

Authorised Version No. 019
Local Government Act 2020

No. 9 of 2020

Authorised Version incorporating amendments as at
26 April 2023

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Local Government Act 2020

No. 9 of 2020

Authorised Version incorporating amendments as at
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The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to give effect to section 74A(1) of the **Constitution Act 1975** which provides that local government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

2 Commencement

- (1) The following provisions of this Act come into operation on a day to be proclaimed but if they do not come into operation before 1 July 2020, they come into operation on that day—
- (a) this Part;
 - (b) Division 1 of Part 2 (except section 11);
 - (c) Division 2 of Part 2;
 - (d) Division 6 of Part 2 (except sections 40 to 43);
 - (e) Division 1 of Part 3 (except sections 55 and 57);
 - (f) Division 4 of Part 3;

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Part 1—Preliminary

- (g) sections 89, 101 and 106;
 - (h) Divisions 6 and 9 of Part 7;
 - (i) Part 8;
 - (j) sections 325, 326 and 327;
 - (k) sections 328 and 329(1) to (6);
 - (l) Divisions 1 and 2 of Part 11;
 - (m) sections 358, 359, 363 and 364;
 - (n) Divisions 4, 5, 6 and 7 of Part 11;
 - (o) heading to Schedule 1 and Schedule 1
items 1.1, 3, 4, 5, 7, 8.1, 9, 10, 11, 12, 13.1,
13.2, 13.3, 14, 15, 16, 17, 19, 20.1, 21.1,
21.3, 21.4, 22, 23.3, 24, 26, 27, 28.1, 29,
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95, 96, 97, 98, 99, 100, 102, 104, 105, 106,
107, 108, 110, 111, 112, 113.2, 113.3, 113.4,
113.5, 114, 115.
- (2) The following provisions of this Act come into operation on a day to be proclaimed but if they do not come into operation before 1 July 2020, they come into operation on that day—
- (a) section 11;
 - (b) sections 40 to 43;
 - (c) section 47;
 - (ca) section 52;
 - (d) Division 8 of Part 2;

- (e) sections 55 and 57;
 - (f) Division 2 of Part 3;
 - (g) Part 9 (except sections 325 to 327);
 - (h) section 360;
 - (i) Schedule 1 items 8.7, 13.4, 18.1, 40.3, 40.5, 44.3, 47.3, 47.4, 70.1, 82.6.
- (3) The following provisions of this Act come into operation on a day to be proclaimed but if they do not come into operation before 24 October 2020, they come into operation on that day—
- (a) Divisions 3, 4 and 5 of Part 2;
 - (b) Divisions 1 (except section 89), 2 and 3 of Part 4;
 - (c) Part 6;
 - (d) Divisions 1, 2, 3, 4, 5, 7 and 8 of Part 7;
 - (e) sections 329(7) to (9) and 361;
 - (f) Schedule 1 items 2, 20.2, 21.2, 23.1, 23.2, 25, 40.7(b), 43.2, 44.2, 56.1(b), 56.1(c), 56.3, 56.4, 56.5, 75.2, 75.3, 75.4, 75.6, 77.1, 77.5, 77.6, 81.2, 82.3, 82.4, 82.5, 109, 113.1.
- (4) The remaining provisions of this Act come into operation on 1 July 2021.

3 Definitions

- (1) In this Act—

approved Great Ocean Road strategic framework plan has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *approved Great Ocean Road strategic framework plan* inserted by No. 42/2021 s. 100.

assessable disclosure has the same meaning as it has in section 3 of the **Public Interest Disclosures Act 2012**;

Audit and Risk Committee means the Audit and Risk Committee established by a Council under section 53;

auditor means the Auditor-General;

authorised legal representative of a person means an Australian legal practitioner who has been instructed by a person to receive documents on the person's behalf;

S. 3(1) def. of
*authorised
legal
representative*
inserted by
No. 11/2021
s. 150.

bullying by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff;

candidate means a person who has nominated as a candidate for an election under section 256;

Chief Executive Officer means the person appointed by a Council under section 44 to be its Chief Executive Officer or any person acting in that position;

Chief Executive Officer Employment and Remuneration Policy means a Chief Executive Officer Employment and Remuneration Policy developed by a Council under section 45;

Chief Municipal Inspector means the person appointed under section 182;

close of the roll means 4 p.m. on the day that is—

- (a) 57 days before election day; or

- (b) if the day determined under paragraph (a) is a public holiday, the last working day before that day;

Community Asset Committee means a Community Asset Committee established by a Council under section 65;

community engagement policy means a community engagement policy adopted and maintained by a Council under section 55;

community engagement principles means the principles specified in section 56;

Community Vision means a Community Vision maintained by a Council under section 88;

confidential information means the following information—

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- (b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- (c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- (d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach

of the law or the fair trial or hearing
of any person;

- (e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- (g) private commercial information, being information provided by a business, commercial or financial undertaking that—
 - (i) relates to trade secrets; or
 - (ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- (h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);
- (i) internal arbitration information, being information specified in section 145;
- (j) Councillor Conduct Panel confidential information, being information specified in section 169;
- (k) information prescribed by the regulations to be confidential information for the purposes of this definition;

- (l) information that was confidential information for the purposes of section 77 of the **Local Government Act 1989**;

confidentiality notice means a notice issued by the Chief Municipal Inspector under section 193(1);

corporation includes—

- (a) any body corporate, whether formed or incorporated within or outside the State of Victoria; and
- (b) any incorporated association within the meaning of the **Associations Incorporation Reform Act 2012**—

but does not include a Council or any other body incorporated or constituted by or under this Act or any public statutory corporation constituted by or under any law of the State of Victoria, any other State, or a Territory of the Commonwealth, or the Commonwealth;

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

Council meeting means a Council meeting that complies with section 61(1);

Council Plan means a Council Plan prepared and adopted by a Council under section 90;

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

Councillor Code of Conduct means the Councillor Code of Conduct developed by a Council under section 139;

Councillor Conduct Officer means the person appointed in writing by the Chief Executive Officer to be the Councillor Conduct Officer for the Council under section 150;

Councillor Conduct Panel means a panel formed by the Principal Councillor Conduct Registrar under section 156;

delegated committee means—

- (a) a delegated committee established by a Council under section 63; or
- (b) a joint delegated committee established by 2 or more Councils under section 64; or
- (c) a committee, other than a Community Asset Committee, exercising any power of a Council under this Act or any other Act delegated to the committee under this Act or any other Act;

deliberative engagement practices means the deliberative engagement practices included in a community engagement policy;

Department means the Department of Jobs, Precincts and Regions;

destroy, in relation to a document provided by the Chief Municipal Inspector to a person by secure electronic means, means—

- (a) to permanently delete the electronic communication from all information systems on which the person who was provided with the document from the Chief Municipal Inspector held or stored that document; and

S. 3(1) def. of *Department* amended by No. 30/2022 s. 28.

S. 3(1) def. of *destroy* inserted by No. 11/2021 s. 150.

- (b) to destroy any hard copy of the document;

disposition of property means any conveyance, transfer, assignment, settlement, delivery, payment, gift or other alienation of property, including the following—

- (a) the allotment of shares in a company;
- (b) the creation of a trust in property;
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, partnership or interest in property;
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of any debt, contract or chose in action, or of any interest in property;
- (e) the exercise by a person of a general power of appointment of property in favour of any other person;
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of any other person;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or

Note

A ***registered relationship*** is defined in subsection (2).

- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

donation period means the period—

- (a) commencing on whichever is the later of—
- (i) 30 days after the last general election for the Council; or
 - (ii) 30 days after the last election for the Council at which the person required to give the election campaign donation return was a candidate; and
- (b) ending 30 days after election day in the current election for the Council;

election day means the day of an election determined under section 257 or 260;

election manager means—

- (a) the VEC; or
- (b) a person appointed in writing by the VEC;

election period means the period that—

- (a) starts at the time that nominations close on nomination day; and
- (b) ends at 6 p.m. on election day;

electoral material means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper that is only announcing the holding of a meeting;

Note

See subsections (3) and (4) as to the meaning of electoral matter.

electoral representation advisory panel means a panel established under section 16(1);

ESC has the same meaning as *Commission* has in the **Essential Services Commission Act 2001**;

film friendly principles has the same meaning as it has in the **Filming Approval Act 2014**;

film permit has the same meaning as it has in the **Filming Approval Act 2014**;

financial management principles means the principles specified in section 101;

gift means any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including—

- (a) the provision of a service (other than volunteer labour); and
- (b) the payment of an amount in respect of a guarantee; and
- (c) the making of a payment or contribution at a fundraising function;

gift disclosure threshold means—

- (a) in the case of a Council, other than the Melbourne City Council, \$500 or a higher amount or value prescribed by the regulations;
- (b) in the case of the Melbourne City Council, \$500 or a higher amount or value prescribed by regulations made

under the **City of Melbourne Act 2001**;

good governance has the meaning given by section 8(2);

Governance Rules means Governance Rules developed by a Council under section 60;

Great Ocean Road coast and parks has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road coast and parks* inserted by No. 42/2021 s. 100.

Great Ocean Road coast and parks protection principles has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road coast and parks protection principles* inserted by No. 42/2021 s. 100.

Great Ocean Road region has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road region* inserted by No. 42/2021 s. 100.

Great Ocean Road scenic landscapes area has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road scenic landscapes area* inserted by No. 42/2021 s. 100.

gross misconduct by a Councillor means behaviour that demonstrates that a Councillor—

- (a) is not of good character; or

- (b) is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature;

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

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

IBAC means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

Information Commissioner means the Information Commissioner appointed under the **Freedom of Information Act 1982** in the Information Commissioner's capacity under the **Privacy and Data Protection Act 2014**;

information system has the same meaning as in the **Electronic Transactions (Victoria) Act 2000**;

S. 3(1) def. of *information system* inserted by No. 11/2021 s. 150.

internal arbitration process means the internal arbitration process of a Council under section 141;

law enforcement agency means—

- (a) Victoria Police; or
- (b) the police force or police service of another State or a Territory; or
- (c) the Australian Federal Police; or
- (d) the Australian Crime Commission established under section 7 of the Australian Crime Commission Act 2002 of the Commonwealth; or
- (e) a commission established by a law of Victoria or the Commonwealth or of any other State or a Territory with the function of investigating matters relating to criminal activity generally or of a specified class or classes; or
- (f) the Chief Examiner and Examiners appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004**; or
- (g) the IBAC; or
- (h) the sheriff within the meaning of the **Sheriff Act 2009**; or
- (i) the Victorian Inspectorate established under section 8 of the **Victorian Inspectorate Act 2011**; or
- (j) an agency responsible for the performance of functions or activities directed to—
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction for a breach;
or

- (ii) the management of property seized or restrained under laws relating to the confiscation of the proceeds of crime or the enforcement of such laws, or of orders made under such laws; or
- (k) an agency responsible for the execution or implementation of an order or decision made by a court or tribunal; or
- (l) an agency responsible for the protection of the public revenue under a law administered by it;

member of Council staff means a natural person appointed by the Chief Executive Officer (other than an independent contractor under a contract for services or a volunteer) under section 48 to enable—

- (a) the functions of the Council under this Act or any other Act to be carried out; and
- (b) the Chief Executive Officer to carry out their functions;

Note

The Chief Executive Officer is also a member of Council staff—see section 44(5).

misconduct by a Councillor means any breach by a Councillor of the standards of conduct;

S. 3(1) def. of *misconduct* amended by No. 30/2022 s. 21(a).

municipal community includes—

- (a) people who live in the municipal district of the Council; and
- (b) people and bodies who are ratepayers of the Council; and

- (c) traditional owners of land in the municipal district of the Council; and
- (d) people and bodies who conduct activities in the municipal district of the Council;

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

Municipal Monitor means a person appointed to be a Municipal Monitor to a Council under section 179;

nomination day means the last day on which nominations to be a candidate at a Council election may be received in accordance with this Act and the regulations;

overarching governance principles means the principles specified in section 9(2);

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

panel list, in relation to arbiters, means the panel list established by the Secretary under section 142;

panel list, in relation to Councillor Conduct Panels, means the panel list established by the Minister under section 153 for the purposes of forming Councillor Conduct Panels;

person, in relation to Divisions 1 to 9 of Part 8, means a natural person who has attained the age of 18 years;

police officer has the same meaning as it has in the **Victoria Police Act 2013**;

Principal Accounting Officer means the person designated by the Chief Executive Officer of a Council as the officer responsible for managing the Council's finances;

Principal Councillor Conduct Registrar means the person appointed by the Secretary to be the Principal Councillor Conduct Registrar under section 148;

principal place of residence has the same meaning as it has in section 3 of the **Electoral Act 2002**;

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

public interest complaint has the same meaning as it has in section 3 of the **Public Interest Disclosures Act 2012**;

public transparency policy means a public transparency policy adopted under section 57;

public transparency principles means the principles specified in section 58;

publish means publish by any means including by publication on the Internet;

rateable property, in relation to Division 1 of Part 8, means an occupancy which—

- (a) is required to be separately valued under section 13DC of the **Valuation of Land Act 1960**; and
- (b) is rateable land but does not include an occupancy that is used, or is intended to be used, for the sole purpose of—

- (i) parking a single *motor vehicle* within the meaning of section 3(1) of the **Road Safety Act 1986**; or
- (ii) mooring a single *vessel* within the meaning of section 3(1) of the **Marine Safety Act 2010**; or
- (iii) storage, being a single lockable unit with a floor area not exceeding 25 square metres;

restricted matter means any of the following—

- (a) any evidence or information given to, or obtained by, the Chief Municipal Inspector;
- (b) the contents of any document produced to, or obtained by, the Chief Municipal Inspector;
- (c) the existence of, or any information about, a confidentiality notice or a requirement under section 183(3) to appear before the Chief Municipal Inspector for examination;
- (d) the subject matter of an investigation by the Chief Municipal Inspector;
- (e) any information that could enable a person who has been, or is proposed to be, examined by, or who has produced, or may produce, any document to the Chief Municipal Inspector, to be identified or located;
- (f) the fact that a person has been, or is proposed to be, examined by, or has produced, or may produce, any document to, the Chief Municipal Inspector;

- (g) the fact that a disclosure or related disclosure has been notified to an appropriate entity for assessment under Part 3 of the **Public Interest Disclosures Act 2012**;
- (h) the fact that a disclosure or related disclosure has been determined under Part 3 of the **Public Interest Disclosures Act 2012** to be a public interest complaint;
- (i) the fact that the Chief Municipal Inspector intends to conduct an investigation on a public interest disclosure;

restructuring advisory panel means a panel established by the Minister under section 239(1);

Secretary means Secretary to the Department;

serious misconduct by a Councillor means any of the following—

- (a) the failure by a Councillor to comply with the Council's internal arbitration process;
- (b) the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;
- (c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- (d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;
- (e) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made

in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);

- (f) bullying by a Councillor of another Councillor or a member of Council staff;
- (g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- (h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- (i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;
- (j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act;

service performance principles means the principles specified in section 106(2);

sexual harassment has the meaning given by section 92 of the **Equal Opportunity Act 2010**;

spouse of a person means a person to whom the person is married;

standards of conduct means the standards of conduct referred to in section 139(3)(a);

S. 3(1) def. of *standards of conduct* amended by No. 30/2022 s. 21(b).

strategic planning principles means the principles specified in section 89(2);

supporting principles means the principles specified in section 9(3)

traditional owners means—

- (a) the members of a registered Aboriginal party under the **Aboriginal Heritage Act 2006**; and
- (b) the members of a traditional owner group within the meaning of section 3 of the **Traditional Owner Settlement Act 2010**;

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

VEC means the Victorian Electoral Commission established under section 6 of the **Electoral Act 2002**;

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

voting centre means a place appointed by the election manager for voting at an election as—

- (a) an early voting centre; or
- (b) a mobile voting centre; or
- (c) an election day voting centre;

ward means—

- (a) a subdivision of a municipal district; or
- (b) if the municipal district is not subdivided, the municipal district;

workforce plan means a workforce plan developed and maintained by the Chief Executive Officer of a Council under section 46(4)(a);

Yarra protection principles has the same meaning as it has in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**;

Yarra River land has the same meaning as it has in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**;

Yarra Strategic Plan has the same meaning as it has in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**;

Yarra Strategic Plan area has the same meaning as it has in the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**.

- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as it has in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.
- (3) In this Act, unless otherwise expressly provided, a reference to an *election* means a reference to the following—
- (a) a general election conducted under section 257;

- (b) a by-election conducted under section 260;
 - (c) a countback conducted under section 261.
- (4) In this Act, *electoral matter* means matter which is intended or likely to affect voting in an election, but does not include any electoral material produced by or on behalf of the election manager for the purposes of conducting an election.
- (5) Without limiting the generality of the definition of *electoral matter*, matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—
- (a) the election; or
 - (b) a candidate in the election; or
 - (c) an issue submitted to, or otherwise before, the voters in connection with the election.

4 Objectives of Act

The objectives of this Act are to ensure that—

- (a) local government continues to be constituted as a democratically elected tier of Government in Victoria; and
- (b) Councils are constituted as representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities; and
- (c) Councils have the functions and powers necessary to enable Councils to perform their role.

5 Act is interface legislation and filming approval legislation

- (1) This Act is interface legislation within the meaning of the **Transport Integration Act 2010**.
- (2) This Act is filming approval legislation within the meaning of the **Filming Approval Act 2014**.

6 Obligations of Council in relation to Yarra River land

- (1) A Council that is a responsible public entity within the meaning of the **Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017**—
 - (a) must not act inconsistently with any part of a Yarra Strategic Plan that is expressed to be binding on the Council when performing a function or duty or exercising a power under this Act in relation to Yarra River land; and
 - (b) must have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan not expressed to be binding on the Council, when performing a function or duty or exercising a power under this Act in relation to the Yarra Strategic Plan area that may affect Yarra River land.
- (2) Subsection (1) does not apply to the performance of a function or the exercise of a power by a Council in relation to—
 - (a) a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or
 - (b) a Suburban Rail Loop project within the meaning of the **Suburban Rail Loop Act 2021**.

S. 6(2)
substituted by
No. 43/2021
s. 219(Sch. 1
item 7.1).

7 Obligations of Council in relation to declared areas

(1) When performing a function or duty or exercising a power under this Act in relation to a declared area, a Council that is a responsible public entity for the purposes of Part 3AAB of the **Planning and Environment Act 1987**—

- (a) must not act inconsistently with any part of a Statement of Planning Policy that is expressed to be binding on the Council; and
- (b) must have regard to those parts of the Statement of Planning Policy not expressed to be binding on the Council; and
- (c) must have regard to the principles set out in section 46AZL of the **Planning and Environment Act 1987**.

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by a Council in relation to—

- (a) a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or
- (b) a Suburban Rail Loop project within the meaning of the **Suburban Rail Loop Act 2021**.

S. 7(2)
substituted by
No. 43/2021
s. 219(Sch. 1
item 7.2).

7A Obligations of Council in relation to Great Ocean Road region

(1) A Council that is a responsible entity within the meaning of the **Great Ocean Road and Environs Protection Act 2020**, when performing a function or duty or exercising a power under this Act—

- (a) must not act inconsistently with any part of an approved Great Ocean Road strategic framework plan that is expressed to be binding on the Council in relation to the

S. 7A
inserted by
No. 42/2021
s. 101.

- Great Ocean Road scenic landscapes area;
and
- (b) must have regard to the Great Ocean Road coast and parks protection principles in relation to the Great Ocean Road coast and parks; and
 - (c) must have regard to those parts of an approved Great Ocean Road strategic framework plan not expressed to be binding on the Council in relation to the Great Ocean Road region.
- (2) Subsection (1) does not apply to the performance of a function or the exercise of a power by a Council in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

Part 2—Councils

Division 1—Role and powers of a Council

8 Role of a Council

- (1) The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.
- (2) A Council provides good governance if—
 - (a) it performs its role in accordance with section 9;
 - (b) the Councillors of the Council perform their roles in accordance with section 28.
- (3) In performing its role, a Council may—
 - (a) perform any duties or functions or exercise any powers conferred on a Council by or under this Act or any other Act; and
 - (b) perform any other functions that the Council determines are necessary to enable the Council to perform its role.
- (4) If it is necessary to do so for the purpose of performing its role, a Council may perform a function outside its municipal district.

9 Overarching governance principles and supporting principles

- (1) A Council must in the performance of its role give effect to the overarching governance principles.
- (2) The following are the overarching governance principles—
 - (a) Council decisions are to be made and actions taken in accordance with the relevant law;
 - (b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;

- (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
 - (d) the municipal community is to be engaged in strategic planning and strategic decision making;
 - (e) innovation and continuous improvement is to be pursued;
 - (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
 - (g) the ongoing financial viability of the Council is to be ensured;
 - (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
 - (i) the transparency of Council decisions, actions and information is to be ensured.
- (3) In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—
- (a) the community engagement principles;
 - (b) the public transparency principles;
 - (c) the strategic planning principles;
 - (d) the financial management principles;
 - (e) the service performance principles.

10 General power

- (1) Subject to any limitations or restrictions imposed by or under this Act or any other Act, a Council

has the power to do all things necessary or convenient to be done in connection with the performance of its role.

- (2) The generality of this section is not limited by the conferring of specific powers by or under this Act or any other Act.

11 Power of delegation

- (1) A Council may by instrument of delegation delegate to—

- (a) the members of a delegated committee; or
- (b) the Chief Executive Officer—

any power, duty or function of a Council under this Act or any other Act other than a power, duty or function specified in subsection (2).

- (2) The following are specified for the purposes of subsection (1)—

- (a) the power of delegation;
- (b) the power to elect a Mayor or Deputy Mayor;
- (c) the power to grant a reasonable request for leave under section 35;
- (d) subject to subsection (3), the power to appoint the Chief Executive Officer, whether on a permanent or acting basis;
- (e) the power to make any decision in relation to the employment, dismissal or removal of the Chief Executive Officer;
- (f) the power to approve or amend the Council Plan;
- (g) the power to adopt or amend any policy that the Council is required to adopt under this Act;

- (h) the power to adopt or amend the Governance Rules;
 - (i) the power to appoint the chair or the members to a delegated committee;
 - (j) the power to make, amend or revoke a local law;
 - (k) the power to approve the budget or revised budget;
 - (l) the power to borrow money;
 - (m) subject to section 181H(1)(b) of the **Local Government Act 1989**, the power to declare general rates, municipal charges, service rates and charges and special rates and charges;
 - (n) any power, duty or function prescribed by the regulations for the purposes of this subsection.
- (3) A Council may delegate to the Chief Executive Officer the power to appoint an Acting Chief Executive Officer for a period not exceeding 28 days.
- (4) A delegation may be made subject to any conditions or limitations specified in the instrument of delegation.
- (5) A delegation that includes the power to enter into a contract or make any expenditure must specify a maximum monetary limit that cannot be exceeded.
- (6) A member of a delegated committee to whom a delegation is given under subsection (1)(a) can only exercise the delegation while acting as a member of the delegated committee at a meeting of the delegated committee.
- (7) A Council must review, within the period of 12 months after a general election, all delegations

which have been made under this section and are still in force.

- (8) A Council must keep a public register of delegations made under this section.
- (9) Unless sooner revoked, a delegation made by a Council under the **Local Government Act 1989** continues in force until 1 September 2020.

Note

See section 47 for the power of delegation of a Chief Executive Officer.

Division 2—Constitution of a Council

12 How is a Council constituted?

A Council consists of its Councillors who are democratically elected in accordance with this Act.

13 Constitution of a Council

- (1) A Council must consist of not fewer than 5 Councillors and not more than 12 Councillors.
- (2) The Mayor and Deputy Mayor are Councillors of the Council.
- (3) The number of Councillors of a Council for the purposes of subsection (1) is to be determined in accordance with the criteria prescribed by the regulations.
- (4) A Council may be constituted so that it consists of—
 - (a) subject to subsection (5), all Councillors elected to represent the municipal district as a whole; or
 - (b) all Councillors elected to represent single member wards into which the municipal district is divided; or

- (c) subject to subsection (5A), an equal number of Councillors elected to represent each ward into which the municipal district is divided.
- (5) A Council must not be constituted in accordance with subsection (4)(a) unless, by notice published in the Government Gazette, the Minister specifies that the Council, or a Council that is a specific type of Council, may be an un-subdivided municipal district.
- (5A) A Council must not be constituted in accordance with subsection (4)(c) unless, by notice published in the Government Gazette, the Minister specifies that the Council, or a Council that is a specific type of Council, may be constituted in accordance with subsection (4)(c).
- (6) For the avoidance of doubt, a Council constituted before the commencement of this Act is not required to be constituted in accordance with this section unless the electoral structure of the Council is altered in accordance with section 15.

14 Council is a body corporate

- (1) A Council—
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may sue or be sued in its corporate name; and
 - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
 - (e) is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer and which are necessary or

expedient for performing its functions and exercising its powers.

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

15 Electoral structure of a Council

- (1) The Governor in Council may, on the recommendation of the Minister, make an Order in Council to do any one or more of the following in relation to the electoral structure of a Council—
- (a) specify or alter the total number of Councillors to be elected for the Council;
 - (b) specify—
 - (i) that the municipal district of the Council is to be subdivided into a specified number of wards;
 - (ii) that each of those wards is to consist of a single Councillor;
 - (iii) the boundaries of wards of the municipal district of the Council;
 - (iv) the name of, or alter the name of, a ward of the municipal district of the Council;

- (c) if a notice has been published in accordance with section 13(5) in respect of a specific Council or a specific type of Council, specify that the electoral structure of the municipal district of a Council to which the notice applies is to be an un-subdivided municipal district; or
 - (d) if a notice has been published in accordance with section 13(5A), specifying—
 - (i) the specific Council or the specific type of Council to be constituted in accordance with section 13(4)(c); and
 - (ii) the number of wards; and
 - (iii) the number of Councillors that are to represent each ward.
- (2) Before recommending the making of an Order in Council under this section that provides for the subdivision of a municipal district into wards or the specification of the boundaries of wards of a municipal district, the Minister must seek to ensure that—
- (a) each ward has approximately an equal number of voters per Councillor; and
 - (b) the number of voters per Councillor in a ward does not vary from the average number of voters per Councillor for all of the wards by more than 10 per cent.
- (3) An Order in Council made under this section—
- (a) must specify a day or days upon which the Order in Council comes into operation; and
 - (b) may provide that the electoral structure of the Council has effect for the purposes of, and from, the next general election of the Council; and

S. 15(2)(b)
amended by
No. 30/2022
s. 29.

- (c) may provide that the electoral structure of the Council specified in the Order in Council is described in a map lodged in the Central Plan Office or with the VEC as specified in the Order in Council; and
- (d) upon being published in the Government Gazette has the like force and effect as if it were expressly enacted in this Act; and
- (e) may be amended or revoked by another Order in Council; and
- (f) has full force and effect despite any non-compliance with any of the matters required by this Act as preliminary to the making of the Order in Council.

16 Electoral structure review

- (1) Subject to subsection (2), the Minister may, before recommending the making of an Order in Council under section 15, establish an electoral representation advisory panel to conduct a review and advise the Minister in relation to the electoral structure of a Council.
- (2) Subject to subsections (13) and (14), the Minister must, before recommending the making of an Order in Council under section 15 in relation to a matter specified in section 15(1)(b), (c) or (d) establish an electoral representation advisory panel to conduct a review and advise the Minister in relation to the electoral structure of a Council.
- (3) If the Minister has established an electoral representation advisory panel, the Minister must consider the advice of the electoral representation advisory panel before recommending the making of an Order in Council under section 15.
- (4) An electoral representation advisory panel must include the Electoral Commissioner appointed under section 12 of the **Electoral Act 2002** or a

person nominated to the Minister by the Electoral Commissioner to represent the Electoral Commissioner on the electoral representation advisory panel.

- (5) The VEC must provide administrative and technical support to an electoral representation advisory panel.
- (6) An electoral representation advisory panel must not include any of the following persons—
- (a) a person who is a Councillor of the Council in respect of which the electoral representation advisory panel is to be established;
 - (b) a person who is qualified to be a candidate for election as a Councillor of the Council in respect of which the electoral representation advisory panel is to be established;
 - (c) a person who is not qualified to be a Councillor;
 - (d) a person who is a member of staff of the Council in respect of which the electoral representation advisory panel is to be established;
 - (e) a person who is a member of a registered political party;
 - (f) a person who has been a member of a registered political party at any time during the period of 5 years immediately before the electoral representation advisory panel is to be established.
- (7) The Minister may request the electoral representation advisory panel to provide advice to the Minister with respect to any or all of the following—

- (a) the total number of Councillors to be elected for the Council;
 - (b) what the boundaries of any ward or wards of the municipal district of the Council should be;
 - (c) subject to the Minister first publishing a notice under section 13(5) in relation to a Council, or a specific type of Council, whether the municipal district of the Council should be un-subdivided;
 - (ca) subject to the Minister first publishing a notice under section 13(5A) in relation to a Council, or a specific type of Council, whether the municipal district of the Council should be constituted in accordance with section 13(4)(c);
 - (d) any other matter relating to the electoral structure of the Council that the Minister requires advice on.
- (8) An electoral structure recommended by an electoral representation advisory panel must—
- (a) provide fair and equitable representation; and
 - (b) facilitate good governance; and
 - (c) comply with section 15(2); and
 - (d) comply with any criteria prescribed by the regulations for the purposes of this section.
- (9) An electoral representation advisory panel—
- (a) may conduct the review in any manner that the electoral representation advisory panel considers appropriate; and
 - (b) must have regard to any matter prescribed by the regulations.

- (10) An electoral representation advisory panel must ensure that a process for community engagement is followed in conducting the review.
- (11) The Minister or a person engaged by the Minister to support a review by an electoral representation advisory panel may send to the Council in respect of which the review is being conducted an account of the reasonable expenses incurred as a consequence of the review.
- (12) The Council must pay the account received under subsection (11).
- (13) Section 16(2) does not apply if a ward boundary review is being conducted under section 17.
- (14) Section 16(2) does not apply in respect of the making of any Order in Council under section 15 before the first general election to be conducted under section 257(1)(a).

17 Ward boundary review

S. 17(1)
amended by
No. 30/2022
s. 30.

- (1) This section applies if the Minister receives advice from the VEC that the number of voters per Councillor in one or more wards of the municipal district of the Council will vary from the average number of voters per Councillor for all of the wards by more than 10 per cent by the time that the next general election is to be held.
- (2) If this section applies, the Minister may request the VEC to—
 - (a) conduct a review of the boundaries of the wards of the municipal district of the Council specified in the request; and
 - (b) provide a report to the Minister containing recommendations in respect of any changes required to the boundaries of the wards of the municipal district of the Council specified in the request.

- (3) Subject to this section, the VEC may conduct the review in any manner that the VEC considers appropriate.
- (4) In conducting the review, the VEC must ensure that a process of community engagement is followed.
- (5) The VEC may send to the Council in respect of which the review is being conducted an account of the reasonable expenses incurred as a consequence of the review.
- (6) The Council must pay the account received under subsection (5).
- (7) The Minister may recommend to the Governor in Council that an Order in Council be made under section 15 to implement the recommendations made in the report under subsection (2).
- (8) Despite the repeal of section 5B(2) of the **Local Government Act 1989**, that section continues to apply in respect of the making of any Order in Council to which subsection (7) applies before the first general election to be conducted under section 257(1)(a).

Division 3—The Mayor and the Deputy Mayor

18 Role of the Mayor

- (1) The role of the Mayor is to—
 - (a) chair Council meetings; and
 - (b) be the principal spokesperson for the Council; and
 - (c) lead engagement with the municipal community on the development of the Council Plan; and

- (d) report to the municipal community, at least once each year, on the implementation of the Council Plan; and
 - (e) promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct; and
 - (f) assist Councillors to understand their role; and
 - (g) take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and
 - (h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
 - (i) perform civic and ceremonial duties on behalf of the Council.
- (2) The Mayor is not eligible to be elected to the office of Deputy Mayor.

