

# **LOCAL GOVERNMENT ACT 1993 No. 30**

NEW SOUTH WALES



## **SUMMARY OF TABLE OF PROVISIONS**

### **CHAPTER 1—PRELIMINARY**

### **CHAPTER 2—WHAT ARE THE PURPOSES OF THIS ACT?**

### **CHAPTER 3—WHAT IS A COUNCIL'S CHARTER?**

### **CHAPTER 4—HOW CAN THE COMMUNITY INFLUENCE WHAT A COUNCIL DOES?**

#### **PART 1—OPEN MEETINGS**

#### **PART 2—ACCESS TO INFORMATION**

#### **PART 3—EXPRESSIONS OF COMMUNITY OPINION**

Division 1—Council polls

Division 2—Constitutional referendums

Division 3—General provisions concerning a council poll or constitutional referendum

### **CHAPTER 5—WHAT ARE A COUNCIL'S FUNCTIONS?**

### **CHAPTER 6—WHAT ARE THE SERVICE FUNCTIONS OF COUNCILS?**

#### **PART 1—GENERAL**

#### **PART 2—PUBLIC LAND**

Division 1—Classification and reclassification of public land

Division 2—Use and management of community land

Division 3—Miscellaneous

**PART 3—RESTRAINTS AND QUALIFICATIONS THAT APPLY TO SERVICE FUNCTIONS**

Division 1—Tendering

Division 2—Water, sewerage and drainage works and facilities

Division 3—Private works

**CHAPTER 7—WHAT ARE THE REGULATORY FUNCTIONS OF COUNCILS?**

**PART 1—APPROVALS**

Division 1—What activities require approval?

Division 2—Crown activities

Division 3—Making and determination of applications for approval—generally

Division 4—Special provisions relating to notice of applications to erect buildings

Division 5—Accreditation of components, processes and designs

**PART 2—ORDERS**

Division 1—Giving of orders

Division 2—Procedures to be observed before giving orders

Division 3—Orders generally

**PART 3—ADOPTION OF LOCAL POLICIES CONCERNING APPROVALS AND ORDERS**

**PART 4—CERTIFICATES CONCERNING BUILDINGS**

**PART 5—APPEALS**

Division 1—Approvals and orders

Division 2—Building certificates

**CHAPTER 8—WHAT ANCILLARY FUNCTIONS DOES A COUNCIL HAVE?**

**PART 1—ACQUISITION OF LAND**

**PART 2—ENTRY ON TO LAND AND OTHER POWERS**

**CHAPTER 9—HOW ARE COUNCILS ESTABLISHED?**

**PART 1—AREAS**

Division 1—How are areas constituted, altered and dissolved?

Division 2—What must be done before areas can be constituted or altered?

**PART 2—COUNCILS**

Division 1—Constitution

Division 2—The mayor

Division 3—The councillors

Division 4—Local Government Remuneration Tribunal

Division 5—What fees, expenses and facilities may be paid or provided to councillors?

Division 6—Appointment of administrator

**PART 3—LOCAL GOVERNMENT BOUNDARIES COMMISSION**

**CHAPTER 10—HOW ARE PEOPLE ELECTED TO CIVIC OFFICE?**

PART 1—WHO MAY VOTE?

PART 2—WHO MAY BE ELECTED?

PART 3—WHAT IS THE SYSTEM OF ELECTION?

PART 4—WHEN ARE ELECTIONS HELD?

PART 5—HOW ARE CASUAL VACANCIES FILLED?

PART 6—HOW ARE ELECTIONS CONDUCTED?

Division 1—The role of the Electoral Commissioner

Division 2—Electoral rolls

Division 3—Nominations and election

Division 4—Where residents fail to vote

Division 5—Miscellaneous

PART 7—POLITICAL PARTIES

PART 8—DISCLOSURE OF ELECTION FUNDING

PART 9—DISMISSAL FROM CIVIC OFFICE

**CHAPTER 11—HOW ARE COUNCILS STAFFED?**

PART 1—ORGANISATION STRUCTURE

PART 2—THE GENERAL MANAGER AND OTHER SENIOR STAFF

PART 3—THE PUBLIC OFFICER

PART 4—EQUAL EMPLOYMENT OPPORTUNITY

PART 5—OTHER PROVISIONS CONCERNING STAFF

**CHAPTER 12—HOW DO COUNCILS OPERATE?**

PART 1—GENERAL

PART 2—HOW ARE DECISIONS MADE?

Division 1—Code of meeting practice

Division 2—Other provisions concerning council meetings

PART 3—DELEGATION OF FUNCTIONS

PART 4—INSURANCE

PART 5—COUNTY COUNCILS

**CHAPTER 13—HOW ARE COUNCILS MADE ACCOUNTABLE FOR THEIR ACTIONS?**

PART 1—PRELIMINARY

PART 2—MANAGEMENT PLANS

**PART 3—FINANCIAL MANAGEMENT**

Division 1—Funds

Division 2—Accounting records, financial reports and auditing

Division 3—Auditors

**PART 4—ANNUAL REPORTS**

**PART 5—INQUIRIES, REVIEWS AND SURCHARGING**

Division 1—Inquiries and reviews

Division 2—Surcharging

**CHAPTER 14—HONESTY AND DISCLOSURE OF INTERESTS**

**PART 1—CONDUCT**

**PART 2—DUTIES OF DISCLOSURE**

Division 1—Preliminary

Division 2—Disclosure of interests in written returns

Division 3—Disclosure of pecuniary interests at meetings

Division 4—Disclosure of pecuniary interests in council dealings

**PART 3—COMPLAINTS CONCERNING NON-DISCLOSURE**

Division 1—Making and investigation of complaints

Division 2—Proceedings before the Pecuniary Interest Tribunal

**PART 4—LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL**

**CHAPTER 15—HOW ARE COUNCILS FINANCED?**

**PART 1—AN OVERVIEW OF RATES AND CHARGES**

**PART 2—LIMIT OF ANNUAL INCOME FROM RATES AND CHARGES**

**PART 3—ORDINARY RATES**

**PART 4—MAKING OF RATES AND CHARGES**

**PART 5—LEVYING OF RATES AND CHARGES**

Division 1—General

Division 2—Special rates and charges relating to water supply, sewerage and drainage

**PART 6—WHAT LAND IS RATEABLE?**

**PART 7—PAYMENT OF RATES AND CHARGES**

**PART 8—CONCESSIONS**

Division 1—Concessions for pensioners

Division 2—Other concessions

PART 9—MISCELLANEOUS MATTERS CONCERNING RATES AND CHARGES

PART 10—FEES

PART 11—GRANTS

PART 12—LOANS

PART 13—INVESTMENTS

**CHAPTER 16—OFFENCES**

PART 1—GENERAL OFFENCES

PART 2—PUBLIC LAND

PART 3—WATER, SEWERAGE AND STORMWATER DRAINAGE OFFENCES

PART 4—STREET DRINKING

PART 5—PARKING

PART 6—OFFENCE RELATING TO CIVIC OFFICE

PART 7—OFFENCES RELATING TO BUILDINGS

PART 8—MISCELLANEOUS

**CHAPTER 17—ENFORCEMENT**

PART 1—GENERAL

PART 2—PROCEEDINGS BY THE COUNCIL OR ITS EMPLOYEES

Division 1—General

Division 2—Evidence

Division 3—Notices by the council

Division 4—Legal proceedings for the recovery of rates and charges

Division 5—Sale of land for unpaid rates and charges

PART 3—PROCEEDINGS AGAINST COUNCILS, COUNCILLORS AND STAFF

Division 1—General

Division 2—Liability

**CHAPTER 18—MISCELLANEOUS**

PART 1—GENERAL

PART 2—REGULATIONS

PART 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

*Local Government Act 1993 No. 30*

---

SCHEDULE 1—LOCAL GOVERNMENT REMUNERATION TRIBUNAL AND  
ASSESSORS

SCHEDULE 2—MEMBERSHIP AND PROCEDURE OF THE BOUNDARIES  
COMMISSION

SCHEDULE 3—DISCLOSURE OF INTERESTS

SCHEDULE 4—LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL

SCHEDULE 5—LOCAL GOVERNMENT GRANTS COMMISSION

SCHEDULE 6—REGULATIONS

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

DICTIONARY

---

# **LOCAL GOVERNMENT ACT 1993 No. 30**

NEW SOUTH WALES



## **TABLE OF PROVISIONS**

### **CHAPTER 1—PRELIMINARY**

1. Short title
2. Commencement
3. Definitions
4. Does this Act bind the Crown?
5. To what parts of the State does this Act apply?
6. Notes in the text

### **CHAPTER 2—WHAT ARE THE PURPOSES OF THIS ACT?**

7. What are the purposes of this Act?

### **CHAPTER 3—WHAT IS A COUNCIL'S CHARTER?**

8. The council's charter

### **CHAPTER 4—HOW CAN THE COMMUNITY INFLUENCE WHAT A COUNCIL DOES?**

#### **PART 1—OPEN MEETINGS**

9. Public notice of meetings
10. Who is entitled to attend meetings?
11. Public access to correspondence and reports

#### **PART 2—ACCESS TO INFORMATION**

12. What information is publicly available?
13. Retention and preservation of records

**PART 3—EXPRESSIONS OF COMMUNITY OPINION**

Division 1—Council polls

14. Council polls

Division 2—Constitutional referendums

15. What is a constitutional referendum?

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

17. What is the effect of a constitutional referendum?

Division 3—General provisions concerning a council poll or constitutional referendum

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

19. Day for taking council poll or constitutional referendum

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

**CHAPTER 5—WHAT ARE A COUNCIL'S FUNCTIONS?**

21. Functions under this Act

22. Other functions

23. Supplementary, incidental and consequential functions

**CHAPTER 6—WHAT ARE THE SERVICE FUNCTIONS OF COUNCILS?**

**PART 1—GENERAL**

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

**PART 2—PUBLIC LAND**

Division 1—Classification and reclassification of public land

25. All public land must be classified

26. What are the classifications?

27. How are the classifications made?

28. Preparation of draft local environmental plans

29. Public hearing into reclassification

30. Reclassification of community land as operational

31. Classification of land acquired after the commencement of this Division

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

33. Reclassification of operational land as community land

34. Classification or reclassification by council resolution

Division 2—Use and management of community land

35. What governs the use and management of community land?

36. Preparation of draft plans of management for community land

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

38. Public notice of draft plans of management

39. Notice to owner of draft plan of management

40. Adoption of plans of management



41. Amendment of plans of management
42. Revocation and cessation of plans of management
43. Public availability of plans of management
44. Use of community land pending adoption of plan of management
45. What dealings can a council have in community land?
46. Leases and licences of community land—generally
47. Leases and licences of community land for more than 5 years—additional requirements

Division 3—Miscellaneous

48. Responsibility for certain public reserves
49. Public reserves and drainage reserves provided for in subdivisions
50. Public garden and recreation space and drainage reserves provided for in subdivisions approved before 15.6.1964
51. Use of land held for drainage purposes
52. Effect of s. 28 of the Environmental Planning and Assessment Act 1979
53. The council's land register
54. Certificate as to classification of land

**PART 3—RESTRAINTS AND QUALIFICATIONS THAT APPLY TO SERVICE FUNCTIONS**

Division 1—Tendering

55. What are the requirements for tendering?

Division 2—Water, sewerage and drainage works and facilities

56. Application of Division
57. Construction of works
58. Handing over of works
59. Vesting of works
60. Council works for which the approval of the Minister for Public Works is required
61. Directions of the Minister for Public Works concerning works to which s. 60 applies
62. Powers of Minister during emergencies
63. Effect of failure to comply with directions
64. Construction of works for developers
65. Powers of Minister for Public Works—entry on to land and other powers
66. Appointment of administrator

Division 3—Private works

67. Private works

**CHAPTER 7—WHAT ARE THE REGULATORY FUNCTIONS OF COUNCILS?**

PART 1—APPROVALS

Division 1—What activities require approval?

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

## Division 2—Crown activities

69. Crown exemption from approval to erect or demolish a building
70. Compliance by the Crown with building standards
71. Use by the Crown of places of public entertainment
72. Determination of applications by the Crown
73. Effect of council's failure to determine Crown application
74. Prohibition on appeals concerning Crown applications

## Division 3—Making and determination of applications for approval—generally

75. Applications for approval
76. What may an application relate to?
77. Relevant regulations and local policies to be brought to notice of intending applicants
78. Who may make an application?
79. What is the form of application?
80. Is there an application fee?
81. What matters must accompany an application?
82. Objections to application of regulations and local policies
83. Ownership and use of plans and specifications
84. Acknowledgment of application
85. Rejection of unclear or illegible applications
86. Request for more information
87. Amendment of applications
88. Withdrawal of applications
89. Matters for consideration
90. Concurrence
91. Giving effect to concurrence
92. Approval where an accreditation is in force
93. Certification by qualified persons
94. Determination of application
95. "In principle" approval
96. Staged approval
97. Conditions concerning security
98. Other conditions
99. Notice to applicant of determination of application
100. Review of determination
101. Date from which approval operates
102. Payment of insurance premium for residential building work
103. When does an approval lapse?
104. Lapsing of building approvals
105. Circumstances in which approval is taken to have been refused
106. Can approvals be amended?
107. Can approvals be extended or renewed?
108. Can approvals be revoked or modified?
109. In what circumstances can an approval be revoked or modified?
110. Notice to be given of proposed revocation or modification
111. Application of ss. 108, 109 and 110 to the Crown
112. Entitlement to compensation
113. Record of approvals

Division 4—Special provisions relating to notice of applications to erect buildings

- 114. Notice of application to erect a building
- 115. Adoption of criteria concerning notice of applications to erect buildings
- 116. Notice of application to erect building not required in certain cases
- 117. Certain persons may inspect plans
- 118. Making and consideration of submissions
- 119. Notice of determination of application for approval to erect a building

Division 5—Accreditation of components, processes and designs

- 120. Application for accreditation
- 121. Determination of application
- 122. Revocation of accreditation
- 123. Councils to be informed of accreditation and revocation

PART 2—ORDERS

Division 1—Giving of orders

- 124. What orders may be given, in what circumstances and to whom?
- 125. Abatement of public nuisances
- 126. Giving orders to public authorities
- 127. Making of regulations for the purposes of this Division
- 128. Catchment districts

Division 2—Procedures to be observed before giving orders

- 129. Circumstances in which compliance with this Division is required
- 130. Effect of compliance with this Division
- 131. Criteria to be considered before order is given
- 132. Notice to be given of proposed order
- 133. Making of representations
- 134. Hearing and consideration of representations
- 135. Procedure after hearing and consideration of representations

Division 3—Orders generally

- 136. Reasons for orders to be given
- 137. Period for compliance with order
- 138. Notice of right to appeal against order
- 139. Order may specify standards and work that will satisfy those standards
- 140. Compliance with order under s. 139
- 141. Council's response to submission of particulars of work by owner
- 142. Orders affecting heritage items
- 143. Combined orders
- 144. Giving and taking effect of orders
- 145. Orders may be given to two or more persons jointly
- 146. Notice in respect of land or building owned or occupied by more than one person
- 147. Compliance with orders by occupiers or managers
- 148. Occupier of land may be required to permit owner to carry out work
- 149. Notice of fire-safety orders to be given to Director-General of Fire Brigades
- 150. Powers of fire brigades
- 151. Inspection reports by fire brigades

- 152. Modification of orders
- 153. Revocation of orders
- 154. The Minister may exercise any function concerning an order that a council may exercise
- 155. Effect of inconsistency between council's order and Minister's order
- 156. Minister may revoke or modify a council's order
- 157. Limitation on Minister's orders

#### PART 3—ADOPTION OF LOCAL POLICIES CONCERNING APPROVALS AND ORDERS

- 158. Preparation of draft local policy for approvals
- 159. Preparation of draft, local policy for orders
- 160. Public notice and exhibition of draft local policy
- 161. Adoption of draft local policy
- 162. Director-General's consent required to exemption from necessity for approval
- 163. Effect of inconsistency between council's local policy and this Act or the regulations
- 164. Local policy not to be more onerous than this Act or the regulations
- 165. Amendment and revocation of local policy
- 166. Public notice of adoption of local policy
- 167. Public availability of local policy

#### PART 4—CERTIFICATES CONCERNING BUILDINGS

- 168. Effect of building certificate
- 169. Application for building certificate
- 170. Acknowledgment of application
- 171. Additional information
- 172. Determination of application
- 173. Contents of building certificates
- 174. Record of certificates
- 175. Other certificates and statements

#### PART 5—APPEALS

##### Division 1—Approvals and orders

- 176. Appeal by an applicant concerning an approval
- 177. Appeal by an applicant as to whether an "in principle" approval operates
- 178. Appeal against the revocation or modification of an approval
- 179. Awarding of compensation concerning approvals
- 180. Appeals concerning orders
- 181. Awarding of compensation concerning orders
- 182. Appeals concerning particulars of work submitted to councils
- 183. Effect of appeal on order
- 184. Court's powers not limited by this Division

##### Division 2—Building certificates

- 185. Appeals

**CHAPTER 8—WHAT ANCILLARY FUNCTIONS DOES A COUNCIL HAVE?****PART 1—ACQUISITION OF LAND**

- 186. For what purposes may a council acquire land?
- 187. How does a council acquire land?
- 188. Restriction on compulsory acquisition of land for re-sale
- 189. No restriction as to area
- 190. Special provisions relating to land containing minerals

**PART 2—ENTRY ON TO LAND AND OTHER POWERS**

- 191. Power of entry
- 192. Inspections and investigations
- 193. Notice of entry
- 194. Use of force
- 195. Notification of use of force or urgent entry
- 196. Care to be taken
- 197. Recovery of cost of entry and inspection
- 198. Compensation
- 199. Authority to enter premises
- 200. In what circumstances can entry be made to a residence?
- 201. Search warrants
- 202. Special provision with respect to fire brigades
- 203. Councils to carry out fire-safety inspections on request of Director-General of Fire Brigades

**CHAPTER 9—HOW ARE COUNCILS ESTABLISHED?****PART 1—AREAS**

## Division 1—How are areas constituted, altered and dissolved?

- 204. Constitution of areas
- 205. Land taken to be included in an area
- 206. Constitution of cities
- 207. Names of areas
- 208. Effect of changing name
- 209. Alteration of boundaries of areas
- 210. Division of areas into wards
- 211. Revision of ward boundaries
- 212. Dissolution of areas
- 213. Facilitating provisions of proclamations

## Division 2—What must be done before areas can be constituted or altered?

- 214. Exercise of functions under ss. 204 and 209
- 215. Who may initiate a proposal?
- 216. Public notice to be given of a proposal
- 217. Making of representations
- 218. The next step

## PART 2—COUNCILS

## Division 1—Constitution

- 219. Constitution of councils
- 220. Bodies corporate
- 221. What is a council's corporate name?
- 222. Who comprise the governing body?
- 223. What is the role of the governing body?
- 224. How many councillors does a council have?

## Division 2—The mayor

- 225. The mayor
- 226. What is the role of the mayor?
- 227. Who elects the mayor?
- 228. How is it decided that the mayor be elected by the electors?
- 229. Can the decision be changed?
- 230. For what period is the mayor elected?
- 231. Deputy mayor

## Division 3—The councillors

- 232. What is the role of a councillor?
- 233. For what period is a councillor elected?
- 234. When does a vacancy occur in a civic office?

## Division 4—Local Government Remuneration Tribunal

- 235. Local Government Remuneration Tribunal
- 236. Assessors
- 237. Provisions relating to the appointment, term of office and remuneration of the Remuneration Tribunal and assessors
- 238. Functions of the Remuneration Tribunal
- 239. Categorisation of councils, county councils and mayoral offices
- 240. How are the categories to be determined?
- 241. Determination of fees
- 242. Special determinations
- 243. Inquiries
- 244. Reports of the Remuneration Tribunal
- 245. Publication and tabling of reports
- 246. Effect of determination
- 247. Assistance for the Remuneration Tribunal

## Division 5—What fees, expenses and facilities may be paid or provided to councillors?

- 248. Fixing and payment of annual fees for councillors
- 249. Fixing and payment of annual fees for the mayor
- 250. At what intervals are fees to be paid?
- 251. What is the consequence of paying fees?
- 252. Payment of expenses and provision of facilities
- 253. Public notice of proposed policy concerning expenses and facilities
- 254. Decision to be made in open meeting

## Division 6—Appointment of administrator

- 255. Governor may dismiss mayor and councillors
- 256. Governor may appoint administrator or order fresh election
- 257. Declaration of council as non-functioning
- 258. The administrator
- 259. Temporary exercise of the council's functions

## PART 3—LOCAL GOVERNMENT BOUNDARIES COMMISSION

- 260. Constitution of the Boundaries Commission
- 261. Membership of Boundaries Commission
- 262. How is a panel to be constituted for the purposes of making an appointment as a commissioner?
- 263. Functions of the Boundaries Commission
- 264. Can a person be represented in proceedings before the Boundaries Commission?
- 265. Boundaries Commission may conduct survey or poll

**CHAPTER 10—HOW ARE PEOPLE ELECTED TO CIVIC OFFICE?**

## PART 1—WHO MAY VOTE?

- 266. Who has the right to be enrolled as an elector?
- 267. Who has the right to vote?
- 268. One vote per elector
- 269. Who is a “resident” for the purposes of this Part?
- 270. Who is an “owner of rateable land” for the purposes of this Part?
- 271. Who is an “occupier” or “ratepaying lessee” for the purposes of this Part?
- 272. Competing claimants
- 273. Application of Part to area not divided into wards

## PART 2—WHO MAY BE ELECTED?

- 274. What are the qualifications for civic office?
- 275. Who is disqualified from holding civic office?
- 276. What is the effect of disqualification?
- 277. May the holder of a civic office be re-elected?

## PART 3—WHAT IS THE SYSTEM OF ELECTION?

- 278. Election of councillors for an area not divided into wards
- 279. Alternative methods for election of councillors for an area divided into wards
- 280. Ward election of councillors—method 1
- 281. Election of councillors partly by wards, partly by area—method 2
- 282. Election of mayor
- 283. Double candidature
- 284. Voting system for election of the mayor by all the electors of the area
- 285. Voting system for election of councillors
- 286. Is voting compulsory?

## PART 4—WHEN ARE ELECTIONS HELD?

- 287. When is an ordinary election of councillors held?
- 288. Delayed elections of councillors

- 289. When is an election of a mayor by the electors to be held?
- 290. When is an election of a mayor by the councillors to be held?

#### PART 5—HOW ARE CASUAL VACANCIES FILLED?

- 291. By-elections
- 292. When is a by-election to be held?
- 293. Delayed by-elections
- 294. Dispensing with by-elections
- 295. Casual vacancy in office of mayor elected by the councillors

#### PART 6—HOW ARE ELECTIONS CONDUCTED?

##### Division 1—The role of the Electoral Commissioner

- 296. Elections to be conducted by the Electoral Commissioner
- 297. Delegation of functions by the Electoral Commissioner

##### Division 2—Electoral rolls

- 298. Residential roll
- 299. Non-residential roll
- 300. Roll of occupiers and ratepaying lessees
- 301. Roll of electors
- 302. Public inspection of roll of electors
- 303. Making of claims for inclusion in the roll
- 304. Enrolment if qualified in more than one respect
- 305. Can an elector vote if his or her name is not on the roll of electors?

##### Division 3—Nominations and election

- 306. Nominations
- 307. Nomination where name omitted from roll
- 308. Candidates' resumes
- 309. Contested elections
- 310. Conduct of contested elections
- 311. Uncontested elections

##### Division 4—Where residents fail to vote

- 312. Offence
- 313. Returning officer to mark residential roll
- 314. Penalty notice to be issued for failure to vote
- 315. Evidence in marked roll

##### Division 5—Miscellaneous

- 316. Position on ballot-paper
- 317. Validity of elections
- 318. Lapsed or void election

#### PART 7—POLITICAL PARTIES

- 319. Local Government Register of Political Parties
- 320. Registration of political parties
- 321. Party endorsement on ballot-papers
- 322. Independent candidate on ballot-papers



- 323. Printing of political party name on ballot-papers
- 324. Form of political party name on ballot-papers

**PART 8—DISCLOSURE OF ELECTION FUNDING**

- 325. Local Government Register of Candidates
- 326. Local Government Register of Party Agents
- 327. Local Government Register of Official Agents
- 328. Obligation to disclose donations

**PART 9—DISMISSAL FROM CIVIC OFFICE**

- 329. Can the holder of a civic office be dismissed?
- 330. Is there a right of appeal against an order of dismissal?
- 331. When does an order of dismissal take effect?

**CHAPTER 11—HOW ARE COUNCILS STAFFED?**

**PART 1—ORGANISATION STRUCTURE**

- 332. Determination of structure
- 333. Re-determination of structure

**PART 2—THE GENERAL MANAGER AND OTHER SENIOR STAFF**

- 334. Appointment of general manager
- 335. Functions of general manager
- 336. Filling of vacancy in position of general manager
- 337. Council to be consulted as to appointment and dismissal of senior staff
- 338. Nature of contracts for senior staff
- 339. Annual reporting of contracts for senior staff
- 340. Industrial arbitration excluded
- 341. Duty to report bankruptcy

**PART 3—THE PUBLIC OFFICER**

- 342. Appointment of the public officer
- 343. Functions of the public officer

**PART 4—EQUAL EMPLOYMENT OPPORTUNITY**

- 344. Objects
- 345. Preparation and implementation of management plans
- 346. Inconsistencies with the Anti-Discrimination Act 1977
- 347. References

**PART 5—OTHER PROVISIONS CONCERNING STAFF**

- 348. Advertising of staff positions
- 349. Appointments to be on merit
- 350. Appointments to which ss. 348 and 349 do not apply
- 351. Temporary appointments
- 352. Independence of staff for certain purposes
- 353. Other work
- 354. Restriction on appointment of a former mayor or councillor

**CHAPTER 12—HOW DO COUNCILS OPERATE?****PART 1—GENERAL,**

- 355. How does a council exercise its functions?
- 356. Can a council financially assist others?
- 357. Can a council exercise its functions only within its area?
- 358. Restrictions on formation of corporations
- 359. Can a council act as an agent?

**PART 2—HOW ARE DECISIONS MADE?**

## Division 1—Code of meeting practice

- 360. Conduct of meetings of councils and committees
- 361. Preparation, public notice and exhibition of draft code
- 362. Adoption of draft code
- 363. Amendment of the code
- 364. Public availability of the code

## Division 2—Other provisions concerning council meetings

- 365. How often does the council meet?
- 366. Calling of extraordinary meeting on request by councillors
- 367. Notice of meetings
- 368. What is the quorum for a meeting?
- 369. Who presides at meetings of the council?
- 370. What are the voting entitlements of councillors?
- 371. What constitutes a decision of the council?
- 372. Rescinding or altering resolutions
- 373. Committee of council
- 374. Certain circumstances do not invalidate council decisions
- 375. Minutes
- 376. Attendance of general manager at meetings

**PART 3—DELEGATION OF FUNCTIONS**

- 379. General power of the council to delegate
- 378. Delegations by the general manager
- 379. Delegation of regulatory functions
- 380. Review of delegations
- 381. Exercise of functions conferred or imposed on council employees under other Acts

**PART 4—INSURANCE**

- 382. Insurance against liability

**PART 5—COUNTY COUNCILS**

- 383. Proposal to establish or dissolve a county council or amend its constitution
- 384. Public notice to be given of a proposal
- 385. Making of representations
- 386. Minister's recommendation concerning the proposal
- 387. Formation of county councils
- 388. Bodies corporate

- 389. What is a county council's corporate name?
- 390. Who comprise the governing body?
- 391. The chairperson
- 392. Vacancy in office of member
- 393. Area of operations of county council
- 394. Functions of county council
- 395. General manager of county council
- 396. How often does a county council meet?
- 397. Amendment and dissolution of county councils
- 398. Facilitating provisions of proclamations
- 399. Making of financial contributions by constituent councils
- 400. Application of Act to county councils

### **CHAPTER 13—HOW ARE COUNCILS MADE ACCOUNTABLE FOR THEIR ACTIONS?**

#### **PART 1—PRELIMINARY**

- 401. Application of Chapter

#### **PART 2—MANAGEMENT PLANS**

- 402. Preparation of draft management plans
- 403. Contents of draft management plan with respect to council's work and activities
- 404. Contents of draft management plan with respect to council's revenue policy
- 405. Public notice of draft management plan
- 406. Adoption of management plan
- 407. General manager to report periodically on implementation of management plan

#### **PART 3—FINANCIAL MANAGEMENT**

##### **Division 1—Funds**

- 408. The council's funds
- 409. The consolidated fund
- 410. Alternative use of money raised by special rates or charges
- 411. The trust fund

##### **Division 2—Accounting records, financial reports and auditing**

- 412. Accounting records
- 413. Preparation of financial reports
- 414. Extension of time for preparation of financial reports
- 415. Auditing of financial reports
- 416. Extension of time for auditing of financial reports
- 417. Auditor's reports
- 418. Public notice to be given of presentation of financial reports etc.
- 419. Presentation of the council's financial reports
- 420. Submissions on financial reports and auditor's reports
- 421. Interim reports

##### **Division 3—Auditors**

- 422. Appointment of auditors
- 423. Disqualified persons
- 424. Auditor's term of office

- 425. Auditor-General to be auditor in certain instances
- 426. Auditor may exercise general power of inspecting accounting records
- 427. Powers of auditor

#### PART 4—ANNUAL REPORTS

- 428. Annual reports

#### PART 5—INQUIRIES, REVIEWS AND SURCHARGING

##### Division 1—Inquiries and reviews

- 429. Minister or Director-General may require councils to provide information
- 430. Director-General may authorise investigation of councils etc.
- 431. Powers of Departmental representatives—generally
- 432. Entry on to premises
- 433. Report of investigation
- 434. Council's response to report

##### Division 2—Surcharging

- 435. Surcharging by Departmental representative
- 436. Procedure for surcharging
- 437. Right of appeal
- 438. Recovery of amount surcharged

### CHAPTER 14—HONESTY AND DISCLOSURE OF INTERESTS

#### PART 1—CONDUCT

- 439. Conduct of councillors, staff and delegates
- 440. Code of conduct

#### PART 2—DUTIES OF DISCLOSURE

##### Division 1—Preliminary

- 441. Who are “designated persons”?
- 442. What is a “pecuniary interest”?
- 443. Who has a pecuniary interest?
- 444. What disclosures must be made by a councillor?
- 445. What disclosures must be made by a designated person?
- 446. What disclosures must be made by a member of a council committee?
- 447. What disclosures must be made by council advisers?
- 448. What interests do not have to be disclosed?

##### Division 2—Disclosure of interests in written returns

- 449. Returns disclosing interests of councillors and designated persons
- 450. Form of returns and interests to be disclosed

##### Division 3—Disclosure of pecuniary interests at meetings

- 451. Disclosure and participation in meetings
- 452. Participation in meetings despite pecuniary interests
- 453. Disclosures to be recorded
- 454. General disclosure
- 455. Powers of council in relation to meetings

- 456. Disclosure by adviser
- 457. Circumstances in which ss. 451 and 456 are not breached
- 458. Powers of Minister in relation to meetings
  - Division 4—Disclosure of pecuniary interests in council dealings
- 459. Disclosure of pecuniary interests when dealing with council matters

### PART 3—COMPLAINTS CONCERNING NON-DISCLOSURE

#### Division 1—Making and investigation of complaints

- 460. Complaints concerning failure to disclose pecuniary interests
- 461. Director-General may require further information
- 462. Investigation of complaints
- 463. Decision not to investigate a complaint
- 464. Referral and investigation of complaints by other authorities
- 465. Pecuniary Interest Tribunal to be notified of investigations
- 466. Persons to be notified of complaint
- 467. Reports of investigation of complaints by authorities
- 468. Presentation of reports to Pecuniary Interest Tribunal

#### Division 2—Proceedings before the Pecuniary Interest Tribunal

- 469. Hearings
- 470. Decision not to conduct a hearing
- 471. General conduct of proceedings
- 472. Private and public hearings
- 473. Representation
- 474. Presentation of cases
- 475. Power to summon witnesses and take evidence
- 476. Power to obtain documents
- 477. Privilege concerning answers and documents
- 478. Additional complaints
- 479. Adjournments
- 480. Release of information
- 481. Witnesses' expenses
- 482. Decision of Pecuniary Interest Tribunal
- 483. Standard of proof
- 484. Pecuniary Interest Tribunal to provide details of its decisions
- 485. Appeals to Supreme Court
- 486. Referral of matters by Pecuniary Interest Tribunal

### PART 4—LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL

- 487. Establishment of Pecuniary Interest Tribunal
- 488. Constitution of Pecuniary Interest Tribunal
- 489. Functions of Pecuniary Interest Tribunal
- 490. Annual report

## CHAPTER 15—HOW ARE COUNCILS FINANCED?

### PART 1—AN OVERVIEW OF RATES AND CHARGES

- 491. Some sources of a council's income
- 492. What are the types of rates?

- 493. Categories of ordinary rates
- 494. Ordinary rates must be made and levied annually
- 495. Making and levying of special rates
- 496. Making and levying of annual charges for domestic waste management services
- 497. What is the structure of a rate?
- 498. The ad valorem amount
- 499. The base amount
- 500. Limit on revenue that can be raised from base amount
- 501. For what services can a council impose an annual charge?
- 502. Charges for actual use
- 503. What is the relationship between rates and charges?
- 504. Domestic waste management services

#### PART 2—LIMIT OF ANNUAL INCOME FROM RATES AND CHARGES

- 505. Application of Part
- 506. Variation of general income
- 507. Variation of annual charges for domestic waste management services
- 508. Orders under ss. 506 and 507
- 509. Maximum general income for a year
- 510. Maximum annual charge for domestic waste management services
- 511. Catching up of shortfall in general income
- 512. Effect of contravening s. 509, 510 or 511
- 513. Estimates of increases and decreases in value for purposes of notional rate income

#### PART 3—ORDINARY RATES

- 514. Categorisation of land for purposes of ordinary rates
- 515. Categorisation as farmland
- 516. Categorisation as residential
- 517. Categorisation as mining
- 518. Categorisation as business
- 519. How is vacant land to be categorised?
- 520. Notice of declaration of category
- 521. When does the declaration of a category take effect?
- 522. When does the declaration of a category cease?
- 523. When are the declarations of categories reviewed?
- 524. Notice of change of category
- 525. Application for change of category
- 526. Appeal against declaration of category
- 527. Adjustment of rates following change in category
- 528. Rate may be the same or different for different categories
- 529. Rate may be the same or different within a category
- 530. Ad valorem rate for the category “farmland”
- 531. What provisions of this Part apply to the determination of sub-categories?

#### PART 4—MAKING OF RATES AND CHARGES

- 532. Publication of draft management plan
- 533. Date by which a rate or charge must be made
- 534. Rate or charge to be made for a specified year
- 535. Rate or charge to be made by resolution

- 536. What criteria are relevant in determining the base amount?
- 537. Form of resolution specifying base amounts of rates
- 538. Form of resolution for special rate
- 539. What criteria are relevant in determining the amount of a charge?
- 540. Form of charge
- 541. Differing amounts of a charge
- 542. Minimum amounts of charges
- 543. Each form of rate and each charge to have its own name
- 544. Inclusion of names in rates and charges notices
- 545. Curing of irregularities

#### PART 5—LEVYING OF RATES AND CHARGES

##### Division 1—General

- 546. How is a rate or charge levied?
- 547. Method of rating dwellings under company title
- 548. Minimum amounts
- 549. Reduction of rates containing base amounts if levied on vacant land
- 550. Charge of rates and charges on land

##### Division 2—Special rates and charges relating to water supply, sewerage and drainage

- 551. Application of Division 2
- 552. What land may be subject to a water supply special rate or charge?
- 553. Time at which land becomes subject to special rate or charge

#### PART 6—WHAT LAND IS RATEABLE?

- 554. What land is rateable?
- 555. What land is exempt from all rates?
- 556. What land is exempt from all rates, other than water supply special rates and sewerage special rates?
- 557. What land is exempt from water supply special rates and sewerage special rates?
- 558. What land and bodies may be exempted from water supply special rates and sewerage special rates?
- 559. Determination as to whether a body is a public benevolent institution or public charity

#### PART 7—PAYMENT OF RATES AND CHARGES

- 560. Who is liable to pay rates?
- 561. Who is liable to pay charges?
- 562. Payment of rates and standing charges by quarterly instalments
- 563. Discount for prompt payment in full
- 564. Agreement as to periodical payment of rates and charges
- 565. Capital contributions instead of payment of special rates
- 566. Accrual of interest on overdue rates and charges
- 567. Writing off of accrued interest
- 568. Application of payments
- 569. Liability of the occupier
- 570. Transfer of land in payment of rates or charges
- 571. What happens if land is transferred?

- 572. What happens if the rateability of land changes?
- 573. What happens if land is subdivided?
- 574. Appeal on question of whether land is rateable

#### PART 8—CONCESSIONS

##### Division 1—Concessions for pensioners

- 575. Reductions for eligible pensioners
- 576. Application of this Division to postponed rates
- 577. Extension of concession to avoid hardship
- 578. When does an order under s. 577 take effect?
- 579. When and how is an application made for the purposes of this Division?
- 580. Variation by regulation of amounts of reductions
- 581. Reimbursement of councils by Parliament
- 582. Abandonment of pensioners rates and charges
- 583. Writing off of pensioners rates and charges
- 584. Ending of concession

##### Division 2—Other concessions

- 585. Who may apply for postponement of rates?
- 586. Applications to be referred to Valuer-General
- 587. Attributable part of land value of land
- 588. Determination of attributable part of land value by Valuer-General
- 589. Redetermination of attributable part of land value
- 590. Use of determination of attributable part of land value
- 591. Postponement of rates
- 592. Interest on postponed rates
- 593. Paid rates to be refunded
- 594. Adjustment of rates
- 595. Rates to be written off after 5 years
- 596. Change of circumstances
- 597. Entitlement to postponement ceases
- 598. Redetermination on partial change of circumstances
- 599. When and how is an application made for the purposes of this Division?
- 600. Rebates in respect of certain land vested in public bodies
- 601. Hardship resulting from certain valuation changes

#### PART 9—MISCELLANEOUS MATTERS CONCERNING RATES AND CHARGES

- 602. Record of rates and charges
- 603. Certificate as to rates and charges
- 604. Notice of transfer of land
- 605. Expenses of tracing persons
- 606. Notice of granting of certain Crown leases
- 607. Writing off of rates, charges and accrued interest

#### PART 10—FEES

- 608. Council fees for services
- 609. How does a council determine the amount of a fee for a service?
- 610. Effect of other Acts



- 611. Annual charge on rails, pipes etc.
- 612. Publication of draft management plan

#### PART 11—GRANTS

- 613. Constitution of the Local Government Grants Commission
- 614. Membership of Grants Commission
- 615. What are the functions of the Grants Commission and the Minister under this Part?
- 616. How does the Grants Commission decide on its recommendations?
- 617. What information does the Minister have to provide?
- 618. What other functions does the Grants Commission have?
- 619. What happens to the money paid to the State under the Commonwealth Act?
- 620. Making of grants by the Minister

#### PART 12—LOANS

- 621. When and for what may a council borrow?
- 622. What form may a council borrowing take?
- 623. Security for borrowings
- 624. Are there any restrictions on a council borrowing?

#### PART 13—INVESTMENTS

- 625. How may councils invest?

### CHAPTER 16—OFFENCES

#### PART 1—GENERAL OFFENCES

- 626. Failure to obtain approval
- 627. Failure to comply with approval
- 628. Failure to comply with order

#### PART 2—PUBLIC LAND

- 629. Injuring flora and fauna on public land
- 630. Breaking glass and other matter on public land or a public road
- 631. Damaging, defacing or polluting public bathing place
- 632. Acting contrary to notices erected by councils
- 633. Bathing (including nude bathing)

#### PART 3—WATER, SEWERAGE AND STORMWATER DRAINAGE OFFENCES

- 634. Unauthorised work
- 635. Damage to council property
- 636. Tampering with meters and fittings
- 637. Waste or misuse of water
- 638. Discharge of prohibited matter into sewer or drain
- 639. Pollution of public water supply
- 640. Offences in catchment districts
- 641. Unlawful sale of water

**PART 4—STREET DRINKING**

- 642. Drinking of alcohol in alcohol-free zone
- 643. Confiscation of alcohol
- 644. Alcohol-free zones
- 645. Suspension or cancellation
- 646. Guidelines for alcohol-free zones
- 647. Penalty notices
- 648. Other laws not affected
- 649. Fine defaulters not to be detained

**PART 5—PARKING**

- 650. Use of council's free parking areas
- 651. Liability of vehicle owner for offence under s. 650

**PART 6—OFFENCE RELATING TO CIVIC OFFICE**

- 652. Acting in civic office while subject to disqualification

**PART 7—OFFENCES RELATING TO BUILDINGS**

- 653. To which buildings does this Part apply?
- 654. Fire safety notices
- 655. Fire exits
- 656. Doors relating to fire exits
- 657. Paths of travel to fire exits
- 658. Building excavations

**PART 8—MISCELLANEOUS**

- 659. Production of certificate of authority to enter premises
- 660. Obstruction
- 661. Failure to comply with certain directions
- 662. Occupier, manager or agent refusing to give name of owner
- 663. Owner refusing to give name of manager or occupier
- 664. Disclosure and misuse of information
- 665. False or misleading information
- 666. Wilful destruction of documents
- 667. Wilful destruction of notices and signs
- 668. Attempts
- 669. Penalties extended to persons causing offence
- 670. Notices and signs
- 671. Proof of lawful or reasonable excuse

**CHAPTER 17—ENFORCEMENT****PART 1—GENERAL**

- 672. What constitutes a breach of this Act for the purposes of this Part?
- 673. Remedy or restraint of breaches of this Act—the Minister, the Director-General and councils
- 674. Remedy or restraint of breaches of this Act—persons whose rights are infringed
- 675. Time limit on proceedings questioning the validity of approvals
- 676. Functions of the Land and Environment Court

- 677. Compensation may be awarded against vexatious litigants
- 678. Failure to comply with order—carrying out of work by the council
- 679. Penalty notices for certain offences
- 680. Demanding name of offender
- 681. Removal of offenders from community land

## PART 2—PROCEEDINGS BY THE COUNCIL OR ITS EMPLOYEES

### Division 1—General

- 682. Power to appear before local land boards
- 683. Authentication of documents
- 684. Laying of informations
- 685. Certain allegations in informations
- 686. Ownership of council property
- 687. Appearance in Local Court
- 688. Bankruptcy
- 689. Payment of expenses of employee
- 690. Other remedies
- 691. Proceedings for offences
- 692. Time for bringing proceedings concerning certain building work
- 693. Time for bringing proceedings concerning electoral offences
- 694. Application of penalties
- 695. Suing for debts
- 696. Apportionment of expenses

### Division 2—Evidence

- 697. Formal matters
- 698. Judicial notice of certain documents
- 699. Service of notices
- 700. Proof of ownership of, or leasehold estate in, land
- 701. Evidence as to whether a place is a public road
- 702. Offences on boundaries of areas
- 703. Minutes
- 704. Delineation of local government boundaries by reference to maps

### Division 3—Notices by the council

- 705. What is public notice?
- 706. What happens after a council gives public notice?
- 707. Publication of notices in Gazette and newspaper
- 708. The Crown
- 709. Corporations
- 710. Service of notices on persons
- 711. Effect of service on successors in title

### Division 4—Legal proceedings for the recovery of rates and charges

- 712. Special provisions with respect to the recovery of unpaid rates and charges

### Division 5—Sale of land for unpaid rates and charges

- 713. Sale of land for unpaid rates and charges
- 714. Estates and interests of the Crown in land
- 715. Notice of proposal to sell land

- 716. Sale of land by public auction
- 717. Payment of purchase money
- 718. Application of purchase money
- 719. What if the purchase money is less than the amounts owing?
- 720. What if the purchase money is more than the amounts owing?
- 721. Apportionment of rates on subdivided land
- 722. Conveyance or transfer of the land
- 723. Land is conveyed free of certain interests
- 724. Special provisions concerning leases of land owned by the Crown
- 725. Transfers not invalid because of procedural irregularities
- 726. Registration of transfer of land under the Real Property Act 1900

**PART 3—PROCEEDINGS AGAINST COUNCILS, COUNCILLORS AND STAFF**

## Division 1—General

- 727. Service of documents
- 728. Suing for penalty
- 729. Proceedings alleging non-compliance with a procedural requirement
- 730. Compensation

## Division 2—Liability

- 731. Liability of councillors, employees and other persons
- 732. Exemption from liability—accreditation and certification
- 733. Exemption from liability—flood liable land and land in coastal zone

**CHAPTER 18—MISCELLANEOUS**

## PART 1—GENERAL

- 734. Public hearings by a council
- 735. Notices to be given in writing
- 736. Proclamations
- 737. Correcting errors
- 738. Validity of proclamations
- 739. Protection of privacy
- 740. Public inquiries
- 741. Exemption from taxes
- 742. Dispute resolution
- 743. Property in waste
- 744. Delegation of functions by the Minister
- 745. Delegation of functions by the Director-General
- 746. Authorised officers.
- 747. Review of Act

## PART 2—REGULATIONS

- 748. Regulations

## PART 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

- 749. Savings, transitional and other provisions

SCHEDULE 1—LOCAL GOVERNMENT REMUNERATION TRIBUNAL AND ASSESSORS  
SCHEDULE 2—MEMBERSHIP AND PROCEDURE OF THE BOUNDARIES COMMISSION  
PART 1—THE COMMISSIONERS  
PART 2—PROCEDURE AT MEETINGS OF THE BOUNDARIES COMMISSION  
SCHEDULE 3—DISCLOSURE OF INTERESTS  
PART 1—FORM OF RETURNS  
PART 2—INTERESTS TO BE DISCLOSED IN RETURNS  
Division 1—Preliminary matters  
Division 2—Interests to be included in returns  
SCHEDULE 4—LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL  
SCHEDULE 5—LOCAL GOVERNMENT GRANTS COMMISSION  
PART 1—THE COMMISSIONERS  
PART 2—PROCEDURE AT MEETINGS OF THE GRANTS COMMISSION  
SCHEDULE 6—REGULATIONS  
SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS  
DICTIONARY

---

# LOCAL GOVERNMENT ACT 1993 No. 30

NEW SOUTH WALES



**Act No. 30, 1993**

An Act to provide for local government in New South Wales. [Assented to 8 June 1993]

---

See also Impounding Act 1993, Local Government (Consequential Provisions) Act 1993, Roads Act 1993, Traffic (Parking Regulation) Amendment Act 1993.

**The Legislature of New South Wales enacts:**

## **CHAPTER 1—PRELIMINARY**

### **INTRODUCTION**

This Chapter contains provisions which are helpful in understanding the Act as a whole, as well as some machinery provisions.

#### **Short title**

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

#### **Commencement**

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

#### **Definitions**

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

NOTE: Expressions used in this Act (or in a particular provision of this Act) which are defined in the Interpretation Act 1987 have the meanings set out in that Act.

#### **Does this Act bind the Crown?**

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

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

- section 69—concerning approvals for the erection and demolition of buildings
- section 70—concerning compliance with building standards
- section 71—concerning the use of places of public entertainment

NOTE —*continued*

- sections 72–74—concerning determination of Crown applications for approvals
- section 111—concerning revocation or modification of approvals given to the Crown
- section 126—concerning the giving of orders affecting Crown lands, reserves under Part 5 of the Crown Lands Act 1989 and commons
- sections 555 and 561—concerning rates and charges on land owned by the Crown
- section 560—concerning the liability to pay rates in respect of land owned by the Crown
- section 611—concerning the imposition of an annual charge for certain things on, under or over public places
- section 708—service of notices on the Crown
- section 714—prohibition on sale of Crown lands for unpaid rates and charges

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

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

NOTE: This Act does not apply to the whole of New South Wales. Some parts of the State do not come within a local government area. For example, parts of the Western Division of the State (to which the Western Lands Act 1901 applies) and Lord Howe Island (to which the Lord Howe Island Act 1953 applies) are not subject to this Act.

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

**Notes in the text**

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



**CHAPTER 2—WHAT ARE THE PURPOSES OF THIS ACT?****INTRODUCTION**

This Chapter states the Parliament's purposes in enacting this Act.

Section 51 of the Constitution Act 1902 provides:

(1) There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government.

(2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.

(3) The reference in subsection (2) to laws of the Legislature shall be read as a reference to laws that have been enacted by the Legislature, whether before or after the commencement of this section, and that are for the time being in force.

(4) For the purposes of this section, the Western Lands Commissioner, the Lord Howe Island Board, and an administrator with all or any of the functions of a local government body, shall be deemed to be local government bodies.

The Chapter also aims to give an overview of the major elements in the system of local government in this State. It contains a diagram showing the way in which these elements relate to one another.

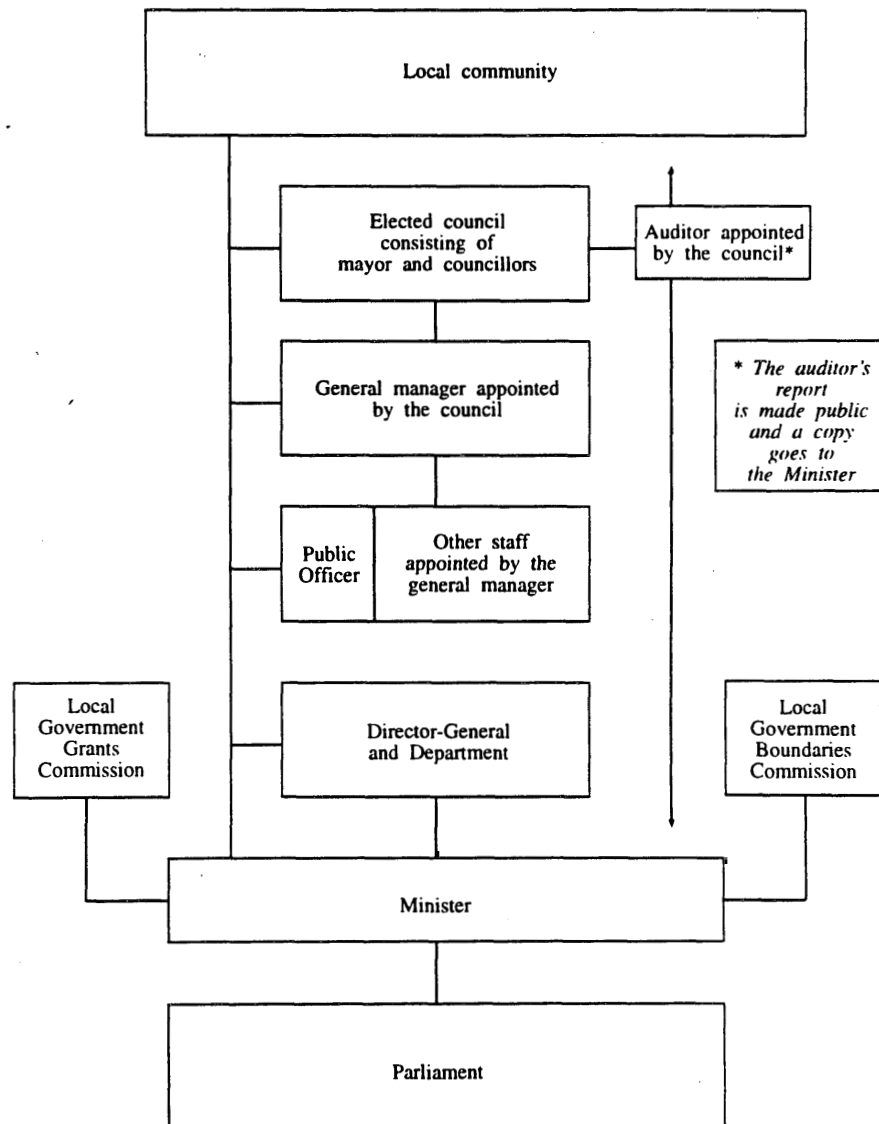
**What are the purposes of this Act?**

7. The purposes of this Act are as follows:

- (a) to provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales;
- (b) to regulate the relationships between the people and bodies comprising the system of local government in New South Wales;
- (c) to encourage and assist the effective participation of local communities in the affairs of local government;
- (d) to give councils:
  - the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public
  - the responsibility for administering some regulatory systems under this Act

- a role in the management, improvement and development of the resources of their areas;
- (e) to require councils to have regard to the protection of the environment in carrying out their responsibilities.

**THE SYSTEM OF LOCAL GOVERNMENT IN NEW SOUTH WALES**



**CHAPTER 3—WHAT IS A COUNCIL'S CHARTER?****INTRODUCTION**

The charter contained in this Chapter comprises a set of principles that are to guide a council in the carrying out of its functions. A council may add other principles not inconsistent with those in the Chapter.

**The council's charter**

**8. (1)** A council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership
- to exercise its functions with due regard for the cultural and linguistic diversity of its community
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants
- to keep the local community and the State government (and through it, the wider community) informed about its activities
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected
- to be a responsible employer.

**(2)** A council, in the exercise of its functions, must pursue its charter but nothing in the charter or this section gives rise to, or can be taken into account in, any civil cause of action.

## **CHAPTER 4—HOW CAN THE COMMUNITY INFLUENCE WHAT A COUNCIL DOES?**

### INTRODUCTION

Under this Chapter, meetings of the council and its committees are required, as a general rule, to be open to the public.

The Chapter provides for public access to information held by councils. Apart from the provisions of this Chapter, members of the public may influence council decisions concerning matters such as the levels of rates and charges, the terms of management plans, the granting of development and building approvals, etc. (which are dealt with in later Chapters) by making submissions, including comments on or objections to proposals relating to those matters.

The Chapter also enables the council to ascertain the views of the local community on various matters through 2 types of polls which may be conducted in the area. A summary of these polls is contained in Part 3 of this Chapter.

### **PART 1—OPEN MEETINGS**

#### **Public notice of meetings**

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

**(2)** A council and each such committee must have available for the public at its offices and at each meeting copies (for inspection or taking away by any person) of the business paper for the meeting. This requirement does not apply to a business paper for a matter that, in the opinion of the general manager, is likely to be considered when the meeting is closed to the public.

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

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

#### **Who is entitled to attend meetings?**

**10. (1)** Everyone is entitled to attend a meeting of the council and those of its committees of which all the members are councillors, except as provided by this section.

(2) A council or such a committee may close to the public only so much of its meeting as comprises the receipt or discussion of any of the following:

- (a) personnel matters concerning particular individuals;
- (b) the personal hardship of any resident or ratepayer;
- (c) commercial information the disclosure of which would be likely:
  - to prejudice the commercial position of the person who supplied it
  - to confer a commercial advantage on a competitor of the council
  - to reveal a trade secret;
- (d) proposals for:
  - the sale or purchase of land
  - the rezoning of land
  - entering into contracts of any kind,if prior knowledge of those proposals could confer an unfair financial advantage on any person;
- (e) information that is subject to legal obligations of confidence;
- (f) the receipt and consideration of legal advice concerning litigation;
- (g) information the disclosure of which would prejudice the maintenance of the law;
- (h) matters affecting the security of the council, councillors, council staff or council property;
- (i) a motion to close the meeting to the public.

(3) The grounds on which a meeting is closed to the public must be specified in the decision to close the meeting and recorded in the minutes of the meeting.

(4) A person (whether a councillor or another person) is not entitled to be present at a meeting if expelled from the meeting by a resolution of the meeting.

### **Public access to correspondence and reports**

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

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

- (a) relate to a matter that was received or discussed; or
- (b) were laid on the table at, or submitted to, the meeting,

when the meeting was closed to the public.

## **PART 2—ACCESS TO INFORMATION**

### **What information is publicly available?**

**12. (1)** Everyone is entitled to inspect the current version of the following documents free of charge:

- the council's code of conduct
- the council's code of meeting practice
- annual report
- annual financial reports
- auditor's report
- management plan
- EEO management plan
- the council's policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors
- the council's land register
- register of investments
- returns of the interests of councillors, designated persons and delegates
- returns as to candidates' campaign donations
- business papers for council and committee meetings (but not including business papers for matters considered when a meeting is closed to the public)
- minutes of council and committee meetings (but not including minutes of a meeting or any part of a meeting that is closed to the public other than the recommendations of that meeting)
- any codes referred to in this Act
- register of delegations
- annual reports of bodies exercising delegated council functions
- local policies adopted by the council concerning approvals and orders
- records of approvals granted and decisions made on appeals concerning approvals
- records of building certificates

- plans of land proposed to be compulsorily acquired by the council
- leases and licences for use of public land classified as community land
- plans of management for community land
- environmental planning instruments, development control plans and plans made under section 94AB of the Environmental Planning and Assessment Act 1979 applying to land within the council's area
- the statement of affairs, the summary of affairs and the register of policy documents required under the Freedom of Information Act 1989.

**(2)** Everyone is entitled to inspect free of charge:

- (a) a document that was replaced by a current document referred to in subsection (1); and
- (b) if a document referred to in subsection (1) is produced annually — the corresponding document produced for the previous year.

**(3)** The documents may be inspected at the office of the council during ordinary office hours.

**(4)** The council must have copies of the documents available for taking away (either free of charge or on payment of reasonable copying charges, as the council chooses) by anyone who asks for a copy. However, a copy of a building certificate must not be taken away unless the owner for the time being of the building to which the certificate relates has given the council written permission to release copies.

**(5)** The council must allow inspection of versions of the documents other than the current and immediately preceding versions if those other versions are reasonably accessible.

**(6)** This section does not prevent the council from allowing inspection free of charge of any other of its documents.

NOTE: A council could also make copies of the documents available at other places, for example, at libraries.

A council may have other information available for inspection free of charge: for example, the rate record, the valuation list and the register of dog registrations.

**Retention and preservation of records**

**13.** The council must retain, preserve and destroy its records in accordance with any approved standards.

**PART 3—EXPRESSIONS OF COMMUNITY OPINION****Division 1—Council polls****Council polls**

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

**Division 2—Constitutional referendums****What is a constitutional referendum?**

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

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

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

- (a) divide its area into wards or abolish all wards in its area;
- (b) change the basis on which the mayor attains office (that is, by election by the councillors or by election by the electors);
- (c) increase or decrease the number of councillors in accordance with the limits under section 224;
- (d) change the method of ordinary election of councillors for an area divided into wards;
- (e) change, subject to Part 3 of Chapter 10, the voting system used in council elections.

**What is the effect of a constitutional referendum?**

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

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



**Division 3—General provisions concerning a council poll or Constitutional referendum****What provisions apply to the conduct of a council poll or constitutional referendum?**

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

NOTE: Part 1 of Chapter 10 identifies the people who are entitled to vote in council elections, and Part 6 governs the conduct of those elections. Division 3 of Part 6 of that Chapter deals with nominations for election, Division 4 with failure to vote and Division 5 with miscellaneous matters such as irregularities of form or procedure in elections, overdue elections and those declared void.

**Day for taking council poll or constitutional referendum**

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

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

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

EXPRESSIONS OF COMMUNITY OPINION

TYPES OF EXPRESSION			
COUNCIL POLL		CONSTITUTIONAL REFERENDUM	
QUESTION TO BE DETERMINED			
Any question		<ul style="list-style-type: none"> <li>• Creation or abolition of all wards</li> <li>• Change in the way in which the mayor is chosen</li> <li>• Change in number of councillors</li> <li>• Change in the way councillors are elected for an area divided into wards</li> <li>• Change in voting system used in council elections</li> </ul>	
RESULT OF POLL			
IF YES	IF NO	IF YES	IF NO
Council chooses whether or not to proceed		Change must proceed	Change cannot proceed until passed by a later constitutional referendum

**CHAPTER 5—WHAT ARE A COUNCIL'S FUNCTIONS?****INTRODUCTION**

This Chapter specifies a council's functions. In doing so, it recognises that all functions of a council come from statute, either from this Act or another Act.

**Functions under this Act**

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

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

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

**Other functions**

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

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

- (1) A statutory corporation:
  - (a) has perpetual succession;
  - (b) shall have a seal;
  - (c) may take proceedings and be proceeded against in its corporate name;
  - (d) may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
  - (e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the exercise of its functions .....

NOTE—*continued*

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

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

Bush Fires Act 1949	declaration of bush fire danger periods and issue of permits to light fires during those periods requiring the furnishing of information to the Bush Fire Council and its Co-ordinating Committee
Clean Air Act 1961	requiring the installation of equipment on industrial premises to reduce air pollution
Community Land Development Act 1989	planning functions as consent authority
Conveyancing Act 1919	placing covenants on council land
Dog Act 1966	dog registration and control
Environmental Offences and Penalties Act 1989	service of penalty notices for certain offences under that Act and the Clean Air Act 1961
Environmental Planning and Assessment Act 1979	environmental planning
Fire Brigades Act 1989	payment of contributions to fire brigade costs and furnishing of returns
Fluoridation of Public Water Supplies Act 1957	fluoridation of water supply by council
Food Act 1989	inspection of food and food premises
Impounding Act 1993	impounding of animals and articles
Library Act 1939	library services
Noise Control Act 1975	noise control
Public Health Act 1991	inspection of systems for purposes of microbial control

*Local Government Act 1993 No. 30*NOTE —*continued*

Recreation Vehicles Act 1983	restricting use of recreation vehicles
Roads Act 1993	roads
State Emergency Service Act 1989	recommending appointment of local controller
Strata Titles Act 1973	approval of strata plans
Strata Titles (Leasehold) Act 1986	approval of leasehold strata plans
Swimming Pools Act 1992	ensuring restriction of access to swimming pools

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

Coastal Protection Act 1979	limitation on coastal development by councils
Environmental Offences and Penalties Act 1989	forfeiture of council functions to person appointed by Governor
Freedom of Information Act 1989	council required to publish certain information, to grant access to certain documents and to amend certain records that are shown to be incomplete, incorrect, out of date or misleading
Heritage Act 1977	rating based on heritage valuation
State Emergency and Rescue Management Act 1989	council required to prepare for emergencies
Unclaimed Money Act 1982	unclaimed money to be paid to the Treasury
Unhealthy Building Land Act 1990	council which approves subdivision of unhealthy building land required to notify Environment Protection Authority

**Supplementary, incidental and consequential functions**

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

**WHAT ARE A COUNCIL'S FUNCTIONS?**

**WHAT ARE A COUNCIL'S FUNCTIONS?**

A COUNCIL EXERCISES FUNCTIONS UNDER THIS ACT						
SERVICE FUNCTIONS	REGULATORY FUNCTIONS	ANCILLARY FUNCTIONS	REVENUE FUNCTIONS	ADMINISTRATIVE FUNCTIONS	ENFORCEMENT FUNCTIONS	OTHER ACTS
For example: <ul style="list-style-type: none"> <li>• Providing community health, recreation, education &amp; information services</li> <li>• Environmental protection</li> <li>• Waste removal &amp; disposal</li> <li>• Land &amp; property, industry &amp; tourism development &amp; assistance</li> </ul> For other functions, see the Introduction to Chapter 6	<ul style="list-style-type: none"> <li>• Approvals</li> <li>• Orders</li> <li>• Building certificates</li> </ul>	<ul style="list-style-type: none"> <li>• Resumption of land</li> <li>• Powers of entry and inspection</li> </ul>	<ul style="list-style-type: none"> <li>• Rates</li> <li>• Charges</li> <li>• Fees</li> <li>• Borrowings</li> <li>• Investments</li> </ul>	For example <ul style="list-style-type: none"> <li>• Employment of staff</li> <li>• Management plans</li> <li>• Financial reporting</li> <li>• Annual reports</li> </ul>	For example <ul style="list-style-type: none"> <li>• Proceedings for breaches of the Act</li> <li>• Prosecution of offences</li> <li>• Recovery of rates and charges</li> </ul>	See the Note to section 22

## **CHAPTER 6—WHAT ARE THE SERVICE FUNCTIONS OF COUNCILS?**

### **INTRODUCTION**

This Chapter confers on councils their service or non-regulatory functions. Examples of these functions include the provision, management or operation of:

- community services and facilities
- public health services and facilities
- cultural, educational and information services and facilities
- sporting, recreational and entertainment services and facilities
- environment conservation, protection and improvement services and facilities
- waste removal, treatment and disposal services and facilities
- pest eradication and control services and facilities
- public transport services and facilities
- energy production, supply and conservation
- water, sewerage and drainage works and facilities
- storm water drainage and flood prevention, protection and mitigation services and facilities
- fire prevention, protection and mitigation services and facilities
- land and property development
- housing
- industry development and assistance
- tourism development and assistance.

This list of examples is not exhaustive.

These functions are conferred in broad terms in Part 1. Particular provisions are made for the management of public land in Part 2. Part 3 imposes some restraints and qualifications on the exercise of the service functions.

A council may have other service functions under other Acts. For example, a council has functions relating to the provision and management of roads under the Roads Act 1993.

## PART 1—GENERAL

### **Provision of goods, services and facilities and carrying out of activities**

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

## PART 2—PUBLIC LAND

NOTE: This Part requires all land vested in a council (except a road or land to which the Crown Lands Act 1989 applies) to be classified as either “community” or “operational”.

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

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

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

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

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

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



**Division 1—Classification and reclassification of public land****All public land must be classified**

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

**What are the classifications?**

**26.** There are 2 classifications for public land—“community” and “operational”.

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

**How are the classifications made?**

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

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

**Preparation of draft local environmental plans**

**28. (1)** A decision under section 54 of the Environmental Planning and Assessment Act 1979 to prepare a draft local environmental plan to classify or reclassify public land that is not owned by the council must not be made unless the council has obtained the consent of the owner to the preparation of the plan.

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

**Public hearing into reclassification**

**29.** A council must arrange a public hearing under section 68 of the Environmental Planning and Assessment Act 1979 in respect of a proposal in a draft local environmental plan to reclassify community land as operational land as if it had received and decided to deal with a submission as referred to in that section that the land be so reclassified.

**Reclassification of community land as operational**

**30. (1)** On the commencement of a local environmental plan that reclassifies community land as operational land, the land, if it is a public reserve, ceases to be a public reserve, and the land is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for:

- (a) any reservations that except land out of a Crown grant relating to the land; and
- (b) reservations of minerals (within the meaning of the Crown Lands Act 1989).

