



New South Wales

Local Government (Financial Management) Regulation 1999

under the

Local Government Act 1993

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

Harry Woods MP

Minister for Local Government

Explanatory note

The object of this Regulation is to repeal and remake, with some modifications, the *Local Government (Financial Management) Regulation 1993*.

The new Regulation supplements the provisions of Parts 2 and 3 of Chapter 13 and Parts 12 and 13 of Chapter 15 of the *Local Government Act 1993*. Those Parts respectively relate to councils' management plans, the financial management of councils, loans made to councils and investments made by councils.

The new Regulation deals with the following matters:

- (a) the requirements for estimates of income and expenditure to be included in councils' draft management plans and the maintenance of budgetary controls by councils (Part 2),
- (b) the keeping of bank, building society or credit union accounts and the withdrawal of money by councils (Part 3),
- (c) the keeping of accounting records by councils and the prescribing of accounting practices (Part 4),
- (d) councils' annual financial reports (Part 5),

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- (e) the auditing of councils' financial reports and the inspection of councils' accounting records (Part 6, clauses 21 and 22),
- (f) borrowing by councils (Part 6, clauses 23 and 24),
- (g) the rounding down of payments to councils (Part 6, clause 25),
- (h) matters of a minor, consequential or ancillary nature (Part 1 and Part 6, clause 26).

The Regulation is made under the *Local Government Act 1993*, including section 748 (the general regulation-making power) and various other provisions referred to in the Regulation.

The Regulation refers to:

- (a) the *Local Government Code of Accounting Practice and Financial Reporting* (published by the Department of Local Government) in relation to:
 - (i) the preparation of a council's estimates (clause 5),
 - (ii) the information to be included in a council accounting officer's budget review statements (clause 7),
 - (iii) a council's accounting records and accounting practices (clause 10),
 - (iv) the preparation of a council's annual financial reports (clauses 18 and 19),
 - (v) the auditing of a council's financial reports (clause 21), and
- (b) the *Local Government Asset Accounting Manual* (published by the Department of Local Government) and the *Australian Accounting Standards* in relation to the preparation of a council's annual financial reports (clauses 18 and 19).

The Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Local Government (Financial Management) Regulation 1999*.

2 Commencement

This Regulation commences on 1 September 1999.

3 Application of Regulation

This Regulation applies to all councils and county councils.

4 Definitions

(1) In this Regulation:

accounting records of a council means the records that section 412 of the Act requires the council to keep, and includes any cash receipt record, assets register, contracts register, stores register or ledger, debtors' ledger and creditors' ledger.

Code means the *Local Government Code of Accounting Practice and Financial Reporting* published by the Department (as in force from time to time).

council includes a county council.

Departmental representative means a person authorised under section 430 of the Act.

estimate includes all sub-estimates that the estimate is required to contain.

Manual means the *Local Government Asset Accounting Manual* published by the Department (as in force from time to time).

quarter means the period of 3 months ending on 30 September, 31 December, 31 March or 30 June.

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Part 1 Preliminary

records includes books, registers, deeds and documents, and any other sources of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means.

responsible accounting officer of a council means:

- (a) a member of the staff of the council designated by the general manager, or
- (b) if no such member has been designated, the general manager.

the Act means the *Local Government Act 1993*.

valuable security means a document that:

- (a) creates, transfers, surrenders or releases a right to, or in or over, property, or
 - (b) authorises the payment of money or the delivery of property, or
 - (c) evidences the creation, transfer, surrender or release of such a right, the payment of money, the delivery of property or the satisfaction of an obligation.
- (2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Management plans and budgeting by councils

5 Requirements as to estimates of income and expenditure

The council's detailed estimate of its income and expenditure required by section 404 (1) of the Act to be included in its draft management plan for a year must be prepared in accordance with the *Code*.

6 Responsible accounting officer to maintain system for budgetary control

The responsible accounting officer of a council must:

- (a) establish and maintain a system of budgetary control that will enable the council's actual income and expenditure to be monitored each month and to be compared with the estimate of the council's income and expenditure, and
- (b) if any instance arises where the actual income or expenditure of the council is materially different from its estimated income or expenditure, report the instance to the next meeting of the council.

7 Budget review statements and revision of estimates

- (1) Not later than 2 months after the end of each quarter, the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the management plan that the council has adopted for the relevant year, a revised estimate of the income and expenditure for that year.
- (2) A budget review statement must include or be accompanied by:
 - (a) a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and
 - (b) if that position is unsatisfactory, recommendations for remedial action.
- (3) A budget review statement must also include any information required by the *Code* to be included in such a statement.

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Part 3 Councils' funds

Part 3 Councils' funds

8 Council to establish and maintain accounts with banks, building societies or credit unions

A council must establish and maintain at least one account with a bank, building society or credit union for its consolidated fund and at least one account with a bank, building society or credit union for its trust fund.