19 Specific powers of the Mayor

- (1) The Mayor has the following specific powers—
- (a) to appoint a Councillor to be the chair of a delegated committee;
 - (b) to direct a Councillor, subject to any procedures or limitations specified in the Governance Rules, to leave a Council meeting if the behaviour of the Councillor is preventing the Council from conducting its business;
 - (c) to require the Chief Executive Officer to report to the Council on the implementation of a Council decision.
- (2) An appointment under subsection (1)(a) prevails over any appointment of a chair of a delegated committee by the Council.

20 When does the office of Mayor become vacant?

The office of Mayor of a Mayor elected by the Councillors becomes vacant—

- (a) at the time and on the day of the election of the next Mayor; or
- (b) on the day the Mayor resigns from the office of Mayor by giving the Chief Executive Officer a written notice of resignation; or
- (c) on the day the Mayor ceases to hold the office of Councillor; or
- (d) on the day the Mayor's office as a Councillor is suspended for any period; or
- (e) on the day the Mayor becomes ineligible to hold the office of Mayor as a result of a decision by a Councillor Conduct Panel; or
- (f) on the day the office of Mayor is declared vacant by the Council in accordance with section 23.

20A Office of Deputy Mayor

- (1) A Council may establish an office of Deputy Mayor.
- (2) If the Council has established an office of Deputy Mayor, the provisions of this Act relating to the office of Deputy Mayor apply.
- (3) If a Council has not established an office of Deputy Mayor, section 20B applies.

20B Acting Mayor

- (1) A Council may appoint a Councillor to be the Acting Mayor when—
 - (a) the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or

- (b) the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
 - (c) the office of Mayor is vacant.
- (2) An appointment under subsection (1) must be for a period specified by the Council.
- (3) If—
- (a) an appointment has not been made under subsection (1) or has expired; and
 - (b) any of the circumstances specified in subsection (1)(a), (b) or (c) apply—
- the Council must appoint a Councillor to be the Acting Mayor for a period specified by the Council.
- (4) An Acting Mayor—
- (a) must perform the role of the Mayor; and
 - (b) may exercise any of the powers of the Mayor—
- until the circumstances specified in subsection (1) no longer apply or the period of the appointment expires, whichever first occurs.
- (5) If an Acting Mayor has been appointed, unless inconsistent with the context or subject matter, a reference in this Act (except in sections 20 and 23, Division 4 of this Part and sections 61(6) and 236(4)) to the Mayor includes a reference to the Acting Mayor.

21 Role and powers of the Deputy Mayor

The Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if—

- (a) the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or
- (b) the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
- (c) the office of Mayor is vacant.

22 When does the office of Deputy Mayor become vacant?

The office of Deputy Mayor of a Deputy Mayor elected by the Councillors becomes vacant—

- (a) at the time and on the day of the election of the next Deputy Mayor; or
- (b) on the day the Deputy Mayor is elected to the office of Mayor; or
- (c) on the day the Deputy Mayor resigns from the office of Deputy Mayor by giving the Chief Executive Officer a written notice of resignation; or
- (d) on the day the Deputy Mayor ceases to hold the office of Councillor; or
- (e) on the day the Deputy Mayor's office as a Councillor is suspended for any period; or
- (f) on the day the Deputy Mayor becomes ineligible to hold the office of Deputy Mayor as a result of a decision by a Councillor Conduct Panel; or
- (g) on the day the office of Deputy Mayor is declared vacant by the Council in accordance with section 23.

23 Declaration of office of Mayor or Deputy Mayor to be vacant

- (1) This section only applies to a Mayor or Deputy Mayor elected for a 2 year term.
- (2) A Council may only declare the office of Mayor or Deputy Mayor vacant in accordance with this section.
- (3) A notice of motion to declare the office of Mayor or Deputy Mayor vacant must be—
 - (a) signed by an absolute majority of the Councillors; and
 - (b) lodged with the Chief Executive Officer at least 14 days before the day on which the meeting to consider the motion is proposed; and
 - (c) provided to each Councillor by the Chief Executive Officer without delay.
- (4) The office of Mayor or Deputy Mayor can only be declared vacant if the motion to declare the office of Mayor or Deputy Mayor vacant is passed by a majority of at least three-quarters of all of the Councillors in office.
- (5) For the purposes of subsection (3)(a), *absolute majority* means the number of Councillors which is greater than half the total number of the Councillors of a Council.

24 Local Government Mayoral Advisory Panel

- (1) The Minister may establish and maintain an advisory panel to be called the Local Government Mayoral Advisory Panel.
- (2) The role of the Local Government Mayoral Advisory Panel is to provide advice to the Minister on matters relating to local government in Victoria referred by the Minister.

- (3) The members of the Local Government Mayoral Advisory Panel—
 - (a) must be appointed by the Minister; and
 - (b) must include at least 5 Mayors.
- (4) The terms of reference of the Local Government Mayoral Advisory Panel are to be determined by the Minister.
- (5) Meetings of the Local Government Mayoral Advisory Panel are to be chaired by the Minister.

Division 4—Election of Mayor and Deputy Mayor

25 Election of Mayor

- (1) At a Council meeting that is open to the public, the Councillors must elect a Councillor to be the Mayor of the Council.
- (2) Subject to section 167, any Councillor is eligible for election or re-election to the office of Mayor.
- (3) The election of the Mayor must—
 - (a) be chaired by the Chief Executive Officer; and
 - (b) subject to this section, be conducted in accordance with the Governance Rules.
- (4) Subject to subsections (5) and (6), the Mayor must be elected by an absolute majority of the Councillors.
- (5) If an absolute majority of the Councillors cannot be obtained at the meeting, the Council may resolve to conduct a new election at a later specified time and date.
- (6) If only one Councillor is a candidate for Mayor, the meeting must declare that Councillor to be duly elected as Mayor.

- (7) In this section, *absolute majority* means the number of Councillors which is greater than half the total number of the Councillors of a Council.

26 When is a Mayor to be elected?

- (1) A Mayor is to be elected no later than one month after the date of a general election.
- (2) The Mayor of the Greater Geelong City Council must be elected for a 2 year term.
- (3) Before the election of the Mayor, a Council, other than the Greater Geelong City Council, must determine by resolution whether the Mayor is to be elected for a 1 year or a 2 year term.
- (4) If the Mayor is elected for a 1 year term, the next election of the Mayor must be held on a day to be determined by the Council that is as close to the end of the 1 year term as is reasonably practicable.
- (5) If the Mayor is to be elected for a 2 year term, the next election of the Mayor must be held on a day to be determined by the Council that is as close to the end of the 2 year term as is reasonably practicable.
- (6) A Mayor is to be elected within one month after any vacancy in the office of Mayor occurs.
- (7) The election of a Mayor after the period specified in this section does not invalidate the election.
- (8) A Councillor elected to fill a vacancy in the office of Mayor caused other than by the expiration of a one year or a 2 year term serves the remaining period of the previous Mayor's term.

27 Election of Deputy Mayor

- (1) Section 25, other than subsection (3)(a), applies to the election of a Deputy Mayor by the Councillors as if any reference in that section to the Mayor was a reference to the Deputy Mayor.

- (2) Section 26 applies to the election of a Deputy Mayor as if any reference in that section to the Mayor was a reference to the Deputy Mayor.

Division 5—Councillors

28 Role of a Councillor

- (1) The role of every Councillor is—
- (a) to participate in the decision making of the Council; and
 - (b) to represent the interests of the municipal community in that decision making; and
 - (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.
- (2) In performing the role of a Councillor, a Councillor must—
- (a) consider the diversity of interests and needs of the municipal community; and
 - (b) support the role of the Council; and
 - (c) acknowledge and support the role of the Mayor; and
 - (d) act lawfully and in accordance with the oath or affirmation of office; and
 - (e) act in accordance with the standards of conduct; and
 - (f) comply with Council procedures required for good governance.
- (3) The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

29 Term of office of a Councillor

- (1) The term of office of a Councillor—
 - (a) commences on the day that the Councillor takes the oath or affirmation of office; and
 - (b) ends at 6 a.m. on the day of the next general election for the Council.
- (2) The office of a Councillor becomes vacant at the expiration of the Councillor's term of office.

30 Oath or affirmation of office

- (1) A person elected to be a Councillor is not capable of acting as a Councillor until the person has taken the oath or affirmation of office in the manner prescribed by the regulations.
- (2) The oath or affirmation of office must be—
 - (a) administered by the Chief Executive Officer; and
 - (b) dated and signed before the Chief Executive Officer; and
 - (c) recorded in the minutes of the Council, whether or not the oath or affirmation was taken at a Council meeting.

31 Failure to take oath or affirmation of office

The office of a Councillor becomes vacant if a person elected to be a Councillor does not take the oath or affirmation of office within 3 months after the day on which the person was declared elected.

32 Councillor induction training

- (1) A Councillor must complete Councillor induction training within 6 months after the day the Councillor takes the oath or affirmation of office.

- (2) Subsection (1) applies—
 - (a) to each Councillor elected at a general election; and
 - (b) to any Councillor elected to fill an extraordinary vacancy; and
 - (c) whether or not the Councillor has been re-elected or ever been a Councillor before.
- (3) A Councillor must make a written declaration before the Chief Executive Officer after completing Councillor induction training that—
 - (a) states that the Councillor has completed the Councillor induction training; and
 - (b) is dated and signed.
- (4) For the purposes of subsection (1), the Chief Executive Officer must—
 - (a) ensure that the Councillor induction training is available to be taken by a Councillor from the day the Councillor takes the oath or affirmation of office; and
 - (b) provide reasonable assistance to a Councillor to enable them to access the Councillor induction training.
- (5) The Councillor induction training must be conducted in the prescribed manner and address any prescribed matters.

33 Failure to take Councillor induction training and make declaration

- (1) If a Councillor fails to—
 - (a) take or complete Councillor induction training as required by section 32(1); and

(b) make a written declaration as required by section 32(3)—

the Councillor's allowance is withheld until the Councillor has completed induction training and made the written declaration.

- (2) A Councillor is entitled to receive any allowance that is withheld under subsection (1) after the Councillor—
- (a) takes or completes Councillor induction training as required by section 32(1); and
 - (b) makes a written declaration as required by section 32(3).

34 Qualification to be a Councillor

- (1) A person is qualified to be a Councillor of a Council if the person—
- (a) has attained the age of 18 years; and
 - (b) is an Australian citizen or an eligible British subject referred to in section 48(1)(a) of the **Constitution Act 1975**; and
 - (c) is enrolled on the voters' roll for the Council or would be enrolled on the voters' roll for the Council on a particular day if a voters' roll were to be prepared on that particular day; and
 - (d) is not a person to whom subsection (2) applies.
- (2) A person is not qualified to be a Councillor of a Council if the person—
- (a) is a member of the Parliament of Victoria or of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth; or

- (b) is employed as a Ministerial officer, a Parliamentary adviser or an electorate officer by a member of the Parliament of Victoria or in a corresponding position (however designated) by, or for, a member of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth; or
- (c) is a Councillor of another Council constituted under this Act or a member of a corresponding body (however designated) under an Act of another State or a Territory of the Commonwealth; or
- (d) is a member of Council staff of the Council; or
- (e) is an undischarged bankrupt; or
- (f) has property that is subject to control under the law relating to bankruptcy; or
- (g) has failed to take the oath or affirmation of office of Councillor at any Council when required under this Act during the current term of office of that Council; or
- (h) has been disqualified from being a Councillor after a finding by VCAT of gross misconduct, for the period that the period of disqualification specified in the order made by VCAT is in force; or
- (i) has been subject to 2 or more findings of serious misconduct by a separate Councillor Conduct Panel under section 167 in the preceding 8 years and the period during which the person can apply under section 170 to VCAT for a review of those findings has expired, for the period of 4 years following the second finding of

- serious misconduct during which the disqualification is in force; or
- (j) has been convicted of the offence of failing to lodge an election campaign donation return in relation to the current term of the Council; or
 - (k) has been convicted of an offence against this Act in the preceding 8 years for which the maximum penalty is at least 120 penalty units or a period of imprisonment of at least 12 months; or
 - (l) has been convicted of an offence in the preceding 8 years, committed when the person was of or over 18 years of age, which is punishable upon first conviction for a term of imprisonment of 2 years or more under the law of Victoria, or the law of any other State, or a Territory of the Commonwealth, or the law of the Commonwealth; or
 - (m) is disqualified from managing corporations under Part 2D.6 of the Corporations Act.
- (3) If a Councillor becomes aware that they have ceased to be qualified to be a Councillor of a Council, the Councillor must immediately give notice in writing to the Chief Executive Officer of the Council that they have ceased to be qualified to be a Councillor of the Council.

35 Councillor ceasing to hold office

- (1) A Councillor ceases to hold the office of Councillor and the office of the Councillor becomes vacant if the Councillor—
 - (a) ceases to be qualified to be a Councillor; or
 - (b) dies; or
 - (c) resigns in writing delivered to the Chief Executive Officer; or

- (d) is ousted from office; or
 - (e) subject to this section, is absent from Council meetings for a period of 4 consecutive months without leave obtained from the Council.
- (2) For the purposes of subsection (1)(a), a Councillor who would cease to have a qualification as an enrolled voter under section 34(1)(c) on a particular day if a voters' roll for the Council were prepared on that particular day, ceases to hold the office of Councillor at the expiration of the period of 50 days after that particular day if the Councillor has not obtained another entitlement to be on the voters' roll for the Council.
- (3) For the purposes of subsection (2), a Councillor is considered to have ceased to have a qualification as an enrolled voter under section 34(1)(c) if—
- (a) their only entitlement to be enrolled on the voters' roll for the Council is as a resident under section 241; and
 - (b) their principal place of residence is no longer located within the municipal district of the Council.
- (4) The Council must grant any reasonable request for leave for the purposes of subsection (1)(e).
- (5) A Councillor is not to be taken to be absent from a Council meeting—
- (a) while any proceeding for ouster from office of the Councillor is pending; or
 - (b) while the Councillor is suspended from office.

- (6) A Councillor is not to be taken to be absent from Council meetings during the period of 6 months after the Councillor or their spouse or domestic partner—
- (a) becomes the natural parent of a child; or
 - (b) adopts a child under the age of 16 years—
- and the Councillor has responsibilities for the care of the child during that period.
- (7) A person who has resigned as a Councillor cannot revoke the resignation after it has been delivered to the Chief Executive Officer.

36 Ouster from office

- (1) The Minister, the Chief Municipal Inspector or a Council of which a particular Councillor is a member may apply to the Supreme Court for the ouster from the office of Councillor of any person whom the Minister, the Chief Municipal Inspector or the Council believes is declared elected or holds the office of Councillor contrary to this Act.
- (2) If an application relates to the election of a Councillor, the application must be made during the term for which that person was elected.

37 Suspension of Councillor

If a Councillor is suspended under this Act, the Councillor—

- (a) ceases to be a Councillor for the term of the suspension; and
- (b) is not entitled to receive a Councillor allowance for the term of the suspension unless this Act otherwise provides; and

- (c) must return all Council equipment and materials to the Council at the beginning of any term of suspension that will exceed 2 months in duration.

38 Penalty for acting as a Councillor when not qualified or ceasing to hold office

- (1) A person must not act as a Councillor if the person knows, or should reasonably know, that they—
 - (a) are not qualified to be a Councillor; or
 - (b) have ceased to hold the office of Councillor.

Penalty: 120 penalty units or 12 months imprisonment.

- (2) If a person is found guilty or convicted of an offence under subsection (1), the court may order that the person return to the Council any allowances, reimbursements, equipment or materials the person received as a result of acting as a Councillor for the period that the person—
 - (a) acted as a Councillor when not qualified to do so; or
 - (b) had ceased to hold the office of Councillor.

- (3) A person who—
 - (a) acts as a Councillor while—
 - (i) not qualified to be a Councillor; or
 - (ii) having ceased to hold the office of Councillor; and
 - (b) engages in conduct that would constitute an offence under this Act if that person were a Councillor—

is guilty of that offence as if that person were a Councillor.

Division 6—Entitlements

39 Allowances for Mayors, Deputy Mayors and Councillors

- (1) A Mayor or a Deputy Mayor is entitled to receive from the Council an allowance as a Mayor or a Deputy Mayor in accordance with a Determination of the Victorian Independent Remuneration Tribunal under the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**.
- (2) A Councillor is entitled to receive from the Council an allowance as a Councillor in accordance with a Determination of the Victorian Independent Remuneration Tribunal under the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**.
- (3) A Mayor or a Deputy Mayor is not entitled to receive an allowance as a Councillor while the Mayor or Deputy Mayor is receiving an allowance as a Mayor or a Deputy Mayor.
- (4) A Council cannot pay an allowance to a Mayor, Deputy Mayor or Councillor that exceeds the amount specified in the relevant Determination of the Victorian Independent Remuneration Tribunal under the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**.
- (5) A Mayor, Deputy Mayor or Councillor may elect—
 - (a) to receive the entire allowance to which they are entitled; or
 - (b) to receive a specified part of the allowance to which they are entitled; or
 - (c) to receive no allowance.

- (6) Despite the repeal of sections 73B and 74 to 74B of the **Local Government Act 1989** and sections 26, 26A and 27 of the **City of Melbourne Act 2001** and sections 12, 13, 14 and 15 of the **City of Greater Geelong Act 1993**, those sections continue to apply in respect of allowances payable to Mayors, Deputy Mayors and Councillors until the first Determination made by the Victorian Independent Remuneration Tribunal under section 23A of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019** comes into effect.
- (7) For the purposes of giving effect to subsection (6), an Order in Council made under section 74B of the **Local Government Act 1989** may determine the amounts of allowances for different categories of Councillors.

40 Reimbursement of expenses of Councillors and members of a delegated committee

- (1) A Council must reimburse a Councillor or a member of a delegated committee for out-of-pocket expenses which the Council is satisfied—
- (a) are bona fide expenses; and
 - (b) have been reasonably incurred in the performance of the role of Councillor or member of a delegated committee; and
 - (c) are reasonably necessary for the Councillor or member of a delegated committee to perform that role.
- (2) A Council must provide details of all reimbursements under this section to the Audit and Risk Committee.

41 Council expenses policy

- (1) A Council must adopt and maintain an expenses policy in relation to the reimbursement of out-of-pocket expenses for Councillors and members of delegated committees.
- (2) A policy adopted by a Council under this section must—
 - (a) specify procedures to be followed in applying for reimbursement and in reimbursing expenses; and
 - (b) comply with any requirements prescribed by the regulations in relation to the reimbursement of expenses; and
 - (c) provide for the reimbursement of child care costs where the provision of child care is reasonably required for a Councillor or member of a delegated committee to perform their role; and
 - (d) have particular regard to expenses incurred by a Councillor who is a carer in a care relationship within the meaning of section 4 of the **Carers Recognition Act 2012**.
- (3) A Council must adopt the first expenses policy under this section on or before 1 September 2020.
- (4) Until a Council adopts a policy under this section, the policy adopted by the Council under section 75B of the **Local Government Act 1989** applies as if it had been adopted under this Act.

42 Resources and facilities for the Mayor and Councillors

- (1) A Council must make available to the Mayor and the Councillors the resources and facilities reasonably necessary to enable them to effectively perform their role.

- (2) Without limiting the generality of subsection (1), a Council must—
- (a) consider the support that may be required by a Mayor, Deputy Mayor or Councillor because of a disability; and
 - (b) have particular regard to the support that may be required by a Councillor who is a carer in a care relationship within the meaning of section 4 of the **Carers Recognition Act 2012**.

43 Indemnity provision

A Council must indemnify and keep indemnified each Councillor, member of a delegated committee and member of a Community Asset Committee against all actions or claims whether arising during or after their term of office in respect of anything necessarily done or reasonably done or omitted to be done in good faith—

- (a) in the performance of a duty or a function or the exercise of a power under this Act, the regulations or a local law or any other Act; or
- (b) in the reasonable belief that the act or omission was in the performance of a duty or a function or the exercise of a power under this Act, the regulations or a local law or any other Act.

Division 7—Chief Executive Officer and members of Council staff

44 The Chief Executive Officer

- (1) Subject to this section, a Council must appoint a natural person to be its Chief Executive Officer in accordance with its Chief Executive Officer

Employment and Remuneration Policy under section 45.

- (2) A Chief Executive Officer must be appointed under a contract of employment with the Council that does not exceed 5 years.
- (3) A Chief Executive Officer is eligible to be re-appointed under a new contract of employment under subsection (2).
- (4) If there is a vacancy in the office of Chief Executive Officer or the Chief Executive Officer is unable to perform the duties of the office of Chief Executive Officer, the Council must appoint a person to be the Acting Chief Executive Officer.
- (5) The Chief Executive Officer or an Acting Chief Executive Officer is a member of Council staff.
- (6) A Council must comply with any requirements prescribed by the regulations in relation to the employment of a Chief Executive Officer.

45 Chief Executive Officer Employment and Remuneration Policy

- (1) A Council must develop, adopt and keep in force a Chief Executive Officer Employment and Remuneration Policy.
- (2) A Chief Executive Officer Employment and Remuneration Policy must—
 - (a) provide for the Council to obtain independent professional advice in relation to the matters dealt with in the Chief Executive Officer Employment and Remuneration Policy; and
 - (b) provide for the following—
 - (i) the recruitment and appointment process;

- (ii) provisions to be included in the contract of employment;
 - (iii) performance monitoring;
 - (iv) an annual review; and
 - (c) include any other matters prescribed by the regulations.
- (3) A Council must have regard to—
- (a) any statement of policy issued by the Government of Victoria which is in force with respect to its wages policy (or equivalent); and
 - (b) any Determination that is currently in effect under section 21 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019** in relation to remuneration bands for executives employed in public service bodies—
- in developing the Chief Executive Officer Employment and Remuneration Policy.
- (4) A Council must adopt the first Chief Executive Officer Employment and Remuneration Policy under this section within 6 months of the commencement of this section.

46 Functions of the Chief Executive Officer

- (1) A Chief Executive Officer is responsible for—
- (a) supporting the Mayor and the Councillors in the performance of their roles; and
 - (b) ensuring the effective and efficient management of the day to day operations of the Council.

- (2) Without limiting the generality of subsection (1)(a), this responsibility includes the following—
- (a) ensuring that the decisions of the Council are implemented without undue delay;
 - (b) ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
 - (c) supporting the Mayor in the performance of the Mayor's role as Mayor;
 - (d) setting the agenda for Council meetings after consulting the Mayor;
 - (e) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
 - (f) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the **Workplace Injury Rehabilitation and Compensation Act 2013**.

Note

See clause 15 of Schedule 1 to the **Workplace Injury Rehabilitation and Compensation Act 2013**.

- (3) Without limiting the generality of subsection (1)(b), this responsibility includes the following—
- (a) establishing and maintaining an organisational structure for the Council;
 - (b) being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff;

- (c) managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;
 - (d) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
- (4) For the purposes of subsection (3)(a), a Chief Executive Officer must—
- (a) develop and maintain a workforce plan that—
 - (i) describes the organisational structure of the Council; and
 - (ii) specifies the projected staffing requirements for a period of at least 4 years; and
 - (iii) sets out measures to seek to ensure gender equality, diversity and inclusiveness; and
 - (b) inform the Council before implementing an organisational restructure that will affect the capacity of the Council to deliver the Council Plan; and
 - (c) consult members of Council staff affected by a proposed organisational restructure, before implementing the organisational restructure.
- (4A) In developing and maintaining a workforce plan, a Chief Executive Officer must have regard to the requirements of the **Gender Equality Act 2020**.

S. 46(4A)
inserted by
No. 5/2020
s. 55 (as
amended by
No. 9/2020
s. 390(Sch. 1
item 45A)).

S. 46(4B)
inserted by
No. 5/2020
s. 55 (as
amended by
No. 9/2020
s. 390(Sch. 1
item 45A)).

(4B) A Council's workforce plan is taken to satisfy subsection (4)(a)(iii) in respect of gender equality during any period when the Council is compliant with Division 1 of Part 4 of the **Gender Equality Act 2020**

(5) A Council and the Chief Executive Officer must, in giving effect to gender equality, diversity and inclusiveness, comply with any processes and requirements prescribed by the regulations for the purposes of this section.

(6) A Chief Executive Officer must ensure that the Mayor, Deputy Mayor, Councillors and members of Council staff have access to the workforce plan.

(7) A Chief Executive Officer must develop the first workforce plan under this section within 6 months of the commencement of this section.

47 Delegations by Chief Executive Officer

(1) The Chief Executive Officer may by instrument of delegation delegate any power, duty or function of the Council that has been delegated to the Chief Executive Officer by the Council to—

- (a) a member of Council staff; or
- (b) the members of a Community Asset Committee.

(2) The Chief Executive Officer may by instrument of delegation delegate any power, duty or function conferred by this Act or any other Act on the Chief Executive Officer, other than this power of delegation and the power of delegation under subsection (1), to a member of Council staff.

- (3) A delegation under this section to a member of Council staff may be made to—
- (a) a person named in the delegation; or
 - (b) the holder of an office or position specified in the delegation.
- (4) A delegation under this section to the members of a Community Asset Committee is to be exercised subject to the terms and conditions specified by the Chief Executive Officer, which must include the following—
- (a) the specified limit on any financial delegation and the specified purpose for which the financial delegation may be used;
 - (b) compliance with specified governance requirements to ensure appropriate standards of probity are met;
 - (c) specified monitoring and reporting of the activities and performance of the Community Asset Committee.
- (5) A member of a Community Asset Committee to whom a delegation is given under this section can only exercise the delegation while acting as a member of the Community Asset Committee at a meeting of the Community Asset Committee.
- (6) A Chief Executive Officer must submit an annual report to the Council in relation to the activities and performance of a Community Asset Committee in respect of which the members have been given a delegation under this section.
- (7) A Chief Executive Officer must keep a register of delegations made under this section.
- (8) Unless sooner revoked, a delegation made by a Chief Executive Officer under the **Local Government Act 1989** continues in force until 1 September 2020.
-

48 Members of Council staff

- (1) A Chief Executive Officer may, having regard to the workforce plan, appoint as many members of Council staff as are required to enable the functions of the Council under this Act or any other Act to be performed.
- (2) A Chief Executive Officer must adopt and maintain a recruitment policy that—
 - (a) ensures that recruitment decisions are based on merit; and
 - (b) supports transparency in recruitment processes and the public advertising of positions; and
 - (c) has regard to the gender equality, diversity and inclusiveness measures specified in the workforce plan.
- (3) A Chief Executive Officer must adopt the first recruitment policy under this section within 6 months of the commencement of this section.
- (4) For the purposes of section 12 of the **Oaths and Affirmations Act 2018**, a senior officer of a Council is a senior member of Council staff who is authorised in writing by the Chief Executive Officer to administer an oath or affirmation.
- (5) For the purposes of section 19(1)(r) of the **Oaths and Affirmations Act 2018**, a senior officer of a Council is a senior member of Council staff who is authorised in writing by the Chief Executive Officer as an authorised affidavit taker.
- (6) A Chief Executive Officer must not appoint as a member of Council staff any person who has been a Councillor of the Council within 2 years after the person ceases to hold that office.
- (7) Any appointment that contravenes subsection (6) is void.

S. 48(2)(c)
amended by
No. 30/2022
s. 31.

49 Code of conduct for members of Council staff

- (1) A Chief Executive Officer must develop and implement a code of conduct for members of Council staff.
- (2) A code of conduct for members of Council staff must include a gift policy that contains—
 - (a) a requirement for members of Council staff to disclose all gifts above a specified level; and
 - (b) provisions providing for disclosed gifts to be recorded in a gift register.
- (3) A code of conduct for members of Council staff must include—
 - (a) procedures for dealing with alleged and actual breaches of conflict of interest under this Act; and
 - (b) provisions for the Chief Executive Officer to take disciplinary action against a member of Council staff.
- (4) The Chief Executive Officer must ensure that members of Council staff have access to the code of conduct for members of Council staff.
- (5) A Chief Executive Officer must develop and implement the first code of conduct for members of Council staff under this section within 6 months of the commencement of this section.
- (6) Until the first code of conduct for members of Council staff under this section is developed and implemented, the code of conduct for Council staff implemented under section 95AA of the **Local Government Act 1989** applies as if it had been developed and implemented under this section.

50 Long service leave

A Council must implement appropriate long service leave arrangements for members of Council staff in accordance with the regulations.

51 Validity of decisions

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

52 Indemnity provision for Chief Executive Officer and members of Council staff

A Council must indemnify and keep indemnified the Chief Executive Officer and each member of Council staff against all actions or claims whether arising during or after their term of office in respect of anything necessarily done or reasonably done or omitted to be done in good faith—

- (a) in the performance of a duty or a function or the exercise of a power under this Act, the regulations or a local law or any other Act; or
- (b) in the reasonable belief that the act or omission was in the performance of a duty or a function or the exercise of a power under this Act, the regulations or a local law or any other Act.

Division 8—Audit and Risk Committee

53 Council must establish an Audit and Risk Committee

- (1) A Council must establish an Audit and Risk Committee.

- (2) An Audit and Risk Committee is not a delegated committee.
- (3) An Audit and Risk Committee must—
 - (a) include members who are Councillors of the Council; and
 - (b) consist of a majority of members who are not Councillors of the Council and who collectively have—
 - (i) expertise in financial management and risk; and
 - (ii) experience in public sector management; and
 - (c) not include any person who is a member of Council staff of the Council.
- (4) The chairperson of an Audit and Risk Committee must not be a Councillor of the Council.
- (5) Sections 123 and 125 and Division 2 of Part 6 apply to a member of the Audit and Risk Committee who is not a Councillor as if the member were a member of a delegated committee.
- (6) A Council may pay a fee to a member of an Audit and Risk Committee who is not a Councillor of the Council.

54 Audit and Risk Committee Charter

- (1) A Council must prepare and approve an Audit and Risk Committee Charter.
- (2) The Audit and Risk Committee Charter must specify the functions and responsibilities of the Audit and Risk Committee including the following—

- (a) monitor the compliance of Council policies and procedures with—
 - (i) the overarching governance principles; and
 - (ii) this Act and the regulations and any Ministerial directions;
 - (b) monitor Council financial and performance reporting;
 - (c) monitor and provide advice on risk management and fraud prevention systems and controls;
 - (d) oversee internal and external audit functions.
- (3) An Audit and Risk Committee must adopt an annual work program.
- (4) An Audit and Risk Committee must—
- (a) undertake an annual assessment of its performance against the Audit and Risk Committee Charter; and
 - (b) provide a copy of the annual assessment to the Chief Executive Officer for tabling at the next Council meeting.
- (5) An Audit and Risk Committee must—
- (a) prepare a biannual audit and risk report that describes the activities of the Audit and Risk Committee and includes its findings and recommendations; and
 - (b) provide a copy of the biannual audit and risk report to the Chief Executive Officer for tabling at the next Council meeting.
- (6) The Chief Executive Officer must—
- (a) ensure the preparation and maintenance of agendas, minutes and reports of the Audit and Risk Committee; and

- (b) table reports and annual assessments of the Audit and Risk Committee at Council meetings when required by this Act and when requested by the chairperson of the Audit and Risk Committee.
- (7) A Council must approve the first Audit and Risk Committee Charter and establish the first Audit and Risk Committee on or before 1 September 2020.
- (8) Despite the repeal of section 139 of the **Local Government Act 1989**, the audit committee established by a Council under that section in existence before that repeal continues in operation until the first Audit and Risk Committee is established by the Council under section 53.

Part 3—Council decision making

Division 1—Community accountability

55 Community engagement policy

- (1) A Council must adopt and maintain a community engagement policy.
- (2) A community engagement policy must—
 - (a) be developed in consultation with the municipal community; and
 - (b) give effect to the community engagement principles; and
 - (c) be capable of being applied to the making of the Council's local laws; and
 - (d) be capable of being applied in relation to the Council's budget and policy development; and
 - (e) describe the type and form of community engagement proposed, having regard to the significance and complexity of the matter and the level of resourcing required; and
 - (f) specify a process for informing the municipal community of the outcome of the community engagement; and
 - (g) include deliberative engagement practices which must include and address any matters prescribed by the regulations for the purposes of this paragraph and be capable of being applied to the development of the Community Vision, Council Plan, Financial Plan and Asset Plan and
 - (h) include any other matters prescribed by the regulations.