**(2)** This section has effect subject to any provision of the local environmental plan that reclassifies the land.

**Classification of land acquired after the commencement of this Division**

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

- (a) land to which the Crown Lands Act 1989 applied before the acquisition and continues to apply after the acquisition; and
- (b) land that is acquired for the purpose of a road.

**(2)** Land acquired by a council is taken, on its acquisition, to have been classified under a local environmental plan as community land unless, on or before its acquisition, the council resolved that the particular land concerned be classified as operational land.

**(3)** A council must not resolve under this section that land be classified as operational land if the resolution would be inconsistent with any other Act, the terms of any trust applying to the land or the terms of any instrument executed by the donor or transferor of the land.

**Reclassification of land dedicated under s 94 of the Environmental Planning and Assessment Act 1979**

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

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

- the size of the land
- the shape of the land

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

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

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

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

### **Reclassification of operational land as community land**

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

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

### **Classification or reclassification by council resolution**

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

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

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

## **Division 2—Use and management of community land**

### **What governs the use and management of community land?**

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

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

**Preparation of draft plans of management for community land**

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

**(2)** A draft plan of management may apply to one or more areas of community land.

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

- (a) the category of the land;
- (b) the objectives and performance targets of the plan with respect to the land;
- (c) the means by which the council proposes to achieve the plan's objectives and performance targets;
- (d) the manner in which the council proposes to assess its performance with respect to the plan's objectives and performance targets,

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

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

- (a) a natural area;
- (b) a sportsground;
- (c) a park;
- (d) general community use.

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

- (a) bushland;
- (b) wetland;
- (c) escarpment;
- (d) watercourse;
- (e) foreshore;
- (f) a category prescribed by the regulations.

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

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

- (a) must identify the owner of the land; and
- (b) must state whether the land is subject to any trust, estate, interest, dedication, condition, restriction or covenant; and
- (c) must state whether the use or management of the land is subject to any condition or restriction imposed by the owner; and
- (d) must not contain any provisions inconsistent with anything required to be stated by paragraph (a), (b) or (c).

### **Public notice of draft plans of management**

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

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

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

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

### **Notice to owner of draft plan of management**

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

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

### **Adoption of plans of management**

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

**(2)** If the council decides to amend the draft plan, it may publicly exhibit the amended draft plan in accordance with this Division or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft plan without public exhibition as the plan of management for the community land concerned.

**Amendment of plans of management**

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

**Revocation and cessation of plans of management**

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

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

- (a) the land is reclassified as operational land; or
- (b) in the case of land that is not owned by the council—the land ceases to be controlled by the council.'

**Public availability of plans of management**

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

**Use of, community land pending adoption of plan of management**

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

**What dealings can a council have in community land?**

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

**(2)** A council may grant a lease or licence of community land, but only in accordance with section 46 and (if relevant) section 47.

**(3)** A council may grant any other estate in community land only in accordance with a plan of management or an Act, other than this Act.

**Leases and licences of community land—generally**

**46. (1)** A council may grant a lease or licence of community land if:

- (a) the grant of such a lease or licence is expressly authorised by a plan of management for the community land; and
- (b) it does so in accordance with such provisions of the plan of management as apply to the granting of the lease or licence.

(2) An authorisation in a plan of management for the granting of a lease or licence may be limited to the granting of a lease or licence for a public purpose or by reference to other matters.

(3) A council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years.

(4) A council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 5 years unless it has also complied with section 47.

**Leases and licences of community land for more than 5 years—additional requirements**

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

- (a) give public notice of the proposal; and
- (b) exhibit notice of the proposal on the land to which the proposal relates; and
- (c) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land.

(2) A notice of the proposal must include:

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

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

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

(5) If a person makes a submission by way of objection to the proposal, the council must not grant the lease or licence except with the Minister's consent.

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

- a copy of the plan of management for the land details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision
- a statement setting out all the facts concerning the proposal to grant the lease or licence
- a copy of the newspaper notice of the proposal
- a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease or licence
- a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease or licence, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease or licence.

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

**(8)** After considering the application and any report of the Director of Planning, the Minister, if satisfied that subsections (1), (2) and (6) have been complied with, may consent to the granting of a lease or licence of the whole or part of the land to which the application relates subject to such terms and conditions as the Minister specifies.

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

### **Division 3—Miscellaneous**

#### **Responsibility for certain public reserves**

**48. (1)** A council has the control of:

- (a) public reserves that are not under the control of or vested in any other body or persons and are not held by a person under lease from the Crown; and
- (b) public reserves that the Governor, by proclamation, places under the control of the council.



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

**Public reserves and drainage reserves provided for in subdivisions**

49. (1) On the registration by the Registrar-General of a plan on which land is marked with the words “public reserve”, the land is dedicated as a public reserve and vests in the council for an estate in fee simple.

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

(3) On the registration by the Registrar-General of a plan on which land is marked with the words “drainage reserve”, the land vests in the council for an estate in fee simple and is held by the council for drainage purposes.

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

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

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

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

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

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

- (a) that the space be conveyed or transferred to the council; or
- (b) because the space is adjacent to land reserved or dedicated for the purpose of public recreation under the Crown Lands Act 1989 or to a public park that is not vested in the council, that the space be surrendered to the Crown.

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

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

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

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

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

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

### **Use of land held for drainage purposes**

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

### **Effect of s. 28 of the Environmental Planning and Assessment Act 1979**

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

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

**The council's land register**

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

**(2)** The register must include the following:

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

**Certificate as to classification of land**

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

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

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

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

**HOW DO COUNCILS MANAGE PUBLIC LAND?**

<b>LAND OWNED OR CONTROLLED BY COUNCILS CONSISTS OF</b>			
<ul style="list-style-type: none"> <li>• ROADS</li> <li>• LAND TO WHICH THE CROWN LANDS ACT 1989 APPLIES</li> <li>• COMMONS</li> <li>• LAND SUBJECT TO THE TRUSTEES OF SCHOOLS OF ARTS ENABLING ACT 1902</li> </ul>	<ul style="list-style-type: none"> <li>• ALL OTHER LAND (It is this other land that this Act defines to be public land.)</li> </ul>		
<b>WHAT REGULATES THIS LAND?</b>	<b>THIS LAND MAY BE CLASSIFIED BY A LOCAL ENVIRONMENTAL PLAN OR COUNCIL RESOLUTION AS</b>		
<ul style="list-style-type: none"> <li>• ROADS—Roads Act 1993</li> <li>• CROWN LANDS—Crown Lands Act 1989</li> <li>• COMMONS—Commons Management Act 1989</li> <li>• MECHANICS' INSTITUTES AND SCHOOLS OF ARTS—Trustees of Schools of Arts Enabling Act 1902</li> </ul>	<table border="1"> <tr> <td>COMMUNITY</td> <td>OPERATIONAL</td> </tr> </table>	COMMUNITY	OPERATIONAL
	COMMUNITY	OPERATIONAL	
	<b>MANAGEMENT PLAN REQUIRED?</b>		
	YES	NO	
	<b>IS USE RESTRICTED?</b>		
<ul style="list-style-type: none"> <li>• Use must not change until management plan adopted</li> <li>• Use and management must be in accordance with:                             <ul style="list-style-type: none"> <li>—plan of management adopted by council</li> <li>—provisions of any relevant law</li> </ul> </li> </ul>	NO		
<b>IS DISPOSAL RESTRICTED?</b>			
<ul style="list-style-type: none"> <li>• Sale prohibited</li> <li>• No lease or licence over 21 years</li> <li>• Leases or licences over 5 years only with Minister's consent if anyone objects to the lease or licence</li> </ul>	NO		
<b>RECLASSIFICATION?</b>			
By local environmental plan or, in some circumstances, by council resolution	By council resolution		

**PART 3—RESTRAINTS AND QUALIFICATIONS THAT  
APPLY TO SERVICE FUNCTIONS**

**Division 1—Tendering**

**What are the requirements for tendering?**

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

- a contract to carry out any work directed or authorised by or under any Act to be carried out by the council
- a contract to perform a service or to provide facilities directed or authorised by or under any Act to be performed or provided by the council
- a contract for providing goods or materials to the council
- a contract for disposal of property of the council
- a contract requiring the payment of instalments by or to the council over a period of 2 or more years.

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

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

- a contract entered into by a council with the Crown (whether in right of the Commonwealth, New South Wales or any other State or a Territory), a Minister of the Crown or a statutory body representing the Crown
- a contract entered into by a council with another council
- a contract for the purchase or sale by a council of land
- a contract for the leasing of land by the council
- a contract for purchase or sale by a council at public auction
- a contract for the purchase of goods, materials or services specified by the State Contracts Control Board or the Department of Administrative Services of the Commonwealth, made with a person so specified, during a period so specified and at a rate not exceeding the rate so specified
- a contract for the employment of a person as an employee of the council

- a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders
- contract for which, because of provisions made by or under another Act, a council is exempt from the requirement to invite a tender
- a contract made in a case of emergency
- a contract involving an estimated expenditure or receipt of an amount of less than \$100,000 or such other amount as may be prescribed by the regulations.

## **Division 2—Water, sewerage and drainage works and facilities**

### **Application of Division**

**56.** The provisions of this Division relating to water supply and sewerage (but not drainage) do not apply to land to which any of the following Acts apply:

Hunter Water Board (Corporatisation) Act 1991  
 Water Board Act 1987  
 Water Supply Authorities Act 1987

### **Construction of works**

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

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

### **Handing over of works**

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

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

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

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

### **Vesting of works**

**59. (1)** The Minister for Public Works may, by notice published in the Gazette, declare that the land acquired for the purposes of any such works, or any part of the works, and all right, title and interest of the Minister in the works, or part of the works, on the land are vested in the council or councils.

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

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

### **Council works for which the approval of the Minister for Public Works is required**

**60.** A council must not, except in accordance with the approval of the Minister for Public Works, do any of the following:

- (a) as to works of water supply—constructor extend a dam for the impounding or diversion of water for public use or any associated works;
- (b) as to water treatment works—constructor extend any such works;
- (c) as to sewage—provide for sewage from its area to be discharged, treated or supplied to any person;
- (d) as to flood retarding basins prescribed by the regulations—construct or extend any such basins.

**Directions of the Minister for Public Works concerning works to which s. 60 applies**

**61. (1)** The Minister for Public Works or a person authorised by the Minister may direct a council to take such measures as are specified in the direction to ensure the proper safety, maintenance and working of any works for which the Minister's approval under section 60 is required.

**(2)** The council must comply with the direction.

**Powers of Minister during emergencies**

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

**(2)** A direction may not be given unless the Minister for Public Works has obtained the concurrence of the Minister for Health.

**(3)** The council must comply with the direction.

**Effect of failure to comply with directions**

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

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

**Construction of works for developers**

**64.** Division 2. of Part 3 of the Water Supply Authorities Act 1987 applies to a council in the same way as it applies to a Water Supply Authority under that Act.



NOTE: Division 2 of Part 3 of the Water Supply Authorities Act 1987 contains a scheme whereby works of water, sewerage and drainage required in connection with the development of land can be provided without ultimate cost to a water supply authority (in this case a council).

Under the scheme, a developer is required to obtain a certificate of compliance from the council before a plan of subdivision can be registered. In deciding whether to grant the certificate, the council can do either or both of the following:

- (a) it can require the developer to contribute to the value of existing works which benefit the developer's land;
- (b) it can require the developer to pay the whole or part of the cost of constructing specified additional works.

The imposition of such a requirement is in addition to any requirement the council may impose in granting a building approval or a development consent.

### **Powers of Minister for Public Works—entry on to land and other powers**

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

### **Appointment of administrator**

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

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

**(3)** The appointment of one or more persons as a commissioner or commissioners to hold the public inquiry may, despite section 740, be made by the Minister for Public Works with the concurrence of the Minister for Local Government.

**(4)** The administrator is to be paid a salary determined by the Minister for Public Works with the concurrence of the Minister for Local Government from the council's funds.

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

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

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

### Division 3—Private works

#### Private works

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

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

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

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

- (a) it has first fixed, generally or in the particular case, an amount or rate for carrying out the work after considering the actual cost of carrying out the work and any current market rates relevant to the carrying out of the work; and
- (b) if the amount for which, or the rate at which, it proposes carrying out the work is less than the amount or rate so fixed, the decision to carry out the work is made by resolution of the council at an open meeting before the work is carried out.

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

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

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

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

## CHAPTER 7—WHAT ARE THE REGULATORY FUNCTIONS OF COUNCILS?

### INTRODUCTION

The major regulatory functions of councils are found in this Chapter. It lists the activities that are regulated and it sets out the means of their regulation.

A council, in relation to a range of activities within its area, exercises regulatory functions of 2 main kinds.

First—various activities can only be carried out if the council gives its **approval** (for example, the erection of a building or the operation of a caravan park).

Second—a council can **order** a person to do, or to stop doing, something (for example, a council can order a person to demolish a building that has been erected without an approval or to keep fewer animals on specified premises).

Failure to obtain or to comply with an approval and failure to comply with an order are made offences under sections 626, 627 and 628.

A council is not given power to regulate activities by other means. For example, the Chapter does not confer power to require a person to hold a periodic licence.

In exercising its regulatory functions, the council must observe any relevant statutory criteria and any other criteria contained in a local policy it may have adopted after public consultation.

The Chapter provides, as an adjunct to the approvals and orders systems, for the issuing by a council of certain certificates, including building certificates. If a council issues a building certificate for a building, the building is protected by the certificate from being the subject of an order to demolish the building or to carry out work to the building because of

- anything existing before the date of the certificate
- deterioration due solely to fair wear and tear within 7 years after that date
- any encroachment of the building onto council land.

The Chapter also enables appeals to be made to the Land and Environment Court against decisions made under the Chapter.

### PART 1—APPROVALS

#### Division 1—What activities require approval?

##### **What activities, generally, require the approval of the council?**

**68. (1)** A person may carry out an activity specified in the following Table only with the prior approval of the council, except in so far as this

Act, the regulations or a local policy adopted under Part 3 allows the activity to be carried out without that approval.

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

Hunter Water Board (Corporatisation) Act 1991  
 Water Board Act 1987  
 Water Supply Authorities Act 1987

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

**TABLE  
 APPROVALS**

<b>PART A—BUILDINGS, TEMPORARY STRUCTURES OR MOVEABLE DWELLINGS</b>
<ol style="list-style-type: none"> <li>1. Erect a building</li> <li>2. Demolish a building</li> <li>3. Install a manufactured home, moveable dwelling or associated structure on land</li> <li>4. Install a temporary structure on land</li> <li>5. Enclose a public place in connection with the erection or demolition of a building</li> <li>6. Use or occupy a building before it has been completed in accordance with the plans and specifications approved by the council</li> <li>7. Change the use of a building or part of a building to a use that is not consistent with the current classification of the building as prescribed by the regulations</li> <li>8. Use a building or temporary structure as a place of public entertainment or permit its use as a place of public entertainment</li> </ol>
<b>PART B—WATER SUPPLY, SEWERAGE AND STORMWATER DRAINAGE WORK</b>
<ol style="list-style-type: none"> <li>1. Carry out water supply work</li> <li>2. Draw water from a council water supply or a standpipe</li> <li>3. Install, alter, disconnect or remove a meter connected to a service pipe</li> <li>4. Carry out sewerage work</li> <li>5. Carry out stormwater drainage work</li> <li>6. Connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer</li> </ol>

<b>PART C—MANAGEMENT OF WASTE</b>
<ol style="list-style-type: none"> <li>1. For fee or reward, transport waste over or under a public place</li> <li>2. Place waste in a public place</li> <li>3. Place a waste storage container in a public place</li> <li>4. Dispose of waste into a sewer of the council</li> <li>5. Install, construct or alter a waste treatment device or a human waste storage facility or a drain connected to any such device or facility</li> </ol>
<b>PART D—COMMUNITY LAND</b>
<ol style="list-style-type: none"> <li>1. Engage in a trade or business</li> <li>2. Direct or procure a theatrical, musical or other entertainment for the public</li> <li>3. Construct a temporary enclosure for the purpose of entertainment</li> <li>4. For fee or reward, play a musical instrument or sing</li> <li>5. Set up, operate or use a loudspeaker or sound amplifying device</li> <li>6. Deliver a public address or hold a religious service or public meeting</li> </ol>
<b>PART E—PUBLIC ROADS</b>
<ol style="list-style-type: none"> <li>1. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway</li> <li>2. Erect an advertising structure over a public road, or expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road</li> <li>3. Extend a balcony, awning, sunblind, canopy, sun louvre or similar structure or an essential service pipe beyond a road alignment</li> </ol>
<b>PART F—OTHER ACTIVITIES</b>
<ol style="list-style-type: none"> <li>1. Operate a public car park</li> <li>2. Operate a caravan park or camping ground</li> <li>3. Operate a manufactured home estate</li> <li>4. Install a domestic oil or solid fuel heating appliance, other than a portable appliance</li> <li>5. Install or operate amusement devices (within the meaning of the Construction Safety Act 1912)</li> <li>6. Install or operate amusement devices prescribed by the regulations in premises</li> <li>7. Use a standing vehicle or any article for the purpose of selling any article in a public place</li> <li>8. Operate an undertaker's business</li> <li>9. Operate a mortuary</li> <li>10. Carry out an activity prescribed by the regulations or an activity of a class or description prescribed by the regulations</li> </ol>

**Division 2—Crown activities****Crown exemption from approval to erect or demolish a building**

**69.** Section 68 does not require the Crown or a person prescribed by the regulations to obtain the approval of a council:

- to erect a building
- to demolish a building
- to do anything that is incidental to the erection or demolition of a building.

**Compliance by the Crown with building standards**

**70. (1)** This section applies to a building erected or proposed to be erected by or on behalf of the Crown or a person prescribed by the regulations.

**(2)** Such a building must comply with the technical provisions of the State's building laws, except as provided by this section.

**(3)** A Minister, by order in writing, may at any time determine in relation to buildings generally or to a specified building or buildings of a specified class that a specified technical provision of the State's building laws:

- (a)** does not apply; or
- (b)** does apply, but with such exceptions or modifications as may be specified.

**(4)** A determination of a Minister applies only to:

- (a)** a building erected on behalf of the Minister; or
- (b)** a building erected by or on behalf of a person appointed, constituted or regulated by or under an Act administered by the Minister.

**(5)** A determination of a Minister has effect according to its tenor.

**(6)** In this section, **technical provisions of the State's building laws** means those provisions of:

- (a)** the regulations; or
- (b)** a publication, the provisions of which have been applied, adopted or incorporated by the regulations,

that are prescribed by the regulations to be technical provisions of the State's building laws for the purposes of this section.

**Use by the Crown of places of public entertainment**

**71. (1)** The Crown may use a building or temporary structure as a place of public entertainment only with the approval of the Minister.

**(2)** For the purpose of the approval, Divisions 1, 3 (except sections 97, 111 and 112) and 5 apply to the Minister in the same way as they apply to a council.

**(3)** If the Minister's functions under this section are delegated, an applicant whose application is determined by the Minister's delegate may apply to the Minister for a review of the determination within 28 days after notice of the determination is given to the applicant.

**(4)** The Minister's determination of an application for an approval under this section or the Minister's decision on a review of a determination under this section is final.

**(5)** Part 5 (Appeals) does not apply to the determination under this section of an application for an approval.

**(6)** The Minister must notify the relevant council of a determination under this section.

**Determination of applications by the Crown**

**72. (1)** A council, in respect of an application for approval made by the Crown or a person prescribed by the regulations, must not:

- (a) refuse to grant approval, except with the written consent of the Minister; or
- (b) impose a condition of an approval, except with the written consent of the Minister or the applicant.

**(2)** If the council proposes to refuse to grant approval or to impose a condition of approval, it must immediately notify the applicant.

**(3)** After the applicant is so notified, the council must submit to the Minister:

- (a) a copy of the application for approval; and
- (b) details of its proposed determination of the application; and
- (c) the reasons for the proposed determination; and
- (d) any relevant reports of another public authority.

**(4)** The applicant may refer the application to the Minister whether or not the council complies with subsection (3).



(5) After receiving the application from the council or the applicant, the Minister must notify the council and the applicant of

- (a) the Minister's consent to the refusal of approval; or
- (b) the Minister's consent to the imposition of the council's proposed conditions; or
- (c) the Minister's intention not to agree with the council's proposed refusal and the period within which the council may submit any conditions it wishes to impose as conditions of approval; or
- (d) the Minister's refusal to agree with the council's proposed conditions and any conditions to which the Minister's consent may be assumed.

(6) At the end of the period specified in subsection (5) (c), the Minister must notify the council and the applicant:

- (a) whether the Minister consents to the imposition of any of the conditions submitted by the council during that period and, if so, which conditions; or
- (b) of the conditions to which the Minister's consent may be assumed.

(7) The Minister must notify the council and the applicant of the reasons for a decision under subsection (5) or (6).

(8) If the council does not determine the application within the period notified by the Minister for the purpose, the council is taken, on the expiration of that period, to have determined the application in accordance with the Minister's consent.

#### **Effect of council's failure to determine Crown application**

**73. (1)** If the council does not determine an application to which section 72 applies within the relevant period specified in section 105, the council is taken, on the expiration of that period, to have refused the application.

(2) If the application is taken to have been refused, the applicant may refer the application to the Minister for determination.

(3) The Minister may determine an application so referred to the Minister.

(4) The Minister's determination has effect as if it were a determination of the council.

**Prohibition on appeals concerning Crown applications**

74. No review or appeal lies against a determination that the council is taken to have made under section 72 (8) or a decision or determination of the Minister under section 72 or 73.

**Division 3—Making and determination of applications for approval—generally****Applications for approval**

75. An application may be made to the council for an approval under this Part.

**What may an application relate to?**

76. The application may relate to:
- the whole or part of an activity
  - the whole or any part of land on which the activity is proposed to be carried out
  - more than one activity.

**Relevant regulations and local policies to be brought to notice of intending applicants**

77. A council must take such steps as are reasonably practicable to bring the existence of any relevant regulations and any relevant local policy adopted under Part 3 to the notice of any person it knows to be an intending applicant for an approval.

**Who may make an application?**

78. (1) An application may be made by the person seeking to carry out the activity for which the council's approval is required.

(2) If the application applies to particular land, the applicant must be the owner of the land or a person who has the consent of the owner.

(3) If the Crown is the owner of the land, the application may be made by or with the consent of a Minister or a person authorised for the purpose by a Minister.

**What is the form of application?**

79. An application must be made in the approved form.

**Is there an application fee?**

**80. (1)** An application must be accompanied by the approved fee.

**(2)** A council may require payment of a further approved fee if the application is subsequently amended.

**What matters must accompany an application?**

**81.** An application must be accompanied by such matters as may be prescribed by the regulations and such matters specified by the council as may be necessary to provide sufficient information to enable the council to determine the application.

**Objections to application of regulations and local policies**

**82. (1)** An applicant for an approval may lodge with the council an objection:

- (a) that the regulations or a local policy adopted under Part 3 by the council relating to the activity for which approval is sought do not make appropriate provision with respect to that activity; or
- (b) that compliance with any provision of those regulations or such a policy is unreasonable or unnecessary in the particular circumstances of the case.

**(2)** The applicant must specify the grounds of the objection.

**(3)** If the council is satisfied that the objection is well founded, it may, with the concurrence of the Director-General, in determining the application, direct that:

- (a) such provisions of any regulation or local policy adopted under Part 3 by the council relating to that activity as are specified in the direction:
  - (i) are not to apply; or
  - (ii) are to apply with such modifications as are specified in the direction,

in respect of the carrying out of that activity; or

- (b) such requirements as are specified in the direction are to apply to the carrying out of that activity,

or give directions under both paragraphs (a) and (b).

**(4)** Any direction given by the council under subsection (3), if the council's approval to the application concerned is granted, has effect according to its tenor and, in the case of a direction referred to in paragraph (a) (ii) or (b) of that subsection, is a condition of that approval.

**Ownership and use of plans and specifications**

**83.** One copy of any plans and specifications accompanying an application becomes the property of the council, but must not be used for any purpose other than giving effect to the provisions of this Act or any other Act.

NOTE: This section does not prevent the use of the plans and specifications for other purposes with the consent of the applicant and with any other necessary consent.

**Acknowledgment of application**

**84.** The council, on receiving an application, must give written acknowledgment to the applicant of its receipt, unless the council rejects the application under section 85.

**Rejection of unclear or illegible applications**

**85. (1)** The council may reject an application within 7 days after its receipt if it is not clear as to the approval sought or if it is not easily legible.

**(2)** An application so rejected is taken not to have been made and the application fee is to be refunded.

**Request for more information**

**86. (1)** The council may, before it determines or is taken to have determined an application, request an applicant to provide it with more information that is reasonably necessary to enable the proper determination of the application.

**(2)** The request must be made within 21 days after the council receives the application.

**(3)** The information must be provided within a reasonable period specified by the council for the purpose, subject to subsection (4).

**(4)** The period of time that elapses between the date of the council's request and the date on which:

- (a) the information is provided; or
- (b) the applicant notifies the council that the information will not be provided; or
- (c) the period specified by the council ends,

whichever is the sooner, is not to be taken into consideration in calculating the period referred to in section 105.

(5) A second or subsequent request for information may be made by the council, but such a request has no effect for the purposes of section 105.

#### **Amendment of applications**

**87. (1)** An applicant, at any time before the application is determined, may make a minor amendment to the application and may amend any matter accompanying the application.

(2) The making of a minor amendment does not require the application to be further notified to anyone.

(3) For the purposes of section 105, the application is taken not to have been made until the amendment is made.

#### **Withdrawal of applications**

**88. (1)** An applicant may withdraw an application at any time before its determination by the council by giving the council notice to that effect signed by the applicant.

(2) An application withdrawn under this section is taken for the purposes of this Act never to have been made.

(3) However, the question whether the application fee should be refunded is at the absolute discretion of the council.

#### **Matters for consideration**

**89. (1)** In determining an application, the council:

- (a) must not approve the application if the activity or the carrying out of the activity for which approval is sought would not comply with the requirements of any relevant regulation; and
- (b) must take into consideration any criteria in a local policy adopted under Part 3 by the council which are relevant to the subject-matter of the application.

(2) If no such requirements are prescribed and no such criteria are adopted, the council in determining an application is to take into consideration all matters relevant to the application and is to seek to give effect to the applicant's objectives to the extent to which they are compatible with the public interest.

**(3)** Without limiting subsection (2), in considering the public interest the matters the council is to consider include:

- (a) protection of the environment; and
- (b) protection of public health, safety and convenience; and
- (c) any items of cultural and heritage significance which might be affected.

### **Concurrence**

**90. (1)** The council must not grant an approval in relation to a matter for which this Act or a regulation requires the council to obtain the concurrence of some other person or authority unless the council has obtained the concurrence of the person or authority.

**(2)** The person or authority may give the council notice that the concurrence may be assumed with such qualifications or conditions as are specified in the notice.

**(3)** The person or authority may amend its notice by a further notice.

**(4)** An approval given in accordance with a notice in force under this section is as valid as it would be if the council had obtained the concurrence of the person or authority concerned.

**(5)** Concurrence is to be assumed if at least 40 days have passed since concurrence was sought and the person or authority has not, within that period, expressly refused concurrence.

### **Giving effect to concurrence**

**91. (1)** In granting an approval for which the concurrence of a person or authority has been given or may be assumed, the council must grant the approval subject to any conditions of the concurrence (whether the concurrence is given under section 90 (1) or (2)).

**(2)** This section does not affect the council's right to impose conditions under this Division not inconsistent with the conditions referred to in subsection (1) or to refuse approval.

### **Approval where an accreditation is in force**

**92.** A council must not refuse to give its approval to an activity on the ground that any component, process or design relating to the activity is unsatisfactory if the component, process or design is accredited under Division 5.

**Certification by qualified persons**

**93. (1)** A council or the Minister may be satisfied that:

- (a) a particular design, material, process or product complies with a criterion for approval; or
- (b) an activity has been carried out in compliance with an approval, by relying on a certificate to that effect from an appropriately qualified person.

**(2)** A certificate relating to a particular design, material, process or product must specify the particular criterion with which the design, material, process or product complies.

**(3)** The council or the Minister must rely on such a certificate if it is from an appropriately qualified person and is furnished by a public authority.

NOTE: Sections 92 and 93 specify circumstances in which a council does not have to form an independent judgment about some aspect of an activity for which approval is being sought, but may rely on an accreditation or certification, of a competent person.

A component, process or design relating to an activity may be accredited in accordance with the procedure set out in Division 5 of this Part.

Section 732 exempts a council, councillor or employee of a council from liability that would otherwise be incurred as a consequence of relying on an accreditation or certification.

**Determination of application**

**94. (1)** The council may determine an application:

- (a) by granting approval to the application, either unconditionally or subject to conditions; or
- (b) by refusing approval.

**(2)** This section does not affect section 72.

**“In principle” approval**

**95. (1)** An approval may be granted subject to a condition that the approval is not to operate until the applicant satisfies the council as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.

NOTE For example, an applicant may seek to erect a building on a contaminated site. The council may approve the erection of the building subject to the condition that the applicant satisfy it that the contamination has been removed.

(2) Such an approval must be clearly identified as an “in principle” approval (whether by the use of that expression or by reference to this section or otherwise).

(3) An “in principle” approval must clearly distinguish conditions concerning matters as to which the council must be satisfied before the approval can operate from any other conditions.

(4) A council may specify the period in which the applicant must produce evidence to the council sufficient to enable it to be satisfied as to those matters.

(5) The applicant may produce evidence to the council sufficient to enable it to be satisfied as to those matters and, if the council has specified a period for the purpose, the evidence must be produced within that period.

(6) If the applicant produces evidence in accordance with this section, the council must notify the applicant whether or not it is satisfied as to the relevant matters. If the council has not notified the applicant within the period of 28 days after the applicant’s evidence is produced to it, the council is, for the purposes only of section 177, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.

### **Staged approval**

**96. (1)** An approval may be granted:

- (a) for the activity or one or more of the activities for which the approval is sought; or
- (b) for such an activity, except for a specified part or aspect of the activity; or
- (c) for a specified part or aspect of such an activity.

(2) Such an approval may be granted subject to a condition that the activity or the specified part or aspect of the activity, or any thing associated with the activity or the carrying out of the activity, must be the subject of

- (a) a further approval; or
- (b) a consent, approval or permission under another Act,

or both.



**Conditions concerning security**

**97. (1)** An approval may be granted subject to a condition that the applicant provides to the council security for the payment of the cost of either or both of the following:

- (a) making good any damage that may be caused to any council property as a consequence of doing or not doing any thing to which the approval relates;
- (b) completing any works (other than works prescribed by the regulations) that may be required in connection with the approval.

NOTE: Works the completion of which may be required in connection with an approval could include footpaths, kerbing and guttering, road works, trunk drainage and environmental controls.

**(2)** The security is to be for such reasonable amount as is determined by the council and specified in the condition.

**(3)** The security may be provided, at the applicant's choice, by:

- (a) a deposit with the council; or
- (b) a guarantee satisfactory to the council.

**(4)** Security provided by way of deposit is to be held in the trust fund and may be paid out to meet any cost referred to in subsection (1).

**(5)** A security deposit (or part) if repaid to the person who provided it is to be repaid with any interest accrued on the deposit (or part) as a consequence of its investment.

**Other conditions**

**98. (1)** An approval may be granted subject to a condition that a specified aspect of the activity that is ancillary to the core purpose of the activity is to be carried out to the satisfaction of the council or a person specified by the council.

**(2)** An approval is subject to any condition prescribed by the regulations as a condition of the approval.

**Notice to applicant of determination of application**

**99. (1)** The council (or the Minister in the case of a determination by the Minister under section 71 or 72) must give notice of the determination of an application to the applicant as soon as practicable after the determination.

(2) The date of the determination and the date from which the approval operates (if approval is granted) must be endorsed on the notice.

(3) In the case of an approval granted subject to a condition that the approval is not to operate until the applicant satisfies the council as to any matter specified in the condition (an “in principle” approval):

- (a) the date from which the approval operates must not be endorsed on the notice; and
- (b) if the applicant satisfies the council as to the matter, the council must, as soon as practicable after being satisfied, give notice to the applicant of the date from which the approval operates.

(4) If the determination is made by the granting of approval subject to conditions or by refusing approval, the notice must notify the applicant:

- (a) of the council’s (or the Minister’s) reasons for the imposition of each condition or for refusing approval; and
- (b) of the provisions of this Act conferring a right of review of the determination (if relevant) and, in the case of a determination by the council, a right of appeal against the determination.

### **Review of determination**

**100. (1)** An applicant may request the council to review a determination of the applicant’s application.

(2) The request for a review must be made within 28 days after the date of the determination.

(3) An approved fee must, if required by the council, be paid in connection with a request for a review.

(4) The council may review the determination and, as a consequence of its review, may confirm or change the determination.

(5) If the council reviews the determination, the review must be made by:

- (a) if the determination was made by a delegate of the council—the council or another delegate of the council who is not subordinate to the delegate who made the determination; or
- (b) if the determination was made by the council—the council.

(6) The council must give notice of the result of the review to the applicant as soon as practicable after the review.

(7) The date of review must be endorsed on the notice.

(8) If, as a consequence of a review, the council changes a determination, the changed determination replaces the earlier determination as from the date of the review.

(9) A determination on a review may not be further reviewed under this section.

#### **Date from which approval operates**

**101. (1)** An approval operates from the date specified for the purpose in the notice under section 99 or 100, subject to this section and section 102.

(2) If an appeal is made (and not withdrawn) against an approval granted on the determination of an application, the approval does not operate until the date of the decision on that appeal, except where that decision is to refuse approval.

(3) An approval is void and (except for the purposes of section 176) is taken never to have been granted if an appeal under section 176 is dismissed and approval is refused.

(4) If a determination is made by refusing approval or if an application is taken by Section 105 to have been so determined, and the decision on the appeal made under section 176 in respect of that determination has the effect of granting approval, the decision is taken to be an approval granted under this Part and the approval operates from the date of that decision.

(5) An approval in respect of an application that is taken to have been approved under section 72 operates from the date on which it is taken to have been approved.

#### **Payment of insurance premium for residential building work**

**102. (1)** This section applies if the council approves (whether or not subject to conditions) of the doing of any residential building work (within the meaning of the Building Services Corporation Act 1989).

(2) The council must not forward or deliver to the applicant or any other person a copy of the plans and specifications submitted to it with the application unless:

- (a) it is satisfied that the appropriate amount payable under the Building Services Corporation Act 1989 as an insurance premium has been duly paid, or that no amount is so payable, in respect of the residential building work; and
- (b) it has endorsed on that copy that it is so satisfied.

(3) Even though the council has approved of the doing of any such work, the approval has no effect unless the council has so endorsed a copy of the plans and specifications and forwarded or delivered the copy to the applicant after that approval was given.

(4) A certificate purporting to be issued under section 131 of, or referred to in clause 16 of Schedule 4 to, the Building Services Corporation Act 1989 and certifying that:

- (a) the appropriate amount of insurance premium has been paid; or
- (b) no such amount is payable,

in respect of any building work specified in the certificate is, for the purpose of the council's making an endorsement, sufficient evidence of the matter referred to in paragraph (a) or (b).

(5) A statement purporting to be signed by an owner of land and declaring that:

- (a) the owner intends to do building work on the land; and
- (b) the reasonable market cost of the labour and materials involved in the work is not high enough for the owner to need an owner-builder permit to do the work,

is, for the purpose of the council's making an endorsement, sufficient evidence of the matter referred to in paragraph (b).

### **When does an approval lapse?**

**103. (1)** An approval lapses:

- (a) 5 years after the date from which it operates, except as provided by paragraph (b); or
- (b) in the case of an approval that is subject to a condition under section 96 (2), 2 years after the date on which the last approval, consent or permission required to be obtained in accordance with the condition operates.

(2) A council, in granting an approval, may vary either or both of the periods referred to in subsection (1).

(3) Such a variation may not be made so as to cause:

- (a) an approval to erect or demolish a building to lapse within 12 months after the date from which the approval operates; or
- (b) an approval of a kind prescribed by the regulations to lapse within the period prescribed by the regulations in relation to the approval.

(4) This section does not prevent the extension or renewal of an approval under section 107.

**Lapsing of building approvals**

**104.** An approval for the erection of a building does not lapse if building, engineering or construction work relating to the building is substantially physically commenced on the land to which the approval relates before the date on which the approval would otherwise lapse under section 103.

**Circumstances in which approval is taken to have been refused**

**105. (1)** If the council has not determined an application:

- (a) within the period of 40 days after the application is lodged with it, except as provided by paragraph (b); or
- (b) within the period of 80 days after the application is lodged with it in the case of an application for which public consultation or the concurrence of a person or authority is required by or under this Act,

the council is, for the purposes only of section 176, taken to have determined the application by refusing approval on the date on which that period expires.

**(2)** Nothing in subsection (1) prevents the council from determining an application after the expiration of the 40-day or 80-day period, whether on a review under section 100 or otherwise.

**(3)** A determination under subsection (2) does not prejudice or affect the continuance or determination of an appeal made under section 176 in respect of a determination that is taken under subsection (1) to have been made, subject to subsection (4).

**(4)** Where a determination under subsection (2) is made by granting approval, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 176 in respect of a determination that is taken by subsection (1) to have been made, withdrawn at any time before the appeal is determined.

**Can approvals be amended?**

**106. (1)** A person to whom an approval is granted or any other person entitled to act on an approval may apply to the council to amend the approval.

**(2)** Sections 78–86, 89 and 97–99 apply to an application to amend an approval in the same way as they apply to an application for approval.

- (3) The council may amend an approval if:
- (a) it is satisfied that the approval as amended will be substantially the same as the original approval; and
  - (b) it is satisfied that no prejudice will be caused to any person who made a submission concerning the application for the original approval; and
  - (c) it has consulted with any person or authority whose concurrence to the original approval was required to be obtained and the person or authority has not, within 21 days after being consulted, objected to the amendment of the original approval.

(4) An approval must not be amended **if** notice **of** the application for the approval was required to be given to any person unless the council notifies those persons and considers any further submissions made by any **of** them within 10 days after their being notified.

(5) If the council amends an approval under this section, the amended approval replaces the original approval **as** from the date endorsed on the notice of determination of the application.

(6) In the case of an approval granted by the Land and Environment Court, a reference in this section to the council is taken to be a reference to the Court, but no appeal lies from the Court's determination of the application.

#### **Can approvals be extended or renewed?**

**107. (1)** The council may extend or renew an approval (but without changing the terms of the approval) if satisfied there is good cause for doing so.

(2) The renewal of an approval operates as if it were an approval granted on the date of renewal.

(3) The extension or renewal may be granted before the approval lapses or at any time within 3 months after the approval lapses.

(4) An application for an extension or renewal must, if required by the council, be accompanied by the approved fee.

#### **Can approvals be revoked or modified?**

**108. (1)** A council may revoke or modify an approval in the circumstances set out in section 109.

(2) A modification may take the form of the imposition of an additional condition or the variation or rescission of a condition to which the approval is subject.

(3) Notice of a revocation of an approval or a modification of an approval that restricts or reduces the authority conferred by the approval may be served on any person who appears to the council to be acting under that authority or to be entitled to act under that authority.

(4) A revocation or modification takes effect on the date of service of the notice of the revocation or modification or a later date specified in the notice.

(5) At the same time as or as soon as practicable after the notice of the revocation or modification is served, the council is required to send:

- (a) a copy of the notice to each person who, in its opinion, is likely to be disadvantaged by the revocation or modification; and
- (b) a copy of the notice and the reasons for the revocation or modification to the Building Services Corporation, if the approval is for:
  - the transfer, alteration, repair or extension of water service pipes; or
  - the carrying out of drainage work or sewer plumbing work.

(6) This section does not apply to an approval granted by the Land and Environment Court.

**In what circumstances can an approval be revoked or modified?**

**109.** An approval may be revoked or modified in any of the following circumstances:

- (a) if the approval was obtained by fraud, misrepresentation or concealment of facts;
- (b) for any cause arising after the granting of the approval which, had it arisen before the approval was granted, would have caused the council not to have granted the approval (or not to have granted it in the same terms);
- (c) for any failure to comply with a requirement made by or under this Act relating to the subject of the approval;
- (d) for any failure to comply with a condition of the approval.

**Notice to be given of proposed revocation or modification**

**110. (1)** Before revoking or modifying an approval, the council must inform, by notice:

- (a) each person who, in its opinion, will be disadvantaged by the revocation or modification of the approval; and
- (b) each person and authority whose concurrence was required to the granting of the approval.

**(2)** The notice must include the council's reasons for revoking or modifying the approval.

**(3)** The council must give those persons and authorities the opportunity of appearing before the council (or a person appointed by it) to show cause why the approval should not be revoked or modified.

**Application of ss. 108, 109 and 110 to the Crown**

**111. (1)** A council that proposes to revoke or modify an approval given to the Crown or a person prescribed by the regulations for the purposes of section 72 must also give notice of its proposal to the Minister.

**(2)** A council must not revoke or modify such an approval except with the written consent of the Minister.

**Entitlement to compensation**

**112.** A person aggrieved by the revocation or modification of an approval in the circumstances set out in section 109 (b) may recover compensation from the council for expenditure which is rendered abortive by the revocation or modification and which was incurred pursuant to the approval during the period between the date on which the approval commenced to operate and the date specified in the relevant notice served under section 108 (4).

**Record of approvals**

**113. (1)** A council must keep a record of approvals granted under this Part and of decisions on appeal from any determination made by it under this Part.

**(2)** The record is to include the following:

- the serial number that identifies the application for the approval
- the date on which the application for the approval was made to the council
- the amount of any fee payable in connection with the application



- the date or dates on which any such fee, or any part of it, was paid to the council
- the date from which the approval operates
- the name and address of the person to whom the approval is granted
- the name or address of any place in relation to which the approval is granted
- a brief description of the subject-matter of the approval
- any conditions, to which the approval is subject
- the duration of the approval
- whether the approval has been revoked or modified
- in the case of approvals concerning residential building work (within the meaning of the Building Services Corporation Act 1989), the names of licensees and owner-builders and the numbers endorsed on contractor licences and permits of which it is informed by owners of affected land.

(3) The council may include any other information in the record.

(4) The council must make such amendments to the record as are necessary as a consequence of any decision made by the Land and Environment Court on an appeal.

(5) The information in the record is to be available for public inspection, without charge, at the office of the council during ordinary office hours.

#### **Division 4—Special provisions relating to notice of applications to erect buildings**

##### **Notice of application to erect a building**

**114. (1)** The council must give notice of an application for approval to erect a building to the persons who appear to the council to own the land adjoining the land to which the application applies if, in the council's opinion, the enjoyment of the adjoining land may be detrimentally affected by the proposed building after its erection.

**(2)** In forming its opinion, the council must take into consideration the effect that the proposed building would have, after its erection, on the following:

- the views to and the views from 'the adjoining land
- the overshadowing of the adjoining land

- the privacy of the adjoining land
- the likelihood of the adjoining land being detrimentally affected by noise
- the streetscape
- any relevant matter in criteria in a local policy adopted under Part 3 by the council.

(3) The council must also give notice of the making of an application for approval to erect a building to persons to whom notice is required to be given under criteria in a local policy adopted under Part 3 by the council.

(4) For the purposes of this section, land adjoins other land if and only if it abuts that other land or is separated from it only by a pathway, driveway or similar thoroughfare.

(5) The notice must be given as soon as practicable after the building application is made to the council and at least 10 days before the council determines the application.

(6) A notice to an association for a community, precinct or neighbourhood parcel within the meaning of the Community Land Development Act 1989 or to a body corporate for a parcel within the meaning of the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986 is taken to be a notice under this section to the owner of each lot within the parcel concerned.

(7) If a parcel of adjoining land is owned by more than one person, a notice to one owner is taken to satisfy the requirements of this section.

(8) A notice must be in an approved form and must include or be accompanied by a plan in an approved form showing the height and external configuration of the building in relation to the site on which it is proposed to be erected.

### **Adoption of criteria concerning notice of applications to erect buildings**

**115. (1)** A council must adopt separate criteria in a local policy under Part 3 for each of the following:

- the matters to which it will have regard when forming its opinion as to whether or not the enjoyment of adjoining land may be detrimentally affected by a proposed building ,after its erection
- the giving of notice of applications to erect buildings to persons other than persons required to be given notice under section 114

- the period during which a person may inspect a plan relating to an application
- the period during which submissions concerning an application may be made.

(2) A council which comes into existence after the commencement of this section must adopt a local policy containing the criteria within 3 months after the date on which the council comes into existence.

#### **Notice of application to erect building not required in certain cases**

**116. (1)** The council is not required to give notice of the making of an application for approval to erect a building to a person if

- (a) it has given notice to the person of the making of a development application (within the meaning of the Environmental Planning and Assessment Act 1979) relating to the same proposal; and
- (b) the plans of the proposed building showing its height and external configuration in relation to the site on which it is proposed to be erected were available for inspection at the time the notice of the development application was given and there has been no significant change to the height and external configuration as shown on those plans.

(2) Notice is not required to be given to an owner of adjoining land if that owner is the person, or one of the persons, who made the application for approval to erect the building.

#### **Certain persons may inspect plans**

**117.** A person may, at any time during the ordinary office hours of the council, inspect, free of charge, such plans of a proposed building as show its height and its external configuration in relation to the site on which it is proposed to be erected, whether or not the person has been, or is entitled to be, given notice, under section 114 or 115, of the making of the relevant application for approval to erect the building.

#### **Making and consideration of submissions**

**118. (1)** A person may make a submission in writing to the council concerning an application for approval to erect a building of which notice has been given under section 114 or 115.

(2) The council must consider all such submissions made within the period allowed for the making of submissions before it determines the application.

**Notice of determination of application for approval to erect a building**

**119.** In addition to the notice required to be given under section 99 to the applicant, the council must give notice of the determination of an application for approval to erect a building to each person who made a submission.

**Division 5—Accreditation of components, processes and designs****Application for accreditation**

**120. (1)** Any person may apply to the Director-General for the accreditation of any component, process or design relating to an activity which is subject to the approval under this Part of a council.

**(2)** An application must be made in the approved form and be accompanied by the approved fee.

**(3)** Before deciding whether or not to grant an accreditation, the Director-General may require the applicant to submit such information relating to the component, process or design (including information describing any relevant method of installation, attachment or construction) as the Director-General considers appropriate.

**(4)** The Director-General may refuse to consider an application but in that event must refund the fee paid.

**Determination of application**

**121. (1)** The Director-General has a discretion to accredit a component, process or design.

**(2)** An accreditation may be granted subject to such conditions and qualifications, and for such period, as the Director-General thinks fit.

**(3)** In determining an application for accreditation, the Director-General may have regard to sources of information published or otherwise made available by such persons or bodies as the Director-General considers appropriate.

**(4)** In granting an accreditation, the Director-General must state the provisions of any regulation which the accredited component, process or design satisfies or with which the accredited component, process or design complies.

**Revocation of accreditation**

**122. (1)** The Director-General may at any time revoke an accreditation if the Director-General finds that:

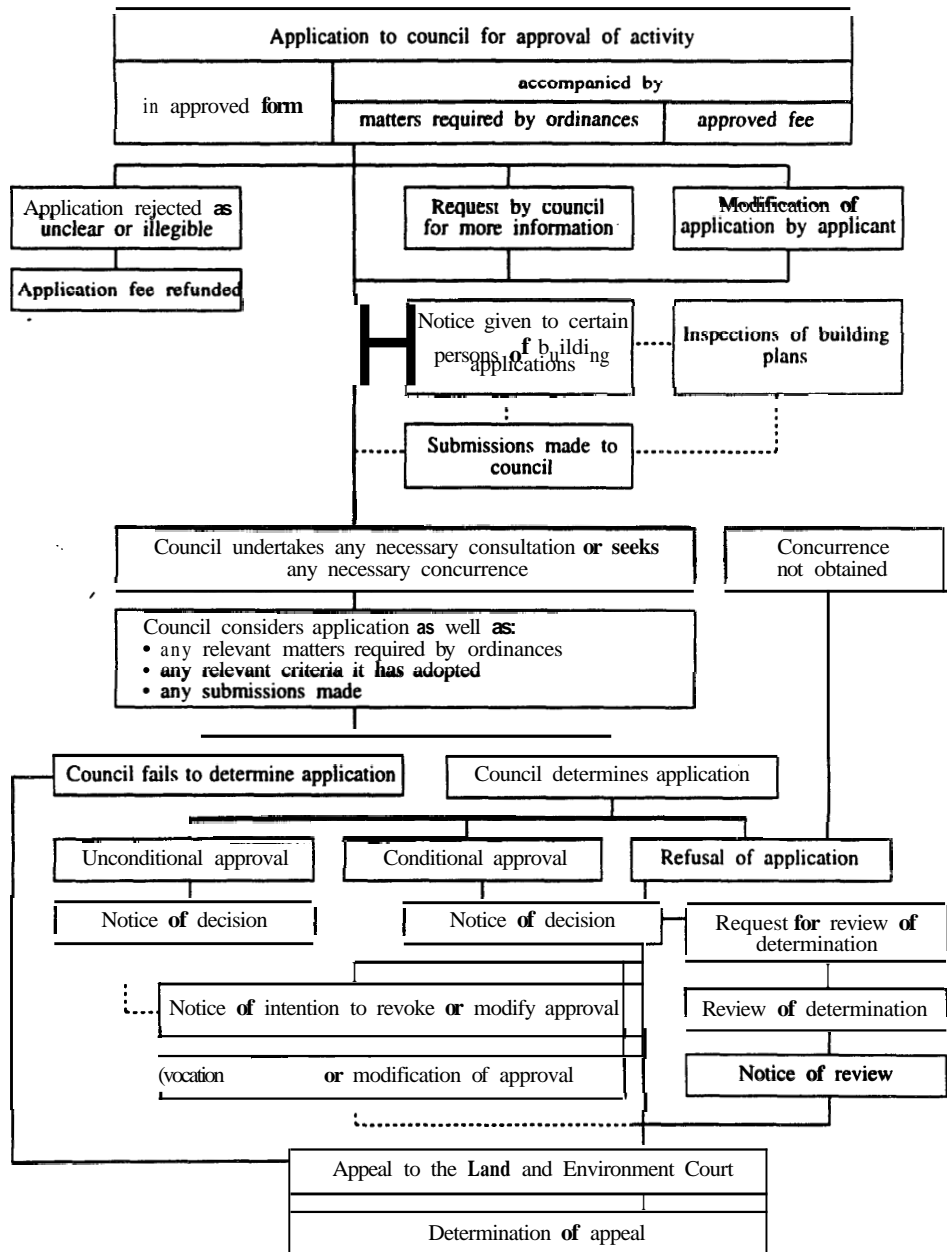
- (a) the accreditation has been obtained by fraud, misrepresentation or concealment of facts; or
- (b) the standard of the component, process or design which is the subject of the accreditation:
  - (i) is unsatisfactory; or
  - (ii) differs from or fails to comply with the standard of that component, process or design as at the time the accreditation was granted; or
- (c) an accreditation granted in any place outside New South Wales in respect of the component, process or design has been revoked or cancelled.

**(2)** If the Director-General determines to revoke an accreditation, the Director-General must notify the applicant for accreditation of the Director-General's determination.

**Councils to be informed of accreditation and revocation**

**123.** The Director-General must notify each council of an accreditation under this Division and of the revocation of any such accreditation as soon as practicable after the accreditation is granted or the accreditation is revoked.

THE MAIN PROCEDURES CONCERNING APPROVALS



**PART 2—ORDERS****Division 1—Giving of orders****What orders may be given, in what circumstances and to whom?**

**124.** A council may order a person to do or to refrain from doing a thing specified in Column 1 of the following Table if the circumstances specified opposite it in Column 2 of the Table exist and the person comes within the description opposite it in Column 3 of the Table.

NOTE: This section does not affect the power of a council to give an order (or a notice or direction) under the authority of another Act. For example, some of those Acts and the orders (or notices or directions) that may be given include:		
Dog Act 1966 .....	order prohibiting the exercising of greyhounds on certain roads	
Food Act 1989 .....	(by delegation) order for closure of food premises or to cease use of food vehicle	
Public Health Act 1991 .....	direction concerning maintenance or use of certain air-conditioning systems	
Roads Act 1993 .....	order preventing the passage of traffic along a road or tollway order for the removal of an obstruction or encroachment on a road	
Swimming Pools Act 1992 .....	order requiring owner of swimming pool to bring it into compliance with the Act	

A person who fails to comply with an order is guilty of an offence—see s. 628.

**ORDERS****ORDERS REQUIRING OR PROHIBITING THE DOING OF THINGS TO OR ON PREMISES**

Column 1	Column 2	Column 3
	<b>In what circumstances?</b>	<b>To whom?</b>
1. To demolish a building	(a) Building is erected without prior approval of council (in a case where prior approval is required) (b) Building is or is likely to become a danger to the public (c) Building is so dilapidated or unsightly as to be prejudicial to its occupants or to persons or property in the neighbourhood (d) Building is erected in a catchment district and causes or is likely to cause pollution of the water supply	Owner of building
2. Not to demolish, or to cease demolishing, a building	(a) Building is likely to be demolished without prior approval of council (in a case where prior approval is required) (b) Building is being demolished without prior approval of council or otherwise than in accordance with prior approval of council (in a case where prior approval is required)	Owner of building, person likely to demolish or person engaged in demolition



*Local Government Act 1993 No. 30*

<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
3. To repair or make structural alterations to a building	(a) Building is or is likely to become a danger to the public (b) Building is so dilapidated or unsightly as to be prejudicial to its occupants or to persons or property in the neighbourhood (c) Building is erected in a catchment district and causes or is likely to cause pollution of the water supply	(Owner of building)
4. To do or refrain from doing such things as are specified in the order so as to ensure or promote adequate fire safety or fire safety awareness	(a) Provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire (b) Maintenance or use of the premises constitutes a significant fire hazard	Owner of premises or, in the case of a place of shared accommodation, the owner or manager
5. To take such action as is necessary to bring into compliance with relevant standards or requirements set or made by or under this Act: (a) a camping ground, caravan park or manufactured home estate (b) a moveable dwelling or manufactured home (c) a building or a temporary structure used as a place of public entertainment (d) a place of shared accommodation	Failure to comply with relevant standards or requirements set or made by or under this Act	(Owner, occupier or manager or, in the case of a water meter, water supply or sewerage system in respect of which a defect occurs in work due to faulty workmanship of, or defective material supplied by, a licensed contractor (being the holder of a licence in force under the Building Services Corporation Act 1989 authorising the holder to contract to do the work) within 12 months after the work is carried out or the material is supplied, the licensed contractor

To do what?	In what circumstances?	To whom?
(e) a hairdressers shop or beauty salon (f) a mortuary (g) a building or part of a building erected without approval of council (h) a water meter, water supply or sewerage system on premises		
6. To erect or install on or around a building such structures or appliances as are necessary to protect persons or property on or in a public place	(a) Building is situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place (b) Building is about to be demolished	Owner or occupier of land
7. To fence land	Public health, safety or convenience renders it necessary or expedient to do so and there is no adequate fence between the land and a public place	Owner or occupier of land
8. To identify premises with such numbers or other identification in such manner as is specified in the order	Premises have a frontage to or entrance from a road and there are no markings that can readily be seen and understood from the road	Owner or occupier of land
9. To fence, empty, fill in or cover up a hole or waterhole in the manner specified in the order	Hole or waterhole is or may become dangerous to life	Owner or occupier of land
10. To remove or stack articles or matter, to cover articles or matter, to erect fences or screens or to plant trees	Land is in the immediate vicinity of a public place and is used for the storage of articles or matter so as to create or be likely to create unsightly conditions	Owner or occupier of land

*Local Government Act 1993 No. 30*

<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
11. To do or to refrain from doing such things as are specified in the order to prevent environmental damage, to repair environmental damage or to prevent further environmental damage	Work carried out on land has caused or is likely to cause environmental damage, being damage to the physical environment that is caused by: (a) drainage; or (b) drainage works; or (c) obstructing a natural watercourse other than by a work constructed or used under a licence granted under Part 2 of the Water Act 1912,  not being environmental damage arising from premises, works or equipment the subject of an approval or licence issued under the Pollution Control Act 1970 or the subject of a notice or direction issued by the Environment Protection Authority	Owner or occupier of land
12. To do such things as are necessary to control the flow of surface water across land	Other land is being damaged or is likely to be damaged	or occupier of
13. To do such things in relation to an advertising structure as are specified in the order to remove a threat to the safety of the public	The condition of an advertising structure threatens the safety of the public	The person who caused the advertising structure to be erected or the owner or occupier of the premises on which the advertising structure is erected

To do what?	In what circumstances?	To whom?
14. To alter, obliterate, demolish or remove an advertisement and any associated advertising structure	(a) The advertisement is unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed (b) The advertisement is displayed contrary to a provision made by or under this Act or any other Act (c) The advertising structure is erected contrary to a provision made by or under this Act or any other Act	The person who caused the advertisement to be displayed or the advertising structure to be erected or the owner or occupier of the premises on which the advertisement is displayed or the advertising structure is erected

**ORDERS REQUIRING THAT PREMISES BE USED OR NOT USED IN SPECIFIED WAYS**

To do what?	In what circumstances?	To whom?
15. Not to conduct, or to cease conducting, an activity on premises (whether or not the activity is approved under this Act)	The activity constitutes or is likely to constitute: (a) a life threatening hazard; or (b) a threat to public health or public safety and is not regulated or controlled under any other Act by a public authority	Any person apparently engaged in promoting, conducting or carrying out the activity
16. To cease the use of premises or to evacuate premises	A person to whom order No. 4 or 15 is given has failed to comply with the order	The person to whom order No. 4 or 15 is given
17. To leave premises or not to enter premises	A person to whom order No. 4 or 15 is given has failed to comply with the order	Any person

*Local Government Act 1993 No. 30*

<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
18. Not to keep birds or animals on premises, other than of such kinds, in such numbers or in such manner as specified in the order	Birds or animals kept on premises are: (a) in the case of any premises (whether or not in a catchment district)—of an inappropriate kind or number or are kept inappropriately; or (b) in the case of premises in a catchment district—birds or animals (being birds or animals that are suffering from a disease which is communicable to man or to other birds or animals) or pigs	Occupier of premises
19. To use or not to use a tennis court as specified	Actual or likely annoyance or threat to the safety of neighbours or users of a public place	Occupier of land

**ORDERS REQUIRING THE PRESERVATION OF HEALTHY CONDITIONS**

<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
20. To do such things as are specified in the order to put premises, vehicles or articles used for the manufacture, preparation, storage, sale, transportation or other handling or use of or in relation to food into a clean or sanitary condition	The premises, vehicle or article is not in a clean or sanitary condition	Owner or occupier of premises or owner or operator of vehicle or article

To do what?	In what circumstances?	To whom?
221. To do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition	The land or premises are not in a safe or healthy condition	Owner or occupier of land or premises
212. To store, treat, process, collect, remove, dispose of or destroy waste (other than waste that is dealt with under the Waste Disposal Act 1970) which is on land or premises in the manner specified in the order	Waste is present or generated on the land or premises and is not being dealt with satisfactorily	Owner or occupier of land or premises, owner of or person responsible for the receptacle or container in which the waste is contained
213. To connect premises to the council's water supply by a specified date	The premises are situated within 225 metres of a water pipe of the council	Owner or occupier of land
24. To connect premises with a sewerage system by a specified date	The premises are situated within 75 metres of a sewer of the council	Owner or occupier of premises
215. Not to use or permit the use of a human waste storage facility on premises after a specified date	It is necessary for the purpose of protecting public health	Owner or occupier of premises

*Local Government Act 1993 No. 30***ORDERS REQUIRING THE PROTECTION OR REPAIR OF PUBLIC PLACES**

<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
26. To repair or remove a building	The building is situated wholly partly in a public place	Owner or occupier of building
27. To remove an object or matter from a public place or prevent any object or matter being deposited there	The object or matter: (a) is causing or is likely to cause an obstruction or encroachment of or on the public place and the obstruction or encroachment is not authorised by or under any Act; or (b) is causing or is likely to cause danger, annoyance or inconvenience to the public	Person causing obstruction or encroachment or owner or occupier of land from which the object or matter emanates or is likely to emanate
28. To take whatever steps are necessary to prevent damage to a public place and to repair damage to a public place	There is actual or likely damage (a) by excavation or removal of material from or adjacent to the public place; or (b) by a work or structure; or  (c) by surface drainage or irrigation spray	Person responsible for the excavation or the removal of the material Owner or person entitled to the benefit of the work or structure Owner or occupier of land from which surface drainage flows or from which spray emanates
29. To alter or repair a work or structure on, over or under a public place	It is in the public interest to do so	Owner of the work or structure

**ORDERS REQUIRING COMPLIANCE WITH APPROVAL**

<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
30. To comply with an approval	The approval is not being complied with	Person entitled to act on the approval or person acting otherwise than in compliance with the approval

**Abatement of public nuisances**

**125.** A council may abate a public nuisance or order a person responsible for a public nuisance to abate it.

**NOTE: Abatement** means the summary removal or remedying of a nuisance (the physical removal or suppression of a nuisance) by an injured party without having recourse to legal proceedings.

**Nuisance** consists of interference with the enjoyment of public or private rights in a variety of ways. A nuisance is “public” if it materially affects the reasonable comfort and convenience of a sufficient class of people to constitute the public or a section of the public. For example, any wrongful or negligent act or omission in a public road that interferes with the full, safe and convenient use by the public of their right of passage is a public nuisance.

**Giving orders to public authorities**

**126. (1)** An order under this Division may not be given in respect of the following land without the prior written consent of the Minister:

- vacant Crown land
- a reserve within the meaning of Part 5 of the Crown Lands Act 1989
- a common.

**(2)** The Minister must not give consent in respect of vacant Crown lands or a reserve within the meaning of Part 5 of the Crown Lands Act 1989 until after the Minister has consulted the Minister administering the Crown Lands Act 1989.

**Making of regulations or the purposes of this Division**

**127.** The regulations may prescribe acts or circumstances that are taken to be included in or excluded from any of the acts or circumstances specified in Column 1 or 2 of the Table to section 124.



**Catchment districts**

**128. (1)** The Governor may proclaim a district to be a catchment district for the purposes of this Act.

**(2)** An owner of a building who complies with order No. 1 in the Table to section 124 in the circumstances specified in paragraph (d) for that order, or order No. 3 in that Table in the circumstances specified in paragraph (c) for that order, under section 124 is entitled to compensation from the council for the expenses incurred by the owner in complying with the order.

**Division 2—Procedures to be observed before giving orders****Circumstances in which compliance with this Division is required**

**129. (1)** Before giving an order, a council must comply with this Division.

**(2)** This section does not apply to:

- (a) an order in terms of order No. 15 in the Table to section 124; or
- (b) an order given, and expressed to be given, in an emergency.

**Effect of compliance with this Division**

**130.** A council that complies with this Division is taken to have observed the rules of natural justice (the rules of procedural fairness).

**Criteria to be considered before order is given**

**131.** If the council has adopted criteria in a local policy under Part 3 on which it is to give an order, the council is required to take the criteria into consideration before giving the order.

**Notice to be given of proposed order**

**132. (1)** Before giving an order, a council must give notice to the person to whom the order is proposed to be given of its intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with.

**(2)** The council's notice must also indicate that the person to whom the order is proposed to be given may make representations to the council as to why the order should not be given or as to the terms of or period for compliance with the order.

(3) The notice may provide that the representations are to be made to the council or a specified committee of the council on a specified meeting date or to a specified councillor or employee of the council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case.

### **Making of representations**

**133. (1)** A person may, in accordance with a notice under section 132, make representations concerning the proposed order.

(2) For the purpose of making the representations, the person may be represented by a barrister, solicitor or agent.

### **Hearing and consideration of representations**

**134.** The council or a specified committee, or the specified councillor or employee of the council, is required to hear and to consider any representations made under section 133.

### **Procedure after hearing and consideration of representations**

**135. (1)** After hearing and considering any representations made concerning the proposed order, the council, the committee, or the councillor or employee concerned, may determine:

- (a) to give an order in accordance with the proposed order; or
- (b) to give an order in accordance with modifications made to the proposed order; or
- (c) not to give an order.

(2) If the determination is to give an order in accordance with modifications made to the proposed order, the council is not required to give notice under this Division of the proposed order as so modified.

## **Division 3—Orders generally**

### **Reasons for orders to be given**

**136. (1)** A council must give the person to whom an order is directed the reasons for the order.

(2) The reasons may be given in the order or in a separate instrument.

(3) The reasons must be given when the order is given, except in a case of urgency. In a case of urgency, the reasons may be given the next working day.

**Period for compliance with order**

**137. (1)** An order must specify a reasonable period within which the terms of the order are to be complied with, subject to this section.

(2) An order may require immediate compliance with its terms in circumstances which the council believes constitute a serious risk to health or safety or an emergency.

**Notice of right to appeal against order**

**138.** A council must, in giving a person notice of an order:

- (a) state that the person or any other person affected by the order may appeal to the Land and Environment Court against the order or a specified part of the order; and
- (b) specify the period within which an appeal may be made.

**Order may specify standards and work that will satisfy those standards**

**139. (1)** Instead of specifying the things the person to whom the order is given must do or refrain from doing, an order:

- (a) may specify the standard that the premises are required to meet; and
- (b) may indicate the nature of the work that, if carried out, would satisfy that standard.

(2) Such an order may require the owner or occupier to prepare and submit to the council, within the period (not exceeding 3 months) specified in the order, particulars of the work the owner or occupier considers necessary to make provision for such matters as may be so specified.

**Compliance with order under s 139**

**140. (1)** A person complies with a requirement of an order under section 139 (2) by submitting to the council such matters as the person would be required to submit under section 81 if applying to the council for approval of the work.

(2) A person who complies with such a requirement does not have to make an application under Division 3 of Part 1 for approval of the work.

**Council's response to submission of particulars of work by owner**

**141. (1)** The council must, within 28 days after particulars of work are submitted to it in accordance with section 139 (2):

- (a) accept the particulars without modification or with such modifications as it thinks fit; or
- (b) reject the particulars.

**(2)** If a council accepts the particulars of work without modification, the council must forthwith order the owner to carry out that work.

**(3)** If a council accepts the particulars of work with modifications or rejects the particulars, or if an owner fails to submit particulars of work in accordance with section 139 (2), the council must:

- (a) prepare, within 3 months after the acceptance, rejection or failure, particulars of the work that it considers necessary to make provision for the matters specified in the order given to the owner under section 139; and
- (b) order the owner to carry out that work.