9 Withdrawal of certain money

A council must ensure that the following classes of money are withdrawn for use only for the purpose for which it is held or for investment in accordance with section 625 of the Act:

- (a) money that the council must set aside to repay the principal outstanding on loans made to the council on interest-only terms,
- (b) money lent to the council not yet expended for the purpose for which the money was obtained,
- (c) money that the council must set aside to meet outstanding claims to be met by the council under any self-insurance scheme that the council operates.

Note. Section 409 (3) of the Act contains requirements in respect of the use of other classes of money. Those classes are:

- (a) money received as a result of levying a special rate or charge,
- (b) money that is, by the provisions of an Act, required to be set aside for a special purpose,
- (c) money received from the Government or a public authority for a specific purpose,
- (d) money received as rents, profits or other proceeds in respect of community land.

Section 625 of the Act says how a council may invest its surplus funds.

Part 4 Accounting records and accounting practices

10 Accounting records and accounting practices to accord with the Code

- (1) A council's accounting records must be kept in a form that accords with the *Code*.
- (2) A council's accounting practices must accord with the *Code*.

Note. Section 412 of the Act contains the general requirements for the keeping of a council's accounting records.

11 Responsibility for accounting records

- (1) The responsible accounting officer of a council is responsible for keeping the council's accounting records.
- (2) The responsible accounting officer must ensure that the accounting records are kept up-to-date and in an accessible form.
- (3) The responsible accounting officer must take all reasonable measures to ensure that:
 - (a) all money payable to the council is collected or recovered promptly, and
 - (b) appropriate arrangements are implemented for the security and banking of money received by the council, and
 - (c) the assets of or under the control of the council are properly accounted for, and
 - (d) liabilities are incurred by the council only with the authority of the council and the council's funds are properly spent in meeting those liabilities, and
 - (e) appropriate budgeting and accounting systems (including internal control systems) are established and maintained for the purposes of the council, and
 - (f) adequate measures are taken to protect the council's valuable securities and accounting records from loss, destruction, damage and theft.

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Clause 12 Local Government (Financial Management) Regulation 1999

Part 4 Accounting records and accounting practices

12 Production of accounting records

A member of the staff of a council who has control of any of the council's accounting records must:

- (a) produce those records for inspection and audit in proper order whenever directed or requested to do so by the council's mayor, responsible accounting officer, general manager (if not the council's responsible accounting officer) or auditor or by a Departmental representative, and
- (b) render all practicable assistance to the mayor, responsible accounting officer, general manager, auditor or Departmental representative with respect to those records.

13 Particular responsibilities of the general manager

The general manager of a council must ensure that:

- (a) the provisions of the Act, the regulations and any other written law relating to councils' financial obligations or the keeping of accounts by councils are complied with, and
- (b) effective measures are taken to secure the effective, efficient and economical management of financial operations within each division of the council's administration, and
- (c) authorising and recording procedures are established to provide effective control over the council's assets, liabilities, revenue and expenditure and secure the accuracy of the accounting records, including a proper division of accounting responsibilities among the council's staff, and
- (d) lines of authority and the responsibilities of members of the council's staff for related tasks are clearly defined.

14 Council to rectify defects in internal control systems

On becoming aware:

- (a) that the systems for properly accounting for the receipt, investment, handling or expenditure of money by a council are defective or inadequate, or
- (b) that the existing systems established for those purposes are not being complied with,

the Director-General may, by notice in writing served on the council, direct the council to remedy the defect or inadequacy, or to comply with the existing systems. The council must comply with such a direction.

Note. Failure to comply with a direction under clause 14 may lead to an investigation being held under Part 5 of Chapter 13 of the Act.

15 Authorisation of expenditure

- (1) A council, or a person purporting to act on behalf of a council, must not incur a liability for the expenditure of money unless the council at the annual meeting held in accordance with subclause (2) or at a later ordinary meeting:
 - (a) has approved the expenditure, and
 - (b) has voted the money necessary to meet the expenditure.
- (2) A council must each year hold a meeting for the purpose of approving expenditure and voting money.
- (3) All such approvals and votes lapse at the end of a council's financial year. However, this subclause does not apply to approvals and votes relating to:
 - (a) work carried out or started, or contracted to be carried out, for the council, or
 - (b) any service provided, or contracted to be provided, for the council, or
 - (c) goods or materials provided, or contracted to be provided, for the council, or
 - (d) facilities provided or started, or contracted to be provided, for the council,

before the end of the year concerned, or to the payment of remuneration to members of the council's staff.

16 Reports on council investments

- (1) The responsible accounting officer of a council:
 - (a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:
 - (i) if only one ordinary meeting of the council is held in a month, at that meeting, or

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Part 4 Accounting records and accounting practices

- (ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and
 - (b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.
- (2) The report must be made up to the last day of the month immediately preceding the meeting.

Note. Section 625 of the Act says how a council may invest its surplus funds.