- (3) A Council must adopt the first community engagement policy under this section on or before 1 March 2021.

56 The community engagement principles

The following are the community engagement principles—

- (a) a community engagement process must have a clearly defined objective and scope;
- (b) participants in community engagement must have access to objective, relevant and timely information to inform their participation;
- (c) participants in community engagement must be representative of the persons and groups affected by the matter that is the subject of the community engagement;
- (d) participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement;
- (e) participants in community engagement are informed of the ways in which the community engagement process will influence Council decision making.

57 Public transparency policy

- (1) A Council must adopt and maintain a public transparency policy.
- (2) A public transparency policy must—
 - (a) give effect to the public transparency principles; and
 - (b) describe the ways in which Council information is to be made publicly available; and

- (c) subject to section 58(b), specify which Council information must be publicly available, including all policies, plans and reports required under this Act or any other Act; and
 - (d) include any other matters prescribed by the regulations.
- (3) A Council must adopt the first public transparency policy under this section on or before 1 September 2020.
- (4) For the purposes of the public transparency policy and the public transparency principles, *information* includes documents.

58 The public transparency principles

The following are the public transparency principles—

- (a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;
- (b) Council information must be publicly available unless—
 - (i) the information is confidential by virtue of this Act or any other Act; or
 - (ii) public availability of the information would be contrary to the public interest;
- (c) Council information must be understandable and accessible to members of the municipal community;
- (d) public awareness of the availability of Council information must be facilitated.

Division 2—Procedure and proceedings

59 Resolution of the Council

- (1) Where a Council is empowered to do any act, matter or thing, the decision to do the act, matter or thing is to be made by a resolution of the Council.
- (2) For the purposes of subsection (1), *resolution of the Council* means the following—
 - (a) a resolution made at a Council meeting;
 - (b) a resolution made at a meeting of a delegated committee;
 - (c) the exercise of a power or the performance of a duty or function of the Council by a member of Council staff or a Community Asset Committee under delegation.

60 Governance Rules

- (1) A Council must develop, adopt and keep in force Governance Rules for or with respect to the following—
 - (a) the conduct of Council meetings (including holding Council meetings by electronic means of communication); S. 60(1)(a) amended by No. 13/2022 s. 40(a).
 - (b) the conduct of meetings of delegated committees (including holding meetings of delegated committees by electronic means of communication); S. 60(1)(b) amended by No. 13/2022 s. 40(b).
 - (ba) requesting and approval of attendance at Council meetings and meetings of delegated committees by electronic means of communication; S. 60(1)(ba) inserted by No. 13/2022 s. 40(c).
 - (c) the form and availability of meeting records;
 - (d) the election of the Mayor and the Deputy Mayor;

- (da) the appointment of an Acting Mayor;
 - (e) an election period policy in accordance with section 69;
 - (f) the procedures for the disclosure of a conflict of interest by a Councillor or a member of a delegated committee under section 130;
 - (g) the procedure for the disclosure of a conflict of interest by a Councillor under section 131;
 - (h) the disclosure of a conflict of interest by a member of Council staff when providing information in respect of a matter within the meaning of section 126(1);
 - (i) any other matters prescribed by the regulations.
- (2) The Governance Rules must provide for a Council to—
- (a) consider and make decisions on any matter being considered by the Council fairly and on the merits; and
 - (b) institute decision making processes to ensure that any person whose rights will be directly affected by a decision of the Council is entitled to communicate their views and have their interests considered.
- (3) A Council may amend its Governance Rules.
- (4) Subject to subsection (5), a Council must ensure that a process of community engagement is followed in developing or amending its Governance Rules.
- (5) Subsection (4) does not apply if the Council is developing and adopting or amending a Governance Rule that only adopts a good practice guideline issued by the Minister under section 87.

- (6) A Council must comply with its Governance Rules.
- (7) A Council must adopt the first Governance Rules under this section on or before 1 September 2020.
- (8) Until a Council adopts Governance Rules under this section, the Local Law Meeting Procedures made by the Council under the **Local Government Act 1989** apply as if the Local Law Meeting Procedures had been adopted as Governance Rules under this section.

61 Council meetings

- (1) A Council meeting is a meeting of the Council at which—
 - (a) all the Councillors are, subject to this Act, entitled to attend and vote; and
 - (b) no other person is entitled to vote; and
 - (c) a decision to do an act, matter or thing is made by a resolution of the Council.
- (2) Except as provided in this Act and subject to the Governance Rules, the conduct of Council meetings is at the Council's discretion.
- (3) A Council meeting must be chaired by—
 - (a) the Mayor; or
 - (b) if the Mayor is not present at the Council meeting, the Deputy Mayor; or
 - (c) if the Mayor and the Deputy Mayor are not present at the meeting, a Councillor who is present at the Council meeting and is appointed by a resolution of the Council to chair the meeting.
- (4) A quorum at a Council meeting is an absolute majority.

- (5) A question before a Council meeting is to be determined as follows—
- (a) each Councillor present at a Council meeting who is entitled to vote is entitled to one vote;
 - (b) voting at a meeting must not be in secret, but if the meeting is closed to the public, a Councillor is not required to divulge their vote to the public;
 - (c) the question is determined in the affirmative by a majority of the Councillors present at a meeting at the time the vote is taken voting in favour of the question;
 - (d) subject to subsection (6), if the number of votes in favour of the question is half the number of Councillors present at the meeting at the time the vote is taken, the chairperson has a second vote;
 - (e) for the purpose of determining the result of a vote, a Councillor present at the meeting who does not vote is to be taken to have voted against the question.
- (6) Subsection (5)(d) does not apply where the question is—
- (a) the election of a Mayor or a Deputy Mayor;
or
 - (b) a vote to declare the office of Mayor or Deputy Mayor vacant.
- (6A) For the purposes of this section, a Councillor may attend and be present at a Council meeting by electronic means of communication.
- (7) In this section, *absolute majority* means the number of Councillors which is greater than half the total number of the Councillors of a Council.

S. 61(6A)
inserted by
No. 13/2022
s. 41.

62 Joint meetings of Councils

- (1) Two or more Councils may determine to hold a joint meeting.
- (2) A joint meeting is a Council meeting of each Council for the purposes of this Act and the provisions of this Act, except section 61(3), (4) and (5)(d), apply accordingly.
- (3) A joint meeting is to be constituted by the Councillors of the Councils holding the joint meeting consisting of—
 - (a) the total number of Councillors determined by the Councils holding the joint meeting; and
 - (b) at least 3 Councillors from each of the Councils holding the joint meeting.
- (4) A quorum at a joint meeting is constituted by the number of Councillors that is equal to at least a majority of the Councillors from each of the Councils holding the joint meeting.
- (5) Subject to subsections (2) and (6), the procedures for conducting a joint meeting are to be determined by the Councils holding the joint meeting.
- (6) A joint meeting must comply with any requirements prescribed by the regulations.

63 Delegated committees

- (1) A delegated committee established by a Council—
 - (a) must include at least 2 Councillors; and
 - (b) may include any other persons appointed to the delegated committee by the Council who are entitled to vote.

- (2) A meeting of a delegated committee established by a Council must be chaired by—
 - (a) a Councillor appointed by the Council or the Mayor to chair meetings of the delegated committee; or
 - (b) if the Councillor appointed by the Council or the Mayor to chair meetings of the delegated committee is not present at the meeting, a Councillor who is present at the meeting and is appointed by the members of the delegated committee who are present at the meeting.
- (3) Section 61 applies to a meeting of a delegated committee as if the members were Councillors.

64 Joint delegated committees

- (1) Two or more Councils may resolve to establish a joint delegated committee.
- (2) A joint delegated committee is a delegated committee of each Council that has resolved to establish the joint delegated committee for the purposes of this Act and the provisions of this Act, except section 61(3), (4) and (5)(d), apply accordingly.
- (3) A joint delegated committee must include at least one Councillor from each of the Councils that has resolved to establish the joint delegated committee.
- (4) A meeting of a joint delegated committee must be chaired by a Councillor from one of the Councils that has resolved to establish the joint delegated committee who is present at the meeting and is appointed by the members of the joint delegated committee who are present at the meeting.
- (5) A quorum at a meeting of a joint delegated committee is constituted by the number of members that is equal to at least a majority of the

members constituting the joint delegated committee.

- (6) Subject to subsection (2) and (7), the procedures for conducting a meeting of a joint delegated committee are to be determined by the Councils that have resolved to establish the joint delegated committee.
- (7) A joint delegated committee must comply with any requirements prescribed by the regulations.

65 Community Asset Committee

- (1) A Council may establish a Community Asset Committee and appoint as many members to the Community Asset Committee as the Council considers necessary to enable the Community Asset Committee to achieve the purpose specified in subsection (2).
- (2) A Council may only establish a Community Asset Committee for the purpose of managing a community asset in the municipal district.

Note

See section 47 for delegation to members of a Community Asset Committee by the Chief Executive Officer.

66 Meetings to be open to the public unless specified circumstances apply

- (1) A Council or delegated committee must keep a meeting open to the public unless the Council or delegated committee considers it necessary to close the meeting to the public because a circumstance specified in subsection (2) applies.
- (2) The circumstances are—
 - (a) the meeting is to consider confidential information; or
 - (b) security reasons; or

(c) it is necessary to do so to enable the meeting to proceed in an orderly manner.

(3) If the circumstance specified in subsection (2)(b) or (2)(c) applies, the meeting can only be closed to the public if the Council or delegated committee has made arrangements to enable the proceedings of the meeting to be viewed by members of the public as the meeting is being held.

S. 66(4)
amended by
No. 13/2022
s. 42(1).

(4) For the purposes of subsection (3), the arrangements may include provision to view the proceedings on the Internet site of the Council or on closed circuit television.

(5) If a Council or delegated committee determines that a meeting is to be closed to the public to consider confidential information, the Council or delegated committee must record in the minutes of the meeting that are available for public inspection—

(a) the ground or grounds for determining to close the meeting to the public by reference to the grounds specified in the definition of **confidential information** in section 3(1); and

(b) an explanation of why the specified ground or grounds applied.

S. 66(6)
inserted by
No. 13/2022
s. 42(2).

(6) In this section—

open to the public means—

(a) in the case of a Council meeting or a joint meeting of Councils—

(i) attendance in person by members of the public; or

(ii) a meeting that is broadcasted live on the Internet site of the Council;
or

- (iii) any other prescribed means of meeting; or
- (b) in the case of a meeting of a delegated committee or a joint delegated committee—
 - (i) attendance in person by members of the public; or
 - (ii) a meeting that is broadcasted live on the Internet site of the Council; or
 - (iii) a meeting that is recorded and published on the Internet site of the Council as soon as practicable after the meeting; or
 - (iv) any other prescribed means of meeting.

67 Council decision making where quorum cannot be maintained

- (1) This section applies if a Council cannot maintain a quorum because of the number of Councillors who have a conflict of interest in a decision in regard to a matter.
- (2) The Council must consider whether the decision can be made by dealing with the matter in an alternative manner.
- (3) For the purposes of subsection (2), an *alternative manner* may include—
 - (a) resolving to split the matter into 2 or more separate parts, so that a quorum can be maintained for each separate part; or
 - (b) making prior decisions on component parts of the matter at a meeting for which a quorum can be maintained, before deciding

the overall matter at a meeting for which a quorum can be maintained.

- (4) Subject to complying with any requirements under any other Act, if a Council is unable to use an alternative manner, the Council must decide to establish a delegated committee to make the decision in regard to the matter consisting of—
 - (a) all the Councillors who have not disclosed a conflict of interest in regard to the matter; and
 - (b) any other person or persons that the Council considers suitable.
- (5) Section 63(2) applies to a delegated committee established under subsection (4) to the extent possible after excluding all the Councillors who have disclosed a conflict of interest in regard to the matter.

68 Validity of proceedings

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

- (a) any vacancy in the number of Councillors or members; or
- (b) any defect in the election or appointment of a Councillor or member; or
- (c) a Councillor or member not being qualified or having ceased to be a Councillor or member; or
- (d) any failure to keep a Council meeting open to the public.

69 Governance Rules to include election period policy

- (1) A Council must include an election period policy in its Governance Rules.

- (2) An election period policy must prohibit any Council decision during the election period for a general election that—
- (a) relates to the appointment or remuneration of the Chief Executive Officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
 - (b) commits the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
 - (c) the Council considers could be reasonably deferred until the next Council is in place; or
 - (d) the Council considers should not be made during an election period.
- (3) An election period policy must prohibit any Council decision during the election period for a general election or a by-election that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.
- (4) A Council decision made in contravention of subsection (2)(a) or (b) is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is invalid by virtue of subsection (4) is entitled to compensation from the Council for that loss or damage.

Note

See section 59 in relation to a resolution of the Council.

70 Prohibition of Councillor discretionary funds

A Council must not adopt or implement a policy under which a Councillor is allocated a fixed or other amount of funds for the purpose of enabling the Councillor to nominate—

- (a) a particular person, body or organisation to whom the funds are to be paid; or
- (b) a particular fund in respect of which the funds are to be applied.

Division 3—Local laws

71 Power to make local laws

- (1) A Council may make local laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under this Act or any other Act.
- (2) A local law must be consistent with the local law requirements.
- (3) A local law is inoperative to the extent that it is inconsistent with the local law requirements.
- (4) A local law is a subordinate instrument for the purposes of the **Interpretation of Legislation Act 1984**.
- (5) Despite subsection (3), a local law is not invalid only because there is an error in any notice published under this Division.
- (6) Despite the repeal of Part 5 of the **Local Government Act 1989**, a local law made under that Act continues in force as if that Part had not been repealed and may be amended or revoked by a local law made under this Act.

- (7) Section 110 of the **Sentencing Act 1991** continues to apply to a local law continued under subsection (6) as if that section had not been amended by item 90 of Schedule 1 to this Act.

72 Local law requirements

The local law requirements are as follows—

- (a) a local law must not be inconsistent with any Act (including the **Charter of Human Rights and Responsibilities Act 2006**) or regulations;

Note

See, for example, section 3 of the **Sex Work Decriminalisation Act 2022**.

Note to
s. 72(a)
inserted by
No. 7/2022
s. 33.

- (b) a local law must not duplicate or be inconsistent with a planning scheme that is in force in the municipal district;
- (c) a local law for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles;
- (d) a local law must not exceed the power to make local laws conferred by this Act or any other authorising Act;
- (e) a local law must be consistent with the objectives of this Act or any other authorising Act;
- (f) a local law must be expressed as clearly and unambiguously as is reasonably possible;
- (g) unless there is clear and express power to do so under this Act or any other authorising Act, a local law must not—
- (i) seek to have a retrospective effect; or

- (ii) impose any tax, fee, fine, imprisonment or other penalty; or
- (iii) authorise the sub-delegation of powers delegated under the local law;
- (h) a local law must comply with any details prescribed in the regulations relating to the preparation and content of local laws.

73 Proposing a local law

- (1) Before a Council makes a local law it must comply with the following procedure.
- (2) The Council must make a local law in accordance with its community engagement policy.
- (3) The Council must publish a notice stating—
 - (a) the objectives of the proposed local law; and
 - (b) the intended effect of the proposed local law; and
 - (c) that a copy of the proposed local law is available for inspection—
 - (i) at the Council's office; and
 - (ii) on the Council's Internet site; and
 - (d) the community engagement process that applies in respect of the making of the local law.
- (4) A notice under subsection (3) must be published—
 - (a) on the Council's Internet site; and
 - (b) in any other manner prescribed by the regulations for the purposes of this section.
- (5) The Council must ensure that a copy of the proposed local law is available for inspection—
 - (a) at the Council's office; and

(b) on the Council's Internet site.

(6) If—

- (a) the Council proposes to alter a proposed local law in respect of which notice has been given under subsection (3); and
- (b) the alteration will affect the rights or responsibilities of any person—

the Council must comply with subsections (2) to (5) and conduct a further community engagement process in respect of the proposed alteration.

74 Making a local law

- (1) Before a Council makes a local law, a Council must obtain a certificate from a qualified person stating that the person is of the opinion that the proposed local law is consistent with the local law requirements.
- (2) For the purposes of subsection (1), *qualified person* means a person who—
 - (a) is an Australian lawyer who has been admitted to the legal profession for at least 5 years; and
 - (b) is not a Councillor of the Council.
- (3) The certificate obtained under subsection (1) must be tabled at the Council meeting at which the proposed local law is to be made.
- (4) After a local law is made, the Council must publish a notice stating—
 - (a) the title of the local law; and
 - (b) the objectives of the local law; and
 - (c) the effect of the local law; and
 - (d) that a copy of the local law is available for inspection—

- (i) at the Council's office; and
 - (ii) on the Council's Internet site.
- (5) A notice under subsection (4) must be published—
- (a) in the Government Gazette; and
 - (b) on the Council's Internet site; and
 - (c) in any other manner prescribed by the regulations for the purposes of this section.

75 Availability of a local law

The Council must ensure that a copy of a local law made under section 74 is available for inspection—

- (a) at the Council's office; and
- (b) on the Council's Internet site.

76 Incorporation by reference

- (1) A local law may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published by any authority or body whether—
- (a) wholly or partially or as amended by the local law; or
 - (b) as formulated, issued, prescribed or published at the time the local law is made or at any time before then; or
 - (c) as formulated, issued, prescribed or published from time to time.
- (2) If a local law has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code,

standard, rule, specification or method is at any time amended, until the Council causes notice to be published of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.

- (3) A notice under subsection (2) must be published—
- (a) on the Council's Internet site; and
 - (b) in any other manner prescribed by the regulations for the purposes of this section.
- (4) The Council must ensure that a copy of any document, code, standard, rule, specification or method which contains any matter incorporated in a local law is available for inspection—
- (a) at the Council's office; and
 - (b) on the Council's Internet site.

77 Permits, licences, fees and charges

- (1) A local law may—
- (a) provide that a Council may by resolution determine a fee, charge, fare or rent in relation to any property, undertaking, good, service or other act, matter or thing; and
 - (b) prescribe, regulate or determine the purposes for which and the conditions on which a Council may—
 - (i) grant a permit, licence, authority or registration; or
 - (ii) perform or supply a service; or
 - (iii) supply any goods or information; and
 - (c) prescribe the manner in which an application may be made for a permit, licence, authority or registration; and

- (d) prescribe the fee which is payable for the granting, renewal or transfer of a permit, licence, authority or registration.
- (2) The power to make a local law imposing fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees according to the value of goods or services provided for the fees or the project being assessed;
 - (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (3) If a local law provides for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply—
- (a) subject to specified conditions or in the discretion of any specified person or body; and
 - (b) either generally or specifically—
 - (i) in respect of certain matters or transactions or classes of matters or transactions; or
 - (ii) in respect of certain documents or classes of documents; or
 - (iii) when an event happens; or
 - (iv) in respect of certain persons or classes of persons; or

- (v) in respect of any combination of matters, transactions, documents, events or persons.

78 Delegation and discretionary authority

A local law may—

- (a) confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and
- (b) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by the Council; and
- (c) delegate to the Chief Executive Officer any power specified in the local law; and
- (d) authorise the Chief Executive Officer to delegate a power referred to in paragraph (c) to the holder of an office or position as a member of Council staff.

79 Penalties

(1) A local law may—

- (a) prescribe a penalty not exceeding 20 penalty units for a contravention of a local law; and
- (b) prescribe a penalty not exceeding 2 penalty units for each day after a finding of guilt or conviction for an offence during which the contravention continues; and
- (c) prescribe higher penalties (not exceeding 20 penalty units) for a subsequent offence.

(2) If a local law does not expressly prescribe a penalty for a contravention of the local law, the court before which proceedings are brought may impose a penalty not exceeding 10 penalty units.

80 Application of local law

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

- (a) apply at all times or at a specified time;
- (b) apply throughout the whole of the municipal district or in a specified part of the municipal district;
- (c) apply to all cases or to all cases subject to specified exceptions or to any specified case or class of case;
- (d) make provision for all cases or different provision for different cases or classes of case or different provisions for the same case or class of case for different purposes;
- (e) require a matter to be in accordance with a specified standard or specified requirement or approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies;
- (f) provide in a specified case or class of case for the exception of persons or things or a class of persons or things from the local law, whether unconditionally or on specified conditions and either wholly or to the extent specified.

81 Infringement notices

- (1) A local law may provide for a person to be served with an infringement notice specifying an infringement penalty for an offence against the local law as an alternative to a prosecution for the offence.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

- (3) The local law must specify—
- (a) the amount of the infringement penalty; and
 - (b) the person or class of persons who may issue a notice of infringement.

82 Recovery of penalty

Any penalty recovered for an offence against a local law is to be paid to the Council that made the local law.

83 Commencement of local law

- (1) A local law or a provision of a local law comes into operation at the beginning of the day on which the local law is made or at the beginning of such later day as is expressed in the local law as the day on which the local law or provision comes into operation.
- (2) Even though a local law has come into operation—
- (a) a person cannot be convicted of an offence against the local law if evidence is provided that at the time of the alleged offence the Council had not complied with section 74(4), 75 or 76(4) unless it is proved that at that time reasonable steps had been taken for the purpose of bringing the effect of the local law to the notice of the public or of persons likely to be affected by it or of the person charged; and
 - (b) a person cannot be prejudicially affected or made subject to any liability by the local law if evidence is provided that at the relevant time the Council had not complied with section 74(4), 75 or 76(4) unless it is proved that at that time reasonable steps had been taken for the purpose of bringing the effect of the local law to the notice of the public or

of persons likely to be affected by it or of the person concerned.

84 Sunset provision

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

85 Revocation by Governor in Council

- (1) A local law may be revoked in whole or in part by the Governor in Council by an Order in Council on the recommendation of the Minister.
- (2) In deciding whether to recommend that a local law be revoked, the Minister must consider—
 - (a) whether the local law is consistent with the local law requirements; and
 - (b) any other matter the Minister considers to be appropriate.

86 Validity of local law

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

Division 4—Good practice guidelines

87 Minister may issue good practice guidelines

- (1) The Minister may issue good practice guidelines for or with respect to any matter under this Act or the regulations relating to compliance by Councils.

- (2) Good practice guidelines must be published on an Internet site maintained by the Department.
- (3) Compliance by a Council with a relevant good practice guideline can be used as evidence that the Council has complied with the corresponding requirement under this Act or the regulations.

Part 4—Planning and financial management

Division 1—Strategic planning

88 Community Vision

- (1) A Council must maintain a Community Vision that is developed with its municipal community in accordance with its deliberative engagement practices.
- (2) The scope of the Community Vision is a period of at least the next 10 financial years.
- (3) A Community Vision must describe the municipal community's aspirations for the future of the municipality.
- (4) A Council must develop or review the Community Vision in accordance with its deliberative engagement practices and adopt the Community Vision by 31 October in the year following a general election.
- (5) The Community Vision adopted under subsection (4) has effect from 1 July in the year following a general election.

89 Strategic planning principles

- (1) A Council must undertake the preparation of its Council Plan and other strategic plans in accordance with the strategic planning principles.
- (2) The following are the strategic planning principles—
 - (a) an integrated approach to planning, monitoring and performance reporting is to be adopted;
 - (b) strategic planning must address the Community Vision;

- (c) strategic planning must take into account the resources needed for effective implementation;
- (d) strategic planning must identify and address the risks to effective implementation;
- (e) strategic planning must provide for ongoing monitoring of progress and regular reviews to identify and address changing circumstances.

90 Council Plan

- (1) A Council must prepare and adopt a Council Plan for a period of at least the next 4 financial years after a general election in accordance with its deliberative engagement practices.
- (2) A Council Plan must include the following—
 - (a) the strategic direction of the Council;
 - (b) strategic objectives for achieving the strategic direction;
 - (c) strategies for achieving the objectives for a period of at least the next 4 financial years;
 - (d) strategic indicators for monitoring the achievement of the objectives;
 - (e) a description of the Council's initiatives and priorities for services, infrastructure and amenity;
 - (f) any other matters prescribed by the regulations.
- (3) A Council must develop or review the Council Plan in accordance with its deliberative engagement practices and adopt the Council Plan by 31 October in the year following a general election.

- (4) The Council Plan adopted under subsection (3) has effect from 1 July in the year following a general election.

91 Financial Plan

- (1) A Council must develop, adopt and keep in force a Financial Plan in accordance with its deliberative engagement practices.
- (2) The scope of a Financial Plan is a period of at least the next 10 financial years.
- (3) A Financial Plan must include the following in the manner and form prescribed by the regulations—
- (a) statements describing the financial resources required to give effect to the Council Plan and other strategic plans of the Council;
 - (b) information about the decisions and assumptions that underpin the forecasts in the statements specified in paragraph (a);
 - (c) statements describing any other resource requirements that the Council considers appropriate to include in the Financial Plan;
 - (d) any other matters prescribed by the regulations.
- (4) A Council must develop or review the Financial Plan in accordance with its deliberative engagement practices and adopt the Financial Plan by 31 October in the year following a general election.
- (5) The Financial Plan adopted under subsection (4) has effect from 1 July in the year following a general election.

92 Asset Plan

- (1) Subject to subsection (6), a Council must develop, adopt and keep in force an Asset Plan in accordance with its deliberative engagement practices.
- (2) The scope of an Asset Plan is a period of at least the next 10 financial years.
- (3) An Asset Plan must include the following—
 - (a) information about maintenance, renewal, acquisition, expansion, upgrade, disposal and decommissioning in relation to each class of infrastructure asset under the control of the Council;
 - (b) any other matters prescribed by the regulations.
- (4) Subject to subsection (6), a Council must develop or review the Asset Plan in accordance with its deliberative engagement practices and adopt the Asset Plan by 31 October in the year following a general election, other than the first general election to be conducted under section 257(1)(a).
- (5) The Asset Plan adopted under subsection (4) has effect from 1 July in the year following a general election.
- (6) A Council must develop and adopt an Asset Plan under this section in accordance with its community engagement policy by 30 June 2022 following the first general election to be conducted under section 257(1)(a).
- (7) The Asset Plan adopted under subsection (6) has effect from 1 July 2022.

93 Revenue and Rating Plan

A Council must prepare and adopt a Revenue and Rating Plan by the next 30 June after a general election for a period of at least the next 4 financial years.

Division 2—Budget processes

94 The budget

- (1) A Council must prepare and adopt a budget for each financial year and the subsequent 3 financial years by—
 - (a) 30 June each year; or
 - (b) any other date fixed by the Minister by notice published in the Government Gazette.
- (2) A Council must ensure that the budget gives effect to the Council Plan and contains the following—
 - (a) financial statements in the form and containing the information required by the regulations;
 - (b) a general description of the services and initiatives to be funded in the budget;
 - (c) major initiatives identified by the Council as priorities in the Council Plan, to be undertaken during each financial year;
 - (d) for services to be funded in the budget, the prescribed indicators and measures of service performance that are required to be reported against by this Act;
 - (e) the total amount that the Council intends to raise by rates and charges;

- (f) a statement as to whether the rates will be raised by the application of a uniform rate or a differential rate;
 - (g) a description of any fixed component of the rates, if applicable;
 - (h) if the Council proposes to declare a uniform rate, the matters specified in section 160 of the **Local Government Act 1989**;
 - (i) if the Council proposes to declare a differential rate for any land, the matters specified in section 161(2) of the **Local Government Act 1989**;
 - (j) any other information prescribed by the regulations.
- (3) The Council must ensure that, if applicable, the budget also contains a statement—
- (a) that the Council intends to apply for a special Order to increase the Council's average rate cap for the financial year or any other financial year; or
 - (b) that the Council has made an application to the ESC for a special Order and is waiting for the outcome of the application; or
 - (c) that a special Order has been made in respect of the Council and specifying the average rate cap that applies for the financial year or any other financial year.

95 Revised budget

- (1) A Council must prepare and adopt a revised budget before the Council—
- (a) can make a variation to the declared rates or charges; or
 - (b) can undertake any borrowings that have not been approved in the budget; or
-

- (c) can make a change to the budget that the Council considers should be the subject of community engagement.
- (2) The Council must ensure that a revised budget contains all the information prescribed by the regulations.
- (3) A Council must adopt a revised budget as soon as is practicable after it has been developed.

96 Preparation of budget or revised budget

- (1) A Council must develop the budget and any revised budget in accordance with—
 - (a) the financial management principles; and
 - (b) subject to subsection (2), its community engagement policy.
- (2) A Council may develop the first budget under section 94 in accordance with section 223 of the **Local Government Act 1989** if the Council has not adopted its first community engagement policy at the time that the budget is being developed.

97 Quarterly budget report

- (1) As soon as practicable after the end of each quarter of the financial year, the Chief Executive Officer must ensure that a quarterly budget report is presented to the Council at a Council meeting which is open to the public.
- (2) A quarterly budget report must include—
 - (a) a comparison of the actual and budgeted results to date; and
 - (b) an explanation of any material variations; and

- (c) any other matters prescribed by the regulations.
- (3) In addition, the second quarterly report of a financial year must include a statement by the Chief Executive Officer as to whether a revised budget is, or may be, required.

Division 3—Reporting

98 Annual report

- (1) A Council must prepare an annual report in respect of each financial year.
- (2) An annual report must contain the following—
 - (a) a report of operations of the Council;
 - (b) an audited performance statement;
 - (c) audited financial statements;
 - (d) a copy of the auditor's report on the performance statement;
 - (e) a copy of the auditor's report on the financial statements under Part 3 of the **Audit Act 1994**;
 - (f) any other matters prescribed by the regulations.
- (3) The report of operations of the Council must contain the following—
 - (a) a statement of progress on implementation of the Council Plan, which includes the results of the strategic indicators;
 - (b) a statement of progress in relation to the major initiatives identified in the budget or a revised budget;

- (c) the prescribed indicators of service performance for the services provided by the Council and funded in the budget during the financial year, the prescribed measures relating to those indicators and the results achieved in relation to those performance indicators and measures;
 - (d) any other information prescribed by the regulations.
- (4) The performance statement must be prepared in accordance with the regulations and contain the following—
- (a) the prescribed indicators of service performance for the services provided by the Council and funded in the budget for the financial year, the prescribed measures relating to those indicators and the results achieved in relation to those performance indicators and measures;
 - (b) the prescribed indicators of financial performance, the prescribed measures relating to those indicators and the results achieved in relation to those performance indicators and measures;
 - (c) the prescribed indicators of sustainable capacity performance, the prescribed measures relating to those indicators and the results achieved in relation to those performance indicators and measures;
 - (d) any other information prescribed by the regulations.
- (5) The financial statements must—
- (a) include any other information prescribed by the regulations; and

- (b) be prepared in accordance with the regulations.

99 Preparation of annual report

- (1) As soon as practicable after the end of the financial year, a Council must cause to be prepared in accordance with section 98, the performance statement and financial statements of the Council for the financial year.
- (2) The Council, after passing a resolution giving its approval in principle to the performance statement and financial statements, must submit the statements to the auditor for reporting on the audit.
- (3) The Council must ensure that the performance statement and financial statements, in their final form after any changes recommended or agreed by the auditor have been made, are certified in accordance with the regulations by—
 - (a) 2 Councillors authorised by the Council for the purposes of this subsection; and
 - (b) any other persons prescribed by the regulations for the purposes of this subsection.
- (4) The auditor must prepare a report on the performance statement.

Note

The auditor is required under Part 3 of the **Audit Act 1994** to prepare a report on the financial statements.

- (5) The auditor must not sign a report under subsection (4) or under Part 3 of the **Audit Act 1994** unless the performance statement or the financial statements (as applicable) have been certified under subsection (3).

- (6) The auditor must provide the Minister and the Council with a copy of the report on the performance statement as soon as is reasonably practicable.