**(4)** An order under this section is not invalid merely because of the failure of the council to accept or reject any particulars of work or prepare particulars of any work, as the case may be, within the period it is required to do so by this section.

**(5)** A council may recover from an owner as a debt its expenses of preparing particulars of work under this section.

**Orders affecting heritage items**

**142. (1)** This section applies to an item of the environmental heritage:

- (a) which is listed in the Register of the National Estate kept in pursuance of the Australian Heritage Commission Act 1975 of the Commonwealth; or
- (b) to which an order under the Heritage Act 1977 applies; or
- (c) which is identified as such an item in an environmental planning instrument.

**(2)** A council must not give an order under this Part in respect of an item of the environmental heritage to which this section applies until after it has considered the impact of the order on the heritage significance of the item.

**(3)** A council must not give an order under this Part in respect of an item of the environmental heritage to which subsection (1) (a) or (b) applies until after it has given notice of the order to the Heritage Council and has considered any submissions duly made to it by the Heritage Council.

(4) The Heritage Council may make a submission:

- (a) within 28 days after it is given notice by the council; or
- (b) if, within 28 days after it is given notice by the council, the Heritage Council requests that a joint inspection of the item be made, within 28 days after the joint inspection is made.

(5) If the Heritage Council notifies a council that it wishes to be consulted in connection with an order under section 141, the council must include a statement to that effect in any order under section 139.

### **Combined orders**

143. A council may include two or more orders in the same instrument.

### **Giving and taking effect of orders**

144. An order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order.

### **Orders may be given to two or more persons jointly**

145. If appropriate in the circumstances of the case, an order may direct two or more people to do the thing specified in the order jointly.

### **Notice in respect of land or building owned or occupied by more than one person**

146. (1) If land, including land on which a building is erected, is owned or occupied by more than one person:

- (a) an order in respect of the land or building is not invalid merely because it was not given to all of those owners or occupiers; and
- (b) any of those owners or occupiers may comply with such an order without affecting the liability of the other owners or occupiers to pay for or contribute towards the cost of complying with the order.

(2) Nothing in this Division affects the right of an owner or occupier to recover from any other person all or any of the expenses incurred by the owner or occupier in complying with such an order.

### **Compliance with orders by occupiers or managers**

147. If an occupier or manager complies with an order, the occupier or manager may (unless the occupier or manager has otherwise agreed) deduct the cost of so complying (together with interest at the rate

currently prescribed by the Supreme Court rules in respect of unpaid judgment debts) from any rent payable to the owner or may recover the cost (and that interest) from the owner as a debt in any court of competent jurisdiction.

### **Occupier of land may be required to permit owner to carry out work**

**148. (1)** The council may order the occupier of any land to permit the owner of the land to carry out such work on the land as is specified in the order (being work that is, in the council's opinion, necessary to enable the requirements of this Act or the regulations, or of any order under Division 1, to be complied with).

**(2)** An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.

**(3)** The owner of the land is not guilty of an offence arising from his or her failure to comply with the requirements of this Act or the regulations, or of any order under Division 1, if, while an order under this section is in force, the occupier of the land refuses to permit the owner to carry out the work specified in the order.

**(4)** Subsection (3) applies only if the owner of the land satisfies the Court that the owner has, in good faith, tried to comply with the requirements concerned.

### **Notice of fire-safety orders to be given to Director-General of Fire Brigades**

**149.** A council must immediately give notice to the Director-General of New South Wales Fire Brigades of an order given by it in terms of order No. 4 in the Table to section 124.

### **Powers of fire brigades**

**150. (1)** An authorised fire officer who inspects a building in accordance with section 202 may give:

- (a) order No. 4 in the Table to section 124 if the order does not require the carrying out of any structural work to the premises concerned; or
- (b) order No. 15 in the Table to section 124 if the premises concerned are a place of shared accommodation; or
- (c) order No. 16 or 17 in the Table to section 124 if a person to whom an order under paragraph (a) or (b) is given has failed to comply with the order.

(2) For the purpose of giving such an order, an authorised fire officer may exercise such of the powers of a council under this Part as are specified in the fire officer's authorisation under this section.

(3) In exercising a power under this Part, an authorised fire officer may be accompanied and assisted by a police officer.

(4) An authorised fire officer must forward a copy of an order given under this section to the relevant council.

(5) In this section, a reference to an authorised fire officer, in relation to the exercise of a power under this Part, is a reference to:

- (a) a member of staff of New South Wales Fire Brigades; or
- (b) an officer or member of a fire brigade,

who is for the time being authorised by the Minister administering the Fire Brigades Act 1989 to exercise that power.

### **Inspection reports by fire brigades**

**151. (1)** If the Director-General of New South Wales Fire Brigades carries out an inspection of a building under section 202, the Director-General must furnish to the council of the area in which the building is located:

- (a) a report of the inspection; and
- (b) if of the opinion that adequate provision for fire safety has not been made concerning the building, such recommendations as to the carrying out of work or the provision of fire safety and fire-fighting equipment as the Director-General considers appropriate.

(2) A council must:

- (a) table any report and recommendations it receives under this section at the next meeting of the council; and
- (b) at any meeting of the council held within 28 days after receiving the report and recommendations or at the next meeting of the council held after the tabling of the report and recommendations, whichever is the later, determine whether it will exercise its powers to give order No. 4 or 15 in the Table to section 124.

(3) A reference in subsection (2) to a meeting of a council does not include a reference to a special meeting of the council unless the special meeting is called for the purpose of tabling any report and recommendations or making any determination referred to in that subsection.

(4) A council must give notice of a determination under this section to the Director-General of New South Wales Fire Brigades.

**Modification of orders**

**152.** A council may, at any time, modify an order it has given to a person (including a modification of the period specified for compliance with the order) if the person agrees to that modification.

**Revocation of orders**

**153. (1)** An order given by the council may be revoked by the council at any time.

**(2)** An order given by the Minister may be revoked by the Minister at any time.

**(3)** An order given by an authorised fire officer may be revoked by an authorised fire officer at any time.

**The Minister may exercise any function concerning an order that a council may exercise**

**154. (1)** The Minister may exercise any function under this Part that the council may exercise.

**(2)** This Part (except Division 2) applies to the Minister in the same way as it applies to a council for the purpose of exercising any such function.

**(3)** The Minister must not give an order to protect public health until after the Minister has consulted the Minister administering the Public Health Act 1991.

**(4)** If the Minister's functions under this section are delegated, a person to whom an order by the Minister's delegate is given may apply to the Minister for a review of the order within 28 days after service of the order.

**(5)** The Minister's decision on the review is final.

**(6)** Part 5 (Appeals) does not apply to an order given under this section.

**(7)** The Minister must forward a copy of an order given under this section to the relevant council.

**Effect of inconsistency between council's order and Minister's order**

**155.** An order given by a council under Division 1, to the extent to which it is inconsistent with an order given by the Minister under section 154, is void.



**Minister may revoke or modify a council's order**

**156. (1)** The Minister may revoke or modify an order given by a council.

**(2)** Notice of the revocation or modification must be given to the council and the person to whom the order was given.

**(3)** The revocation or modification takes effect from the date specified in the Minister's notice. The date may be the date on which the order was given by the council or a later date.

**(4)** The Minister may prohibit a council from re-making an order that is revoked or modified under this section, totally or within such period or except in accordance with such terms and conditions (if any) as the Minister may specify.

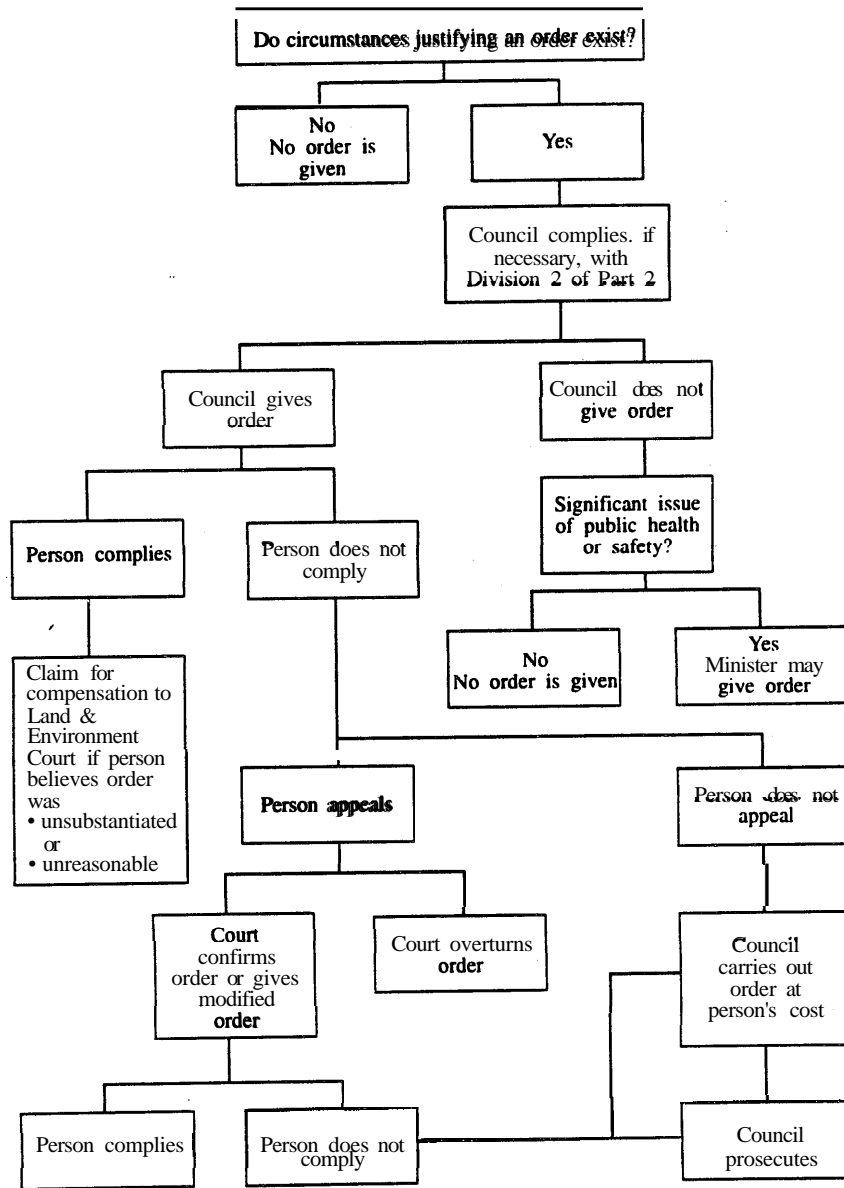
**(5)** Notice of a prohibition may be given in the same notice as notice of the revocation or modification of an order or in a separate notice.

**Limitation on Minister's orders**

**157.** The Minister must not give an order under this Part that is inconsistent with, or has the effect of revoking or modifying, an order given by the council unless the Minister is of the opinion that:

- (a) it is necessary because of an emergency; or
- (b) it is necessary because of the existence or reasonable likelihood of a serious risk to health or safety; or
- (c) the order relates to a matter of State or regional significance; or
- (d) the order relates to a matter in which the intervention of the Minister is necessary in the public interest.

**ORDERS**



**PART 3—ADOPTION OF LOCAL POLICIES CONCERNING APPROVALS AND ORDERS****Preparation of draft local policy for approvals**

**158. (1)** A council may prepare a draft local approvals policy.

**(2)** A draft local approvals policy is to consist of three parts.

**(3)** Part 1 is to specify the circumstances (if any) in which (if the policy were to be adopted) a person would be exempt from the necessity to obtain a particular approval of the council.

**(4)** Part 2 is to specify the criteria (if any) which (if the policy were to be adopted) the council must take into consideration in determining whether to give or refuse an approval of a particular kind.

**(5)** Part 3 is to specify other matters relating to approvals (for example, matters referred to in section 115).

**Preparation of draft local policy for orders**

**159. (1)** A council may prepare a draft local orders policy.

**(2)** A draft local orders policy is to specify the criteria which (if the policy were to be adopted) the council must take into consideration in determining whether or not to give an order under section 124.

**Public notice and exhibition of draft local policy**

**160. (1)** The council must give public notice of a draft local policy after it is prepared.

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

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

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

**Adoption of draft local policy**

**161. (1)** After considering all submissions received by it concerning the draft local policy, the council may decide:

- (a) to amend its draft local policy; or
- (b) to adopt it without amendment; or
- (c) not to adopt it, except where the adoption of criteria is mandatory.

(2) If the council decides to amend its draft local policy, it may publicly exhibit the amended draft local policy in accordance with this Part or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft local policy without public exhibition.

**Director-General's consent required to exemption from necessity for approval**

**162.** A council has no power to adopt that part of a draft local approvals policy that specifies circumstances in which (if the policy were to be adopted) a person would be exempt from the necessity to obtain a particular approval of the council, unless the council has received the Director-General's consent to the adoption of that part.

**Effect of inconsistency between council's local policy and this Act or the regulations**

**163.** A local policy adopted under this Part by a council, to the extent to which it is inconsistent with this Act or the regulations, is void.

**Local policy not to be more onerous than this Act or the regulations**

**164. (1)** If a criterion is prescribed by this Act or the regulations in relation to:

- (a) a specified aspect of an activity that may be carried out only with the prior approval of the council; or
- (b) a specified aspect of anything for which an order may be given under Part 2, a local policy adopted under this Part by a council, to the extent to which its provisions impose a more onerous criterion in relation to the specified aspect, is void.

(2) However, for the purposes of this section, the imposition of a criterion in a local policy in relation to a specified aspect, does not, in the absence of the prescription by this Act or the regulations of a criterion in relation to that aspect, constitute a more onerous criterion.

**Amendment and revocation of local policy**

**165. (1)** A council may amend a local policy adopted under this Part by means only of a local policy so adopted.

(2) An amending local policy may deal with the whole or part of the local policy amended.

(3) A council may at any time revoke a local policy adopted under this Part.

(4) A local policy, (other than a local policy adopted since the last general election) is automatically revoked at the expiration of 12 months after the declaration of the poll for that election.

**Public notice of adoption of local policy**

**166.** The council must give public notice, in a form and manner prescribed by the regulations (or, if no form and manner are so prescribed, in a form and manner determined by the council), of the adoption, or revocation (other than by section 165 (4)) of a local policy.

**Public availability of local policy**

**167. (1)** A local policy adopted under this Part by a council must be available for public inspection free of charge at the office of the council during ordinary office hours.

(2) Copies of the local policy must also be available free of charge or, if the council determines, on payment of the approved fee.

**PART 4—CERTIFICATES CONCERNING BUILDINGS****Effect of building certificate**

**168. (1)** If a building certificate has been issued in relation to a building or part, a council:

- (a) by virtue of anything existing or occurring before the date of issue of the certificate; or
- (b) within 7 years after that date by virtue of the deterioration of the building or part solely by fair wear and tear,

must not:

- (c) make order No. 1, 3, 5 (g) or 26 in the Table to section 124 in relation to the building or part; or

- (d) take proceedings for an order or injunction requiring the demolition, alteration, addition or rebuilding of or to the building or part; or
  - (e) take proceedings in relation to any encroachment by the building or part onto land vested in or under the control of the council.
- (2) An order made or proceeding taken in contravention of this section is of no effect.
- (3) The issue of a building certificate does not prevent:
- (a) the taking of proceedings against any person under section 626 or 627; or
  - (b) the making of order No. 4 in the Table to section 124.

### **Application for building certificate**

- 169. (1)** An application for a building certificate in relation to the whole or a part of a building may be made to the council by:
- (a) the owner of the building or part or any other person having the owner's consent to make the application; or
  - (b) the purchaser under a contract for the sale of property, which comprises or includes the building or part, or the purchaser's solicitor or agent; or
  - (c) a public authority which has notified the owner of its intention to apply for the certificate.
- (2) An application must be in the approved form and be accompanied by the approved fee.
- (3) Despite subsection (1) (a), the consent in writing of the owner of the building or part is not required if the applicant is a public authority and the public authority has, before making the application, served a copy of the application on the owner.

### **Acknowledgment of application**

- 170.** The council, on receiving an application for a building certificate, must give written acknowledgment to the applicant of its receipt.

### **Additional information**

- 171. (1)** On receipt of an application, the council may, by notice, require the applicant to supply it with such information (including building plans, specifications, survey reports and certificates) as may be reasonably necessary to enable the proper determination of the application.

(2) If the applicant is able to provide evidence that no material change has occurred in relation to the building or part since the date of a survey certificate which, or a copy of which, is supplied to the council by the applicant, the council is not entitled to require the applicant to supply a more recent survey certificate.

### **Determination of application**

**172. (1)** The council must determine an application for a building certificate by issuing or by refusing to issue a building certificate to the applicant.

(2) The council must issue a building certificate if it appears that:

(a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council:

(i) to make order No. 1, 3, 5 (g) or 26 in the Table to section 124 in relation to the building or part; or

(ii) to take proceedings for an order or injunction requiring the demolition, alteration, addition or rebuilding of or to the building or part; or

(iii) to take proceedings in relation to any encroachment by the building or part onto land vested in or under the control of the council; or

(b) there is such a matter but, in the circumstances, the council does not propose to do any of the things referred to in paragraph (a).

(3) If the council refuses to issue a building certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.

(4) The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building certificate.

(5) The council must not refuse to issue or delay the issue of a building certificate by virtue of the existence of a matter which would not entitle the council to do any of the things referred to in subsection (2) (a).

(6) Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.

### **Contents of building certificates**

**173. (1)** A building certificate must:

(a) identify the building or part to which it relates; and

- (b) reproduce or include a summary of the provisions of section 168; and
  - (c) specify the classification of the building or part; and
  - (d) identify all written information (including building inspection reports, building plans, specifications, survey reports and certificates) used by the council in deciding to issue the certificate.
- (2) If an application is made in relation to:
- (a) the whole of a building—the building certificate is to relate to the whole of the building; or
  - (b) part of a building—the building certificate is to relate only to that part of the building to which the application relates.

**Record of certificates**

**174. (1)** The council must keep a record of building certificates issued by it in such form as it thinks fit.

(2) A person may inspect the record at any time during the ordinary office hours of the council.

(3) A person may obtain a copy of a building certificate from the record with the consent of the owner of the building and on payment of the approved fee.

**Other Certificates and statements**

**175.** The regulations may make provision for or with respect to the following:

- certificates of classification of buildings
- statements of classification concerning buildings.

**PART 5—APPEALS****Division 1—Approvals and orders****Appeal by an applicant concerning an approval**

**176. (1)** An applicant who is dissatisfied with the determination of a council with respect to the applicant's application for an approval may appeal to the Land and Environment Court.

(2) The appeal must be made within 12 months after:

- (a) the date endorsed on the notice under section 99 or 100 in respect of the application; or



- (b) the date on which the application is taken to have been determined under section 105; or
- (c) the date of renewal of the approval if the approval has been renewed under section 107,

as the case requires.

### **Appeal by an applicant as to whether an “in principle” approval operates**

**177. (1)** An applicant who is dissatisfied with a decision that a council is not satisfied as to a matter, being a matter as to which it must be satisfied before an “in principle” approval under section 95 can operate, may appeal to the Land and Environment Court.

**(2)** The appeal must be made within 12 months after the council notifies the applicant of its decision.

### **Appeal against the revocation or modification of an approval**

**178. (1)** If an approval is revoked or modified under section 108, the applicant for the approval may appeal to the Land and Environment court.

**(2)** The appeal must be made within 3 months after the date on which the revocation or modification takes effect.

**(3)** The Court may determine the appeal by affirming, varying or cancelling the instrument of revocation or modification.

### **Awarding of compensation concerning approvals**

**179. (1)** The Land and Environment Court, on the hearing of an appeal or otherwise, has a discretion to award compensation to an applicant for an approval for any expense incurred by the person as a consequence of

- (a) a council’s refusal to grant the approval; or
- (b) a council’s delay in granting the approval,

if the Court considers that the council would not have acted in the way it did but for the fact that it was unduly influenced by vexatious or unmeritorious submissions made by members of the public or that the council has acted vexatiously.

**(2)** An application for compensation may be made on the hearing of an appeal or by proceedings brought for the purpose of claiming compensation.

(3) A claim for compensation may not be made more than 28 days after the date on which the Court gives its decision on an appeal concerning the application for approval or more than 3 months after the date of the council's determination of the application if an appeal is not made against the determination.

(4) Compensation under this section is to be awarded against the council.

NOTE: The Land and Environment Court has other powers to award compensation under section 677.

### **Appeals concerning orders**

**180. (1)** A person on whom an order is served may appeal against the order to the Land and Environment Court.

(2) However, a person may not appeal against an order given under section 150 (1) (a).

(3) The appeal must be made within 28 days after the service of the order on the person.

(4) On hearing an appeal, the Court may:

- (a) revoke the order; or
- (b) modify the order; or
- (c) substitute for the order any other order that the council could have made; or
- (d) find that the order is sufficiently complied with; or
- (e) make such order with respect to compliance with the order as the Court thinks fit; or
- (f) make any other order with respect to the order as the Court thinks fit.

### **Awarding of compensation concerning orders**

**181. (1)** The Land and Environment Court, on the hearing of an appeal or otherwise, has a discretion to award compensation to a person on whom an order is served for any expense incurred by the person as a consequence of the order, including the cost of any investigative work or reinstatement carried out by the person as a consequence of the order, but only if the person satisfies the Court that the giving of the order was unsubstantiated or the terms of the order were unreasonable.

(2) A claim for compensation may not be made more than 28 days after the date on which the Court gives its decision on the appeal or more than 3 months after the date of the order if an appeal is not made against the order.

(3) Compensation under this section is to be awarded against the council.

### **Appeals concerning particulars of work submitted to councils**

**182. (1)** A person may appeal to the Land and Environment Court against the failure of the council:

- (a) to accept or reject, under section 141 (1), particulars of work submitted to it in accordance with section 139 (2); or
- (b) to prepare, under section 141 (3) (a), particulars of the work that it considers necessary to make provision for the matters specified in an order given to an owner under section 139.

(2) The appeal must be made within 28 days after the period limited under section 141 (1) or (3) (a) for compliance by the council.

(3) On hearing an appeal, the Court may:

- (a) make any order that the council could have made; or
- (b) order the council to perform its functions under section 141 (1) or (3) (a) within such time as is specified in the order.

### **Effect of appeal on order**

**183.** If an appeal is duly made to the Land and Environment Court against an order, the appeal does not effect a stay of the order.

### **Court's powers not limited by this Division**

**184.** This Division does not limit a power of the Land and Environment Court under the Land and Environment Court Act 1979.

## **Division 2—Building certificates**

### **Appeals**

**185. (1)** An applicant:

- (a) who is aggrieved by the refusal of the council to issue a building certificate; or

- (b) who is aggrieved by the failure of the council to issue a building certificate within a period of 40 days after:
- (i) the date of application for the certificate; or
  - (ii) if the applicant receives a notice under section 171 to supply information, the date on which the information is supplied,
- whichever is the later; or
- (c) who receives a notice under section 171 to supply information, may appeal to the Land and Environment Court.
- (2) The appeal must be made within 12 months after the date on which the refusal is communicated to the person, the date on which the 40-day period expires or the date of the notice under section 171, as the case may require.
- (3) On hearing an appeal, the Court may:
- (a) direct the council to issue a building certificate in such terms and on such conditions as the Court thinks fit; or
  - (b) revoke, alter or confirm a notice under section 171; or
  - (c) make any other order that it considers appropriate.

## **CHAPTER 8—WHAT ANCILLARY FUNCTIONS DOES A COUNCIL HAVE?**

### **INTRODUCTION**

This Chapter confers on councils certain functions which it is necessary or desirable for them to have in order to carry out their other functions. These functions are “ancillary” in the sense that they are auxiliary to, they give support to, and they aid the carrying out of, the other functions of a council, particularly its service and regulatory functions.

Councils are given power to acquire land by compulsory process.

The Chapter also confers on councils powers to enter land and buildings and to carry out inspections.

A council may also have similar powers for different purposes under other Acts. For example, under the Roads Act 1993, a council has power to compulsorily acquire land for road purposes and may enter land for the purposes of that Act.

### **PART I—ACQUISITION OF LAND**

#### **For what ‘purposes may a council acquire land?’**

**186. (1)** A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.

**(2)** Without limiting subsection (1), a council may acquire:

- (a)** land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument; or
- (b)** land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.

#### **How does a council acquire land?**

**187. (1)** Land that a council is authorised to acquire under this Part may be acquired by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

**(2)** A council may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

#### **Restriction on compulsory acquisition of land for re-sale**

**188. (1)** A council may not acquire land under this Part by compulsory process without the approval of the owner of the land if it is being acquired for the purpose of re-sale.

(2) However, the owner's approval is not required if the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time under this Part for a purpose other than the purpose of re-sale.

#### **No restriction as to area**

**189.** Land may be acquired by a council under this Part even if it lies wholly or partly outside the council's area.

#### **Special provisions relating to land containing minerals**

**190.** Division 4 of Part 8 of the Public Works Act 1912 applies to a council and land acquired by a council in the same way as that Division applies to a Constructing Authority and land acquired by a Constructing Authority.

### **PART 2—ENTRY ON TO LAND AND OTHER POWERS**

#### **Power of entry**

**191. (1)** For the purpose of enabling a council to exercise its functions, a council employee (or other person) authorised by a council may enter any premises.

(2) Entry may only be made at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the premises.

#### **Inspections and investigations**

**192.** For the purpose of enabling a council to exercise its functions, a person authorised to enter premises under this Part may:

- (a) inspect the premises and any food, vehicle, article, matter or thing on the premises; and
- (b) for the purpose of an inspection:
  - (i) open any ground and remove any flooring and take such measures as may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting; and
  - (ii) require the opening, cutting into or pulling down of any work if the person authorised has reason to believe or suspect that anything on the premises has been done in contravention of this Act or the regulations; and
- (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set **up** any posts, stakes or marks; and

- (d) require any person at those premises to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation; and
- (e) examine and test any meter; and
- (f) measure a supply of water; and
- (g) take samples or photographs in connection with any inspection.

**Notice of entry**

**193. (1)** Before a person authorised to enter premises under this Part does so, the council must give the owner or occupier of the premises written notice of the intention to enter the premises.

**(2)** The notice must specify the day on which the person intends to enter the premises and must be given before that day.

**(3)** This section does not require notice to be given:

- (a) if entry to the premises is made with the consent of the owner or occupier of the premises; or
- (b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety.

**Use of force**

**194. (1)** Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under a power conferred by this Part, but only if authorised by the council in accordance with this section.

**(2)** The authority of the council:

- (a) must be in writing; and
- (b) must be given in respect of the particular entry concerned; and
- (c) must specify the circumstances which are required to exist before force may be used.

**Notification of use of force or urgent entry**

**195. (1)** A person authorised to enter premises under this Part who:

- (a) uses force for the purpose of gaining entry to the premises; or
- (b) enters the premises in an emergency without giving written notice to the owner or occupier,

must promptly advise the council.

(2) The council must give notice of the entry to such persons or authorities as appear to the council to be appropriate in the circumstances.

### **Care to be taken**

**196. (1)** In the exercise of a function under this Part, a person authorised to enter premises must do as little damage as possible. The council must provide, if necessary, other means of access in place of any taken away or interrupted by a person authorised by it.

(2) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.

(3) If, in the exercise of a function under this Part, any pit, trench, hole or bore is made, the council must, if the owner or occupier of the premises so requires:

- (a) fence it and keep it securely fenced so long as it remains open or not sufficiently sloped down; and
- (b) without unnecessary delay, fill it up or level it or sufficiently slope it down.

### **Recovery of cost of entry and inspection**

**197.** If a person authorised by a council enters any premises under this Part for the purpose of making an inspection and as a result of that inspection, under a power conferred on the council, the council requires any work to be carried out on or in the premises, the council may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

### **Compensation**

**198.** A council must pay compensation for any damage caused by any person authorised by the council under this Part to enter premises, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this or any other Act.

NOTE: Section 730 provides for the resolution of claims for compensation under this section in cases of dispute between the person claiming the compensation and the council.



**Authority to enter premises**

**199. (1)** A power conferred by this Part to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.

**(2)** The authority must be a written authority which is issued by the council and which:

- (a) states that it is issued under this Act; and
- (b) gives the name of the person to whom it is issued; and
- (c) describes the nature of the powers conferred and the source of the powers; and
- (d) states the date (if any) on which it expires; and
- (e) describes the kind of premises to which the power extends; and
- (f) bears the signature of the general manager.

**(3)** This section does not apply to a power conferred by a search warrant.

**In what circumstances can entry be made to a residence?**

**200.** The powers of entry and inspection conferred by this Part are not exercisable in relation to that part of any premises being used for residential purposes except:

- (a) with the permission of the occupier of that part of the premises; or
- (b) if entry is necessary for the purpose of inspecting work being carried out under an approval; or
- (c) under the authority conferred by a search warrant.

**Search warrants**

**201. (1)** An authorised person may apply to an authorised justice if the authorised person has reasonable grounds for believing that the provisions of this Act or the regulations or the terms of an approval or order under this Act have been or are being contravened in or on any premises.

**(2)** An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:

- (a) to enter the premises; and
- (b) to search the premises for evidence of a contravention of this Act or the regulations or the terms of an approval or order.

(3) Part 3 of the Search Warrants Act 1985 applies to a search, warrant issued under this section.

(4) Without limiting the generality of section 18 of the Search Warrants Act 1985, a police officer:

- (a) may accompany an authorised person executing a search warrant issued under this section; and
- (b) may take all reasonable steps to assist the authorised person in the exercise of the person's functions under this section.

(5) In this section, authorised justice has the same meaning it has in the Search Warrants Act 1985.

#### **Special provision with respect to fire brigades**

**202.** (1) The Director-General of New South Wales Fire Brigades, or any members of staff of the New South Wales Fire Brigades or any officers or members of a fire brigade authorised for the purposes of this section by the Minister administering the Fire Brigades Act 1989, may exercise the functions conferred on a person authorised by a council under this Part for the purpose of inspecting a building to determine:

- (a) whether or not adequate provision for fire safety has been made in or in connection with the building; or
- (b) whether or not such of the provisions of this or any other Act or law as may be prescribed for the purposes of this paragraph have been complied with.

(2) An inspection for the purposes of subsection (1) (a) is not, however, authorised for premises other than places of shared accommodation except:

- (a) when requested by the council of the area in which the building is located; or
- (b) when requested by a person who holds himself or herself out as the owner, lessee or occupier of the building; or
- (c) when the Director-General of New South Wales Fire Brigades has received a complaint in writing that adequate provision for fire safety has not been made concerning the building.

(3) A council must, at the request of the Director-General of New South Wales Fire Brigades, make available a person authorised by the council for the purposes of the inspection, and the person concerned is to be present during the inspection.

(4) The Director-General of New South Wales Fire Brigades must send a report of my inspection carried out under this section to the council concerned.

(5) This Part applies to the Director-General of New South Wales Fire Brigades and a person authorised by the Minister administering the Fire Brigades Act 1989 in the same way as it applies to a council and a council employee (or other person) authorised by the council.

**Councils to carry out fire-safety inspections on request of Director-General of Fire Brigades**

**203. (1)** A council must, at the written request of the Director-General of New South Wales Fire Brigades, cause any building specified in the request to be inspected for the purpose of determining whether or not adequate provision for fire safety has been made in or in connection with the building.

(2) As soon as practicable after such an inspection has been carried out, the council must send a report of the inspection to the Director-General of New South Wales Fire Brigades.

**CHAPTER 9—HOW ARE COUNCILS ESTABLISHED?****INTRODUCTION**

This Chapter contains provisions dealing separately with the constitution of land as a local government area and the constitution of a council to manage that area. It enables the making of changes to those areas and to councils. It provides for the dissolution of councils and the appointment of administrators.

Each council is a statutory corporation. The councillors are the governing body of the corporation and they have the responsibility of directing and controlling the affairs of the council in accordance with this Act.

The Chapter includes a statement of the role of the mayor and of a councillor.

Provision is made for the payment of fees to the mayor and other councillors. Payment is to be made in accordance with determinations of the Local Government Remuneration Tribunal which is established by this Chapter. Provision is also made for the payment of expenses and the provision of facilities to the mayor and other councillors.

The Chapter also constitutes the Local Government Boundaries Commission and provides for its functions.

**PART 1—AREAS****Division 1—How are areas constituted, altered and dissolved?****Constitution of areas**

**204. (1)** The Governor may, by proclamation, constitute any part of New South Wales as an area.

**(2)** The area is to have the boundaries determined by the Governor by proclamation.

**(3)** An area must be a single area of contiguous land.

**Land taken to be included in an area**

**205. (1)** The land and water between high-water mark and low-water mark on the foreshores of an area is taken to be in the area.

**(2)** The land and water enclosed by:

(a) a straight line drawn between the low-water marks of consecutive headlands to any body of water on the foreshores of an area; and

(b) those foreshores,

is taken to be in the area.

(3) Land on the boundary of an area is taken to be in the area if:  
(a) it is reclaimed from tidal waters; or  
(b) it is on the foreshores of the area and beyond low-water mark,  
and it is privately owned or has a structure erected on it.

(4) This section is subject to any proclamation made under this Division.

### **Constitution of cities**

206. The Governor may, by proclamation, constitute an area as a city.

### **Names of areas**

207. The Governor may, by proclamation, name or rename an area.

### **Effect of changing name**

208. When an area is constituted as a city or an area or ward is renamed, a reference in an Act or instrument to the old name of the area, the council concerned or the ward is taken to include a reference to the new name of the area, council or ward.

### **Alteration of boundaries of areas**

209. The Governor may, by proclamation, alter the boundaries of one or more areas.

### **Division of areas into wards**

210. (1) The council may divide its area into divisions, called "wards".

(2) The council may abolish all wards.

(3) The council may alter ward boundaries.

(4) The council may name or rename a ward.

(5) A council must not divide an area into wards or abolish all wards unless it has obtained approval to do so at a constitutional referendum.

(6) A by-election held after an alteration of ward boundaries and before the next ordinary election is to be held as if the boundaries had not been altered.

### **Revision of ward boundaries**

211. (1) The council of an area divided into wards must keep the ward boundaries under review.

(2) The council must submit any changes proposed to the boundaries of its wards to the Electoral Commissioner and the Australian Statistician for consideration before the end of the third year of each term of office.

(3) The council must consult the Electoral Commissioner and the Australian Statistician to ensure that, as far as practicable, the proposed boundaries of its wards correspond to the boundaries of appropriate subdivisions (within the meaning of the Parliamentary Electorates and Elections Act 1912) and census districts.

(4) A boundary change must not result in a variation of more than 10 per cent between the number of electors in each ward in the area.

### **Dissolution of areas**

**212. (1)** The Governor may, by proclamation, dissolve the whole or part of an area.

(2) The Minister may not recommend the making of a proclamation to dissolve the whole or part of an area until after a public inquiry has been held and the Minister has considered the report made as a consequence of the inquiry.

### **Facilitating provisions of proclamations**

**213. (1)** A proclamation of the Governor for the purposes of this Division may include such provisions as are necessary or convenient for giving effect to the proclamation, including provisions for or with respect to:

- the transfer or apportionment of assets, rights and liabilities
- the transfer of staff
- the application of regulations
- the holding of elections
- the delivery or retention of records
- the termination, cessation, dissolution or abolition of anything existing before the proclamation takes effect
- the preservation or continuance of anything existing before the proclamation takes effect
- the making of appointments.

(2) Such a proclamation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
- (b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,  
or may do any combination of those things.

### **Division 2—What must be done before areas can be constituted or altered?**

NOTE: This Division sets out the things that must be done before areas can be constituted or altered.

Land may only be constituted as an area or the boundaries of an area altered if the public has been notified of the proposal to do so and the councils and electors concerned have been given an opportunity to make representations concerning the proposal.

It also provides for the Boundaries Commission (or the Director-General, in the case of a minor alteration or variation) to consider proposals to constitute or alter areas.

### **Exercise of functions under ss. 204 and 209**

**214.** A function under section 204 or 209 may be exercised only after a proposal for the exercise of the function is dealt with under this Division.

### **Who may initiate a proposal?**

**215. (1)** A proposal may be made by the Minister or it may be made to the Minister by a council affected by the proposal or by an appropriate minimum number of electors.

**(2)** An appropriate minimum number of electors is:

- (a)** if a proposal applies to the whole of an area or the proposal is that part of an area be constituted as a new area—250 of the enrolled electors for the existing area or 10 per cent of them, whichever is the greater; or
- (b)** if a proposal applies only to part of an area—250 of the enrolled electors for that part or 10 per cent of them, whichever is the lesser.

### **Public notice to be given of a proposal**

**216.** The Minister must give at least 28 days' public notice of a proposal that the Minister decides to proceed with.

**Making of representations**

**217. (1)** Within the period of public notice, representations concerning the proposal may be made to the Minister by a council or elector affected by the proposal.

**(2)** The Minister must consider all representations made.

**The next step**

**218. (1)** If the Minister decides to continue with the proposal, the Minister must refer it for examination and report to the Boundaries Commission or, if the Minister is of the opinion that the proposal involves a minor alteration or variation only, to the Director-General.

**(2)** The Minister may recommend to the Governor that the proposal be implemented with such modifications arising out of the Boundaries Commission's or Director-General's report or such modifications as the Minister determines, if the Minister is of the opinion that the modifications do not constitute a new proposal.

**(3)** The Minister may decline to recommend to the Governor that the proposal be implemented.

**PART 2—COUNCILS****Division 1—Constitution****Constitution of councils**

**219.** A council is constituted by this Act for each area.

**Bodies corporate**

**220.** A council is a body corporate.

<p>NOTE: Part 8 of the Interpretation Act 1987 applies to statutory bodies. It contains provisions stating the general attributes of statutory incorporation (for example, perpetual succession, the requirement for a seal, the taking of proceedings, etc.), it provides for judicial notice to be taken of a statutory corporation's seal, it creates a presumption of regularity for acts and proceedings of a statutory corporation and contains other provisions.</p>
---



**What is a council's corporate name?**

**221. (1)** The corporate name of a council of an area other than a city is the "Council of X" or the "X Council", X being the name of the council's area.

**(2)** The corporate name of a council of a city is the "Council of the City of X" or the "X City Council", X being the name of the city.

**Who comprise the governing body?**

**222.** The elected representatives, called "councillors", comprise the governing body of the council.

**What is the role of the governing body?**

**223.** The role of the governing body is to direct and control the affairs of the council in accordance with this Act.

**How many councillors does a council have?**

**224. (1)** A council must have at least 5 and not more than 15 councillors (one of whom is the mayor).

**(2)** Not less than 12 months before the next ordinary election, the council must determine the number, in accordance with subsection (1), of its councillors for the following term of office.

**(3)** If the council proposes to change the number of councillors, it must, before determining the number, obtain approval for the change at a constitutional referendum.

**Division 2—The mayor****The mayor**

**225.** An area must have a mayor who is elected in accordance with this Division.

**What is the role of the mayor?**

**226.** The role of the mayor is:

- to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- to exercise such other functions of the council as the council determines

- to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office.

### **Who elects the mayor?**

**227.** The mayor of an area is the person elected to the office of mayor by:

- (a) the councillors from among their number, unless there is a decision in force under this Division which provides for the election of the mayor by the electors; or
- (b) the electors, if such a decision is in force.

NOTE: As to the election of the mayor, see also section 282.

### **How is it decided that the mayor be elected by the electors?**

**228. (1)** It may be decided at a constitutional referendum that the mayor be elected by the electors.

**(2)** A decision that the mayor be elected by the electors takes effect in relation to the next ordinary election or the next casual vacancy in the office of mayor, whichever happens first, after the decision is made.

### **Can the decision be changed?**

**229. (1)** A decision that the mayor be elected by the electors is rescinded only if a constitutional referendum decides in favour of discontinuing that means of election.

**(2)** The rescission takes effect in relation to the next ordinary election or the next casual vacancy in the office of mayor, whichever happens first, after the rescission occurs.

### **For what period is the mayor elected?**

**230. (1)** A mayor' elected by the councillors holds the office of mayor for 1 year, subject to this Act.

**(2)** A mayor elected by the electors holds the office of mayor for 4 years, subject to this Act.

**(3)** The office of mayor:

- (a) commences on the day the person elected to the office is declared to be so elected; and

(b) becomes vacant when the person's successor is declared to be elected to the office, or on the occurrence of a casual vacancy in the office.

(4) A person elected to fill a casual vacancy in the office of mayor holds the office for the balance of the predecessor's term.

### **Deputy mayor**

**231. (1)** The councillors may elect a person from among their number to be the deputy mayor.

(2) The person may "be elected for the mayoral term or a shorter term.

(3) The deputy mayor may exercise any function of the mayor at the request of the mayor or if the mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of mayor.

(4) The councillors may elect a person from among their number to act as deputy mayor if the deputy mayor is prevented by illness, absence or otherwise from exercising a function under this section, or if no deputy mayor has been elected.

## **Division 3—The councillors**

### **What is the role of a councillor?**

**232. (1)** The role of a councillor is, as a member of the governing body of the council:

- to direct and control the affairs of the council in accordance with this Act
- to participate in the optimum allocation of the council's resources for the benefit of the area
- to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions
- to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

(2) The role of a councillor is, as an elected person:

- to represent the interests of the residents and ratepayers
- to provide leadership and guidance to the community
- to facilitate communication between the community and the council.

**For what period is a councillor elected?**

**233. (1)** A councillor (other than the mayor) holds office for 4 years, subject to this Act.

**(2)** The office of councillor:

- (a) commences on the day the person elected to the office is declared to be so elected; and
- (b) becomes vacant on the day appointed for the next ordinary election of councillors, or on the occurrence of a casual vacancy in the office.

**(3)** A person elected to fill a casual vacancy in the office of councillor holds the office for the balance of the predecessor's term.

**When does a vacancy occur in a civic office?**

**234.** A civic office becomes vacant if the holder:

- (a) dies; or
- (b) resigns the office by writing addressed to the general manager; or
- (c) is disqualified from holding civic office; or
- (d) is absent without prior leave of the council from 3 consecutive ordinary meetings of the council; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a mentally incapacitated person; or
- (g) is dismissed from civic office; or
- (h) ceases to hold the office for any other reason.

NOTE: See section 275 for the circumstances in which a person is disqualified from holding civic office.
--

**Division 4—Local Government Remuneration Tribunal****Local Government Remuneration Tribunal**

**235.** There is established by this Act a tribunal to be known as the Local Government Remuneration Tribunal.

**Assessors**

**236. (1)** For the purposes of this Part, there are to be 2 assessors:

- (a) one of whom is to be the Director-General; and
- (b) the other of whom is to be a person appointed by the Governor on the nomination of the Minister, being a person who has, in the Minister's opinion, special knowledge of the system of local government in New South Wales.

**(2)** The Remuneration Tribunal, in exercising the Remuneration Tribunal's functions is:

- (a) to be assisted by the assessors; and
- (b) to take into consideration the views and recommendations tendered by the assessors.

**Provisions relating to the appointment, term of office and remuneration of the Remuneration Tribunal and assessors**

**237.** Schedule 1 has effect with respect to the Remuneration Tribunal and the assessors.

**Functions of the Remuneration Tribunal**

**238. (1)** The Remuneration Tribunal has the functions conferred or imposed on the Remuneration Tribunal by or under this Act.

**(2)** In addition, the Remuneration Tribunal has such functions as may be conferred or imposed on the Remuneration Tribunal by the Minister.

**Categorisation of councils, county councils and mayoral offices**

**239. (1)** The Remuneration Tribunal must, at least once every 3 years:

- (a) determine categories for councils, county councils (other than electricity authorities) and mayoral offices; and
- (b) place each council, county council (other than an electricity authority) and mayoral office into one of the categories it has determined.

**(2)** The determination of categories by the Remuneration Tribunal is for the purpose of enabling the Remuneration Tribunal to determine the maximum and minimum amounts of fees to be paid to mayors, councillors and members of county councils in each of the categories so determined.

**How are the categories to be determined?**

**240. (1)** The Remuneration Tribunal is to determine categories for councils, county councils (other than electricity authorities) and mayoral offices according to the following matters:

- the size of areas
- the physical terrain of areas
- the population of areas and the distribution of the population
- the nature and volume of business dealt with by each council or county council
- the nature and extent of the development of areas
- the diversity of communities served
- the regional, national and international significance of the council or county council
- such matters as the Remuneration Tribunal considers relevant to the provision of efficient and effective local government
- such other matters as may be prescribed by the regulations.

**(2)** In addition, the categories for county councils are to be determined having regard to the functions of county councils.

**Determination of fees**

**241.** The Remuneration Tribunal must, not later than 1 May in each year, determine, in each of the categories determined under section 239, the maximum and minimum amounts of fees to be paid during the following year to councillors (other than mayors), members of county councils and mayors.

**Special determinations**

**242. (1)** The Minister may direct the Remuneration Tribunal to make a determination as to whether, and (if so) how, a determination already made should be altered in relation to such councillors, members of county councils or mayors as are specified in the direction.

**(2)** Such a determination must be made before the date specified for the purpose in the Minister's direction.

**(3)** In making the determination, the Remuneration Tribunal is to take into consideration such matters as are specified in the Minister's direction and such other matters as the Remuneration Tribunal thinks fit.

**Inquiries**

**243. (1)** Before making a determination, the Remuneration Tribunal may make such inquiry as the Remuneration Tribunal thinks necessary.

- (2) In exercising a function, the Remuneration Tribunal:
- (a) may obtain and assess information in such manner as the Remuneration Tribunal thinks fit; and
  - (b) may receive written or oral submissions; and
  - (c) is not required to conduct any proceedings in a formal manner; and
  - (d) is not bound by the rules of evidence.

### **Reports of the Remuneration Tribunal**

244. (1) The Remuneration Tribunal must, within 7 days after making a determination under section 239, make a report to the Minister of the determination.

(2) The Remuneration Tribunal must, not later than 1 May in each year, make a report to the Minister of the determination made under section 241.

(3) The Remuneration Tribunal must, within 7 days after making a determination under section 242, make a report to the Minister of the determination.

### **Publication and tabling of reports**

245. (1) The report of a determination of the Remuneration Tribunal must:

- (a) be published in the Gazette as soon as practicable after the report is received by the Minister; and
- (b) be laid before each House of Parliament within 14 sitting days of that House after the day on which it is so published.

(2) Failure to lay a report before each House of Parliament in accordance with this section does not affect the validity of a determination, but the report must nevertheless be laid before each House.

### **Effect of determination**

246. A determination of the Remuneration Tribunal may not be challenged, reviewed, quashed or called into question before any court in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition, mandamus, certiorari or otherwise.

**Assistance for the Remuneration Tribunal**

247. The Minister is to make available to the Remuneration Tribunal such persons employed under Part 2 of the Public Sector Management Act 1988 as may be necessary to assist the Remuneration Tribunal in the exercise of the Remuneration Tribunal's functions.

**Division 5—What fees, expenses and facilities may be paid or provided to councillors?****Fixing and payment of annual fees for councillors**

248. (1) A council must pay each councillor an annual fee.

(2) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.

(3) The annual fee so fixed must be the same for each councillor.

(4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.

**Fixing and payment of annual fees for the mayor**

249. (1) A council must pay the mayor an annual fee.

(2) The annual fee must be paid in addition to the fee paid to the mayor as a councillor.

(3) A council may fix the annual fee and, if it does so, it must fix the annual fee in accordance with the appropriate determination of the Remuneration Tribunal.

(4) A council that does not fix the annual fee must pay the appropriate minimum fee determined by the Remuneration Tribunal.

(5) A council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.

**At what intervals are fees to be paid?**

250. Fees payable under this Division by a council are payable monthly in arrears for each month (or part of a month) for which the councillor holds office.



**What is the consequence of paying fees?**

**251. (1)** A person is not, for the purposes of any Act, taken to be an employee of a council and is not disqualified from holding civic office merely because the person is paid a fee under this Division.

**(2)** A fee paid under this Division does not constitute salary for the purposes of any Act.

**Payment of expenses and provision of facilities**

**252. (1)** A council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.

**(2)** The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.

**Public notice of proposed policy concerning expenses and facilities**

**253.** Before adopting a policy for the payment of expenses or provision of facilities, the council must give at least 28 days' public notice of the proposal.

**Decision to be made in open meeting**

**254.** The council or a council committee all the members of which are councillors must not close to the public that part of its meeting at which a policy for the payment of expenses or provision of facilities is adopted **or** at which any proposal concerning those matters is discussed or considered.

NOTE: Section 428 (2) (f) requires a council to include, in its annual report:

- the total amount of money expended during the year on mayoral fees and councillor fees
- the council's policy on the provision of facilities for, and the payment of expenses to, councillors
- the total amount of money expended during the year on providing those facilities and paying those expenses.

### **Division 6—Appointment of administrator**

#### **Governor may dismiss mayor and councillors**

**255.** The Governor may, by proclamation, declare all civic offices in relation to a council to be vacant if:

- (a) a public inquiry concerning the council has been held; and
- (b) after considering the results of the inquiry, the Minister has recommended that the Governor make such a declaration.

#### **Governor may appoint administrator or order fresh election**

**256. (1)** By the same proclamation under section 255 or by one or more subsequent proclamations, the Governor is:

- (a) to appoint an administrator of the council for a specified term; or
- (b) to order the holding of a fresh council election,

or both.

**(2)** The Governor may, by those or other proclamations, make such further orders as the Minister recommends are necessary in the circumstances.

#### **Declaration of council as non-functioning**

**257. (1)** An administrator may be appointed for an area by the Governor without the necessity for a public inquiry under section 255 if the Governor declares the council to be non-functioning because:

- (a) the requirements of this Act as to the making and levying of an ordinary rate have not been followed; or
- (b) the council has not exercised its functions for 6 months or more; or
- (c) there are not enough councillors for there to be a quorum at council meetings.

**(2)** The Governor may, as an alternative to the appointment of an administrator on the ground referred to in subsection (1) (c), appoint (or authorise a special election to elect) councillors to fill all the vacancies on the council or such number of those vacancies as will provide a quorum at meetings.

#### **The administrator**

**258. (1)** When the administrator of a council takes office:

- (a) any persons holding civic office in relation to the council cease to hold office; and

(b) the administrator has all the functions of the council until immediately before the first meeting of the council held after the fresh election.

(2) The administrator must be paid a salary from the council's funds determined by the Governor.

(3) The Governor may terminate the administrator's appointment at any time.

(4) The administrator ceases to hold office:

- (a) immediately before the first meeting of the council held after the fresh election; or
- (b) if the administrator's appointment is earlier, terminated by the Governor.

### **Temporary exercise of the council's functions**

**259. (1)** In this section, **the transitional period** means the period between:

- (a) the appointment of an administrator of a council and the time at which the administrator takes office; or
- (b) the declaration of a council to be non-functioning and the time at which the appointed or elected councillors for the area take office, if the declaration provides for their appointment or election instead of the appointment of an administrator.

(2) During the transitional period, the mayor, or the general manager if there is no mayor, may temporarily exercise the following functions of the council:

- (a) the continuation of works and services already commenced;
- (b) the payment of council employees;
- (c) the payment of accounts due;
- (d) the administration of the area without expenditure other than those payments and payments approved by the Minister.

## **PART 3—LOCAL GOVERNMENT BOUNDARIES COMMISSION**

### **Constitution of the Boundaries Commission**

**260.** There is constituted by this Act a body corporate with the name of Local Government Boundaries Commission.

---

**Membership of Boundaries Commission**

**261. (1)** The Boundaries Commission is to consist of 4 commissioners appointed by the Governor.

**(2)** Of the commissioners:

- (a) one is to be a person nominated by the Minister; and
- (b) one is to be an officer of the Department nominated by the Director-General; and
- (c) 2 are to be persons appointed from the panel constituted under section 262 (1).

**(3)** Despite subsection (2), the Boundaries Commission is taken to be properly constituted when the commissioners referred to in paragraphs (a) and (b) of that subsection have been appointed.

**(4)** The commissioner referred to in subsection (2) (a) is the chairperson of the Boundaries Commission.

**(5)** Schedule 2 has effect with respect to the commissioners and the procedure of the Boundaries Commission.

**How is a panel to be constituted for the purposes of making an appointment as a commissioner?**

**262. (1)** There is to be a panel consisting of 8 persons, 4 of whom are councillors nominated by the executive of the Local Government Association of New South Wales and 4 of whom are councillors nominated by the executive of the Shires Association of New South Wales.

**(2)** The nomination of members of the panel must be made in the manner determined by the Minister. A person must not be nominated as a member of the panel unless he or she has consented in writing to be nominated.

**(3)** If an insufficient number of nominations have been made to the panel to enable the Governor to appoint a commissioner or commissioners in accordance with this Part, the Governor may appoint a person to be a commissioner on the recommendation of the Minister.

**Functions of the Boundaries Commission**

**263. (1)** The Boundaries Commission is required to examine and report on any matter with respect to the boundaries of areas and the areas of operation of county councils which may be referred to it by the Minister.

(2) The Boundaries Commission may hold an inquiry, but only with the approval of the Minister, for the purpose of exercising its functions.

(3) When considering any matter referred to it that relates to the boundaries of areas or the areas of operations of county councils, the Boundaries Commission is required to have regard to the following factors:

- (a) the financial advantages or disadvantages (including the economies or diseconomies of scale) of any relevant proposal to the residents and ratepayers of the areas concerned;
- (b) the community of interest and geographic cohesion in the existing areas and in any proposed new area;
- (c) the existing historical and traditional values in the existing areas and the impact of change on them;
- (d) the attitude of the residents and ratepayers of the areas concerned;
- (e) the requirements of the area concerned in relation to elected representation for residents and ratepayers at the local level, the desirable and appropriate relationship between elected representatives and ratepayers and residents and such other matters as it considers relevant in relation to the past and future patterns of elected representation for that area;
- (f) such other factors as it considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

(4) The Boundaries Commission is not entitled to examine or report on any matter relating to the area of operations of a county council constituted or proposed to be constituted for the supply of electricity.

(5) The Boundaries Commission must allow members of the public to attend any inquiry held by the Commission under this section.

(6) The Boundaries Commission may continue with an examination or inquiry even though a commissioner or acting commissioner replaces another commissioner during the course of the examination or inquiry.

(7) The Supreme Court may not make an order in the nature of prohibition in respect of, or an order for removing to the Court or quashing, any decision or proceeding made or conducted by the Boundaries Commission in connection with the exercise of its functions.

---

**Can a person be represented in proceedings before the Boundaries Commission?**

**264. (1)** In proceedings before the Boundaries Commission, a person is not entitled to be represented:

- (a) by a barrister or solicitor or by a person qualified for admission as a barrister or solicitor; or
- (b) by any person acting for a fee or reward.

**(2)** However, this section does not prevent:

- (a) an employee of a person from representing the person before the Boundaries Commission if the employee is not a person referred to in subsection (1) (a); or
- (b) a person who is the mayor of an area or the chairperson of a county council from appearing in that capacity in proceedings before that Commission; or
- (c) a person referred to in subsection (1) (a) from preparing any documents or submissions or tendering any legal advice in connection with any proceedings before that Commission.

**Boundaries Commission may conduct survey or poll**

**265. (1)** To assist it in determining the attitude of the residents and ratepayers of an area or areas for the purposes of section 263 (3) (d), the Boundaries Commission may conduct (in such manner as it thinks appropriate) an opinion survey or poll of the residents and ratepayers.

**(2)** The residents and ratepayers of the area or areas concerned may participate in any such opinion survey or poll but are not required to do so.

**(3)** The Boundaries Commission may request the Electoral Commissioner, a council or any other person or organisation to conduct any such opinion survey or poll.

## **CHAPTER 10—HOW ARE PEOPLE ELECTED TO CIVIC OFFICE?**

### INTRODUCTION

This Chapter deals with the election of persons to civic office. Those qualified for civic office are elected for 4-year terms under a system which is preferential (wherever 1 or 2 positions must be filled) and proportional (wherever 3 or more positions must be filled) or, alternatively, a system decided by referendum in each area. Voting is compulsory for residents but optional for non-resident ratepayers, occupiers and ratepaying lessees. Elections are conducted under the supervision of the Electoral Commissioner.

When an area is not divided into wards, councillors are elected by the area. When it is divided, councillors may be elected by wards (or, if so decided at a referendum, by wards and area).

The mayor may be popularly elected or elected by the councillors from among their number. The choice of method depends on a constitutional referendum as referred to in sections 228 and 229. A popularly-elected mayor holds office for 4 years and is a councillor by virtue of being mayor. A mayor elected by the councillors holds office for 1 year. In each case, the mayor votes as mayor, not as a councillor, at council meetings. (See Chapter 9.)

### **PART 1—WHO MAY VOTE?**

#### **Who has the right to be enrolled as an elector?**

**266. (1)** A person who is entitled to vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives is entitled to be enrolled as an elector for a ward if:

- (a) he or she is a resident of the ward; or
- (b) he or she is not a resident of the ward but is an owner of rateable land in the ward; or
- (c) he or she is an occupier, or ratepaying lessee, of rateable land in a ward.

**(2)** A person who is disqualified by section 21 of the Parliamentary Electorates and Elections Act 1912 from having his or her name placed or retained on a roll under that Act is subject to the same disqualification in relation to a roll under this Act.

#### **Who has the right to vote?**

**267. (1)** A person whose name is on the roll kept under Division 2 of Part 6 for a ward is entitled to vote:

- (a) at an election of councillors for the ward; and
- (b) at an election of the mayor by all the electors of the area.

(2) A person who changes his or her name from that on the roll may, until the roll is corrected, vote under the enrolled name.

(3) The right of an enrolled person to vote at an election is not affected by:

- (a) a change of residence within a ward or within an area that is not divided into wards; or
- (b) a change in the qualification that entitles an enrolled person to vote.

(4) A person who:

- (a) is qualified in respect of more than one parcel of land to be enrolled for a ward; and
- (b) is enrolled in respect of only one of the parcels; and
- (c) ceases to be qualified in respect of that parcel,

is not disqualified from voting at an election held while the person is enrolled in respect of that parcel if the returning officer is satisfied that the person is then qualified in respect of another of the parcels.

(5) This section does not confer a right to vote at an election on a person who by or under this Act is disqualified from voting, or is not qualified to vote, at the election.

### **One vote per elector**

**268.** Nothing in this Chapter entitles a person to more than one vote in one area in an election.

NOTE: A person may not exercise more than one vote in any one area even if:

- the person is entitled to be enrolled as an elector for more than one ward in the area; or the person's entitlement is based on more than one of the criteria in section 266 (1) (a), (b) and (c); or
- the person's entitlement is based on the ownership or occupation of more than one parcel of land in the area.

### **Who is a “resident” for the purposes of this Part?**

**269. (1)** For the purposes of this Part, a person is a resident of a ward if:



- (a) the person is, within the meaning of the Parliamentary Electorates and Elections Act 1912, enrolled on the relevant date on the roll for an electoral district; and
- (b) the person's place of living as described on that roll is in the ward or (in the case of a person whose place of living is not described on that roll) the person's place of living is in the ward.

**(2)** The **relevant date** for the purposes of this section is:

- (a) the date on which the claim for enrolment is made, if the claim is for inclusion in the roll of residents of the ward; or
- (b) the closing date for the election referred to in Part 4, if the claim is for the purpose of voting at the election.

**(3)** In this section, place of living includes the place of residence to which a person temporarily residing elsewhere intends to return in order to continue living there.

**Who is an “owner of rateable land” for the purposes of this Part?**

**270. (1)** For the purposes of this Part, a person is the owner of rateable land if:

- (a) the person is not a corporation, is the sole owner of the rateable land and does not own it as trustee; or
- (b) the person is not a corporation, is a joint or several owner of the rateable land and is nominated in writing as an elector by the only other owner of the land, or by a majority of all the owners of the land; or
- (c) the person is not a corporation, is not a nominee under paragraph (b) and is nominated in writing as an elector by a corporation which is the owner, or by trustees who are the owners, of the land; or
- (d) the person is a lessee of the land from the Crown and the land is rateable Crown land.

**(2)** Land is not rateable land for the purposes of this Part if it is a lot in a strata plan that is registered under the Strata Titles Act 1973 or the Strata Titles (Leasehold) Act 1986 and is provided only for the purpose of parking a motor vehicle.

**(3)** If there is more than one person who (by virtue of subsection (1)) is the owner of the same parcel of rateable land, only one of the persons is entitled to be enrolled as an elector for a ward.

**(4)** If a corporation or trustees own more than one parcel of land in an area, it or they can nominate a person as the owner of rateable land only in respect of one of those parcels.

(5) A nomination under this section is to be lodged with the general manager.

**Who is an “occupier” or “ratepaying lessee” for the purposes of this Part?**

**271. (1)** For the purposes of this Part, a person is an occupier of rateable land if the person has a legally enforceable right to continuous occupation of rateable land (jointly or severally, but not as owner or ratepaying lessee) for not less than 3 years following the relevant date.

(2) If there is more than one such occupier of the same parcel of rateable land, only one of them is entitled to be enrolled as an elector for a ward.

(3) For the purposes of this Part, a person is a ratepaying lessee of rateable land if the person is jointly or severally liable, under a lease in writing or other document of title relating to the land, to pay to any person the whole or any part of any rates that may, during the 3 years following the relevant date, be made or levied in respect of the land.

(4) If there is more than one such ratepaying lessee of the same parcel of rateable land, only one of them is entitled to be enrolled as an elector for a ward.

(5) The relevant date for the purposes of this section is:

- (a) the date on which the claim for enrolment is made, if the claim is for inclusion in the roll of occupiers and ratepaying lessees; or
- (b) the closing date for the election referred to in Part 4, if the claim is for the purpose of voting in the election.

**Competing claimants**

**272. (1)** If two or more persons apply to be enrolled as an elector for a ward as owners of the same parcel of rateable land, and those persons do not nominate one of their number to be so enrolled, the general manager may do so instead.

(2) Likewise, if two or more persons apply to be enrolled as an elector for a ward as occupiers, or as ratepaying lessees, or as occupier and ratepaying lessee, of the same parcel of land, and those persons do not nominate one of their number to be so enrolled, the general manager may do so instead.

**Application of Part to area not divided into wards**

**273.** If an area is not divided into wards, this Part applies to the area in the same way as it applies to a ward.

**PART 2—WHO MAY BE ELECTED?****What are the qualifications for civic office?**

**274.** A person is qualified to hold civic office if:

- (a) the person is entitled to be enrolled as an elector; and
- (b) the person is not disqualified from holding civic office by this Act; and
- (c) the person is not prevented from being elected to civic office by section 276 (2).

**Who is disqualified from holding civic office?**

**275. (1)** A person is disqualified from holding civic office:

- (a) while disqualified from being an elector; or
- (b) while a judge of any court of the State or the Commonwealth; or
- (c) while serving a sentence (whether or not by way of periodic detention) for a felony or any other offence, except a sentence imposed for a failure to pay a fine; or
- (d) if he or she is while holding that office, or has been within 2 years before nomination for election, election or appointment to the office, convicted of an offence under the regulations made for the purposes of section 748 (3); or
- (e) if he or she is while holding that office, or has been within 5 years before nomination for election, election or appointment to the office, convicted of an offence referred to in Part 4 of the Crimes Act 1900 (Offences relating to property); or
- (f) while a surcharge, payable by the person under Part 5 of Chapter 13 and not paid within 6 months after it became payable, remains unpaid; or
- (g) while disqualified from holding a civic office under a provision of this Act or Part 4A of the Crimes Act 1900 (Corruptly receiving commissions and other corrupt practices); or
- (h) while prohibited by order under section 230 of the Corporations Law from managing a corporation within the meaning of that section.

**(2)** A person is disqualified from holding civic office on a council if he or she is an employee of the council or holds an office or place of profit under the council.

(3) A person is not disqualified from holding a civic office only because, while holding the civic office, the person ceases to be a resident in the area, to own property in the area or to be an occupier or ratepaying lessee of rateable land in the area.

(4) A person is taken not to be disqualified from holding civic office if a court, in proceedings under section 329, has refused to order the dismissal of the person in circumstances to which subsection (3) of that section applies.

NOTE: If a person while holding civic office becomes subject to disqualification under this section, the office becomes vacant under section 234.

### **What is the effect of disqualification?**

**276. (1)** A person who is disqualified from holding civic office may not be elected or appointed to a civic office and may not hold, or act in, a civic office.

(2) A person who vacates the office of councillor by resignation or disqualification may not be elected to a civic office in the same area (and may not hold, or act in, a civic office in the same area) until:

- (a) if the person is not disqualified—the first anniversary of the vacation of office, or the next ordinary election for the area (whichever occurs first); or
- (b) if the person is disqualified—the first ordinary election after the person ceases to be disqualified.

(3) A person convicted of an offence under Part 6 of Chapter 16 for acting in a civic office while disqualified under section 275:

- (a) is disqualified from holding civic office for 7 years from the time of conviction, unless the court determines a shorter period; and
- (b) is not entitled to receive or recover from the council any money relating to the civic office in respect of the period in which the person is disqualified.

(4) The council may, within 2 years after the person so convicted receives money from the council relating to the civic office in respect of the period in which the person is disqualified, recover the money from the person as a debt.

**May the holder of a civic office be re-elected?**

**277.** The holder of a civic office is eligible for re-election, subject to this Act.

**PART 3—WHAT IS THE SYSTEM OF ELECTION?****Election of councillors for an area not divided into wards**

**278.** The councillors for an area that is not divided into wards are to be elected by an electorate comprising all the electors for the area.

**Alternative methods for election of councillors for an area divided into wards**

**279. (1)** The councillors for an area that is divided into wards are to be elected in accordance with either section 280 or 281.

**(2)** The method of election under section 280 (method 1) is to apply unless a decision made at a constitutional referendum is in force which:

- (a)** requires the method of election under section 281 (method 2) to apply; and
- (b)** specifies the number of councillors each of whom is to be elected by an electorate comprising all the electors for a ward and the number of councillors (if any) each of whom is to be elected by an electorate comprising all the electors for the area,

**Ward election of councillors—method 1**

**280. (1)** Each councillor for an area that is divided into wards may be elected by an electorate comprising all the electors for a ward.

**(2)** The same number of councillors is to be elected for each ward. The mayor is to be excluded when determining that number if the mayor is to be elected by all the electors for the area.