17 Restrictions on writing-off debts to a council

- (1) This clause does not apply to amounts owed to a council for rates or other charges for which the Act, or any other regulation in force under the Act, makes specific provision for writing-off those amounts in specified circumstances.
- (2) A council must from time to time, by resolution, fix an amount above which debts to the council may be written off only by resolution of the council.
- (3) A debt of or below that amount can be written off either by resolution of the council or by order in writing of the council's general manager. In the absence of a resolution under subclause (2), the council's debts can be written off only by resolution of the council.
- (4) A resolution or order writing off a debt to a council must:
 - (a) specify the name of the person whose debt is being written off, and
 - (b) identify the account concerned, and
 - (c) specify the amount of the debt,or must refer to a record kept by the council in which those particulars are recorded.
- (5) A debt can be written off under this clause only if:
 - (a) the debt is not lawfully recoverable, or
 - (b) as a result of a decision of a court, or

- (c) the council or the general manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.
- (6) The fact that a debt is written off under this clause does not prevent the council concerned from taking legal proceedings to recover the debt.

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Part 5 Annual financial reports

Part 5 Annual financial reports

18 Additional requirements for preparation of a council's financial reports

- (1) For the purpose of section 413 (2) (b) of the Act, any matters required by the *Code* or the *Manual* to be included in a council's financial reports are prescribed matters.
- (2) For the purpose of section 413 (3) (b) of the Act, the *Code* and the *Manual* are prescribed standards.

19 Statement by a council on its annual reports

- (1) The statement required by section 413 (2) (c) of the Act must:
 - (a) be made by resolution of the council, and
 - (b) be signed by:
 - (i) the mayor, and
 - (ii) at least one other member of the council, and
 - (iii) the responsible accounting officer, and
 - (iv) the general manager (if not the responsible accounting officer).
- (2) The statement must indicate:
 - (a) whether or not the council's annual financial reports have been drawn up in accordance with:
 - (i) the Act and the regulations, and
 - (ii) the *Code* and the *Manual*, and
 - (iii) the *Australian Accounting Standards*, and
 - (b) whether or not those reports present fairly the council's financial position and operating result for the year, and
 - (c) whether or not those reports accord with the council's accounting and other records, and
 - (d) whether or not the signatories know of anything that would make those reports false or misleading in any way,and include such information and explanations as will prevent those reports from being misleading because of any qualification that is included in the statement.
- (3) The council must ensure that the statement is attached to the relevant annual financial reports.

20 Council's annual financial reports to be amended in certain cases

- (1) If the Director-General, by notice in writing served on a council, directs the council to amend its annual financial reports in a way specified in the notice, the council must comply with the direction as soon as practicable after service of the notice.
- (2) A council that amends its annual financial reports to give effect to such a direction must give public notice of the amendment in a newspaper circulating in its area. The council must specify in the notice that any member of the public is entitled to inspect, without fee, the amended financial reports at each of the council's offices during the council's ordinary business hours.

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Clause 21 Local Government (Financial Management) Regulation 1999

Part 6 Miscellaneous

Part 6 Miscellaneous

21 Matters to be taken into consideration by auditor

For the purposes of section 415 (3) of the Act, the matters that an auditor must consider and provide comment on in auditing a council's financial reports are the matters that the *Code* requires an auditor to consider and provide comment on.

22 Half-yearly inspection of council's accounting records

- (1) For the purposes of section 426 (1) (b) of the Act, the prescribed periods are after the first 6 months of each financial year.
- (2) The responsible accounting officer of a council must:
 - (a) ensure that, within 1 month after the first 6 months of each financial year, the council's ledgers are balanced and a list of ledger balances is prepared so as to enable the council's auditor to conduct a six-monthly inspection of the council's accounting records, and
 - (b) as soon as practicable afterwards, notify the council's auditor that those records are available for inspection.

23 Loans to council to be charge on the council's income

The repayment of money borrowed by a council (whether by way of overdraft or otherwise), and the payment of any interest on that money, is a charge on the income of the council.

24 General manager to notify borrowings to Director-General

- (1) Within 7 days after a council borrows money under a loan contract, the general manager must notify the Director-General of the borrowing.
- (2) This clause extends to further advances made to a council under an existing loan contract, but does not apply to a borrowing by a council by way of overdraft.

25 Rounding down of certain payments to nearest multiple of 5 cents

- (1) If a person tenders in cash an amount payable to a council and the amount is not a multiple of 5 cents, the council must round the amount down to the nearest multiple of 5 cents.

- (2) A council may, before issuing an invoice or an account for the payment of an amount that is not a multiple of 5 cents, adjust the amount by rounding it down to the nearest multiple of 5 cents.
- (3) An amount rounded down in accordance with this clause becomes the amount payable to the council.

26 Repeal

- (1) The *Local Government (Financial Management) Regulation 1993* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Local Government (Financial Management) Regulation 1993*, had effect under that Regulation continues to have effect under this Regulation.