Note

The auditor is required under Part 3 of the **Audit Act 1994** to report on the financial statements to the Council within 4 weeks and to give a copy of the report to the Minister.

100 Meeting to consider annual report

- (1) For the purposes of section 18(1)(d), the Mayor must report on the implementation of the Council Plan by presenting the annual report at a Council meeting open to the public.
- (2) The Council meeting must be held—
- (a) in the year of a general election, on a day not later than the day before election day; and
 - (b) in any other year, within 4 months of the end of the financial year.

Division 4—Financial management

101 Financial management principles

- (1) The following are the financial management principles—
- (a) revenue, expenses, assets, liabilities, investments and financial transactions must be managed in accordance with a Council's financial policies and strategic plans;
 - (b) financial risks must be monitored and managed prudently having regard to economic circumstances;
 - (c) financial policies and strategic plans, including the Revenue and Rating Plan, must seek to provide stability

- and predictability in the financial impact on the municipal community;
- (d) accounts and records that explain the financial operations and financial position of the Council must be kept.
- (2) For the purposes of the financial management principles, *financial risk* includes any risk relating to the following—
- (a) the financial viability of the Council;
 - (b) the management of current and future liabilities of the Council;
 - (c) the beneficial enterprises of the Council.

102 Financial policies

- (1) A Council must prepare and adopt financial policies that give effect to the financial management principles.
- (2) A financial policy must include any matters prescribed by the regulations.

103 Investments

A Council may invest any money—

- (a) in Government securities of the Commonwealth; and
- (b) in securities guaranteed by the Government of Victoria; and
- (c) with an ADI; and
- (d) with any financial institution guaranteed by the Government of Victoria; and
- (e) on deposit with an eligible money market dealer within the meaning of the Corporations Act; and

- (f) in any other manner approved by the Minister, either generally or specifically, to be an authorised manner of investment for the purposes of this section.

104 Borrowings

A Council cannot borrow money unless the proposed borrowings were included in the budget or a revised budget.

105 Accounts and records

- (1) The Principal Accounting Officer of a Council must ensure that there are kept proper accounts and records of the transactions and financial affairs of the Council.
- (2) A failure by a Council to keep proper accounts and records and the reason for that failure must be reported in the annual report.

Part 5—Council operations

Division 1—Service performance

106 Service performance principles

- (1) A Council must plan and deliver services to the municipal community in accordance with the service performance principles.
- (2) The following are the service performance principles—
 - (a) services should be provided in an equitable manner and be responsive to the diverse needs of the municipal community;
 - (b) services should be accessible to the members of the municipal community for whom the services are intended;
 - (c) quality and costs standards for services set by the Council should provide good value to the municipal community;
 - (d) a Council should seek to continuously improve service delivery to the municipal community in response to performance monitoring;
 - (e) service delivery must include a fair and effective process for considering and responding to complaints about service provision.

107 Complaints policy

- (1) A Council must develop and maintain a complaints policy that includes—
 - (a) a process for dealing with complaints made to the Council; and

- (b) a process for reviewing any action, decision or service in respect of which the complaint is made; and
 - (c) a discretion for the Council to refuse to deal with a complaint which is otherwise subject to statutory review; and
 - (d) the prescribed processes for dealing with complaints about the Council; and
 - (e) the prescribed processes for internal review of complaints made to a Council; and
 - (f) the prescribed processes for exercising the discretion referred to in paragraph (c); and
 - (g) any other matter prescribed by the regulations.
- (2) A review process must provide for a review that is independent of—
- (a) the person who took the action; and
 - (b) the person who made the decision; and
 - (c) the person who provided the service.
- (3) For the purposes of the complaints policy, **complaint** includes the communication, whether orally or in writing, to the Council by a person of their dissatisfaction with—
- (a) the quality of an action taken, decision made or service provided by a member of Council staff or a contractor engaged by the Council; or
 - (b) the delay by a member of Council staff or a contractor engaged by the Council in taking an action, making a decision or providing a service; or
 - (c) a policy or decision made by a Council or a member of Council staff or a contractor.

- (4) A Council must develop the first complaints policy under this section within 6 months of the commencement of this section.

Division 2—Procurement

108 Procurement Policy

- (1) A Council must prepare and adopt a Procurement Policy which specifies the principles, processes and procedures applying in respect of the purchase of goods and services by the Council, including for the carrying out of works.
- (2) A Procurement Policy must seek to promote open and fair competition and provide value for money.
- (3) A Procurement Policy must include the following—
- (a) the contract value above which the Council must invite a tender or seek an expression of interest;
 - (b) a description of the criteria to be used by the Council to evaluate whether a proposed contract provides value for money;
 - (c) a description of how the Council will seek collaboration with other Councils and public bodies in the procurement of goods or services;
 - (d) the conditions under which the Council may purchase goods or services without inviting a public tender or expression of interest;
 - (e) a description of the process to be undertaken in inviting a public tender or expression of interest;
 - (f) any other matters prescribed by the regulations.

- (4) The contract value to be included in a Procurement Policy in accordance with subsection (3)(a) must not exceed the value prescribed by the regulations for the purposes of this section.
- (5) A Council must review its Procurement Policy at least once during each 4 year term of the Council.
- (6) A Council must adopt the first Procurement Policy under this section within 6 months of the commencement of this section.
- (7) Until a Council adopts a Procurement Policy under this section—
 - (a) the procurement policy approved by the Council under section 186A of the **Local Government Act 1989** which is in effect before the commencement of this section applies as if the procurement policy had been adopted under this section; and
 - (b) the restrictions on the power of a Council to enter into a contract under sections 186 and 186A of the **Local Government Act 1989** as in force before the commencement of this section continue to apply as if those sections had not been repealed.

109 Procurement

- (1) A Council must comply with its Procurement Policy before entering into a contract for the purchase of goods or services or the carrying out of works.
- (2) The Chief Executive Officer must ensure that any report to the Council that recommends entering into a procurement agreement includes information in relation to any opportunities for collaboration with other Councils or public bodies which may be available.

Division 3—Beneficial enterprises

110 Beneficial enterprises

- (1) For the purpose of performing its role, a Council may participate in any of the following beneficial enterprises—
 - (a) become a member of a corporation;
 - (b) participate in the formation of a corporation, trust or other body;
 - (c) acquire shares in a corporation, trust or other body;
 - (d) enter into a partnership or joint venture with any other person or body.
- (2) If by virtue of any participation, subscription or acquisition under subsection (1), a Council has the right to appoint some person to be a director of or hold office in or under the corporation, trust, partnership or other body, the Council may appoint a Councillor, member of Council staff or other person to that office.
- (3) For the purposes of subsection (1)(a), (b) or (c), a Council may nominate a person to hold the shareholding or unit holding on behalf of the Council and the person nominated is to be treated as being the shareholder or unit holder of the shares or units.

111 Process before participating in beneficial enterprises

- (1) A Council must in participating in a beneficial enterprise under section 110—
 - (a) assess the total investment involved and the total risk exposure and ensure that its total risk exposure does not exceed its total investment; and

- (b) if section 110(1)(a), (b) or (c) applies, ensure that the corporation is a limited corporation; and
 - (c) have regard to the risks involved; and
 - (d) establish risk management arrangements; and
 - (e) implement regular performance monitoring and reporting arrangements in relation to the beneficial enterprise; and
 - (f) ensure that any changes to the operation or purpose of the beneficial enterprise are reported to the Council; and
 - (g) identify and manage any risks associated with any changes to the operation or purpose of the beneficial enterprise.
- (2) A Council must report on the operations and performance of each beneficial enterprise in its annual report.

Division 4—Powers in relation to land

112 Acquisition and compensation

- (1) A Council may purchase or compulsorily acquire any land which is or may be required by the Council for or in connection with, or as incidental to, the performance of its functions or the exercise of its powers.
- (2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—
 - (a) the **Local Government Act 2020** is the special Act; and
 - (b) the Council is the Authority.

- (3) Any purchase or compulsory acquisition of land by a Council under this section must be undertaken in accordance with the Council's community engagement policy.

113 Creation of easements

If any right in the nature of an easement or purporting to be an easement or an irrevocable licence is or has been acquired by a Council, the right is deemed for all purposes to be and to have been an easement even if there is no land vested in the Council which is benefited by the right.

114 Restriction on power to sell or exchange land

- (1) Except where section 116 applies, if a Council sells or exchanges any land it must comply with this section.
- (2) Before selling or exchanging the land, the Council must—
- (a) at least 4 weeks prior to selling or exchanging the land, publish notice of intention to do so—
 - (i) on the Council's Internet site; and
 - (ii) in any other manner prescribed by the regulations for the purposes of this subsection; and
 - (b) undertake a community engagement process in accordance with its community engagement policy; and
 - (c) obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the **Valuation of Land Act 1960** a valuation of the land which is made not more than 6 months prior to the sale or exchange.

115 Lease of land

- (1) A Council's power to lease any land to any person is limited to leases for a term of 50 years or less.
- (2) Subject to any other Act, and except where section 116 applies, if a Council leases any land to any person subject to any exceptions, reservations, covenants and conditions, it must comply with this section.
- (3) A Council must include any proposal to lease land in a financial year in the budget, where the lease is—
 - (a) for one year or more and—
 - (i) the rent for any period of the lease is \$100 000 or more a year; or
 - (ii) the current market rental value of the land is \$100 000 or more a year; or
 - (b) for 10 years or more.
- (4) If a Council proposes to lease land that is subject to subsection (3) and that was not included as a proposal in the budget, the Council must undertake a community engagement process in accordance with the Council's community engagement policy in respect of the proposal before entering into the lease.

116 Transfer, exchange or lease of land without consideration

- (1) A Council's powers to transfer, exchange or lease any land include the power to do so with or without consideration to—
 - (a) the Crown; or
 - (b) a Minister; or
 - (c) any public body; or

- (d) the trustees appointed under any Act to be held on trust for public or municipal purposes; or
 - (e) a public hospital within the meaning of the **Health Services Act 1988** or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society.
- (2) Any transfer, exchange or lease under this section is valid in law and equity.
 - (3) Sections 114 and 115 do not apply to any transfer, exchange or lease under this section to a person or body specified in subsection (1).

Division 5—Carrying out works on land

117 When Council or other person can carry out required work

- (1) If a person fails to carry out any work which the person is required to carry out by a Council under any Act, regulation or local law—
 - (a) any other person may with the approval of the Council cause the work to be carried out; or
 - (b) the Council may carry out the work.
- (2) Any other person who carries out the work may recover the cost of carrying out the work from the person who failed to do it.
- (3) If the Council carries out the work or engages any other person to carry out the work, the Council may recover the cost of carrying out the work from the person who failed to do it.

118 Right of owner to carry out required work on occupied land

- (1) If the owner of any land is required to carry out any work by a Council under any Act, regulation or local law, the owner may give a written notice to the occupier of the land—
 - (a) stating particulars of the work to be carried out; and
 - (b) requiring the occupier to permit the owner and any other person to enter the land and carry out the work.
- (2) If the occupier of the land does not comply with a notice within 7 days of being given the notice, the owner of the land may apply to the Magistrates' Court for an order.
- (3) The Magistrates' Court may make an order requiring the occupier of the land to permit the owner and any other person to enter the land and carry out the work.
- (4) An occupier of the land who fails to comply with an order made under subsection (3) is guilty of an offence.

Penalty: 10 penalty units.
- (5) While the occupier of the land fails to comply with the order, the owner of the land is excused from any penalty for failing to carry out the work.

Division 6—Unpaid money

119 Recovery of money owed to Council by former owner or occupier

- (1) If a former owner or occupier of any building or land in respect of which that person owes money (other than rates or charges or money for personal services carried out by the Council) to a Council does not pay the money, the Council may, subject

to subsection (2), require the payment of all or part of the money from the present owner or occupier of the building or land.

- (2) A Council cannot recover an amount under subsection (1), or interest which has accrued on that amount, if that amount was omitted from the certificate issued under section 121.

120 Council may charge interest on unpaid money

- (1) A Council may require a person to pay interest on any amount of money (other than rates and charges)—
- (a) which that person owes to the Council; and
 - (b) which has not been paid by the due date.
- (2) The interest—
- (a) is to be calculated at the rate set from time to time for the purposes of this section by the Council; and
 - (b) becomes payable—
 - (i) on and from the date on which the money became due; or
 - (ii) in the case of a court order requiring payment of the money, on and from the date of the court order; and
 - (c) continues to be payable until the payment or recovery of the money.
- (3) The interest rate specified by the Council must not be more than the rate fixed under section 2 of the **Penalty Interest Rates Act 1983**.
- (4) If the Council sets a new interest rate, the new rate takes effect on the date set by the Council and applies from that date to all money (other than interest) owing to the Council on that date.

Division 7—Land information

121 Land information certificate

- (1) A person may apply to a Council for a certificate specifying the prescribed information in relation to matters affecting any land in the municipal district.
- (2) An application for a certificate must be—
 - (a) in the form prescribed by the regulations; and
 - (b) sent to the Chief Executive Officer.
- (3) An applicant must pay the prescribed fee to the Council for the issue of a certificate.
- (4) In addition to the prescribed information, a Council may provide in the certificate any other information concerning the land as the Council considers in its absolute discretion to be relevant.
- (5) A Council does not incur any liability in respect of any information provided in addition to the prescribed information in good faith.
- (6) A certificate is conclusive proof as at the date it is given of the prescribed information stated in the certificate.

122 Notice in relation to acquisition of land

- (1) A person who acquires any land in a municipal district must give an acquisition notice to the Chief Executive Officer of the Council of the municipal district in which the land is located—
 - (a) in a prescribed form containing prescribed particulars; and
 - (b) within a prescribed period.

(2) A person is guilty of an offence if the person contravenes this section without having a reasonable excuse.

Penalty: 10 penalty units.

Part 6—Council integrity

Division 1—Improper conduct

123 Misuse of position

- (1) A person who is, or has been, a Councillor or member of a delegated committee must not intentionally misuse their position—
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years.

- (2) An offence against subsection (1) is an indictable offence.
- (3) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include—
- (a) making improper use of information acquired as a result of the position the person held or holds; or
 - (b) disclosing information that is confidential information; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or

- (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) participating in a decision on a matter in which the person has a conflict of interest.
- (4) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of delegated committees; and
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

124 Directing a member of Council staff

A Councillor must not intentionally direct, or seek to direct, a member of Council staff—

- (a) in the exercise of a delegated power, or the performance of a delegated duty or function, of the Council; or
- (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
- (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under this Act or any other Act; or
- (d) in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

Penalty: 120 penalty units.

125 Confidential information

- (1) Unless subsection (2) or (3) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply if the information that is disclosed is information that the Council has determined should be publicly available.

- (3) A person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, may disclose information that the person knows, or should reasonably know, is confidential information in the following circumstances—

- (a) for the purposes of any legal proceedings arising out of this Act;
- (b) to a court or tribunal in the course of legal proceedings;
- (c) pursuant to an order of a court or tribunal;
- (d) in the course of an internal arbitration, including an application for internal arbitration, and for the purposes of the internal arbitration process;
- (e) in the course of a Councillor Conduct Panel hearing, including an application for a Councillor Conduct Panel hearing, and for the purposes of the hearing;
- (f) to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;

S. 125(3)(d)
amended by
No. 30/2022
s. 19(1)(a).

S. 125(3)(e)
amended by
No. 30/2022
s. 19(1)(b).

- (g) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
 - (h) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry;
 - (i) to the extent reasonably required by a law enforcement agency.
- (4) Despite section 38 of the **Freedom of Information Act 1982**, a document containing information of the kind described in paragraph (a), (b), (c), (d), (e), (f) or (g) of the definition of *confidential information* is not an exempt document within the meaning of the **Freedom of Information Act 1982** by virtue of section 38 of that Act.
- (5) Despite section 38 of the **Freedom of Information Act 1982**, a document containing information prescribed to be confidential information for the purposes of paragraph (k) of the definition of *confidential information* is not an exempt document within the meaning of the **Freedom of Information Act 1982** by virtue of section 38 of that Act if, for the purposes of this subsection, it is a prescribed non-exempt document or prescribed class of non-exempt document.

S. 125(4)
inserted by
No. 30/2022
s. 19(2).

S. 125(5)
inserted by
No. 30/2022
s. 19(2).

Note

A document referred to in subsection (4) or (5) may still be an exempt document by virtue of another provision of Part IV of the **Freedom of Information Act 1982**.

Note to s. 125
inserted by
No. 30/2022
s. 19(2).

Division 2—Conflict of interest

126 Definitions

(1) In this Division—

family member means—

- (a) a spouse or domestic partner of the relevant person; or
- (b) a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner; or
- (c) any other relative that regularly resides with the relevant person;

matter means a matter with which a Council, delegated committee, community asset committee or a member of Council staff is concerned and that will require—

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council, delegated committee or community asset committee in respect of the matter; or
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Council staff in respect of the matter;

not-for-profit organisation means a body that—

- (a) operates exclusively for charitable, civil, sporting or other social purposes; and
- (b) does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation;

relevant person means a person who is a—

- (a) Councillor; or
 - (b) member of a delegated committee who is not a Councillor; or
 - (c) member of Council staff.
- (2) For the purposes of this Division, a relevant person has a ***conflict of interest*** if the relevant person has—
- (a) a general conflict of interest within the meaning of section 127; or
 - (b) a material conflict of interest within the meaning of section 128.

127 General conflict of interest

- (1) Subject to section 129, a relevant person has a ***general conflict of interest*** in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.
- (2) For the purposes of subsection (1)—

private interests means any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief;

public duty means the responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.

128 Material conflict of interest

- (1) Subject to section 129, a relevant person has a ***material conflict of interest*** in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.
- (2) The benefit may arise or the loss incurred—
 - (a) directly or indirectly; or
 - (b) in a pecuniary or non-pecuniary form.
- (3) For the purposes of this section, any of the following is an ***affected person***—
 - (a) the relevant person;
 - (b) a family member of the relevant person;
 - (c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;
 - (d) an employer of the relevant person, unless the employer is a public body;
 - (e) a business partner of the relevant person;
 - (f) a person for whom the relevant person is a consultant, contractor or agent;
 - (g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;
 - (h) a person from whom the relevant person has received a disclosable gift.
- (4) For the purposes of subsection (3)(h), ***disclosable gift*** means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of this subsection, the prescribed amount, received from a person in the 5 years preceding the decision on the matter—

- (a) if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or
- (b) if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation—

but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.

129 Exemptions

A conflict of interest does not arise if any of the following applies—

- (a) the conflict of interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter;
- (b) the interest that would give rise to a conflict of interest is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors;
- (c) the relevant person does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances;
- (d) the interest only arises because the relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person

- receives no personal advantage from the not-for-profit organisation;
- (e) the interest only arises because a family member of the relevant person is a member but not an office-holder of a not-for-profit organisation;
 - (f) the interest only arises because the relevant person is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter;
 - (g) the interest arises in relation to a decision by a Councillor on a matter or in a circumstance that is prescribed to be exempt by the regulations.

130 Disclosure of conflict of interest

- (1) This section applies in respect of a conflict of interest in respect of a matter—
 - (a) to be considered at a Council meeting; or
 - (b) to be considered at a meeting of a delegated committee; or
 - (c) to be considered at a meeting of a community asset committee; or
 - (d) that arises in the course of the exercise of a power of delegation by a member of Council staff; or
 - (e) that arises in the course of the exercise of a statutory function under this Act or any other Act.
- (2) A relevant person who has a conflict of interest in respect of a matter must—
 - (a) disclose the conflict of interest in the manner required by the Council's Governance Rules; and

- (b) exclude themselves from the decision making process in relation to that matter, including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.
- (3) A relevant person must not fail to comply with subsection (2) in respect of a conflict of interest that is a material conflict of interest.
- Penalty: 120 penalty units.
- (4) If a relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a general conflict of interest is a Councillor who has been previously—
- (a) found guilty by a court of a conflict of interest offence against this Act; or
 - (b) subject to a finding of serious misconduct by a Councillor Conduct Panel for a conflict of interest breach—
- the relevant person commits an offence against this Act and is liable to a fine not exceeding 120 penalty units.
- (5) If a relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a material conflict of interest or a general conflict of interest is a Councillor, an application may be made under section 154 to a Councillor Conduct Panel alleging serious misconduct.
- (6) If a relevant person who fails to comply with subsection (2) is the Chief Executive Officer, the Mayor must notify the Chief Municipal Inspector as soon as practicable after the Mayor becomes aware that the Chief Executive Officer has failed to comply with subsection (2).

- (7) If a relevant person who fails to comply with subsection (2) is a member of Council staff other than the Chief Executive Officer, the Chief Executive Officer—
- (a) must notify the Chief Municipal Inspector as soon as practicable after the Chief Executive Officer becomes aware that the member of Council staff has failed to comply with subsection (2); and
 - (b) must deal with the failure to comply with subsection (2) in accordance with the code of conduct for members of Council staff.
- (8) If a relevant person who fails to comply with subsection (2) is a person other than a Councillor or a member of Council staff, the Chief Executive Officer must notify the Council and make a recommendation to the Council as to the action that is to be taken.

131 Disclosure of conflict of interest at other meetings

- (1) This section applies in respect of a conflict of interest in respect of a matter at a meeting conducted under the auspices of the Council that is not a meeting specified in section 130(1)(a), (b) or (c).
- (2) A Councillor who has a conflict of interest in respect of a matter must—
- (a) disclose the conflict of interest in the manner required by the Council's Governance Rules; and
 - (b) comply with the procedures specified in the Council's Governance Rules for the purposes of this section.

- (3) If a Councillor fails to comply with subsection (2), an application may be made under section 154 to a Councillor Conduct Panel alleging serious misconduct.

Division 3—Personal interests returns

132 Definitions

- (1) In this Division—

biannual personal interests return means a return lodged by a specified person while they continue to be a specified person;

initial personal interests return means the first return lodged by a specified person;

nominated officer means a member of Council staff who—

- (a) has a statutory or delegated power, duty or function; and
- (b) is nominated by the Chief Executive Officer because of the nature of that power, duty or function;

personal interests return means an initial personal interests return or a biannual personal interests return;

specified person means—

- (a) a Councillor; or
- (b) a member of a delegated committee who is not a Councillor; or
- (c) a Chief Executive Officer; or
- (d) a nominated officer.

- (2) A nomination for the purposes of the definition of *nominated officer* may be made by reference to a specified person or to the holder of a specified position.

133 Lodging of an initial personal interests return

- (1) A specified person must lodge an initial personal interests return with the Chief Executive Officer containing the matters prescribed by the regulations—
- (a) if the specified person is a Councillor, within 30 days of taking the oath or affirmation of office of a Councillor; or
 - (b) if the specified person is a member of a delegated committee, within 30 days of being appointed a member of the delegated committee; or
 - (c) if the specified person is a Chief Executive Officer, within 30 days of being appointed a Chief Executive Officer; or
 - (d) if the specified person is a nominated officer, within 30 days of being nominated or being appointed to a nominated position.

Penalty: 60 penalty units.

- (2) A specified person who is a member of a delegated committee, Chief Executive Officer or nominated officer as at the commencement of this section must lodge an initial personal interests return with the Chief Executive Officer containing the matters prescribed by the regulations within 30 days of that commencement.

Penalty: 60 penalty units.

- (3) A specified person must not intentionally or recklessly lodge an initial personal interests return that contains any false or incomplete information.

Penalty: 60 penalty units.

- (4) If a person is re-elected or reappointed upon completion of their term of office as a Councillor or member of a delegated committee, the

Councillor or member of a delegated committee does not have to submit a new initial personal interests return.

- (5) If the specified person is a member of Council staff who is reappointed after the renewal of their current contract of employment, the member of Council staff does not have to submit a new initial personal interests return.

134 Lodging of a biannual personal interests return

- (1) A specified person who continues to be a specified person must lodge a biannual personal interests return with the Chief Executive Officer containing the matters prescribed by the regulations twice yearly by the end of each prescribed period.

Penalty: 60 penalty units.

- (2) A specified person must not intentionally or recklessly lodge a biannual personal interests return that contains any false or incomplete information.

Penalty: 60 penalty units.

135 Public access to summary of personal interests

- (1) The Chief Executive Officer must prepare a summary of the personal interests information disclosed in the last personal interests return lodged with the Chief Executive Officer.
- (2) The summary of personal interests must—
- (a) include the town or suburb, but not the street address or number of the land that is the place of residence of a person as disclosed in the personal interests return; and
 - (b) include the matters prescribed by the regulations; and

- (c) exclude the matters required by the regulations to be excluded; and
 - (d) be prepared in accordance with the manner prescribed by the regulations.
- (3) The Chief Executive Officer must—
- (a) publish the summary of personal interests on the Council's Internet site; and
 - (b) ensure that the summary of personal interests is available for inspection at the Council office.

136 Confidentiality of personal interests returns

- (1) The Chief Executive Officer must ensure that personal interests returns are kept in accordance with the **Public Records Act 1973**.
- (2) The Chief Executive Officer must ensure that only the following persons have access to, or can inspect, a personal interests return—
 - (a) the Chief Executive Officer or a member of Council staff who is responsible for managing the personal interests returns or preparing the summary of personal interests;
 - (b) a Municipal Monitor;
 - (c) the Chief Municipal Inspector or a person authorised by the Chief Municipal Inspector;
 - (d) a Commission of inquiry;
 - (e) the person who lodged the personal interests return;
 - (f) a person who has obtained an order of a court to do so.
- (3) A person must not make a record of, divulge or communicate to any person any information in a personal interests return that is gained by or

conveyed to them in the course of the discharge of their official duties unless—

- (a) the information is information published in a summary of personal interests; or
- (b) the information is required by the person for the performance of their official duties under this Act or any other Act, including in relation to a proceeding before a Councillor Conduct Panel, VCAT or a court.

Penalty: 60 penalty units.

Division 4—Gifts

137 Anonymous gift not to be accepted

- (1) Subject to subsection (2), a Councillor must not accept, directly or indirectly, a gift for the benefit of the Councillor the amount or value of which is equal to or exceeds the gift disclosure threshold unless—
 - (a) the name and address of the person making the gift are known to the Councillor; or
 - (b) at the time when the gift is made—
 - (i) the Councillor is given the name and address of the person making the gift; and
 - (ii) the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.

Penalty: 60 penalty units.

- (2) If the name and address of the person making the gift are not known to the Councillor for whose benefit the gift is intended, the Councillor is not in breach of subsection (1) if the Councillor disposes

of the gift to the Council within 30 days of the gift being received.

- (3) In addition to the penalty specified in subsection (1), a Councillor who is found guilty of a breach of that subsection must pay to the Council the amount or value of the gift accepted in contravention of that subsection.

138 Councillor gift policy

- (1) A Council must adopt a Councillor gift policy within the period of 6 months after this section comes into operation.
- (2) A Councillor gift policy must include—
 - (a) procedures for the maintenance of a gift register; and
 - (b) any other matters prescribed by the regulations.
- (3) A Council may review and update the Councillor gift policy.

Division 5—Councillor conduct

139 Councillor Code of Conduct

- (1) A Council must develop a Councillor Code of Conduct.
- (2) The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.
- (3) A Councillor Code of Conduct—
 - (a) includes the standards of conduct prescribed by the regulations expected to be observed by Councillors; and

S. 139(3)(a)
amended by
No. 30/2022
s. 22(1).

- (b) includes any other provisions prescribed by the regulations for the purpose of this section; and
 - (c) must include provisions addressing any matters prescribed by the regulations for the purpose of this section; and
 - (d) may include any other matters which the Council considers appropriate, other than any other standards of conduct.
- (4) A Council must review and adopt the Councillor Code of Conduct within the period of 4 months after a general election.
- (5) A Council must adopt the Councillor Code of Conduct under subsection (4) by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council.
- (6) Until a Council adopts a Councillor Code of Conduct under subsection (4), the Councillors must comply with the existing Councillor Code of Conduct.
- (7) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act (including the **Charter of Human Rights and Responsibilities Act 2006**) or regulation.

S. 139(3)(b)
amended by
No. 30/2022
s. 22(2).

140 Review or amendment of Councillor Code of Conduct

- (1) A Council may review or amend the Councillor Code of Conduct at any time.
- (2) A Council can only amend the Councillor Code of Conduct by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council.

141 Internal arbitration process

S. 141(1)
amended by
No. 30/2022
s. 23(1).

- (1) The internal arbitration process applies to any breach of the standards of conduct.
- (2) The following applies to an internal arbitration process—
 - (a) any processes prescribed by the regulations, including any application process;
 - (b) the arbiter must ensure that parties involved in internal arbitration process are given an opportunity to be heard by the arbiter;
 - (c) the arbiter must ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
 - (d) any requirements prescribed by the regulations;
 - (e) the rules of natural justice.

S. 141(2)(d)
amended by
No. 30/2022
s. 23(2).

S. 141(2)(e)
inserted by
No. 30/2022
s. 23(3).

142 The panel list

- (1) The Secretary must establish a panel list of eligible persons from which an arbiter must be selected to conduct an internal arbitration process.
- (2) The Secretary may appoint as many eligible persons to the panel list as the Secretary considers appropriate.

- (3) A person is eligible for appointment to the panel list if the person—
 - (a) is an Australian lawyer who has been admitted to the legal profession for at least 5 years; or
 - (b) has any other experience the Secretary considers relevant to the position.
- (4) A member of the panel list may resign by notice in writing to the Secretary.
- (5) The Secretary may remove a member of the panel list if the Secretary considers that the person is no longer a suitable person to be an arbiter.
- (6) The **Public Administration Act 2004** does not apply to a member of the panel list.

143 Application for an internal arbitration process

- (1) An arbiter may hear an application that alleges misconduct by a Councillor.
- (2) An application for an internal arbitration process to make a finding of misconduct against a Councillor may be made by—
 - (a) the Council following a resolution of the Council; or
 - (b) a Councillor or a group of Councillors.
- (3) An application under this section must be made within 3 months of the alleged misconduct occurring.
- (4) An application under this section must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c).

144 Principal Councillor Conduct Registrar must examine application

S. 144(1)
amended by
No. 30/2022
s. 32.

- (1) The Principal Councillor Conduct Registrar, after examining an application made under section 143, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is satisfied that—
 - (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
 - (b) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.
- (2) The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a) or (b).
- (3) The rejection of an application by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 143 in respect of the same conduct by a Councillor that was the subject of the rejected application.

S. 145
substituted by
No. 30/2022
s. 20.

145 Internal arbitration information

The following information is confidential information—

- (a) information in an application made under section 143 for an internal arbitration process;
- (b) information provided to the Principal Councillor Conduct Registrar or produced by the Principal Councillor Conduct Registrar for the purposes of an internal arbitration process, other than the findings and the reasons;

- (c) information provided to an arbiter or produced by an arbiter for the purposes of an internal arbitration process, other than the findings and the reasons.

146 Arbiter must refer certain applications

- (1) If, at any time before, during or after the hearing of an application for an internal arbitration process, the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application under section 154, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.
- (2) If the Principal Councillor Conduct Registrar receives a referral under subsection (1), the Principal Councillor Conduct Registrar must notify the parties to the application for an internal arbitration process that the matter has been referred by the arbiter.

147 Sanctions that may be imposed by an arbiter on finding of misconduct

- (1) If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the standards of conduct, the arbiter may make a finding of misconduct against the Councillor.
- (2) If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following—
- (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
 - (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;

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amended by
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s. 24.

- (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
 - (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
 - (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.
- (3) The arbiter must provide a written copy of the arbiter's decision and statement of reasons to—
- (a) the Council; and
 - (b) the applicant or applicants; and
 - (c) the respondent; and
 - (d) the Principal Councillor Conduct Registrar.
- (4) Subject to subsection (5), a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.
- (5) If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled under subsection (4).

S. 147A
inserted by
No. 30/2022
s. 25.

147A Immunity of arbiters

- (1) An arbiter is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a power or the discharge of a duty under this Act; or

- (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to an arbiter attaches to the Council.