**(3)** The same person is not to be a candidate for election as a councillor by the electors for more than one ward, unless the election is for the mayor as such.

**Election of councillors partly by wards, partly by area—method 2**

**281. (1)** The councillors for an area that is divided into wards may be elected:

- (a)** as to some of them—each by an electorate comprising all the electors for a ward; and

(b) as to the others—by an electorate comprising all the electors for the area.

(2) The same number of councillors is to be elected for each ward. The mayor is to be excluded when determining that number if the mayor is to be elected by all the electors for the area.

### **Election of mayor**

**282. (1)** The mayor of an area who is to be elected by the electors is to be elected by an electorate comprising all the electors for the area, even if the area is divided into wards.

(2) The mayor of an area who is to be elected by the councillors for the area is to be elected by the councillors from among their number.

(3) A mayor elected for an area is one of the councillors of the council for the area.

### **Double candidature**

**283. (1)** A person may be a candidate for election as mayor and a candidate for election as a councillor at the same time.

(2) If the person is elected by the electors to the office of mayor, the person is taken not to be elected as a councillor. In that case, the position of councillor that would have been filled by the person is to be filled by the person who, according to the voting (if any) and the regulations would be the next elected candidate.

(3) If a person is a candidate for election by the electors for a ward, the person must not at the same time be a candidate for election by the electors for another ward or a candidate for election by all the electors for the area.

### **Voting system for election of the mayor by all the electors of the area**

**284.** The voting system in a contested election of the mayor by all the electors of the area is to be optional preferential.

### **Voting system for election of councillors**

**285. (1)** The voting system in a contested election of a councillor or councillors is, except as provided by this section, to be:

- (a) optional preferential, if the number of councillors to be elected is 1 or 2; or
- (b) proportional, if the number of councillors to be elected is 3 or more.

(2) The voting system for a contested ordinary election after 1995 may be optional preferential or proportional, as decided at a constitutional referendum held in accordance with this Act and the regulations at least 12 months before the day of the election (but at or after the previous ordinary election).

(3) Each time such a referendum is held, a further such referendum can be held only at or after the second ordinary election held after the referendum.

(4) The system that applies to a contested ordinary election applies also to a contested by-election held between that ordinary election and the next ordinary election.

#### **Is voting compulsory?**

**286.** Whichever voting system applies, electors on the residential roll must vote at a contested election unless exempt from voting under this Act. Electors on the non-residential roll or the roll of occupiers and ratepaying lessees may vote, but are not required to vote.

### **PART 4—WHEN ARE ELECTIONS HELD?**

#### **When is an ordinary election of councillors held?**

**287. (1)** An ordinary election of the councillors for an area is to be held on the second Saturday of September 1995 and on the second Saturday of September in every fourth year after 1995.

(2) An election of the councillors for an area is to be held on a Saturday proclaimed for the purpose if:

- (a) the area is constituted after the commencement of this Part; or
- (b) all civic offices in relation to the council of the area are declared to be vacant under section 255; or
- (c) the council is declared to be non-functioning under section 257.

#### **Delayed elections of councillors**

**288. (1)** If the Minister is of the opinion that it would be impracticable or inconvenient to hold an election as provided by section 287, the Minister may, by order published in the Gazette, appoint a subsequent Saturday for the election.

(2) The subsequent Saturday must not be more than 28 days later than the day when the election should have been held.

(3) If a day is appointed under this section for an election, the retiring councillors continue in office until the election is held and, if a retiring councillor resigns in the meantime, his or her office is vacant until the election is held.

### **When is an election of a mayor by the electors to be held?**

**289. (1)** The election of a mayor by the electors for an area is to be held (unless its purpose is the filling of a casual vacancy):

- (a) on the day on which the election of the councillors for the area is held; or
- (b) if the election of the councillors is uncontested, on the day on which the election of the councillors would have been held if it had been contested.

(2) If a mayor of an area is to be elected by the electors on the day on which a contested election of councillors for the area is to be held and the election of the councillors is delayed for any reason, the election of the mayor is also delayed but must be held on the same day as the delayed election of the councillors.

### **When is an election of a mayor by the councillors to be held?**

**290. (1)** The election of the mayor by the councillors is to be held:

- (a) if it is the first election after an ordinary election of councillors—within 3 weeks after the ordinary election; or
- (b) if it is not that first election or an election to fill a casual vacancy—during the month of September; or
- (c) if it is the first election after the constitution of an area—within 14 days after the appointment of a provisional council or the first election of the council if a provisional council is not appointed; or
- (d) if the relevant council is a non-functioning council, or a council of which all civic offices have been declared vacant, and the election is the first to be held after the appointment or election of the councillors—within 14 days after the appointment or election of the councillors.

(2) If the councillors fail to elect a mayor as required by this section, the Governor may appoint one of the councillors as the mayor.

**NOTE:** The filling of a casual vacancy in the office of a mayor elected by the councillors is dealt with in section 295.



**PART 5—HOW ARE CASUAL VACANCIES FILLED?****By-elections**

**291.** If a casual vacancy occurs in a civic office, the office is to be filled by a by-election, subject to this Part.

NOTE: The circumstances in which casual vacancies occur are specified in Chapter 9.

**When is a by-election to be held?**

**292.** A by-election to fill a casual vacancy in the office of a councillor or a mayor elected by the electors of an area is to be held on a Saturday that is fixed by the returning officer with the approval of the Electoral Commissioner and that falls not later than 3 months after the vacancy occurs.

**Delayed by-elections**

**293. (1)** If the Minister is of the opinion that it would be impractical or inconvenient to hold a by-election as provided by section 292, the Minister may, by order published in the Gazette, appoint a subsequent Saturday for the by-election.

**(2)** The subsequent Saturday must not be more than 28 days later than the day when the by-election should have been held.

**Dispensing with by-elections**

**294. (1)** This section applies if a casual vacancy occurs in the office of a councillor, including a mayor elected by the electors of an area, on or after 1 January last preceding the end of the term of a council.

**(2)** If such a casual vacancy occurs in the office of a councillor (but not the office of a mayor elected by the electors), the Minister may, on the application of the council:

- (a) order that the vacancy not be filled; or
- (b) order the holding on a stated day of a by-election to fill the vacancy and revoke any earlier order made under paragraph (a).

**(3)** If such a casual vacancy occurs in the office of a mayor elected by the electors, the casual vacancy is to be filled by the Governor appointing to the vacant office a councillor nominated by the council.

(4) If the council does not nominate a councillor for the purposes of subsection (3), the Governor may appoint one of the councillors to the vacant office.

#### **Casual vacancy in office of mayor elected by the councillors**

**295. (1)** If a casual vacancy occurs in the office of a mayor elected by the councillors, the vacancy is to be filled at a meeting of the council to be held within 14 days after the occurrence of the vacancy.

(2) If the councillors fail to elect a mayor as required by this section, the Governor may appoint one of the councillors as the mayor.

### **PART 6—HOW ARE ELECTIONS CONDUCTED?**

#### **Division 1—The role of the Electoral Commissioner**

##### **Elections to be conducted by the Electoral Commissioner**

**296. (1)** The Electoral Commissioner is to conduct elections for the purposes of this Chapter, other than the election of the mayor or a deputy mayor, by the councillors.

(2) The Electoral Commissioner is to appoint a returning officer and a substitute returning officer for each area. The returning officer is to conduct elections on behalf of, and under the direction of, the Electoral Commissioner. In the absence of the returning officer, the substitute returning officer is to exercise the functions of the returning officer.

(3) The returning officer is to appoint one or more electoral officials.

(4) An employee of a council for an area cannot be appointed as a returning officer or substitute returning officer for that area. However, an electoral official may be an employee of the council.

(5) For the purpose of conducting an election, the returning officer and substitute returning officer for an area are entitled to access to any relevant records of the council for the area.

(6) For the purpose of conducting an election, the Electoral Commissioner is to:

- (a) appoint the polling places; and
- (b) determine the fees payable to the returning officer, substitute returning officer and electoral officials; and
- (c) determine any matter not provided for by this Act or the regulations.

(7) Expenses incurred by the Electoral Commissioner, returning officer, substitute returning officer and electoral officials in connection with an election are to be met by the council for which it is conducted and are recoverable from the council as a debt owed to the Electoral Commissioner as the holder of that office.

(8) The Electoral Commissioner, the returning officer and the substitute returning officer must not vote at any election which they are conducting.

### **Delegation of functions by the Electoral Commissioner**

**297.** The Electoral Commissioner may delegate to a person any of the Electoral Commissioner's functions under this Act, other than this power of delegation.

### **Division 2—Electoral rolls**

NOTE: The roll of electors for an area is prepared in time for each election. The roll of electors is a composite roll based on the residential roll, the non-residential roll and the roll of occupiers and ratepaying lessees. *The residential roll* is a roll of residents in the area, whether or not they own the property where they reside. It is prepared and confirmed by the Electoral Commissioner in time for each election. It may be based on the same roll as the one used for State and Federal elections. *The non-residential roll* is a roll of persons who pay rates on property they own in an area but who do not live on that property. It is prepared by the general manager of the council for the area and confirmed by the Electoral Commissioner in time for each election. *The roll of occupiers and ratepaying lessees* covers both occupiers of rateable land who are not owners, and lessees who, under the terms of their leases, must pay rates. It is prepared for a specific election by the general manager and includes only those who actually apply for inclusion on this roll. It is confirmed by the Electoral Commissioner.

### **Residential roll**

**298. (1)** The Electoral Commissioner is to keep a roll for each area of persons who, in the opinion of the Electoral Commissioner, are entitled, in accordance with Part 1, to be enrolled as electors because they are residents of the area.

**(2)** The Electoral Commissioner may use the roll used for elections of the Legislative Assembly or for Commonwealth elections as a basis for the residential roll.

(3) The Electoral Commissioner is to confirm as the residential roll for an election the roll referred to in subsection (1) if, in the Commissioner's opinion, the roll contains the names of the persons who on the closing date are qualified for inclusion in the residential roll as electors.

### **Non-residential roll**

**299. (1)** Not later than the closing date for an election, the general manager is to prepare a roll of non-resident owners of rateable land for confirmation by the Electoral Commissioner as the roll of non-resident owners of rateable land within the area.

(2) The roll of non-resident owners of rateable land lapses after the election for which it is prepared, and it consists only of the names of those non-resident owners of rateable land who have applied for the inclusion of their names for the purposes of the election for which it is being prepared.

(3) The Electoral Commissioner is to confirm as the roll of non-resident owners of rateable land for the election a roll certified by the general manager as being, in the general manager's opinion, a roll of the persons who on the closing date are qualified for inclusion in the roll of non-resident owners of rateable land.

### **Roll of occupiers and ratepaying lessees**

**300. (1)** Not later than the closing date for an election, the general manager is to prepare the roll of occupiers and ratepaying lessees for confirmation by the Electoral Commissioner as the roll of occupiers (of land within the area) and ratepaying lessees (of rateable land within the area) for the election.

(2) The roll of occupiers and ratepaying lessees lapses after the election for which it is prepared, and it consists only of the names of those occupiers and ratepaying lessees who have applied for the inclusion of their names for the purpose of the election for which it is being prepared.

(3) The Electoral Commissioner is to confirm as the roll of occupiers and ratepaying lessees for the election a roll certified by the general manager as being, in the general manager's opinion, a roll of the persons who on the closing date are qualified for inclusion in the roll of occupiers and ratepaying lessees.

### **Roll of electors**

**301. (1)** The roll of electors for an area is a composite roll, consisting of the residential roll kept and confirmed under section 298 for the area, the non-residential roll kept and confirmed under section 299 for the area,

and the roll of occupiers and ratepaying lessees prepared and confirmed under section 300 for the area.

(2) For each election, the roll of electors is to be compiled in accordance with this Division and printed in the form prescribed by the regulations.

(3) If an area is divided into wards, the roll of electors is to be prepared separately for each ward or, if the roll is for a by-election to fill a casual vacancy, only for the ward in which the by-election is to be held.

#### **Public inspection of roll of electors**

**302. (1)** The Electoral Commissioner is to make the latest copy of the residential roll available for public inspection at any reasonable time during office hours at the office of the Electoral Commissioner and at any other place determined by the Electoral Commissioner.

(2) The general manager is to make the latest copy of the non-residential roll and of the roll of occupiers and ratepaying lessees (once it is prepared) available for public inspection at any reasonable time during office hours at the office of the council.

#### **Making of claims for inclusion in the roll**

**303. (1)** A person may lodge with the Electoral Commissioner (in the case of the residential roll) or the general manager (in the case of another roll):

- (a) a claim for the inclusion of his or her name in the roll or for the amendment of any particulars entered in the roll against the name; or
- (b) an objection to the inclusion in the roll of his or her name or the name of another person; or
- (c) an objection to the inclusion in the roll of specified particulars entered against his or her name or the name of another person.

(2) Within 7 days after the lodging of a claim for inclusion in, or of an objection to an entry in, a roll, the Electoral Commissioner or general manager:

- (a) is to decide whether the claim or objection is to be allowed or disallowed; and
- (b) as soon as practicable, is to make such entries in, or alterations to, the roll as give effect to the decision; and
- (c) is to serve notice of the decision on the claimant or objector and, in the case of an objection, on any other person to whom the objection relates.

(3) A person dissatisfied with the decision of the Electoral Commissioner or general manager may, in the manner prescribed by the regulations, appeal against the decision to the Local Court nearest to the council's office.

(4) The Electoral Commissioner or general manager is to make as soon as practicable such entries in the appropriate roll as are necessary to give effect to the decision on an appeal.

(5) Despite this section, the roll of electors is not to be altered between the closing date for an election and the end of polling day.

#### **Enrolment if qualified in more than one respect**

**304. (1)** A person may not, in respect of the same ward, be enrolled more than once in a roll of electors.

(2) A person who is qualified for enrolment in respect of more than one ward of an area may be enrolled only in respect of the ward for which the person is qualified as a resident or, if the person is not so qualified:

- (a) the ward specified in a notice given by the person to the general manager before the closing date for the election; or
- (b) if no such notice is given, a ward chosen by the general manager.

#### **Can an elector vote if his or her name is not on the roll of electors?**

**305.** An elector for an area:

- (a) whose name is not on the roll of electors for an election; and
- (b) who claims to be entitled to vote at the election; and
- (c) who makes a declaration in the form prescribed by the regulations that is written or printed on an envelope that is addressed to the returning officer,

is to be given a ballot-paper by the returning officer, substitute returning officer or electoral official in charge of a polling place and permitted to vote in accordance with this Act.

NOTE: A person may apply under section 739 for the omission of the person's place of living from a roll.

**Division 3—Nominations and election****Nominations**

**306. (1)** A person who is not duly nominated is not eligible for election as a councillor, or for election by the electors of an area as mayor.

**(2)** To be duly nominated for election as a councillor for an area, or for election as mayor of an area by the electors of an area, a person must be enrolled as an elector for the area at the closing date for the election.

**(3)** A person may not be nominated for election as a councillor for more than one ward.

**(4)** A nomination is to be proposed to and made by the returning officer as prescribed by the regulations and may be withdrawn by the nominee as prescribed by the regulations.

**(5)** A nomination is to be rejected if the returning officer has not been paid the deposit prescribed by the regulations for the nomination or (if none is prescribed) a deposit of 50 per cent of the deposit required to be deposited under the Parliamentary Electorates and Elections Act 1912 for the nomination of a candidate for election to the Legislative Assembly.

**(6)** If a returning officer rejects a proposed nomination and the nominated person applies in writing for an explanation of the rejection, the returning officer must provide the nominated person with a written explanation within 7 days.

**(7)** A deposit may be refunded in accordance with the regulations.

**Nomination where name omitted from roll**

**307.** Despite section 306, a person whose nomination for election to a civic office would, but for this section, be rejected on the ground only that he or she is not enrolled as an elector for the area may be nominated if:

- (a) the name of the person has been omitted from the roll of electors mistakenly or accidentally; and
- (b) but for that omission the nomination would not have been rejected.

**Candidates' resumes**

**308. (1)** A nomination of a candidate for election to a civic office is to be accompanied by a candidate resume in the form of a statutory declaration made by the candidate.

(2) The regulations may make provision for the matters which are to be included in the resume.

(3) The returning officer is to make each resume available for public inspection at any reasonable time during office hours at the office of the returning officer and at any other place determined by the returning officer.

(4) An electoral official at each polling place is to ensure that a copy of each resume is displayed at the polling place.

### **Contested elections**

**309. (1)** If the number of candidates nominated for election as councillors for a ward or an area is greater than the number required to be elected for the ward or area, the election is to be a contested election.

(2) If there are two or more candidates for election by the electors of an area as mayor of the area, there is to be a contested election for the office.

(3) If a candidate who is nominated for election to a civic office in respect of a ward or area dies before the day when the poll at a contested election closes, the election fails in respect of the ward or area.

### **Conduct of contested elections**

**310.** A contested election for a civic office is to be conducted as prescribed by the regulations.

### **Uncontested elections**

**311. (1)** A candidate nominated for election as a councillor for a ward or area is, without a poll being held, taken to have been elected if the number of candidates nominated for election as councillors for the ward or area is no greater than the number of councillors required to be elected for the ward or area.

(2) A candidate nominated for election by the electors of the area as the mayor of the area is, without a poll being held, taken to have been elected if he or she is the only nominee for election as the mayor.

(3) A person holding civic office under this section without a poll being held is taken to have been elected:

- (a) on the day on which the poll would have been held, if the election were an ordinary election; or
- (b) on the day of nomination, if paragraph (a) does not apply.



(4) If a candidate who is nominated for election to a civic office in respect of a ward or area dies before the day referred to in subsection (3), the election in respect of that ward or area is taken to have failed and no candidate in that election can be taken to have been elected in respect of that ward or area.

#### **Division 4—Where residents fail to vote**

##### **Offence**

**312.** A person whose name is on the residential roll in respect of a ward or area must vote at any contested election in the ward or area (other than an election of the mayor by the councillors) unless the person has a sufficient reason not to vote.

Maximum penalty: 1 penalty unit.

##### **Returning officer to mark residential roll**

**313. (1)** After the close of the poll at an election, the returning officer is to indicate, by a distinguishing mark made on a copy of each residential roll used at the election, the names of the electors who, although entitled to vote at the election, appear to have failed to vote and do not appear to have had a sufficient reason for the failure.

(2) The returning officer is to certify each roll so marked by a statutory declaration and each certified roll is then a marked roll for the purposes of this Act.

(3) The returning officer is to deliver each marked roll without delay to the Electoral Commissioner.

##### **Penalty notice to be issued for failure to vote**

**314. (1)** The Electoral Commissioner is to serve a penalty notice on each resident who is indicated on a marked roll delivered to the Electoral Commissioner as appearing not to have a sufficient reason for failing to vote at an election.

(2) A penalty notice is to be served within 3 months after the close of the poll at the election to which it relates and, if not served personally, is to be served by post at the address of the resident last known to the Electoral Commissioner.

(3) A penalty notice is a notice in the form prescribed by the regulations to the effect that, if the resident does not desire to have the failure to vote dealt with by a court:

- (a) the Electoral Commissioner must be given, within a time stated in the notice, a sufficient reason for the failure to vote; or
- (b) a penalty of 0.5 penalty unit must be paid to the Electoral Commissioner.

(4) If, within 28 days after service of the penalty notice, the Electoral Commissioner is given a sufficient reason for the failure to vote or the penalty is paid, the resident is not liable to any further proceedings for the offence to which the penalty notice relates.

(5) If an insufficient reason for a failure to vote is given in response to a penalty notice, the Electoral Commissioner is to include a statement to that effect in any courtesy letter served under section 100J of the Justices Act 1902 in relation to the penalty notice.

(6) For the purposes of this section, it is a sufficient reason for a failure by a resident to vote if the Electoral Commissioner is satisfied that the resident:

- (a) is dead; or
- (b) was absent from the area on polling day; or
- (c) was ineligible to vote; or
- (d) had an honest belief that he or she had a religious duty to abstain from voting; or
- (e) had voted under an enrolment on a roll other than the marked roll indicating the failure to vote; or
- (f) was unable to vote for any other reason acceptable to the Electoral Commissioner.

(7) If a penalty notice is served, the Electoral Commissioner is to note on the marked roll whether or not there has been a response to the penalty notice and, if there has been a response, whether a sufficient reason has been given, or a penalty paid, for the failure to vote.

#### **Evidence in marked roll**

**315.** It is evidence:

- (a) of service of a penalty notice on a resident; or
- (b) of a lack of response to a penalty notice served on a resident; or
- (c) that a reason was given for a failure by a resident to vote at an election, but the reason was insufficient,

if there is on a marked roll a notation to that effect in relation to the resident.

**Division 5—Miscellaneous****Position on ballot-paper**

**316.** The order of candidates' names on ballot-papers is to be determined by a ballot conducted as prescribed by the regulations.

**Validity of elections**

**317. (1)** An election is not invalid just because:

- (a) there was a formal defect or error in or relating to the election, if the election was held substantially in accordance with this Act; or
- (b) there was a defect in the appointment of the returning officer; or
- (c) the time for closing the poll for postal voting was extended with the approval of the Electoral Commissioner or returning officer conducting the election; or
- (d) on polling day the name of a political party, or the abbreviation of that name, as registered in the Local Government Register of Political Parties appears printed adjacent to the name of a candidate on the ballot-papers for the election, but between the time the candidate was endorsed by the party and the polling day the candidate has ceased to be so endorsed.

**(2)** A proclamation of the Governor to the effect that a specified irregularity does not invalidate an election is conclusive as to the matter stated in the proclamation.

**Lapsed or void election**

**318. (1)** If an election for a civic office is not held when it is due, fails or is later declared void:

- (a) the holder of the civic office at the time when the election should have been held or when the election failed (or, in the case of a void election, if there is no such holder, the candidate purporting to have been elected at the void election), holds the office as if duly elected until an election is held under paragraph (b); and
- (b) the returning officer is to hold another election as if a casual vacancy had occurred in the civic office.

**(2)** An election held for the purposes of this section is as valid as it would have been if it had been held at the time originally appointed for the purpose.

**PART 7—POLITICAL PARTIES****Local Government Register of Political Parties**

**319. (1)** The Electoral Commissioner is to keep a register containing the names of the parties registered under this Part and other particulars or documents required by this Part.

**(2)** The register is to be called the Local Government Register of Political Parties.

**(3)** The register is to be kept in the form and manner decided by the Electoral Commissioner.

**Registration of political parties**

**320. (1)** A political party may be registered under this Act in the same way as a party may be registered under Part 4A of the Parliamentary Electorates and Elections Act 1912, subject to the regulations.

**(2)** A political party registered under the Parliamentary Electorates and Elections Act 1912 is taken to be registered under this Act.

**(3)** For the purposes of this section, sections 66C and 66N of that Act are to be disregarded and sections 66A, 66B and 66D–66M of that Act are to be read as if:

- (a) references to an eligible party and to a party were references to a political party; and
- (b) references (except in section 66A) to Parliament were references to a council; and
- (c) references to the Register of Parties were references to the Local Government Register of Political Parties; and
- (d) references to the issue of a writ for an election were references to the closing date for an election; and
- (e) the references to 200 members in paragraph (b) of the definition of “eligible party” in section 66A of that Act, and in section 66I (2) (b) of that Act, were references to 100 members; and
- (f) the references to 200 electors in sections 66D (2) (g) and 66DA (4) of that Act were references to 100 electors.

**Party endorsement on ballot-papers**

**321. (1)** The registered officer for a political party may apply to the returning officer to arrange for the name of the party as registered in the Local Government Register of Political Parties, or the abbreviation of the

name as so registered, to be printed adjacent to the name of a candidate on the ballot-papers for an election to civic office, but only if the candidate has been endorsed for that election by the party.

(2) A candidate at an election is taken to have been endorsed for the election by a political party registered in the Local Government Register of Political Parties only if:

- (a) the candidate is stated by the registered officer for the party to be so endorsed; or
- (b) the name of the candidate is included in a statement that is signed by the registered officer for the party, sets out the names of the candidates endorsed by the party for the election and is given to the returning officer before noon on the day for the nomination of candidates at the election; or
- (c) the returning officer is satisfied, after making such inquiries as the returning officer thinks appropriate, that the candidate is so endorsed.

(3) A candidate for an election who has been endorsed by two or more political parties is taken to have been endorsed:

- (a) by the political party whose registered officer nominated the candidate, if the candidate was nominated by the registered officer; or
- (b) by the political party whose registered officer applied for the endorsement, if paragraph (a) does not apply; or
- (c) in any other case, by the political party specified by the candidate in a notice given to the returning officer.

(4) An application under this section must be in writing signed by the applicant and delivered to the returning officer before noon on the day for the nomination of candidates at the election.

(5) An application under this section may be withdrawn by the candidate by written notice to the returning officer before noon on the day for nomination.

### **Independent candidate on ballot-papers**

**322.** (1) A candidate for election to civic office may apply to the returning officer to arrange for the word “Independent” to be printed adjacent to the name of the candidate on the ballot-papers for the election.

(2) The application is to be in writing signed by the applicant and given to the returning officer before noon on the day for the nomination of candidates at the election.

(3) If an application is made under both this section and section 321 in relation to the same candidate, the application under section 321 is void and is to be disregarded.

(4) An application under this section may be withdrawn by the candidate by written notice to the returning officer before noon on the day for nomination.

### **Printing of political party name on ballot-papers**

**323. (1)** The name of a political party is to be printed adjacent to the name of a candidate on the ballot-papers for an election to civic office if:

- (a) the candidate has been endorsed by the party as a candidate at the election; and
- (b) an application for the name of the party to be printed on the ballot-papers adjacent to the name of the candidate has been accepted by the returning officer.

(2) The word “Independent” is to be printed adjacent to the name of a candidate for election to civic office if an application made by the candidate to have the word so printed has been accepted by the returning officer.

### **Form of political party name on ballot-papers**

**324. (1)** The name of a political party to be printed on ballot-papers under this Part is the name entered for the party in the Local Government Register of Political Parties or the abbreviated name so entered for the party if application was made for the printing of the abbreviated name.

(2) The names, or abbreviated names, of political parties printed on ballot-papers adjacent to the names of candidates are to be in capital letters in type that is uniform in size and style for all of the political parties’ names or abbreviated names.

## **PART 8—DISCLOSURE OF ELECTION FUNDING**

### **Local Government Register of Candidates**

**325. (1)** The Election Funding Authority is to keep a register, to be called the Local Government Register of Candidates, for each ordinary election and by-election.

(2) The Local Government Register of Candidates for an election is to be kept as from the close of the poll at the previous ordinary election.

(3) Subject to this Act, the Local Government Register of Candidates is to be kept in such form and manner as the Election Funding Authority thinks fit.

### **Local Government Register of Party Agents**

**326.** (1) The Election Funding Authority is to keep a register, to be called the Local Government Register of Party Agents.

(2) The Local Government Register of Party Agents is to be kept on a continuous basis.

(3) Subject to this Act, the Local Government Register of Party Agents is to be kept in such form and manner as the Election Funding Authority thinks fit.

### **Local Government Register of Official Agents**

**327.** (1) The Election Funding Authority is to keep a register, to be called the Local Government Register of Official Agents, for each ordinary election and by-election.

(2) The Local Government Register of Official Agents for an election is to be kept as from the close of the poll at the previous ordinary election.

(3) Subject to this Act, the Local Government Register of Official Agents is to be kept in such form and manner as the Election Funding Authority thinks fit.

### **Obligation to disclose donations**

**328.** (1) The provisions of the Election Funding Act 1981 (except sections 31, 33 (2) (c), 39, 44 and 51 (1)–(3) and Parts 5 and 7), apply to each ordinary election and each by-election under this Act for a civic office in the same way as they apply to a current election or by-election referred to in that Act.

(2) Those provisions also apply in relation to each register required to be kept under this Part in the same way as they apply in relation to the registers required to be kept under Part 4 of the Election Funding Act 1981.

(3) For the purposes of this section, the Election Funding Act 1981 is to be read as if Parts 5 and 7 and the matter relating to groups had been omitted and as if:

- (a) references to the Register of Candidates were references to a Local Government Register of Candidates; and

- (b) references to the Register of Party Agents were references to a Local Government Register of Party Agents; and
  - (c) references to the Register of Official Agents were references to a Local Government Register of Official Agents; and
  - (d) references to 90 days after the day for the return of the writs were references to 3 months after the close of polling; and
  - (e) references to the previous general election were references to the previous ordinary election for civic office; and
  - (f) references to the return of writs were references to the close of polling at an ordinary election for civic office; and
  - (g) references to the day of issue of the writ for the by-election were references to the closing date for the by-election; and
  - (h) references to things done under the Election Funding Act 1981 included things done under that Act by virtue of this Part; and
  - (i) references to an electoral district were references to a ward (or, in a case where an election is held in respect of an area and not a ward, to an area); and
  - (j) any other necessary adaptations were made.
- (4) The regulations may modify or make other provision for the manner in which the Election Funding Act 1981 is to be applied in relation to elections under this Act.

## **PART 9—DISMISSAL FROM CIVIC OFFICE**

### **Can the holder of a civic office be dismissed?**

**329. (1)** The Supreme Court, the District Court or a Local Court may, on the application of any person, order the dismissal of a person from civic office:

- (a) if there has been any irregularity in the manner in which the person has been elected or appointed to that office; or
- (b) if the person is disqualified from holding civic office.

(2) Proceedings based on the ground that there has been an irregularity in the manner in which a person has been elected or appointed to civic office may not be commenced more than 3 months after the date of the person's election or appointment to that office.

(3) A court before which proceedings are taken on the ground that a person is disqualified from holding civic office may refuse to order the dismissal of the person from that office if it is satisfied:

- (a) that the facts and circumstances giving rise to the disqualification are of a trifling character; and



- (b) that the acts which gave rise to that disqualification were done in good faith and without knowledge that the person would incur disqualification by doing those acts.

(4) Subsection (3) does not apply to a person who is disqualified from holding civic office by a decision of the Pecuniary Interest Tribunal under section 482.

**Is there a right of appeal against an order of dismissal?**

**330. (1)** A person against whom an order of dismissal is made by the District Court or by a Local Court may appeal against the order, on a question of law, to the Supreme Court.

(2) Such an appeal may not be made more than 28 days after the date on which the order of dismissal is made.

**When does an order of dismissal take effect?**

**331. (1)** An order of dismissal made by the Supreme Court takes effect when the order is made.

(2) An order of dismissal made by the District Court or by a Local Court takes effect:

- (a) if no appeal to the Supreme Court is made against the order, at the end of the period during which such an appeal may be made; or
- (b) if such an appeal is made within that period and the order is confirmed on appeal, when the order is confirmed; or
- (c) if, within that period, the person against whom the order is made serves on the general manager of the council concerned written notice of intention not to appeal against the order, when the notice is lodged.

## CHAPTER 11—HOW ARE COUNCILS STAFFED?

### INTRODUCTION

The Chapter provides for the employment of staff to assist councils to exercise their functions. A council should have sufficient and appropriately qualified staff for the efficient and effective management of its organisation. The Chapter includes provision for the appointment by each council of a general manager and other senior staff and of a “public officer”. Some requirements concerning employment of staff are contained in other law (for example, industrial relations legislation).

### PART 1—ORGANISATION STRUCTURE

#### Determination of Structure

**332. (1)** A council must determine:

- an organisation structure
- those positions within the organisation structure that are senior staff positions
- the resources to be allocated towards the employment of staff.

**(2)** A council may not determine a position to be a senior staff position if the remuneration for the position is less than:

- (a) the lowest band of the “executive band” of the Local Government (State) Award as in force at the commencement of this section; or
- (b) such amount as may be prescribed by the regulations.

#### Re-determination of structure

**333.** The organisation structure may be re-determined by the council from time to time. It must be re-determined within 12 months after any ordinary election of the council.

### PART 2—THE GENERAL MANAGER AND OTHER SENIOR STAFF

#### Appointment of general manager

**334. (1)** A council must appoint a person to be its general manager. The person must not be a body corporate.

**(2)** The position of general manager is a senior staff position.

**Functions of general manager**

**335. (1)** The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.

**(2)** The general manager has the following particular functions:

- the day-to-day management of the council
- to exercise such of the functions of the council as are delegated by the council to the general manager
- to appoint staff in accordance with an organisation structure and resources approved by the council
- to direct and dismiss staff
- to implement the council's equal employment opportunity management plan.

**(3)** The general manager has such other functions as may be conferred or imposed on the general manager by or under this or any other Act.

**Filling of vacancy in position of general manager**

**336. (1)** If a vacancy occurs in the position of general manager, the council must immediately appoint a person under section 334 to the vacant position or appoint a person to act in the vacant position.

**(2)** A vacancy occurs in the position of general manager if the general manager:

- (a) dies; or
- (b) completes the term of his or her contract and is not re-appointed;  
or
- (c) resigns from the position; or
- (d) becomes a mentally incapacitated person; or
- (e) is sentenced to penal servitude or imprisonment; or
- (f) is removed from the position for breach of or under the terms of the general manager's contract with the council.

**Council to be consulted as to appointment and dismissal of senior staff**

**337.** The general manager may appoint or dismiss senior staff only after consultation with the council.

**Nature of contracts for senior staff**

**338. (1)** The general manager and other senior staff of a council are to be employed under contracts that are performance-based.

**(2)** The term of a contract must not be less than 12 months or more than 5 years (including any option for renewal). A term that is less than 12 months is taken to be for 12 months and a term for more than 5 years is taken to be limited to 5 years.

**(3)** Contracts may be renewed from time to time.

**Annual reporting of contracts for senior staff**

**339.** The general manager must, at least once annually, report to the council on the contractual conditions of senior staff.

**Industrial arbitration excluded**

**340. (1)** In this section, a reference to the employment of the general manager or another senior staff member is a reference to:

- (a)** the appointment of, or failure to appoint, a person to the vacant position of general manager or to another vacant senior staff position; or
- (b)** the removal, retirement, termination of employment or other cessation of office of the general manager or another senior staff member; or
- (c)** the remuneration or conditions of employment of the general manager or another senior staff member.

**(2)** The employment of the general manager or another senior staff member, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the Industrial Relations Act 1991.

**(3)** Subsection (2) applies whether or not any person has been appointed to the vacant position of general manager or another vacant senior staff position.

**(4)** No award, agreement, contract determination or order made or taken to have been made or continued in force under the Industrial Relations Act 1991, whether made before or after the commencement of this section, has effect in relation to the employment of senior staff members.

(5) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to the position of general manager or to another senior staff position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

#### **Duty to report bankruptcy**

**341. (1)** If a person who is a senior staff member becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the person's creditors, the person must:

- (a) immediately give notice of the bankruptcy, composition, arrangement or assignment to the general manager; and
- (b) provide the general manager, within the time specified by the general manager, with any further information concerning the cause of the bankruptcy or of the making of the composition, arrangement or assignment required by the general manager.

(2) If the person is the general manager, subsection (1) applies as if references to the general manager were references to the council.

### **PART 3—THE PUBLIC OFFICER**

#### **Appointment of the public officer**

**342. (1)** The general manager is to designate a member of staff as the public officer of the council.

(2) The position of public officer may, but need not be, a senior staff position.

#### **Functions of the public officer**

**343. (1)** The public officer:

- may deal with requests from the public concerning the council's affairs
- has the responsibility of assisting people to gain access to public documents of the council
- may receive submissions made to the council
- may accept service of documents on behalf of the council
- may represent the council in any legal or other proceedings
- has such other functions as may be conferred or imposed on the public officer by the general manager or by or under this Act.

(2) The public officer is subject to the direction of the general manager.

---

**PART 4—EQUAL EMPLOYMENT OPPORTUNITY****Objects**

**344.** The objects of this Part are:

- (a) to eliminate and ensure the absence of discrimination in employment on the grounds of race, sex, marital status and physical impairment in councils; and
- (b) to promote equal employment opportunity for women, members of racial, minorities and physically handicapped persons in councils.

**Preparation and implementation of management plans**

**345. (1)** A council must prepare and implement an equal employment opportunity management plan in order to achieve the objects of this Part.

**(2)** The plan is to include provisions relating to:

- (a) the devising of policies and programs by which the objects of this Part are to be achieved; and
- (b) the communication of those policies and programs to persons within the staff of the council; and
- (c) the collection and recording of appropriate information; and
- (d) the review of personnel practices within the council (including recruitment techniques, selection criteria, training and staff development programs, promotion and transfer policies and patterns, and conditions of service) with a view to the identification of any discriminatory practices; and
- (e) the setting of goals or targets, where these may reasonably be determined, against which the success of the plan in achieving the objects of this Part may be assessed; and
- (f) the means, other than those referred to in paragraph (e), of evaluating the policies and programs referred to in paragraph (a); and
- (g) the revision and amendment of the plan; and
- (h) the appointment of persons within the council to implement the provisions referred to in paragraphs (a)–(g).

**(3)** An equal employment opportunity management plan may include provisions, other than those referred to in subsection (2), that are not inconsistent with the objects of this Part.

(4) A council may, from time to time, amend its equal employment opportunity management plan.

### **Inconsistencies with the Anti-Discrimination Act 1977**

**346. (1)** The provisions of an equal employment opportunity management plan, to the extent of any inconsistency between those provisions and the provisions of the Anti-Discrimination Act 1977, prevail.

(2) This section does, not apply to or in respect of the provisions of a plan which are the subject of a reference under section 347 to the Anti-Discrimination Board or the Director of Equal Opportunity in Public Employment.

NOTE: This section adopts the principles in section 122K of the Anti-Discrimination Act 1977. Those principles are designed to ensure that full effect can be given to the objects of this Part.

### **References**

**347. (1)** Where the Minister is dissatisfied with any matter relating to the preparation, amendment or implementation of an equal employment opportunity management plan by a council or any failure or omission of a council with respect to the preparation, amendment or implementation of any such plan, the Minister may refer the matter to the Anti-Discrimination Board or the Director of Equal Opportunity in Public Employment.

(2) The provisions of section 122N of the Anti-Discrimination Act 1977, and the succeeding provisions of Part 9A of that Act, apply to and in respect of a reference under this section to the Anti-Discrimination Board as if it were a reference under section 122M of that Act and as if the council were an authority within the meaning of that Part.

## **PART 5—OTHER PROVISIONS CONCERNING STAFF**

### **Advertising of staff positions**

**348. (1)** When it is proposed to make an appointment to a position within the organisation structure of the council, the position must be advertised in a manner sufficient to enable suitably qualified persons to apply for the position.

If the position is a senior staff position, the requirement of this section is satisfied if the position is advertised at least twice in a daily newspaper circulating throughout the State.

(3) This section does not apply to:

- (a) the re-appointment, under a new contract, of a senior staff member whose contract has expired; or
- (b) the appointment of an employee if the term of employment is for:
  - (i) not more than 12 months; or
  - (ii) two or more periods that together are not more than 12 months in any period of 2 years.

#### **Appointments to be on merit**

**349. (1)** When the decision is being made to appoint a person to a position:

- (a) only a person who has applied for appointment to the position may be selected; and
- (b) from among the applicants eligible for appointment, the applicant who has the greatest merit is to be selected.

**(2)** The merit of the persons eligible for appointment to a position is to be determined according to:

- (a) the nature of the duties of the position; and
- (b) the abilities, qualifications, experience and standard of work performance of those persons relevant to those duties.

#### **Appointments to which ss 348 and 349 do not apply**

**350.** Sections 348 and 349 do not apply to:

- (a) an appointment by way of demotion; or
- (b) an appointment by way of lateral transfer, unless the council decides that those sections are to apply to the appointment.

#### **Temporary appointments**

**351. (1)** If a position (including a senior staff position) within the organisation structure of the council is vacant or the holder of such a position is suspended from duty, sick or absent:

- (a) the council, in the case of the general manager's position; or
- (b) the general manager, in the case of any other position,

may appoint a person to the position temporarily.



(2) A person who is appointed to a position temporarily may not continue in that position for a period of more than 12 months.

#### **Independence of staff for certain purposes**

**352. (1)** A member of staff of a council is not subject to direction by the council as to the content of any advice or recommendation made by the member.

(2) This section does not prevent a council from directing a member of its staff to provide advice or a recommendation.

#### **Other work**

**353. (1)** The general manager must not engage, for remuneration, in private employment or contract work outside the service of the council without the approval of the council.

(2) A member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member's council duties unless he or she has notified the general manager in writing of the employment or work.

(3) The general manager may prohibit a member of staff from engaging, for remuneration, in private employment or contract work outside the service of the council that relates to the business of the council or that might conflict with the member's council duties.

(4) A member of staff must not engage, for remuneration, in private employment or contract work outside the service of the council if prohibited from doing so under subsection (3).

#### **Restriction on appointment of a former mayor or councillor**

**354. (1)** A person who has held civic office in relation to a council must not be appointed to any paid position on the staff of the council within 6 months after ceasing to hold the office.

(2) A purported appointment in contravention of this section is void.

## CHAPTER 12—HOW DO COUNCILS OPERATE?

### INTRODUCTION

This Chapter describes the ways in which a council carries out its functions and makes decisions.

The Chapter enables each council to adopt a code of meeting practice after giving public notice of a draft code. The Chapter provides for the basic matters concerning council meetings (frequency of meetings, notice of meetings, quorum, voting, rescission motions, committees etc.)

The Chapter enables a council to delegate its functions, other than those functions the delegation of which is expressly prohibited. Functions that may not be delegated include the making of a rate or charge, the borrowing of money, the compulsory acquisition of land, the adoption of financial statements and the classification of public land as operational land. Functions may be delegated to the general manager and to specified persons and bodies but may not be delegated directly by the council to council employees other than the general manager.

The Chapter requires councils to have public liability and professional liability insurance. The Chapter also makes provision for the constitution, functions, operation and dissolution of county councils.

### PART 1—GENERAL

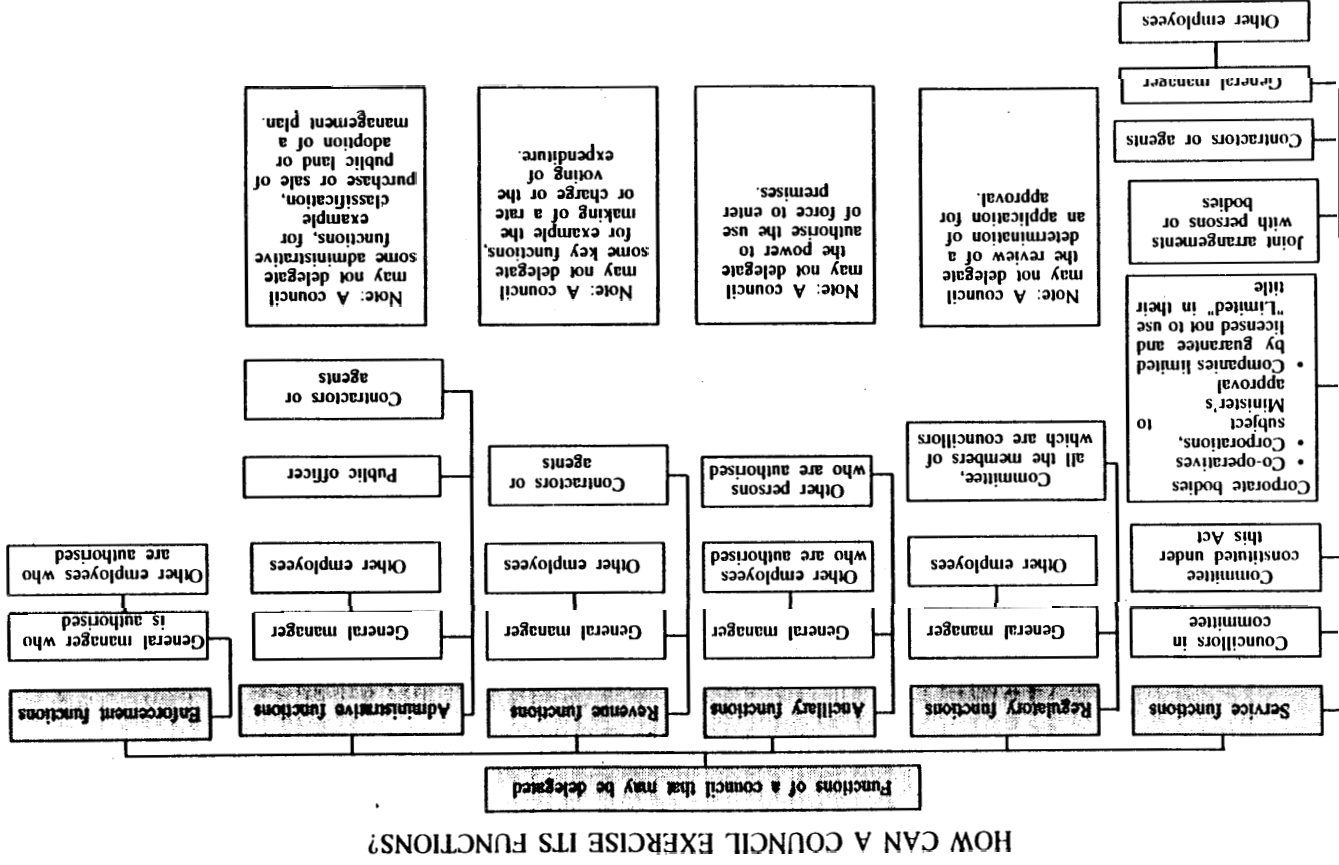
#### How does a council exercise its functions?

- 355.** A function of a council may, subject to this Chapter, be exercised:
- (a) by the council by means of the councillors or employees, by its agents or contractors, by financial provision, by the provision of goods, equipment, services, amenities or facilities or by any other means; or
  - (b) by a committee of the council; or
  - (c) partly or jointly by the council and another person or persons; or
  - (d) by two or more councils jointly; or
  - (e) by a delegate of the council.

#### Can a council financially assist others?

**356. (1)** A council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.

**(2)** A proposed recipient who acts for private gain is not ineligible to be granted financial assistance but must not receive any benefit under this section until at least 28 days' public notice of the council's proposal to pass the necessary resolution has been given.



**Can a council exercise its functions only within its area?**

**357.** A council may exercise its functions within its area or outside its area, but may exercise its regulatory functions under Chapter 7 only within its area.

**Restrictions on formation of corporations**

**358. (1)** A council must not form or participate in the formation of a corporation, or acquire a controlling interest in a corporation, except:

- (a) with the consent of the Minister; or
- (b) as provided by this Act.

**(2)** This section does not prevent a council from being a member of a co-operative society or a company limited by guarantee and licensed not to use the word “Limited” in its name.

**Can a council act as an agent?**

**359.** A council may act as the agent of another person or of the Crown, subject to the regulations.

**PART 2—HOW ARE DECISIONS MADE?****Division 1—Code of meeting practice****Conduct of meetings of councils and committees**

**360. (1)** The regulations may make provision with respect to the conduct of meetings of councils and committees of councils of which all the members are councillors.

**(2)** A council may adopt a code of meeting practice that incorporates the regulations made for the purposes of this section and supplements those regulations with provisions that are not inconsistent with them.

**(3)** A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

**Preparation, public notice and exhibition of draft code**

**361. (1)** Before adopting a code of meeting practice, a council must prepare a draft code.

**(2)** The council must give public notice of the draft code after it is prepared.

**(3)** The period of public exhibition must not be less than 28 days.

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

(5) The council must publicly exhibit the draft code in accordance with its notice.

#### **Adoption of draft code**

**362. (1)** After considering all submissions received by it concerning the draft code, the council may decide:

- (a) to amend those provisions of its draft code that supplement the regulations made for the purposes of section 360; or
- (b) to adopt the draft code as its code of meeting practice.

(2) If the council decides to amend its draft code, it may publicly exhibit the amended draft in accordance with this Division or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft code without public exhibition as its code of meeting practice.

#### **Amendment of the code**

**363.** A council may amend a code adopted under this Part by means only of a code so adopted.

#### **Public availability of the code**

**364. (1)** The code of meeting practice adopted under this Division by a council must be available for public inspection free of charge at the office of the council during ordinary office hours.

(2) Copies of the code must be available free of charge or, if the council determines, on payment of the approved fee.

### **Division 2—Other provisions concerning council meetings**

#### **How often does the council meet?**

**365.** The council is required to meet at least 10 times each year, each time in a different month.

#### **Calling of extraordinary meeting on request by councillors**

**366.** If the mayor receives a request in writing signed by at least 2 councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable but in any event within 21 days after receipt of the request.

**Notice of meetings**

**367. (1)** The general manager of a council must send to each councillor, at least 3 days before each meeting of the council, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting.

**(2)** Notice of less than 3 days may be given of an extraordinary meeting called in an emergency.

**What is the quorum for a meeting?**

**368.** The quorum for a meeting of the council is a majority of the councillors of the council who hold office for the time being and are not suspended from office.

**Who presides at meetings of the council?**

**369. (1)** The mayor or, at the request of or in the absence of the mayor, the deputy mayor (if any) presides at meetings of the council.

**(2)** If the mayor and the deputy mayor (if any) are absent, a councillor elected to chair the meeting by the councillors present presides at a meeting of the council.

**What are the voting entitlements of councillors?**

**370. (1)** Each councillor is entitled to one vote.

**(2)** However, the person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

**What constitutes a decision of the council?**

**371.** A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council.

**Rescinding or altering resolutions**

**372. (1)** A resolution passed by a council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with the council's code of meeting practice.

**(2)** If notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

**(3)** If a motion has been negatived by a council, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with the council's code of meeting practice.

(4) A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negatived by the council, must be signed by 3 councillors if less than 3 months has elapsed since the resolution was passed, or the motion was negatived, as the case may be.

(5) If a motion to alter or rescind a resolution has been negatived, or if a motion which has the same effect as a previously negatived motion, is negatived, no similar motion may be brought forward within 3 months. This subsection may not be evaded by substituting a motion differently worded, but in principle the same.

(6) A motion to which this section applies may be moved on the report of a committee of the council and any such report must be recorded in the minutes.

(7) The provisions of this section concerning negatived motions do not apply to motions of adjournment.

### **Committee of council**

**373.** A council may resolve itself into a committee to consider any matter before the council.

### **Certain circumstances do not invalidate council decisions**

**374.** Proceedings at a meeting of a council or a council committee are not invalidated because of:

- (a) a vacancy in a civic office; or
- (b) a failure to give notice of the meeting to any councillor or committee member; or
- (c) any defect in the election or appointment of a councillor or committee member; or
- (d) a failure of a councillor or a committee member to disclose a pecuniary interest at a council or committee meeting in accordance with section 451; or
- (e) a failure to comply with the code of meeting practice.

### **Minutes**

**375. (1)** The council must ensure that full and accurate minutes are kept of the proceedings of a meeting of the council.

**(2)** The minutes must, when they have been confirmed at a subsequent meeting of the council, be signed by the person presiding at that subsequent meeting.

**Attendance of general manager at meetings**

**376. (1)** The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all the members are councillors.

**(2)** The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.

**(3)** However, the general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of the employment of the general manager.

**PART 3—DELEGATION OF FUNCTIONS****General power of the council to delegate**

**377.** A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council, other than the following:

- the making of a rate
- a determination under section 548 as to the levying of a rate
- the making of a charge
- the fixing of a fee
- the borrowing of money
- the voting of money for expenditure on its works, services or operations
- the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property
- the acceptance of tenders which are required under this Act to be invited by the council
- the adoption of a management plan
- the adoption of a financial statement included in an annual financial report
- a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6
- the fixing of an amount or rate for the carrying out by the council of work on private land
- the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work
- the review of a determination of an application for approval



- the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194
- a decision under section 356 to contribute money or otherwise grant financial assistance to persons
- the power of the council under section 455 in relation to attendance at meetings
- the making of an application, or the giving of a notice, to the Governor or Minister
- this power of delegation.

**Delegations by the general manager**

**378. (1)** The general manager may delegate any of the functions of the general manager, other than this power of delegation.

**(2)** The general manager may sub-delegate a function delegated to the general manager by the council to any person or body (including another employee of the council).

**Delegation of regulatory functions**

**379.** A regulatory function of a council under Chapter 7 must not be delegated or sub-delegated to a person or body other than:

- (a) a committee of the council of which all the members are councillors or of which all the members are either councillors or employees of the council; or
- (b) an employee of the council; or
- (c) a county council.

**Review of delegations**

**380.** Each council must review all its delegations during the first 12 months of each term of office.

**Exercise of functions conferred or imposed on council employees under other Acts**

**381. (1)** If, under any other Act, a function is conferred or imposed on an employee of a council, the function is taken to be conferred or imposed on the council.

**(2)** Such a function may be delegated by the council in accordance with this Part.

- (3)** A person must not, under any other Act, delegate a function to:
- the general manager, except with the approval of the council
  - an employee of the council, except with the approval of the council and the general manager.

## PART 4—INSURANCE

### Insurance against liability

**382. (1)** A council must make arrangements for its adequate insurance against public liability and professional liability.

**(2)** The regulations may make provision with respect to:

- arrangements for insurance
- minimum; amounts of insurance
- risk management
- claims management
- the keeping of records concerning insurance
- other matters concerning insurance.

## PART 5—COUNTY COUNCILS

### Proposal to establish or dissolve a county council or amend its constitution

**383. (1)** A council, a county council, a public authority or the Director-General may make a proposal to the Minister to establish or dissolve a county council or to amend the constitution of a county council.

**(2)** The Minister may propose to establish or dissolve a county council or to amend the constitution of a county council.

### Public notice to be given of a proposal

**384.** The Minister must give at least 28 days' public notice of a proposal made to the Minister that the Minister decides to proceed with or of a proposal initiated by the Minister.

### Making of representations

**385.** Within the period of public notice, representations concerning the proposal may be made to the Minister by anyone affected by the proposal.

### Minister's recommendation concerning the proposal

**386.** After considering all representations received concerning the proposal, the Minister may recommend to the Governor that the proposal be implemented, with or without modifications, or may decline to recommend that the proposal be implemented.

**Formation of county councils**

**387. (1)** The Governor may, by proclamation, establish county councils for the purposes of this Act.

**(2)** A proclamation under this section must contain the following particulars:

- (a) the name of the county council;
- (b) a description of the county council's area of operations;
- (c) the number of persons to be elected by each constituent council to the county council's governing body;
- (d) a description of the county council's functions.

**(3)** A proclamation under this section conferring functions on a county council as to the control of noxious weeds on land is to be made only with the concurrence of the Minister administering the Noxious Weeds Act 1993.

**Bodies corporate**

**388.** A proclamation establishing a county council operates to constitute the county council as a body corporate under this Act.

**What is a county council's corporate name?**

**389.** The corporate name of a county council is to be "X County Council", where "X" is the name specified by the proclamation.

**Who comprise the governing body?**

**390. (1)** A county council must have a governing body elected by its constituent councils.

**(2)** Provisions concerning the membership of a county council's governing body are to be as prescribed by the proclamation establishing the county council.

**(3)** A member of a county council is to be elected from among the councillors of the constituent councils in accordance with the regulations.

**(4)** The governing body of a county council is responsible for managing the affairs of the county council.

**The chairperson**

**391. (1)** The chairperson of a county council is the person elected to the office of chairperson by the members of the county council from among their number.

- (2) The chairperson holds office for one year, subject to this Act.
- (3) The office of chairperson:
  - (a) commences on the day the person elected to the office is declared to be so elected; and
  - (b) becomes vacant when the person's successor is declared to be elected to the office, or on the occurrence of a casual vacancy in the office.

**Vacancy in office of member**

**392. (1)** A member of a county council vacates that office on ceasing to be a councillor of a constituent council.

(2) This section does not limit the other circumstances in which a member of a county council vacates that office.

**Area of operations of county council**

**393.** The area of operations of a county council may, in accordance with a proclamation made for the purposes of this Part, comprise the whole or any part of one or more local government areas.

**Functions of county council**

**394. (1)** The functions of a county council may, in accordance with a proclamation made for the purposes of this Part, comprise any one or more of the functions of a council under this or any other Act.

(2) A council may not undertake a function conferred on a county council whose area of operations includes the whole or any part of the council's area, subject to the regulations or a proclamation made for the purposes of this Part.

**General manager of county council**

**395. (1)** A county council must employ a general manager.

(2) The general manager of a county council has the same functions in relation to the county council as the general manager of a council has in relation to the council.

**How often does a county council meet?**

**396.** A county council is required to meet at least 4 times each year.

**Amendment and dissolution of county councils**

**397. (1)** The Governor may, by proclamation, amend or revoke a proclamation in force under section 387 for the purpose of amending the constitution of, or of dissolving, a county council.

**(2)** A proclamation for the purpose of amending the constitution of a county council:

- (a) may change the name of the county council; or
- (b) may vary the county council's area of operations; or
- (c) may vary the number of persons who comprise the county council's governing body; or
- (d) may vary the county council's functions.

**Facilitating provisions of proclamations**

**398.** A proclamation of the Governor for the purposes of this Part may include provisions of the same kind as are referred to in section 213.

**Making of financial contributions by constituent councils**

**399.** The regulations may make provision for or with respect to the making of financial contributions to a county council by the constituent councils, including the following:

- the purposes for which contributions may be made
- the circumstances in which contributions may be required
- the assessment of contributions
- the payment of contributions
- the recovery of contributions.

**Application of Act to county councils**

**400.** This Act (except Part 1 and Divisions 1 and 2 of Part 2 of Chapter 9, Chapter 10, section 365 and the provisions of Chapter 15 concerning the making and levying of ordinary rates) applies:

- (a) to county councils in the same way as it applies to councils; and
- (b) to the members of county councils in the same way as it applies to the councillors of councils,

with such exceptions and modifications (if any) as the regulations may provide.

## **CHAPTER 13—HOW ARE COUNCILS MADE ACCOUNTABLE FOR THEIR ACTIONS?**

### INTRODUCTION

This Chapter sets out the mechanisms by which a council is made accountable for its actions.

Each year, a council is required to adopt a management plan that sets out its proposed strategy for at least the following 3 years, together with its proposed revenue policy for the next year. The management plan is to include a statement of the council's objectives and performance targets for its principal activities.

Public notice is to be given by the council of its management plan.

A council is required to have 2 funds (a consolidated fund and a trust fund). It must keep proper accounts which are to be audited annually.

Each year, a council is required to prepare an annual report on its work and activities.

The Minister retains a supervisory role in relation to councils. The Minister and the Director-General will be able to call for further information from councils, and the Director-General will be able to authorise persons to investigate and report on matters connected with a council's work and activities and to direct a council to act on any recommendations contained in such a report.

Members of the general public are entitled to inspect a wide range of council documents (see section 12). Members of the general public are also entitled, under the Freedom of Information Act 1989, to be given access to certain other documents held by a council. They are also entitled to require the correction of certain kinds of information in the event that the information is incomplete, incorrect, out of date or misleading.

### **PART 1—PRELIMINARY**

#### **Application of Chapter**

**401.** This Chapter applies to the functions conferred or imposed on a council by or under this or any other Act or law.

NOTE: Examples of functions conferred or imposed on councils by or under other Acts are set out in the Note to section 22.

**PART 2—MANAGEMENT PLANS****Preparation of draft management plans**

**402.** During each year, a council must prepare a draft management plan with respect to:

- (a) the council's activities for at least the next 3 years; and
- (b) the council's revenue policy for the next year.

**Contents of draft management plan with respect to council's work and activities**

**403. (1)** A draft management plan must contain the following statements with respect to the council's activities for the period to which it relates:

- a statement of the principal activities that the council proposes to conduct
- a statement of the objectives and performance targets for each of its principal activities
- a statement of the means by which the council proposes to achieve these targets
- a statement of the manner in which the council proposes to assess its performance in respect of each of its principal activities
- statements with respect to such other matters as may be prescribed by the regulations.

**(2)** The statement of principal activities must include the following particulars:

- capital works projects to be carried out by the council
- services to be provided by the council
- asset replacement programs to be implemented by the council
- sales of assets to be conducted by the council
- activities of a business or commercial nature to be undertaken by the council
- human resource activities (such as training programs) to be undertaken by the council
- activities to protect environmentally sensitive areas and to promote the ecological sustainability of the area undertaken by the council
- programs to be undertaken by the council to implement its equal employment opportunity management plan.

NOTE: Equal employment opportunity plans are dealt with in Part 4 of Chapter 11.
--

### **Contents of draft management plan with respect to council's revenue policy**

**404. (1)** A draft management plan must include the following statements with respect to the council's revenue policy for the next year, subject to the regulations:

- a statement containing a detailed estimate of the council's income and expenditure
- a statement with respect to each ordinary rate and each special rate proposed to be levied

NOTE: The annual statement of revenue policy may include a note that the estimated yield from ordinary rates is subject to the specification of a percentage variation by the Minister if that variation has not been published in the Gazette when public notice of the annual statement of revenue policy is given.

- a statement with respect to each charge proposed to be levied
- a statement of the types of fees proposed to be charged by the council and the amounts of each such fee
- a statement of the council's pricing policy with respect to the goods and services provided by it
- a statement of the amounts or rates proposed to be charged for the carrying out by the council of work on private land
- a statement of the amounts of any proposed borrowings (other than internal borrowing), the sources from which they are proposed to be borrowed and the means by which they are proposed to be secured
- statements with respect to such other matters as may be prescribed by the regulations.

**(2)** The statement with respect to an ordinary or special rate proposed to be levied must include the following particulars:

- the ad valorem amount (the amount in the dollar) of the rate
- whether the rate is to have a base amount and, if so:
  - the amount in dollars of the base amount; and
  - the percentage, in conformity with section 500, of the total amount payable by the levying of the rate, or, in the case of the rate, the rate for the category or sub-category concerned of the ordinary rate, that the levying of the base amount will produce
- the estimated yield of the rate
- in the case of a special rate—the purpose for which the rate is to be levied



the categories or sub-categories of land in respect of which the council proposes to levy the rate.

(3) The statement with respect to each charge proposed to be levied must include the following particulars:

- the amount or rate per unit of the charge
- the differing amounts for the charge, if relevant
- the minimum amount or amounts of the charge, if relevant
- the estimated yield of the charge.

(4) A draft management plan must include a statement containing a general estimate of the council's income and expenditure for the second and subsequent years for which the draft management plan is prepared.

(5) The statement of fees and the statement of the pricing policy need not include information which could confer a commercial advantage on a competitor of the council.

#### **Public notice of draft management plan**

**405.** (1) A council must give public notice of its draft management plan after it, is prepared.

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

(3) The public notice must specify that submissions may be made to the council at any time during the period of public exhibition.

(4) The council must publicly exhibit the draft management plan in accordance with its notice.

(5) During the period of public exhibition, the council must have for inspection at its office (and at such other places as it may determine) a map which shows those parts of its area to which each category and sub-category of the ordinary rate and each special rate included in the draft management plan applies.

#### **Adoption of management plan**

**406.** (1) Before the end of each year, a council must adopt a management plan for the following year after it has been prepared and exhibited in accordance with this Part and any other matters it considers relevant.

(2) In deciding on the final plan to be adopted, a council must take into consideration any submissions that have been made concerning the draft management plan prepared and exhibited in accordance with this Part.

### **General manager to report periodically on implementation of management plan**

**407.** The general manager must report to the council within 1 month after the end of each four-monthly period of July–October, November–February and March–June as to the extent to which the performance targets set by the council's current management plan have been achieved during that four-monthly period.

## **PART 3—FINANCIAL MANAGEMENT**

### **Division 1—Funds**

#### **The council's funds**

**408.** A council must have 2 separate funds:

- a consolidated fund
- a trust fund.

#### **The consolidated fund**

**409. (1)** All money and property received by a council must be held in the council's consolidated fund unless it is required to be held in the council's trust fund.

**(2)** Money and property held in the council's consolidated fund may be applied towards any purpose allowed by this or any other Act.

**(3)** However:

- (a) money that has been received as a result of the levying of a special rate or charge may not be used otherwise than for the purpose for which the rate or charge was levied; and
- (b) money that is subject to the provisions of this or any other Act (being provisions that state that the money may be used only for a specific purpose) may be used only for that purpose; and
- (c) money that has been received from the Government or from a public authority by way of a specific purpose advance or grant may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose.

**(4)** Pending its expenditure for the purpose for which it is held, money of the kind referred to in subsection (3) (a), (b) or (c). may not be held otherwise than in a bank account or in an investment in which such money is, by or under this or any other Act, authorised to be invested.

**Alternative use of money raised by special rates or charges**

**410. (1)** This section applies to money that has been received by a council as a result of the levying of a special rate or a charge.

**(2)** If the special rate or charge has been discontinued and the purpose for which the money was received has been achieved, or is no longer required to be achieved, any remaining money may be used by the council for any other purpose if, and only if:

- (a) a proposal to that effect has been included in a draft management plan for the current year or for a previous year; and
- (b) public notice of the fact that the proposal was included in the management plan adopted by the council for that year has been published in a newspaper.

**(3)** Money that is not yet required for the purpose for which it was received may be lent (by way of internal loan) for use by the council for any other purpose if, and only if, its use for that other purpose is approved by the Minister.

**(4)** In granting such an approval, the Minister must impose conditions as to the time within which the internal loan must be repaid and as to any additional amount, in the nature of interest, that is to be paid in connection with that loan.

**The trust fund**

**411. (1)** All money and property received by a council in trust must be held in the council's trust fund.

**(2)** Money or property held in the council's trust fund must be applied for the purposes, or in accordance with the trusts, relating to it.

**Division 2—Accounting records, financial reports and auditing****Accounting records**

**412. (1)** A council must keep such accounting records as are necessary to correctly record and explain its financial transactions and its financial position.

**(2)** In particular, a council must keep its accounting records in a manner and form that facilitate:

- (a) the preparation of financial reports that present fairly its financial position and the results of its operations; and
- (b) the convenient and proper auditing of those reports.

**Preparation of financial reports**

**413. (1)** A council must prepare financial reports for each year, and must refer them for audit within 2 months after the end of that year.

**(2)** A council's financial reports must include:

- (a) a general purpose financial report; and
- (b) any special schedules prescribed by the regulations; and
- (c) a statement in the approved form by the council as to its opinion on the general purpose financial report and any such special schedules.

**(3)** The general purpose financial report must be prepared in accordance with the requirements of:

- (a) the publications issued by the Australian Accounting Research Foundation, on behalf of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia, under the titles "Statements of Accounting Concepts" and "Australian Accounting Standards", as in force for the time being, subject to the regulations; and
- (b) such other standards as may be prescribed by the regulations.

**(4)** The special schedules must be prepared in accordance with such requirements as are prescribed by the regulations.

**Extension of time for preparation of financial reports**

**414. (1)** A council may from time to time apply to the Director-General for an extension of the period within which it must refer for audit the whole or any part of its financial reports.

**(2)** Before deciding whether or not to grant an extension, the Director-General may require the council to give reasons, additional to those set out in the application, as to why the extension should be granted.

**(3)** The Director-General may grant an extension of such period as, in the opinion of the Director-General, is necessary in the particular circumstances of the case.

**(4)** A council must notify its auditor of any application for an extension made, and of any extension granted, under this section.

**Auditing of financial reports**

**415. (1)** A council's auditor must audit the council's financial reports as soon as practicable (and, in any case, within 2 months) after they are referred for audit.

NOTE: Unless an extension is granted to a council under section 414 or to the council's auditor under section 416, a council's financial reports must be audited within 4 months after the end of the year to which they relate.

(2) A council's financial reports must be audited in accordance with the requirements of:

- (a) the publications issued by the Australian Accounting Research Foundation, on behalf of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia, under the titles "Statements of Auditing Standards" and "Statements of Auditing Practice", as in force for the time being, subject to the regulations; and
- (b) such other standards as may be prescribed by the regulations.

### **Extension of time for auditing of financial reports**

**416. (1)** A council's auditor may from time to time apply to the Director-General for an extension of the period within which the auditor must audit a council's financial reports.

(2) Before deciding whether or not to grant an extension, the Director-General may require the auditor to give reasons, additional to those set out in the application, as to why the extension should be granted.

(3) The Director-General may grant an extension of such period as, in the opinion of the Director-General, is necessary in the particular circumstances of the case.

(4) The auditor must notify the council of any application for an extension made, and of any extension granted, under this section.

### **Auditor's reports**

**417. (1)** A council's auditor must prepare 3 reports:

- a report on the general purpose financial report
- a report on any special schedules prescribed by the regulations
- a report on the conduct of the audit.

(2) The report on the council's financial reports must include the following:

- (a) a statement as to whether, in the opinion of the auditor, the council's accounting records have been kept in accordance with the requirements of this Division;

- (b) a statement as to whether, in the opinion of the auditor, the council's financial reports:
  - (i) have been prepared in accordance with the requirements of this Division; and
  - (ii) are consistent with the council's accounting records; and
  - (iii) present fairly the council's financial position and the results of its operations;
- (c) a statement as to whether, in the opinion of the auditor, any information relevant to the conduct of the audit has been unobtainable by the auditor;
- (d) a statement setting out particulars of any deficiency in the accounting records or financial reports that has come to light in the course of the audit.

(3) The report on the conduct of the audit may contain such statements, comments and recommendations as to the conduct of the audit of the council's financial reports as the auditor considers appropriate to include in the report.

(4) As soon as practicable after completing the audit, the auditor must send a copy of the auditor's reports to the Director-General and to the council.

(5) As soon as practicable after receiving the auditor's reports, the council must send a copy of the auditor's report on the council's financial reports, together with a copy of the council's audited financial reports, to the Director-General and to the Australian Bureau of Statistics.

#### **Public notice to be given of presentation of financial reports etc.**

**418. (1)** As soon as practicable after a council receives a copy of the auditor's reports:

- (a) it must fix a date for the meeting at which it proposes to present its audited financial reports, together with the auditor's reports, to the public; and
- (b) it must give public notice of the date so fixed.

(2) The date fixed for the meeting must be at least 2 weeks after the date on which the notice is given but not more than 1 month after the auditor's reports are given to the council.

<p>NOTE: Unless an extension is granted under section 414 or 416, the meeting must be held within 5 months after the end of the year to which the report relates.</p>
---

**(3)** The public notice must include:

- (a) a statement that the business of the meeting will include the presentation of the audited financial reports and the auditor's reports; and
- (b) a summary, in the approved form, of the financial reports.

**(4)** Copies of the council's audited financial reports, together with the auditor's reports, must be kept available at the office of the council for inspection by members of the public on and from the date on which public notice of the holding of the meeting is given and until the day after the meeting (or any postponement of the meeting).

#### **Presentation of the council's financial reports**

**419. (1)** A council must present its audited financial reports, together with the auditor's reports, at a meeting of the council held on the date fixed for the meeting.

**(2)** The council's auditor may, and if so required in writing by the council must, attend the meeting at which the financial reports are presented:.

#### **Submissions on financial reports and auditor's reports**

**420. (1)** Any person may make submissions to the council with respect to the council's audited financial reports or with respect to the auditor's reports.

**(2)** A submission must be in writing and must be lodged with the council within 14 days after the date on which those reports are presented to the public.

**(3)** The council must ensure that copies of all submissions received by it are referred to the auditor.

**(4)** The council may take such action as it considers appropriate with respect to any such submission, including the giving of notice to the Director-General of any matter that appears to require amendment of the council's financial reports.

#### **Interim reports**

**421. (1)** A council's auditor may, at any time during the audit of a council's financial reports, report to the Minister on any matter relating to those reports or to the conduct of the audit.

**(2)** The auditor must give the council a copy of any report made to the Minister under this section.

---

### Division 3—Auditors

#### Appointment of auditors

**422. (1)** A council must appoint a person as its auditor.

**(2)** A council's auditor may be:

- (a) an individual who is a registered company auditor; or
- (b) a partnership whose members or employees include a registered company auditor; or
- (c) a corporation whose employees include a registered company auditor.

**(3)** If the council's auditor is a partnership, any member or employee of the partnership may act as the council's auditor as long as he or she is a registered company auditor.

**(4)** If the council's auditor is a corporation, any employee of the corporation may act as the council's auditor as long as he or she is a registered company auditor.

**(5)** An auditor may not be appointed unless tenders for the appointment have been called.

**(6)** In this section, **registered company auditor** has the same meaning as it has in the Corporations Law.

#### Disqualified persons

**423. (1)** A person may not be appointed as a council's auditor:

- (a) in the case of an individual, if he or she is a disqualified person; or
- (b) in the case of a partnership, if any member or employee of the partnership is a disqualified person; or
- (c) in the case of a corporation, if the corporation or any employee of the corporation is a disqualified person.

**(2)** In this section, **disqualified person** means a person:

- (a) who is a councillor or an employee of the council; or
- (b) who is in debt to the council otherwise than for rates or charges owed by the person as a ratepayer; or
- (c) who has a contractual arrangement with the council that (if the person were the council's auditor) might reasonably be seen to give rise to a conflict between the person's duties as an auditor and the person's interests under the arrangement.



**Auditor's term of office**

**424. (1)** A council's auditor holds office for 6 years and, if otherwise qualified, is eligible for re-appointment subject to this section.

**(2)** The office of auditor becomes vacant if the auditor:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) ceases to be qualified to hold office as auditor or becomes a disqualified person within the meaning of section 423; or
- (d) resigns office by notice in writing addressed to the council; or
- (e) becomes a mentally incapacitated person; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (h) is removed by the council in accordance with this section.

**(3)** The council may remove an auditor from office only with the consent of the Minister.

**(4)** If the office of auditor becomes vacant, the council must appoint a qualified person to fill the vacancy.

**Auditor-General to be auditor in certain instances**

**425. (1)** The Auditor-General is authorised to audit a council's financial reports if the council fails to appoint an auditor or during any vacancy in the office of auditor.

**(2)** The costs certified by the Auditor-General as having been incurred by the Auditor-General in auditing a council's financial reports in accordance with the authorisation given by this section must be paid by the council.

**Auditor may exercise general power of inspecting accounting records**

**426. (1)** A council's auditor:

- (a) may inspect the council's accounting records and other records necessary in order to carry out the auditor's functions at any time; and

- (b) must inspect those records at such periods as may be prescribed by the regulations,

for the purpose of forming an opinion as to whether the requirements of this Act and the regulations are being complied with.

(2) The auditor may report to the council or to the Minister on the results of the inspection.

(3) Such a report may deal with such matters concerning the council's accounting and other records as, in the auditor's opinion, should be dealt with by the report.

(4) The auditor must give the council a copy of any report made under this section to the Minister.

#### **Powers of auditor**

**427. (1)** When exercising the functions conferred on a council's auditor by this Part, a council's auditor is entitled at all reasonable times to full and free access to the council's accounting records and other records necessary in order to carry out the auditor's functions and may direct a councillor, the general manager or any other member of staff of the council:

- (a) to produce to the auditor any document relating to those records that is in that person's custody or under that person's control; or
- (b) to grant to the auditor such authorities as may be necessary to enable the auditor to gain access to any document relating to those records that is in the custody or control of any bank or other person; or
- (c) to answer any question,

being a document or question that, in the opinion of the auditor, is relevant to the carrying out, of the auditor's functions.

(2) An auditor may make copies of or take extracts from any document to which the auditor gains access under this section.

### **PART 4—ANNUAL REPORTS**

#### **Annual reports**

**428. (1)** Within 5 months after the end of each year, a council must prepare a report as to its achievements with respect to the objectives and performance targets set out in its management plan for that year.

(2) A report must contain the following particulars:

- (a) a statement of:

- (i) the expenses incurred by the council during that year; and
  - (ii) the revenue raised by the council during that year; and
  - (iii) the assets acquired by the council during that year; and
  - (iv) the assets held by the council at the end of that year, for each of the council's principal activities;
- (b) a comparison of the council's actual performance of its principal activities during that year (measured in accordance with the criteria set out in the relevant management plan) with the council's projected performance of those activities (as contained in the relevant management plan), together with a statement of the reasons for any difference between them;
- (c) a report as to the state of the environment in the area, including a report as to:
- (i) areas of environmental sensitivity; and
  - (ii) important wildlife and habitat corridors; and
  - (iii) any unique landscape and vegetation; and
  - (iv) development proposals affecting, or likely to affect, community land or environmentally sensitive land; and
  - (v) polluted areas; and
  - (vi) any storage and disposal sites of toxic and hazardous chemicals; and
  - (vii) waste management policies; and
  - (viii) threatened species and any recovery plans; and
  - (ix) any environmental restoration projects; and
  - (x) vegetation cover and any instruments or policies related to it, including any instruments relating to tree preservation;
- (d) a report on the condition of the public works (including public buildings, public roads and water, sewerage and drainage works) under the control of the council as at the end of that year, together with:
- (i) an estimate (at current values) of the amount of money required to bring the works up to a satisfactory standard; and
  - (ii) an estimate (at current values) of the annual expense of maintaining the works at that standard; and
  - (iii) the council's program of maintenance for that year in respect of the works;
- (e) a summary of the amounts incurred by the council during that year in relation to legal proceedings taken by or against the council (including amounts, costs and expenses paid or received

by way of out of court settlements, other than those the terms of which are not to be disclosed) and a summary of the state of progress of each legal proceeding and (if it has been finalised) the result;

- (f) the total amount of money expended during the year on mayoral fees and councillor fees, the council's policy on the provision of facilities for use by councillors and the payment of councillors' expenses, together with a statement of the total amount of money expended during that year on the provision of such facilities and the payment of such expenses;
- (g) a statement of the number of senior staff employed by the council during that year, together with a statement of the total amount of money payable in respect of the employment of senior staff, including money payable for salary, for the provision of fringe benefits and for all other on-costs connected with their employment;
- (h) details of each contract awarded by the council during that year (whether as a result of tender or otherwise) other than:
  - (i) employment contracts (that is, contracts of service but not contracts for services); and
  - (ii) contracts for less than \$100,000 or such other amount as may be prescribed by the regulations,
 

including the name of the contractor, the nature of the goods or services supplied by the contractor and the total amount payable to the contractor under the contract;
- (i) details of programs undertaken by the council during that year to preserve, protect, restore and enhance the environment;
- (j) details of programs undertaken by the council during that year to promote services and access to services for people with diverse cultural and linguistic backgrounds;
- (k) details or a summary (as required by section 67 (3)) of resolutions made during that year under section 67 concerning work carried out on private land and details or a summary of such work if the cost of the work has been fully or partly subsidised by the council, together with a statement of the total amount by which the council has subsidised any such work during that year;
- (l) the total amount contributed or otherwise granted under section 354;
- (m) a statement of the human resource activities (such as training programs) undertaken by the council during that year;

- (n) a statement of the activities undertaken by the council during that year to implement its equal employment opportunity management plan;
  - (o) a statement of all external bodies (such as county councils) that during that year exercised functions delegated by the council;
  - (p) a statement of all companies in which the council (whether alone or in conjunction with other councils) held a controlling interest during that year;
  - (q) a statement of all partnerships, co-operatives or other joint ventures to which the council was a party during that year;
  - (r) such other information as the regulations may require.
- (3) Copies of the council's annual report must be furnished to the Minister and to such other persons and bodies as are required by the regulations to be furnished with the report.

## **PART 5—INQUIRIES, REVIEWS AND SURCHARGING**

### **Division 1—Inquiries and reviews**

#### **Minister or Director-General may require councils to provide information**

**429. (1)** The Minister or the Director-General may at any time require a council to provide such information concerning the council or its work and activities (including information concerning any auditor's report or any report provided to the council with respect to the council or its work and activities) as the Minister or the Director-General may determine.

(2) A council must provide the information within such period as is specified by the Minister or Director-General.

#### **Director-General may authorise investigation of councils etc.**

**430. (1)** The Director-General may, at the request of the Minister or on the Director-General's own initiative, authorise any person (referred to in this Part as a **Departmental representative**) to investigate any aspect of a council or of its work and activities.

(2) An authority may be given generally or in respect of a particular matter.

(3) The functions of a Departmental representative are as set out in the authority.

(4) The Director-General is, by virtue of holding office as Director-General, a Departmental representative with power to investigate all matters.

### **Powers of Departmental representatives—generally**

**431. (1)** For the purpose of exercising his or her functions, a Departmental representative may direct a person to do any one or more of the following:

- (a) to appear personally before the Departmental representative at a time and place specified in the direction;
- (b) to give evidence (including evidence on oath);
- (c) to produce to the Departmental representative any document that is in that person's custody or under that person's control;
- (d) to grant to the Departmental representative such authorities as may be necessary to enable the Departmental representative to gain access to any document that is in the custody or under the control of any bank or other person.

(2) For the purposes of this section, a Departmental representative may administer an oath.

(3) A Departmental representative may take copies of or extracts from any document to which the Departmental representative gains access under this section.

### **Entry on to premises**

**432.** Part 2 of Chapter 8 applies, in relation to the functions of a Departmental representative, to the Director-General and a Departmental representative in the same way as it applies to a council and a council employee (or other person) authorised by the council.

### **Report of investigation**

**433. (1)** A Departmental representative must report to the Minister and the Director-General on the results of the investigation and must send a copy of the report to the council.

(2) The report may comment on any matter which, in the Departmental representative's opinion, warrants special mention and may contain such recommendations as the Departmental representative considers appropriate.

(3) A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.

**Council's response to report**

**434. (1)** A council must, within 40 days after presentation to it of a Departmental representative's report, give written notice to the Minister of the things done or proposed to be done to give effect to any recommendations contained in the report.

**(2)** The Minister may:

- (a) after receiving the council's notice; or
- (b) after the 40-day period,

whichever is the earlier, order the council to do such things or to refrain from doing such things arising from the recommendations contained in the report as are specified in the order.

**(3)** A council must comply with the Minister's order.

**(4)** An order under this section may state that a failure to comply with the order may lead to legal proceedings being taken to enforce compliance.

**Division 2—Surcharging****Surcharging by Departmental representative**

**435. (1)** If satisfied that any expenditure or transfer, or any entry in a council's accounts, has been incurred or made in contravention of this or any other Act or of any regulation in force under this or any other Act, a Departmental representative may:

- (a) disallow the expenditure, transfer or entry; and
- (b) surcharge the amount of the disallowance on the councillor, the general manager or any other member of staff of the council by whom the expenditure, transfer or entry was incurred or made or ordered to be incurred or made.

**(2)** A Departmental representative may also surcharge on a councillor, the general manager or any other member of staff of the council the amount of:

- (a) any deficiency or loss incurred by the council as a consequence of the culpable negligence or misconduct of the councillor, general manager or member of staff; or
- (b) any money which ought to have been, but has not been, brought into account by the councillor, general manager or member of staff.

(3) A Departmental representative may not exercise the powers conferred by this section unless expressly authorised to do so by the Director-General.

### **Procedure for surcharging**

**436. (1)** Before surcharging a person, the Departmental representative:

- (a) must cause notice of the proposed surcharge, and of the reasons for the proposed surcharge, to be given to the person; and
- (b) must allow the person a reasonable opportunity to make submissions to the Departmental representative with respect to the proposed surcharge; and
- (c) must take into consideration any submissions duly made by the person with respect to the proposed surcharge.

(2) The Departmental representative must certify in the council's accounts the amount by which the Departmental representative has surcharged any person.

(3) Immediately on surcharging an amount on any person, the Departmental representative must give notice of that fact to the person.

### **Right of appeal**

**437. (1)** A person who is surcharged under this Division may, in accordance with rules of court, appeal to the District Court against the surcharge.

(2) Such an appeal must be made within 28 days after the person is given notice of the surcharge.

(3) The District Court may confirm or annul the surcharge or may reduce the amount of the surcharge.

(4) The council must give effect to the decision of the District Court.

### **Recovery of amount surcharged**

**438. (1)** The amount of a surcharge becomes payable to the council as a debt when the time within which an appeal may be made against the surcharge expires or, if such an appeal is made and the surcharge is not annulled, when that appeal is finally determined.

(2) Any money recovered in connection with a surcharge relating to a particular account is to be paid into the fund in which money in that account is held.



## **CHAPTER 14—HONESTY AND DISCLOSURE OF INTERESTS**

### INTRODUCTION

This Chapter places obligations on councillors, council delegates and staff of councils to act honestly and responsibly in carrying out their functions.

The Chapter also requires councils to adopt a code of conduct for councillors, staff and other persons associated with the functions of councils. However, the Chapter does not affect any other duties imposed by other laws or any offences created by other laws.

It also requires that pecuniary interests of councillors, council delegates and other persons involved in making decisions or giving advice on council matters be publicly recorded and requires councillors and staff to refrain from taking part in decisions on council matters in which they have a pecuniary interest.

The Chapter enables any person to make a complaint concerning a failure to disclose a pecuniary interest and provides for the investigation of complaints.

The Chapter also establishes the Local Government Pecuniary Interest Tribunal.

The Tribunal is empowered to conduct hearings into complaints and to take disciplinary action against a person if a complaint against the person is found to be proved.

### **PART 1—CONDUCT**

#### **Conduct of councillors, staff and delegates**

**439. (1)** Every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this Act.

**(2)** Although this section places certain duties on councillors, members of staff of a council and delegates of a council, nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

#### **Code of conduct**

**440. (1)** Every council must prepare or adopt a code of conduct to be observed by councillors, members of staff of the council and delegates of the council.

**(2)** The Minister may prepare and issue a model code of conduct. A council may, but need not, adopt the model code.

(3) A council must, within 12 months after each ordinary election, review its code of conduct and make such changes to it as it considers appropriate.

(4) This section does not apply if the regulations prescribe a code of conduct to be observed by councillors, members of staff of the council and delegates of the council.

## PART 2—DUTIES OF DISCLOSURE

### Division 1—Preliminary

#### Who are “designated persons”?

441. For the purposes of this Chapter, **designated persons** are:

- the general manager
- other senior staff of the council
- a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person’s duty as a member of staff or delegate and the person’s private interest.

#### What is a “pecuniary interest”?

442. (1) For the purposes of this Chapter, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in section 443.

(2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in section 448.

#### Who has a pecuniary interest?

443. (1) For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the person; or
- (b) another person with whom the person is associated as provided in this section.

(2) A person is taken to have a pecuniary interest in a matter if:

- (a) the person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter; or
- (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

(3) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (2):

- (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body; or
- (b) just because the person is a member of, or employed by, a council or a statutory body or is a member of a company or other body that has a pecuniary interest in the matter if the person has no beneficial interest in any shares of the company or body.

**What disclosures must be made by a councillor?**

**444.** A councillor:

- (a) must prepare and submit written returns of interests in accordance with section 449; and
- (b) must disclose pecuniary interests in accordance with section 451.

**What disclosures must be made by a designated person?**

**445.** A designated person:

- (a) must prepare and submit written returns of interests in accordance with section 449; and
- (b) must disclose pecuniary interests in accordance with section 459.

**What disclosures must be made by a member of a council committee?**

**446.** A member of a council committee must disclose pecuniary interests in accordance with section 451.

**What disclosures must be made by council advisers?**

**447.** A person giving advice to the council at a council or council committee meeting must disclose pecuniary interests in accordance with section 456.

DISCLOSURE OF INTERESTS						
How and when disclosed and nature of interests disclosed	Councillor	Member of council committee	Council advisor	General manager	Senior staff member	Staff member or delegate, holding "designated person" position (s. 441)
• In periodic returns: Interests specified in Schedule 3 (s. 449)	✓	×	×	✓	✓	✓
• At meetings: Pecuniary interests (ss. 451, 456)	✓	✓	✓	×	×	×
• In dealings with council matters: Pecuniary interests (s. 459)	×	×	×	✓	✓	✓

PENALTIES FOR BREACH OF DISCLOSURE REQUIREMENTS (s. 461)	
Councillor	Council employee
<ul style="list-style-type: none"> <li>• Counselling</li> <li>• Reprimand</li> <li>• Suspension from civic office for up to 2 months</li> <li>• Disqualification from civic office for up to 5 years</li> </ul>	<ul style="list-style-type: none"> <li>• Recommend taking of disciplinary action by the council</li> <li>• Recommend dismissal</li> </ul>

**What interests do not have to be disclosed?**

**448.** The following interests do not have to be disclosed for the purposes of this Chapter:

- an interest as an elector
- an interest as a ratepayer or person liable to pay a charge
- an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public or a section of the public that includes persons who are not subject to this Part
- an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)
- an interest of a member of a council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee
- an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument, other than an instrument that effects a change of the permissible uses of:
  - (a) land in which the person has a pecuniary interest; or
  - (b) land adjoining, or adjacent to, land referred to in paragraph (a); or
  - (c) other land in proximity to land referred to in paragraph (a), if the change in uses would affect the value of the land referred to in paragraph (a).

**Division 2—Disclosure of interests in written returns****Returns disclosing interests of councillors and designated persons**

**449. (1)** A councillor or designated person must complete and lodge with the general manager, within 3 months after becoming a councillor or designated person, a return in the form in Part 1 of Schedule 3.

**(2)** A person need not lodge a return within the 3-month period after becoming a councillor or designated person if the person lodged a return in the previous year or if the person ceases to be a councillor or designated person within the 3-month period.

**(3)** A councillor or designated person holding that position at 30 June in any year must complete and lodge with the general manager within 3 months after that date a return in the form in Part 1 of Schedule 3.

(4) A person need not lodge a return within the 3-month period after 30 June in a year if the person lodged a return under subsection (1) within 3 months of 30 June in that year.

(5) Nothing in this section prevents a councillor or designated person from lodging more than one return in any year.

(6) Nothing in this section or Schedule 3 requires a person to disclose in a return lodged under this section an interest of the person's spouse or de facto partner or a relative of the person.

### **Form of returns and interests to be disclosed**

450. Schedule 3 has effect.

### **Division 3—Disclosure of pecuniary interests at meetings**

#### **Disclosure and participation in meetings**

451. (1) A councillor or a member of a council committee who has a pecuniary interest in any matter with which the council is concerned and who is, present at a meeting of the council or committee at which the matter is being considered must disclose the interest to the meeting as soon as practicable.

(2) The councillor or member must not take part in the consideration or discussion of the matter.

(3) The councillor or member must not vote on any question relating to the matter.

#### **Participation in meetings despite pecuniary interests**

452. Section 451 does not prevent a person from taking part in the consideration or discussion of, or from voting on, any of the following questions:

- (a) a question relating to a contract, proposed contract or other matter if the person or the spouse, de facto partner or relative of the person has a pecuniary interest only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company;
- (b) a question arising on a motion for a resolution to fill the office of mayor, if the reason for which abstention from voting would otherwise be required is that a fee for the following 12 months had been determined for the office;

- (c) a question relating to the making of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the only reason for which abstention from voting would otherwise be required is that a relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership;
- (d) a question relating to the making of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
- the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation
  - an approval granted by the council to enclose a public place in connection with the erection or demolition of a building
  - security for damage to footpaths or roads
  - any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council;
- (e) a question relating to:
- the making or levying of a rate or charge; or
  - the fixing or charging of a fee for the supply to a relative of the person by the council of any commodity or service provided by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part; or
  - the payment of fees and expenses and the provision of facilities to councillors (including the mayor);
- (f) a question relating to the passing for payment of a regular account for wages or salary of an employee who is a relative of the person;
- (g) a question relating to the indemnity insurance of councillors or members of council committees.

**Disclosures to be recorded**

**453.** A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.

**General disclosure**

**454.** A general notice given to the general manager in writing by a councillor or a member of a council committee to the effect that the councillor or member, or the councillor's or member's spouse, de facto partner or relative, is:

- (a) a member, or in the employment, of a specified company or other body; or
- (b) a partner, or in the employment, of a specified person,

is, unless and until the notice is withdrawn, sufficient disclosure of the councillor's or member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

**Powers, of council in relation to meetings**

**455.** A councillor or member of a council committee must not, if the council so resolves, attend a meeting of the council or committee while it has under consideration a matter in which the councillor or member has an interest required to be disclosed under this Chapter.

**Disclosure by adviser**

**456. (1)** A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee must disclose any pecuniary interest the person has in the matter to the meeting at the time the advice is given.

**(2)** The person is not required to disclose the person's interest as an adviser.

**Circumstances in which ss. 451 and 456 are not breached**

**457.** A person does not breach section 451 or 456 if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.



**Powers of Minister in relation to meetings**

**458.** The Minister may, conditionally or unconditionally, allow a councillor or a member of a council committee who has a pecuniary interest in a matter with which the council is concerned and who is present at a meeting of the council or committee to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business; or
- (b) that it is in the interests of the electors for the area to do so.

**Division 4—Disclosure of pecuniary interests in council dealings****Disclosure of pecuniary interests when dealing with council matters**

**459. (1)** A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) any pecuniary interest the person has in any council matter with which the person is dealing.

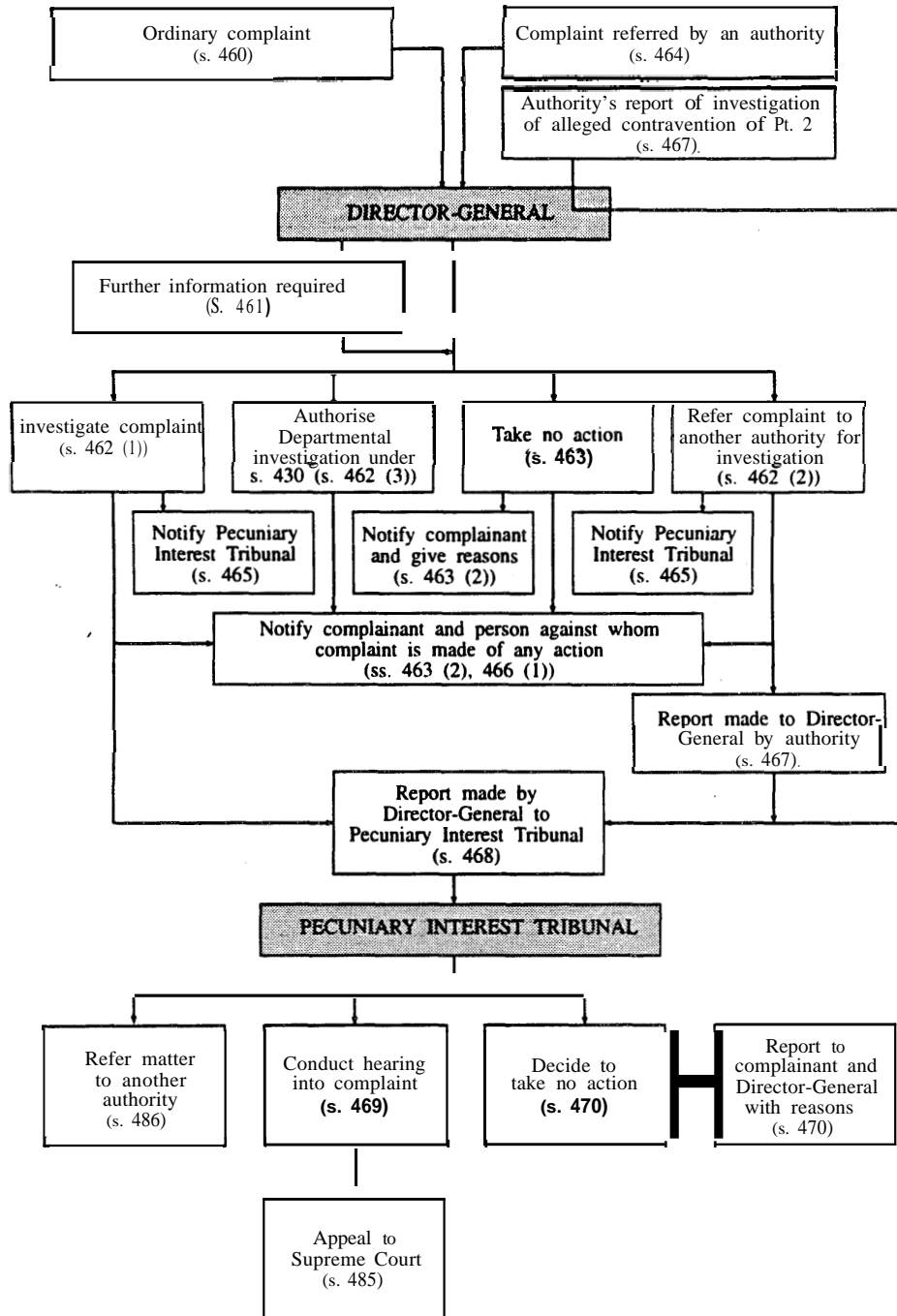
**(2)** The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.

**(3)** A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

**PART 3—COMPLAINTS CONCERNING NON-DISCLOSURE****Division 1—Making and investigation of complaints****Complaints concerning failure to disclose pecuniary interests**

**460. (1)** A person may make a complaint to the Director-General, or the Director-General may make a complaint, that a person has or may have contravened Part 2.

MANAGEMENT OF PECUNIARY INTEREST COMPLAINTS



**(2) A complaint:**

- (a) must be in writing; and
- (b) must identify the complainant and the person against whom the complaint is made; and
- (c) must give particulars of the grounds of the complaint; and
- (d) must be verified by statutory declaration; and
- (e) must be lodged with the Director-General.

**Director-General may require further information**

**461.** The Director-General may require the complainant to provide further particulars of the complaint within the time specified by the Director-General.

**Investigation of complaints**

**462. (1)** The Director-General may investigate a complaint.

**(2)** The Director-General may refer a complaint for investigation to an authority, being the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions, if the authority agrees to the referral. Such a referral may be made whether or not the Director-General has begun to investigate the complaint.

**(3)** The Director-General may decide not to investigate a complaint but to authorise an investigation under section 430 in respect of a matter to which the complaint relates.

**Decision not to investigate a complaint**

**463. (1)** The Director-General may decide to take no action concerning a complaint if the Director-General considers that the complaint falls into any of the following categories:

- (a) the complaint is frivolous, vexatious or not made in good faith;
- (b) the subject-matter of the complaint is trivial or does not warrant investigation;
- (c) the subject-matter of the complaint has been or is under investigation by some other competent person or body or has been or is the subject of legal proceedings;
- (d) the complaint raises issues that require investigation by another person or body;
- (e) there is or was, in relation to the matter complained of, a satisfactory alternative means of dealing with the matter by the complainant;

- (f) the complaint relates to a matter that occurred more than 2 years before the complaint was made and the complainant does not have a sufficient reason for having delayed the making of the complaint;
- (g) the complainant has failed to provide further particulars of the complaint within the time specified by the Director-General.

(2) If the Director-General decides to take no action concerning a complaint, the Director-General must notify the complainant and give the reasons for the decision.

#### **Referral and investigation of complaints by other authorities**

**464. (1)** An authority who receives a matter (otherwise than from the Director-General) for the purpose of investigation is authorised by this Act to refer the matter to the Director-General if the matter involves a possible contravention of Part 2.

(2) A matter referred to the Director-General under this section is taken to be a complaint.

#### **Pecuniary Interest Tribunal to be notified of investigations**

**465.** The Director-General must notify the Pecuniary Interest Tribunal of a decision to investigate a complaint or to refer a complaint for investigation to an authority.

#### **Persons to be notified of complaint**

**466. (1)** The Director-General must, within 3 months after receiving a complaint, making a complaint or having a matter referred to the Director-General under section 464, give the person against whom the complaint is made notice of the nature of the complaint and whether any action has been, or is intended to be, taken concerning the complaint.

(2) At the same time as notice is given to the person against whom the complaint is made, the Director-General must notify the complainant whether any action has been, or is intended to be, taken concerning the complaint.

#### **Reports of investigation of complaints by authorities**

**467.** An authority who has investigated an allegation that a person has or may have contravened Part 2 (whether or not the allegation was referred for investigation by the Director-General), is authorised by this Act to send any report prepared by the authority concerning the investigation to the Director-General.

**Presentation of reports to Pecuniary Interest Tribunal**

**468. (1)** The Director-General must present a report to the Pecuniary Interest Tribunal of an investigation into a complaint carried out by the Director-General.

**(2)** The Director-General must present to the Pecuniary Interest Tribunal any report received under section 467 from an authority.

**Division 2—Proceedings before the Pecuniary Interest Tribunal****Hearings**

**469.** The Pecuniary Interest Tribunal may, after considering a report presented to it, conduct a hearing into the complaint concerned.

**Decision not to conduct a hearing**

**470. (1)** If the Pecuniary Interest Tribunal decides not to conduct a hearing into a complaint, it must provide a written statement of its decision to the person who made the complaint and, if the complaint was not made by the Director-General, to the Director-General.

**(2)** The written statement must include the reasons for the decision.

**General conduct of proceedings**

**471. (1)** The Pecuniary Interest Tribunal may determine its own procedure, subject to this Act.

**(2)** In the conduct of any proceedings, the Pecuniary Interest Tribunal:

- (a) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence; and
- (b) may receive information or submissions in the form of oral or written statements; and
- (c) may consult with such persons as it thinks fit.

**Private and public hearings**

**472. (1)** A hearing is to be held in public unless the Pecuniary Interest Tribunal decides otherwise.

**(2)** In reaching such a decision, the Pecuniary Interest Tribunal is to have regard to any matters which it considers are related to the public interest.

**Representation**

**473.** In proceedings before the Pecuniary Interest Tribunal, a person is entitled to be represented by a legal practitioner.

**Presentation of cases**

**474.** A party to proceedings before the Pecuniary Interest Tribunal may:

- (a) call and examine any witness; and
- (b) cross-examine any witness called by another party; and
- (c) examine any copy of any document or part of a document produced in the proceedings; and
- (d) produce documents and exhibits to the Pecuniary Interest Tribunal; and
- (e) otherwise adduce, orally or in writing, to the Pecuniary Interest Tribunal such matters, and address the Pecuniary Interest Tribunal on such matters, as are relevant to the proceedings.

**Power to summon witnesses and take evidence**

**475. (1)** The Pecuniary Interest Tribunal may summon a person to appear in proceedings before the Pecuniary Interest Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.

**(2)** The Pecuniary Interest Tribunal may require a person appearing in the proceedings to produce a document.

**(3)** The Pecuniary Interest Tribunal may, in proceedings before it, take evidence on oath or affirmation and, for that purpose the Pecuniary Interest Tribunal:

- (a) may require a person appearing in the proceedings to give evidence either to take an oath or to make an affirmation in a form approved by the Pecuniary Interest Tribunal; and
- (b) may administer an oath to or take an affirmation from a person so appearing in the proceedings.

**(4)** A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by the Pecuniary Interest Tribunal.

(5) A person appearing in proceedings to give evidence must not, without reasonable excuse:

- (a) when required to be sworn or affirm—fail to comply with the requirement; or
- (b) fail to answer a question that the person is required to answer by the Pecuniary Interest Tribunal; or
- (c) fail to produce a document that the person is required to produce by this section.

Maximum penalty: 20 penalty units.

#### **Power to obtain documents**

**476. (1)** The Pecuniary Interest Tribunal may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before the Pecuniary Interest Tribunal; and
- (b) to produce, at that time and place, to the Pecuniary Interest Tribunal a document specified in the notice.

(2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this section is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Privilege concerning answers and documents**

**477. (1)** A witness summoned to attend or appearing before the Pecuniary Interest Tribunal at a hearing is not excused from answering any question or producing any document or other thing:

- (a) on the ground that the answer or production may incriminate the witness; or
- (b) on any other ground of privilege; or
- (c) on the ground of a duty of secrecy or other restriction on disclosure; or
- (d) on any other ground.

(2) An answer made, or document or other thing produced, by a witness at a hearing before the Pecuniary Interest Tribunal is not (except as otherwise provided by this section) admissible in evidence against the witness in any civil or criminal proceedings or in any disciplinary proceedings.

- (3) Nothing in this section makes inadmissible:
- (a) any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (1); or
  - (b) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.
- (4) If:
- (a) a legal practitioner or other person is required to answer a question or produce a document or other thing at a hearing before the Pecuniary Interest Tribunal; and
  - (b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between the practitioner (in his or her capacity as a legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the Pecuniary Interest Tribunal,

the legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

### **Additional complaints**

**478. (1)** The Pecuniary Interest Tribunal may in proceedings before it deal with one or more complaints about a person.

(2) If, during any such proceedings, it appears to the Pecuniary Interest Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the person concerned:

- (a) whether instead of or in addition to the complaint which was made; and
- (b) whether or not by the same complainant,

the Pecuniary Interest Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

(3) If another complaint is taken to have been referred to the Pecuniary Interest Tribunal under subsection (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Pecuniary Interest Tribunal, just and equitable in the circumstances.



**Adjournments**

**479.** The Pecuniary Interest Tribunal may adjourn proceedings for any reason it thinks fit.

**Release of information**

**480. (1)** The Pecuniary Interest Tribunal may, if it thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a person):

- (a) direct that the name of any witness is not to be disclosed in the proceedings; or
- (b) direct that all or any of the following matters are not to be published:
  - the name and address of any witness
  - the name and address of a complainant
  - the name and address of the person against whom the complaint was made
  - any specified evidence
  - the subject-matter of a Complaint.

**(2)** A direction may be amended or revoked at any time by the Pecuniary Interest Tribunal.

**(3)** A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the Pecuniary Interest Tribunal for consideration of the matter to:

- (a) a person who requested the direction; and
- (b) the complainant or the person against whom the complaint was made, as appropriate; and
- (c) such other person as the Pecuniary Interest Tribunal thinks fit.

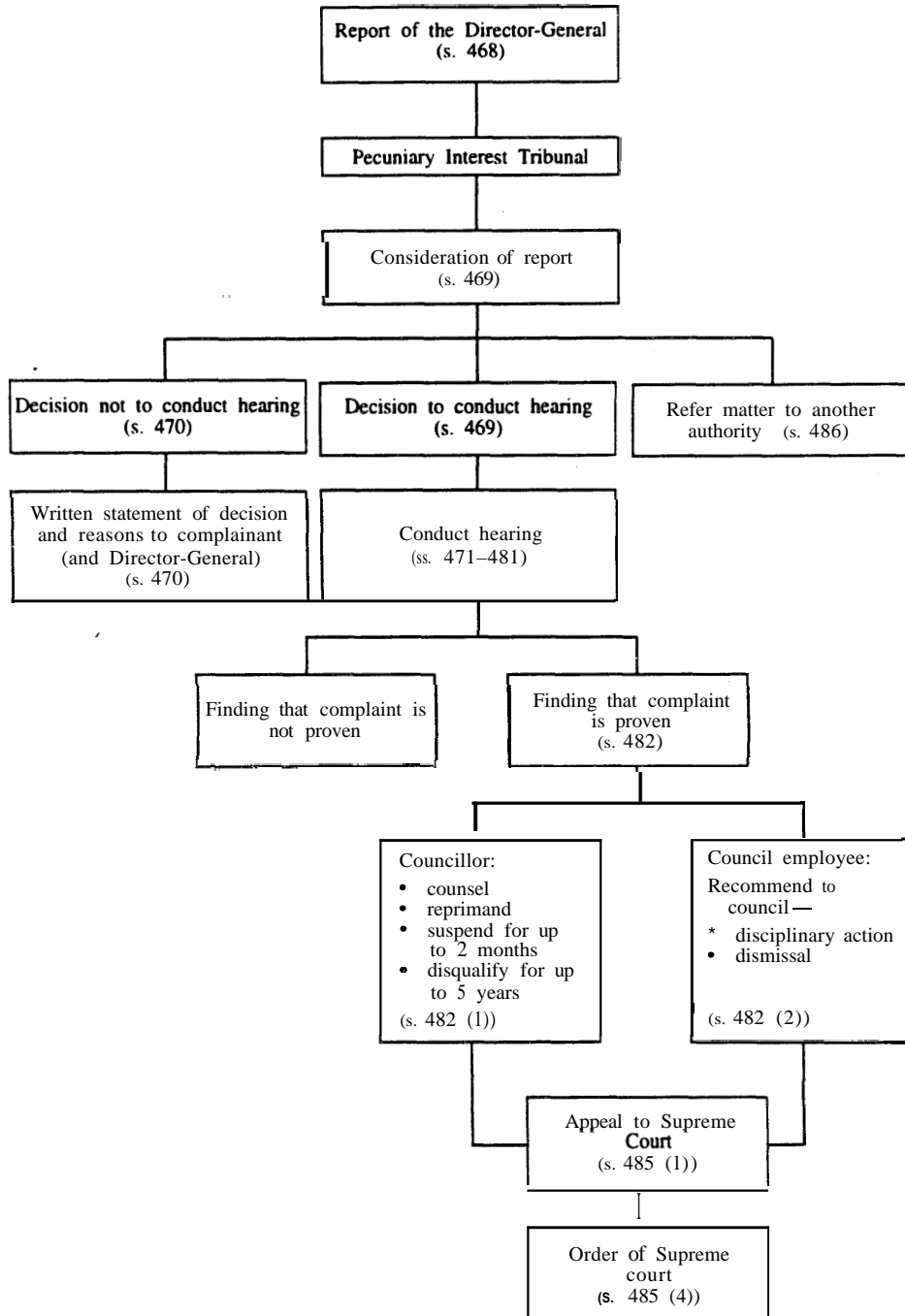
**(4)** A person who contravenes a direction given under this section is guilty of an offence.

Maximum penalty: 20 penalty units (in the case of an individual) or 150 penalty units (in the case of a corporation).

**Witnesses' expenses**

**481.** A person who is required to appear or to give evidence before the Pecuniary Interest Tribunal is entitled to be paid such allowances and expenses as the Pecuniary Interest Tribunal may determine in respect of the person.

PROCEEDINGS BEFORE THE PECUNIARY INTEREST TRIBUNAL



**Decision of Pecuniary Interest Tribunal**

**482. (1)** The Pecuniary Interest Tribunal may, if it finds a complaint against a councillor is proved:

- (a) counsel the councillor; or
- (b) reprimand the councillor; or
- (c) suspend the councillor from civic office for a period not exceeding 2 months; or
- (d) disqualify the councillor from holding civic office for a period not exceeding 5 years.

**(2)** The Pecuniary Interest Tribunal may, if it finds a complaint against an employee of the council is proved, recommend that the council take specified disciplinary action against the employee or recommend dismissal of the employee.

**Standard of proof**

**483.** A finding of the Pecuniary Interest Tribunal is to be made on the balance of probabilities.

**Pecuniary Interest Tribunal to provide details of its decisions**

**484. (1)** The Pecuniary Interest Tribunal must provide a written statement of a decision made in proceedings before it to the person against whom the proceedings were taken, to the person who made the initial complaint and to the Director-General and must do so as soon as practicable after the decision is made.

**(2)** The statement of a decision must:

- (a) set out the findings on material questions of fact; and
- (b) refer to any evidence or other material on which the findings were based; and
- (c) give the reasons for the decision.

**(3)** The Pecuniary Interest Tribunal may also provide the statement of a decision to such other persons as the Pecuniary Interest Tribunal thinks fit.

**Appeals to Supreme Court**

**485. (1)** A party to a proceeding before the Pecuniary Interest Tribunal may appeal to the Supreme Court against any decision of the Pecuniary Interest Tribunal in the proceeding.

(2) An appeal must be made within 28 days after the day on which the statement of the decision of the Pecuniary Interest Tribunal is provided to the person making the appeal or within such further time as the Supreme court allows.

(3) The Supreme Court may stay any decision made by the Pecuniary Interest Tribunal, on such terms as the Court thinks fit, until such time as the Court determines the appeal.

(4) On the hearing of an appeal, the Supreme Court may:

- (a) make an order reversing, affirming or amending the decision appealed against; or
- (b) remit the matter to the Pecuniary Interest Tribunal for decision by the Pecuniary Interest Tribunal in accordance with the order of the Court; or
- (c) make an order directing a rehearing of the proceedings in respect of which the decision appealed against was made; or
- (d) make such other order in relation to the appeal as the Court thinks fit.

### **Referral of matters by Pecuniary Interest Tribunal**

486. The Pecuniary Interest Tribunal may refer a matter before it to an authority if it considers that it is more appropriate that the authority deal with the matter and if the authority agrees to the referral.

## **PART 4—LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL**

### **Establishment of Pecuniary Interest Tribunal**

487. For the purposes of this Chapter, there is established a tribunal to be known as the Local Government Pecuniary Interest Tribunal.

### **Constitution of Pecuniary Interest Tribunal**

488. (1) The Pecuniary Interest Tribunal consists of one part-time member, appointed by the Governor, who is a barrister or solicitor eligible for appointment as a District Court or Supreme Court Judge.

(2) A person is not qualified for appointment if, within 12 months before the appointment, the person has been a councillor or an employee of a council.

(3) Schedule 4 has effect with respect to the Pecuniary Interest Tribunal.

**Functions of Pecuniary Interest Tribunal**

**489. (1)** The Pecuniary Interest Tribunal is to hold hearings into and decide allegations of contraventions of Part 2 of this Chapter.

**(2)** The Pecuniary Interest Tribunal has such other functions as are conferred or imposed on it by or under this Act or any other Act.

**Annual report**

**490.** The Pecuniary Interest Tribunal must, within 2 months after the end of each year, provide a report to the Minister concerning proceedings that have been conducted before it during that year.

**CHAPTER 15—HOW ARE COUNCILS FINANCED?****INTRODUCTION**

The main sources of council finance are:

- rates, of which there are 2 kinds
  - ordinary rates
  - special rates
- charges
- fees
- grants
- borrowings
- income from business activities
- income from land
- income from other investments
- sales of assets.

This Chapter deals mainly with the making and collection of the different kinds of rates and the imposition of charges.

Part 1 gives a general overview of the principles of rating and explains the relationship between ordinary rates, special rates and charges.

A council must make an ordinary rate each year. The amount of the ordinary rate may differ according to the category of the land to which it applies and it may differ according to sub-categories within those categories.

A council has a discretion whether it will make a special rate. Special rates may be levied for services provided by the council (such as water supply) or for special purposes.

A council has 2 choices in determining the structure of a rate (whether an ordinary rate for a category or sub-category of land or a special rate). It may decide that the rate is to be wholly an ad valorem rate (that is, an amount in the dollar that is to be applied uniformly to the rateable value of all rateable land in its area subject to the rate). It may decide, instead, that a rate is to have a 2-part structure. The first part is to be a base amount that will be the same for each parcel of rateable land subject to the rate. This base amount will be the amount that the council determines to be the basic contribution required to cover the general operating costs of the council or to cover the cost of providing the specific service or facilities to which it relates. The second part is to be an ad valorem amount. The 2 parts are added together to produce the amount of the rate to be paid in respect of the rateable parcel.

If a council makes a rate with a 2-part structure, the application of the base amount for the rate (or the category or sub-category of the rate) must not produce more than 50% of the total revenue derived from the rate (or the category or sub-category of the rate).

**INTRODUCTION—*continued***

Special provisions are made for the rating of vacant land.

The Chapter also enables the making and collection of charges. A charge may be made in relation to specified services provided by a council (such as the provision of water, sewerage or drainage services or the collection of garbage). A charge may be set at a level that enables part or full cost recovery or, in some cases, that exceeds costs.

A council may impose charges in addition to ordinary rates and special rates or in substitution for special rates that may be made for the same purposes as a charge.

A charge, when made, has the same characteristics as a rate concerning payment, the accrual of interest (if the charge remains unpaid) and the procedures that may be taken for its recovery.

The reasonable cost to the council of providing domestic waste management services must not be recovered by the ordinary rate. It must be obtained from the making and levying of a charge.

**PART 1—AN OVERVIEW OF RATES AND CHARGES****Some sources of a council's income**

**491.** A council may, in accordance with this Chapter, obtain income from:

- rates
- charges
- fees
- grants
- borrowings
- investments.

**What are the types of rates?**

**492.** The types of rates that can be made by a council are:

- ordinary rates
- special rates.

**Categories of ordinary rates**

493. (1) There are 4 categories of an ordinary rate:

- farmland
- residential
- mining
- business.

(2) These categories may, at a council's discretion, be divided into sub-categories in accordance with section 529.

**Ordinary rates must be made and levied annually**

494. A council must make and levy an ordinary rate for each year on all rateable land in its area.

**Making and levying of special rates**

495. (1) A council may make a special rate for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of the council's area, other than domestic waste management services.

(2) The special rate is to be levied on such rateable land in the council's area as, in the council's opinion:

- (a) benefits or will benefit from the works, services, facilities or activities; or
- (b) contributes or will contribute to the need for the works, services, facilities or activities; or
- (c) has or will have access to the works, services, facilities or activities.

NOTE: Under section 495, a council could, for example make a levy:

- different special rates for different kinds of works, services, facilities or activities
- different special rates for the same kind of work, service, facility or activity in different parts of its area
- different special rates for the same work in different parts of its area.

The amount of special rate will be determined according to the council's assessment of the relationship between the cost or estimated cost of the work, service, facility or activity and the degree of benefit afforded to the ratepayer by providing or undertaking the work, service, facility or activity.



**Making and levying of annual charges for domestic waste management services**

**496.** A council must make and levy a charge for each year for the provision of domestic waste management services for each parcel of rateable land for which the service is available.

**What is the structure of a rate?**

**497.** A rate, whether an ordinary rate or a special rate, may, at a council's discretion, consist of

- (a) an ad valorem amount; or
- (b) a base amount to which an ad valorem amount is added.

**The ad valorem amount**

**498. (1)** The ad valorem amount of a rate is an amount in the dollar determined for a specified year by the council and expressed to apply:

- (a) in the case of an ordinary rate—to the land value of all rateable land in the council's area within the category or sub-category of the ordinary rate; or
- (b) in the case of a special rate—to the land value of all rateable land in the council's area or such of that rateable land as is specified by the council in accordance with section 538.

**(2)** The ad valorem amount of a rate is to be levied on the land value of rateable land, except as provided by this or any other Act.

NOTE: "Land value" is defined in the Dictionary for this Act. Generally, it is a value determined specially for rating purposes by the Valuer-General under the Valuation of Land Act 1916.

A value other than land value may be used, for example, under section 127 of the Heritage Act 1977.

**The base amount**

**499. (1)** A council may, in a resolution making a rate, specify a base amount of the rate, or a base amount for a category or sub-category of an ordinary rate.

**(2)** The base amounts so specified may be the same or different amounts.

**(3)** The appropriate base amount so specified is to form part of the rate levied on each separate parcel of rateable land subject to the rate.

**Limit on revenue that can be raised from base amount**

**500.** The amount specified as the base amount of a rate (or the base amount of the rate for a category or sub-category of an ordinary rate) must not be such as to produce more than 50 per cent of the total amount payable by the levying of the rate (or of the rate for the category or sub-category concerned) on all rateable land subject to the rate (or the rate for the category or sub-category concerned).

**For what services can a council impose an annual charge?**

**501. (1)** A council may make and levy an annual charge for any of the following services provided, or proposed to be provided, on an annual basis by the council:

- water supply services
- sewerage services
- drainage services
- waste management services (other than domestic waste management services)
- any services prescribed by the regulations.

**(2)** A council may make and levy a single charge for two or more such services.

**(3)** An annual charge may be levied on each parcel of rateable land for which the service is provided or proposed to be provided.

**Charges for actual use**

**502.** A council may make a charge for the actual use of a service provided by the council.

**What is the relationship between rates and charges?**

**503. (1)** A charge may be made:

- (a) in addition to an ordinary rate; and
- (b) in addition to or instead of a special rate.

**(2)** If land is not rateable to a special rate for a particular service, a council may not levy a charge in respect of that land relating to the same service, unless the charge is limited to recovering the cost of providing the service to that land.

**Domestic waste management services**

**504. (1)** A council must not apply income from an ordinary rate towards the cost of providing domestic waste management services.

(2) Income to be applied by a council towards the cost of providing domestic waste management services must be obtained from the making and levying of a charge.

(3) Income obtained from charges for domestic waste management must be calculated so as to not exceed the reasonable cost to the council of providing those services.

## **PART 2—LIMIT OF ANNUAL INCOME FROM RATES AND CHARGES**

### **Application of Part**

**505.** This Part applies to:

- (a) **general income**, that is, income from ordinary rates, special rates and charges, other than:
  - (i) water supply special rates and sewerage special rates; and
  - (ii) charges for water supply services and sewerage services; and
  - (iii) annual charges for domestic waste management services; and
- (b) annual charges made and levied towards the cost of providing domestic waste management services.

### **Variation of general income**

**506.** The Minister may, by order published in the Gazette specify the percentage by which councils' general income for a specified year may be varied.

### **Variation of annual charges for domestic waste management services**

**507.** The Minister may, by order published in the Gazette:

- (a) specify the percentage by which the amounts of annual charges made by councils for domestic waste management services for a specified year may be varied; and
- (b) impose conditions with respect to the variation of those charges.

### **Orders under ss. 506 and 507**

**508. (1)** The year specified in an order under section 506 or 507 may be the year in which the order is published in the Gazette or a later year.

(2) The Minister may, by instrument in writing given to a council, specify the percentage by which the council's general income or the

amount of an annual charge for domestic waste management services, or both, for a specified year (being the year in which the instrument is given or a later year) may be varied.

(3) An instrument made under subsection (2) takes effect on the day it is signed by the Minister.

(4) Subject to subsection (5), a percentage specified in an order under section 506 or 507 applies to all councils uniformly, but does not apply to a council specified (in the order by which the percentage is specified) as being a council to which the percentage does not apply.

(5) A percentage specified in an order under section 506 or 507 for a year does not apply, and (if relevant) is taken never to have applied, to a council to which a percentage specified under subsection (2) for that year applies, whether the order specifying the percentage was made before, on or after the day on which the instrument specifying the percentage under subsection (2) was made.

(6) The Minister may specify a percentage by way of increase or decrease or a nil percentage for the purposes of section 506 or 507 or this section.

(7) The Minister may, by order published in the Gazette, specify that no limitation is to apply for the purposes of section 506 or 507 or this section for a specified year.

### **Maximum general income for a year**

**509. (1)** A council must not make rates and charges for a year so as to produce general income of an amount that exceeds the notional general income of the council for the previous year as varied by the percentage (if any) applicable to the council under section 506 for the year for which the rates and charges are made, except as provided by section 511.

(2) The **notional general income of a council for the previous year** is the amount that would have been derived if the same rates and charges as were made to produce the general income for that previous year had been so made but, in the case of rates, had been made in respect of

- (a) the valuations of rateable land in the council's valuation record applicable as at 1 July in that previous year and required under this Act to be used in that previous year for the making and levying of rates (not including valuations of those parcels of rateable land for which supplementary valuations referred to in paragraph (b) have been furnished); and
- (b) supplementary valuations of rateable land having the same base date as those valuations and furnished to the council under the Valuation of Land Act 1916 during that previous year; and

- (c) any estimates of increase in value of rateable land that are provided to the council under section 513 in respect of that previous year.

**Maximum annual charge for domestic waste management services**

**510.** A council must not make an annual charge for domestic waste management services for a parcel of rateable land that exceeds the annual charge for the previous year as varied by the percentage (if any) applicable to the council under section 507 for the year for which the charge is made.

**Catching up of shortfall in general income**

**511. (1)** If the rates and charges made by a council for a year that produce its general income produce an amount of general income that is less than the maximum amount permissible under section 509 for that year because the council did not apply a full percentage increase applicable to it under section 506 for the year for which the rates and charges were made, the council may make rates and charges for either or both of the next 2 years after the year for which the shortfall occurred so as to produce the maximum amount so permissible of the general income plus the whole or any part of the shortfall.

**(2)** An amount of a shortfall caught up in accordance with this section may be caught up once only.

**Effect of contravening s. 509, 510 or 511**

**512. (1)** If a council contravenes section 509, 510 or 511 in making a rate or charge for a year:

- (a) the contravention does not affect the validity of the rate or charge; but
- (b) rates and charges made for the following year by the council are invalid for all purposes unless:
  - (i) before the rates and charges were made the council submitted to the Minister such information respecting the rates and charges proposed to be made for that following year as the Minister may require and the Minister, by order published in the Gazette, approved of their being made; and
  - (ii) the rates and charges conform with the Minister's approval; and
  - (iii) the council did not contravene section 509, 510 or 511 in making the rates and charges.

(2) The Minister may, by order published in the Gazette, exempt a specified council from the operation of subsection (1) (b) for a specified year.

(3) Section 710 does not prevent a person's liability for a rate or charge that is invalid because of subsection (1) (b) from being disputed at any time on the ground of that invalidity.

### **Estimates of increases and decreases in value for purposes of notional rate income**

**513. (1)** A council may, at any time after 31 January in any year but before 31 May in that year, request the Valuer-General to provide estimates of increases and decreases in values for parcels of rateable land for which supplementary valuations are required to be furnished under the Valuation of Land Act 1916 but which, before the date of the request, have not been so furnished.

(2) The Valuer-General must provide the estimates within 1 month after the date of the request.

(3) An estimate must be made with respect to the same base date as the valuations used for rating purposes for the year in which the request is made.

(4) An estimate may relate to all parcels of rateable land of the class for which a kind of ordinary rate was made for the relevant year by the council.

## **PART 3—ORDINARY RATES**

### **Categorisation of land for purposes of ordinary rates**

**514.** Before making an ordinary rate, the council must have declared each parcel of rateable land in its area to be within one or other of the following categories:

- farmland
- residential
- mining
- business.

<p>NOTE: Land falls within the “business” category if it cannot be categorised as farmland, residential or mining. The main land uses that will fall within the “business” category are commercial and industrial.</p>
--

Local Government Act 1993 No. 30

RATES AND CHARGES

TYPES	LEVIED ON OR PAYABLE BY	DIFFERENTIATION				STRUCTURE	APPLICATION
Ordinary rates (s. 492)	All rateable land (ss. 554, 555, 556)	4 CATEGORIES (ss. 493, 514)				<ul style="list-style-type: none"> <li>Wholly ad valorem OR</li> <li>Base amount plus ad valorem (ss. 497, 498, 499)</li> <li>Base amount may yield up to 50% of income from rate.</li> <li>category or subcategory (s. 500)</li> </ul>	Ordinary rate must be made each year (s. 494) Ad valorem amount may be the same or different for categories (s. 528) and the same or different for subcategories (s. 529) Special rate may be made in addition to ordinary rate (s. 495 and see note to s. 495)
		Farmland (s. 515)	Residential (s. 516)	Mining (s. 517)	Business (s. 518)		
		OPTIONAL SUBCATEGORIES (ss. 493, 529)					
		* Intensity of land use * Economic factors	* Rural Centre of population	* Kind of mining	* Centre of activity		
special rates- (s. 492)	Rateable land that <ul style="list-style-type: none"> <li>benefits from works, etc.</li> <li>contributes to need for works, etc.</li> <li>has access to works, etc. (ss. 495, 498, 538)</li> </ul>	<ul style="list-style-type: none"> <li>Works</li> <li>Services</li> <li>Facilities</li> <li>Activities</li> </ul> provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of its area (other than domestic waste management services) (s. 495)					
Annual charges for domestic waste management services (s. 4%)	Each parcel of rateable land for which the service is available (s. 4%)	A council may determine differing amounts for the same charge (s. 541)				<ul style="list-style-type: none"> <li>Income from charges not to exceed reasonable cost to council of providing the service (s. 504)</li> <li>Annual percentage increase on charge for individual property (s. 510)</li> </ul>	Charge must be made each year (s. 496)
Other annual charges (s. 501)	Each parcel of rateable land for which the service is provided or proposed to be provided (s. 501)	<ul style="list-style-type: none"> <li>Water supply services</li> <li>Sewerage services</li> <li>Drainage services</li> <li>Waste management services (other than domestic waste management services)</li> <li>Other services prescribed by the regulations (s. 501)</li> </ul> A council may determine differing amounts for the same charge (s. 541)				Charge may be a single amount, a rate per unit, or a combination (s. 540) Charge may be of differing amounts (s. 541) A minimum amount may be fixed (s. 542) A single charge may be imposed for two or more services (s. 501) Criteria for determining amount (s. 539)	Charge may be made <ul style="list-style-type: none"> <li>in addition to ordinary rate and in addition to or instead of special rate (s. 503)</li> </ul>
Charges for actual use (s. 502)	The user of the service (s. 502)	According to the nature of the service					

### **Categorisation as farmland**

**515. (1)** Land is to be categorised as **farmland** if it is a parcel of rateable land valued as one assessment and its dominant use is for farming (that is, the business or industry of grazing, animal feedlots, dairying, pig-farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, vegetable growing, the growing of crops of any kind, forestry, oyster farming, or fish farming within the meaning of the Fisheries and Oyster Farms Act 1935, or any combination of those businesses or industries) which:

- (a) has a significant and substantial commercial purpose or character; and
- (b) is engaged in for the purpose of profit on a continuous or repetitive basis (whether or not a profit is actually made).

**(2)** Land is not to be categorised as farmland if it is rural residential land.

**(3)** The regulations may prescribe circumstances in which land is or is not to be categorised as farmland.

### **Categorisation as residential**

**516. (1)** Land is to be categorised as **residential** if it is a parcel of rateable land valued as one assessment and:

- (a) its dominant use is for residential accommodation (otherwise than as a hotel, motel, guest-house, boarding house, lodging house or nursing home or any other form of residential accommodation prescribed by the regulations); or
- (b) in the case of vacant land, it is zoned or otherwise designated for use under an environmental planning instrument (with or without development consent) for residential purposes; or
- (c) it is rural residential land.

**(2)** The regulations may prescribe circumstances in which land is or is not to be categorised as residential.

### **Categorisation as mining**

**517. (1)** Land is to be categorised as **mining** if it is a parcel of rateable land valued as one assessment and its dominant use is for a coal mine or metalliferous mine.

**(2)** The regulations may prescribe circumstances in which land is or is not to be categorised as mining.



**Categorisation as business**

**518.** Land is to be categorised as **business** if it cannot be categorised as farmland or residential.

**How is vacant land to be categorised?**

**519.** Subject to sections 515 and 516, vacant land is to be categorised:

- (a) if the land is zoned or otherwise designated for use under an environmental planning instrument—according to any purpose for which the land may be used after taking into account the nature of any improvements on the land and the nature of surrounding development; or
- (b) if the land is not so zoned or designated—according to the predominant categorisation of surrounding land.

**Notice of declaration of category**

**520.** A council must give notice to each rateable person of the category declared for each parcel of land for which the person is rateable.

**When does the declaration of a category take effect?**

**521.** A declaration that a parcel of land is within a particular category takes effect from the date specified for the purpose in the declaration.

**When does the declaration of a category cease?**

**522.** A declaration that a parcel of land is within a particular category ceases when a subsequent declaration concerning the land takes effect.

**When are the declarations of categories reviewed?**

**523. (1)** A council need not annually review a declaration that a parcel of land is within a particular category, but may review a declaration:

- (a) as part of a general review of the categorisation of all or a number of parcels of land; or
- (b) because it has reason to believe that a parcel of land should be differently categorised.

**(2)** A council must review a declaration if required to do so in accordance with section 525 by a person who is rateable in respect of a parcel of land to which the declaration applies.

**Notice of change of category**

**524.** A rateable person (or the person's agent) must notify the council within 30 days after the person's rateable land changes from one category to another.

**Application for change of category**

**525. (1)** A rateable person (or the person's agent) may apply to the council at any time:

- (a) for a review of a declaration that the person's rateable land is within a particular category for the purposes of section 514; or
- (b) to have the person's rateable land declared to be within a particular category for the purposes of that section.

**(2)** An application must be in writing, must include a description of the land concerned and must nominate the category the applicant considers the land should be within.

**(3)** The council must declare the land to be within the category nominated in the application unless it has reasonable grounds for believing that the land is not within that category.

**(4)** If the council has reasonable grounds for believing that the land is not within the nominated category, it may notify the applicant of any further information it requires in order to be satisfied that the land is within that category. After considering any such information, the council must declare the category for the land.

**(5)** The council must notify the applicant of its decision. The council must include the reasons for its decision if it declares that the land is not within the category nominated in the application.

**(6)** If the council has not notified the applicant of its decision within 40 days after the application is made to it, the council is taken, at the end of the 40-day period, to have declared the land to be within its existing category.

**Appeal against declaration of category**

**526. (1)** A rateable person who is dissatisfied with:

- (a) the date on which a declaration is specified, under section 521, to take effect; or
- (b) a declaration of a council under section 525,

may appeal to the Land and Environment Court.

(2) An appeal must be made within 30 days after the declaration is made.

(3) The Court, on an appeal, may declare the date on which a declaration is to take effect or the category for the land, or both, as the case requires.

### **Adjustment of rates following change in category**

**527.** A council must make an appropriate adjustment of rates paid or payable by a rateable person following a change in category of land.

### **Rate may be the same or different for different categories**

**528. (1)** The ad valorem amount (the amount in the dollar) of the ordinary rate may be the same for all categories of land or it may be different for different categories.

(2) The regulations may provide that the ad valorem amount of the ordinary rate for land categorised as mining is to be not more or less than a specified percentage of the ad valorem amount of the ordinary rate for land categorised as business. The regulations may apply to all councils or one or more councils specified in the regulations.