Division 6—Appointment and functions of Principal Councillor Conduct Registrar and Councillor Conduct Officers

148 Appointment of Principal Councillor Conduct Registrar

The Secretary must appoint a Principal Councillor Conduct Registrar who is employed under Part 3 of the **Public Administration Act 2004**.

149 Functions and powers of the Principal Councillor Conduct Registrar

- (1) The Principal Councillor Conduct Registrar has the following functions—
 - (a) receive applications for the appointment of an arbiter;
 - (b) appoint an arbiter from the panel list established under section 142;
 - (c) publish any guidelines in relation to processes and procedures relating to internal arbitration process applications that the Principal Councillor Conduct Registrar has determined to be necessary;
 - (ca) provide general advice and assistance to arbiters in relation to the functions of an arbiter;
 - (cb) publish any decision made by an arbiter and the statement of reasons for that decision;

S. 149(1)(ca)
inserted by
No. 30/2022
s. 26.

S. 149(1)(cb)
inserted by
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s. 26.

- (d) set and publish a schedule of fees specifying the fees to be paid to arbiters;
- (e) send a notice to a Council specifying the fees payable by the Council following any internal arbitration process conducted for, or on behalf of, the Council;
- (f) receive applications for the establishment of Councillor Conduct Panels;
- (g) form Councillor Conduct Panels by appointing members of the panel list to sit on Councillor Conduct Panels;
- (h) provide general advice and assistance to members of the Councillor Conduct Panel in relation to their functions;
- (i) publish any determination made by a Councillor Conduct Panel and any reasons given for that determination;
- (j) keep copies of all documents requested by, and given to, a Councillor Conduct Panel;
- (k) comply with any request made by the Chief Municipal Inspector or VCAT for copies of any documents given to, or made by, a Councillor Conduct Panel;
- (l) set and publish a schedule of fees specifying the fees to be paid to members of a Councillor Conduct Panel;
- (m) send a notice to a Council specifying the fees payable by the Council following any Councillor Conduct Panel hearing conducted for, or on behalf of, the Council;
- (n) publish any guidelines in relation to Councillor Conduct Panel procedures and processes that the Principal Councillor Conduct Registrar has determined to be necessary.

- (2) The Principal Councillor Conduct Registrar has the power to do all things necessary or convenient to be done for or in connection with the performance of the Principal Councillor Conduct Registrar's functions under this Act.
- (3) Without limiting the generality of subsection (2), the Principal Councillor Conduct Registrar may request any information from a Council that the Principal Councillor Conduct Registrar considers is necessary to enable the Principal Councillor Conduct Registrar to make a determination under section 155(1)(c).

150 Appointment of Councillor Conduct Officer

- (1) The Chief Executive Officer must—
 - (a) appoint a person in writing to be the Councillor Conduct Officer; and
 - (b) notify the Principal Councillor Conduct Registrar of the appointment.
- (2) Subject to subsection (3), a person may be appointed to be a Councillor Conduct Officer if—
 - (a) the person is a member of Council staff; or
 - (b) the Council resolves that the person is suitably qualified to perform the functions of the Councillor Conduct Officer.
- (3) The Chief Executive Officer cannot be appointed as a Councillor Conduct Officer.

151 Functions of a Councillor Conduct Officer

A Councillor Conduct Officer must—

- (a) assist the Council in the implementation of, and conduct of, the internal arbitration process of a Council; and

- (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in section 149(1); and
- (c) assist the Principal Councillor Conduct Registrar in relation to any request for information under section 149(3).

152 Council must pay fees

A Council must pay the fees specified in a notice under section 149(1)(e) or (m).

Division 7—Councillor Conduct Panels and VCAT

153 The panel list

- (1) The Minister must establish a panel list of eligible persons from which members of a Councillor Conduct Panel must be selected.
- (2) The Minister may appoint as many eligible persons to the panel list as the Minister considers appropriate.
- (3) A person is eligible for appointment to the panel list if the person—
 - (a) is an Australian lawyer who has been admitted to the legal profession for at least 5 years; or
 - (b) has any other experience the Minister considers relevant to the position.

Note

See also section 156(3) which requires at least one person selected to form a Councillor Conduct Panel to be an eligible person in accordance with subsection (3)(a).

- (4) A member of the panel list may resign by notice in writing to the Minister.

- (5) The Minister may remove a member of the panel list if the Minister considers that the person is no longer a suitable person to sit on a Councillor Conduct Panel.
- (6) The **Public Administration Act 2004** does not apply to a member of the panel list.

154 Application to Councillor Conduct Panel

- (1) A Councillor Conduct Panel may hear an application that alleges serious misconduct by a Councillor.
- (2) Subject to subsection (4), an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by—
 - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
 - (b) a Councillor or a group of Councillors; or
 - (c) the Chief Municipal Inspector.
- (3) An application under subsection (2) must be made within 12 months of the alleged serious misconduct occurring.
- (4) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor that alleges that the Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.
- (5) An application made under this section must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(n).

- (6) An application made under this section must—
- (a) specify the ground or grounds for the application; and
 - (b) set out—
 - (i) the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting serious misconduct; and
 - (ii) the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the serious misconduct; and
 - (c) specify—
 - (i) any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
 - (ii) if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter.
- (7) If an application is made under this section by the Council or a group of Councillors, the application must state the name and address of the Councillor whom the Council or the group of Councillors has appointed as representative of the Council or the group of Councillors.

155 Principal Councillor Conduct Registrar must examine application

- (1) Subject to subsection (2), the Principal Councillor Conduct Registrar, after examining an application made under section 154, must form a Councillor
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Conduct Panel to hear the matter if the Principal Councillor Conduct Registrar is satisfied that—

- (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
 - (b) there is sufficient evidence to support an allegation of serious misconduct as specified in the application; and
 - (c) the Council—
 - (i) has taken sufficient or appropriate steps to resolve the matter and the matter remains unresolved; or
 - (ii) has not taken any steps to resolve the matter but the Principal Councillor Conduct Registrar is satisfied as to the Council's reasons for not taking any steps.
- (2) The Principal Councillor Conduct Registrar may reject an application, or refer a matter the subject of an application back to the Council, if the Principal Councillor Conduct Registrar is satisfied that the matter the subject of the application has been, or is being, dealt with, by the Council or another body.
- (3) Subject to subsections (2) and (4), the Principal Councillor Conduct Registrar must reject an application, or refer a matter the subject of an application back to the Council, if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a), (b) or (c).
- (4) The Principal Councillor Conduct Registrar must form a Councillor Conduct Panel to hear the matter if the application is made by the Chief Municipal Inspector for a finding of serious misconduct.

- (5) The rejection of an application, or the referral of a matter the subject of an application back to the Council, by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 154 in respect of the same conduct by a Councillor that was the subject of the rejected or referred application.

156 Principal Councillor Conduct Registrar to form Councillor Conduct Panel

- (1) Subject to sections 155 and 157, the Principal Councillor Conduct Registrar must form a Councillor Conduct Panel, after examining an application made under section 154, without undue delay.
- (2) For the purposes of subsection (1), the Principal Councillor Conduct Registrar must select 2 people from the panel list who the Principal Councillor Conduct Registrar considers suitable to form a Councillor Conduct Panel in accordance with this section and any guidelines in relation to panel procedures published by the Principal Councillor Conduct Registrar.
- (3) The Principal Councillor Conduct Registrar must ensure that at least one of the 2 people selected to form a Councillor Conduct Panel is an eligible person in accordance with section 153(3)(a).
- (4) The person selected under subsection (3) is the chairperson for the Councillor Conduct Panel.

157 Related applications

- (1) If the Principal Councillor Conduct Registrar receives an application (a *subsequent application*) that appears to be related to another application for which a Councillor Conduct Panel has already been formed, the Principal Councillor Conduct Registrar must—

- (a) forward the subsequent application directly to the existing Councillor Conduct Panel; or
 - (b) reject the subsequent application if the Principal Councillor Conduct Registrar considers that the application is frivolous, vexatious, misconceived or lacking in substance.
- (2) On receipt of the subsequent application, the Councillor Conduct Panel must decide, based on the subject matter of the subsequent application, either—
- (a) to join the subsequent application to the application the Councillor Conduct Panel was formed to hear; or
 - (b) to return the subsequent application to the Principal Councillor Conduct Registrar without hearing the matter.
- (3) If the Councillor Conduct Panel returns the subsequent application to the Principal Councillor Conduct Registrar under subsection (2)(b), the Principal Councillor Conduct Registrar must examine the subsequent application in accordance with section 155.
- (4) If the Principal Councillor Conduct Registrar is satisfied as to the matters specified in section 155(1)(a), (b) and (c), the Principal Councillor Conduct Registrar must form a Councillor Conduct Panel which does not include any of the members of the Councillor Conduct Panel that returned the subsequent application.
- (5) If the Principal Councillor Conduct Registrar is not satisfied as to the matters specified in section 155(1)(a), (b) or (c), the Principal Councillor Conduct Registrar must deal with the application in accordance with section 155(2) or (3).

158 Charge for certain offences not to proceed if application has been made

- (1) This section applies if an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of the following conduct—
 - (a) the release of confidential information;
 - (b) a failure to comply with conflict of interest requirements;
 - (c) seeking to direct a member of Council staff.
- (2) If this section applies, the Councillor must not be charged with an offence in respect of the same conduct unless—
 - (a) the Councillor Conduct Panel application is withdrawn; or
 - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter; or
 - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
 - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.

159 Application not to be made if charge has been made for certain offences

- (1) This section applies if a Councillor has been charged with an offence in respect of the following conduct—
 - (a) the release of confidential information;
 - (b) a failure to comply with conflict of interest requirements;

- (c) seeking to direct a member of Council staff.
- (2) If this section applies, an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.

160 Notice of a Councillor Conduct Panel

A Councillor Conduct Panel must—

- (a) fix a time and a place for the hearing to be conducted; and
- (b) serve by post a notice of the time and place of the hearing on the applicant, the respondent and the Council.

161 Procedures

- (1) A Councillor Conduct Panel may do any or all of the following—
 - (a) request a person to attend a hearing and answer questions;
 - (b) request information from the applicant, the respondent or the Council, including confidential information held by the Council;
 - (c) direct a Councillor to attend a hearing or provide information, including confidential information held by the Councillor.
- (2) Members of a Councillor Conduct Panel that are provided with confidential information must ensure that the information is not released to the public.

162 Obligation on Council

A Council which is served with a notice under section 160 must provide all reasonable assistance to the Councillor Conduct Panel which is

necessary to enable the Councillor Conduct Panel to conduct the hearing and make a determination.

163 Conduct of a Councillor Conduct Panel

- (1) A Councillor Conduct Panel must not make a determination under section 167 until it has conducted a hearing.
- (2) The following applies to a hearing of a Councillor Conduct Panel—
 - (a) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit;
 - (b) there is no right to representation at the hearing except if the Councillor Conduct Panel considers that a party requires representation to ensure that the hearing is conducted fairly;
 - (c) the proceedings must not be open to the public;
 - (d) if the hearing is based on an application made by a Council or a group of Councillors, the appointed representative must represent the Council or group of Councillors at the hearing;
 - (e) the Councillor Conduct Panel is not bound by rules of evidence but may inform itself in any way it thinks fit;
 - (f) the Councillor Conduct Panel is bound by the rules of natural justice;
 - (g) the procedure of a Councillor Conduct Panel is otherwise in its discretion.
- (3) At the hearing of an application, the Councillor Conduct Panel must provide the respondent with an opportunity to be heard.

164 Dissolution of Councillor Conduct Panels

A Councillor Conduct Panel is dissolved when any of the following occurs—

- (a) the application for the Councillor Conduct Panel to make a finding is withdrawn;
- (b) the Councillor Conduct Panel has dismissed the application because the Councillor Conduct Panel was satisfied that the application is frivolous, vexatious, misconceived or lacking in substance;
- (c) the Chief Municipal Inspector has stopped the consideration of the matter by the Councillor Conduct Panel;
- (d) the time for a person who is affected by the decision of the Councillor Conduct Panel on the application to make an application for review of the decision has expired;
- (e) after the conclusion of the hearing by VCAT of an application for review of the decision of the Councillor Conduct Panel.

165 Notification to Chief Municipal Inspector of apparent offence

- (1) This section applies if it appears to a Councillor Conduct Panel that a Councillor has committed an offence under this Act.
- (2) A Councillor Conduct Panel must by notice in writing notify the Chief Municipal Inspector that a Councillor appears to have committed an offence under this Act as soon as the Councillor Conduct Panel becomes aware of the apparent offence.

166 Investigation by Chief Municipal Inspector

- (1) The Chief Municipal Inspector may at any time (whether or not the Chief Municipal Inspector has received a notice under section 165), by notice,

require a Councillor Conduct Panel to suspend or stop the consideration of a matter.

- (2) Within 28 days of the Chief Municipal Inspector requiring a Councillor Conduct Panel to suspend or stop consideration of a matter, the Chief Municipal Inspector must commence an investigation into the matter.

167 Determinations by a Councillor Conduct Panel

- (1) After a Councillor Conduct Panel has conducted a hearing, the Councillor Conduct Panel may—
- (a) make a finding of serious misconduct against a Councillor; or
 - (b) if it is satisfied that a Councillor has breached one or more of the standards of conduct and the application for a finding of serious misconduct was made to the Councillor Conduct Panel within the period of 3 months after the breach occurred, make a finding of misconduct against a Councillor; or
 - (c) whether or not a finding of misconduct or serious misconduct against a Councillor has been made, make a finding that remedial action is required; or
 - (d) dismiss the application.
- (2) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term unless the Councillor Conduct Panel directs otherwise.
- (3) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor Conduct Panel may do any one or more of the following—

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- (a) reprimand the Councillor;
 - (b) direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel;
 - (c) suspend the Councillor from office for a period specified by the Councillor Conduct Panel not exceeding 12 months;
 - (d) direct that the Councillor is ineligible to chair a delegated committee of the Council for a period specified by the Councillor Conduct Panel not exceeding the remainder of the Council's term.
- (4) If a Councillor Conduct Panel makes a finding of misconduct against a Councillor as specified in subsection (1)(b), the Councillor Conduct Panel may do any one or more of the following—
- (a) direct the Councillor to make an apology in a form or manner specified by the Councillor Conduct Panel;
 - (b) suspend the Councillor from the office of Councillor for a period specified by the Councillor Conduct Panel not exceeding one month;
 - (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the Councillor Conduct Panel;
 - (d) direct that the Councillor be removed from being the chair of a delegated committee for the period determined by the Councillor Conduct Panel.
- (5) For the purposes of subsection (3) or (4), any period of suspension of a Councillor from the office of Councillor is to be reduced by any period during which the Councillor was stood down

under Division 6 of Part 7 in relation to the relevant conduct.

- (6) If a Councillor Conduct Panel makes a finding that remedial action is required, the Councillor Conduct Panel may direct the Councillor who is the subject of the application to attend one or more of the following—
 - (a) mediation;
 - (b) training;
 - (c) counselling.
- (7) For the purposes of subsection (6), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (8) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.
- (9) In addition to any findings made under subsection (1)(a), (b) or (c), a Councillor Conduct Panel may direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue.
- (10) A Council must comply with a direction under subsection (9) within the period of 3 months after the direction is given.

168 Notice and tabling of decision

- (1) After a Councillor Conduct Panel has made a determination under section 167, the Councillor Conduct Panel must give a copy of the decision to the following—
 - (a) the Council;
 - (b) the parties to the matter;
 - (c) the Minister;

- (d) the Principal Councillor Conduct Registrar.
- (2) A copy of the decision given to the Council under subsection (1)(a) must be tabled at the next Council meeting and recorded in the minutes of that meeting.
- (3) A Councillor Conduct Panel must within 28 days of making a determination give a written statement of reasons for the decision to the following—
 - (a) the Council;
 - (b) the parties to the matter;
 - (c) the Minister;
 - (d) the Principal Councillor Conduct Registrar.
- (4) A statement of reasons provided in accordance with subsection (3) is taken to be a statement of reasons provided in accordance with section 46(1) of the **Victorian Civil and Administrative Tribunal Act 1998**.
- (5) A record of the decision of VCAT, made in respect of an application or review under this Division in relation to a Councillor of a Council, must be tabled at the next Council meeting and recorded in the minutes of that meeting.

169 Councillor Conduct Panel confidential information

Unless otherwise determined by a Councillor Conduct Panel, the following information is confidential information—

- (a) information that is provided to, or produced by, a Principal Councillor Conduct Registrar, for the purposes of an application for a Councillor Conduct Panel to be formed;
- (b) information, other than a decision or reasons for a decision, that is provided to, or produced by, a Councillor Conduct

Panel, for the purposes of conducting the Councillor Conduct Panel hearing;

- (c) any part of a statement of reasons or any other document under the control or possession of the Councillor Conduct Panel that the Councillor Conduct Panel determines contains confidential information.

170 Review by VCAT

- (1) Subject to subsection (2), a person who is affected by the decision made by a Councillor Conduct Panel under this Division may apply to VCAT for review of the decision.
- (2) A person is not entitled to apply for review of a decision made by a Councillor Conduct Panel to dismiss the application because it is frivolous, vexatious, misconceived or lacking in substance.
- (3) An application for review must be made within 28 days of the Councillor Conduct Panel giving a statement of reasons.
- (4) For the purposes of a review by VCAT—
 - (a) the person who applies for a review is the applicant; and
 - (b) any other party to the original Councillor Conduct Panel proceeding is a respondent; and
 - (c) the members of the original Councillor Conduct Panel are also respondents.

171 Application to VCAT on grounds of gross misconduct

- (1) VCAT may hear an application made by the Chief Municipal Inspector that alleges gross misconduct by a Councillor.

- (2) An application made under subsection (1) may only be made by the Chief Municipal Inspector.
- (3) The applicant and respondent are parties to a proceeding commenced in VCAT under this section.

172 Powers of VCAT in relation to finding of gross misconduct

If VCAT makes a finding that a Councillor has engaged in conduct that constitutes gross misconduct, VCAT may order that—

- (a) the Councillor is disqualified from continuing to be a Councillor for a period specified by VCAT not exceeding 8 years; and
- (b) the office of the Councillor is vacated.

173 Suspension of matters during election period

- (1) Applications and proceedings made and conducted under this Division must be suspended during the election period for a general election.
- (2) If an application is made to a Councillor Conduct Panel for a finding of serious misconduct against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person who was a Councillor before the election lapses.
- (3) If an application is made to a Councillor Conduct Panel for a finding of serious misconduct against a person who is a Councillor before a general election, and that person is returned to the office of Councillor as a result of the general election, the application made against the Councillor may resume, whether or not any applicant was returned to the office of Councillor as a result of the general election.

- (4) An application to VCAT on the grounds of gross misconduct made by the Chief Municipal Inspector against a person who is a Councillor before a general election must resume after the general election is held whether or not the person is returned to the office of Councillor.

174 Immunity

- (1) A member of a Councillor Conduct Panel under this Act is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that would but for subsection (1) attach to a member of a Councillor Conduct Panel attaches to the Council.

Part 7—Ministerial oversight

Division 1—Governance directions

175 Minister may give direction

- (1) The Minister may in writing direct the Council to amend, discontinue, replace or report on its governance processes and policies if—
 - (a) a person or body specified in subsection (2)(b) has advised the Minister that those governance processes and policies require improvement; and
 - (b) the Minister is satisfied that those governance processes and policies require improvement.
- (2) Without limiting the generality of subsection (1), the Minister may, in relation to any requirement that applies to a Council under this Act, direct the Council to do any or all of the following—
 - (a) adopt a good practice guideline issued by the Minister under section 87;
 - (b) adopt any recommendation made, or take any action recommended, by—
 - (i) a Municipal Monitor; or
 - (ii) the Chief Municipal Inspector; or
 - (iii) a Commission of Inquiry; or
 - (iv) the Ombudsman; or
 - (v) the IBAC.
- (3) If the Minister considers that it is necessary or appropriate in the public interest to do so, the Minister may, by a written direction, direct a Council to prepare and submit to the Minister within the period of 4 weeks after the direction is given to the Council—

- (a) financial statements in respect of any part of the financial year as specified in the direction; and
 - (b) any other information relating to the financial status of the Council as specified in the direction.
- (4) Subject to subsection (5), the Minister may by a written direction, on the recommendation of a Municipal Monitor, the Chief Municipal Inspector, a Commission of Inquiry, the Ombudsman or the IBAC, direct a Council—
- (a) not to employ a new Chief Executive Officer; or
 - (b) not to re-employ a Chief Executive Officer.
- (5) The Minister must not give a direction under subsection (4) unless the Minister is satisfied on reasonable grounds that the employment or re-employment of the Chief Executive Officer could result in—
- (a) a failure by the Council to provide good governance; or
 - (b) the Council acting unlawfully.
- (6) Any contract entered into by a Council or Chief Executive Officer in contravention of a written direction under subsection (4) is void.
- (7) A written direction under this section must be complied with.

176 Failure to comply with written direction

If the Council fails to comply with a written direction made under section 175, the Minister may take that failure to comply with the direction into account for the purposes of recommending the suspension of all the Councillors of the Council under this Act.

Division 2—Compliance exemptions

177 Application for compliance exemption

- (1) A Council may apply to the Minister for a compliance exemption from a regulatory requirement under this Act or the regulations specified in the application.
- (2) A Council must provide evidence to the satisfaction of the Minister that—
 - (a) the granting of the compliance exemption—
 - (i) will not limit the ability of the Council to provide good governance; and
 - (ii) would be in the public interest; and
 - (b) the Council is otherwise providing good governance and is not subject to any governance direction.

178 Actions by Minister

If in considering an application for a compliance exemption under section 177(1), the Minister is reasonably satisfied as to the matters specified in section 177(2), the Minister may grant the compliance exemption—

- (a) subject to any terms and conditions; and
 - (b) for any period—
- determined by the Minister.

Division 3—Municipal Monitors

179 Municipal Monitor

- (1) The Minister may appoint a person to be a Municipal Monitor to a Council.
- (2) The Minister must give the Council written notice of any appointment of a Municipal Monitor made to the Council under subsection (1) which

specifies the amounts the Municipal Monitor is entitled to be paid and the terms of the appointment.

- (3) The Council must pay a Municipal Monitor the amounts specified in the notice under subsection (2).

180 Functions of a Municipal Monitor

A Municipal Monitor has the following functions—

- (a) to monitor Council governance processes and practices;
- (b) to advise the Council about governance improvements the Council should make;
- (c) to report to the Minister on any steps or actions taken by the Council to improve its governance and the effectiveness of those steps or actions;
- (d) to make recommendations to the Minister at the request of the Minister in relation to the exercise of any power under this Act or any other Act relating to governance matters in respect of the Council;
- (e) to investigate a matter referred to the Municipal Monitor by the Minister under section 225 and provide a report to the Minister;
- (f) to monitor and report to the Minister on any other matters determined by the Minister.

181 Powers of Municipal Monitor

- (1) A Municipal Monitor has the power to do all things necessary or convenient to be done in connection with the performance of the functions of a Municipal Monitor under section 180.

- (2) If a Municipal Monitor considers at any time that any matter referred to the Municipal Monitor by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011** appears to involve conduct that is corrupt conduct, the Municipal Monitor must inform the IBAC.

Division 4—Chief Municipal Inspector

182 Appointment of Chief Municipal Inspector

- (1) The Minister may appoint a Chief Municipal Inspector who is employed under Division 5 of Part 3 of the **Public Administration Act 2004**.
- (2) The Chief Municipal Inspector has the following functions—
- (a) to investigate and prosecute any possible offence under this Act;
 - (b) to examine any possible breach of this Act;
 - (c) to investigate any allegation of serious misconduct or gross misconduct by a Councillor;
 - (d) to investigate any public interest complaint that relates to the conduct of a Councillor or a member of Council staff;
 - (e) to make an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor;
 - (f) to make an application to VCAT for a finding of gross misconduct by a Councillor;
 - (g) to investigate a matter referred to the Chief Municipal Inspector by the Minister under section 225 and provide a report to the Minister;

(h) any other function conferred on the Chief Municipal Inspector by or under this Act.

183 Powers of the Chief Municipal Inspector

- (1) The Chief Municipal Inspector has all the powers necessary to perform the Chief Municipal Inspector's functions.
- (2) The Chief Municipal Inspector may examine, investigate and prosecute—
 - (a) any matter relating to a Council's operations or to Council elections or electoral matters; and
 - (b) any possible breaches of this Act.
- (3) The Chief Municipal Inspector may, by notice in writing, require a person to—
 - (a) produce any document (whether or not specifically identified in the notice) in the person's custody or control that relates to any matter that the Chief Municipal Inspector may examine or investigate; and
 - (b) give all reasonable assistance in connection with an examination or investigation; and
 - (c) appear before the Chief Municipal Inspector for examination on oath or affirmation and to answer questions.

S. 183(3A)
inserted by
No. 11/2021
s. 151(1).

(3A) A notice under subsection (3) may specify that an appearance required under the notice is to be by means of audio visual link or audio link and in a specified manner.

S. 183(3B)
inserted by
No. 11/2021
s. 151(1).

(3B) A notice under subsection (3) that provides for appearance as described in subsection (3A)—

- (a) need not specify a place for the appearance; and

- (b) may specify, if any documents are to be produced, that those documents are to be produced by secure electronic means and in a specified manner.
- (4) The Chief Municipal Inspector may administer an oath or affirmation.
- (5) The Chief Municipal Inspector may take possession of any document produced under subsection (3) for so long as the Chief Municipal Inspector considers necessary.
- (6) However, while the Chief Municipal Inspector retains possession of such a document, the Chief Municipal Inspector must permit any person who would be entitled to inspect the document if it were not in the Chief Municipal Inspector's possession to inspect the document at any reasonable time.
- (6A) If subsection (6) applies to a document, the Chief Municipal Inspector may provide the document by secure electronic means to any person who would be entitled to inspect the document if it were not in the Chief Municipal Inspector's possession.
- (6B) A person provided with a document under subsection (6A) must—
- (a) destroy the document as soon as practicable after inspecting the document; and
- (b) advise the Chief Municipal Inspector in writing that the inspection of the document has been completed and that the document has been destroyed.
- (7) A person appearing before the Chief Municipal Inspector is entitled to be represented by another person.

S. 183(6A)
inserted by
No. 11/2021
s. 151(2).

S. 183(6B)
inserted by
No. 11/2021
s. 151(2).

S. 183(7A)
inserted by
No. 11/2021
s. 151(3).

- (7A) For the purposes of subsection (7), if a person appearing before the Chief Municipal Inspector is represented by another person that representative may appear by means of audio visual link or audio link.
- (8) If the Chief Municipal Inspector considers at any time that any matter referred to the Chief Municipal Inspector by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011** appears to involve conduct that is corrupt conduct, the Chief Municipal Inspector must inform the IBAC.

184 Chief Municipal Inspector must investigate public interest complaints

Subject to sections 185 and 186, the Chief Municipal Inspector must conduct an investigation under this Act on a public interest complaint referred to the Chief Municipal Inspector by the IBAC.

185 Chief Municipal Inspector must refuse to investigate certain public interest complaints

- (1) The Chief Municipal Inspector must refuse to conduct an investigation on a public interest complaint if the investigation would prejudice any—
- (a) criminal proceedings or criminal investigations; or
 - (b) investigations by the IBAC or the Victorian Inspectorate.
- (2) For the purposes of ensuring compliance with subsection (1), the Chief Municipal Inspector may consult any of the following—
- (a) the Director of Public Prosecutions;
 - (b) the Chief Commissioner of Police;

- (c) the IBAC;
- (d) the Victorian Inspectorate.

186 Chief Municipal Inspector may refuse to investigate certain public interest complaints

- (1) The Chief Municipal Inspector may refuse to conduct an investigation on a public interest complaint if the Chief Municipal Inspector considers the subject matter of the public interest complaint has already been investigated or otherwise dealt with by—
 - (a) an integrity body within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (b) any other person or body (whether or not still in existence) with the power to require the production of documents or the answering of questions.
- (2) The Chief Municipal Inspector may refuse to conduct an investigation on a public interest complaint if the person who made the public interest complaint—
 - (a) made the disclosure that was determined to be a public interest complaint more than 12 months after becoming aware of the disclosed matter; and
 - (b) fails to give a satisfactory explanation for the delay in making the disclosure.
- (3) The Chief Municipal Inspector may refuse to conduct an investigation on a public interest complaint if the Chief Municipal Inspector considers that the conduct that is the subject of the complaint does not amount to improper conduct, within the meaning of section 3 of the **Public Interest Disclosures Act 2012**, or detrimental

action against a person in contravention of section 45 of that Act.

187 Notification of refusal to conduct investigation on public interest complaint

- (1) This section applies if the Chief Municipal Inspector refuses under section 185 or 186 to conduct an investigation on a public interest complaint.
- (2) Within a reasonable time after the public interest complaint is referred to the Chief Municipal Inspector by the IBAC, the Chief Municipal Inspector must inform the IBAC and the person who made the public interest complaint of—
 - (a) the refusal to conduct the investigation; and
 - (b) the reason for that refusal.

188 Notification of corrupt conduct

If, at any time before, during or after an investigation of a public interest complaint, the Chief Municipal Inspector believes that the conduct that is the subject of the complaint appears to involve corrupt conduct of which the IBAC may not be aware, the Chief Municipal Inspector must—

- (a) notify the IBAC of that belief; and
- (b) if the investigation of the public interest complaint has not been completed, suspend the investigation pending a response from the IBAC to the notification.

189 Procedure on completion of investigation of public interest complaint

- (1) On completion of an investigation of a public interest complaint, the Chief Municipal Inspector—

- (a) must report the findings of the investigation to—
 - (i) the relevant Council; and
 - (ii) the Minister; and
 - (b) may make recommendations as to the action to be taken as a result of the investigation to—
 - (i) the Minister; or
 - (ii) the relevant Council.
- (2) If the Chief Municipal Inspector makes recommendations to the relevant Council, the Chief Municipal Inspector—
- (a) must provide the Minister with a copy of those recommendations; and
 - (b) may request the relevant Council to notify the Chief Municipal Inspector within a specified time of the steps to be taken to address the recommendations.
- (3) If no appropriate steps have been taken by the relevant Council to address the recommendations of the Chief Municipal Inspector within a reasonable time after those recommendations were made, the Chief Municipal Inspector may advise the Minister of that failure.
- (4) The Chief Municipal Inspector must not include in a report under this section any information that—
- (a) is likely to lead to the identification of a person who has made an assessable disclosure; and
 - (b) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

- (5) The Chief Municipal Inspector may prosecute any possible breach of this Act identified in the course of the investigation of the public interest complaint.

190 Person who made public interest disclosure to be informed of result of investigation

- (1) If the Chief Municipal Inspector conducts an investigation on a public interest complaint, the Chief Municipal Inspector must inform the person who made the complaint (unless the complaint was made anonymously) of—
- (a) the result of the investigation; and
 - (b) any other information that the Chief Municipal Inspector thinks proper.
- (2) The Chief Municipal Inspector must not disclose any information under this section if the Chief Municipal Inspector considers that the disclosure of the information would—
- (a) not be in the public interest or in the interests of justice; or
 - (b) put a person's safety at risk; or
 - (c) cause unreasonable damage to a person's reputation; or
 - (d) prejudice any criminal proceedings or criminal investigations, or investigations by the Ombudsman, the IBAC, the Victorian Inspectorate or the Chief Municipal Inspector; or
 - (e) otherwise contravene any applicable statutory secrecy obligations or involve the unreasonable disclosure of information relating to the personal affairs of any person.