### **Rate may be the same or different within a category**

**529. (1)** Before making an ordinary rate, a council may determine a sub-category or sub-categories for one or more categories of rateable land in its area.

(2) A sub-category may be determined:

- (a) for the category “farmland”—according to the intensity of land use or economic factors affecting the land; or
- (b) for the category “residential”—according to whether the land is rural residential land or is within a centre of population; or
- (c) for the category “mining”—according to the kind of mining involved; or
- (d) for the category “business”—according to a centre of activity.

NOTE: In relation to the category “business”, a centre of activity might comprise a business centre, an industrial estate or some other concentration of like activities.
---

(3) The ad valorem amount (the amount in the dollar) of the ordinary rate may be the same for all land within a category or it may be different for different sub-categories.

**Ad valorem rate for the category “farmland”**

**530.** If the ad valorem amount is different for different categories or different sub-categories within a category, the ad valorem amount for the category “farmland” (or each sub-category within that category) must be lower than the ad valorem amount in each other category (or each sub-category within those other categories).

**What provisions of this Part apply to the determination of sub-categories?**

**531. (1)** Sections 519—527 apply to the determination of sub-categories for a category of rateable land in the same way as those sections apply to the declaration of a category.

(2) Notice of determination of a sub-category may be given in the same notice as the notice of declaration of a category.

**PART 4—MAKING OF RATES AND CHARGES****Publication of draft management plan**

**532.** A council must not make a rate or charge until it has given public notice (in accordance with section 405) of its draft management plan for the year for which the rate or charge is to be made and has considered any matters concerning the draft management plan (in accordance with section 406).

**Date by which a rate or charge must be made**

**533.** A rate or charge must be made before 1 August in the year for which the rate or charge is made or before such later date in that year as the Minister may, if the Minister is of the opinion that there are special circumstances, allow.

**Rate or charge to be made for a specified year**

**534.** Each rate or charge is to be made for a specified year, being the year in which the rate or charge is made or the next year.

**Rate or charge to be made by resolution**

**535.** A rate or charge is made by resolution of the council.

**What criteria are relevant in determining the base amount?**

**536. (1)** In determining a base amount of a rate, the council must have regard to (but is not limited to) the following:

- its general administration and overhead costs
- the extent to which projected ad valorem rates on individual properties do not reflect the cost of providing necessary services and facilities
- the level of grant or similar income available to provide necessary services and facilities
- the degree of congruity and homogeneity between the values of properties subject to the rate and their spread throughout the area
- whether a rate that is wholly an ad valorem rate would result in an uneven distribution of the rate burden because a comparatively high proportion of assessments would bear a comparatively low share of the total rate burden
- in the case of a special rate—the cost of providing the works, services, facilities or activities to the parcels of land subject to the rate (ignoring the rateable value of those parcels).

**(2)** The council, in having regard to its general administration and overhead costs, must use net costs, with income being included in the calculation of standard costs for all community service functions, library services, recreational and cultural facilities and amenities and the like.

**Form of resolution specifying base amounts of rates**

**537.** In the resolution that specifies a base amount of a rate, or the base amount of a rate for a category or sub-category of an ordinary rate, the council must state:

- (a) the amount in dollars of the base amount; and
- (b) the percentage, in conformity with section 500, of the total amount payable by the levying of the rate, or the rate for the category or sub-category concerned of the ordinary rate, that the levying of the base amount will produce.

**Form of resolution for special rate**

**538. (1)** In the resolution that makes a special rate, the council must state whether the special rate is to be levied on all rateable land in the council's area or on only a part of that land.

**(2)** If the special rate is to be levied on only a part of that land, the council must specify in the resolution the part on which it is to be levied.

**What criteria are relevant in determining the amount of a charge?**

**539. (1)** In determining the amount of a charge for a service, the council may have regard to (but is not limited to) the following:

- the purpose for which the service is provided
- the nature, extent and frequency of the service
- the cost of providing the service
- the categorisation for rating purposes of the land to which the service is provided
- the nature and use of premises to which the service is provided
- the area of land to which the service is provided
- in the case of water supply services—the quantity of water supplied.

**(2)** The amount of a charge need not be limited to recovering the cost of providing the service for which the charge is made, except as provided by sections 503 (2) and 504 (3).

**Form of charge**

**540.** The amount of a charge may be expressed as a single amount or as a rate per unit or as any combination of them.

NOTE: For example, the amount of a charge for a water supply service could be a fixed amount, a rate per kilolitre, or a combination of them.

**Differing amounts of a charge**

**541.** A council may determine differing amounts for the same charge.

**Minimum amounts of charges**

**542.** A council may, in a resolution making a charge, specify a minimum amount of the charge or, if the council has determined differing amounts for the same charge, minimum amounts for each such differing amount.

**Each form of rate and each charge to have its own name**

**543. (1)** A council must, when making an ordinary rate, give a short separate name for each amount of the ordinary rate.

(2) A council must, when making a special rate, give the special rate a short name.

(3) A council must, when making a charge, give a short separate name for each amount of the charge.

NOTE: The names given to the ordinary rate could include names like:

- Farmland—Ordinary
- Farmland—Poultry farms
- Residential—A
- Residential—B

The names given to special rates could include names like:

- Upper Smithtown water rate
- Lower Smithtown water rate
- Leisure centre—primary rate
- Leisure centre—secondary rate

The names given to charges could include names like:

- Waste management services—domestic
- Waste management services—commercial

### **Inclusion of names in rates and charges notices**

**544.** A council must include the name of each rate and charge, in full or in an abbreviated form, in the rates and charges notice by which the rate or charge is levied.

SOME STEPS RELATING TO THE MAKING OF RATES AND CHARGES

		Council requests Valuer-General to estimate increase in value of land subject to supplementary valuations. (This may be done after 31 January but before 31 May)	s. 513
		Minister specifies % (if any) by which last year's general income and annual charges for domestic waste management services are to vary	s. 506
		Council prepares draft management plan which includes the council's revenue policy for the next year	ss. 402, 404
	}	Council publicly exhibits draft management plan	s. 405 (1)
		Public notice of draft management plan for not less than 28 days	ss. 405 (2), 532
	}	Council considers submissions concerning draft management plan	ss. 406 (2), 706 (2)
		Council adopts management plan	s. 406
	}	Council makes rates and charges by resolution	ss. 535, 537, 538
<b>1 July</b>			
1 Aug.		Final day for making of rates and charges for current year (unless Minister allows a later day)	s. 533
		Rates levied by service of rates and charges notice	s. 546
31 Aug.		1st quarterly instalment of rates and charges payable (unless rate notice not served by 1 August)	s. 562



**Curing of irregularities**

**545. (1)** The Minister may authorise a council to do such things as may be necessary to cure an irregularity in the making or levying of a rate or charge.

**(2)** The Minister may declare, by order published in the Gazette, that a rate or charge that would otherwise be invalid because of a provision of this Part is taken to have been validly made from the time it purported to have been made. Such an order has effect according to its tenor.

**(3)** The Minister may not make such an order unless, in the Minister's opinion, the rate or charge concerned is invalid only because of a minor and technical breach of one or more of the provisions of this Part.

**(4)** The Minister may make such an order even though proceedings in relation to the validity have commenced.

**PART 5—LEVYING OF RATES AND CHARGES****Division 1—General****How is a rate or charge levied?**

**546. (1)** A rate or charge is levied on the land specified in a rates and charges notice by the service of the notice.

**(2)** The notice may be served at any time after 1 July in the year for which the rate or charge is made or in a subsequent year.

**(3)** A notice that is required to effect an adjustment of rates or charges may be served in the year for which the rate or charge is made or a subsequent year.

**(4)** The notice may include more than one rate, more than one charge and more than one parcel of land.

**(5)** It is not necessary to specify the name of the rateable person or the person liable to pay the charge in the notice if the council does not know the person's name.

**Method of rating dwellings under company title**

**547. (1)** For the purposes of this Act:

- (a)** a person who, because of the ownership of shares in a company, is entitled to occupy a dwelling in a building containing two or more such dwellings is taken to be the owner of land (or two or more persons who, because of the ownership of the shares in a company, are entitled to occupy the same dwelling in such a building are taken together to be the owners of land); and

- (b) the land value of the land of which the person is (or the persons are) taken to be the owner (or owners) is that proportion of the land value of the land on which the building is erected as the number of shares in the company owned by the person (or persons) bears to the total number of shares issued by the company.
- (2) The secretary of such a company must notify the council of:
- (a) the names and addresses of owners of shares in the company and of the number of shares issued to each owner; and
  - (b) changes in ownership of any shares in the company.
- (3) A rate or charge, to the extent to which it is payable by the owners of shares in accordance with this section, is not also payable by the company in which those shares are held.

NOTE: The rating of land under strata title is provided for:

- in the case of land under the Strata Titles Act 1973—in Division 6 of Part 4 of that Act
- in the case of land under the Strata Titles (Leasehold) Act 1986—in Division 6 of Part 4 of that Act.

### Minimum amounts

- 548. (1)** A council, in a resolution making a rate:
- (a) may specify a minimum amount of the rate which must be levied in respect of each separate parcel; or
  - (b) may specify:
    - (i) a minimum amount of the rate which must be levied in respect of each separate parcel, other than a separate parcel consisting of vacant land; and
    - (ii) a minimum amount of the rate, being less than the minimum amount of rate specified under subparagraph (i), which must be levied in respect of each separate parcel consisting of vacant land; or
  - (c) may specify:
    - (i) a minimum amount of the rate which must be levied in respect of each separate parcel, other than a separate parcel consisting of vacant land; and

- (ii) a minimum amount of the rate, being less than the minimum amount of the rate specified under subparagraph (i), which must be levied in respect of each separate parcel consisting of vacant land, other than a separate parcel consisting of vacant flood liable land or vacant coastal hazard liable land; and
- (iii) a minimum amount of the rate, being less than the minimum amount of the rate specified under subparagraph (ii), which must be levied in respect of each separate parcel of vacant flood liable land or vacant coastal hazard liable land.

(2) if a council makes an ordinary rate for different categories or sub-categories of land, it may specify a different minimum amount for each category or sub-category of land.

(3) Except as provided by subsection (4), the minimum amount of a rate is to be:

- (a) in respect of an ordinary rate, such amount as is determined by the council, not exceeding \$259 or such greater amount as may be prescribed by the regulations or, in the case of a rate for which a particular council may, under subsection (1) or (2), specify a minimum amount, such greater amount as the Minister may determine by instrument in writing; or
- (b) in respect of any other rate (not being a water supply special rate or a sewerage special rate), such amount as is determined by the council, not exceeding \$2 or such greater amount as the Minister may determine by instrument in writing given to the council.

(4) If the minimum amount of an ordinary rate for the previous year exceeded the amount prescribed or determined in respect of such a rate under subsection (3) (a), the council may determine the minimum amount of the ordinary rate in accordance with subsection (5).

(5) The minimum amount of the ordinary rate must be of such amount as is determined by the council, not exceeding the amount of the minimum ordinary rate for the previous year increased by the percentage (if any) specified in respect of the council under this Act.

(6) A minimum amount of a rate is not invalid because:

- (a) the minimum amount is levied on the whole or any part of the land subject to the rate; or
- (b) of the size of the minimum amount.

**Reduction of rates containing base amounts if levied on vacant land**

**549. (1)** A council may determine that a rate (whether an ordinary rate or a special rate) consisting of a base amount to which an ad valorem amount is added is to be levied on:

- (a) vacant land; or
- (b) vacant land that has suffered physical damage (such as flood liable or coastal hazard affected land); or
- (c) land prescribed by the regulations for the purposes of this section,

in accordance with this section.

**(2) If:**

- (a) the rate were to be levied on land on the basis that the rate consisted of only the ad valorem amount; and
- (b) the amount payable as a consequence of levying the ad valorem amount on the land would be less than \$250 (or such other amount as may be prescribed by the regulations),

the rate payable in respect of the land is \$250 (or such other amount as may be prescribed by the regulations) or the base amount of the rate, whichever is the lesser.

**Charge of rates and charges on land**

**550. (1)** A rate or charge levied under this Act on land (including any interest accrued on the rate or charge as referred to in section 566) and any costs awarded to the council by a court in proceedings to recover the rate or charge are a charge on the land.

**(2)** The charge ranks on an equal footing with a charge on the land under any other Act but takes priority over any other charge or encumbrance.

**(3)** The charge does not affect:

- (a) the estate of the Crown in land owned by the Crown; or
- (b) the estate of a Crown lessee if the lease is granted after the rate or charge was levied (whether or not the land was previously held under a lease from the Crown).

**(4)** The charge does not affect a bona fide purchaser for value who made due inquiry at the time of purchase but had no notice of the liability. A purchaser who has obtained a certificate under section 603 is taken to have made due inquiry.

**Division 2—Special rates and charges relating to water supply, sewerage and drainage****Application of Division 2**

**551.** This Division applies to a special rate or charge made for any purpose in relation to water supply, sewerage or drainage.

**What land may be subject to a water supply special rate or charge?**

**552. (1)** A special rate or charge relating to water supply may be levied on:

- (a) land that is supplied with water from a water pipe of the council; and
- (b) land that is situated within 225 metres of a water pipe of the council whether the land has a frontage or not to the public road (if any) in which the water pipe is laid, and although the land is not actually supplied with water from any water pipe of the council.

**(2)** A special rate or charge relating to water supply may not be levied on land unless water could be supplied to some part of the land from a standpipe at least 1 metre in height from the ground level, if such a pipe were laid and connected to the council's mains.

**(3)** A special rate or charge relating to sewerage may be levied on all land except:

- (a) land which is more than 75 metres from a sewer of the council and is not connected to the sewer; and
- (b) land from which sewage could not be discharged into any sewer of the council.

**(4)** A special rate or charge relating to drainage may be levied on rateable land that is within the basin served by the drainage works.

**Time at which land becomes subject to special rate or charge**

**553.** Land does not become subject to a special rate or charge to which this Division applies by virtue of the extension by a council of a water pipe, sewer or drain:

- (a) in the case of a special rate or charge relating to water supply—until 21 days after notice is given by the council in the Gazette of the extension of the water pipe or until the date on which the land is connected to the council's mains, whichever is the earlier; or

- (b) in the case of a special rate or charge relating to sewerage—until 60 days after notice is given by the council in the Gazette of the extension of the sewer or until the date on which the land is connected to the sewer, whichever is the earlier; or
- (c) in the case of a special rate or charge relating to drainage—until notice is given by the council in the Gazette of the extension of the drain.

## **PART 6—WHAT LAND IS RATEABLE?**

### **What land is rateable?**

**554.** All land in an area is rateable unless it is exempt from rating.

### **What land is exempt from all rates?**

**555. (1)** The following land is exempt from all rates:

- (a) land owned by the Crown, not being land held under a lease for private purposes;
- (b) land within a national park, historic site, nature reserve, state game reserve or karst conservation reserve (within the meaning of the National Parks and Wildlife Act 1974), whether or not the land is affected by a lease, licence, occupancy or use;
- (c) land that is within a special area (within the meaning of the Water Board Act 1987) for the Water Board and is Crown land or land vested in the Board;
- (d) land that is within a special area (within the meaning of the Water Supply Authorities Act 1987) for a water supply authority and is Crown land or land vested in the authority;
- (e) land that belongs to a religious body and is occupied and used in connection with:
  - (i) a church or other building used or occupied for public worship; or
  - (ii) a building used or occupied solely as the residence of a minister of religion in connection with any such church or building; or
  - (iii) a building used or occupied for the purpose of religious teaching or training; or
  - (iv) a building used or occupied solely as the residence of the official head or the assistant official head (or both) of any religious body in the State or in any diocese within the State;

- (f) land that belongs to and is occupied and used in connection with a school (being a government school or non-government school within the meaning of the Education Reform Act 1990 or a school in respect of which a certificate of exemption under section 78 of that Act is in force), including:
    - (i) a playground that belongs to and is used in connection with the school; and
    - (ii) a building occupied as a residence by a teacher, employee or caretaker of the school that belongs to and is used in connection with the school;
  - (g) land that is vested in the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council and is declared under Division 5 of Part 6 of the Aboriginal Land Rights Act 1983 to be exempt from payment of rates;
  - (h) land that is below high water mark and is used for oyster farming within the meaning of the Fisheries and Oyster Farms Act 1935.
- (2) Land is not rateable under subsection (1) (a) only because the land is leased by the Crown to a caretaker at a nominal rent.

**What land is exempt from all rates, other than water supply special rates and sewerage special rates?**

**556.** The following land is exempt from all rates, other than water supply special rates and sewerage special rates:

- (a) land that is a public place;
- (b) land used for a public reserve and vested in the Crown, a public body or trustees;
- (c) land used for a common and vested in the Crown, a public body or trustees;
- (d) land used for a public cemetery and vested in the Crown, a public body or trustees;
- (e) land used solely for a free public library and vested in the Crown, a public body or trustees;
- (f) land acquired under an environmental planning instrument for the public purpose specified in the instrument and not leased for private purposes;
- (g) land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim granted under Division 4 of Part 9 of the Mining Act 1992 and that the council has declared is not rateable;

- 
- (h) land that belongs to a public benevolent institution or, public charity and is used or occupied by the institution or charity for the purposes of the institution or charity;
  - (i) land that belongs to a public hospital;
  - (j) land that is vested in the Minister for Health, the Health Administration Corporation or the New South Wales Health Foundation;
  - (k) land that is vested in an area health service constituted under the Area Health Services Act 1986;
  - (l) land that is vested in a university, or a university college, and is used or occupied by the university or college solely for its purposes;
  - (m) land that is vested in the Crown or the Sydney Cricket and Sports Ground Trust and is used or occupied for the purposes of or in accordance with the Sydney Cricket and Sports Ground Act 1978;
  - (n) land that is vested in the Crown or the Zoological Parks Board and is used or occupied by the Board for its purposes;
  - (o) land that is vested in the Mines Rescue Board and is used for the purposes of a central rescue station or subsidiary rescue station within the meaning of the Mines Rescue Act 1925;
  - (p) land that is managed by the Teacher Housing Authority and on which a house is erected;
  - (q) land that is leased to the Crown for the purpose of cattle dipping;
  - (r) land that is specified or described in the regulations as being exempt from all rates, other than water supply special rates and sewerage special rates.

**What land is exempt from water supply special rates and sewerage special rates?**

**557. (1)** In addition to the land specified in section 555, water supply special rates may not be levied on land to which the council has resolved not to supply water.

**(2)** In addition to the land specified in section 555, sewerage special rates may not be levied on land which the council has resolved not to connect to the council's sewers.



**What land and bodies may be exempted from water supply special rates and sewerage special rates?**

**558. (1)** A council may exempt the following from payment of water supply special rates and sewerage special rates:

- (a) a public reserve;
- (b) a public hospital;
- (c) a public charity;
- (d) land:
  - (i) that is unoccupied; and
  - (ii) that is not supplied with water from a council water pipe and is not connected to a council sewer; and
  - (iii) that the council has determined is unsuitable for the erection of a building because it is liable to flooding or tidal inundation or liable to be affected by a coastal hazard;
- (e) land that, in the opinion of the council, it is impracticable, having regard to the physical features of the land or any unusual cost that may be incurred, to supply with water or connect to the sewer.

**(2)** A council may exempt from payment of water supply special rates land that is within 225 metres of a gravitation or rising water main and that is not connected to the main.

**(3)** A council may exempt from payment of sewerage special rates land that for the time being is not rateable in respect of the water supply special rate.

**(4)** A public hospital that is exempt from payment of water supply special rates is to be supplied with water, and a public charity that is so exempt may be supplied with water, on the following conditions:

- (a) there is to be supplied free of charge:
  - (i) in the case of a public hospital—300 litres per day (or such greater quantity as the council may determine) for each person resident in the hospital; and
  - (ii) in the case of a public charity—140 litres per day (or such greater quantity as the council may determine) for each person resident in an institution conducted by the public charity;
- (b) for the purposes of this provision:
  - (i) an inmate is taken to be resident; and
  - (ii) the number of persons resident is the average number of persons resident during the year preceding the period in respect of which charges would be payable; and

- (iii) the general manager may, at any reasonable time, require the production of the records of the public hospital or public charity to verify the average number;
  - (c) the supply is to be through a meter;
  - (d) any quantity of water in excess of that which may be supplied free of charge is to be paid for at the charge fixed by the council for excess water.
- (5) The council may revoke or alter an exemption.

**Determination as to whether a body is a public benevolent institution or public charity**

359. The provisions of the Charitable Fundraising Act 1991 are irrelevant in determining whether a body is a public benevolent institution or public charity for the purposes of section 556 or 558.

**PART 7—PAYMENT OF RATES AND CHARGES**

**Who is liable to pay rates?**

560. (1) The owner for the time being of land on which a rate is levied is liable to pay the rate to the council, except as provided by this section.

(2) If land owned by the Crown is leased, the lessee is liable to pay the rate, except as provided by subsection (4).

(3) If there are two or more owners, or two or more lessees from the Crown, of the land, they are jointly and severally liable to pay the rate.

(4) The Crown is liable to pay the rate for land owned by the Crown which is subject to the Housing Act 1912.

**Who is liable to pay charges?**

561. The person liable to pay a charge is:

- (a) the person who, if the charge were a rate and if the land on which the charge is levied were rateable in respect of that rate, would be liable under section 560 to pay the rate; or
- (b) the Crown in respect of land owned by the Crown, not being land held under a lease for private purposes.

**Payment of rates and standing charges by quarterly instalments**

562. (1) Rates and charges for a year may be paid by the person liable for payment by quarterly instalments.

(2) Each instalment is to be a quarter of the rates or charges, disregarding any remainder, together, in the case of the first instalment, with the remainder. However, if the amount of an instalment, other than the first instalment, is not a multiple of 10 cents, the amount of each instalment in excess of a multiple of 10 cents is to be subtracted from that instalment and added to the first instalment.

(3) The instalments are payable by 31 August, 30 November, 28 February and 31 May, except as provided by subsection (4).

(4) If the rates and charges notice is not served by 1 August, the first 2 instalments are payable by 30 November or by the day that is 30 days after service of the notice, whichever is the later.

(5) A council is to send quarterly notices to a person who makes payments in accordance with this section.

#### **Discount for prompt payment in full**

**563.** A council may discount the amount of a rate or charge to such extent as it determines if the whole of the discounted amount of the rate or charge is paid by a date nominated by the council.

#### **Agreement as to periodical payment of rates and charges**

**564. (1)** A council may accept payment of rates and charges due and payable by a person in accordance with an agreement made with the person.

(2) The council may write off or reduce interest accrued on rates or charges if the person complies with the agreement.

#### **Capital contributions instead of payment of special rates**

**565.** A council may waive payment by a rateable person of the whole or part of a special rate for one or more years as specified by the council if the person pays, or enters into a written agreement to pay, a lump sum towards the capital cost of any works, services or facilities for which the special rate is made.

#### **Accrual of interest on overdue rates and charges**

**566. (1)** Interest accrues on rates and charges that remain unpaid after they become due and payable.

(2) Interest accrues on a daily basis.

(3) The rate of interest is that set by the council but must not exceed the rate specified for the time being by the Minister by notice published in the Gazette.

(4) Accrued interest is, for the purpose of its recovery, taken to be a rate or charge which is due and payable.

(5) Interest continues to accrue on unpaid rates or charges even though judgment for payment of the rates or charges may have been obtained in a court. Interest is not payable on the judgment debt, despite any other Act.

### **Writing off of accrued interest**

**567.** The council may write off accrued interest on rates or charges payable by a person if, in its opinion:

- (a) the person is unable to pay the accrued interest for reasons beyond the person's control; or
- (b) payment of the accrued interest would cause the person hardship.

### **Application of payments**

**568.** Money paid to a council in respect of rates or charges levied on land is to be applied towards payment of those rates or charges in the order in which they became due.

### **Liability of the occupier**

**569. (1)** A council may serve on an occupier of land a notice of the amount of any rate or charge unpaid in respect of the land or of the amount of any judgment given against a person for any rate or charge unpaid in respect of the land, if the person liable to pay the rate or charge:

- (a) is resident outside New South Wales; or
- (b) is unknown to the council; or
- (c) has not been served in any legal proceedings for the recovery of the rate or charge after reasonable efforts have been made by or on behalf of the council to effect service; or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (e) dies; or
- (f) has had judgment given against him or her for the amount of the rate or charge.

(2) The notice may demand that any rent in respect of the land is to be paid by the occupier to the council as it falls due in satisfaction of the rate, charge or judgment.

(3) The council may recover the amount of the rate, charge or judgment outstanding as a debt from the occupier if rent is not paid to the council in accordance with the demand.

(4) A payment under this section to the council discharges the payer from any liability to any person to pay the rent.

### **Transfer of land in payment of rates or charges**

570. A council may accept a transfer of the land in respect of which rates or charges are or accrued interest is due and payable in full satisfaction of the rates, charges or accrued interest.

### **What happens if land is transferred?**

571. (1) A person who disposes of an estate in land continues to be liable to pay a rate or charge levied in respect of the land if the rate or charge was levied:

- (a) before the estate was disposed of; or
- (b) after the estate was disposed of but before notice of the transfer was given as required by this Act.

(2) A person who, as the holder of a licence, permit, permissive occupancy or authority under the Crown Lands Act 1989, was liable for rates or charges continues to be liable to pay a rate or charge levied in respect of the land subject to the licence, permit, permissive occupancy or authority if the rate or charge was levied before the licence, permit, permissive occupancy or authority was terminated or expired.

(3) A person who becomes liable for rates and charges levied on land is liable to the council for a rate or charge owing in respect of the land even though the person was not so liable when the rate or charge was levied.

### **What happens if the rateability of land changes?**

572. A rate is proportionate to the portion of the year for which land is rateable and to the portion of the land which is rateable.

### **What happens if land is subdivided?**

573. If land is subdivided, and a part is sold or let, any unpaid rates or charges may be apportioned by the council on the recommendation of the Valuer-General.

### Appeal on question of whether land is rateable

**574. (1)** A person who has an estate in land, or who is the holder of a licence or permit for land under the Crown Lands Act 1989, in respect of which a rates and charges notice is served may appeal to the Land and Environment Court against the levying of the rate on the ground that the land or part of it is not rateable or is not rateable to a particular ordinary rate or a particular special rate.

**(2)** An appeal may not be made under this section on the ground that land has been wrongly categorised under Part 3.

**(3)** An appeal must be made within 30 days after service of the rates and charges notice.

**(4)** If the Land and Environment Court determines that only a part of land is rateable, it is required to determine the value of that part.

NOTE: While the grounds of appeal concerning rates are limited to those specified in section 574, opportunity is given at different points in the rate-making process for objections, submissions (including submissions by way of objection) and applications to be made to a council concerning rates. These include:

- public notice of the draft management plan
- application for change of category for purposes of ordinary rate
- deferral and reduction of rates.

## PART 8—CONCESSIONS

### Division 1—Concessions for pensioners

#### Reductions for eligible pensioners

**575. (1)** If an eligible pensioner is the person solely liable, or a person jointly liable with one or more other persons, for a rate or charge levied on land on which a dwelling is situated, the rate or charge is, on application to the council and on production to the council of evidence sufficient to enable it to calculate the amount of the reduction, to be reduced in accordance with this section.

**(2)** Subject to subsection (3), the amount by which a rate or charge is required to be reduced is:

- (a)** if the person making the application is, on the date on which the rate or charge is levied, an eligible pensioner who is solely liable or jointly liable with one or more jointly eligible occupiers but with no other person for the rate or charge—one-half of the rate or charge; or

- (b) if the person making the application is, on the date on which the rate or charge is levied, an eligible pensioner who is jointly liable with one other person who is not a jointly eligible occupier, or with two or more other persons, any of whom is not a jointly eligible occupier for the rate or charge—an amount that bears to one-half of the rate or charge the same proportion as the part of that rate or charge for which, as between all persons liable to pay the rate or charge, the applicant and any jointly eligible occupier are liable bears to the whole of that rate or charge.
- (3) The total amount by which:
- (a) all ordinary rates and charges for domestic waste management services levied on any land for the same year are reduced is not to exceed \$250; and
  - (b) all water supply special rates or charges so levied are reduced is not to exceed \$87.50; and
  - (c) all sewerage special rates or charges so levied are reduced is not to exceed \$87.50.

However, if subsection (2) (b) applies, the maximum amounts specified in this subsection are to be proportionately reduced in line with the proportion applicable under subsection (2) (b).

(4) If a person becomes an eligible pensioner after the day on which a rate or charge is made and levied, the person is entitled to a reduction under this section of the rate or charge proportionate to the number of full quarters remaining after the day on which the person becomes an eligible pensioner in the year for which the rate or charge is made.

(5) A person who is an eligible pensioner or a jointly eligible occupier is, to the extent to which any rate or charge that, but for this section, would be payable by the person is reduced under this section, discharged from liability as between that person and any other person jointly liable to pay the rate or charge.

#### **Application of this Division to postponed rates**

**576.** If the payment of part of a rate which is required to be reduced by section 575 is postponed under Division 2, the amount of the rate for the purposes of this Division is taken to be the amount of that part of the rate that is not postponed under Division 2.

#### **Extension of concession to avoid hardship**

**577. (1)** If a council considers it proper to do so to avoid hardship, the council may, by order, direct that:

- (a) a person specified in the order:

- (i) who occupies a dwelling as his or her sole or principal place of living, which dwelling is the sole or principal place of living of an eligible pensioner; and
  - (ii) who is jointly liable with that eligible pensioner or with that eligible pensioner and one or more other persons in respect of the land on which that dwelling is situated; and
  - (iii) in respect of whom a reduction of rates or charges would not, if that person were solely liable in respect of that land, be required to be made under this Division; or
- (b) any person belonging to a class of persons specified in the order, being persons referred to in paragraph (a),

is; on and from the effective date of the order, taken, for the purposes of this Division, to be or to have been an eligible pensioner.

(2) If a council considers it proper to do so to avoid hardship, the council may, by order, direct that:

- (a) an eligible pensioner specified in the order who, although not liable, or although liable jointly with one or more other persons, to do so, has, for such period as, in the opinion of the council, warrants the making of an order under this section in respect of that person, paid the whole of the rates or charges for the land on which that dwelling is situated or is, in the opinion of the council, likely to pay the whole of the rates or charges in circumstances that in the opinion of the council warrant the making of an order under this subsection; or
- (b) any person belonging to a class of persons specified in the order being persons referred to in paragraph (a),

is, on and from the effective date of the order, taken, for the purposes of this Division, to be or to have been the person solely liable in respect of the land on which the dwelling is situated.

(3) An order under this section has effect according to its tenor.

#### **When does an order under s. 577 take effect?**

**578. (1)** An order under section 577 takes effect (or is taken to take effect) on such date as is specified in the order (the **effective date**), being a date in the year commencing on 1 July during which the order is made, whether or not that date is before or after the date on which the order is made.

(2) If a council makes an order under section 577 that is taken to take effect on a date that is before the date of the making of the order, the council may, in that order or in a subsequent order, give such directions



*Local Government Act 1993 No. 30*

---

as to refunding any rates or charges that have been paid and the charging of interest on overdue rates or charges and as to such other matters as the council thinks fit.

(3) An order under subsection (2) has effect according to its tenor.

**When and how is an application made for the purposes of this Division?**

579. (1) An application under this Division is to be made within the time and in the manner prescribed by the regulations.

(2) If no such regulations are in force, the application is to be made within the time and in the manner fixed by resolution of the council and, if an application is made for an order referred to in section 577, as the council may require.

(3) If, pursuant to an application made under this Division, a reduced rate or charge applies, the council may, if the eligibility of the applicant for a reduction in a subsequent rate or charge is verified by the council as prescribed by the regulations, reduce the subsequent rate or charge without requiring a further application under this Division.

**Variation by regulation of amounts of reductions**

580. The amount by which a rate or charge is to be reduced in accordance with this Division may be varied from time to time by the regulations.

**Reimbursement of councils by Parliament**

581. The Minister is required, out of money provided by Parliament, to pay to the council an amount equal to half that written off by the council under this Division because of section 575.

**Abandonment of pensioners rates and charges**

582. A council may waive or reduce rates, charges and interest due by any person prescribed by the regulations who is in receipt of a pension, benefit or allowance under the Social Security Act 1991 of the Commonwealth.

**Writing off of pensioners rates and charges**

583. (1) A council is to write off amounts of rates, charges and interest which are reduced or waived under this Division.

(2) A council may not take proceedings to recover an amount so written off unless the amount has been written off because of a wilfully false statement in an application under this Division or except as provided by section 584.

### Ending of concession

**584. (1)** If circumstances occur that cause a person's entitlement to a reduction, under this Division, of rates or charges to cease, the entitlement is taken to cease on the last day of the quarterly instalment period during which those circumstances occur.

(2) If, at the time the entitlement is taken to cease, the rates or charges for the whole year, reduced under this Division, have been paid in full, the portion of the payment that is proportionate to the quarterly instalment periods remaining after that time is to be credited to the rates or charges payable in respect of that part of the year remaining after that time.

### Division 2—Other concessions

NOTE: This Division enables a ratepayer to apply for a postponement of part of rates on land which is used only as the site of a house or rural land but, because of its zoning or permitted use, is valued for rating purposes in a way that reflects its permitted use rather than its actual use.

This Division also entitles the Maritime Services Board, the State Rail Authority and the State Transit Authority to a 25% rebate for ordinary rates payable for certain land.

Other rating concessions may be provided under other Acts. For example, section 127 of the Heritage Act 1977 provides for rates to be levied on heritage valuations determined in accordance with that Act instead of on other valuations.

### Who may apply for postponement of rates?

**585.** The rateable person for land described in any of the following paragraphs may apply to the council for a postponement of rates payable for the land in the current or following rating year (or in both years):

- (a) a parcel of land on which there is a single dwelling-house used or occupied as such and which is zoned or otherwise designated for use under an environmental planning instrument for the purposes of industry, commerce or the erection of residential flat buildings, not being land referred to in paragraph (b) or (c);
- (b) a parcel of land (which may comprise one or more lots or portions in a current plan) on which there is a single dwelling-house used or occupied as such and which is zoned or otherwise designated

under an environmental planning instrument so as to permit its subdivision for residential purposes, not being land referred to in paragraph (c);

- (c) a parcel of rural land (which may comprise one or more lots or portions in a current plan) which is zoned or otherwise designated under an environmental planning instrument so as to permit its use otherwise than as rural land, or its subdivision into two or more lots or portions, one or more of which has an area of less than 40 hectares.

### **Applications to be referred to Valuer-General**

**586. (1)** The council must refer the application to the Valuer-General to determine the attributable part of the land value of the land if the council is satisfied that the land is described in section 585 (a), (b) or (c).

**(2)** The Valuer-General must determine the attributable part of the land value and notify the council of the determination.

### **Attributable part of land value of land**

**587. (1)** The attributable part of the land value of land described in section 585 (a) or (b) is determined by deducting from the land value the value that the land would have if the land could be used only as the site of a single dwelling-house.

**(2)** The attributable part of the land value of land described in section 585 (c) that may be used otherwise than as rural land is determined by deducting from the land value the value that the land would have if the land could be used only as rural land.

**(3)** The attributable part of the land value of land described in section 585 (c) that may be subdivided into one or more lots having an area of less than 40 hectares is determined by deducting from the land value the value that the land would have if the land could only be subdivided into lots having an area of 40 hectares or more.

### **Determination of attributable part of land value by Valuer-General**

**588.** The Valuer-General must not, in determining the attributable part of the land value of land described in section 585 (a) or (b), take into account any portion of the land which the Valuer-General considers to be in excess of that which is reasonably necessary to be occupied or used in conjunction with the single dwelling-house.

**Redetermination of attributable part of land value**

**589. (1)** If a valuation for which the attributable part of the land value of land was determined is altered on objection or for the correction of a clerical error or misdescription, the council must require the Valuer-General to redetermine the attributable part of the land value of the land.

**(2)** The Valuer-General must, on redetermination of the attributable part of the land value of land, notify the council of the redetermination.

**Use of determination of attributable part of land value**

**590.** The attributable part of the land value of land determined, or redetermined, by the Valuer-General may be used by a council for the purpose of postponing rates only while the circumstances that made the land eligible for a postponement of rates under this Division continue to exist and the valuation of the land value for which the determination was made remains in use for rating purposes.

**Postponement of rates**

**591. (1)** A council must, in accordance with this section, postpone the payment of rates for land in any rating year for which a determination or redetermination of the attributable part of the land value is in force.

**(2)** For land for which no base amount of a rate is specified, the amount of the rate postponed is to be the same proportion of the rate as the attributable part of the land value bears to the land value.

**(3)** For land for which a base amount of a rate is specified, the amount of the rate postponed is to be the same proportion of the ad valorem amount of the rate as the attributable part of the land value bears to the land value.

**Interest on postponed rates**

**592.** Interest accrues on parts of rates postponed under this Division as if the rates were overdue rates and, for this purpose, the due dates for payment are taken to be the respective dates on which the parts of the rates which were payable became due.

**Paid rates to be refunded**

**593.** The council must refund to a rateable person any amount of rates paid by the person which exceeds the amount of the rates remaining after part of the rates is postponed.

**Adjustment of rates**

**594.** On a redetermination of the attributable part of the land value of land, a council must adjust amounts payable for rates or to be postponed as appropriate. Any amounts paid in excess are to be refunded and amounts short-paid are recoverable as arrears of rates.

**Rates to be written off after 5 years**

**595. (1)** If 5 years have elapsed since the commencement of a rating year for which part of the rates levied on land have been postponed under this Division, the part postponed and any interest accrued on that part must be written off by the council.

**(2)** Nothing in this section affects the right of the council to recover rates and interest, even though they have been written off under this section, if it subsequently appears to the council that they should not have been written off.

**Change of circumstances**

**596.** A rateable person for land for which an application has been made under this Division but not determined, or for which a determination or redetermination of the attributable part of the land value is in force, must inform the council (within 1 month) if land used or occupied solely as a site for a single dwelling-house, or as rural land, ceases to be so used or occupied.

**Entitlement to postponement ceases**

**597.** A person ceases to be entitled to a postponement of rates under this Division if the whole of a parcel of land used or occupied solely as a site for a single dwelling-house, or as rural land, ceases to be so used or occupied.

**Redetermination on partial change of circumstances**

**598. (1)** If part only of a parcel of land used or occupied solely as the site of a single dwelling-house or as rural land ceases to be so used or occupied, the council must require the Valuer-General to determine the amount of the attributable part of the land value of the land (if any) in relation to that part of the land and each other part of the land.

**(2)** The council must, in accordance with the Valuer-General's redetermination, make a due adjustment to the rates payable, or apply the provisions postponing rates, as it considers equitable in the circumstances.

**When and how is an application made for the purposes of this Division?**

**599. (1)** An application under this Division is to be made within the time and in the manner prescribed by the regulations.

**(2)** If no such regulations are in force, the application is to be made within the time and in the manner fixed by resolution of the council.

**(3)** If, pursuant to an application made under this Division, a reduced rate applies, the council may, if the eligibility of the rateable person for a reduction in a subsequent rate is verified by the council as prescribed by the regulations, reduce the subsequent rate without requiring a further application under this Division.

**Rebates in respect of certain land vested in public bodies**

**600. (1)** The rateable person in respect of a parcel of land vested in a public body is entitled to a rebate of 25 per cent of the ordinary rate made and leviable on the land or, if on objection by the council the Minister determines a lesser rebate, the lesser rebate.

**(2)** The amount of the rebate is to be written off and abandoned by the council.

**(3)** The rebate is to be allowed only if:

- (a)** access to the parcel is wholly or substantially over other lands for which the public body provides at its own cost such services as materially benefit the parcel; and
- (b)** the parcel is included in the then current list referred to in subsection (5); and
- (c)** the council has not objected to the inclusion of the parcel in the list or its objection has been dismissed.

**(4)** The rate notice must state the amount of the rebate, and, if an objection has been lodged under this section, must not be served unless and until the objection has been determined.

**(5)** A public body in which is vested any parcel of land in respect of which the rateable person is entitled to a rebate under this section must furnish to the council not later than 30 April before the commencement of the year for which the rate is made a list setting out the parcels of land of the nature referred to in subsection (3) (a), giving particulars of each parcel, the means of access to them and the material services provided by the public body in respect of those parcels as at 31 March in the year in which the list is furnished.

(6) If the council objects to the inclusion of any parcel in the list, it must serve notice of objection on the public body and on the Minister within 2 months after the list is furnished.

(7) The Minister may allow or dismiss an objection, but, before determining an objection, the Minister must, if either the public body or the council so desires, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for that purpose.

(8) The decision of the Minister on an objection is final.

(9) In this section:

**access and means of access** include lifts, stairways, escalators and passageways in or on a building, structure, work or excavation;

**public body** means the Maritime Services Board, the State Rail Authority and the State Transit Authority;

**services** means cleaning, lighting, repairs and maintenance of any access and means of access.

### **Hardship resulting from certain valuation changes**

**601. (1)** A ratepayer who, as a consequence of the making and levying of a rate on a valuation having a later base date than any valuation previously used by a council for the making and levying of a rate, suffers substantial hardship, may apply to the council for relief under this section.

(2) The council has a discretion to waive, reduce or defer the payment of the whole or any part of the increase in the amount of the rate payable by the ratepayer in such circumstances, for such period and subject to such conditions as it thinks fit.

(3) An applicant who is dissatisfied with a council's decision under this section may request the council to review its decision and the council, at its discretion, may do so.

## **PART 9—MISCELLANEOUS MATTERS CONCERNING RATES AND CHARGES**

### **Record of rates and charges**

**602. (1)** A council is required to keep a record of

- (a) each rate and charge made by it; and
- (b) in relation to each separate parcel of land within its area:
  - the land value of the parcel

- whether the parcel is rateable, exempt from all rates or exempt from particular kinds of rates
  - the category declared under Part 3 for the parcel of land; and
- (c) the owner or lessee of each such parcel.
- (2) The council may amend the record as the occasion requires.

### **Certificate as to rates and charges**

**603. (1)** A person may apply to the council for a certificate as to the amount (if any) due or payable to the council, by way of rates, charges or otherwise, in respect of a parcel of land.

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

(3) The council is to issue a certificate to the applicant stating:

- (a) the rates, charges or other amounts due or payable to the council in respect of the land and when they became due or payable, or that no such rates, charges or other amounts are due or payable; and
- (b) the balance of any special rate waived, under section 565, and the period for which it is waived; and
- (c) the work carried out on the land by the council and the cost that may be recovered from the owner or occupier for the work, or that no such work has been carried out; and
- (d) the name of the person shown in the council's records at the date of the certificate as the owner of the land, if the person acquired the land under Division 5 of Part 2 of Chapter 17.

(4) The production of the certificate is taken for all purposes to be conclusive proof in favour of a bona fide purchaser for value of the matters certified.

(5) For the purposes of this section, rates, charges and other amounts are taken to be due or payable even though the requisite period after service of any notice may not have expired.

### **Notice of transfer of land**

**604. (1)** Notice is required to be given to the council of the following events by the person specified in relation to the event:

- (a) the transfer of the estate of a rateable person in rateable land—by the transferee;
- (b) the entry into possession of rateable land under a mortgage—by the mortgagee;



- (c) the grant of probate or letters of administration in respect of the estate of a deceased person which includes an estate in rateable land—by the trustee, executor or administrator.
- (2) The notice must be given within 1 month after the event occurs.
- (3) It is not necessary to give notice of a mortgage or the discharge of a mortgage, except as provided by subsection (1) (b).
- (4) A person is taken to have satisfied the requirements of this section in relation to an event if notice of the event is lodged with the Registrar-General in accordance with the Conveyancing Act 1919 or the Real Property Act 1900 within 1 month after the event occurs.

**Expenses of tracing persons**

- 605. (1)** A council may add to the amount of a rate or charge any reasonable out-of-pocket expenses incurred in tracing the person liable to pay the rate or charge.
- (2) Those expenses may be recovered as rates or charges, at the same time as any rates or charges and without the need to give any notice concerning them.

**Notice of granting of certain Crown leases**

- 606. (1)** The statutory body or head of a Government Department who grants or takes the action necessary for the grant of a lease to any person for private purposes of Crown lands or land within a State forest must give particulars of the lease to the council of the area concerned within 60 days after the lease is granted.
- (2) The particulars do not have to be given if they are notified in the Gazette within the 60-day period.

**Writing off of rates, charges and accrued interest**

- 607.** The regulations may specify circumstances, in addition to those for which provision is made in this Chapter, in which a council may write off rates and charges and interest accrued on unpaid rates and charges.

**PART 10—FEES****Council fees for services**

- 608. (1)** A council may charge and recover an approved fee for any service it provides, other than a service provided, or proposed to be provided, on an annual basis for which it may make an annual charge under section 501.

(2) The services for which an approved fee may be charged include the following services provided under this Act or any other Act or the regulations by the council:

- supplying a service, product or commodity
- giving information
- providing a service in connection with the exercise of the council's regulatory functions—including receiving an application for approval, granting an approval, making an inspection and issuing a certificate
- allowing admission to any building or enclosure.

(3) In particular, a council may charge an approved fee for inspecting premises that are reasonably required to be inspected in the exercise of the council's functions, whether or not the inspection is requested or agreed to by the owner or occupier of the premises.

(4) However, a council may not charge an approved fee for the inspection of premises that are not used for a commercial activity, except where it is necessary to inspect the premises in connection with an application for an approval concerning the premises.

#### **How does a council determine the amount of a fee for a service?**

**609. (1)** A council, if it determines the amount of an approved fee for a service, must take into consideration the following factors:

- the cost to the council of providing the service
- the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department
- the importance of the service to the community  
any factors specified in the regulations.

(2) The cost to the council of providing a service in connection with the exercise of a regulatory function need not be the only basis for determining the approved fee for that service.

(3) A higher fee or an additional fee may be charged for an expedited service provided, for example, in a case of urgency.

#### **Effect of other Acts**

**610. (1)** If the amount of a fee for a service is determined under another Act:

- (a) a council may not determine an amount that is inconsistent with the amount determined under the other Act; and

(b) a council may not charge a fee in addition to the amount determined under the other Act.

(2) If the charging of a fee for a service is prohibited under another Act, a council must not charge a fee for the service under this Act.

### **Annual charge on rails, pipes etc**

**611. (1)** A council may make an annual charge on the person for the time being in possession, occupation or enjoyment of a rail, pipe, wire, pole, cable, tunnel or structure laid, erected, suspended, constructed or placed on, under or over a public place.

(2) The annual charge may be made, levied and recovered in accordance with this Act as if it were a rate.

(3) The annual charge is to be based on the nature and extent of the benefit enjoyed by the person concerned.

(4) If a person is aggrieved by the amount of the annual charge, the person may appeal to the Land and Environment Court and that Court may determine the amount.

(5) A person dissatisfied with the decision of the Court as being erroneous in law may appeal to the Supreme Court in the manner provided for appeals from the Land and Environment Court.

(6) This section does not apply to:

- (a) the Crown; or
- (b) the Water Board, the Hunter Water Corporation Limited or a water supply authority.

### **Publication of draft management plan**

**612.** A council must not determine the amount of an approved fee until it has given public notice (in accordance with section 405) of its draft management plan for the year in which the fee is to be made and has considered any submissions duly made to it concerning the draft management plan.

## **PART 11—GRANTS**

### **Constitution of the Local Government Grants Commission**

**613.** There is constituted by this Act a body corporate with the name of Local Government Grants Commission.

---

**Membership of Grants Commission**

**614. (1)** The Grants Commission is to consist of 4 commissioners appointed by the Governor.

**(2)** Of the commissioners:

- (a)** 3 are to be persons nominated by the Minister; and
- (b)** the other is to be an officer of the Department.

**(3)** At least 2 of the commissioners must be persons who are or have been associated with local government in New South Wales, either as members of a council or in some other way.

**(4)** One of the persons referred to in subsection (2) (a) is to be appointed as the chairperson of the Grants Commission.

**(5)** The commissioner referred to in subsection (2) (b) is to be the deputy chairperson of the Grants Commission.

**(6)** Schedule 5 has effect with respect to the commissioners and the procedure of the Grants Commission.

**What are the functions of the Grants Commission and the Minister under this Part?**

**615. (1)** The Grants Commission is required to make recommendations to the Minister with respect to the allocation among councils of the total amount proposed to be paid to the State under the Local Government (Financial Assistance) Act 1986 of the Commonwealth in respect of each financial year.

**(2)** The Grants Commission must make its recommendations in accordance with the requirements of the Commonwealth Act and any relevant principles of allocation approved under that Act.

**(3)** The Minister may either adopt the recommendations made by the Grants Commission or request the Grants Commission to reconsider its recommendations.

**(4)** The Grants Commission must, as soon as practicable after receiving a request from the Minister to reconsider its recommendation on a matter, make a further recommendation on the matter.

**(5)** The Minister must, having regard to or having adopted the recommendations of the Grants Commission, allocate among councils the total amount proposed to be paid to the State under the Commonwealth Act in respect of the financial year concerned.

(6) A council is entitled to receive from the Local Government Financial Assistance Fund, without delay, an unconditional payment of the amount allocated to it.

**How does the Grants Commission decide on its recommendations?**

**616. (1)** Before making a recommendation under section 615, the Grants Commission:

- (a) must hold such hearings and make such inspections, investigations and inquiries as it thinks necessary; and
- (b) may require a council to provide any information which may, in the opinion of the Grants Commission, assist it.

(2) A requirement to provide information may specify the form in which, the period within which and the person to whom the information is to be provided.

(3) A council, or an association of councils, may make submissions to the Grants Commission with respect to any matter likely to affect a recommendation under section 615 concerning the council or the association.

**What information does the Minister have to provide?**

**617.** The Minister is required, as soon as practicable after the end of each financial year, to provide to the Treasurer of the Commonwealth:

- (a) a statement, in accordance with a form approved by that Treasurer, specifying the payments to councils made under this Part during that financial year in accordance with the Commonwealth Act and the dates of those payments; and
- (b) a certificate by the Auditor-General that, in the Auditor-General's opinion, the contents of the statement are correct.

**What other functions does the Grants Commission have?**

**618. (1)** The Minister may, from time to time, request the Grants Commission to report on any matter that the Minister specifies.

(2) The Grants Commission must comply with such a request as soon as practicable after it is made.

(3) The Grants Commission may require a council to provide any information which may, in the opinion of the Commission, assist it in complying with such a request.

(4) A requirement to provide information may specify the form in which, the period within which and the person to whom the information is to be provided.

(5) A council must comply with such a requirement to the extent that it is able to do so.

### **What happens to the money paid to the State under the Commonwealth Act?**

**619.** (1) There is to be deposited into the Local Government Financial Assistance Fund established in the Special Deposits Account in the Treasury all money paid to the State under the Commonwealth Act.

(2) There is to be paid from that Fund the amounts that the Minister decides to allocate to councils under this Division.

### **Making of grants by the Minister**

**620.** The Minister may, out of money appropriated by Parliament for the purpose, make grants to councils and other bodies constituted under this Act.

## **PART 12—LOANS**

### **When and for what may a council borrow?**

**621.** A council may borrow at any time for any purpose allowed under this Act.

### **What form may a council borrowing take?**

**622.** A council may borrow by way of overdraft or loan or by any other means approved by the Minister.

### **Security for borrowings**

**623.** (1) A council may give security for any borrowing in such manner as may be prescribed by the regulations.

(2) All such securities rank on an equal footing, despite any other Act.

### **Are there any restrictions on a council borrowing?**

**624.** The Minister may, from time to time, impose limitations or restrictions on borrowings by a particular council or councils generally despite the other provisions of this Part.

**PART 13—INVESTMENTS****How may councils invest?**

**625. (1)** A council may invest money that is not, for the time being, required by the council for any other purpose.

**(2)** Money may be invested only:

- (a) in any security authorised by the Trustee Act 1925; or
- (b) in a form of investment notified by order of the Minister published in the Gazette.

**(3)** An order of the Minister notifying a form of investment for the purposes of this section must not be made without the approval of the Treasurer.

**(4)** The acquisition, in accordance with section 358, of a controlling interest in a corporation is not an investment for the purposes of this section.

## CHAPTER 16—OFFENCES

### INTRODUCTION

This Chapter creates offences which are grouped under the following headings:

- General offences—relating to failure to obtain an approval and failure to comply with an approval or order
- Public land
- Water, sewerage and stormwater drainage offences
- Street drinking—relating to the creation and enforcement of alcohol-free zones
- Parking—relating to parking in free parking areas
- Offence relating to civic office
- Offences relating to buildings
- Miscellaneous.

The Chapter does not contain all offences created under this Act. Other offences are found in section 312 in Chapter 10 (How are people elected to civic office?), sections 475, 476 and 480 in Chapter 14 (Honesty and disclosure of interests) and section 680 in Chapter 17 (Enforcement).

The regulations may also create offences, for example, offences relating to elections.

Furthermore, councils may conduct prosecutions for offences under other Acts, for example, the Crimes Act 1900 and the Summary Offences Act 1988.

Other Acts will be relevant to the provisions of this Chapter, including the Crimes Act 1900, the Justices Act 1902 and the Children (Criminal Proceedings) Act 1987. For example, under section 5 of the Children (Criminal Proceedings) Act 1987, it is to be conclusively presumed, in all criminal proceedings, that no child who is under the age of 10 years can be guilty of an offence.

Penalties for offences are expressed in penalty units. Under section 56 of the Interpretation Act 1987, the amount of a penalty unit is currently \$100.

### PART 1—GENERAL OFFENCES

#### Failure to obtain approval

**626. (1)** A person who carries out an activity specified in Part A of the Table to section 68 without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the carrying out of that activity is guilty of an offence, subject to subsection (2).

Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).



(2) A person who erects a building without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the erection of the building is guilty of an offence.

Maximum penalty: 200 penalty units (in the case of an individual) or 400 penalty units (in the case of a corporation).

(3) A person who carries out an activity specified in Parts B–F of the Table to section 68 without having obtained a prior approval of the council under Part 1 of Chapter 7 required for the carrying out of that activity is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Failure to comply with approval**

**627. (1)** A person who has obtained the approval of the council under Part 1 of Chapter 7 to the carrying out of an activity specified in Part A of the Table to section 68 and who carries out that activity otherwise than in accordance with the terms of that approval is guilty of an offence, subject to subsection (2).

Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).

(2) A person who has obtained such an approval with respect to the erection of a building and who erects the building otherwise than in accordance with the terms of the approval that relate to:

- (a) the design of the building; or
- (b) the manner in which the building is to be constructed; or
- (c) the materials to be used in the construction of the building; or
- (d) the appliances or other equipment to be installed in the building,

is guilty of an offence.

Maximum penalty: 200 penalty units (in the case of an individual) or 400 penalty units (in the case of a corporation).

(3) A person who has obtained the approval of the council under Part 1 of Chapter 7 to the carrying out of an activity specified in Parts B–F of the Table to section 68 and who carries out that activity otherwise than in accordance with the terms of that approval is guilty of an offence.

Maximum penalty: 20 penalty units.

**Failure to comply with order**

**628. (1)** A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos. 1–17 in the Table to section 124 is guilty of an offence.

Maximum penalty: 50 penalty units (in the case of an individual) or 100 penalty units (in the case of a corporation).

**(2)** A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos. 18–29 of the Table to section 124 is guilty of an offence.

Maximum penalty: 20 penalty units.

**(3)** A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of order No. 30 in the Table to section 124 is guilty of an offence.

Maximum penalty: The same penalty as the penalty imposed for carrying out the activity the subject of the approval otherwise than in accordance with the approval.

**(4)** A person who fails to comply with an order given to the person under section 125 to abate a public nuisance is guilty of an offence.

Maximum penalty: 20 penalty units.

**(5)** It is a sufficient defence to a prosecution for an offence to which this section applies if the defendant satisfies the court that the defendant was unaware of the fact that the activity in respect of which the offence arose was the subject of an order under Part 2 of Chapter 7.

**PART 2—PUBLIC LAND****Injuring plants and animals on public land**

**629. (1)** A person who, without lawful excuse, wilfully or negligently injures or unnecessarily disturbs any plant or animal on public land is guilty of an offence.

Maximum penalty: 5 penalty units.

**(2)** A person who, without lawful excuse, removes any plant or animal from public land is guilty of an offence.

Maximum penalty: 5 penalty units.

**Breaking glass and other matter on public land of a public road**

**630. (1)** A person who, without lawful excuse, wilfully breaks a bottle, glass, glass receptacle or syringe on public land or a public road is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) A person who, on public land or a public road, throws, places or leaves any bottle, glass, glass receptacle, syringe, broken glass or other matter or thing likely to endanger the safety of or cause injury to any person or animal or damage to any vehicle or property is guilty of an offence.

Maximum penalty: 5 penalty units.

(3) A person who:

- (a) breaks a bottle, glass, syringe or glass receptacle in a public bathing place under the control of the council; and
- (b) does not collect and remove all portions of the bottle, glass, syringe or glass receptacle either to a receptacle (if any) provided by the council for that purpose, or to a place beyond the public bathing place,

is guilty of an offence.

Maximum penalty: 5 penalty units.

#### **Damaging, defacing or polluting public bathing place**

**631.** A person who, in a public bathing place under the control of the council does any act which damages, defaces or pollutes the public bathing place or which is likely to damage, deface or pollute the public bathing place or anything relating to the public bathing place is guilty of an offence.

Maximum penalty: 5 penalty units.

#### **Acting contrary to notices erected by councils**

**632. (1)** A person who, on public land or in a public bathing place under the control of a council, fails to comply with the terms of a notice erected by the council is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) The terms of any such notice may relate to any one or more of the following:

- (a) the payment of a fee for entry to or the use of the land;
- (b) the use of a vehicle on the land;
- (c) the taking of any animal or thing onto the land;
- (d) the use of any animal or thing on the land;
- (e) the doing of any thing on the land;
- (f) the use of the land or any part of the land.

(3) The terms of a notice referred to in this section may:

- (a) apply generally or be limited in their application by reference to specified exceptions or factors; or

(b) apply differently according to different factors of a specified kind, or may do any combination of those things.

**Bathing (including nude bathing)**

**633. (1)** A person who, in a place being:

- (a) a public bathing place under the control of a council; or
- (b) a river, watercourse or tidal or non-tidal water; or
- (c) the sea adjacent to (although outside) an area; or
- (d) a public place adjacent to any of those places,

fails to comply with the terms of a notice erected by the council is guilty of an offence.

Maximum penalty: 5 penalty units.

**(2)** A person who is in public view in the nude in any place referred to in subsection (1) is guilty of an offence unless a notice erected by the council at the place allows the use of the place (or part of the place) for the purposes of nude bathing.

Maximum penalty: 5 penalty units.

**(3)** A council may erect a notice:

- (a) on land vested in or under the control of a council; or
- (b) on any other land, with the consent of the person who owns or controls the land.

**(4)** The terms of a notice referred to in this section may relate to either or both of the following:

- (a) the conduct and costume of the bathers in the place;
- (b) the use of the place (or any part of the place open to public view) for the purposes of nude bathing.

**(5)** The terms of a notice referred to in this section may:

- (a) apply generally or be limited in their application by reference to specified exceptions or factors; or
- (b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

**PART 3—WATER, SEWERAGE AND STORMWATER  
DRAINAGE OFFENCES**

**Unauthorised work**

**634. (1)** A person must not do any water supply work, sewerage work or stormwater drainage work unless the person:

- (a) is the holder of an endorsed licence or supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do (and to supervise) work of the kind concerned; or
- (b) is the holder of a registration certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work under supervision and does that work under the general supervision of the holder of a licence or Certificate referred to in paragraph (a); or
- (c) does the work, under the immediate supervision of a person referred to in paragraph (a).

Maximum penalty: 100 penalty units.

(2) A person who employs (or uses the services of) another person to do any water supply work, sewerage work or stormwater drainage work is guilty of an offence if the person knows that the other person, in doing the work, contravenes subsection (1).

Maximum penalty: 100 penalty units.

(3) Subsections (1) and (2) do not apply to or in respect of:

- (a) anything done in a part of an area that is not provided, or is not in the course of being provided, with a public water supply scheme or sewerage scheme; or
- (b) a council employee who, in the normal course of his or her duties, taps a water main, extends a water main, connects a service pipe to a water main, taps a sewer, attaches a house drain to a sewer, extends a sewer or fixes, alters or removes a council meter.

(4) A person who, in doing any water supply work, sewerage work or stormwater drainage work, uses, connects or installs a pipe, fitting, fixture or other thing in contravention of any requirement or specification contained in the regulations or other prescribed standard for water supply works, sewerage works or stormwater drainage works is guilty of an offence.

Maximum penalty (subsection (4)): 20 penalty units.

### **Damage to council property**

**635.** A person who wilfully or negligently removes, damages, destroys or otherwise interferes with a pipe, lock, tap, valve, engine or other thing belonging to the council in connection with the supply of water or the provision of sewerage services or drainage is guilty of an offence.

Maximum penalty: 20 penalty units.

**Tampering with meters and fittings**

**636. (1)** A person who wilfully or fraudulently, or by culpable negligence:

- (a) damages a meter, fitting, fixture or other thing belonging to a council in connection with the supply of water; or
- (b) alters the index of such a meter; or
- (c) prevents such a meter from duly registering the quantity of water supplied,

is guilty of an offence.

Maximum penalty: 20 penalty units.

**(2)** The existence of any means for altering the index of such a meter or preventing such a meter from duly registering the quantity of water supplied is *prima facie* evidence that the person supplied with water through the meter has wilfully or fraudulently altered the index of the meter or prevented the meter from duly registering the quantity of water supplied.

**Waste or misuse of water**

**637. (1)** A person who wilfully or negligently wastes or misuses water from a public water supply, or causes any such water to be wasted, is guilty of an offence.

Maximum penalty: 20 penalty units.

**(2)** If an offence against this section is committed, the occupier of the premises on which the offence was committed is guilty of the offence as if the occupier were the actual offender unless the occupier proves that the waste or misuse constituting the offence:

- (a) was not reasonably within the occupier's knowledge; and
- (b) was caused by the act of the person other than a member of the occupier's household or other than a person employed on the premises by the occupier.

**(3)** Subsection (2) does not affect the liability of the actual offender, but, if a penalty has been imposed on or recovered from any person in relation to the offence, no further penalty in respect of the offence may be imposed on or recovered from any other person.

**Discharge of prohibited matter into sewer or drain**

**638.** A person who discharges any prohibited matter (being matter prescribed by the regulations for the purposes of this section) into:

- (a) a public sewer; or

- (b) a fitting connected to a public sewer; or
- (c) a public drain; or
- (d) a gutter of a council,

is guilty of an offence.

Maximum penalty: 20 penalty units.

### **Pollution of public water supply**

**639. (1)** A person who wilfully or negligently does any act which damages or pollutes (or is likely to damage or pollute) a public water supply, or a source of that supply, is guilty of an offence.

Maximum penalty: 20 penalty units.

**(2)** The occupier of premises on which a pipe or fitting supplied with water from a public water supply is directly connected to a device or fitting:

- (a) that is designed for use for the dispensing of any chemical compound capable of contaminating the water supply; and
- (b) that is a device or fitting of a type other than a type approved for such connection by the Principal Engineer, Sewerage Services and Operations, Public Works Department,

is guilty of an offence as if the occupier were the person who actually made the connection.

**(3)** Subsection (2) does not affect the liability of the person who actually made the connection, but, if a penalty has been imposed on or recovered from any person in relation to the offence, no further penalty in respect of the offence may be imposed on or recovered from any other person.

### **Offences in catchment districts**

**640.** A person who wilfully or negligently does any act in contravention of a prohibition or restriction in a notice erected in a catchment district by a council is guilty of an offence.

Maximum penalty: 20 penalty units.

### **Unlawful sale of water**

**641.** A person supplied with water by a council must not sell any of the water to another person.

Maximum penalty: 20 penalty units.

**PART 4—STREET DRINKING****Drinking of alcohol in alcohol-free zone**

**642. (1)** It is the duty of a police officer who finds a person drinking or about to drink, or who has recently been drinking, alcohol in an alcohol-free zone to warn the person that drinking of alcohol in the zone is prohibited and that alcohol in the person's possession may be confiscated if the person attempts to drink any of it in the zone.

**(2)** A person who has received a warning under subsection (1) but who, in the same alcohol-free zone in which the warning was given, and on the same day:

- (a) commences to drink alcohol in the zone; or
- (b) fails to stop drinking alcohol in the zone; or
- (c) resumes drinking alcohol in the zone,

is guilty of an offence.

Maximum penalty: 0.2 penalty unit.

**Confiscation of alcohol**

**643. (1)** Alcohol in the immediate possession of a person in an alcohol-free zone who is committing, or has just committed, an offence under section 642, and any container in which the alcohol is packaged, may be seized by a police officer.

**(2)** Alcohol (and any container) seized under this section is, by virtue of the seizure, forfeited to the Crown and may be disposed of in accordance with directions given by the Commissioner of Police.

**Alcohol-free zones**

**644. (1)** A council may, by resolution, declare a zone consisting of one or more public roads or parts of public roads within the area to be an alcohol-free zone.

**(2)** Such a resolution is not validly made unless:

- (a) the council has received an application in a form approved by the Minister:
  - (i) from a person who the council is satisfied is a representative of a bona fide community group active in the area; or
  - (ii) from one or more police officers; or
  - (iii) from one or more persons who the council is satisfied live or work in the area,



requesting that the zone concerned be established as an alcohol-free zone; and

- (b) the council has assessed the application by reference to guidelines, if any, for the time being in force under section 646, and all aspects of the proposed alcohol-free zone accord in all respects with the guidelines; and
- (c) the council has, by publication in one or more newspapers circulating in the area as a whole or in a part of the area that includes the zone concerned:
  - (i) given notice of its intention to establish the zone as an alcohol-free zone; and
  - (ii) invited representations and objections from any person or group within the area that wishes to make them, and has considered any such representations and objections received by the council within 14 days after that publication; and
- (d) if, following consideration of representations and objections under paragraph (c), the council still intends to make the appropriate resolution—advice to that effect has been given by the council to:
  - (i) the Anti-Discrimination Board; and
  - (ii) the officer in charge of the police station within or nearest to the zone concerned; and
  - (iii) the occupier of any premises in respect of which a licence is in force under the Liquor Act 1982 and which border on the zone,

and the council has considered any written representations made by or on behalf of any of those persons or bodies within 30 days after advising them.