191 Chief Municipal Inspector must not disclose certain information

If a public interest complaint is referred by the IBAC to the Chief Municipal Inspector for investigation, the Chief Municipal Inspector must not disclose any information that—

- (a) is likely to lead to the identification of a person who has made an assessable disclosure; and
- (b) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

192 Disclosure of information by the Chief Municipal Inspector

- (1) At any time, the Chief Municipal Inspector may provide or disclose any information received or obtained in the course of an investigation of an assessable disclosure to a person or body specified in subsection (3) if the Chief Municipal Inspector considers that—
 - (a) the information is relevant to the performance of the duties and functions or the exercise of the powers of the person or body; and
 - (b) it is appropriate for the information to be brought to the attention of the person or body, having regard to the nature of the information.
- (2) Despite subsection (1), the Chief Municipal Inspector must not provide or disclose any information to a person or body if—
 - (a) the person or body, or an employee of the person or body, is the subject of an assessable disclosure; and

- (b) the information—
 - (i) is likely to lead to the identification of a person who made the assessable disclosure; and
 - (ii) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (3) For the purposes of subsection (1), the following persons and bodies are specified—
 - (a) the IBAC;
 - (b) the Victorian Inspectorate;
 - (c) the Ombudsman;
 - (d) the Auditor-General;
 - (e) Victoria Police;
 - (f) the Director of Public Prosecutions;
 - (g) the Commission for Children and Young People established under section 6 of the **Commission for Children and Young People Act 2012**;
 - (h) the Australian Federal Police constituted under section 6 of the Australian Federal Police Act 1979 of the Commonwealth;
 - (i) the police force or police service (however described) of another State or a Territory;
 - (j) a prescribed person or body.
- (4) Subsection (1) applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Commonwealth Act).

193 Confidentiality notice

(1) If, during an investigation on a public interest complaint, the Chief Municipal Inspector considers on reasonable grounds that the disclosure of one or more restricted matters would be likely to prejudice—

- (a) an investigation by the IBAC or the Victorian Inspectorate; or
- (b) the safety or reputation of a person; or
- (c) the fair trial of a person who has been, or may be, charged with an offence—

the Chief Municipal Inspector must issue a confidentiality notice in respect of the investigation to a person (other than an IBAC officer or a Victorian Inspectorate officer) specifying the restricted matter or restricted matters in accordance with this section.

(2) A confidentiality notice must—

- (a) be in the prescribed form; and
- (b) specify the restricted matter or restricted matters in respect of which the confidentiality notice is issued; and
- (c) include a copy of the provisions of subsections (3) to (7) and sections 194 and 196 and an explanation of the effect of those provisions; and
- (d) include a statement—
 - (i) advising the person to whom the confidentiality notice is issued that additional obligations under the **Public Interest Disclosures Act 2012** relating to confidentiality may apply to the person; and

- (ii) directing the person to the provisions of that Act which impose those obligations.
- (3) If at any time the Chief Municipal Inspector considers on reasonable grounds that it is necessary to restrict disclosure of a different restricted matter from any of those specified in a confidentiality notice in respect of a particular investigation to ensure that the disclosure would not be likely to have the effect specified in subsection (1)(a), (b) or (c), the Chief Municipal Inspector must issue to the person to whom the confidentiality notice was issued—
- (a) a notice cancelling the previous confidentiality notice; and
 - (b) a new confidentiality notice in respect of that investigation under subsection (1).
- (4) If at any time the Chief Municipal Inspector considers on reasonable grounds that disclosure of a particular restricted matter specified in a confidentiality notice in respect of a particular investigation would no longer be likely to have the effect specified in subsection (1)(a), (b) or (c), the Chief Municipal Inspector must issue to the person to whom the confidentiality notice was issued—
- (a) a notice cancelling the previous confidentiality notice; and
 - (b) a new confidentiality notice in respect of that investigation under subsection (1).
- (5) If at any time the Chief Municipal Inspector considers on reasonable grounds that disclosure of the restricted matter or restricted matters specified in a confidentiality notice in respect of a particular investigation would no longer be likely to have the effect specified in

subsection (1)(a), (b) or (c), the Chief Municipal Inspector must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice.

- (6) At the conclusion of an investigation in respect of which a confidentiality notice was issued, the Chief Municipal Inspector must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice, unless—
- (a) the Chief Municipal Inspector has applied for an order under section 194 extending the confidentiality notice and the application has not been determined; or
 - (b) the Supreme Court has made an order under section 194 extending the confidentiality notice; or
 - (c) the confidentiality notice has already been cancelled under subsection (3), (4) or (5) or section 194(3).
- (7) A confidentiality notice in respect of a particular investigation ceases to have effect on whichever of the following occurs first—
- (a) the date on which the Chief Municipal Inspector issues a notice cancelling the confidentiality notice under subsection (3), (4), (5) or (6) or section 194(3);
 - (b) the date specified in an order under section 194 extending the confidentiality notice.
- (8) A confidentiality notice under subsection (1) or a notice cancelling a confidentiality notice under subsection (3), (4), (5) or (6) may be issued to a person by serving a copy on the person in accordance with subsection (9).

**S. 193(8)
amended by
No. 11/2021
s. 152(1).**

S. 193(9)
inserted by
No. 11/2021
s. 152(2).

- (9) For the purposes of this section and section 194, a confidentiality notice or a notice cancelling a confidentiality notice may be served on a natural person by—
- (a) serving a copy of the document on the person personally; or
 - (b) sending by registered post a copy of the document addressed to that person at the person's last known place of residence or business; or
 - (c) delivering a copy of the document to the person by means of electronic communication that is confirmed as having been received by the person; or
 - (d) sending by registered post a copy of the document, addressed to the person's authorised legal representative, to the place of business of the person's authorised legal representative; or
 - (e) leaving a copy of the document for that person—
 - (i) at the place of business of the person's authorised legal representative; and
 - (ii) with a person apparently employed at that place and who is apparently at least 18 years of age; or
 - (f) delivering a copy of the document, addressed to the person's authorised legal representative, to the person's authorised legal representative personally; or
 - (g) delivering a copy of the document to the person's authorised legal representative by means of an electronic communication that is confirmed as having been received by the person's authorised legal representative.

- (10) For the purposes of subsection (9), a person may deliver a copy of a document to another person personally by placing a copy of the document on a surface in the presence of that other person.
- (11) For the purposes of subsection (9)(c) and (g), the receipt of a document may be confirmed by any form of electronic communication.

S. 193(10)
inserted by
No. 11/2021
s. 152(2).

S. 193(11)
inserted by
No. 11/2021
s. 152(2).

194 Extension of confidentiality notice

- (1) If, before the conclusion of an investigation in respect of which a confidentiality notice has been issued, the Chief Municipal Inspector considers on reasonable grounds that it is necessary to extend the confidentiality notice for a period following the investigation, the Chief Municipal Inspector may apply to the Supreme Court for an order extending the confidentiality notice.
- (2) On an application under subsection (1), the Supreme Court may, by order, extend a confidentiality notice to a date specified in the order, if the Supreme Court is satisfied that disclosure of the restricted matter or restricted matters specified in the confidentiality notice before that date would be likely to have the effect specified in section 193(1)(a), (b) or (c).
- (3) If, on an application under subsection (1), the Supreme Court declines to make an order under subsection (2), the Chief Municipal Inspector must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice, unless the investigation in respect of which the confidentiality notice was issued has not concluded.

Note

Section 193(6) provides for the issue of a notice cancelling a confidentiality notice at the conclusion of the investigation to which the confidentiality notice relates.

S. 194(4)
amended by
No. 11/2021
s. 153.

- (4) A notice cancelling a confidentiality notice under subsection (3) may be issued to a person by serving a copy on the person in accordance with section 193(9).

195 Chief Municipal Inspector to provide the IBAC with copies

The Chief Municipal Inspector, as soon as reasonably practicable, must provide the IBAC with a copy of—

- (a) each confidentiality notice issued by the Chief Municipal Inspector;
- (b) each notice cancelling a confidentiality notice issued by the Chief Municipal Inspector under section 193(3), (4), (5) or (6) or section 194(3);
- (c) each application to the Supreme Court under section 194(1) to extend a confidentiality notice;
- (d) each order of the Supreme Court under section 194(2) extending a confidentiality notice.

196 Disclosure subject to confidentiality notice

- (1) Except as provided in this section, a person who—
- (a) is duly served with a confidentiality notice and, if applicable, a copy of any order extending the confidentiality notice; or
 - (b) receives a copy of a confidentiality notice under subsection (8) or (9) and, if applicable, a copy of any order extending the confidentiality notice—

must not disclose a restricted matter specified in the confidentiality notice while the confidentiality notice has effect.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (2) A restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made in any of the following circumstances—
- (a) in accordance with a direction or an authorisation given by the Chief Municipal Inspector;
 - (b) to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice, including any of the following—
 - (i) to an interpreter, if the person does not have a sufficient knowledge of the English language to understand the nature of the witness summons or confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice;
 - (ii) to a parent, guardian or independent person, if the person is under the age of 18 years;
 - (iii) to an independent person, if the person is illiterate or has a mental, physical or other impairment which prevents the person from understanding the witness summons, confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice without assistance;

- (c) for the purposes of obtaining legal advice or representation in relation to—
 - (i) an investigation conducted by the Chief Municipal Inspector under this Act; or
 - (ii) the person's rights, liabilities, obligations and privileges under this Act or a relevant Act;
- (d) by a legal practitioner who receives a disclosure in the circumstances specified in paragraph (c), for the purposes of complying with a legal duty of disclosure or a professional obligation arising from their professional relationship with their client;
- (e) to any of the following persons, unless the Chief Municipal Inspector directs that the restricted matter must not be disclosed to that person—
 - (i) the spouse or domestic partner of the person served with the confidentiality notice;
 - (ii) the employer or manager of the person served with the confidentiality notice, or both;
- (f) in any of the following circumstances, unless the Chief Municipal Inspector directs that the restricted matter must not be disclosed in that circumstance—
 - (i) to any of the following for the purpose of assisting the person to seek advice or support in relation to the investigation in respect of which the confidentiality notice has been issued—
 - (A) a registered health practitioner;

- (B) a trade union of which the person is a member;
 - (C) an employee assistance program;
 - (ii) to the Victorian WorkCover Authority for the purpose of a workers' compensation claim;
 - (iii) to a prescribed service for a purpose prescribed for that service;
 - (iv) for the purpose of an application to the Fair Work Commission, including any related proceeding;
 - (g) as is otherwise authorised or required to be made by or under this Act.
- (3) A restricted matter specified in a confidentiality notice may be disclosed to the IBAC if—
- (a) the IBAC referred the complaint to which the restricted matter relates to the Chief Municipal Inspector under section 73A of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
 - (b) the IBAC has withdrawn the referral in accordance with section 79 of that Act.
- (4) A restricted matter specified in a confidentiality notice may be disclosed to Victoria Police if—
- (a) the Chief Municipal Inspector has disclosed information to the Chief Commissioner of Police under section 192 relating to actual or potential criminal conduct; and
 - (b) the restricted matter is relevant to an investigation by Victoria Police of the actual or potential criminal conduct.

- (5) A restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of making—
- (a) a complaint to the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (b) a complaint to the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (6) A restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of complying with—
- (a) a witness summons served on a person by the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (b) a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (7) A restricted matter specified in a confidentiality notice may be disclosed if the disclosure made is of information that has been published by an investigating entity or the IBAC Committee in a report or has otherwise been made public in accordance with this or any other Act.
- (8) A person who makes a disclosure of information permitted by subsection (2) must, when making the disclosure, provide the person to whom the disclosure is made with a copy of the confidentiality notice and of any order extending the confidentiality notice, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

(9) If in respect of a particular investigation a person who makes a disclosure of information permitted by subsection (2) receives a new confidentiality notice, a notice cancelling the confidentiality notice or an order extending the confidentiality notice, the person must as soon as reasonably practicable provide a copy of the new confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice to each person to whom the disclosure has been made, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

(10) Proceedings may only be instituted for an offence under subsection (1), (8) or (9)—

- (a) by the Chief Municipal Inspector; or
- (b) by or with the consent of the Director of Public Prosecutions.

(11) In this section—

Fair Work Commission means the body continued in existence by section 575 of the Fair Work Act 2009 of the Commonwealth;

investigating entity has the same meaning as in section 3 of the **Public Interest Disclosures Act 2012**;

registered health practitioner means a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student);

relevant Act means—

- (a) the **Public Interest Disclosures Act 2012**; or

- (b) the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (c) the **Victorian Inspectorate Act 2011**;
or
- (d) the **Ombudsman Act 1973**; or
- (e) the Fair Work Act 2009 of the Commonwealth;

Victorian WorkCover Authority has the same meaning as in the **Workplace Injury Rehabilitation and Compensation Act 2013**.

197 Delegation by Chief Municipal Inspector

- (1) The Chief Municipal Inspector may, by instrument, delegate any power, duty or function of the Chief Municipal Inspector under this Act to any person who has, in the Chief Municipal Inspector's opinion, appropriate skills or knowledge to perform that power, duty or function other than this power of delegation.
- (2) A person delegated any power, duty or function by the Chief Municipal Inspector under subsection (1) is by virtue of that delegation an inspector of municipal administration.

198 Offences in relation to Chief Municipal Inspector

- (1) A person must not, without a reasonable excuse, refuse or fail to comply with a requirement of the Chief Municipal Inspector to the extent to which that person is able to comply.

Penalty: 60 penalty units or imprisonment for 3 months or both.

- (2) A person must not give information which the person knows is false or misleading to the Chief Municipal Inspector.

Penalty: 240 penalty units or imprisonment for 2 years or both.

199 Referral to Supreme Court

- (1) If a person fails, without reasonable excuse, to comply with a requirement made by the Chief Municipal Inspector, the Chief Municipal Inspector may certify the failure in writing to the Supreme Court.
- (2) The Supreme Court may inquire into the failure and may—
- (a) make an order requiring the person to comply with the requirement made by the Chief Municipal Inspector within the period fixed by the Supreme Court; or
 - (b) instead of, or in addition to, an order under paragraph (a), if the Supreme Court is satisfied that the person failed, without a reasonable excuse, to comply with the requirement of the Chief Municipal Inspector, punish the person as if the person had been guilty of contempt of court.

199A Act applies equally to attendance in person or by audio or audio visual link

S. 199A
inserted by
No. 11/2021
s. 154.

For the avoidance of doubt, except as otherwise provided by this Division, a provision of this Act that applies—

- (a) in relation to an appearance required under section 183(3) applies in relation to the appearance by audio visual link or audio link in the same way that it applies in relation to an appearance in person; and

- (b) in relation to the production of documents required under section 183(3) applies in relation to production of documents by secure electronic means in the same way that it applies in relation to production of documents in person.

Division 5—Commissions of Inquiry

200 Appointment of Commission of Inquiry

- (1) The Minister may by instrument appoint a Commission of Inquiry to conduct an inquiry into the affairs of a Council or Councils.
- (2) The instrument of appointment must specify the following—
 - (a) the person or persons appointed to constitute the Commission of Inquiry;
 - (b) if more than one person is appointed, the person who is to chair the Commission of Inquiry;
 - (c) the terms of reference of the Commission of Inquiry;
 - (d) any other matter the Minister considers appropriate, including the manner in which the Commission of Inquiry is to be conducted.
- (3) A Commission of Inquiry must provide a written report to the Minister by the date specified by the Minister.

201 Appointment of Commissioners

- (1) The Minister may appoint a person or persons that the Minister considers appropriate to be a Commissioner of a Commission of Inquiry.

- (2) A Commissioner—
- (a) is to be appointed for the period specified in the instrument of appointment; and
 - (b) is eligible for re-appointment; and
 - (c) may resign by a written notice of resignation addressed to the Minister; and
 - (d) holds office on such other terms and conditions as are determined by the Minister.
- (3) A Commissioner ceases to hold office if the Commissioner—
- (a) resigns; or
 - (b) becomes incapacitated; or
 - (c) dies; or
 - (d) becomes bankrupt; or
 - (e) is convicted of an indictable offence; or
 - (f) receives a notice of termination of appointment from the Minister.

202 Services to support Commission of Inquiry

- (1) A Commission of Inquiry, with the approval of the Minister, may make use of the services of any employees in the public service.
- (2) For the purposes of this Division, a person providing services under this section is to be taken to be a member of staff of the Commission of Inquiry.

203 Certain public sector values do not apply to Commission of Inquiry staff

If the public sector values referred to in section 7(1)(a)(i) and (c)(iii) of the **Public Administration Act 2004** would, but for this section, apply to a member of staff of a Commission of Inquiry, those public sector

values do not apply to the member of staff in respect of their employment or engagement with the Commission of Inquiry.

Note

Section 7(1)(a)(i) and (c)(iii) of the **Public Administration Act 2004** deal with providing advice to the Government and implementing Government policies and programs.

204 Manner of inquiry of Commission of Inquiry

A Commission of Inquiry may conduct its inquiry in any manner that it considers appropriate, subject to—

- (a) the instrument of appointment; and
- (b) the requirements of procedural fairness; and
- (c) this Act and any regulations under this Act.

205 Rules of evidence do not apply

A Commission of Inquiry—

- (a) is not bound by the rules of evidence or any practices or procedures applicable to courts of record; and
- (b) may inform itself on any matter as it sees fit.

206 Power to serve a written notice

- (1) A Commissioner may serve a written notice to a person to appear before the Commission of Inquiry and give evidence or produce any documents specified in the written notice.
- (2) A person must not fail to appear before the Commission of Inquiry after being served with a written notice without reasonable excuse.

Penalty: 10 penalty units or imprisonment for 3 months.

207 Power to examine person under oath or on affirmation

- (1) A Commissioner may—
- (a) administer an oath or affirmation to; and
 - (b) examine upon oath or affirmation—
any person appearing before the Commission of Inquiry.
- (2) A person must not without a reasonable excuse—
- (a) refuse to take an oath or make an affirmation; or
 - (b) fail to give evidence or produce any documents specified in the written notice served on that person.

Penalty: 10 penalty units or imprisonment for 3 months.

208 Powers in relation to documents and other things

- (1) A Commissioner or a person authorised by a Commissioner may—
- (a) inspect any document or other thing produced to the Commission of Inquiry; and
 - (b) retain the document or other thing for as long as is reasonably necessary for the purposes of the inquiry; and
 - (c) copy any document or other thing produced to the Commission of Inquiry necessary for the purposes of the inquiry.
- (2) If the retention of a document or other thing under subsection (1) ceases to be reasonably necessary for the purposes of its inquiry, the Commission of Inquiry, at the request of a person who appears to be entitled to the document or other thing, must cause the document or other thing to be delivered

to the person unless it has been given to another person or body under section 219.

- (3) A reference in this section to the purposes of an inquiry includes a reference to the disclosure of information under section 219.

209 Witnesses may be represented

- (1) A Commission of Inquiry may determine whether a witness appearing before the Commission of Inquiry may be represented by another person.
- (2) A Commission of Inquiry may allow a person representing a witness to—
 - (a) address the Commission of Inquiry; and
 - (b) examine any witnesses—as the Commission of Inquiry sees fit.
- (3) A Commission of Inquiry may make an order that a witness is entitled to be paid any expenses and allowances as the Commission of Inquiry sees fit.

210 Proceedings of the inquiry may be open or closed

- (1) A Commission of Inquiry must determine whether the proceedings of the inquiry, or any part of the proceedings of the inquiry, are to be open to the public.
- (2) In making a determination under subsection (1), the Commission of Inquiry must have regard to—
 - (a) the public interest; and
 - (b) the effect on the reputational and privacy interests of any person if the proceedings of the inquiry, or a part of the proceedings of the inquiry, are not closed to the public.

211 Access to Commission of Inquiry proceedings

- (1) A Commission of Inquiry may make an order excluding any person from a proceeding of the Commission of Inquiry if—
 - (a) prejudice or hardship might be caused to any person, including harm to their safety or reputation; or
 - (b) the nature and subject matter of the proceeding is sensitive; or
 - (c) there is a possibility of any prejudice to legal proceedings; or
 - (d) the Commission of Inquiry otherwise considers the exclusion appropriate.
- (2) The Commission of Inquiry must cause a copy of the order to be posted—
 - (a) on a door of the place where the proceeding is being conducted; or
 - (b) in another conspicuous place where notices are usually posted at the place where the proceeding is being conducted.
- (3) An order made under subsection (1) is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

212 Restriction on publication of information relating to inquiries

- (1) Subject to subsection (2), a Commission of Inquiry may make an order prohibiting or restricting the publication of—
 - (a) any information that may enable the identity of a person who has given, or is to give, information to the Commission of Inquiry for the purposes of an inquiry to be ascertained; or

- (b) any information given to the Commission of Inquiry for the purposes of an inquiry.
- (2) A Commission of Inquiry may make an order prohibiting or restricting the publication of information or evidence if—
- (a) prejudice or hardship might be caused to any person, including harm to their safety or reputation; or
 - (b) the nature and subject matter of the information or evidence is sensitive; or
 - (c) there is a possibility of any prejudice to legal proceedings; or
 - (d) the Commission of Inquiry otherwise considers the prohibition or restriction appropriate.
- (3) If the order is made during a proceeding, the Commission of Inquiry must cause a copy of the order to be posted—
- (a) on a door of the place where the proceeding is being conducted; or
 - (b) in another conspicuous place where notices are usually posted at the place where the proceeding is being conducted.
- (4) If the order is made in relation to information that is given by the Commission of Inquiry to another person, the Commission of Inquiry must cause a copy of the order to be given to that person.
- (5) An order made under this section is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

213 Offence to contravene exclusion or restriction orders

A person must not engage in conduct that constitutes a contravention of an order of a Commission of Inquiry under section 211(1) or 212(1) that is in force if the person—

- (a) knows that the order is in force; or
- (b) is reckless as to whether the order is in force.

Penalty: 120 penalty units.

214 Order as to costs

- (1) A Commission of Inquiry may make an order for the payment of all or any of the costs of the Commission of Inquiry.
- (2) An order under subsection (1) is enforceable in the same manner as an order of the Supreme Court is enforceable.

215 Protection of Commissioners, members of staff, Australian legal practitioners and witnesses

- (1) A Commissioner has, in the performance of their functions as a Commissioner, the same protection and immunity as a Judge of the Supreme Court has in the performance of their duties as a Judge of the Supreme Court.
- (2) A member of staff of a Commission of Inquiry has, in the performance of their functions as a member of staff of a Commission of Inquiry, the same protection and immunity as a Judge of the Supreme Court has in the performance of their duties as a Judge of the Supreme Court.
- (3) An Australian legal practitioner representing a person in a proceeding at a Commission of Inquiry has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.

- (4) A person who gives information or evidence, or produces a document or other thing, to the Commission of Inquiry has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

216 Admissibility of answers, information, documents and other things

- (1) Any answer, information, document or other thing given or produced to a Commission of Inquiry by a person, and the fact that an answer, information, document or other thing was given or produced, is not admissible in evidence, or otherwise able to be used, against the person in any other proceedings, except in proceedings for—
- (a) an offence against this Act; or
 - (b) an offence against section 254 or 314 of the **Crimes Act 1958** in relation to the Commission of Inquiry.
- (2) Subsection (1) does not apply to a document or other thing if it was obtained, or could have been obtained, independently of its production to the Commission of Inquiry, either before or after its production, by the person seeking to tender it in evidence, or otherwise to use it, in the other proceedings.
- (3) In this section, *other proceedings* means criminal, civil or administrative proceedings before a court, tribunal or person acting judicially or disciplinary proceedings, but does not include any proceedings relating to a decision of the Minister to exercise any power under this Act.

217 Adverse findings

- (1) If a Commission of Inquiry proposes to make a finding that is adverse to a person, the Commission of Inquiry must be satisfied that the person—
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- (a) is aware of the matters on which the proposed finding is based; and
 - (b) has had an opportunity, at any time during the course of the inquiry, to respond on those matters.
- (2) A Commission of Inquiry must consider a person's response under subsection (1)(b) (if any) before making a finding that is adverse to the person.
- (3) If a Commission of Inquiry includes a finding that is adverse to a person in its report, the Commission of Inquiry must fairly set out the person's response under subsection (1)(b) (if any) in the report.

218 Confidentiality for members of staff

A person who is or was a member of staff of a Commission of Inquiry must not knowingly disclose any material information acquired by the person by reason of being a member of staff, or in the course of the performance of functions under this Act, except—

- (a) for the performance of the functions of the member of staff under this Act; or
- (b) for the purpose of any criminal proceedings under section 254 of the **Crimes Act 1958** in relation to the Commission of Inquiry; or
- (c) if the information is in the public domain at the time of the disclosure, otherwise than as a result of a disclosure that the person knows or ought to have known was unlawful; or
- (d) as is otherwise authorised or required under this Act or any other Act.

Penalty: 120 penalty units or imprisonment for 3 months.

219 Disclosure or provision of information by Commission of Inquiry

- (1) A Commission of Inquiry or a person authorised by a Commission of Inquiry may at any time provide or disclose any information or give any document or other thing, to any person or body if the Commission of Inquiry or authorised person—
 - (a) considers that the information, document or other thing is relevant to the performance of the functions of the person or body; and
 - (b) considers it appropriate to disclose the information or give the document or other thing to the person or body.
- (2) If a document or other thing is given to a person or body under subsection (1), the person or body must, at the request of the Commission of Inquiry, return the document or other thing if it ceases to be reasonably necessary for the person or body to retain the document or other thing for the purposes for which it was given to the person or body.

220 Offence to make false or misleading statements or produce false or misleading documents or other things

- (1) A person must not make a statement to a Commission of Inquiry that the person knows to be false or misleading in a material particular.
Penalty: 120 penalty units or imprisonment for 12 months.
- (2) A person must not produce a document or other thing to a Commission of Inquiry that the person knows to be false or misleading in a material particular unless the person indicates to the Commission of Inquiry the respect in which it is false or misleading and, to the extent practicable, provides the correct information.

Penalty: 120 penalty units or imprisonment for 12 months.

221 Tabling of report of Commission of Inquiry

Within 7 sitting days of the Minister receiving a Commission of Inquiry report under section 200(3), the Minister must cause the report to be tabled in each House of the Parliament.

222 Transfer of records

- (1) After a Commission of Inquiry's report is tabled in each House of the Parliament by the Minister under section 221, all of the records of the Commission of Inquiry are to be transferred to the Department.
- (2) Despite section 8A of the **Public Records Act 1973**, the Department may cause the records to be transferred to the custody of the Public Record Office after their receipt.
- (3) Records transferred to the Department or the Public Record Office under this section are to be held and dealt with on the same basis, and in the same manner, as the basis on which they were held, and the manner in which they could be dealt with, by the Commission of Inquiry.
- (4) This section is subject to any arrangements made under section 2B(b) of the **Public Records Act 1973**.

223 Exemption from Freedom of Information Act 1982

- (1) The **Freedom of Information Act 1982** does not apply to—
 - (a) a document that is in the possession of a Commission of Inquiry; or

(b) a document of a Commission of Inquiry that is in the possession of an agency at any time during which the Commission of Inquiry is in existence.

(2) In this section—

agency has the same meaning as in the **Freedom of Information Act 1982**;

document has the same meaning as in the **Freedom of Information Act 1982**.

Division 6—Standing down of Councillor on recommendation of the Minister

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224 Application of Division

(1) This Division applies if—

(a) one of the following has been made in respect of a Councillor to which paragraph (b) applies—

- (i) an application to a Councillor Conduct Panel to make a finding of serious misconduct against the Councillor;
- (ii) an application to VCAT alleging gross misconduct by the Councillor;
- (iii) the Minister has, by instrument, appointed a Commission of Inquiry into the Council of the Councillor;
- (iv) an application has been made to the Supreme Court for the ouster from the office of Councillor of the Councillor; and

- (b) the Minister has reason to believe that the Councillor—
 - (i) is creating a serious risk to the health and safety of Councillors or Council staff; or
 - (ii) in the Councillor's capacity as a Councillor, is creating a serious risk to the health and safety of other persons; or
 - (iii) is preventing the Council from performing its functions.

225 Referral of Councillor to the Chief Municipal Inspector or a Municipal Monitor

- (1) The Minister may refer a Councillor to which section 224(1)(b) applies to—
 - (a) subject to subsection (2), the Chief Municipal Inspector; or
 - (b) a Municipal Monitor.
- (2) The Minister must not refer the Councillor to the Chief Municipal Inspector if the Chief Municipal Inspector made the application under section 224(1)(a).

226 Chief Municipal Inspector or Municipal Monitor to conduct investigation and prepare a report

- (1) The Chief Municipal Inspector or a Municipal Monitor who has received a referral under section 225 must conduct and complete an investigation into the referral in accordance with this section—
 - (a) within 10 days after the day that the Chief Municipal Inspector or Municipal Monitor (as the case requires) received the referral; or

- (b) within such other period agreed to by the Minister after receiving a request from the Chief Municipal Inspector or the Municipal Monitor (as the case requires) for an extension of time to conduct and complete the investigation.
- (2) On receiving a referral from the Minister, the Chief Municipal Inspector or the Municipal Monitor (as the case requires) must give notice to the following persons—
- (a) the Councillor who is the subject of the referral;
 - (b) the Mayor;
 - (c) the Chief Executive Officer.
- (3) Notice under subsection (2) must—
- (a) be in writing; and
 - (b) specify the period of time that will be taken to conduct and complete the investigation in accordance with subsection (1).
- (4) Within the period specified in subsection (1)(a) or such other period agreed to by the Minister under subsection (1)(b), the Chief Municipal Inspector or the Municipal Monitor (as the case requires) must—
- (a) investigate the referral; and
 - (b) prepare a report of the advice and findings of the Chief Municipal Inspector or Municipal Monitor specifying—
 - (i) whether the Chief Municipal Inspector or Municipal Monitor is satisfied that the Councillor the subject of the referral—

- (A) is creating a serious risk to the health and safety of Councillors or Council staff; or
 - (B) in the Councillor's capacity as a Councillor, is creating a serious risk to the health and safety of other persons; or
 - (C) is preventing the Council from performing its functions; and
- (ii) the reasons for the advice and findings of the Chief Municipal Inspector or Municipal Monitor (as the case requires); and
- (c) give a copy of the report prepared under paragraph (b) to—
 - (i) the Councillor the subject of the referral; and
 - (ii) the Minister.
- (5) The copy of the report given to a Councillor under subsection (4)(c)(i) must specify the following—
 - (a) that the Councillor may give a response to the report to the Minister within 5 days of receiving the report;
 - (b) the manner in which any response to the report must be given to the Minister.

227 Councillor may respond to report

Within 5 days after receiving a copy of a report prepared by the Chief Municipal Inspector or Municipal Monitor (as the case requires) under section 226(4)(b), the Councillor who is the subject of the referral may give to the Minister a response to the report in accordance with section 226(5)(b).

228 Councillor may be ordered to stand down

- (1) On the recommendation of the Minister, the Governor in Council may, by Order in Council, stand down a Councillor—
 - (a) for a specified period not exceeding 6 months; or
 - (b) until an outcome specified in subsection (5) has occurred.
- (2) The Minister may make a recommendation under subsection (1) if—
 - (a) any of the following applies in respect of the Councillor—
 - (i) an application has been made to a Councillor Conduct Panel or VCAT alleging serious misconduct or gross misconduct (as the case requires) by the Councillor;
 - (ii) the Minister has appointed a Commission of Inquiry into the Council of the Councillor;
 - (iii) an application has been made to the Supreme Court for the ouster from the office of Councillor of the Councillor; and
 - (b) the Chief Municipal Inspector or a Municipal Monitor has given the Minister a report under section 226 advising the Minister that the Councillor in respect of whom circumstances specified in paragraph (a) apply—
 - (i) is creating a serious risk to the health and safety of Councillors or Council staff; or

- (ii) in the Councillor's capacity as a Councillor, is creating a serious risk to the health and safety of other persons; or
 - (iii) is preventing the Council from performing its functions; and
- (c) the Minister is satisfied that the Councillor—
 - (i) is creating a serious risk to the health and safety of Councillors or Council staff; or
 - (ii) in the Councillor's capacity as a Councillor, is creating a serious risk to the health and safety of persons other than Councillors or Council staff; or
 - (iii) is behaving in a manner that is preventing the Council from performing its functions.
- (3) If an Order in Council is made under subsection (1), the Minister must give a written notification to—
 - (a) the Councillor, who by Order in Council, must stand down;
 - (b) the Chief Executive Officer.
- (4) If an Order in Council is made under subsection (1), for the duration of the Order—
 - (a) the allowance of the Councillor ordered to stand down is to be withheld; and
 - (b) the Councillor ordered to stand down must not perform the functions and duties of, or exercise the powers of, a Councillor including—
 - (i) attend any meetings of the Council; and

- (ii) attend any delegated committee meetings; and
 - (iii) attend Council premises.
- (5) The following outcomes are specified for the purposes of subsection (1)(b)—
- (a) on the making of a determination by a Councillor Conduct Panel or VCAT in respect of the application;
 - (b) on the withdrawal of the application to the Councillor Conduct Panel or VCAT;
 - (c) on the dismissal of the application by the Councillor Conduct Panel or VCAT;
 - (d) on the tabling of the report of a Commission of Inquiry under section 221;
 - (e) the Supreme Court has made a decision in respect of an application for the ouster from the office of Councillor of the Councillor that has been stood down;
 - (f) an application to the Supreme Court for the ouster from the office of Councillor of the Councillor that has been stood down is withdrawn.
- (6) Unless one of the following applies in respect of a Councillor that has been stood down under this section, the Councillor's allowance must be returned to the Councillor when the Councillor is no longer stood down—
- (a) the Councillor Conduct Panel makes a finding of serious misconduct in respect of the Councillor;
 - (b) VCAT makes a finding of gross misconduct in respect of the Councillor;

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- (c) the Commission of Inquiry has made an adverse finding in its report;
- (d) the Councillor is ousted from the office of Councillor by the Supreme Court.

Division 6A—Standing down of Councillor by VCAT

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(Heading)
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s. 35.

229 Standing down of Councillor by VCAT

- (1) If a Councillor is charged with an offence specified in section 34(2)(k), (l) or (m), the Chief Municipal Inspector may apply to VCAT for an order to stand down the Councillor until proceedings in respect of the charge are finally determined.
- (2) Before VCAT makes an order under subsection (1), VCAT must have regard to the nature and circumstances of the charge.
- (3) An order made under subsection (1) ceases to have effect if—
 - (a) the relevant charge is withdrawn; or
 - (b) the Councillor is not convicted of the offence.
- (4) If a Councillor is ordered to stand down under subsection (1), the Councillor must not perform the functions and duties of, or exercise the powers of, a Councillor including—
 - (a) attend any meetings of the Council; and
 - (b) attend any delegated committee meetings; and
 - (c) attend Council premises.

- (5) If a person who is stood down from the office of Councillor under subsection (1) is convicted of the offence and the person lodges an appeal in respect of the conviction, the person remains stood down and their allowance must be withheld until the appeal is determined or withdrawn.
- (6) If the conviction referred to in subsection (5) is quashed or set aside following the appeal the Councillor is entitled to receive any allowances that were withheld during the period the Councillor was stood down.

Division 7—Suspension of Councillors

230 Suspension of all of the Councillors of a Council

- (1) On the recommendation of the Minister, the Governor in Council may, by Order in Council, suspend all of the Councillors of a Council.
- (2) The Minister may make a recommendation under subsection (1) if the Minister is satisfied on reasonable grounds—
 - (a) subject to subsection (3), that there has been a failure to provide good governance; or
 - (b) that the Council has repeatedly and substantially failed to comply with a general Order and any special Order.
- (3) Before making a recommendation on the grounds specified in subsection (2)(a), the Minister must consider what steps the Council has taken to address and remedy the difficulties underlying the failure.
- (4) The Governor in Council may, by Order in Council, do any or all of the following—
 - (a) suspend all of the Councillors of the Council;
 - (b) appoint an administrator for the Council;

- (c) appoint a person to fill a vacancy in the office of administrator;
 - (d) appoint a temporary administrator in the place of the administrator to act in the administrator's absence or incapacity to act.
- (5) The Order in Council takes effect from the date specified in the Order in Council.
- (6) The Order in Council has full force and effect despite any non-compliance with any of the matters required by this section as preliminary to the making of the Order in Council.
- (7) The Order in Council—
- (a) must be laid before both Houses of Parliament—
 - (i) if Parliament is then sitting, within 7 days after its making; or
 - (ii) if Parliament is not then sitting, within 7 days after the next meeting of Parliament; and
 - (b) may be disallowed by a resolution of either House of Parliament within 7 days after it has been laid before each House.
- (8) If the Order in Council is disallowed—
- (a) the Governor in Council must by Order in Council fix a day on which—
 - (i) the administrator must go out of office; and
 - (ii) the suspended Councillors must resume office; and
 - (b) the disallowance does not affect anything done under the disallowed Order in Council.

- (9) The Order in Council under subsection (1) expires—
- (a) unless paragraph (b) applies, one year after the date of its publication; or
 - (b) on the date specified in the Order in Council, being a date which is less than one year after the date of its publication.
- (10) The suspended Councillors are not Councillors of the Council during the period of suspension.
- (11) On the expiry of the Order in Council, the Councillors resume office and the administrator goes out of office unless—
- (a) the Minister has fixed the date on which a general election for the Council is to be held and has published notice of that date in the Government Gazette; or
 - (b) a Bill to dismiss the Council has been introduced into the Parliament.
- (12) The date fixed for the holding of the general election must be a date that occurs within the period of 100 days after the date on which the Order in Council expires.
- (13) If the Bill to dismiss the Council has not become an Act which is in operation within the period of 100 days after the date on which the Order in Council expires, the Councillors resume office and the administrator goes out of office immediately after the end of that period.
- (14) An election under subsection (11)(a) must be held in accordance with the procedures for a general election.
- (15) If the election is held under subsection (11)(a), on the public declaration of the election result the administrator goes out of office.

- (16) The Chief Executive Officer must summon a Council meeting within 14 days after the public declaration of the election result.

231 Provisions relating to appointment of administrators

- (1) The following provisions apply to the appointment of an administrator of a Council under section 230—
- (a) the administrator constitutes the Council and, subject to any conditions of that person's appointment, must perform all the functions, powers and duties of the Council, which must be treated as if they were performed by the Council;
 - (b) the administrator's appointment and anything done by the administrator is not invalid only by reason of a defect in relation to the appointment;
 - (c) the administrator is entitled to be paid the remuneration and allowances and is employed on the conditions which are fixed by the Minister and the remuneration and allowances are to be paid by the Council;
 - (d) the administrator—
 - (i) must not, without the Minister's consent, directly or indirectly engage in any paid employment outside the duties of the office of administrator; and
 - (ii) may resign by a written notice of resignation addressed to the Governor in Council;
 - (e) the office of the administrator becomes vacant if the administrator—
 - (i) becomes bankrupt; or

- (ii) dies; or
 - (iii) is removed or resigns from office; or
 - (iv) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (v) becomes incapable of performing the duties of the office.
- (2) If provision is made in any Act, regulation, rule, by-law, local law, instrument or document for the Mayor, the Deputy Mayor, a Councillor or the Chairperson or a member of a committee of the Council to be a member of, or to be represented on, a board, Council, committee, commission or other body, or to be a trustee, or to be a member or director of a company, that provision has effect during the period of administration as if it provided for the administrator, or some other person appointed by the administrator, to be that member, representative, trustee or director.

Division 8—Temporary administration

232 Temporary administration if multiple extraordinary vacancies created

- (1) This section applies if—
- (a) the number of extraordinary vacancies created in the offices of Councillors of a Council has resulted in at least 50 per cent of the offices of Councillors of the Council becoming vacant; and
 - (b) the Minister is reasonably satisfied that the number of extraordinary vacancies created in the offices of Councillors of a Council could restrict the ability of the Council to provide good governance.

- (2) If this section applies, the Minister must recommend to the Governor in Council that an Order in Council be made under this section appointing an administrator for the Council for the period ending on a day specified in the Order in Council.
- (3) For the purposes of subsection (2), the day on which the period of administration ends may be specified as the day on which a percentage specified in the Order in Council of the offices of Councillors of the Council are filled.
- (4) Section 231 applies to the appointment of an administrator of a Council under this section.
- (5) If a majority of the vacancies in the offices of Councillors of a Council are filled before the day specified in the Order in Council, the period of administration ends on that day.

233 Suspension of remaining Councillors

- (1) If section 232 applies, the remaining Councillors of the Council are by virtue of this section suspended for the period of administration.
- (2) Subject to subsection (4), the suspended Councillors are not Councillors of the Council during the period of suspension.
- (3) Despite subsection (2), the suspended Councillors are entitled to receive Councillor allowances but not mayoral allowances.
- (4) The administrator of the Council may during the period of administration request a suspended Councillor to do any of the following—
 - (a) provide advice to the administrator;
 - (b) be a member of a delegated committee;
 - (c) represent the Council on another body.

- (5) If a suspended Councillor agrees to do any of the things specified in subsection (4), the suspended Councillor is to be taken not to be suspended for the purpose only of doing that thing.

Division 9—Restructuring Orders

234 Construction provisions

- (1) If the boundary of a municipal district is described by reference to a road, proposed road, railway line, former railway line or waterway (other than a waterway that forms part of the sea coast), that boundary is to be taken to be constituted by a line along the centre for the time being of the road, proposed road, railway line, former railway line or waterway.
- (2) If the boundary of a municipal district is described by reference to the sea coast (regardless of whether it is referred to as the sea shore or the waters of the sea or a bay or in any other way), that boundary is to be taken to be the line for the time being of the low water mark on that sea coast.
- (3) Subsection (1) or (2) does not apply if an intention contrary to the effect of that subsection appears in the description.

235 Power to make Orders

Subject to this Division, the Governor in Council may, on the recommendation of the Minister, make an Order in Council to do any one or more of the following—

- (a) alter the boundaries of a municipal district by adding or removing an area to or from an existing municipal district or an outlying district;

- (b) constitute a new municipal district in an area or areas removed from—
 - (i) an existing municipal district or municipal districts; or
 - (ii) an outlying district;
- (c) constitute a new municipal district by amalgamating existing municipal districts;
- (d) declare an existing boundary of a municipal district;
- (e) constitute a new Council;
- (f) abolish an existing Council;
- (g) give a name to, or alter the name of, a Council;
- (h) provide for the interim administration of a new or reconstituted Council until an election is held.

236 Matters which may be included in Order

- (1) The Governor in Council may by Order in Council provide for any matter necessary or convenient to give effect to this Division.
- (2) Without limiting the generality of subsection (1), an Order in Council may provide for the following—
 - (a) any property, income, assets, rights, liabilities, expenses or other matters to be apportioned, settled, transferred, adjusted or determined;
 - (b) the appointment, transfer, redundancy or classification of members of Council staff and any matters relating to the remuneration and emoluments of such staff including superannuation and long service leave;

- (c) the appointment, conditions of appointment and the powers and functions of any persons appointed to administer a new or reconstituted Council until an election is held;
 - (d) existing Councillors to go out of office and the election of new Councillors to be elected in the numbers, for the wards and the terms specified in the Order;
 - (e) the holding of elections having regard to the provisions of this Act and the regulations dealing with enrolment for and voting at Council elections and the election of Councillors, with such modifications as may be specified in the Order;
 - (f) the application, continuation, amendment or revocation of existing local laws;
 - (g) transitional provisions in relation to any act, matter or thing done or required to be done by or in relation to any Council affected by the Order in Council.
- (3) If an Order in Council provides for the appointment of persons to administer a new or reconstituted Council until an election is held, those persons by virtue of this Act—
- (a) are deemed to be the Councillors of the Council and together to constitute the Council as Councillors; and
 - (b) have and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed upon the following—
 - (i) a Council or a former Council by or under any Act;

- (ii) Councillors generally or upon the Councillors of a former Council by or under any Act;
 - (iii) the persons so appointed by the Order in Council.
- (4) If an Order in Council provides for the appointment of a chairperson of persons appointed to administer a new or reconstituted Council until an election is held, the chairperson by virtue of this Act—
- (a) is deemed to be the Mayor of the Council as if appointed or elected as Mayor in accordance with this Act; and
 - (b) has and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed upon the following—
 - (i) Mayors generally or upon the Mayor of a former Council by or under any Act;
 - (ii) the person so appointed by the Order in Council.

237 General provisions relating to Orders

- (1) An Order in Council made under this Division—
- (a) must specify a day or days upon which the Order in Council comes into operation; and
 - (b) may provide that the boundaries of a municipal district specified in the Order in Council are described in a map lodged in the Central Plan Office or with the VEC as specified in the Order in Council; and
 - (c) upon being published in the Government Gazette has the like force and effect as if it were expressly enacted in this Act; and

- (d) may be amended or revoked by another Order in Council; and
 - (e) has full force and effect despite any non-compliance with any of the matters required by this Act as preliminary to the making of the Order in Council.
- (2) An Order in Council made under this Division may—
- (a) apply generally or be limited in its application by reference to specified matters or things; and
 - (b) apply differently according to different factors or subject to specified exceptions; and
 - (c) leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a person or body specified in the Order in Council; and
 - (d) confer powers or impose duties in connection with the Order in Council on a person or body specified in the Order in Council; and
 - (e) apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act; and
 - (f) contain provisions of a savings and transitional nature consequent on the making of the Order, including providing for the construction of references in any instrument or in any other document of any kind; and
 - (g) provide that during a transitional period specified in the Order the provisions of this Act specified in the Order apply as varied or modified by the Order; and

- (h) modify the application of the **Valuation of Land Act 1960** by providing that existing valuations are to be used until a date specified in the Order; and
 - (i) provide for the manner in which or conditions subject to which any contracts or leases may be entered into by or with a Council during any period specified in the Order and specify any penalty which is to apply in respect of any non-compliance.
- (3) Without limiting the generality of subsection (2)(g), an Order in Council may provide for—
- (a) the non-application of any specified sections of this Act during a transitional period specified in the Order; and
 - (b) the fixing or alteration of the close of the voters' roll for the purposes of any election; and
 - (c) the non-application of any specified sections of this Act to persons appointed to administer a new or re-constituted Council; and
 - (d) the fixing or the alteration of the date by or within which any specified act, matter or thing under this Act must be done or any specified requirement under this Act must be complied with.

238 Restrictions on making of Order in Council

- (1) The Minister must not recommend to the Governor in Council that an Order in Council be made in relation to a matter under section 235(a), (b), (c), (e) or (f) unless the Minister—
 - (a) has established a restructuring advisory panel under section 239 to conduct a review of the matter; and

- (b) has considered the report of the restructuring advisory panel on the matter.
- (2) The Minister may recommend that an Order in Council be made to give effect to minor boundary changes without considering a report from a restructuring advisory panel if the Minister certifies to the Governor in Council that—
 - (a) the proposed changes are of a minor nature only; and
 - (b) any Council whose municipal district is affected by the proposed changes has approved of the proposed changes; and
 - (c) notice of the proposed changes has been given in the municipal district or districts affected by the proposed changes.

239 Restructuring advisory panels

- (1) The Minister may by a public notice published in the Government Gazette constitute a restructuring advisory panel to review a matter under section 235.
- (2) In conducting a review, a restructuring advisory panel must—
 - (a) consider the views of any Council affected by the matter under consideration; and
 - (b) ensure that a process of community engagement is followed; and
 - (c) comply with any direction specified by the Minister in the notice constituting the restructuring advisory panel; and
 - (d) otherwise conduct the review in a manner that the restructuring advisory panel considers appropriate.

- (3) The restructuring advisory panel must consider the following matters before recommending to the Minister that a new Council should be created—
- (a) whether each Council affected by the creation of the new Council and the new Council will be viable and sustainable as separate entities;
 - (b) whether the allocation of revenue and expenditure between each Council affected by the creation of the new Council and the new Council will be equitable for the municipal community of each Council;
 - (c) whether the views of the municipal communities affected by the creation of the new Council have been taken into consideration;
 - (d) whether the new Council will have sufficient financial capacity to provide the municipal community with a comprehensive range of municipal services and to undertake necessary investment in infrastructure;
 - (e) any other matter specified in the notice published under subsection (1).
- (4) A restructuring advisory panel must submit a final report to the Minister within the period specified by the Minister in the notice constituting the restructuring advisory panel.

Part 8—Electoral provisions

Division 1—Voters

240 Entitlements relating to enrolment

- (1) A person can only be enrolled on the voters' roll of a Council if the person is a resident in the municipal district of the Council or a ratepayer to the Council exercising an entitlement under and in accordance with this Division.
- (2) Despite anything to the contrary in this Division, a person can only be enrolled on the voters' roll once and for one ward in a municipal district.
- (3) A person can only be enrolled on the voters' roll if—
 - (a) the person has an entitlement under section 241 or 243(1) as a resident or ratepayer to be enrolled without application as at the close of the roll; or
 - (b) the person is entitled under section 242, 243(2) or 244 as a ratepayer to apply to be enrolled and the application—
 - (i) complies with subsection (7); and
 - (ii) is accepted in accordance with this Division; or
 - (c) the person is appointed to vote on behalf of a corporation under section 245 and the application for appointment—
 - (i) complies with subsection (7); and
 - (ii) is accepted in accordance with this Division.

- (4) A person cannot exercise a right of entitlement conferred by section 242, 244 or 245 if the person has a right of entitlement under section 241 or 243.
- (5) For the purposes of subsection (3)(b) and (c), only 2 joint owners and only 2 joint occupiers can be enrolled in respect of each rateable property.
- (6) An application for enrolment made under section 242, 244 or 245 is void if—
- (a) the application for enrolment is made by an owner and there are 2 joint owners already enrolled in respect of the rateable property at the date that the application is made; or
 - (b) the application is made by an occupier and there are 2 joint occupiers already enrolled in respect of the rateable property at the date that the application is made.
- (7) An application referred to in subsection (3)(b) or (c) must—
- (a) be in writing; and
 - (b) contain the details required by the regulations; and
 - (c) be delivered to the Council office before the close of the roll.
- (8) Enrolment under an application referred to in section 242(1) has effect after it is accepted from the close of the roll and continues in force until the person who is enrolled—
- (a) ceases to be an owner of the rateable property; or
 - (b) resigns the enrolment by an application under section 242(2); or

**S. 240(8)
amended by
No. 30/2022
s. 36(1).**

- (c) becomes otherwise enrolled as a resident in respect of an address in the municipal district under section 241.
- (9) Enrolment under an application referred to in sections 244 and 245 has effect from the next close of the roll after it is accepted and continues in force until the day before the subsequent close of the roll for a general election.
- (10) The Chief Executive Officer, or the VEC under an agreement with the Chief Executive Officer, must not later than 30 days before the close of the roll, send a notice which includes the information prescribed by the regulations to each person who was enrolled on the previous voters' roll under section 244 or 245.
- (11) For the purposes of the first general election to be conducted under section 257(1)(a), the Chief Executive Officer, or the VEC under an agreement with the Chief Executive Officer, must not later than 30 days before the close of the roll, send a notice which includes the information prescribed by the regulations to each person who was enrolled on the previous voters' roll under section 14, 15 or 16 of the **Local Government Act 1989**.
- (12) For the purposes of the following elections the Chief Executive Officer or the VEC under an agreement with the Chief Executive Officer, must not later than 30 days before the close of the roll, send a notice which includes the information prescribed by the regulations to each person who was enrolled on the previous voters' roll under section 243—
- (a) the second general election to be conducted under section 257(1)(b);

S. 240(12)
amended by
No. 30/2022
s. 36(2)(3),
substituted by
No. 3/2023
s. 11.

- (b) the general election of Councillors for the Whittlesea City Council to be held on the fourth Saturday in October 2024;
- (c) the general election of Councillors for the Casey City Council to be held on the fourth Saturday in October 2024;
- (d) the second general election of Councillors for the Moira Shire Council to be held on the fourth Saturday in October 2028.

Notes

1. Section 10(1) of the **Local Government (Whittlesea City Council) Act 2020** and section 10(1) of the **Local Government (Casey City Council) Act 2020** provide that a general election for the Whittlesea City Council and Casey City Council is to be held on the fourth Saturday in October 2024.
2. Section 10(1) of the **Local Government (Moira Shire Council) Act 2023** provides that a second general election for the Moira Shire Council is to be held on the fourth Saturday in October 2028.

241 Residents entitled to be enrolled without application

- (1) A person who as at the close of the roll would be an elector in respect of an address in a municipal district if a roll of electors for the Legislative Assembly was compiled from the register of electors, is entitled as a resident without application to be enrolled on the voters' roll in respect of the ward in which that address is located.
- (2) Despite subsection (1), a person who—
 - (a) will attain 18 years of age on or before election day; and
 - (b) had the person been not less than 18 years of age as at the close of the roll would be an elector in respect of an address in a ward if a

roll of electors for the Legislative Assembly was compiled from the register of electors—
is entitled as a resident without application to be enrolled on the voters' roll in respect of that address.

242 Owner ratepayers may apply for enrolment

- (1) A person who as at the close of the roll—
- (a) is not a person referred to in section 241; and
 - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before election day; and
 - (c) is an owner of any rateable property in the municipal district—

is entitled as a ratepayer to apply to be enrolled on the voters' roll in respect of the ward in which that rateable property is located.

- (2) A person who is enrolled on the voters' roll as an owner under this section may resign the enrolment by an application containing the details required by the regulations delivered to the Council office before the close of the roll.

S. 243
(Heading)
amended by
No. 30/2022
s. 37(1).

243 Entitlement to enrolment without application until the second general election to be conducted under section 257(1)(b) or the general election for Whittlesea City Council and Casey City Council in October 2024

S. 243(1)
amended by
No. 30/2022
s. 37(2).

- (1) Despite section 242 but subject to subsection (2), if a person—
- (a) is immediately before the commencement of this section enrolled on the last voters' roll for the Council in respect of a rateable property in accordance with section 13 of the **Local Government Act 1989**; and

- (b) would, but for the repeal of section 13 of the **Local Government Act 1989**, have continued to be entitled to be so enrolled—

the person is by virtue of this section entitled to be enrolled without application on the voters' roll prepared in respect of the first general election to be conducted under section 257(1)(a) and any by-election required to be held before the second general election to be conducted under section 257(1)(b) or the general election of Councillors for the Whittlesea City Council or the Casey City Council to be held on the fourth Saturday in October 2024.

Note

Section 10(1) of the **Local Government (Whittlesea City Council) Act 2020** and section 10(1) of the **Local Government (Casey City Council) Act 2020** provide that a general election for the Whittlesea City Council and Casey City Council is to be held on the fourth Saturday in October 2024.

**Note to
s. 243(1)
inserted by
No. 30/2022
s. 37(3).**

- (2) Despite subsection (1), if an application by the owner or 2 owners of a rateable property to which subsection (1) applies to be enrolled on the voters' roll instead of a person that would otherwise be enrolled by virtue of subsection (1) is accepted, the owner or 2 owners are to be enrolled on the voters' roll referred to in subsection (1) instead of that person.

244 Occupier ratepayers may apply to be enrolled

- (1) A person who as at the close of the roll—
- (a) is not a person referred to in section 241; and
 - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before the election day; and
 - (c) is the occupier of any rateable property in the municipal district, whether solely or jointly

with any other person or persons and is liable to pay the rates in respect of that rateable property—

is entitled as a ratepayer to apply to be enrolled on the voters' roll in respect of the ward in which that rateable property is located.

- (2) For the purposes of subsection (1), an occupier is liable to pay the rates in respect of that rateable property only if—
 - (a) the occupier is paying the rates to the Council; or
 - (b) the lease under which the occupier occupies the rateable property specifies that the occupier is liable to pay the rates.
- (3) A person who is enrolled on the voters' roll as an occupier under subsection (1) may renew the enrolment by an application containing the details required by the regulations delivered to the Council office before the close of the roll for the next general election.
- (4) A person who is enrolled on the voters' roll as an occupier under subsection (1) may resign the enrolment by an application containing the details required by the regulations delivered to the Council office before the close of the roll.
- (5) A person who is enrolled on the voters' roll as an occupier under subsection (1) ceases to be enrolled on the voters' roll if the entitlement under subsection (1) ceases to exist.

245 Provisions relating to corporations

- (1) If as at the close of the roll a corporation is the owner of any rateable property in the municipal district whether solely or jointly, the corporation may apply to appoint a person to represent it at Council elections and to be enrolled on the voters'

roll for the ward where the rateable property is located and vote on its behalf.

- (2) If as at the close of the roll a corporation is the occupier of any rateable property in the municipal district whether solely or jointly and is liable to pay the rates in respect of that rateable property, the corporation may apply to appoint a person to represent it at Council elections and to be enrolled on the voters' roll for the ward where the rateable property is located and vote on its behalf.
- (3) Section 244(2) applies in respect of an application under subsection (2) as if any reference to "subsection (1)" in that section was a reference to "subsection (2)" of this section.
- (4) A corporation may only exercise the right of entitlement conferred by subsections (1) and (2) once, regardless of how many rateable properties it owns or occupies or jointly owns or occupies in the municipal district.
- (5) A corporation may only be represented by one person under this section at a Council election in respect of the municipal district, regardless of anything to the contrary in subsections (1) and (2).
- (6) An application for a person to be appointed under this section is void if at the time the appointment is made the person appointed—
 - (a) is not a director or company secretary (however styled) of the corporation; or
 - (b) has not reached 18 years of age and will not attain the age of 18 years on or before election day; or
 - (c) has not consented in writing to be appointed;
or

- (d) is as a result of another appointment for the purposes of subsection (1) or (2) which is still in force, already enrolled on the voters' roll in respect of the municipal district for which the appointment is made.
- (7) An appointment for the purposes of subsection (1) or (2) is revoked if—
- (a) the person appointed—
 - (i) ceases to be a director or company secretary (however styled) of the corporation; or
 - (ii) dies; or
 - (iii) delivers a notice of resignation containing the details required by the regulations to the Council office; or
 - (iv) for any other reason becomes entitled in their own right to be enrolled on the voters' roll in respect of the municipal district for which the appointment was made; or
 - (b) notice of revocation containing the details required by the regulations is delivered to the Council office; or
 - (c) the entitlement under subsection (1) or (2) ceases to exist.

246 Provisions relating to appointments and enrolments

- (1) On receiving a notice of an appointment under section 245 or an application for enrolment under section 242 or 244, the Chief Executive Officer must enrol the person unless the Chief Executive Officer believes that the person is not entitled to be enrolled.

- (2) If the Chief Executive Officer believes the person is not entitled to be enrolled, the Chief Executive Officer must—
 - (a) refuse to enrol the person; and
 - (b) advise the person who submitted the notice of appointment or application for enrolment of the refusal in writing and give the person the reason for the refusal.
- (3) The Chief Executive Officer may, either orally or in writing, request any person or corporation to provide information to enable the Chief Executive Officer to determine the eligibility of a person to be enrolled.
- (4) If a request under subsection (3) is made in writing, the Chief Executive Officer may require the information to be given in writing and signed by the person giving the information.

247 Request that address not be shown

- (1) A person who is entitled as a ratepayer to be enrolled on the voters' roll under section 242, 243, 244 or 245 may lodge a request in the prescribed form with the Chief Executive Officer that the address of the person not be shown on any voters' roll if the person considers that having the address on the voters' roll places or would place the personal safety of the person or of members of the person's family at risk.
- (2) A request must—
 - (a) give particulars of the relevant risk; and
 - (b) be verified by statutory declaration by the person making the request.
- (3) If the Chief Executive Officer is satisfied that having the address of the person making the request shown on any voters' roll places or would place the personal safety of the person or of

members of the person's family at risk, the Chief Executive Officer must ensure that the address of the person is not entered on any voters' roll.

- (4) The Chief Executive Officer must notify the person in writing of a decision to grant or refuse a request made by a person under subsection (1).

Division 2—Voters' rolls

248 Chief Executive Officer to prepare voters' list of ratepayers

- (1) The Chief Executive Officer must supply to the VEC as at the times and in the form determined by the VEC—
- (a) a voters' list of the persons who appear to the Chief Executive Officer to be entitled to be enrolled under sections 242, 243, 244 and 245 identifying those persons whose request that their address not be shown has been accepted; and
 - (b) any information required by the VEC to enable the VEC to compile or amend the voters' roll.
- (2) For the purposes of section 243, in the absence of any other information as to a person's place of residence, the Chief Executive Officer may include in the voters' list under subsection (1)(a) a person whose address for the service of a rate notice appears from the rate records of the Council to be specified as an address (not being a post office box) that is located outside the municipal district.

249 VEC to compile voters' rolls

- (1) The VEC must compile a voters' roll containing the prescribed particulars of persons entitled to be enrolled as at the close of the roll from—

- (a) a roll of electors for the Legislative Assembly compiled from the register of electors in accordance with section 268; and
 - (b) the voters' lists and information provided under section 248.
- (2) A voters' roll must not include the address of any person who has been granted a request to be a silent elector under section 247 of this Act or section 31 of the **Electoral Act 2002**.
- (3) A voters' roll must be prepared—
- (a) in the case of a Council with an un-subdivided municipal district, for the whole of the municipal district; and
 - (b) in the case of a Council with a municipal district that is divided into wards, for each ward.
- (4) The VEC must, not later than 3 working days before nomination day, certify in writing that the voters' roll has been prepared in accordance with this Act.
- (5) A voters' roll provided to any person under section 252, 253 or 254 must not include the address of any person who has been granted a request, whether before or after the close of the voters' roll, to be a silent elector under section 247 of this Act or section 31 of the **Electoral Act 2002**.

250 Amendment of certified voters' roll

- (1) A certified voters' roll may be amended by the VEC only if—
- (a) there is any error or omission in the preparation, printing or copying of the voters' roll; or

- (b) there is any misnomer or any inaccurate description of any person, place or thing on the voters' roll.
- (2) The amendment of the voters' roll under subsection (1) must be certified by the VEC.
- (3) The certification under subsection (2) must—
 - (a) be in writing; and
 - (b) detail the amendments made; and
 - (c) specify the reasons why the amendments were made.

251 Inspection of certified voters' roll

- (1) The VEC must ensure that the voters' roll, as certified under section 249 and incorporating any amendments certified under section 250, is available for inspection by members of the public from the day the voters' roll is certified until one month after the election day.
- (2) The certified voters' roll must be available for inspection—
 - (a) at the locations; and
 - (b) at the times; and
 - (c) in the format—determined by the VEC.

252 Provision of voters' rolls to a candidate

- (1) On the request after nomination day of any candidate for an election, the VEC must provide a copy of the voters' roll for the ward for which the candidate has nominated to be the candidate.
- (2) The voters' roll must be provided to the candidate—
 - (a) free of charge; and
 - (b) in a form determined by the VEC.

- (3) A candidate must only use a copy of the voters' roll provided under subsection (1) for the purpose of conducting the election campaign.

Penalty: 120 penalty units.

- (4) A candidate who retires after the close of nomination day must—

- (a) destroy the copy of the voters' roll and any copies made from it; or
- (b) return the copy of the voters' roll and any copies made from it to the VEC—

within the period of 30 days after retiring.

Penalty: 120 penalty units.

- (5) A candidate must—

- (a) destroy the copy of the voters' roll and any copies made from it; or
- (b) return the copy of the voters' roll and any copies made from it to the VEC—

within the period of 30 days after the election day.

Penalty: 120 penalty units.

253 Provision of voters' rolls to a person or organisation other than a candidate

- (1) After receiving a request from any person or organisation, other than a candidate under section 252, for a voters' roll, the VEC must—
- (a) identify the public interest in providing the requested information; and
 - (b) consult with the Information Commissioner on the public interest in protecting the privacy of personal information; and
 - (c) taking into account the advice of the Information Commissioner, make a finding whether or not the public interest in

providing the voters' roll outweighs the public interest in protecting the privacy of personal information in the particular circumstances.