- (3) When, in respect of a zone proposed as an alcohol-free zone:
  - (a) a valid resolution has been passed; and
  - (b) a starting date for the zone's operation has been specified and notified at least 7 days in advance by publication in one or more newspapers circulating in the area as a whole or in a part of the area that includes the zone concerned; and
  - (c) conspicuous signs that comply with the requirements of the guidelines, if any, for the time being in force under section 646 have been erected by or with the approval of the council on the roads or parts of roads affected, clearly indicating that the drinking of alcohol is prohibited in the zone and the period for which the zone operates as an alcohol-free zone,

the zone concerned is established as an alcohol-free zone from the date so specified.

(4) By force of this subsection, the zone ceases to operate as an alcohol-free zone on and from the first anniversary of its starting date, but nothing in this subsection prevents its re-establishment from time to time, in accordance with the procedures provided by this Part, as an alcohol-free zone for a further term or terms of one year.

### **Suspension or cancellation**

**645. (1)** The council may, at the request of any person or body or of its own motion, suspend the operation of an alcohol-free zone by publishing notice of the suspension in a newspaper circulating in the area as a whole or in a part of the area that includes the zone concerned.

(2) During the period indicated in such a notice as the period of suspension, the zone does not operate as an alcohol-free zone.

(3) In like manner the council may at any time cancel the operation of an alcohol-free zone.

### **Guidelines for alcohol-free zones**

**646. (1)** For the purposes of this Part, the Minister may from time to time prepare, adopt or vary guidelines to be followed by councils for the establishment of an alcohol-free zone or the cancellation or suspension of the operation of an alcohol-free zone.

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

### **Penalty notices**

**647. (1)** A police officer may serve a penalty notice on a person if it appears to the police officer that the person has committed an offence under section 642.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay within the time and to the person specified in the notice, the maximum amount of the penalty for the offence.

(3) A penalty notice may be served personally or by post.

(4) If the maximum amount of the penalty for the offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(6) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

#### **Other laws not affected**

**648.** This Part is to be read as supplementing, and not as derogating from, the provisions of the Summary Offences Act 1988 or any other Act or law.

#### **Fine defaulters not to be detained**

**649.** No person is to be imprisoned or detained in a detention centre for failing to pay a pecuniary penalty for an offence under section 642 or for failing to pay an amount specified in a penalty notice issued in relation to such an offence.

### **PART 5—PARKING**

#### **Use of council's free parking areas**

**650. (1)** The driver of a vehicle parked in a free parking area otherwise than as permitted by a notice or sign erected by the council is guilty of an offence.

Maximum penalty: 5 penalty units.

**(2)** The terms of any such notice or sign may relate to any one or more of the following:

- (a) the time during which the public may use the free parking area;
- (b) the maximum period for which a vehicle may be parked in the free parking area (or in any part of the free parking area);
- (c) the designation of a parking space within the free parking area as a space for the sole use of persons with disabilities.

**(3)** For the purposes of this section, a vehicle parked otherwise than as permitted by such a notice or sign includes a vehicle parked in a parking space designated as a space for the sole use of persons with disabilities, unless:

- (a) a parking authority for a person with disabilities is displayed on the vehicle in the manner specified in the authority; and
- (b) the conditions specified in the authority are being observed; and
- (c) the authority is in force.

**(4)** If spaces in which a vehicle may be parked in a free parking area are marked by the council (for example, by means of painted lines or by

studs, pads or plates), a person must not cause a vehicle to be parked in a free parking area:

- (a) otherwise than in such a parking space; or
- (b) in a parking space in which another vehicle is parked; or
- (c) so that any part of the vehicle is on or across (or partly on or across) any line, stud, pad, plate or other mark defining the space or so that the vehicle is not wholly within the space.

Maximum penalty: 5 penalty units.

(5) The driver of a vehicle in a free parking area must at all times observe and comply with any reasonable direction of any authorised person regarding the parking or movement of the vehicle within the area.

Maximum penalty: 5 penalty units.

#### **Liability of vehicle owner for offence under s 650**

**651. (1)** If an offence is committed under section 650 (1), the person who at the time of the commission of the offence was the owner of the vehicle is guilty of an offence against that subsection as if the person were the actual offender unless:

- (a) in any case where the offence is dealt with under section 18B of the Traffic Act 1909, the person satisfies the prescribed officer under that section that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used; or
- (b) in any other case, the court is satisfied that the vehicle was at the relevant time a stolen vehicle or a vehicle illegally taken or used.

(2) Subsection (1) does not affect the liability of the actual offender but, if a penalty has been imposed or recovered from any person in relation to the offence, no further penalty in respect of the offence may be imposed on or recovered from any other person.

(3) Despite subsection (1), the owner of a vehicle is not because of that subsection, guilty of an offence if:

- (a) in any case where the offence is dealt with under section 18B of the Traffic Act 1909, the owner:
  - (i) within 21 days after service on the owner of a notice under that section alleging that he or she has been guilty of the offence, supplies by statutory declaration to the prescribed officer under that section the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence; or

- (ii) satisfies that officer that the owner did not know and could not with reasonable diligence have ascertained that name and address; or
  - (b) in any other case, the owner:
    - (i) within 21 days after service on the owner of a summons in respect of the offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence; or
    - (ii) satisfies, the court that he or she did not know and could not with reasonable diligence have ascertained that name and address.
- (4) A statutory declaration under subsection (3) if produced in any proceedings against the person named in the statutory declaration and in respect of the offence in respect of which the statutory declaration was supplied is evidence that that person was in charge of the vehicle at all relevant times relating to that offence.

(5) A statutory declaration that relates to more than one offence is taken not to, be a statutory declaration under, or for the purposes of, subsection (3).

(6) In this section:

**owner**, in relation to a vehicle, being a registered vehicle includes:

- (a) every person who is the owner or joint owner or part owner of the vehicle and any person who has the use of the vehicle under a hire-purchase agreement (but not the lessor under any such agreement);
- (b) the person in whose name the vehicle is registered (unless that person has sold or otherwise disposed of the vehicle and has complied with the regulations under the Traffic Act 1909 applicable to that person with respect to the sale or disposal);
- (c) in the case of a vehicle to which a trader's plate has been affixed, the person to whom the trader's plate is issued; and
- (d) a person who, pursuant to a regulation under section 3 (1) (q11) or (q12) of the Traffic Act 1909, is to be treated as being, for the purposes of section 18A of that Act, the owner of the vehicle;

**registered** means registered under the Traffic Act 1909;

**trader's plate** means a trader's plate issued under regulations made under the Traffic Act 1909.

## PART 6—OFFENCE RELATING TO CIVIC OFFICE

### Acting in civic office while subject to disqualification

**652. (1)** A person who acts in a civic office while disqualified from holding the office is guilty of an offence.

Maximum penalty: 20 penalty units.

**(2)** If the court is satisfied that an offence under this section was of a trifling character comprising acts done in good faith while in ignorance of the fact that the result would be disqualification, the court may:

- (a) dismiss the case; or
- (b) proceed to conviction and declare that section 276 (3) does not apply to the conviction or applies only to a specified extent.

**(3)** A declaration by a court under this section as to the application of section 276 (3) has effect according to its tenor.

## PART 7—OFFENCES RELATING TO BUILDINGS

### To which buildings does this Part apply?

**653.** This Part applies to all buildings whenever erected.

### Fire safety notices

**654.** If:

- (a) a building includes a fire-isolated passageway, a fire-isolated ramp or a fire-isolated stairway; and
- (b) a notice of a size and kind prescribed by the regulations is not at all times displayed in a conspicuous position adjacent to, but not within, the passageway, ramp or stairway,

the occupier of the part of the premises adjacent to the passageway, ramp or stairway, or the owner of that part if it is unoccupied, is guilty of an offence.

Maximum penalty: 20 penalty units.

### Fire exits

**655.** A person:

- (a) who places anything that may impede the free passage of persons:
  - (i) in a path of travel leading to a required exit; or
  - (ii) in a stairway, passageway or ramp serving as or forming part of a required exit; or

- (b) who interferes with, or causes obstruction or impediment to, the normal operation of any self-closing fire doors providing access to a stairway, passageway or ramp serving as or forming part of a required exit; or
- (c) who removes, damages or otherwise interferes with a notice displayed, in accordance with the requirements of the regulations, adjacent to a doorway providing access to a fire-isolated stairway, fire-isolated passageway or fire-isolated ramp serving as or forming part of a required exit,

is guilty of an offence.

Maximum penalty: 10 penalty units.

#### **Doors relating to fire exits**

**656.** A person:

- (a) who locks or otherwise interferes with any door that:
  - (i) serves as or forms part of a required exit; or
  - (ii) is situated in a path of travel, in such a manner as to render the door incapable of being operated in accordance with the requirements of the regulations; or
- (b) who obstructs any doorway that:
  - (i) serves as or forms part of a required exit; or
  - (ii) is situated in a path of travel, in such a manner as to render the doorway incapable of being used in accordance with the requirements of the regulations,

is guilty of an offence.

Maximum penalty: 10 penalty units.

#### **Paths of travel to fire exits**

**657.** The owner of a building:

- (a) who fails to ensure that:
  - (i) any path of travel leading to a required exit; and
  - (ii) any stairway, passageway or ramp serving as or forming part of a required exit,

is kept clear of anything which may impede the free passage of persons; or

- (b) who fails to ensure that any self-closing fire doors providing access to any stairway, passageway or ramp serving as or forming part of a required exit are capable of normal operation; or

(c) who fails to ensure that any notice required by the regulations to be displayed adjacent to any doorway providing access to a stairway, passageway or ramp serving as or forming part of a required exit is so displayed,

is guilty of an offence.

Maximum penalty: 10 penalty units.

### **Building excavations**

**658.** A person who excavates for building purposes is guilty of an offence if the excavation is not properly guarded and protected to prevent the excavation from being dangerous to life and property.

Maximum penalty: 20 penalty units.

## **PART 8—MISCELLANEOUS**

### **Production of certificate of authority to enter premises**

**659.** A person authorised under this Act to enter premises who does not, on demand by the owner or occupier of the premises, produce the written authority to enter given to the person by the Director-General or the council is guilty of an offence.

Maximum penalty: 5 penalty units.

### **Obstruction**

**660.** A person who wilfully obstructs any of the following in the exercise of any function under this Act, or any other Act or any regulation conferring functions on a council is guilty of an offence:

- the Minister
- the Director-General
- a Departmental representative authorised under Part 5 of Chapter 13
- a person authorised under section 747
- an auditor appointed under Part 3 of Chapter 13
- a council
- a councillor
- an administrator appointed as referred to in section 256
- an employee of a council
- a police officer
- a person duly authorised to perform the function for the purposes of the Act or regulation concerned.

Maximum penalty: 20 penalty units.



**Failure to comply with certain directions**

**661.** A person who fails, without lawful excuse, to comply with a direction given to the person under Part 3 or 5 of Chapter 13 by a person authorised to give the direction is guilty of an offence.

Maximum penalty: 20 penalty units.

**Occupier, manager or agent refusing to give name of owner**

**662.** An occupier or manager of any premises or an agent of the owner of the premises who, on the request of a council or an authorised person, refuses or wilfully omits to disclose or wilfully misstates the name and address of the owner of the premises or of the person receiving or authorised to receive the rents of the premises is guilty of an offence.

Maximum penalty: 5 penalty units.

**Owner refusing to give name of manager or occupier**

**663.** An owner of premises who, on the request of a council or an authorised person, refuses or wilfully omits to disclose or wilfully misstates the name and address of the manager or occupier of the premises is guilty of an offence.

Maximum penalty: 5 penalty units.

**Disclosure and misuse of information**

**664. (1)** A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974 or the Freedom of Information Act 1989; or
- (e) with other lawful excuse.

**(2)** A person acting in the administration or execution of this Act must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner or a relative of the person.

(3) A person acting in the administration or execution of this Act, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner or a relative of the person, influence:

- (a) the determination of an application for an approval; or
- (b) the giving of an order.

Maximum penalty: 50 penalty units.

#### **False or misleading information**

**665.** A person who, in or in connection with an application under this Act, makes any statement that the person knows to be false or misleading in a material particular is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Wilful destruction of documents**

**666. (1)** Any person who, without reasonable excuse, wilfully destroys any document belonging to a council is guilty of an offence.

Maximum penalty: 20 penalty units.

**(2)** Any person who, without lawful authority, destroys, defaces or alters a council record is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Wilful destruction of notices and signs**

**667.** A person who wilfully removes, destroys, defaces, damages or otherwise interferes with a notice or sign erected by a council is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **Attempts**

**668.** A person who attempts to commit an offence against this Act or the regulations is guilty in the same degree and liable to the same penalty as a person who commits the offence.

#### **Penalties extended to persons causing offence**

**669.** A person:

- (a) who causes the commission of an offence against this Act or the regulations; or
- (b) by whose order or direction such an offence is committed; or

- (c) who aids, abets, counsels or procures or by act or omission is directly or indirectly concerned in the commission of such an offence,

is guilty in the same degree and liable to the same penalty as the principal offender.

### **Notices and signs**

**670. (1)** A person who fails to comply with the terms of a notice or sign referred to in this Chapter is not guilty of an offence unless the notice or sign:

- (a) is clearly legible; and
- (b) where it relates to:
  - (i) the whole of a parcel of public land, is exhibited at each entrance to the parcel of public land or in a conspicuous place in or in the vicinity of the parcel of public land; or
  - (ii) part only of a parcel of public land, is exhibited at each entrance to that part or in a conspicuous place in or in the vicinity of that part; or
  - (iii), a building, is exhibited (as may be appropriate) either inside or at or near the entrance to the building.

**(2)** The council has the onus of proving that the notice or sign complies with this section.

### **Proof of lawful or reasonable excuse**

**671.** Where, by this Act, the doing of a particular act without lawful or reasonable excuse is made an offence, proof of the lawful or reasonable excuse lies on the accused.

## CHAPTER 17—ENFORCEMENT

### INTRODUCTION

Part 1 of this Chapter provides means for enforcing the Act in addition to the summary prosecution of offences under Chapter 16. Examples of these remedies include:

- proceedings in the Land and Environment Court to restrain a breach of the Act
- the carrying out of work by a council following a failure by a person to carry out the work in accordance with an order of the council
- prosecution in certain circumstances of the owner of an illegally parked vehicle instead of the actual offender
- the issue of penalty notices.

Division 1 of Part 2 relates to functions of a council in relation to legal proceedings. Examples of these functions include:

- the right to appear before a local land board
- the making of allegations and their effect
- payment of employees for expenses incurred in taking legal action on behalf of a council.

Division 2 of Part 2 deals with matters relating to evidence in legal proceedings involving a council. These include:

- matters of which proof by a council is not required unless evidence to the contrary is given
- matters of which judicial notice is to be taken.

Division 3 of Part 2 deals with certain notices involving a council, including the content, giving and service of the notices.

Division 4 of Part 2 deals with legal proceedings to recover unpaid rates and charges.

Division 5 of Part 2 enables the sale of land and interests in land (other than an estate or interest of the Crown in land) to recover amounts unpaid for rates and charges.

Part 3 deals with matters such as compensation and exculpation from liability that may arise as a result of proceedings involving a council.

### PART 1—GENERAL

#### **What constitutes a breach of this Act for the purposes of this Part?**

**672.** In this Part:

(a) **a breach of this Act** means:

- (i) a contravention of or failure to comply with this Act;

(ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act; and

(b) **this Act** includes:

- (i) an approval under Part 1 of Chapter 7; and
- (ii) an order under Part 2 of Chapter 7; and
- (iii) the regulations.

#### **Remedy or restraint of breaches of this Act—the Minister, the Director-General and councils**

**673.** The Minister, the Director-General or a council may bring proceedings in the Land and Environment Court or such other court as may be specified in this Act for the purpose of the proceedings for an order to remedy or restrain a breach of this Act.

#### **Remedy or restraint of breaches of this Act—persons whose rights are infringed**

**674. (1)** Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act.

**(2)** The proceedings may be brought by a person on the person's own behalf or on behalf of the person and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

**(3)** Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

#### **Time limit on proceedings questioning the validity of approvals**

**675.** Proceedings questioning the validity of an approval under Part 1 of Chapter 7 may not, if the council has given public notice of the granting of the approval in the manner and form prescribed by the regulations, be commenced more than 3 months after the date on which the notice was given.

#### **Functions of the Land and Environment Court**

**676. (1)** If the Land and Environment Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless

restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.

(2) If a breach of this Act would not have been committed but for the failure to obtain an approval under Part 1 of Chapter 7, the Court on application being made by the defendant, may:

- (a) adjourn the proceedings to enable an application to be made under Part 1 of Chapter 7 to obtain that approval; and
- (b) in its discretion, by interlocutory order, restrain the continuance of the commission of the breach while the proceedings are adjourned:

(3) The functions of the Court under this section are in addition to and not in derogation of any other functions of the Court.

#### **Compensation may be awarded against vexatious litigants**

**677. (1)** The Land and Environment Court, on the hearing of proceedings brought under section 674, has a discretion to award compensation to the person against whom such proceedings are taken if the Court considers that:

- (a) the proceedings against the person are frivolous or vexatious; and
- (b) the person has incurred expense as a consequence of any delay to an activity that has occurred as a result of the proceedings; and
- (c) the activity is authorised by an approval held by the person.

(2) A claim for compensation may not be made more than 28 days after the date on which the Court gives its decision in the proceedings.

(3) Compensation under this section is to be awarded against the person by whom the proceedings under section 674 were taken.

#### **Failure to comply with order—carrying out of work by the council**

**678. (1)** If a person fails to comply with the terms of an order given to the person under Part 2 of Chapter 7, the council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.

(2) If the council gives effect to an order by demolishing a building, the council:

- (a) may remove any materials concerned; and
- (b) may sell the materials, unless the expenses of the council in giving effect to the terms of the order are paid to it within 14 days after removal of the materials.

(3) If the proceeds of such a sale exceed the expenses incurred by the council in relation to the demolition and the sale, the council:

- (a) may deduct out of the proceeds of the sale an amount equal to those expenses; and
- (b) must pay the surplus to the owner on demand.

(4) If the proceeds of sale do not exceed those expenses, the council:

- (a) may retain the proceeds; and
- (b) may recover the deficiency (if any) together with its costs of recovery from the owner as a debt.

(5) Materials removed that are not saleable may be destroyed or otherwise disposed of.

(6) Any expenses incurred by the council under this section (less the proceeds, if any, of any sale under this section) together with all its associated costs may be recovered by the council in any court of competent jurisdiction as a debt due to the council by the person concerned.

(7) Nothing in subsection (3), (4) or (6) affects the owner's right to recover any amount from any lessee or other person liable for the expenses of repairs.

(8) A reference in subsection (4) or (6) to costs is a reference to costs incurred by the council in seeking to recover the deficiency or expenses otherwise than by proceedings in a court, but nothing in this section prevents the council from receiving costs as between party and party in respect of those proceedings.

(9) A council may exercise its functions under this section irrespective of whether the person concerned has been prosecuted for an offence under section 628.

### **Penalty notices for certain offences**

**679. (1)** An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under this Act (other than an offence under section 642 or 650), being an offence prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

**(3)** A penalty notice:

- (a) may be served personally or by post; or
- (b) if it relates to an offence involving the use of a vehicle, may be addressed to the owner (without naming the owner or stating the owner's address) and may be served by leaving it on or attaching it to the vehicle.

**(4)** If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

**(5)** Payment under this section is not regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

**(6)** The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

**(7)** The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

**(8)** This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

**Demanding name of offender**

**680. (1)** An authorised person who finds a person committing an offence under this Act in a public place, or an offence in respect of which the authorised person may issue a penalty notice under section 8G of the Environmental Offences and Penalties Act 1989, may:

- (a) demand from the person his or her name and residential address; and
- (b) report the offence and the name and residential address of the person to the council as soon as practicable.

**(2)** The provisions of subsection (1) (b) do not apply to any police officer in respect of an offence under section 650 (use of council's free parking areas).



- (3) A person who on demand made as referred to in this section:
- (a) refuses to state his or her name or residential address; or
  - (b) states a name or residential address which in the opinion of the authorised person is false,

may without any other warrant than this Act be apprehended by the authorised person and taken before a Justice to be dealt with according to law.

(4) A Justice before whom a person is taken under subsection (3) may grant the person bail in accordance with the Bail Act 1978 as if the person were accused of an offence.

- (5) A person who on demand made as referred to in this section:
- (a) refuses to state his or her name or residential address; or
  - (b) states a false name or residential address,

is guilty of an offence.

Maximum penalty: 5 penalty units.

### **Removal of offenders from community land**

**681. (1)** A person committing an offence against this Act on community land may be removed from the land by an authorised person.

(2) Reasonable force may be used to effect the person's removal.

(3) The removal of the person does not affect the person's liability to be prosecuted for an offence.

## **PART 2—PROCEEDINGS BY THE COUNCIL OR ITS EMPLOYEE**

### **Division 1—General**

#### **Power to appear before local land boards**

**682.** A council may appear and be represented by counsel, solicitor or agent before a local land board constituted under the Crown Lands Act 1989 or the Western Lands Act 1901 in any matter before the board affecting the council or the interests of its area.

#### **Authentication of documents**

**683.** A document requiring authentication by the council may be sufficiently authenticated without the seal of the council if signed by the general manager or public officer.

---

**Laying of informations**

- 684.** In any proceedings for an offence, the information may be laid:
- (a) in the name of the council, if not required to be made on oath; or
  - (b) in any case by the general manager or by any other employee of the council appointed generally or in respect of any special proceedings or by any police officer; or
  - (c) in any case by a person appointed by the Director-General, generally or in respect of any special proceedings; or
  - (d) in any case by an officer of the Department of Health appointed by the Director-General, Department of Health, generally or in respect of any special proceedings; or
  - (e) by any other person.

**Certain allegations in informations**

**685.** An allegation, in an information in respect of an offence against this Act or the regulations:

- (a) that the defendant has not obtained a relevant approval under this Act of the council; or
- (b) that a standard, sign, notice or device was erected or displayed with the authority of the council,

is sufficient proof of the matter so alleged, unless the defendant proves to the contrary.

**Ownership of council property**

**686.** In any proceedings (whether for the enforcement of a penalty or criminal proceedings) in relation to any property of or under the control and management of the council, it is sufficient to state generally that the property is the property of the council.

**Appearance in Local Court**

**687.** In proceedings in a Local Court, the general manager or any other employee of the council appointed in writing by the general manager may:

- (a) represent the council in all respects as though the general manager or other employee were the party concerned; and
- (b) institute and carry on any proceedings which the council is authorised to institute and carry on under this Act.

**Bankruptcy**

**688. (1)** If any person against whom a council has any claim or demand takes the benefit of any Act relating to bankruptcy or for the relief of insolvent debtors, the general manager may, in all proceedings:

- (a) against the estate of that bankrupt or insolvent person; or
- (b) under any adjudication, sequestration or act of bankruptcy or insolvency against or of that insolvent or bankrupt person,

represent the council and act in its behalf in all respects as if the claim or demand were the claim or demand of the general manager.

(2) If any company against which a council has any claim or demand is being or is wound up, the general manager may represent the council in all proceedings relating to the winding up and act on its behalf as if the claim or demand were the claim or demand of the general manager.

**Payment of expenses of employee**

**689.** Any damages, costs, charges or expenses that an employee of a council incurs or is liable to pay because of any proceedings which the employee is authorised by or under this or any other Act to take are to be paid by the council out of its consolidated fund.

**Other remedies**

**690. (1)** Whether any penalty imposed on a person by or under this Act has been recovered or not, the council may recover from the person:

- (a) any sum for damage sustained by it through the person's act or default; and
- (b) the costs and expenses incurred by it in remedying that damage; and
- (c) the value of anything wasted, misused or unlawfully consumed, diverted or taken by the person.

(2) The penalty may be recovered even if the council has not exercised any other right of recovery.

(3) A prosecution or conviction for an offence against this Act or the regulations does not affect any right of action of any person for any damage sustained by the person.

**Proceedings for offences**

**691.** Proceedings for an offence against this Act or the regulations may be dealt with:

- (a) summarily before a Local Court constituted by a Magistrate sitting alone; or
- (b) in the case of an offence against section 626 (1) or (2), 627 (1) or (2) or 628 (1), summarily before the Land and Environment Court in its summary jurisdiction.

#### **Time for bringing proceedings concerning certain building work**

**692.** Proceedings for the offence of erecting a building without the approval of the council or erecting a building otherwise than in accordance with such an approval may be instituted at any time within 12 months after any work in connection with the erection of the building is done.

#### **Time for bringing proceedings concerning electoral offences**

**693.** Proceedings for an offence concerning an election or poll under this Act may be instituted at any time within 12 months after the offence is alleged to have been committed.

#### **Application of penalties**

**694. (1)** Any penalty, fine or forfeiture under any Act recovered in proceedings instituted by or under the direction or on behalf or for the benefit of the council is:

- (a) to be paid to the council; and
- (b) to be allocated by the council to the council's consolidated fund.

**(2)** Any penalty, fine or forfeiture under this Act or the regulations recovered in proceedings instituted by a police officer or by an officer of the Department of Health is to be paid to the Consolidated Fund referred to in section 39 of the Constitution Act 1902.

#### **Suing for debts**

**695.** A rate, charge, fee or other money due to the council under this Act or the regulations may be recovered by the council as a debt in a court of competent jurisdiction, except as provided by this Act.

#### **Apportionment of expenses**

**696.** If because of this Act or the regulations:

- (a) two or more persons are or may be directed by the council to do or join in doing any act or to pay or join in paying any sum of money, costs or expenses; or

- (b) the council permits two or more persons to join together in doing any act or paying any sum of money, costs or expenses,

the council may apportion the matter to be done or the sum of money, costs or expenses to be paid between those persons in whatever manner the council thinks just and reasonable, and the act is to be done or the money, costs or expenses are to be paid accordingly.

## **Division 2—Evidence**

### **Formal matters**

**697.** In any prosecution or other legal proceeding under this Act or any other Act instituted by or under the direction or on behalf or for the benefit of the council, proof is not, until evidence is given to the contrary, to be required of any of the following:

- the incorporation of the council
- the persons comprising the governing body of the council
- the election or appointment of the mayor or any other councillor
- the extent or boundaries of the area or of any ward
- the fact that any particular place is within the area or within a ward
- the appointment of the general manager or of any other employee of the council
- any order to prosecute or the authority of the general manager or any employee of the council to prosecute
- the presence of a quorum of the council at the passing of any resolution or the making of any decision or determination or the doing of any act
- the fact that the defendant is or at any relevant time was the owner or occupier of any land in question
- the fact that the defendant is or at any relevant time was the owner or in possession, control or charge of any animal or thing in question.

### **Judicial notice of certain documents**

**698. (1)** Judicial notice is to be taken of any document purporting to be issued or written by or under the direction of the council and purporting to be signed by the mayor, the general manager or the public officer.

(2) Judicial notice is to be taken of every notice made or given under this Act:

- (a) that has been published in the Gazette; or
- (b) that has been published in a newspaper; or
- (c) a copy of which has been certified by the mayor, general manager or the public officer as a true copy,

and of the date on which the notice was made or given.

(3) It is to be presumed, until the contrary is proved, that any such notice has been duly made or given.

(4) A copy of any such notice is to be delivered to any person who demands a copy on payment to the council of the approved fee.

#### **Service of notices**

**699.** If any employee of the council or other person:

- (a) serves any notice required to be given by the council in the manner directed by or under this Act; and
- (b) endorses on or annexes to a true copy of the notice a statutory declaration stating the place, the time and the manner in which it has been served,

the statutory declaration purporting to have been so made is, until the contrary is proved, evidence of the service of the notice.

#### **Proof of ownership of, or leasehold estate in, land**

**700. (1)** In any legal proceedings under this Act, in addition to any other method of proof available:

- (a) evidence that the person proceeded against is rated in respect of any land to any rate under this Act is, until the contrary is proved, evidence that the person is the owner or lessee of the land; or
- (b) a certificate furnished by the Registrar-General under subsection (2) with respect to any land is, until the contrary is proved, evidence:
  - (i) that the person described in the certificate as the proprietor or owner of the land was the owner of that land; and
  - (ii) that the person, if any, so described as the lessee of the land was the lessee of that land,

at the time or during the period specified in the certificate pursuant to subsection (3) (b) (i) or (ii).

**(2) If:**

- (a) written application with respect to any land is made to the Registrar-General under this subsection by the general manager of a council; and
- (b) the Registrar-General has been paid the prescribed fee,

the Registrar-General is to furnish to the council a certificate setting out such of the particulars specified in subsection (3) as are recorded in the Register kept under the Real Property Act 1900 or in the General Register of Deeds maintained under Division 1 of Part 23 of the Conveyancing Act 1919 and as the Registrar-General is able to ascertain from the information about the land furnished in the application.

**(3) The particulars are:**

- (a) the situation and a description of the land; and
- (b) in the case of:
  - (i) land subject to the provisions of the Real Property Act 1900—the names and addresses of the person registered under that Act as the proprietor of, and any person so registered as a lessee of, the land at the time or during the period in respect of which the application is made and the date of registration of the instruments under which they became so registered; or
  - (ii) land not subject to those provisions—the names and addresses of the owner and of any lessee of the land at the time or during the period in respect of which the application is made and the dates, and dates of registration under Division 1 of Part 23 of the Conveyancing Act 1919, of the instruments kept in the General Register of Deeds maintained under that Division under which the owner or lessee became the owner or lessee of the land.

(4) Judicial notice is to be taken for the purposes of this Act of the signature of the Registrar-General and of a Deputy Registrar-General.

(5) In subsection (2) (b), the reference to the prescribed fee is, in relation to an application made under that paragraph:

- (a) in the case of land subject to the provisions of the Real Property Act 1900—a reference to the fee prescribed under that Act for the purposes of that paragraph; or
- (b) in the case of land not subject to those provisions—a reference to the fee prescribed under the Conveyancing Act 1919 for the purposes of that paragraph.

**Evidence as to whether a place is a public road**

**701. (1)** Evidence that a place is or forms part of a thoroughfare in the nature of a road, and is so used by the public, is admissible in any legal proceedings and is evidence that the place is or forms part of a public road.

**(2)** This section is subject to section 178 of the Conveyancing Act 1919 (No way by user against Crown, etc.).

**Offences on boundaries of areas**

**702. (1)** In proceedings for an offence alleged to have been committed on any part of a public road or on or in any part of a river, watercourse or tidal or non-tidal water, any part of which forms the boundary of the area, it is not necessary to prove that the place where the offence is alleged to have been committed was on either side of the boundary, but it is sufficient to prove that the place where the offence is alleged to have been committed is part of the road, river, watercourse or water.

**(2)** The council of the area or the council of any adjoining area may take proceedings for any such offence.

**Minutes**

**703.** Every entry in the minutes of the business transacted at a meeting of the council and purporting to be signed by the person presiding at a subsequent meeting of the council is, until the contrary is proved, evidence:

- (a) that the business as recorded in the minutes was transacted at the meeting; and
- (b) that the meeting was duly convened and held.

**Delineation of local government boundaries by reference to maps**

**704. (1)** In any proclamation, regulation or notice made or given or purporting to be made or given under this Act with respect to the boundaries of any area or with respect to any proposal relating to those boundaries, the boundaries of the land affected:

- (a) may be defined by metes and bounds; or
- (b) may be defined or indicated by reference to recorded plans kept in the central plan register established under the Survey Co-ordination Act 1949.

**(2)** If the Minister certifies in writing to the Governor that it is desirable that the existing boundaries of any area be described by reference:



- (a) to different surveys or definitions of land boundaries; or
- (b) to different recorded plans kept in the central plan register established under the Survey Co-ordination Act 1949,

the Governor may, by proclamation, redescribe those boundaries accordingly.

(3) On and from the publication in the Gazette of the proclamation, the boundaries of the area are to be as so redefined.

(4) Recorded plans referred to in this section are taken to be public documents for the purposes of sections 15 and 16 of the Evidence Act 1898.

### **Division 3—Notices by the council**

#### **What is public notice?**

**705. (1)** If the council or another person is required to give public notice under this Act, the notice must state the place at which, the dates on which, and the times during which the matter publicly notified may be inspected by the public.

(2) The notice is to be in the approved form.

(3) The notice is to be given in a manner determined by the council with the object of bringing the matter notified to the attention of as many people in its area as possible.

#### **What happens after a council gives public notice?**

**706. (1)** If public notice is given by the council, anyone may make a written submission to the council during the period of public notice (or any longer period allowed by this Act for the making of submissions) concerning the matter notified.

(2) Before determining the matter notified, the council must consider all submissions duly made to it.

#### **Publication of notices in Gazette and newspaper**

**707. (1)** If the regulations direct the publication of any advertisement or notice both in the Gazette and in any newspaper, it is sufficient compliance with the direction if, in addition to publication in the Gazette, there is also published in a newspaper either a summary of the advertisement or notice, or a statement only that such advertisement or notice has been published in the Gazette.

(2) The date of the Gazette in which the advertisement or notice has been published is to be specified in the summary or statement.

**The Crown**

**708. (1)** A notice required to be served on the Crown may be served as provided by this section.

**(2)** If a Department is concerned, the service may be on the Department head.

**(3)** If a statutory body representing the Crown is concerned, the service may be:

- (a) on the chief executive officer of the statutory body; or
- (b) on such person as may be prescribed by the regulations.

**Corporations**

**709.** A notice required to be served on a corporation may be served on the secretary or public officer of the corporation.

**Service of notices on persons**

**710. (1)** A notice required by or under this Act to be served on a person may be served as provided by this section.

**(2)** The service may be:

- (a) personal; or
- (b) by delivering the notice at or on the premises at which the person to be served lives or carries on business, and leaving it with any person apparently above the age of 14 years resident or employed at the premises; or
- (c) by posting the notice by prepaid letter addressed to the last known place of residence or business or post office box of the person to be served; or
- (d) by facsimile transmission to a number specified by the person (on correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent; or
- (e) by fixing the notice on any conspicuous part of the land, building or premises owned or occupied by the person; or
- (f) in the case of an offence involving a vehicle, by attaching the notice to the vehicle; or
- (g) if the person to be served maintains a box at a document exchange established in New South Wales, by depositing the notice in that box or leaving it at another such exchange for transmission to the first mentioned exchange for deposit in that box.

(3) If a notice is deposited in a box, or left at a document exchange, service of the notice is, until the contrary is proved, taken to be effected 2 days after the day on which the notice is so deposited or left.

(4) In addition to the means of service prescribed by subsection (2):

- (a) in any case where the person to be served is, or after inquiry appears to be, absent from New South Wales, the service may be on the agent of that person by any of the means prescribed by subsection (2) (a), (b), (c) or (d); and
- (b) in any case where the land, building or premises are unoccupied and the owner or the owner's address or place of residence is not known to the council, the service may be by advertisement in the approved form published in a newspaper circulating in the district in which the land, building or premises are situated; and
- (c) in the case of the service of a rates and charges notice, the service may be effected by delivering the notice to the premises at which the person to be served lives or carries on business and depositing it in a box or receptacle at, on or in the proximity of those premises that is provided, used or designed for the reception of letters addressed to that person.

(5) The notice may be addressed by the description of "rateable person" or "owner" or "occupier" of the land, building or premises (naming or otherwise sufficiently indicating the same) in respect of which the notice is served, and without further name or description.

(6) The notice may be wholly printed, wholly written or partly printed and partly written.

(7) If a notice has been served by any of the means prescribed by this section, all inquiries required under this section are taken to have been made, and the service is conclusive evidence of them.

(8) Proof by affidavit or orally that a notice has been posted in accordance with this section is conclusive evidence of service.

(9) For the purposes of this section, a justice of the peace is authorised to take and receive an affidavit, whether any matter to which the affidavit relates is or is not pending in any court.

#### **Effect of service on successors in title**

**711.** A notice duly served on a person binds any person claiming through or under or in trust for or in succession to the person or who is a subsequent owner or occupier to the person, as if the notice had been served on that person.

---

**Division 4—Legal proceedings for the recovery of rates and charges****Special provisions with respect to the recovery of unpaid rates and charges**

**712. (1)** Proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable.

**(2)** All rates and charges payable by the same person, whether in respect of the same or of different land, may be recovered in a single action.

**(3)** In any proceedings for the recovery of a rate or charge, a court may decide any matter that is called into question and that is relevant to the determination of the proceedings, even though the matter would otherwise be beyond the court's jurisdiction.

**(4)** A court's decision on any matter that would, but for this section, be beyond its jurisdiction is relevant only to the determination of the proceedings in which it is called into question and is of no effect' in relation to any other proceedings.

**(5)** No matter in respect of which a right of appeal is given under section 574 may be called into question in any proceedings for the recovery of a rate or charge so as to prevent its recovery if the time within which the right of appeal may be exercised has expired.

**(6)** Service of a rates and charges notice or notice of a charge may not be called into question more than 10 years after the date of alleged service of the notice.

**(7)** Proceedings for the recovery of any rate or charge by the enforcement of the charge it comprises on the land are not to be taken in any court, except proceedings for the purposes of Division 5.

**Division 5—Sale of land for unpaid rates and charges****Sale of land for unpaid rates and charges**

**713. (1)** For the purposes of this Division, a rate or charge is overdue if it has remained unpaid for more than 5 years from the date on which it became payable.

**(2)** A council may, in accordance with this Division, sell any land on which any rate or charge is overdue.

(3) The council must not sell any such land unless the general manager or the public officer certifies in writing:

- (a) what rates and charges (including overdue rates and charges) are payable on the land; and
- (b) when each of those rates and charges was made and how it was levied; and
- (c) when each of those rates and charges became payable; and
- (d) what amounts are payable by way of overdue rates and charges on the land; and
- (e) what amounts are payable by way of rates and charges (other than overdue rates and charges) on the land.

(4) The council may, in the case of adjoining parcels of land (whether in the same or different ownerships) each of which may be sold under this Division:

- (a) sell them separately or as a single parcel and under whatever conditions of sale it considers proper; and
- (b) do such things as it considers appropriate for the purpose of selling the land at its full value.

### **Estates and interests of the Crown in land**

**714.** This Division does not enable the sale of:

- (a) any estate or interest of the Crown in land; or
- (b) any interest in land owned by the Crown that may not be transferred at law.

### **Notice of proposal to sell land**

**715. (1)** Before selling land under this Division, the council must:

- (a) fix a convenient time (being not more than 6 months and not less than 3 months from the publication in a newspaper of the advertisement referred to in paragraph (b)) and a convenient place for the sale; and
- (b) give notice of the proposed sale by means of an advertisement published in the Gazette and in at least one newspaper; and
- (c) take reasonable steps to ascertain the identity of any person who has an interest in the land; and
- (d) take reasonable steps to notify each such person (and the Crown, if the land concerned is owned by the Crown) of the council's intention to sell the land under this Division.

(2) If, before the time fixed for the sale:

- (a) all rates and charges payable (including overdue rates and charges) are paid to the council; or
- (b) an arrangement satisfactory to the council for payment of all such rates and charges is entered into by the rateable person,

the council must not proceed with the sale.

### **Sale of land by public auction**

**716. (1)** Any sale of land under this Division must be by way of public auction, except as provided by this section.

(2) If any land is not sold by public auction at the time originally fixed, the council may either sell the land at a subsequent public auction or else sell the land by private treaty.

(3) Land may be sold under this Division to the council, a councillor, a relative of a councillor, a member of staff of the council or any relative of a member of staff of the council in the case of sale by public auction, but may, not be so sold in the case of sale by private treaty.

### **Payment of purchase money**

**717. (1)** The purchase money for land sold under this Division must be paid to the council, and the council's receipt is a discharge to the purchaser in respect of all expenses, rates, charges and debts referred to in section 718.

(2) The purchase money for land purchased by the council must be paid by way of a transfer between the appropriate funds kept by the council.

(3) Any such transfer is taken to be:

- (a) payment to the council of the purchase price of the land, for the purposes of section 722; and
- (b) purchase money received by the council on the sale of land for overdue rates and charges, for the purposes of section 718.

### **Application of purchase money**

**718.** The council must apply any purchase money received by it on the sale of land for overdue rates and charges in or towards payment of the following purposes and in the following order:

- (a) firstly, the expenses of the council incurred in connection with the sale;

- (b) secondly, any rate or charge in respect of the land due to the council, or any other rating authority, and any debt in respect of the land (being a debt of which the council has notice) due to the Crown as a consequence of the sale on an equal footing.

**What if the purchase money is less than the amounts owing?**

**719.** If the purchase money is insufficient to satisfy all rates, charges and debts referred to in section 718 (b):

- (a) the amount available is to be divided between the rates, charges and debts in proportion to the amounts owing on each; and  
(b) the rates, charges and debts are taken to have been fully satisfied.

**What if the purchase money is more than the amounts owing?**

**720. (1)** Any balance of the purchase money must be paid into the council's trust fund and held by the council in trust for the persons having estates or interests in the land immediately before the sale according to their respective estates and interests.

**(2)** The council may pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it, and the receipt of the person to whom any payment is so made is an effectual discharge to the council for it.

**(3)** The Unclaimed Money Act 1982 applies to the balance of any purchase money held by the council as if the council were a business and the money were unclaimed money within the meaning of that Act.

**Apportionment of rates on subdivided land**

**721. (1)** This section applies to any land on which a rate or charge is levied and which is subsequently subdivided.

**(2)** If part only of any such land is sold under this Division, any unpaid rates and charges in respect of the land may be apportioned by the council on the recommendation of the Valuer-General.

**Conveyance or transfer of the land**

**722.** The council, on payment to it of the purchase money, may convey or transfer the land to the purchaser without any other authority than that conferred by this section.

**Land is conveyed free of certain interests**

**723. (1)** A conveyance or transfer under this Division vests the land in the purchaser for an estate in fee simple freed and discharged from all

trusts, obligations, estates, interests, contracts and charges, and rates and charges under this Act or any other Act, but subject to:

- (a) any reservations or conditions for the benefit of the Crown affecting the land; and
- (b) any easements, restrictive covenants, positive public covenants created in accordance with section 88D or 88E of the Conveyancing Act 1919 and public rights of way affecting the land.

(2) This section does not apply to a leasehold estate under a lease that may be transferred at law in land owned by the Crown.

#### **Special provisions concerning leases of land owned by the Crown**

**724. (1)** This section applies to a leasehold estate under a lease that may be transferred at law in land owned by the Crown.

(2) A conveyance or transfer under this Division of a leasehold estate to which this section applies vests the leasehold estate in the purchaser freed and discharged from all trusts, obligations, estates, interests, contracts and charges, and rates and charges under this or any other Act, but subject to:

- (a) any debt payable to the Crown; and
- (b) any liability for any breach before the conveyance or transfer of the lease; and
- (c) the provisions of the Crown Lands Act 1989, the Crown Lands (Continued Tenures) Act 1989 and the Western Lands Act 1901 applicable to the leasehold estate.

#### **Transfers not invalid because of procedural irregularities**

**725.** A transfer or conveyance issued by a council under this Division is not invalid merely because the council has failed to comply with a requirement of this Division with respect to the sale of the land to which the transfer or conveyance relates.

#### **Registration of transfer of land under the Real Property Act 1900**

**726. (1)** On lodgment of a transfer of land under the Real Property Act 1900, the Registrar-General is to make such recordings in the Register kept under that Act as are necessary to give effect to this Division.

(2) The transfer does not operate at law until it is registered under the Real Property Act 1900.



**PART 3—PROCEEDINGS AGAINST COUNCILS,  
COUNCILLORS AND STAFF****Division 1—General****Service of documents**

**727.** A document required to be served on a council may be served by being given personally to the general manager or the public officer.

**Suing for penalty**

**728.** A penalty or surcharge recoverable against the council or a councillor or employee of the council may be sued for without notice by any person.

**Proceedings alleging non-compliance with a procedural requirement**

**729.** The validity or effectiveness of a decision of a council may not be questioned in any legal proceedings on the ground that, in making or purporting to make the decision, the council failed to comply with a procedural requirement of this Act or the regulations (including a requirement as to the giving of notice) unless the proceedings are commenced within 3 months after the date of the decision.

**Compensation**

**730. (1)** A claim for compensation under section 128 or 198, in case of dispute, may by agreement between the council and the person claiming the compensation be referred to arbitration under the Commercial Arbitration Act 1984.

**(2)** Failing agreement within 28 days after notice of the claim is served on the council, either party may refer the claim to the Land and Environment Court for determination.

**(3)** The Land and Environment Court may hear and determine the matter and make any order with respect to the claim and the costs of the case as having regard to the circumstances of the case and to the public interest the Court thinks just.

**Division 2—Liability****Liability of councillors, employees and other persons**

**731.** A matter or thing done by the Minister, the Director-General, a council, a councillor or employee of the council or any person acting under the direction of the Minister, the Director-General or the council does not, if the matter or thing was done in good faith for the purpose of

executing this or any other Act, and for and on behalf of the Minister, the Director-General or the council, subject a councillor, an employee or a person so acting personally to any action, liability, claim or demand.

**Exemption from liability—accreditation and certification**

**732.** A council, a councillor and an employee of a council do not incur any liability as a consequence of:

- (a) the council's acting in accordance with section 92 (Approval where an accreditation is in force); or
- (b) the council's satisfying itself as to a matter referred to in section 93 (Certification by qualified persons) by relying on a certificate referred to in that section.

**Exemption from liability—flood liable land and land in coastal zone**

**733. (1)** A council does not incur any liability in respect of:

- (a) any advice furnished in good faith by the council relating to the likelihood of any land being flooded or the nature or extent of any such flooding; or
- (b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.

**(2)** A council does not incur any liability in respect of:

- (a) any advice furnished in good faith by the council relating to the likelihood of any land in the coastal zone being affected by a coastline hazard (as described in a manual referred to in subsection (5) (b)) or the nature or extent of any such hazard; or
- (b) anything done or omitted to be done in good faith by the council in so far as it relates to the likelihood of land being so affected.

**(3)** Without limiting subsections (1) and (2), those subsections apply to:

- (a) the preparation or making of an environmental planning instrument or development control plan, or the granting or refusal of consent to a development application, under the Environmental Planning and Assessment Act 1979; and
- (b) the granting or refusal of an application for the erection of a building under this Act; and

- (c) the imposition of any condition in relation to an application referred to in paragraph (a) or (b); and
- (d) advice furnished in a certificate under section 149 of the Environmental Planning and Assessment Act 1979; and
- (e) the carrying out of flood mitigation works; and
- (f) the carrying out of coastal management works; and
- (g) any other thing done or omitted to be done in the exercise of a council's functions under this or any other Act.

(4) Without limiting any other circumstances in which a council may have acted in good faith, a council is, unless the contrary is proved, taken to have acted in good faith for the purposes of this section if the advice was furnished, or the thing was done or omitted to be done, substantially in accordance with the principles contained in the relevant manual most recently notified under subsection (5) at that time.

(5) For the purposes of this section, the Minister for Planning may, from time to time, give notification in the Gazette of the publication of:

- (a) a manual relating to the management of flood liable land; or
- (b) a manual relating to the management of the coastline.

The notification must specify where and when copies of the manual may be inspected.

(6) A copy of the manual must be available for public inspection, free of charge, at the office of the council during ordinary office hours.

(7) This section applies to and in respect of:

- (a) the Crown, a statutory body representing the Crown and a public or local authority constituted by or under any Act; and
- (b) a councillor or employee of a council or any such body or authority; and
- (c) a public servant; and
- (d) a person acting under the direction of a council or of the Crown or any such body or authority,

in the same way as it applies to and in respect of a council.

(8) In this section, **coastal zone** has the same meaning as in the Coastal Protection Act 1979.

## CHAPTER 18—MISCELLANEOUS

### INTRODUCTION

This Chapter makes provision for a number of matters relating to the operation of the Act. These include:

- a requirement that notices under the Act be in writing
- a description of the ways in which the Governor may exercise the Governor's powers under the Act
- a description of the effect of proclamations
- a description of how public inquiries are to be held
- specification of tax exemptions applicable to council property and dealings
- a description of the manner of settling disputes between councils
- specification of the Minister's and Director-General's powers to delegate.

The Chapter also authorises the making of regulations.

### PART 1—GENERAL

#### Public hearings by a council

**734. (1)** This section applies to a public hearing that by this Act (section 29 excepted) is required to be arranged by a council with respect to any matter.

**(2)** The public hearing is to be conducted in such manner as is determined by the council, subject to the regulations.

**(3)** A report of the public hearing must be furnished to the council and the council must make the report public.

**(4)** The council must consider the report before making any decision with respect to the matter to which it relates.

#### Notices to be given in writing

**735.** Every notice under this Act must be by instrument in writing, except where this Act expressly authorises another means of giving notice.

#### Proclamations

**736. (1)** The Governor may, by proclamation, rescind, revoke, amend or vary any order, proclamation or notification under this Act, other than an order or notification given or made by a council.

(2) Except with the consent of any council the interests of which may be concerned, this section or any proclamation under it is not to affect anything done before the publication of the proclamation.

### **Correcting errors**

737. An error in a proclamation may be corrected by a subsequent proclamation which may be expressed to take effect at the same time as the earlier proclamation took effect or at a later time.

### **Validity of proclamations**

738. (1) A proclamation or notification of the Governor purporting to be made under this Act and being within the powers conferred on the Governor is not invalid because of any non-compliance with any matter required by this Act as a preliminary to the making of the proclamation or notification.

(2) A misnomer or inaccurate description or omission of description in any proclamation or notification under this Act does not affect the operation of the proclamation or notification.

### **Protection of privacy**

739. (1) A person may request that any material that is available (or is to be made available) for public inspection by or under this Act be prepared or amended so as to omit or remove any matter that would disclose or discloses the person's place of living if the person considers that the disclosure would place or places the personal safety of the person or of members of the person's family at risk.

(2) A person who may make a request under this section includes a person who is entitled to be enrolled as an elector.

(3) The request is to be made to the general manager or, in the case of the residential roll for an area, the Electoral Commissioner.

(4) The request is to be in the form prescribed by the regulations, 'to give particulars of the relevant risk and to be verified by statutory declaration by the person making the request or by some other person.

(5) The person to whom the request is made may grant the request if satisfied that disclosing or continuing to disclose the matter would place or places the personal safety of the person or of members of the person's family at risk.

(6) The person to whom the request is made must notify the person concerned of the decision to grant or refuse the request.

(7) The Electoral Commissioner must not include in the residential roll for an area the address of an elector whose request under this section is granted by the Electoral Commissioner.

(8) The general manager, in relation to:

- (a) the non-residential roll and the roll of occupiers and ratepaying lessees for the area; and
- (b) any other material that is available (or is to be made available) for public inspection by or under this Act,

must not include in the roll or other material the address of a person whose request under this section is granted by the general manager. However, in the case of material other than a roll, the general manager may include the address of a person if the name of the person is excluded from the material.

### **Public inquiries**

**740. (1)** The Governor or the Minister may appoint a person as commissioner, or two or more persons as commissioners, to hold a public inquiry and to report to the Governor or the Minister with respect to:

- (a) any matter relating to the carrying out of the provisions of this Act or any other Act conferring or imposing functions on a council; and
- (b) any act or omission of a member of a council, any employee of a council or any person elected or appointed to any office or position under this or any other Act conferring or imposing functions on a council, being an act or omission relating to the carrying out of the provisions of the Act concerned, or to the office or position held by the member, employee or person under the Act concerned, or to the functions of that office or position.

(2) For the purposes of any inquiry under this section, any person appointed to hold the inquiry has the powers, authorities, protections and immunities conferred on a commissioner, and:

- (a) if the person is the only person appointed to hold the inquiry—on a sole commissioner; or
- (b) if the person is one of two or more persons appointed to hold the inquiry and has been appointed as chairman of the inquiry—on a chairman of a commission,

by Division 1 of Part 2 of the Royal Commissions Act 1923.

(3) The provisions of section 152 (Contempt of court) of the Justices Act 1902 apply to any witness or person summoned by or appearing before the person so appointed in the same way as they apply to witnesses and persons in proceedings under that Act.

(4) The provisions of the Royal Commissions Act 1923 (section 13 and Division 2 of Part 2 excepted) apply, with any necessary adaptations, to and in respect of any inquiry under this section and to and in respect of any witness or person summoned by or appearing before the person or persons holding the inquiry.

(5) The Minister is to cause the report of the person or persons who have held an inquiry under this section to be laid before both Houses of Parliament. If neither House of Parliament is sitting, section 14B of the Royal Commissions Act 1923 applies.

### **Exemption from taxes**

**741. (1)** Unless the contrary is expressly provided by any Act, taxes and stamp duties are not chargeable or payable under any Act on any of the following:

- (a) any land vested in or under the management and control of the council;
- (b) any property or income of the council;
- (c) any receipt or release from debt given by one employee of a council to another in the course of the internal administration of the council's business;
- (d) any receipt for any money, or for the return of any money deposited by any person with the council in relation to any contract entered into by the person with the council, or in relation to any tender made by the person for any contract with the council.

(2) This section does not extend to any rate, charge or assessment made or levied by the following:

- another council
- the Water Board
- the Hunter Water Corporation Limited
- a water supply authority
- the Director-General of New South Wales Fire Brigades
- a person prescribed by the regulations.

### **Dispute resolution**

**742. (1)** If any difference, whether arising out of the construction of this Act or not, arises between the councils of any two or more areas, or between two or more county councils, or between any of them and one or more Departments of the Government, with respect to:

- (a) the carrying out of the provisions of this Act; or

(b) the fulfilment and exercise of the functions of councils under any Act,

and if after diligent efforts to resolve the difference it remains unresolved, either or any of the parties to the dispute may submit the matter to the Minister.

(2) The Minister may inquire into the matter or may refer the matter for inquiry to some person appointed by the Minister.

(3) Before making such an inquiry into any matter relating to the carrying out by a council of a provision of this or any other Act that is administered by another Minister, the Minister must consult the other Minister.

(4) For the purposes of or after the inquiry, the Minister may make any order that in the public interest and in the circumstances of the case seems just and equitable.

(5) Such an order may direct the payment of any costs and expenses incidental to the conduct of the inquiry.

(6) An order may, on the application of the Minister or of either or any party, by leave of the Supreme Court, be enforced in the same manner as a judgment or order of the Court.

(7) In this section, **Department of the Government** includes any public authority and any of the following:

- the State Rail Authority
- the Maritime Services Board
- the Director-General of New South Wales Fire Brigades
- the Water Board
- the Darling Harbour Authority
- the Building Services Corporation
- the New South Wales Land and Housing Corporation
- a water supply authority
- the Western Lands Commissioner
- the Health Administration Corporation
- the New South Wales Health Foundation
- an area health service constituted under the Area Health Services Act 1986
- a hospital mentioned in the Second Schedule to the Public Hospitals Act 1929
- the Ambulance Service of New South Wales



- any trust constituted under the Water Act 1912 and any union constituted under the Drainage Act 1939
- the trustees of any public reserve, water reserve, or cemetery, or of any land, appointed by or under the Crown Lands Act 1989 or the trustees of any lands or works held, constructed, or used for any public purpose
- a trust established by or under the Commons Management Act 1989
- the Forestry Commission of New South Wales
- the Zoological Parks Board of New South Wales
- the New South Wales Meat Industry Authority.

(8) This section does not apply to a dispute arising under the Roads Act 1993.

NOTE: Disputes involving councils and public sector bodies may also be resolved by arbitration or other forms of negotiated settlement.

### **Property in waste**

743. All waste removed from any land or premises by or on behalf of the council or received at a depot of the council is the property of the council.

### **Delegation of functions by the Minister**

744. The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.

### **Delegation of functions by the Director-General**

745. The Director-General may delegate to any person any of the Director-General's functions under this Act, other than this power of delegation.

### **Authorised officers**

746. (1) The Director-General may authorise a person who is employed in the Department to enter and inspect any premises to determine whether the provisions of this Act or the regulations are being complied with in relation to those premises.

(2) Part 2 of Chapter 8 applies, in relation to the functions of a person authorised under this section, to the Director-General and a person so authorised in the same way as it applies to a council and a council employee (or other person) authorised by the council.

**Review of Act**

**747. (1)** The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

**(2)** The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

**(3)** A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**PART 2—REGULATIONS****Regulations**

**748. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**(2)** In particular, the regulations may make provision for or with respect to a matter specified in Schedule 6.

**(3)** The regulations may create offences in connection with elections and polls under this Act by adopting, with such modifications as are necessary, any of the provisions of the Parliamentary Electorates and Elections Act 1912.

**(4)** The regulations may create an offence punishable by a penalty not exceeding 10 penalty units or, in the case of an offence created as referred to in subsection (3), not exceeding the penalty provided for the corresponding offence in the Parliamentary Electorates and Elections Act 1912.

**(5)** The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by any authority or body, whether or not it is a New South Wales authority or body.

**PART 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS****Savings, transitional and other provisions**

**749.** Schedule 7 has effect.

**SCHEDULE 1—LOCAL GOVERNMENT REMUNERATION  
TRIBUNAL AND ASSESSORS**

(Sec. 237)

**Appointment of person as Remuneration Tribunal**

1. (1) The Governor may appoint a person to hold office as the Remuneration Tribunal.

(2) A person may not be appointed if the person is:

- (a) the holder of a civic office; or
- (b) an employee of a council or a county council; or
- (c) a retired Judge of a court of New South Wales; or
- (d) a person who has retired from an office in which the person served in New South Wales with the same status as a Judge of a court of New South Wales.

**Terms of office**

2. (1) Subject to this Schedule, a person appointed to hold office as the Remuneration Tribunal and an assessor appointed under section 236 (1) (b) hold office for such period, not exceeding 3 years, as is specified in the instrument of appointment.

(2) Such a person is eligible for re-appointment.

**Appointment of deputy assessor**

3. The assessor appointed under section 236 (1) (a) may appoint a deputy and, in the absence of the assessor, the deputy may act as an assessor.

**Remuneration**

4. (1) The person holding office as the Remuneration Tribunal and the assessor appointed under section 236 (1) (b) are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may determine in respect of them.

(2) The remuneration payable to:

- (a) the person holding office as the Remuneration Tribunal must be fixed before the person's appointment; and
- (b) the assessor appointed under section 236 (1) (b) must be fixed before the assessor's appointment,

and may be varied in respect of any year commencing on 1 April before that day.

**Application of other Acts**

5. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a person as the Remuneration Tribunal.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also office as the Remuneration Tribunal or from accepting and retaining any remuneration payable to the person under this Act as the Remuneration Tribunal.

(3) Office as the Remuneration Tribunal is not, for the purposes of any Act, an office or place of profit under the Crown.

**Vacation of office**

6 (1) The person holding office as the Remuneration Tribunal or the assessor appointed under section 236 (1) (b) vacates office if the person or assessor:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (e) becomes a mentally incapacitated person; or
- (f) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (g) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988.

(2) The Governor may remove the person holding office as the Remuneration Tribunal or the assessor appointed under section 236 (1) (b) from office at any time.

**SCHEDULE 2—MEMBERSHIP AND PROCEDURE OF THE  
BOUNDARIES COMMISSION**

(Sec. 261 (5))

**PART 1—THE COMMISSIONERS****Term of office**

1. Subject to this Part, each commissioner holds office for 5 years from the date of appointment and (if otherwise qualified) is eligible for re-appointment.

**Acting commissioners**

2. (1) Whenever a commissioner is absent from his or her office as a commissioner with the leave of the Minister, granted for any particular period or with respect to any particular examination or inquiry, the Minister may appoint as an acting commissioner:

- (a) if the absent commissioner is the chairperson—a person nominated by the Minister; or
- (b) if the absent commissioner is the commissioner referred to in section 261 (2) (b)—a person who is an officer of the Department nominated by the Director-General; or
- (c) if the absent commissioner is a commissioner referred to in section 261 (2) (c), a person selected from the panel constituted under section 262 (1).

(2) A person appointed as an acting commissioner in the absence of the chairperson is, while acting as a commissioner, also required to act as chairperson of the Boundaries Commission.

(3) An appointment under this clause is to be for such period or with respect to such examination or inquiry as may be specified in the instrument of appointment.

(4) A person acting as the chairperson or as a commissioner has the functions of the chairperson or commissioner in whose place the person is acting.

**Remuneration**

3. A commissioner or acting commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the commissioner.

**Application of other Acts**

4. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a commissioner or acting commissioner.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of commissioner or acting commissioner or from accepting and retaining any remuneration payable to the person under this Act as such a commissioner or acting commissioner.

(3) The office of commissioner or acting commissioner is not, for the purposes of any Act, an office or place of profit under the Crown.

**Vacation of office**

5. (1) The office of commissioner or acting commissioner becomes vacant if the commissioner or acting commissioner:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) becomes a mentally incapacitated person; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (g) having been appointed as a commissioner or an acting commissioner in his or her capacity as a councillor or an officer of the Department ceases to be such a councillor or officer; or
- (h) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988.

(2) The Governor may remove a commissioner or acting commissioner from office at any time.

(3) A person who vacates office as a commissioner or acting commissioner under subclause (1) (g) because the person is no longer a councillor may, nevertheless, continue to act as a commissioner or acting commissioner for the purposes only of:

- (a) any examination or inquiry started before the person ceased to be a councillor if, before the person ceased to be a councillor, the person took part as a commissioner or acting commissioner in the proceedings of the Boundaries Commission in respect of the examination or inquiry; and
- (b) making any report required to be made in relation to the examination or inquiry.

#### **Filling of vacancy**

6. (1) If the office of a commissioner becomes vacant, a person nominated or selected in the same manner as the vacating commissioner is to be appointed by the Governor to fill the vacancy.

(2) A person appointed under this clause is to hold office for the remainder of his or her predecessor's term of office.

## **PART 2—PROCEDURE AT MEETINGS OF THE BOUNDARIES COMMISSION**

#### **Procedure for calling meetings of the Boundaries Commission**

7. The procedure for the calling of meetings of the Boundaries Commission and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Commission.

#### **Chairperson to preside etc.**

8. The chairperson is to preside at all meetings of the Boundaries Commission and is required to perform such executive functions as the Boundaries Commission specifies or approves.

#### **Quorum**

9. The quorum for a meeting of the Boundaries Commission is 2 commissioners (including the chairperson).

**Voting**

10. (1) A decision supported by a majority of the votes cast at a meeting of the Boundaries Commission at which a quorum is present is the decision of the Boundaries Commission.

(2) The person presiding at a meeting of the Boundaries Commission has a deliberative vote and, in the event of an equality of votes, has a casting vote.

**Disqualification from voting**

11. (1) A commissioner who is a councillor is not entitled to vote on any question relating to the boundaries of the council area for which the commissioner is a councillor.

(2) A commissioner who is a councillor must not take part in any examination or inquiry made in relation to the boundaries of the council area for which the commissioner is a councillor. Such a commissioner is to be treated as being absent with the leave of the Minister under clause 2 (1) for the period of the examination or inquiry.

**Dissenting reports**

12. A commissioner who has dissented on a question may provide a separate report on the question.

**Boundaries Commission not bound to follow strict legal procedure**

13. The Boundaries Commission is not required to follow strict legal procedure or to observe the rules of law governing the admission of evidence when exercising its functions.



**SCHEDULE 3—DISCLOSURE OF INTERESTS**

(Secs. 449, 450)

**PART 1—FORM OF RETURNS**

LOCAL GOVERNMENT ACT 1993  
DISCLOSURES BY COUNCILLORS AND DESIGNATED PERSONS  
RETURN

- (1) The pecuniary interests and other matters to be disclosed in this return are prescribed by Division 2 of Part 2 of Schedule 3 to the Local Government Act 1993.
- (2) If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, do not complete Parts C, D and H of the return. All other Parts of the return should be completed with appropriate information as at the return date i.e. the date on which you attained that position.  
If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant return period since the last return i.e. the period from the return date of the last return to 30 June in this year or the period from the end of the last return period to 30 June in this year (whichever is appropriate).
- (3) The particulars required to complete this form are to be written in block letters or typed.
- (4) If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.
- (5) If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.
- (6) \* means delete whichever is inapplicable.

Schedule 3—Disclosure of Interests

<p><b>DISCLOSURES OF PECUNIARY INTERESTS AND OTHER MATTERS</b></p>	
<p>by .....</p> <p style="text-align: center;">(full name of councillor or designated person)</p>	
<p>*as .....at</p> <p style="text-align: center;">(return date)</p>	
<p>*in respect of the period from ..... to .....</p> <p style="text-align: right;">(return period)</p>	
<p>.....</p> <p>(councillor's or designated person's signature)</p>	
<p>.....</p> <p>(date)</p>	

A REAL PROPERTY	
Address of each parcel of real property in which I had an interest *at the return date/*at any time during the return period	Nature of interest

*Local Government Act 1993 No. 30*

<b>B. SOURCES OF INCOME</b>		
<p>1. *Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June: *Sources of income I received from an occupation at any time during the return period:</p>		
Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)
<p>2. *Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June: *Sources of income I received from a trust during the return period:</p>		
Name and address of settlor	Name and address of trustee	

## Schedule 3—Disclosure of Interests

<p>3. *Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June: *Sources of other income I received at any time during the return period: <i>(Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)</i></p>		
<b>C. GIFTS</b>		
Description of each gift I received at any time during the return period		Name and address of donor
<b>D. CONTRIBUTIONS TO TRAVEL</b>		
Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken

*Local Government Act 1993 No. 30*

E. INTERESTS AND POSITIONS IN CORPORATIONS			
Name and address of each corporation in which I had an interest or held a position *at the return date/*at any time during the return period	Nature of interest (if any)	Description of position (if any)	Description of principal objects of corporation (except in case of public company)
F. POSITIONS IN TRADE UNIONS AND PROFESSIONAL OR BUSINESS ASSOCIATIONS			
Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) *at the return date/*at any time during the return period		Description of position	
G. DEBTS			
Name and address of each person to whom I was liable to pay any debt *at the return date/*at any time during the return period.			

*Schedule 3—Disclosure of Interests*

H. DISPOSITIONS OF PROPERTY
<ol style="list-style-type: none"> <li>1. Particulars of each disposition of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.</li> <li>2. Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.</li> </ol>
I. DISCRETIONARY DISCLOSURES

**PART 2—INTERESTS TO BE DISCLOSED IN RETURNS****Division 1—Preliminary matters****Definitions**

1. In this Schedule:

**address** means:

- (a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address; or
- (b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is incorporated; or
- (c) in relation to any real property, the postal address of the property or particulars of title of the property.

**disposition of property** means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including:

- (a) the allotment of shares in a company; and
- (b) the creation of a trust in respect of property; and
- (c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property; and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property; and
- (e) the exercise by a person of a general power of appointment over property in favour of another person; and
- (f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

**gift** means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the donee to the donor, unless it is a financial or other contribution to travel.

**interest** means:

- (a) in relation to property—an estate, interest, right or power, at law or in equity, in or over the property; or
- (b) in relation to a corporation—relevant interest (within the meaning of section 9 of the Corporations Law) in securities issued or made available by the corporation.

**occupation** includes trade, profession and vocation.

**professional or business association** means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

**property** includes money.

**public company** means a company of which the shares are listed for quotation on the stock market of a stock exchange in New South Wales.

**travel** includes accommodation incidental to a journey.

**The return date for certain returns**

2. (1) A reference in this Schedule to the return date for a return made by a person under section 449 (1) is a reference to the date on which the person became the holder of a position required to make such a return.

(2) A reference in this Schedule to the return period for a return by a person under section 449 (3) in a particular year is a reference to:

- (a) if the last return made by the person was a return under section 449 (1), the period commencing on the first day after the return date and ending on 30 June in that particular year; or
- (b) if the latest return made by a person was a return under section 449 (3), the period commencing on the expiration of the period to which that return relates and ending on 30 June in that particular year.

**Matters relating to the interests that must be included in returns**

3. (1) **Interests etc. outside New South Wales.** A reference in this Schedule to a disclosure concerning a corporation or other thing includes a reference to a disclosure concerning a corporation incorporated, or other thing arising or received, outside New South Wales.

(2) **References to interests in real property.** A reference in this Schedule to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.

(3) **Gifts, loans etc. from related corporations.** For the purposes of this Schedule, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations which are related to each other for the purposes of the Corporations Law are all given, made or supplied by a single corporation.

**Division 2—Interests to be included in returns****Real property**

4. (1) A person making a return under section 449 (1) must disclose:
- (a) the address of each parcel of real property in which he or she had an interest on the return date; and
  - (b) the nature of the interest.



- (2) A person making a return under section 449 (3) must disclose:
- (a) the address of each parcel of real property in which he or she had an interest at any time since the last return under Part 2 of Chapter 14 was made; and
  - (b) the nature of the interest.

(3) An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:

- (a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy; F
- (b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to his or her duties. as the holder of a position required to make a return.

(4) In this clause, interest includes an option to purchase.

### **Gifts**

5. (1) A person making a return under section 449 (3) must disclose:
- (a) a description of each gift received since the last return under Part 2 of Chapter 14 was made; and
  - (b) the name and address of the donor of each of the gifts.

(2) A gift need not be included in a return if:

- (a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less; or
- (b) it was a political contribution disclosed, or required to be disclosed under Part 6 of the Election Funding Act 1981; or
- (c) the donor was a relative of the donee.

(3) For the purposes of this clause, the amount of a gift other than money is an amount equal to the value of the property given.

### **Contributions to travel**

6. (1) A person making a return under section 449 (3) must disclose:
- (a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person since the last return under Part 2 of Chapter 14 was made; and
  - (b) the dates on which the travel was undertaken; and.
  - (c) the names of the States and Territories, and of the overseas countries, in which the travel was undertaken.

(2) A financial or other contribution to any travel need not be disclosed under this clause if it:

- (a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles); or
- (b) was made by a relative of the traveller; or
- (c) was made in the ordinary course of an occupation of the traveller that is not related to his or her functions as the holder of a position requiring the making of a return; or
- (d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12 month period or less; or
- (e) was a political contribution required to be disclosed under Part 6 of the Election Funding Act 1981; or
- (f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable the traveller to represent the party within Australia.

(3) For the purposes of this clause, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

### **Interests and positions in corporations**

7. (1) A person making a return must disclose:

- (a) the name and address of each corporation in which he or she had an interest or held a position (whether remunerated or not) on the return date (in the case of a return under section 449 (1)) or at any time since the last return under Part 2 of Chapter 14 was made (in the case of a return under section 449 (3)); and
- (b) the nature of the interest, or the position held, in each of the corporations; and
- (c) a description of the principal objects of each of the corporations, except in the case of a public company.

(2) An interest in, or a position held in, a corporation need not be disclosed if the corporation is:

- (a) formed for the purpose of providing recreation or amusement or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose; and
- (b) required to apply its profits or other income in promoting its objects; and
- (c) prohibited from paying any dividend to its members.

(3) An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

### **Positions in trade unions and professional or business associations**

8. A person making a return must disclose:

- (a) the name of each trade union, and of each professional or business association, in which he or she held any position (whether remunerated or not) on the return date (in the case of a return under section 449 (1)) or at any time since the last return under Part 2 of Chapter 14 was made (in the case of a return under section 449 (3)); and
- (b) a description of the position held in each of the unions and associations.

### **Dispositions of property**

9. (1) A person making a return under section 449 (3) must disclose particulars of each disposition of real property by the councillor or employee, at any time since the last return under Part 2 of Chapter 14 was made, under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property.

(2) A person making a return under section 449 (3) must disclose particulars of each disposition of real property to another person, since the last return under Part 2 of Chapter 14 was made, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

### **Sources of income**

10. (1) A person making a return must disclose:

- (a) in the case of a return under section 449 (1)—each source of income which the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June; and
- (b) in the case of a return under section 449 (3)—each source of income received by the person since the last return under Part 2 of Chapter 14 was made.

*Schedule 3—Disclosure of Interests*

---

(2) A reference in subclause (1) to each source of income received, or reasonably expected to be received, by a person is a reference to:

- (a) in relation to income from an occupation of the person:
  - (i) a description of the occupation; and
  - (ii) if the person is employed or the holder of an office—the name and address of his or her employer or a description of the office; and
  - (iii) if the person has entered into a partnership with other persons—the name (if any) under which the partnership is conducted; or
- (b) in relation to income from a trust—the name and address of the settlor and the trustee; or
- (c) in relation to any other income—a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

(3) The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

**Debts**

11. (1) A person making a return must disclose the name and address of each person to whom the person was liable to pay any debt:

- (a) in the case of a return under section 449 (1)—on the return date; or
- (b) in the case of a return under section 449 (3)—at any time since the last return under Part 2 of Chapter 14 was made.

(2) A liability to pay a debt must be disclosed by a person in a return whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time since the last return under Part 2 of Chapter 14 was made, as the case may be.

(3) A liability to pay a debt need not be disclosed by a person in a return if:

- (a) the amount to be paid did not exceed \$500 on the return date or at any time since the last return under Part 2 of Chapter 14 was made, as the case may be, unless:

- (i) the debt was one of two or more debts which the person was liable to pay to one person on the return date or at any time since the last return was made, as the case may be; and
  - (ii) the amounts to be paid exceeded, in the aggregate, \$500; or
- (b) the person was liable to pay the debt to a relative; or
- (c) in the case of a debt arising from a loan of money—the person was liable to pay the debt to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender; or
- (d) in the case of a debt arising from the supply of goods or services:
- (i) the goods or services were supplied in the period of 12 months immediately preceding the return date or were supplied since the last return under Part 2 of Chapter 14 was made, as the case may be; or
  - (ii) the goods or services were supplied in the ordinary course of any occupation of the person which is not related to his or her duties as the holder of a position required to make a return.

**Discretionary disclosures**

12. A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Schedule.

**SCHEDULE 4—LOCAL GOVERNMENT PECUNIARY  
INTEREST TRIBUNAL**

(Sec. 488 (3))

**Definition**

1. In this Schedule, **the member** means the member appointed as the Pecuniary Interest Tribunal under section 488.

**Deputy member**

2. (1) The Governor may, from time to time, appoint a person to be the deputy of the member, and the Governor may revoke any such appointment. A person appointed as a deputy must have the same qualifications as those required of a person appointed as the member.

(2) In the absence of the member, the member's deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has the functions of the member and is taken to be the member.

(3) A person while so acting in the place of the member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(4) For the purposes of this clause, a vacancy in the office of the member is taken to be an absence from office of the member.

**Term of office of the member**

3. Subject to this Schedule, the member holds office for such period, not exceeding 5 years, as is specified in the member's instrument of appointment, and (if otherwise qualified) is eligible for re-appointment.

**Remuneration of the member**

4. The member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Vacancy in office of the member**

5. (1) The office of the member becomes vacant if the member:

(a) dies; or

(b) completes a term of office and is not re-appointed; or

- (c) resigns the office by instrument in writing addressed to the Minister; or
  - (d) is elected or appointed to civic office or becomes an employee of a council; or
  - (e) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (g) becomes a mentally incapacitated person; or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove the member from office at any time.

**Filling of vacancy in office of member**

6. If the office of the member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Application of other Acts**

7. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the member.

- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of the member or from accepting and retaining any remuneration payable to the person under this Act as the member.

**SCHEDULE 5—LOCAL GOVERNMENT GRANTS  
COMMISSION**

(Sec. 614 (6))

**PART 1—THE COMMISSIONERS****Term of office**

1. Subject to this Part, each commissioner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment and (if otherwise qualified) is eligible for re-appointment.

**Acting commissioner**

2. (1) The Minister may, from time to time, appoint a person to act in the office of a commissioner (other than the deputy chairperson) during the illness or absence of the commissioner (or during a vacancy in that office) and may revoke any such appointment.

(2) A person appointed under this clause to act as a commissioner has the functions of the commissioner in whose place the person is acting and is taken to be a commissioner.

(3) However, a person acting in place of a commissioner who is also the chairperson does not have the commissioner's functions as chairperson.

**Remuneration**

3. (1) A commissioner or acting commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the commissioner or acting commissioner.

(2) However, a commissioner or acting commissioner who is employed in the Public Service is entitled to be paid only travelling and subsistence allowances.

**Application of other Acts**

4. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a commissioner or acting commissioner.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or



- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a commissioner or from accepting and retaining any remuneration payable to the person under this Act as such a commissioner.

- (3) The office of commissioner or acting commissioner is not, for the purposes of any Act, an office or place of profit under the Crown.

#### **Vacation of office**

5. (1) The office of a commissioner becomes vacant if the commissioner:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) becomes a mentally incapacitated person; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (g) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988.

- (2) The Governor may remove a commissioner from office at any time.

#### **Filling of vacancy**

6. (1) If the office of a commissioner becomes vacant, a person nominated or selected in the same manner as the vacating commissioner is, subject to this Part, to be appointed to fill the vacancy.

- (2) A person appointed under this clause is to hold office for the remainder of his or her predecessor's term of office.

**PART 2—PROCEDURE AT MEETINGS OF THE GRANTS COMMISSION****Procedure for calling meetings of the Grants Commission**

7. (1) The procedure for the calling of meetings of the Grants Commission and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as the Grants Commission determines.

(2) The Grants Commission is required to meet at least once in each year and at such other times as the Minister specifies or the Commission considers necessary.

**Presiding commissioner**

8. (1) The chairperson or, in the absence of the chairperson, the deputy chairperson is to preside at a meeting of the Grants Commission.

(2) The person presiding at a meeting of the Grants Commission has a deliberative vote and, in the event of an equality of votes, has a casting vote.

**Quorum**

9. The quorum for a meeting of the Grants Commission is 3 commissioners.

**Decision of the Grants Commission**

10. A decision supported by a majority of the votes cast at a meeting of the Grants Commission at which a quorum is present is the decision of the Grants Commission.

**SCHEDULE 6—REGULATIONS**

(Sec. 748)

1. The exemption of areas or parts of areas from the operation of specified provisions of this Act
2. Meetings of the council and its committees
3. Standards for the retention, preservation and destruction of council records
4. Council polls and constitutional referendums

*Examples:*

Conduct of council polls and constitutional referendums  
Voting and counting of votes

5. Tendering

*Examples:*

Invitations to tender  
Consideration of tenders

6. Contracting out

7. Water, sewerage and drainage works

*Examples:*

The supply and use of water  
Water, sewerage and drainage systems  
The discharge and treatment of sewage  
Trade wastes  
Drainage areas  
Catchment districts  
The carrying out of specified works, with or without the consent of the Minister, or by the Minister  
Works to serve the areas of two or more councils  
Connections to water and sewer mains  
Installation and operation of meters  
Cutting off or restricting supply of water  
Pipes and fittings for hot water apparatus  
Inspection of works and facilities  
Measures to ensure the safety of works

The accumulation of funds to finance capital works  
 The provision of information by councils  
 The appointment, remuneration and accommodation of an administrator and an administrator's assistants  
 Exemption of persons from liability

8. Approvals under Part 1 of Chapter 7

*Examples:*

Application for approvals  
 Approvals concerning moveable dwellings  
 The imposition, on the owners or occupiers of land used for the placement of moveable dwellings, of a levy to be applied to specified purposes, including:

- (a) expenses in connection with the examination and review, by or on behalf of the Minister, of the terms and conditions of approvals for moveable dwellings generally; and
- (b) the undertaking, by or on behalf of the Minister, of research in connection with moveable dwellings

Activities that may be carried out without approval  
 Matters for consideration in determining applications for approvals

Standards, including:

- standards to be met in order for an activity to be approved
- standards for activities that are approved

Conditions of approvals

Duration of approvals

Notice of granting of approvals

Records of approvals

Accreditation of components, processes and designs

Inspection of activities subject to approvals

9. Orders under Part 2 of Chapter 7

*Examples:*

Service of orders

Information to be included in orders

Standards to be met in complying with orders

10. Building certificates

11. Proposals to constitute or change the boundaries of areas

## 12. The practice and procedures of councils

*Example:*

The custody and affixing of a council's seal

## 13. The administration of a council

## 14. Elections

*Examples:*

The preparation of electoral rolls

Claims for, and objections to, inclusion on an electoral roll

Forms to be used for the purposes of an election

The Local Government Register of Political Parties

Nominations for candidature at an election

The preparation of ballot-papers

Postal voting

The counting of votes, including the rejection of informal votes

The application of the Parliamentary Electorates and Elections Act 1912 and the Election Funding Act 1981 to elections under this Act

## 15. Staffing

*Examples:*

The classification of positions as senior staff positions

The functions of the general manager

Matters in respect of which the general manager is not subject to direction by a council

Contracts of employment for senior staff

The advertising of vacant staff positions

The disclosure of interests by staff

## 16. Delegations

## 17. County councils

## 18. Management and reporting

*Examples:*

The form and content of management plans

The keeping of accounting records and the preparation of financial and associated reports and statements

The form and content of annual reports  
 The establishment of sinking funds and debt repayment funds

19. Conduct of councillors, members of staff and delegates of a council

20. Rates and charges

*Examples:*

The valuation of land for rating purposes  
 The rateability of land  
 The making and levying of rates, including base amounts of rates  
 The making and imposition of charges and fees, including minimum charges  
 The payment and recovery of rates, charges and fees  
 The charging of interest on overdue rates and charges  
 Abandonment  
 The division of categories of rateable land into sub-categories  
 The form of a rates and charges notice  
 The exemption of land from rating  
 The waiver, remission and postponement of rates and charges  
 The writing off of rates and charges  
 The reduction of rates and charges for eligible pensioners

21. Miscellaneous

*Examples:*

The functions and procedures of bodies (other than councils and county councils) constituted or established under this Act  
 The erection and maintenance of notices  
 The making and consideration of representations and objections to the declaration of alcohol-free zones  
 The issuing of penalty notices under this Act  
 The manner and form in which public notices are to be given under this Act  
 Authorisation of persons under this Act to enter premises  
 Forms (including the form of notices) for use under this Act  
 Fees payable under this Act

**SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

(Sec. 749)

**Part 1—Preliminary****Definitions**

1. In this Schedule:  
“old Act” means the Local Government Act 1919.

**Regulations—general**

2. (1) The Governor may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

Impounding Act 1993;  
Local Government (Consequential Provisions) Act 1993;  
Roads Act 1993;  
Traffic (Barking Regulation) Amendment Act 1993.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**General saving**

3. (1) If anything done or commenced under a provision of an instrument repealed by the Local Government (Consequential Provisions) Act 1993 has effect or is not completed immediately before the repeal of the provision and could have been done or commenced under a provision of an Act specified in clause 2 (1) if the provisions of the Act had been in force when the thing was done or commenced:

- (a) the thing done continues to have effect; or
- (b) the thing commenced may be completed.

(2) This clause is subject to any express provision of this Act or the regulations on the matter.

**Construction of references to the old Act and its provisions**

4. (1) Except as provided by this clause, a reference in any instrument to the old Act (or a provision of the old Act) is to be read as a reference to that instrument or the following instruments (or that provision of such an instrument) that, having regard to the reference and the context in which the reference occurs, most nearly corresponds to the old Act (or the provision of the old Act):

*Schedule 7—Savings, transitional and other provisions*

---

- this Act
- the Impounding Act 1993
- the Roads Act 1993
- the Traffic Act 1909
- the regulations made under those Acts.

(2) The regulations may provide that a reference in any instrument or a specified instrument to the old Act (or a specified provision of the old Act) is to be read as a reference to another specified instrument (or a specified provision of such an instrument).

**Saving of certain ordinances**

5. (1) Ordinance No. 32 under the old Act and the Manufactured Home Estates Ordinance 1992 under the old Act are taken to be regulations under this Act and may be amended and repealed accordingly.

(2) An ordinance that is taken, under this clause, to be a regulation is taken, for the purposes of the Subordinate Legislation Act 1989, to be originally published in the Gazette on the date of commencement of this clause.

**Part 2—Provisions arising out of Chapter 6  
(What are the service functions of councils?)**

**Classification of existing public land**

6. (1) This clause applies to all public land within a council's area as at the commencement of Part 2 of Chapter 6 (the relevant commencement).

(2) On the relevant commencement, the following land that is vested in or under the control of a council is taken to have been classified as community land:

- (a) land comprising a public reserve;
- (b) land subject to a trust for a public purpose;
- (c) land dedicated as a condition of a development consent under section 94 of the Environmental Planning and Assessment Act 1979;
- (d) land reserved, zoned or otherwise designated for use under an environmental planning instrument as open space;
- (e) land controlled by a council that is vested in the corporation constituted by section 8 (1) of the Environmental Planning and Assessment Act 1979.

(3) Within 1 year after the relevant commencement, a council may, by resolution, classify, as community land or operational land, any public land that is vested in it or under its control and that is not classified by subclause (2).

(4) A resolution under subclause (3) to classify public land that is not owned by the council must not be made without the consent of the owner.

(5) On the making of a resolution under subclause (3) that classifies public land as operational land, the land is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, subject to the terms of the resolution, but is not discharged from:



*Local Government Act 1993 No. 30*

---

- (a) any reservations that except land out of a Crown grant relating to the land; and
- (b) reservations of minerals (within the meaning of the Crown Lands Act 1989).

(6) The classification of public land by resolution under subclause (3) may be changed only by a local environmental plan.

(7) Any public land that may be classified by resolution under subclause (3) and that is not classified within 1 year after the relevant commencement is taken to have been classified as community land.

**Land to which s. 32 applies**

7. Section 32 applies to land whether acquired before or after the commencement of Part 2 of Chapter 6.

**Preparation of plans of management for community land**

8. A council must, in accordance with Part 2 of Chapter 6, adopt a plan of management by 1 July 1996 for community land vested in it or under its control.

**Leases and licences of community land**

9. If, within 12 months after the commencement of section 46, a council has not adopted a plan of management for community land, it may, with the Minister's consent, grant a lease or licence of the community land that otherwise complies with that section.

**Negotiations to enter into contracts**

10. If a council has invited tenders, or invitations to tender have been made, under the old Act before the commencement of section 55, a contract resulting from such a tender or invitation may be entered into in accordance with the provisions of the old Act (as in force immediately before that commencement), but only within 6 months after that commencement.

**Contracting out**

11. If, immediately before the commencement of section 54, a council is providing goods, materials, services, facilities or works to which that section applies, the council may continue to provide them for a maximum period of 2 years after that commencement, subject to the terms of any contract entered into before that commencement concerning their provision.

**Water, sewerage and drainage works**

12. The Minister or the Governor may charge a council with the care and management of any water, sewerage or drainage works constructed or commenced by the Minister or Governor before the commencement of Division 2 of Part 3 of Chapter 6, or vest any such works in a council, as if those works had been constructed after that commencement.

**Part 3—Provisions arising out of Chapter 7**  
**(What are the regulatory functions of councils?)**

**Carrying out of activities concerning buildings**

13. (1) Section 68 does not require a person to obtain an approval to carry out an activity specified in Part A of the Table to that section (other than the activity specified in paragraph 5 of that Part) on land to which Part 11 of the old Act did not apply immediately before the commencement of that section.

(2) This clause ceases to have effect 12 months after the commencement of section 68 or, in relation to a part of an area specified by the Minister by notice published in the Gazette, on such earlier date as is so specified.

**Existing approvals**

14. An approval given by a council or council officer under the old Act or an ordinance under the old Act, and in force immediately before the commencement of Division 1 of Part 1 of Chapter 7, if it is an approval, or an approval of a kind, that may be given under this Act, continues in force and is taken to have been given, and may be revoked or modified, under this Act.

**Pending applications for approvals**

15. (1) An application for an approval made under the old Act or an ordinance under the old Act to a council, being an application that has not, immediately before the commencement of Division 3 of Part 1 of Chapter 7, been determined by the council, is to be dealt with as if the old Act and any relevant ordinances under the old Act were still in force.

(2) A person may appeal against a decision made about any such application in accordance with this Act.

**Notice of applications to erect buildings—validation**

16. (1) An approval to erect a building given by a council on or before 12 December 1990 is not invalid merely because written notice of the building application was not given to any one or more affected persons unless a court, in proceedings commenced on or before that date, determines or has determined that the approval is invalid for that reason.

(2) For the purposes of any such proceedings, the council is taken to have given written notice of the building application to an affected person if it is established that the person knew, or could reasonably be expected to have known, of the existence of the building application within a reasonable time before the council gave its approval to the application.

(3) An approval to erect a building given by a council after 12 December 1990 but before the commencement of Division 4 of Part 1 of Chapter 7 is not invalid merely because written notice of the building application was not given to any one or more affected persons, as long as the notice was given to the persons to whom the notice would have been required to be given had the provisions of that Division (section 115 excepted) been in force when the approval was given.

(4) In this clause, **affected person** means a person who, when the building application was made, owned land:

- (a) that adjoined the land in respect of which the application was made; or
- (b) the enjoyment of which might have been detrimentally affected by the erection of a building on the land in respect of which the application was made.

#### **Draft criteria concerning notice of building applications**

17. A council continued in existence by this Schedule must prepare draft criteria concerning the giving of notice of applications to erect buildings to persons in accordance with section 115 within 3 months after the commencement of that section.

#### **Orders**

18. An order made by a council or council officer under the old Act or an ordinance under the old Act, and in force immediately before the commencement of Part 2 of Chapter 7, if it is an order, or an order of a kind, that may be given under this Act, continues in force, and is taken to have been given, and may be revoked, modified or appealed against, under this Act.

#### **Catchment districts**

19. A proclaimed Catchment District for the purposes of Part 8 of Ordinance No. 45 made under the old Act is taken to be a catchment district proclaimed under section 128.

#### **Building certificates**

20. A building certificate, in relation to the whole or a part of a building, issued by a council under Part 11 of the old Act, and in force immediately before the commencement of Part 4 of Chapter 7, continues in force and is taken to have been issued under this Act.

### **Part 4—Provisions arising out of Chapter 9**

#### **(How are councils established?)**

##### **Division 1—General**

#### **Continuation of existing areas**

21. (1) An area constituted as a municipality or shire immediately before the commencement of Division 1 of Part 1 of Chapter 9 continues as an area under this Act and is taken to be constituted under this Act.

(2) An area constituted as a city immediately before the commencement of Division 1 of Part 1 of Chapter 9 continues as that city and is taken to be constituted under this Act.

*Schedule 7—Savings, transitional and other provisions*

---

**Continuation of existing councils**

22. A council constituted immediately before the commencement of Division 1 of Part 2 of Chapter 9 continues as that council and is taken to be constituted under this Act.

**Continuance in office of existing members of councils**

23. A person holding civic office before the commencement of Divisions 2 and 3 of Part 2 of Chapter 9 continues in that office for the balance of the person's term of office, subject to this Act.

**References to councils, areas and council members etc.**

24. (1) On and from the commencement of the relevant provision of this Act, a reference (however expressed) in any other Act (whether assented to before, on or after that commencement), in any instrument made under an Act or in any other instrument of any kind:

- (a) to a municipality or a shire—is to be read as a reference to an area under this Act; or
- (b) to the council of a municipality or shire, or a municipal council or shire council, is to be read as a reference to the council of the area concerned; or
- (c) to a riding of a shire is to be read as a reference to a ward of an area; or
- (d) to the President of a council is to be read as a reference to the mayor of the council; or
- (e) to an alderman is to be read as a reference to a councillor; or
- (f) to a town clerk or shire clerk of a council is to be read as a reference to the general manager of a council.

(2) Without limiting the operation of clauses 2 and 4, the regulations may contain provisions with respect to the interpretation of references to the old Act or any provision of that Act, councils constituted under that Act or any member or employee of a council.

**Election of mayors**

25. (1) An area whose mayor or president was, immediately before the commencement of Division 2 of Part 2 of Chapter 9, elected by the electors is, for the purposes of this Act, taken to be an area for which there is a decision in force under this Act that the mayor is to be elected by the electors.

(2) A decision referred to in this clause has effect, and may be changed by a constitutional referendum, in the same way as if the decision had been made under this Act.

**Division 2—Alteration in number of councillors**

**Councils with more than 15 councillors**

26. (1) A council with more than 15 councillors at the commencement of section 224 may retain that number of councillors until the end of the current term of office.

*Local Government Act 1993 No. 30*

---

(2) However, a vacancy may not be filled by a by-election during the current term of office to maintain the number of councillors above 15.

(3) The council must, before 1 July 1994, prepare a draft resolution determining the number, in accordance with section 224 (1), of its councillors for the following term.

(4) In addition, that or another draft resolution prepared before 1 July 1994 may contain provisions for any of the following:

- (a) dividing its area into wards;
- (b) abolishing all wards;
- (c) altering ward boundaries;
- (d) naming or renaming a ward.

**Public notice of proposed resolution**

27. (1) The council must give public notice of a draft resolution under clause 26 after it is prepared.

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

**Proposed resolution to be forwarded to Minister**

28. (1) After the end of the period during which submissions may be made, the council must forward a copy of the draft resolution to the Minister, together with a summary of the submissions received within the period and its comments on the submissions.

(2) The Minister may approve the draft resolution, with or without any amendments made by the Minister, or may decline to approve it. Such an approval is operative only if made before 1 September 1994.

(3) On approval, the resolution has effect as if duly made under and for the purposes of the relevant provisions of this Act, but has effect despite any such provisions.

(4) The resolution has effect only for the purposes of the next ordinary election and afterwards.

**No resolution**

29. (1) This clause applies where there is no resolution in force on 1 September 1994 that has the effect of reducing the number of councillors of a council having more than 15 councillors at the commencement of section 224 to 15 or below.

(2) If the area is not divided into wards, the number of councillors is automatically reduced to 15 for the following term.

(3) If the area is divided into wards and the mayor is elected by the electors for the area, the number of councillors (other than the mayor) is automatically reduced to 14, or the largest number less than 14 that is divisible by the number of wards (excluding any remainder) for the following term.

*Schedule 7—Savings, transitional and other provisions*

---

(4) If the area is divided into wards and the mayor is elected by the councillors, the number of councillors (including the mayor) is automatically reduced to 15, or the largest number less than 15 that is divisible by the number of wards (excluding any remainder) for the following term.

**Mayor**

30. The mayor is included as a councillor for the purposes of clauses 26–29 (except clause 29 (3)).

**Part 5—Provisions arising out of Chapter 10**

**(How are people elected to civic office?)**

**Disqualification from civic office**

31. The reference in section 275 (1) (d) to an offence under the regulations made for the purposes of section 748 (3) includes a reference to an electoral offence within the meaning of the old Act.

**Electors under the City of Sydney Act 1988**

32. Part 1 of Chapter 10 does not affect the right of a person to be an elector under the City of Sydney Act 1988.

**Filling of casual vacancies**

33. If a casual vacancy occurs in a civic office before the commencement of Division 3 of Part 2 of Chapter 9, a by-election held to fill the vacancy (whether held before or after that commencement) is to be held in accordance with the provisions of the old Act and the ordinances under that Act.

**Part 6—Provisions arising out of Chapter 11**

**(How are councils staffed?)**

**Definitions**

34. In this Part:

“**appointed day**” means the date of commencement of Chapter 11;

“**organisation structure**” of a council means its organisation structure determined under Part 1 of Chapter 11.

**Time within which organisation structure to be determined**

35. (1) A council must determine its organisation structure within 2 years after the appointed day.

(2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

**Time within which general manager to be appointed**

36. (1) A council must, under section 334, appoint a general manager within 2 years after the appointed day.

(2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

(3) A council is taken to have complied with this clause if:

- (a) within 3 years before the appointed day, it appointed a person as general manager (or to a position having functions comparable with those of a general manager), being an appointment that, if this Act had been in force at the time of the appointment, would have complied with the provisions of this Act; and
- (b) within 12 months after the appointed day, it confirms that appointment by resolution.

(4) For the purposes of subclause (3) (a), an appointment for a term exceeding 5 years is taken to satisfy section 338 (2), but such a term (if it would, but for this subclause, expire more than 5 years after the appointed day) expires 5 years after the appointed day.

**Time within which other senior staff to be appointed**

37. (1) If in the organisation structure of a council determined in accordance with clause 35 there are senior staff positions other than that of the general manager, the council must make appointments to those positions within 2 years after the appointed day.

(2) The Minister may extend the 2-year period in relation to a council specified by the Minister.

(3) Any such appointment is to be made in accordance with Chapter 11 or this Part.

**Who exercises the functions of general manager pending an appointment?**

38. Until a council appoints a person to be its general manager, the employee of the council specified by resolution of the council has the functions of the general manager.

**Employment of existing employees as senior staff—advertising requirements**

39. (1) This clause applies to the appointment to the general manager's position, or to any other senior staff position in a council's organisation structure, of a person who, immediately before the appointed day, held a position on the staff of the council to which the person was appointed within 3 years before the appointed day and continues to hold the position immediately before the appointment.

(2) The Minister may extend the application of this clause to a person or class of persons appointed to a position on the staff of a council 3 years or more before the appointed day.

(3) The requirements of Part 5 of Chapter 11 that relate to advertising do not apply to an appointment to which this clause applies, if the council by resolution declares that:

- (a) the position is part of an organisation structure that is not, as far as senior management positions are concerned, substantially different from the structure existing before the appointed day; and

*Schedule 7—Savings, transitional and other provisions*

---

- (b) there has been no substantial change in the duties or responsibilities of the position concerned; and
  - (c) the position was advertised in a manner that, if section 348 had been in force at the time the position was advertised, would have complied with that section; and
  - (d) the person appointed held a similar position at the appointed day under an appointment made on a merit basis.
- (4) Subclause (3) does not apply if the cost to the council of the total remuneration for the position exceeds the remuneration for the position referred to in subclause (3) (c).
- (5) For the purposes of subclause (4), total remuneration includes:
- wages
  - salary
  - superannuation
  - provision or use of a motor vehicle
  - any other benefits provided in relation to the position.
- (6) This clause ceases to have effect 2 years after the appointed day.

**Compensation to redundant staff**

40. (1) Despite any other Act or law, the council may by resolution terminate the employment of a person identified in the resolution on the ground of redundancy arising from the determination by the council of its organisation structure.
- (2) The Employment Protection Act 1982 does not apply to a termination of employment to which this clause applies.
- (3) On a termination of employment to which this clause applies, the employee is entitled to a termination package consisting of the following:
- Four weeks' notice or 4 weeks' pay in lieu of notice
  - Two weeks' pay per year of service to a maximum of 26 weeks' pay
  - Annual leave loading on untaken annual leave.
- (4) This clause does not affect any person's entitlements under the Annual Holidays Act 1944, the Long Service Leave Act 1955 or any other Act or under any superannuation scheme to which the person belongs.
- (5) This clause ceases to have effect 3 years after the appointed day.

**No contracting out of Part 2 of Chapter 11**

41. The reference in section 338 (2) to any contract is a reference to any contract made before, on or after the appointed day.

**Recognition of study or training**

42. (1) This clause applies to persons who have undertaken, but not completed, any course of study or training prescribed, approved or recognised by ordinance under the old Act as necessary or appropriate for obtaining suitable qualifications to hold an office referred to in Part 6 of the old Act.



*Local Government Act 1993 No. 30*

---

(2) On application by a person to whom this clause applies, the Director-General must provide the person with a certificate of recognition acknowledging the person's stage of completion of and achievements in the course concerned.

(3) This clause ceases to have effect 3 years after the appointed day.

**Preparation of equal employment Opportunity management plan**

43. Each council must prepare its first equal employment opportunity management plan under section 345, and commence its implementation, within 12 months after the commencement of that section.

**Part 7—Provisions arising out of Chapter 12****(How do councils operate?)****Existing delegations**

44. Section 381 does not apply to a delegation made before the Commencement of that section until 12 months after that commencement.

**Continuation of existing county councils**

45. A county council constituted immediately before the commencement of Part 5 of Chapter 12 continues as that county council and is taken to be constituted under this Act.

**Continuation of existing county districts**

46. Any group of wholes and parts of areas constituted as a county district immediately before the commencement of Part 5 of Chapter 12 continues as the area of operations of a county council and is taken to be constituted under this Act.

**Construction of references to county districts**

47. On and from the commencement of Part 5 of Chapter 12, a reference (however expressed) in any other Act (whether assented to before, on or after that commencement), in any instrument made under an Act or in any other instrument of any kind to a county district is to be read as a reference to the area of operations of a county council.

**Continuance in office of existing members of county councils**

48. A person holding office as a member of a county council before the commencement of Part 5 of Chapter 12 continues in that office for the balance of the person's term of office, subject to this Act.

**Part 8—Provisions arising out of Chapter 13**  
**(How are councils made accountable for their actions?)**

**Auditors**

49. (1) Any person who was the auditor of a council immediately before the commencement of Division 3 of Part 3 of Chapter 13 continues to hold office, subject to the terms of his or her appointment.

(2) If the term of the auditor's appointment would, but for this subclause, expire more than 3 years after the commencement of Division 3 of Part 3 of Chapter 13, it expires 3 years after that commencement, except as provided by subclause (3).

(3) A person appointed as auditor not more than 2 years before the commencement of Division 3 of Part 3 of Chapter 13 on a fixed term contract of not more than 6 years after tendering in accordance with the old Act may, with the Minister's approval, continue as auditor for the balance of the term of the contract.

(4) It does not matter that the auditor may not be qualified for an appointment under this Act.

(5) However, a person does not continue to hold office as auditor if he or she is a disqualified person within the meaning of section 423.

**Environmental reports**

50. The Environment Protection Authority must, not later than 3 months after the commencement of section 428 (2) (c), prepare and issue to councils guidelines as to the preparation of reports for the purposes of that provision.

**Inquiries and reviews**

51. (1) Any investigation being carried out by a person who is a local government inspector under the old Act may continue to be carried out by that person under Part 5 of Chapter 13 as if that person were a Departmental representative within the meaning of that Part.

(2) Any surcharge under the old Act is taken to be a surcharge under Part 5 of Chapter 13.

**Part 9—Provisions arising out of Chapter 14**  
**(Honesty and disclosure of interests)**

**Code of conduct**

52. (1) A code of conduct of a council in force immediately before the commencement of section 440 is taken to have been adopted under that section.

(2) Such a code remains in force for 1 year after that commencement.

(3) A council must prepare or adopt a code of conduct as required by section 440 within 1 year after the commencement of that section.

**Returns disclosing interests**

53. A person who, immediately before the commencement of section 449, is not in breach of section 46B of the old Act, is not required to lodge a return under section 449 until 6 months after the commencement of that section.

**Part 10—Provisions arising out of Chapter 15**  
**(How are councils financed?)**

**Initial categorisation of land for rating purposes**

54. (1) Before 1 July 1994, a council must:

- (a) declare, in accordance with Part 3 of Chapter 15, all rateable land in its area to be within one of the categories specified in section 514; and
- (b) give notice to each rateable person of the category so declared for the land for which the person is rateable.

(2) A rateable person may request the council to review the categorisation.

(3) A request for review must be made within 30 days after service of the notice.

(4) The council must review a categorisation on receiving a request for review and may, after the review, confirm or change the categorisation.

(5) The council must give notice to the rateable person of the decision made as a result of the review. The notice may be given in or with the rates and charges notice levying the ordinary rate for the year commencing on 1 July 1994.

(6) If the council has not made a decision concerning a request for a review within 30 days after the request is made to it, the council is taken to have decided to confirm the categorisation on the date on which the 30-day period expires.

(7) Nothing in subclause (6) prevents the council from making a decision concerning a request for a review after the expiration of the 30-day period.

(8) A rateable person who is dissatisfied with a decision made by a council as a result of a request for a review may appeal to the Land and Environment Court.

(9) An appeal must be made within 30 days after the council's decision.

(10) Such an appeal is to be heard and disposed of within Class 3 of the Land and Environment Court's jurisdiction.

(11) Without limiting the jurisdiction of the Land and Environment Court, the Court may, on an appeal, make any decision that could be made by the council on a request for a review.

(12) The categorisation of rateable land in accordance with this clause has effect on and from 1 July 1994, subject to Part 3 of Chapter 15.

**Regulations—new rating year**

55. (1) Without limiting clause 2, the Governor may make regulations containing provisions of a savings and transitional nature consequent on the change in the rating year on the commencement of the relevant provisions of this Act.

*Schedule 7—Savings, transitional and other provisions*

---

(2) Any such regulations may provide for the levying of a rate or charge for a period other than the year specified under this Act and may adopt and modify the provisions of this Act, the old Act and the Valuation of Land Act 1916 for that purpose.

(3) In particular, the regulations may provide that:

- (a) there is to be a transition period from 1 January 1994 to 30 June 1994 for the purpose of making and levying rates and annual charges; and
- (b) rates and annual charges for the transition period are to be made under the old Act (and the ordinances under the old Act) for the whole of the year commencing on 1 January 1994; and
- (c) a rate or annual charge levied for the transition period on a parcel of rateable land subject to the rate or charge is to be one-half of the amount that would otherwise be levied on the parcel under the old Act for the whole of the year; and
- (d) appropriate adjustments are to be made for:
  - (i) the calculation of the maximum annual revenue that may be obtained from rates and charges; and
  - (ii) the determination of rebates for eligible pensioners; and
  - (iii) the payment of rates by instalments or otherwise; and
  - (iv) other matters consequent on rating during the transition period.

(4) Nothing in this clause prevents a regulation that relates to rates or charges or associated matters from being made under clause 2.

**Existing investments**

56. Section 625 does not affect an investment lawfully made before the commencement of that section by a council.

**Part 11—Provisions arising out of Chapter 17**

**(Enforcement)**

**Exemption from liability—flood liable land and land in coastal zone**

57. Section 733 applies to advice furnished before the commencement of that section as well as to advice furnished after that commencement.

**Manuals for flood liable land and land in coastal zone**

58. A manual notified under section 582A of the old Act before the commencement of section 733 is taken to be notified for the purposes of section 733.

---

**DICTIONARY**

(Sec. 3)

**adjoining**, in relation to an area, means abutting or separated only by a public reserve, road, river, watercourse, or tidal or non-tidal water, or other like division.

**advertisement** means a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.

**advertising structure** means a structure used or to be used principally for the display of an advertisement.

**alcohol** means ethanol, any liquid containing ethanol and any liquor within the meaning of the Liquor Act 1982.

**alcohol-free zone** means a zone operating under Part 4 of Chapter 16 as an alcohol-free zone and in which the drinking of alcohol is accordingly prohibited in the circumstances and to the extent provided by section 642.

**alignment** means the boundary line between any public place and any land abutting that place.

**amusement device** has the same meaning as in the Construction Safety Act 1912.

**NOTE**

**amusement device**, as defined in the Construction Safety Act 1912, means anything mobile or fixed made available to members of the public on which, or on any part of which, or by means of which, they may ascend or descend, or be carried, transported, raised, lowered or supported for the purposes of amusement, games, recreation, sightseeing or entertainment but does not include:

- (a) anything that:
  - (i) is not power-operated; or
  - (ii) may only be operated by manual power, unless a fee is payable for its use, or for entry therein or thereon, or for entry to the place where it is situated;
- (b) a conveyor, crane, escalator, hoist, lift or moving walk;
- (c) a railway system in so far as it uses a locomotive for its motive power and has a track gauge of more than 650 mm;
- (d) a vehicle required to be registered under the Traffic Act 1909;
- (e) a vessel used on waters navigable for the purpose of trade;

NOTE—*continued*

- (f) an aircraft subject to the regulations made under the Air Navigation Act 1920 of the Parliament of the Commonwealth and any Act amending or replacing that Act; or
- (g) anything prescribed as being excluded from this definition.

**approval** means an approval that is in force under this Act.

**approved fee** means:

- (a) the fee prescribed by the regulations for the purposes of the provision in relation to which the expression is used or determined by the council in accordance with any such regulations; or
- (b) if no such regulations are in force, the fee (if any) determined by the Director-General for the purposes of the provision in relation to which the expression is used; or
- (c) if no such regulations are in force and no fee is determined by the Director-General, the fee (if any) determined by the council for the purposes of the provision in relation to which the expression is used.

**approved form** means:

- (a) the form prescribed by the regulations for the purposes of the provision in relation to which the expression is used; or
- (b) if no such form is prescribed, the form (if any) approved by the Director-General for the purposes of the provision in relation to which the expression is used; or
- (c) if no such form is prescribed and no form is approved by the Director-General, the form approved by the council for the purposes of the provision in relation to which the expression is used.

**approved standards** means:

- (a) the standards prescribed by the regulations for the purposes of the provision in relation to which the expression is used; or
- (b) if no such standards are prescribed, the standards (if any) determined by the Director-General for the purposes of the provision in relation to which the expression is used; or
- (c) if no such standards are prescribed or determined by the Director-General, the standards (if any) determined by the council for the purposes of the provision in relation to which the expression is used.

**area** means an area as constituted under Division 1 of Part 1 of Chapter 9.

**associated structure** means:

- (a) a carport, garage, shed, pergola, verandah or other structure designed to enhance the amenity of a moveable dwelling and attached to or integrated with, or located on the same site as, the dwelling concerned; or
- (b) a separating wall between 2 moveable dwellings.

**Australian Statistician** means the Australian Statistician referred to in section 5 (2) of the Australian Bureau of Statistics Act 1975 of the Commonwealth.

**authorised person** means:

- (a) an employee of a council generally or specially authorised by the council in respect of or whose duty it is to deal with, or to act in regard to, any acts, matters or things in relation to which the expression is used; or
- (b) a police officer.

**authority**, in Part 3 of Chapter 14, means the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions.

**base amount** of a rate means a base amount specified in a resolution of a council under section 537.

**Boundaries Commission** means the Local Government Boundaries Commission constituted under this Act.

**builder** means the person who is employed to build or to execute work on a building, or, where no person is so employed, the owner of the building.

**building** includes part of a building and any structure or part of a structure.

**building certificate**, in Part 4 of Chapter 7, means a building certificate issued by the council under section 172.

**bushland** means land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation.

**business day** means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public or bank holiday throughout New South Wales.

**catchment district** means a district proclaimed to be a catchment district under section 128.

**city** means an area constituted as a city under Division 1 of Part 1 of Chapter 9.

**civic office** means the office of councillor or mayor or, in the case of a county council, the office of chairperson or member.

**closing date**, in relation to an election or poll, means the date prescribed by the regulations for the closing of the roll of electors for the election or poll.

**common** has the same meaning as in the Commons Management Act 1989.

**NOTE**

**common**, as defined in the Commons Management Act 1989, means:

- (a) a parcel of land which, on or before 1 February 1909, had, by any instrument made by the Governor, been set aside as a common for the use of the inhabitants of any specified locality or the cultivators or farmers of any locality in which the parcel of land is situated; or
- (b) any parcel of land which, after that date, has been set aside by the Governor or the Minister as a common or for pasturage for the use of the inhabitants of a specified locality,

but does not include such a parcel where the setting aside of the common has been revoked or otherwise terminated.

**Commonwealth Act**, in Part 11 of Chapter 15, means the Local Government (Financial Assistance) Act 1986 of the Commonwealth.

**community land** means land that is classified as community land under Division 1 of Part 2 of Chapter 6.

**council:**

- (a) means the council of an area, and includes an administrator; and
- (b) in Part 11 of Chapter 15, includes the Lord Howe Island Board constituted under the Lord Howe Island Act 1953.

**councillor** means a person elected or appointed to civic office, and includes a mayor.

**county council** means a county council established under Part 5 of Chapter 12.

**Crown** includes any statutory body representing the Crown.

**Crown land** has the same meaning as in the Crown Lands Act 1989.



## NOTE

**Crown land**, as defined in the Crown Lands Act 1989, means land that is vested in the Crown or was acquired under the Closer Settlement Acts as in force before their repeal, not in either case being:

- (a) land dedicated for a public purpose; or
- (b) land that has been sold or lawfully contracted to be sold and in respect of which the purchase price or other consideration for the sale has been received by the Crown.

**de facto partner** has the same meaning as in the De Facto Relationships Act 1984.

## NOTE

**de facto partner**, as defined in the De Facto Relationships Act 1984, means:

- (a) in relation to a man, a woman who is living or has lived with the man as his wife on a bona fide domestic basis although not married to him; and
- (b) in relation to a woman, a man who is living or has lived with the woman as her husband on a bona fide domestic basis although not married to her.

**debt** means:

- (a) a debt arising from a loan of money; or
- (b) a debt arising from the supply of goods or services.

**Department** means the Department of Local Government and Co-operatives.

**Departmental representative** means a person authorised under section 430.

**deputy mayor** includes Deputy Lord Mayor.

**designated person** has the meaning given in section 441.

**Director-General** means the Director-General of the Department.

**domestic waste** means waste on domestic premises of a kind and quantity ordinarily generated on domestic premises.

**domestic waste management services** means services comprising the periodic collection of domestic waste from individual parcels of rateable land and services that are associated with those services.

**drain** means a drain for the carrying off of waters other than sewage.

**drive-in theatre** means any place or structure:

- (a) which is used or intended to be used for the purpose of exhibiting or screening films (within the meaning of the Film and Video Tape Classification Act 1984) in the open air; and
- (b) in respect of which provision is made for the parking or accommodation of motor vehicles from which such films are to be viewed; and
- (c) to which admission may ordinarily be gained by members of the public on payment of money, or other consideration, as the price or condition of admission,

and includes any building used or intended to be used in connection with the place or structure.

**dwelling**, in Division 1 of Part 8 of Chapter 15, means a building or part of a building used as a place of dwelling.

**effective date**, in Division 1 of Part 8 of Chapter 15, has the meaning given to it in section 578.

**election** means:

- (a) the first election for an area after its constitution; or
- (b) an ordinary election; or
- (c) a by-election to fill a casual vacancy; or
- (d) a fresh election ordered under this Act as a consequence of the declaration of all civic offices in relation to a council to be vacant; or
- (e) an election authorised under this Act for an area the council of which has been declared to be non-functioning.

**elector** means a person who is entitled to vote in an election.

**Electoral Commissioner** means the person for the time being holding or acting in the office of Electoral Commissioner under the Parliamentary Electorates and Elections Act 1912.

**electoral offence** means an electoral offence under this Act.

**eligible pensioner**, in Division 1 of Part 8 of Chapter 15, in relation to a rate or charge levied on land on which a dwelling is situated means a person:

- (a) who is a member of a class of persons prescribed by the regulations (such a class being prescribed by reference to eligibility to receive a pension, benefit or allowance under the Social Security Act 1991 of the Commonwealth); and
- (b) who occupies that dwelling as his or her sole or principal place of living.

**entertainment** includes:

- (a) amusement provided by means of any ride or device or by any other means (such as pin-ball machines and video games); and
- (b) an exhibition, sporting event or contest,

but does not include anything that is declared by the regulations not to be entertainment for the purposes of this definition.

**environmental planning instrument** has the same meaning as in the Environmental Planning and Assessment Act 1979.

**NOTE**

**environmental planning instrument**, as defined in the Environmental Planning and Assessment Act 1979, means a State environmental planning policy, a regional environmental plan, or a local environmental plan, and except where otherwise expressly provided by that Act, includes a deemed environmental planning instrument.

**deemed environmental planning instrument**, as defined in that Act, means a former planning instrument referred to in clause 2 of Schedule 3 to the Miscellaneous Acts (Planning) Repeal and Amendment Act 1979 and includes an instrument referred to in clause 3 (2) of that Schedule.

**erection**, in relation to building, includes any structural work and any alteration, addition or rebuilding.

**exercise** of a function includes, where the function is a duty, the performance of the duty.

**fire-isolated passageway** means a corridor, hallway or similar space that, in accordance with the regulations, provides egress to or exit from a fire-isolated stairway or a fire-isolated ramp, or access to a road or open space.

**fire-isolated ramp** means a ramp that:

- (a) is within a fire-resisting enclosure; and
- (b) provides egress from a storey of a building or a space in the nature of a storey; and
- (c) complies with the regulations.

**fire-isolated stairway** means a stairway that:

- (a) is within a fire-resisting shaft; and
- (b) has a floor and is enclosed above by a structure; and
- (c) complies with the regulations.

**fittings**, in relation to any premises connected to a water main or sewer, means all apparatus (other than pipes or fixtures) used or intended to be used in connection with the conveyance of water to, or of permitted discharges from, the premises.

**fixtures**, in relation to water supply, sewerage or drainage, means all apparatus (other than pipes or fittings) used or intended to be used for the collection or retention of water or permitted discharges for ultimate delivery into a sewer.

**free parking area** means any area of public land (other than a public road) for the accommodation of vehicles without payment of a fee or charge.

**function** includes a power, authority and duty.

**Grants Commission** means the Local Government Grants Commission constituted under this Act.

**human waste** means human faeces and urine.

**human waste storage facility** means a device for holding or disposing of human waste, including a cesspit, septic tank, septic closet, water closet, chemical closet, humus closet and combustion closet.

**joint**, in relation to owning, holding or occupying land, includes owning, holding or occupying in common.

**jointly eligible occupier**, in Division 1 of Part 8 of Chapter 15, in relation to a rate or charge in respect of which an eligible pensioner is jointly liable, means a person who:

- (a) is the spouse of that eligible pensioner; or
- (b) is another eligible pensioner; or
- (c) if another eligible pensioner and his or her spouse have the same sole or principal place of dwelling, is the spouse of that other eligible pensioner,

and whose sole or principal place of living is the same as that of that firstmentioned eligible pensioner.

**land value:**

- (a) means:
  - (i) the land value of the land as determined in accordance with the Valuation of Land Act 1916, except as provided by paragraph (b); or
  - (ii) in the case of a stratum, the land value of the stratum as determined in accordance with the Valuation of Land Act 1916; and

(b) in Division 2 of Part 8 of Chapter 15, means:

- (i) except as provided by subparagraph (ii), the land value of the land after deducting from that land value the amount of any allowance made in respect of the land under section 58 (2) of the Valuation of Land Act 1916; or
- (ii) if the land is land to which section 598 applies, the land rating factor of the land determined in accordance with that section after deducting from that land rating factor the amount of any allowance made in respect of the land under section 58 (2) of the Valuation of Land Act 1916.

**lease:**

- (a) includes an original lease, derivative lease or an under-lease or an agreement for any of them, and extends to any case where there is the relation of landlord and tenant, whether there is or is not any instrument in writing; and
- (b) in relationship to Crown land, land owned by or vested in the Crown or land within a State forest, includes a licence, permit, permissive occupancy or authority (other than a licence issued under section 27A, 27B, 27C, 27G or 28 of the Forestry Act 1916, or a permit granted under section 31 (1), a permit to occupy land for bee-farming purposes granted under section 31(1A) (b), or a permit granted under section 32B (1) or 32F (1), of that Act), and land occupied under a mineral claim under the Mining Act 1992 is taken for the purposes of this Act to be held under a lease by the person in lawful occupation, under the mineral claim, of the land.

**lessee** includes:

- (a) an original lessee, derivative lessee or under-lessee and any person deriving title under or from a lessee or under-lessee; and
- (b) the holder of a mineral claim under the Mining Act 1992.

**licensed premises** means premises the subject of

- (a) a licence under the Liquor Act 1982; or
- (b) a certificate of registration under the Registered Clubs Act 1976,

that are used or intended to be used for the purpose of providing entertainment.

**manufactured home** means a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling:

- (a) that comprises one or more major sections; and
- (b) that is not capable of being registered under the Traffic Act 1909,

and includes any associated structures that form part of the dwelling.

**manufactured home estate** means land on which manufactured homes are, or are to be, erected.

**marked roll** means a roll marked in accordance with section 313.

**mayor** includes Lord Mayor.

**mine** means land, on or below the surface or partly on or partly below the surface, used or held for any mining purpose.

**mortgage** includes any charge whatever on land or an interest in land, however created, for the securing of money.

**mortgagee** includes every person entitled at law or in equity to a mortgage or any part of a mortgage.

**moveable dwelling** means:

- (a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation; or
- (b) a manufactured home; or
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.

**newspaper** means a paper containing news, which is printed, for sale or free distribution, at intervals not exceeding 26 days and which circulates within the area with respect to which the term is used.

**notice** includes notification, order, direction and demand.

**notify** means notify by publication in the Gazette or by such other method as may be prescribed by the regulations.

**occupier** includes:

- (a) person having the charge, management or control of premises; and
- (b) in the case of a building which is let out in separate occupancies or a lodging house which is let out to lodgers, the person receiving the rent payable by the tenants or lodgers, either on his or her own account or as the agent of another person,

and, in the case of a vessel, means the master or other person in charge of the vessel.

**open-air theatre** means any place or structure:

- (a) which is used or intended to be used for the purpose of exhibiting or screening films (within the meaning of the Film and Video Tape Classification Act 1984) in the open air; and
- (b) to which admission may ordinarily be gained by members of the public on payment of money, or other consideration, as the price or condition of admission,

and includes any building used or intended to be used in connection with the place or structure, but does not include a drive-in theatre.

**operational land** means land that is classified as operational land under Division 1 of Part 2 of Chapter 6.

order, in Part 2 of Chapter 7, means, if:

- (a) an appeal is made to the Land and Environment Court in accordance with section 182 against an order in the terms of order No. 4 in the Table to section 124 and the Court confirms that order with modifications; or
- (b) a council modifies an order in the terms of order No. 4 in the Table to section 124 in accordance with section 152,

the order as so modified.

**owner:**

- (a) in relation to Crown land, means the Crown and includes:
  - (i) a lessee of land from the Crown; and
  - (ii) a person to whom the Crown has lawfully contracted to sell the land but in respect of which the purchase price or other consideration for the sale has not been received by the Crown; and
- (b) in relation to land other than Crown land, includes:
  - (i) every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession; and
  - (ii) every such person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise; and

- (iii) in the case of land that is the subject of a strata scheme under the Strata Titles Act 1973 or a leasehold strata scheme under the Strata Titles (Leasehold) Act 1986, the body corporate under that scheme; and
  - (iv) in the case of land that is a community, precinct or neighbourhood parcel within the meaning of the Community Land Development Act 1989, the association for the parcel; and
  - (v) every person who by this Act is taken to be the owner; and
- (c) in relation to land subject to a mining lease under the Mining Act 1992, the holder of the lease; and
- (d) in Part 2 of Chapter 7, in relation to a building, means the owner of the building or the owner of the land on which the building is erected.

**parcel of land**, in relation to rateable land, means a portion or parcel of land separately valued under the Valuation of Land Act 1916.

**park**, in relation to land, means an area of open space used for recreation, not being bushland.

**park**, in relation to a vehicle, includes stand or wait.

**parking authority for a person with disabilities** means an authority issued by the Roads and Traffic Authority to a person with disabilities or to a person or organisation in respect of a vehicle used for the conveyance of persons with disabilities.

**Pecuniary Interest Tribunal** means the Local Government Pecuniary Interest Tribunal established under this Act.

**person with disabilities** means a person who is unable to walk or who is able to walk only short distances because of permanent loss of the use of one or both legs or other severe permanent medical or physical handicap.

**place of public entertainment** means:

- (a) a drive-in theatre; or
- (b) an open-air theatre; or
- (c) a theatre or public hall; or
- (d) licensed premises.

**place of shared accommodation** includes a boarding house, a common lodging house, a house let in lodgings and a backpackers hostel.

**plan of management** means a plan of management adopted by a council under Division 2 of Part 2 of Chapter 6 and in force in relation to an area of public land.



**political party** means a body or organisation, whether or not incorporated, having as one of its objects or activities the promotion of the election to Parliament or to a council of a candidate or candidates endorsed by it or by a body or organisation of which it forms part.

**premises** means any of the following:

- (a) a building of any description or any part of it and the appurtenances to it;
- (b) land, whether built on or not;
- (c) a shed or other structure;
- (d) a tent;
- (e) a swimming pool;
- (f) a ship or vessel of any description (including a houseboat);
- (g) a van.

**private land** means land the fee-simple of which is not vested in the Crown, and land that the Crown has lawfully contracted to sell.

**promote or conduct a public entertainment** includes being interested in the proceeds or profits of the entertainment.

**provision for fire safety** means provision for any or all of the following:

- (a) the safety of persons in the event of fire;
- (b) the prevention of fire;
- (c) the detection of fire;
- (d) the suppression of fire;
- (e) the prevention of the spread of fire.

**public authority** means a public authority constituted by or under an Act, a government department or a statutory body representing the Crown, and includes a person exercising any function on behalf of the authority, department or body and any person prescribed by the regulations to be a public authority.

**public car park** means any premises used for the purpose of accommodating vehicles of members of the public on payment of a fee, but does not include a metered space (within the meaning of that Act).

## NOTE

**metered space** as defined in the Traffic Act 1909 means any part of a public street:

- (a) in which a parking meter is installed; and
- (b) which has been marked by painted lines or by any other prescribed method for the purpose of indicating where a vehicle may park on payment of a fee.

**public entertainment:**

- (a) means entertainment to which admission may ordinarily be gained by members of the public on payment of money, or other consideration, as the price or condition of admission and an entertainment does not cease to be a public entertainment merely because:
  - (i) some (but not all) persons may be admitted to the entertainment otherwise than on payment of money, or other consideration, as the price or condition of admission; or
  - (ii) such payment, or other consideration, is demanded as the charge for a meal or other refreshment, or for any other service or thing, before admission to the entertainment is granted or as the charge for the entertainment after admission to the entertainment has been granted; and
- (b) includes a public meeting; and
- (c) does not include the provision or use of approved amusement devices (within the meaning of the Liquor Act 1982) or poker machines (within the meaning of the Registered Clubs Act 1976).

**public inquiry** means a public inquiry held under section 740.

**public land** means any land (including a public reserve) vested in or under the control of the council, but does not include:

- (a) a road; or
- (b) land to which the Crown Lands Act 1989 applies; or
- (c) a common; or
- (d) land subject to the Trustees of Schools of Arts Enabling Act 1902.

**public meeting** means an assembly held for a public purpose to which admission may ordinarily be gained by members of the public (whether or not on payment of money, or other consideration, as the price or condition of admission), but does not include an assembly held for the purpose of religious worship only.

**public notice** means public notice given as referred to in section 705.

**public officer** of a council means the public officer appointed under Chapter 11 for that council.

**public place** means a public road, bridge, jetty, wharf, road-ferry, public reserve, public bathing reserve, public baths, public swimming pool or other place which the public are entitled to use.

**public reserve** means:

- (a) a public park; or
- (b) any land conveyed or transferred to the council under section 340A of the Local Government Act 1919; or
- (c) any land dedicated or taken to be dedicated as a public reserve under section 340C or 340D of the Local Government Act 1919; or
- (d) any land dedicated or taken to be dedicated under section 49 or 50; or
- (e) any land vested in the council, and declared to be a public reserve, under section 37AAA of the Crown Lands Consolidation Act 1913; or
- (f) any land vested in the council, and declared to be a public reserve, under section 76 of the Crown Lands Act 1989; or
- (g) a reserve within the meaning of section 78 of the Crown Lands Act 1989; or
- (h) land declared to be a public reserve and placed under the control of a council under section 52 of the State Roads Act 1986; or
- (i) land dedicated as a public reserve and placed under the control of a council under section 159 of the Roads Act 1993,

and includes a public reserve of which a council has the control under section 344 of the Local Government Act 1919 or section 48, but does not include a common.

**public road** means a road which the public are entitled to use.

**rateable land** means land that is rateable to an ordinary rate or a special rate, or both.

**rateable person** includes the Crown in respect of rateable land owned by the Crown and means:

- (a) an owner in any case where this Act provides that a rate is to be paid to the council by the owner; and
- (b) a holder of a lease in any case where this Act provides that a rate is to be paid to the council by the holder of the lease.

**relative**, in relation to a person, means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partner of the person or of a person referred to in paragraph (a).

**remuneration**, in section 332, means the salary component of the remuneration.

**Remuneration Tribunal** means the Local Government Remuneration Tribunal established under this Act.

**required exit** has the same meaning as in the Building Code of Australia published by the Australian Uniform Building Regulations Co-ordinating Council, and incorporating the New South Wales variations set out in the relevant appendix to that Code, as in force on 1 November 1992 or such later date as may be prescribed by the regulations.

**road** includes:

- (a) highway, street, lane, pathway, footpath, cycleway, thoroughfare, bridge, culvert, causeway, road-ferry, ford, crossing, by-pass and trackway, whether temporary or permanent; and
- (b) any part of a road and any part of any thing referred to in paragraph (a); and
- (c) any thing forming part of a road or any thing forming part of any thing referred to in paragraph (a).

**rural land**, in Division 2 of Part 8 of Chapter 15, means:

- (a) a parcel of rateable land which is valued as one assessment and exceeds 8,000 square metres in area and which is wholly or mainly used for the time being by the occupier for carrying on one or more of the businesses or industries of grazing, animal feedlots, dairying, pig-farming, poultry farming, viticulture, orcharding, bee-keeping, horticulture, vegetable growing, the growing of crops of any kind or forestry; or
- (b) an oyster farm, or a fish farm within the meaning of the Fisheries and Oyster Farms Act 1935.

**rural residential land** means land that:

- (a) is the site of a dwelling; and
- (b) is not less than 2 hectares and not more than 40 hectares in area; and
- (c) is either:
  - (i) not zoned or otherwise designated for use under an environmental planning instrument; or
  - (ii) zoned or otherwise designated for use under such an instrument for non-urban purposes; and
- (d) does not have a significant and substantial commercial purpose or character.

**senior staff** of a council means the general manager of the council and the holders of all other positions identified in the council's organisation structure as senior staff positions.

**sewerage work** means the construction, alteration, extension, disconnection, removal, ventilation, flushing or cleansing of any sewerage service pipes or fittings or fixtures communicating or intended to communicate, directly or indirectly, with:

- (a) a septic tank, an effluent or a sullage disposal system; or
- (b) any sewer of a council,

and includes work of sanitary plumbing and work of house drainage.

**shares** includes stock.

**single dwelling-house**, in Division 2 of Part 8 of Chapter 15, means a dwelling used or adapted for use solely for habitation by not more than one family and includes a dwelling in a row of 2 or more dwellings attached to each other such as are commonly known as semi-detached or terrace buildings, but does not include a flat.

**stormwater drainage work** means the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal or cleansing of any stormwater drain communicating or intended to communicate, directly or indirectly, with any stormwater channel of a council.

**temporary structure** includes:

- (a) a booth, tent or other temporary enclosure, whether or not a part of the booth, tent or enclosure is permanent; and
- (b) a mobile structure.

**theatre or public hall** means any building or part of a building that is used or intended to be used for the purpose of providing public entertainment or conducting public meetings.

**tidal waters** includes the waters of the sea or of any lake, estuary, harbour, river, bay or lagoon in which the tide ebbs and flows.

**transfer**, in relation to the estate or interest of a rateable person, includes conveyance.

**trustee**, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, includes:

- (a) an executor, administrator, guardian, committee, receiver and liquidator; and
- (b) every person having or taking on himself or herself the administration or control of land affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the land of a person under any legal or other disability.

**waste** means:

- (a) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a human waste storage facility, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a human waste storage facility, sullage pit or grease trap; or
- (b) trade waste, being any matter or thing, whether solid, gaseous or liquid or a combination of solids, gases and liquids (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade or business process or operation, including any building or demolition work; or
- (c) garbage, being all refuse other than trade waste and effluent, and a substance is not precluded from being waste merely because it is capable of being refined or recycled.

**waste depot** means a place at which waste may be treated or stored in accordance with an approval under this Act or a place approved as a waste depot under any other Act.

**water supply authority** means a corporation listed in Schedule 1 to the Water Supply Authorities Act 1987.

**water supply work** means the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal or clearing of any pipes or fittings of any water service communicating or intended to communicate, directly or indirectly, with any water main of a council, but does not include changing a washer.

**year** means the period from 1 July to the following 30 June.

Words and expressions defined in the Interpretation Act 1987 include:

affidavit	Gazette	named month
alien	Government	Northern Territory
amend	Government Printer	oath
ASC Law and ASC Regulations	Governor	office
Australia	High Court	ordinance
Australia Acts	Imperial Act	Parliament
British Act	Imperial Parliament	party
British Parliament	indictable offence	penalty
British subject	individual	person
by-law	internal Territory	Police Force
calendar month	Jervis Bay Territory	police officer
calendar year	justice	Police Service
committal proceedings	land	prescribed
Commonwealth	Legislative Assembly	proclamation
Commonwealth Constitution	Legislative Council	property
Consolidated Fund	Local Court	Public Service
contravene	Magistrate	regulation
Corporations Law and Corporations Regulations	make	repeal
date of assent	mentally incapacitated person	rule
definition	midnight	rules of court
document	Minister	sign
estate	minor	State
Executive Council	misdemeanour	statutory declaration
external Territory	month	summary offence
felony		swear
foreign country		Territory
		the State
		United Kingdom
		writing

*[Minister's second reading speech made in—  
Legislative Assembly on 11 March 1993  
Legislative Council on 20 May 1993]*