- (2) Subject to subsection (3), if the VEC has made a finding under subsection (1) that the public interest in providing the voters' roll outweighs the public interest in protecting the privacy of personal information, the VEC may—
- (a) provide the voters' roll to the person or organisation; and
 - (b) charge a fee that covers the cost to the VEC of providing the voters' roll.
- (3) The VEC must obtain from the person or organisation to be provided with a voters' roll under this section an undertaking that the person or organisation will—
- (a) only use the voters' roll for the purpose for which the VEC agreed to provide the voters' roll; and
 - (b) not copy the voters' roll or give it to any other person or organisation; and
 - (c) return the voters' roll to the VEC or destroy the voters' roll after using it for the purpose for which the VEC agreed to provide the voters' roll.
- (4) A person or organisation that is provided with a copy of the voters' roll under subsection (2) must comply with subsection (3).

Penalty: In the case of a natural person,
120 penalty units;
In the case of a body corporate,
600 penalty units.

254 Use of voters' roll by the Chief Executive Officer

- (1) The Chief Executive Officer may use a copy of the voters' roll on behalf of the Council for the purpose of communicating or consulting with the municipal community in relation to the performance of the Council's functions.
- (2) The Chief Executive Officer must obtain from any person or organisation to be provided with a voters' roll under this section an undertaking that the person or organisation will—
 - (a) not copy the voters' roll or give it to any other person or organisation; and
 - (b) return the voters' roll to the Chief Executive Officer or destroy the voters' roll after using it for the purposes of this section.
- (3) A person or organisation that is provided with a copy of the voters' roll under subsection (1) must comply with an undertaking given under subsection (2).

Penalty: In the case of a natural person,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (4) If requested by the Chief Executive Officer for the purposes of this section, the VEC must provide a copy of the voters' roll to the Chief Executive Officer.

255 Validity of voters' rolls

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

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

- (b) from any cause, there has been an error in the preparation, printing or copying of the voters' roll; or
- (c) there has been any misnomer or any inaccurate description of any person, place or thing on the voters' roll which is capable of being given meaning.

Division 3—Candidate for election

256 Candidate for election

- (1) Subject to this section, a person may nominate as a candidate for an election for any ward of the Council if they are qualified to be a Councillor under this Act.
- (2) A person who is a Councillor of a Council cannot nominate as a candidate for an election as a Councillor of any Council unless at the time of the nomination the person will cease to hold office as a Councillor on or before the election day for that election.
- (3) A person who has nominated as a candidate for an election as a Councillor of a Council cannot nominate as a candidate for any other election as a Councillor unless at the time of the nomination the person has withdrawn the previous nomination.
- (4) If a person makes a nomination in contravention of subsection (2) or (3), the nomination is void.
- (5) A person must not nominate as a candidate for more than one election of Councillors to be held on the same day.
- (6) If a person makes nominations in contravention of subsection (5), all the nominations are void.

- (7) A person cannot nominate as a candidate for an election as a Councillor unless the person has completed the prescribed training.
- (8) A person who is not qualified to be a Councillor under this Act only because they hold a position or office specified in section 34(2)(b) or (d), is not prevented from nominating as a candidate at an election if for the duration of the election period for that election—
- (a) the person has taken leave from that office or position; and
 - (b) the person does not perform any of the duties of that office or position.

Note

A person who holds a position specified in section 34(2)(b) or (d) cannot take the oath or affirmation of office as a Councillor unless they resign from that office or position before taking the oath or affirmation of office.

Division 4—Holding of general elections and by-elections

257 General elections

- (1) A general election of Councillors for all Councils must be held—
- (a) on the fourth Saturday in October 2020; and
 - (b) thereafter on the fourth Saturday in October in the fourth year after the last general election of Councillors for all Councils was held.
- (2) A general election is an election—
- (a) which is to be conducted in each ward of a Council; and
 - (b) for all the offices of Councillor.

- (3) Despite subsection (1), the Minister may, by notice published in the Government Gazette before the nomination day, change the election day under subsection (1)—
- (a) in respect of all Councils; or
 - (b) in respect of one or more Councils specified in the notice—
- to another Saturday as nearest as possible to that election day having regard to the need to ensure that the election is conducted in a participatory and secure manner.
- (4) The Minister may change the election day under subsection (1) if the Minister—
- (a) is satisfied that an event or circumstance could adversely affect the conduct of the general election for all Councils or for one or more Councils if the general election were to be held on that day; and
 - (b) has requested advice from the VEC in relation to the proposed change to the election day; and
 - (c) has considered the advice provided to the Minister by the VEC.
- (5) Without limiting the generality of subsection (4), an event or circumstance that could adversely affect the conduct of the general election includes any of the following—
- (a) a general election is to be held under the **Constitution Act 1975**;
 - (b) a general election for the House of Representatives or an election for the Senate, of the Commonwealth Parliament, is to be held;
 - (c) school holidays;

- (d) a natural disaster;
- (e) the declaration of a state of disaster under section 23 of the **Emergency Management Act 1986**.

258 Extraordinary vacancy

- (1) An extraordinary vacancy occurs if the office of a Councillor becomes vacant under section 31 or 35(1).
- (2) If the office of a Councillor becomes vacant as a result of the resignation of a Councillor, an extraordinary vacancy occurs on the day that the written resignation is delivered to the Chief Executive Officer.
- (3) The death or incapacity of an elected candidate after the close of voting but before the declaration of the result does not affect the declaration of the election of any other elected candidates but the vacancy arising as a result of the death or incapacity of the elected candidate is to be treated as an extraordinary vacancy occurring on the day on which the candidate would have been declared elected.
- (4) If an extraordinary vacancy is caused by the ouster of a Councillor from office by the Supreme Court, the extraordinary vacancy occurs on the following days—
 - (a) if notice of appeal to the Court of Appeal is not served within the period allowed, on the day after that period;
 - (b) if an appeal to the Court of Appeal is dismissed, on the day the decision is given.
- (5) If an extraordinary vacancy is caused by the declaration of VCAT, the extraordinary vacancy occurs on the day the declaration is made.

- (6) Despite subsection (7), if more than one extraordinary vacancy in a ward is caused by the declaration of VCAT, an election must be held to fill all the extraordinary vacancies at the same time.
- (7) If more than one extraordinary vacancy occurs in respect of the same ward and an election is required to be held to fill the vacancies on the same day, one election must be held to fill all the extraordinary vacancies at the same time.
- (8) The Chief Executive Officer must within 3 working days of—
 - (a) receiving a written resignation from a Councillor; or
 - (b) becoming aware of an extraordinary vacancy—

notify the Minister and the VEC that an extraordinary vacancy has occurred.

259 When is an extraordinary vacancy not to be filled?

- (1) An extraordinary vacancy is not to be filled if the VEC determines that there is insufficient time to conduct a by-election or countback to fill the extraordinary vacancy before the period of 3 months before a general election.
- (2) The VEC must advise the Minister and the relevant Council of a determination under subsection (1) as soon as practicable after it is made.

260 When is a by-election to be held?

- (1) Subject to section 259, a by-election must be held to fill an extraordinary vacancy if the extraordinary vacancy occurs—
 - (a) in a ward consisting of one Councillor; or

- (b) in a ward consisting of more than one Councillor but there are no eligible candidates from the last election who are available to be elected by a countback; or
 - (c) in a ward that has already held a by-election to fill an extraordinary vacancy since the last general election.
- (2) Subject to subsection (3), a by-election must be held on a Saturday on a date fixed by the VEC that occurs within 100 days—
- (a) of the date of the extraordinary vacancy occurring; or
 - (b) of the date of the determination by the election manager that the extraordinary vacancy cannot be filled by a countback.
- (3) If the VEC considers that the process for holding a by-election in accordance with subsection (2) would be adversely affected by a public holiday or a school holiday, the VEC may do any or all of the following—
- (a) fix as the by-election date a Saturday not later than 150 days after the date specified in subsection (2)(a) or (b);
 - (b) fix a different date for the close of the roll;
 - (c) fix a different nomination day.
- (4) The VEC must—
- (a) publish any date fixed in accordance with subsection (2) or (3) in the Government Gazette; and
 - (b) advise the Minister and the relevant Council as to the date fixed in accordance with subsection (2) or (3).

261 When is a countback to be held?

Subject to sections 259 and 260, a countback in accordance with Division 8 must be held to fill an extraordinary vacancy if—

- (a) the extraordinary vacancy occurs in a ward consisting of more than one Councillor; and
- (b) there are one or more eligible candidates from the last election or countback conducted for the ward who are available to be elected.

Division 5—Conduct of elections

262 Voting system

- (1) The voting system to be used for general elections and by-elections is to be determined by the Minister in accordance with this section.
- (2) Before making a determination under this section, the Minister must consider advice obtained by the Minister from the VEC.
- (3) The Minister must determine the voting system to be used for the first general elections to be held after the commencement of section 257 within 2 months after the commencement of section 257.
- (4) The Minister must publish a notice of the determination under subsection (3) in the Government Gazette.
- (5) Subject to subsection (3), a change to the voting system to be used for a general election must be determined in accordance with the regulations at least 12 months before the general election to which the regulations will apply.

- (6) A general election must be held using the voting system that applies under the most recent determination made under subsection (3) or the regulations referred to in subsection (5).
- (7) A by-election must be held using the voting system that was used for the preceding general election.
- (8) In this section, *voting system* means—
 - (a) postal voting; or
 - (b) attendance voting.

263 Conduct of election

- (1) An election must be conducted by the VEC in accordance with this Act and the regulations.
- (2) Without limiting the generality of subsection (1), the VEC may use electronic counting equipment and systems to assist in the counting of votes at an election.

264 Filling of vacancies

- (1) If the number of candidates exceeds the number of vacancies to be filled at an election in a ward, an election must be held for that ward.
- (2) If—
 - (a) the number of candidates; or
 - (b) the withdrawal, retirement or death of a candidate—

means that the number of candidates is equal to or less than the number of vacancies to be filled at an election in a ward, the election manager must declare the candidate or candidates to be elected and give notice of the declaration.

- (3) If the election manager declares the candidate or candidates to be elected under subsection (2), the declaration must be made—

- (a) in the case of a general election, as soon as practicable on or after election day; or
 - (b) in the case of a by-election, as soon as practicable after the close of nominations.
- (4) If a by-election is required following the death or retirement of a candidate, the vacancy is deemed to have occurred on election day.
- (5) If there are no candidates for an election the election fails and the election manager must give notice that the election has failed.
- (6) A vacancy caused if—
- (a) there is no candidate; or
 - (b) the number of candidates is less than the number of vacancies—
- is to be treated as an extraordinary vacancy occurring on the nomination day.
- (7) A vacancy to which subsection (6) applies is to be filled at a by-election held using the voters' roll certified for the general election in respect of which the vacancy has arisen.
- (8) The election manager must give notice of—
- (a) an election under subsection (1); and
 - (b) an extraordinary vacancy under subsection (6).
- (9) A notice under subsection (8) must include the matters prescribed by the regulations.

265 One vote per person

- (1) A person who is entitled to vote at an election of a Councillor is only entitled to one vote in respect of each municipal district for which the person is enrolled.

- (2) A person is entitled to vote at an election if the person is—
- (a) enrolled on the voters' roll; or
 - (b) a member of a category of persons which is prescribed by the regulations to be persons entitled to vote.

266 Voting is compulsory

- (1) Subject to subsection (4), it is compulsory for a person who is enrolled under section 241 as a resident on the voters' roll to vote in any election for the ward in respect of which the person is enrolled.
- (2) Subject to subsection (4), for the purposes of the following elections, it is compulsory for a person who is enrolled under Division 1 on the voters' roll to vote in any election for the ward in respect of which the person is enrolled—
- (a) the second general election to be conducted under section 257(1)(b);
 - (b) the general election of Councillors for the Whittlesea City Council or the Casey City Council to be held on the fourth Saturday in October 2024;
 - (c) the second general election of Councillors for the Moira Shire Council to be held on the fourth Saturday in October 2028;
 - (d) each general election conducted after the second general election or the elections specified in paragraphs (b) and (c).

S. 266(2)
amended by
No. 30/2022
s. 38,
substituted by
No. 3/2023
s. 12(1).

Notes

1. Section 10(1) of the **Local Government (Whittlesea City Council) Act 2020** and section 10(1) of the **Local Government (Casey City Council) Act 2020** provide that a general election for the Whittlesea City Council

and Casey City Council is to be held on the fourth Saturday in October 2024.

2. Section 10(1) of the **Local Government (Moirā Shire Council) Act 2023** provides that a second general election for the Moira Shire Council is to be held on the fourth Saturday in October 2028.
- (3) Unless subsection (4) applies, it is an offence against this Act to fail to vote as required by subsection (1) or (2).
Penalty: 1 penalty unit.
- (4) Subsection (1) or (2) does not apply if an exemption prescribed by the regulations applies to the person.

267 Infringement offence and infringement penalty

- (1) In this section, *prosecution officer* means the VEC or a person appointed by the VEC for the purposes of this section.
- (2) A prosecution officer may serve an infringement notice on a person who the prosecution officer has reason to believe has committed an offence against section 266.
- (3) An offence referred to in subsection (2) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (4) The infringement penalty for an offence against section 266 is 0.5 penalty units.
- (5) In addition to the details required under section 13 of the **Infringements Act 2006**, the following details of the election to which the offence referred to in subsection (2) relate must be included in the infringement notice—
 - (a) the name of the Council;
 - (b) if applicable, the name of the ward;

- (c) if the election was conducted using attendance voting, the date of the election;
 - (d) if the election was conducted by postal voting, the date the voting closed.
- (6) Payments received by the prosecution officer under this section, in relation to the enforcement of an offence referred to in subsection (2), must be paid to the Council in respect of which the offence relates.

268 VEC's election and enforcement expenses

- (1) The VEC may send to each Council an account of the reasonable expenses incurred by the VEC—
- (a) for preparing and providing the voters' roll; and
 - (b) for conducting an election for the Council, including in advertising and giving notice of the election and electoral process; and
 - (c) for the administration, enforcement and prosecution of any offence related to compulsory voting under this Act, the **City of Melbourne Act 2001** or the regulations.
- (2) A Council is responsible for the reasonable expenses of the VEC as specified in an account sent to the Council under subsection (1).
- (3) For the purposes of this section, reasonable expenses that may be recovered from a Council do not include any costs recovered under the **Infringements Act 2006** and passed on to the VEC under that Act (being an enforcement agency under that Act).

269 Marking of ballot-paper at election to express preference

- (1) A voter must mark the voter's vote on the ballot-paper by placing—
 - (a) the number 1 opposite the name of the candidate for whom the voter votes as first preference; and
 - (b) the numbers 2, 3, 4 (and so on as the case requires) opposite the remaining candidates' names so as to indicate the order of preference by an unbroken numerical sequence.
- (2) In the case of 2 candidates, the requirements of subsection (1) are sufficiently complied with if the ballot-paper is marked with the number 1 opposite the name of one candidate to indicate the voter's first preference.
- (3) In the case of an election where there are more than 2 candidates, the requirements of subsection (1) are sufficiently complied with if the ballot-paper is marked with a number 1, 2, 3 or 4 (and so on as the case requires) opposite the names of all the candidates on the ballot-paper except one.
- (4) A ballot-paper can only be rejected if it is not marked in accordance with this section.
- (5) Except as otherwise expressly provided, a ballot-paper is to be given effect to according to the voter's intention so far as the voter's intention is clear.

270 Validity of election

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

- (2) The validity of an election is not affected by—
- (a) any irregularity in any of the proceedings preliminary to voting; or
 - (b) any failure to hold the election at any place appointed; or
 - (c) any failure to comply with any directions as to the holding of the election or the counting of the votes; or
 - (d) any mistake in the use of any forms—
- if the election was conducted in accordance with the principles in this Act and the irregularity, failure or mistake did not affect the result of the election.

Division 6—Counting of votes—single vacancy

271 Application of Division

This Division applies to the following—

- (a) an election of a Councillor for a single member ward of a Council with a subdivided municipal district;
- (b) any by-election where only one vacancy in the office of Councillor of a Council is to be filled at the by-election.

272 Only 2 candidates

If only one Councillor is to be elected and there are only 2 candidates the result is to be determined as follows—

- (a) the candidate who has received the greater number of first preference votes is to be declared elected by the election manager;

- (b) if the 2 candidates have received an equal number of votes the result is to be determined by lot by the election manager.

273 More than 2 candidates

If only one Councillor is to be elected and there are more than 2 candidates the result is to be determined as follows—

- (a) the candidate who has received the greatest number of first preference votes if that number constitutes an absolute majority of votes is to be declared elected by the election manager;
- (b) *absolute majority of votes* means a number of votes greater than one-half of the total number of ballot-papers (excluding ballot-papers which are rejected) and if necessary includes the vote by lot;
- (c) if no candidate has received an absolute majority of votes, the election manager upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any one scrutineer, if present, appointed by each candidate but of no other person, must—
- (i) open all the sealed parcels containing used ballot-papers; and
- (ii) arrange such ballot-papers together with the allowed postal ballot-papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for

- all the remaining candidates, omitting ballot-papers which are rejected; and
- (iii) declare the candidate who has received the fewest first preference votes a defeated candidate; and
 - (iv) distribute the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference; and
 - (v) after the distribution again ascertain the total number of votes given to each non-defeated candidate;
- (d) the candidate who has then received the greatest number of votes if that number constitutes an absolute majority of votes is to be declared elected by the election manager;
 - (e) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference is to be repeated until one candidate has received an absolute majority of votes and is declared elected by the election manager;
 - (f) if on any count 2 or more candidates have an equal number of votes and one of them has to be declared a defeated candidate, the result is to be determined—
 - (i) by declaring whichever of those candidates had the fewest votes at the last count at which those candidates

had a different number of votes to be defeated; or

- (ii) if a result is still not obtained or there has been no count, by lot by the election manager;
- (g) if on the final count 2 candidates have an equal number of votes, the result is to be determined by lot by the election manager.

Division 7—Counting of votes—any election to which Division 6 does not apply

274 Application of Division

This Division applies to any election to which Division 6 does not apply.

275 2 or more Councillors to be elected

- (1) The result of the election is to be determined as set out in this section.
- (2) In this section—

continuing candidate means a candidate not already elected or excluded from the count;

quota means the number determined by dividing the number of first preference votes by one more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by one;

surplus votes means the number, if any, of votes in excess of the quota of each elected candidate.

- (3) A reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer.

- (4) The election manager upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any one scrutineer, if present, appointed by each candidate but of no other person must—
- (a) open all the sealed parcels containing used ballot-papers; and
 - (b) arrange the ballot-papers together with the allowed postal ballot-papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot-papers which are rejected; and
 - (c) ascertain—
 - (i) the number of first preference votes given for each candidate; and
 - (ii) the total number of first preference votes.
- (5) A quota is to be determined.
- (6) Any candidate who has received a number of first preference votes equal to or greater than the quota is to be declared duly elected by the election manager.
- (7) Unless all the vacancies have been filled, the surplus votes of each elected candidate are to be transferred to the continuing candidates as follows—
- (a) the number of surplus votes of the elected candidate is to be divided by the number of first preference votes received by the elected candidate and the resulting fraction is the transfer value;

- (b) the total number of ballot-papers of the elected candidate that express the first preference vote for the elected candidate and the next available preference for a particular continuing candidate is to be multiplied by the transfer value;
 - (c) the number obtained under paragraph (b) (disregarding any fraction) is to be added to the number of first preference votes of the continuing candidate and all those ballot-papers are to be transferred to the continuing candidate.
- (8) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under subsection (7) is to be declared duly elected by the election manager.
- (9) Unless all the vacancies have been filled, the surplus votes, if any, of any candidate elected under subsection (8) or elected subsequently under this subsection are to be transferred to the continuing candidates in accordance with subsection (7) and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of the transfer is to be declared duly elected by the election manager.
- (10) If a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus votes of a particular elected candidate under subsection (7) or (9), no votes of any other candidate are to be transferred to the continuing candidate.
- (11) For the purposes of the application of subsection (7) in relation to a transfer of the surplus votes of an elected candidate under subsection (9) or (14), each ballot-paper of

the elected candidate obtained by the elected candidate on a transfer is to be dealt with as if—

- (a) any vote it expressed for the elected candidate were a first preference vote; and
 - (b) the name of any other candidate previously elected or excluded had not been on the ballot-paper; and
 - (c) the numbers indicating subsequent preferences had been altered accordingly.
- (12) If, after the counting of first preference votes or the transfer of any surplus votes of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes is to be excluded and all that candidate's votes are to be transferred to the continuing candidates as follows—
- (a) the total number of ballot-papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be transferred at a transfer value of one for each ballot-paper and added to the number of votes of the continuing candidate and all those ballot-papers are to be transferred to the continuing candidate;
 - (b) the total number, if any, of other votes obtained by the excluded candidate on transfers are to be transferred from the excluded candidate beginning with the highest transfer value and ending with the ballot-papers received at the lowest transfer value, as follows—

- (i) the total number of ballot-papers received by the excluded candidate at a particular transfer value and expressing the next available preference for a particular continuing candidate is to be multiplied by that transfer value;
 - (ii) the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate;
 - (iii) all those ballot-papers are to be transferred to the continuing candidate.
- (13) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer of votes of an excluded candidate under subsection (12) or (16) is to be declared duly elected by the election manager.
- (14) Subject to subsection (15), unless all the vacancies have been filled, the surplus votes, if any, of a candidate elected under subsection (13) are to be transferred in accordance with subsection (7).
- (15) If a candidate elected under subsection (13) is elected before all the votes of the excluded candidate have been transferred, the surplus votes, if any, of the elected candidate are not to be transferred until the remaining votes of the excluded candidate have been transferred in accordance with subsection (12) to continuing candidates.
- (16) Subject to subsection (18), if after the transfer of all the votes of an excluded candidate no continuing candidate has received a number of votes greater than the quota—
 - (a) the continuing candidate who has the fewest votes must be excluded; and

- (b) that candidate's votes must be transferred in accordance with subsection (12).
- (17) If a candidate is elected as a result of a transfer of ballot-papers under subsections (12) and (16), no other ballot-papers of an excluded candidate are to be transferred to the candidate so elected.
- (18) In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is to be elected notwithstanding that that number is below the quota.
- (19) Despite any other provision of this section, if the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates are to be declared duly elected by the election manager.
- (20) Subject to subsections (21), (22) and (23), if after any count or transfer, 2 or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative size of the surpluses, the largest surplus being transferred first.
- (21) Subject to subsection (23), if after any count or transfer, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first.
- (22) For the purposes of subsection (21), if there has been no count or transfer the election manager must determine the order in which the surpluses are to be dealt with.

- (23) If after any count or transfer, a candidate obtains surplus votes, those surplus votes are not to be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.
- (24) If on any count or transfer 2 or more candidates have the fewest number of votes and the candidate who has the fewest number of votes is required to be excluded, the result is to be determined—
- (a) by declaring whichever of those candidates had the fewest votes at the last count at which those candidates had a different number of votes to be excluded; or
 - (b) if a result is still not obtained or there has been no count or transfer, by lot by the election manager.
- (25) If on the final count or transfer 2 candidates have an equal number of votes, the result is to be determined by lot by the election manager.
- (26) If a candidate is elected by reason that—
- (a) the number of first preference votes received by the candidate; or
 - (b) the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers—
- is equal to the quota, all the ballot-papers expressing those votes are to be set aside as finally dealt with.
- (27) For the purposes of this section each of the following constitutes a separate transfer—
- (a) a transfer under subsection (7), (9) or (14) of all the surplus votes of an elected candidate;

- (b) a transfer in accordance with subsection (12)(a) of all first preference votes of an excluded candidate;
- (c) a transfer in accordance with subsection (12)(b) of all the votes of an excluded candidate or candidates, as the case may be, at a particular transfer value.

Division 8—Countback process and counting of votes

276 Definitions

In this Division—

eligible candidate means a person who—

- (a) was a candidate at the original election; and
- (b) did not withdraw or retire from, and was not elected at, that election; and
- (c) is qualified to be a Councillor;

original election means the most recent election for the ward that was not conducted by a countback;

vacating Councillor means the person whose departure created the extraordinary vacancy (even if that person never became a Councillor).

277 Exclusion of candidate

- (1) The election manager must exclude from participation in a countback any candidate which the election manager knows has died or has otherwise ceased to be qualified to be a Councillor.
- (2) A candidate is not to be excluded from participation in a countback only because the candidate failed to complete a declaration under

section 282(1) after a countback to fill a previous extraordinary vacancy.

- (3) An exclusion under subsection (1) cannot be made once the countback procedure has been commenced.

278 Filling of multiple vacancies

- (1) If there is more than one extraordinary vacancy to be filled at any time, the extraordinary vacancy that occurred first is to be filled first.
- (2) If, in the opinion of the election manager, it is impossible to determine which vacancy occurred first, the vacating Councillor who was elected first (either at the same election or in point of time) is deemed to have left their office before the other vacating Councillor or Councillors.
- (3) If it is still not possible to determine which vacancy occurred first despite subsection (2), the election manager must determine by lot which extraordinary vacancy is to be filled first.
- (4) The election manager may comply with section 281 in respect of an extraordinary vacancy even while the election manager or another election manager is complying with that section in respect of another extraordinary vacancy.

279 Procedure if there are no eligible candidates

If there are no eligible candidates, the countback fails and section 283 applies.

280 Procedure if there is only one eligible candidate

- (1) This section applies if there is only one eligible candidate.

- (2) The election manager must invite in writing the candidate to complete a written declaration specifying that the candidate is qualified to be a Councillor.
- (3) A written declaration under subsection (2) must be given to the election manager within 14 days of the date of the written invitation.
- (4) If the candidate complies with this section, the election manager must declare the candidate elected in accordance with section 284.
- (5) If the candidate does not comply with this section, the countback fails and section 283 applies.

281 Procedure if there is more than one eligible candidate

- (1) This section applies if there is more than one eligible candidate.
- (2) Within 14 days of the extraordinary vacancy occurring, the election manager must—
 - (a) publish a notice on the VEC's Internet site in accordance with subsection (3); and
 - (b) give written notice in accordance with subsection (3) to each eligible candidate at their last known address.
- (3) The notice on the VEC's Internet site and the written notice must specify the following—
 - (a) the date, time and place for the conduct of the countback; and
 - (b) that an eligible candidate is entitled to appoint scrutineers for the countback; and
 - (c) the contact details of the election manager.
- (4) The date for the conduct of the countback must be the date which is at least 14 days after the date of the notice which in the opinion of the election

manager is the earliest practicable date to conduct the countback.

- (5) The countback must be conducted in accordance with section 285.

282 Conduct of countback

- (1) The election manager must make reasonable efforts to—
- (a) notify the candidate who would be declared elected as a result of the countback; and
 - (b) invite the candidate to complete a written declaration within 48 hours that the candidate is qualified to be a Councillor.
- (2) If the candidate completes the written declaration under subsection (1), section 284 applies.
- (3) If the candidate does not complete the written declaration under subsection (1), a further count is to be conducted as soon as is practicable after the period in subsection (1) has expired until—
- (a) a candidate who would be declared elected as a result of the countback and is invited to complete a written declaration within 48 hours that the candidate is qualified to be a Councillor does so; or
 - (b) if there is only one candidate remaining, the candidate is invited to complete a written declaration within 48 hours that the candidate is qualified to be a Councillor and does so; or
 - (c) there are no eligible candidates remaining.
- (4) For the purposes of the application of subsection (3), each time the process is repeated, a preference indicated for a candidate who failed to complete a written declaration is to be disregarded.

- (5) If subsection (3)(a) or (b) applies, section 284 applies.
- (6) If subsection (3)(c) applies, the countback has failed and section 283 applies.

283 Procedure if the countback fails

- (1) If the countback fails or the election manager is otherwise unable to fill the extraordinary vacancy by a countback—
 - (a) the election manager must notify the Chief Executive Officer; and
 - (b) subject to section 259, a by-election must be held to fill the extraordinary vacancy.
- (2) By-elections to fill 2 or more vacancies may be held at the same time.

284 Declaration of result

- (1) As soon as possible after a candidate completes a candidate declaration after being requested by the election manager to do so, the election manager must publicly declare that candidate to be elected.
- (2) The election manager must as soon as is practicable after publicly declaring the candidate to be elected—
 - (a) give public notice of the name of the person elected; and
 - (b) advise the Minister of the result.

285 Process for counting of votes at a countback

- (1) This section sets out the process for the counting of votes at a countback.
- (2) All the votes counted in the original election are to be counted in accordance with the process specified in Division 7.

S. 285(4)(ab)
inserted by
No. 30/2022
s. 39.

- (3) The quota for election in the countback is the same quota as that which applied to the count of votes in the original election.
- (4) The preferences indicated on ballot-papers are to be disregarded during the countback unless they are preferences indicated for—
 - (a) a Councillor who was previously elected at the original election; or
 - (ab) a Councillor who was previously elected at a countback occurring after the original election referred to in paragraph (a); or
 - (b) an eligible candidate.
- (5) A countback under this section does not affect the election of a previously elected candidate.
- (6) The election or exclusion of a previously elected candidate during the countback has effect only for the purpose of the continuation of the count.
- (7) The countback stops—
 - (a) as soon as a candidate who was not previously elected obtains a quota; or
 - (b) when only one candidate who was not previously elected remains in the count.
- (8) If a candidate—
 - (a) who was not previously elected obtains a quota; or
 - (b) is the only candidate who was not previously elected remaining in the count—section 282(1) applies.

Division 9—Electoral offences

286 Nomination offence

A person who is not entitled to nominate as a candidate for election under section 256 must not nominate as a candidate for an election.

Penalty: 240 penalty units or imprisonment for 2 years.

287 Printing and publication of electoral material

- (1) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, electoral material unless the name and address of the person who authorised the electoral material is clearly displayed on its face.

Penalty: In the case of a natural person,
10 penalty units;

In the case of a body corporate,
50 penalty units.

- (2) It is sufficient compliance with subsection (1) if the electoral material is a letter or card which—
- (a) bears the name and address of the person who distributed it; and
 - (b) does not contain a representation or purported representation of a ballot-paper intended to be used in the election.
- (3) Subsection (1) does not apply in relation to—
- (a) a car sticker, an item of clothing, a lapel button, a lapel badge, a fridge magnet, a pen, a pencil or a balloon; or
 - (b) an article included in a prescribed class of articles.
- (4) Nothing in subsection (3)(a) is to be taken, by implication, to limit the generality of regulations that may be made by virtue of subsection (3)(b).

- (5) In this section, *address* means a street address or a post office box address.

288 Misleading or deceptive matter

- (1) A person must not—
- (a) print, publish or distribute; or
 - (b) cause, permit or authorise to be printed, published or distributed—

any matter or thing that the person knows, or should reasonably be expected to know, is likely to mislead or deceive a voter in relation to the casting of the vote of the voter.

Penalty: In the case of a natural person,
60 penalty units or imprisonment
for 6 months;

In the case of a body corporate,
300 penalty units.

- (2) A person must not—
- (a) print, publish or distribute; or
 - (b) cause, permit or authorise to be printed, published or distributed—

electoral material that contains a representation or purported representation of a ballot-paper for use in an election that the person knows, or should reasonably be expected to know, is likely to induce a voter to mark the voter's vote otherwise than in accordance with the directions on the ballot-paper.

Penalty: In the case of a natural person,
60 penalty units or imprisonment for
6 months;

In the case of a body corporate,
300 penalty units.

289 Heading to electoral advertisements

The proprietor of a newspaper must cause the word "advertisement" to be printed as a headline in letters not smaller than 10 point to each article or paragraph in the proprietor's newspaper containing electoral matter, the insertion—

- (a) of which is, or is to be, paid for; or
- (b) for which any reward or compensation or promise of reward or compensation is, or is to be, made.

Penalty: In the case of a natural person,
10 penalty units;
In the case of a body corporate,
50 penalty units.

290 Author to be identified

- (1) A person must not during the election period—
 - (a) print, publish or distribute; or
 - (b) cause, permit or authorise to be printed, published or distributed—

a newspaper, circular or pamphlet containing an article, report, letter or other matter containing electoral matter unless the author's name and address are set out at the end of the article, report, letter or other matter, or if only part of the article, report, letter or other matter appears in any issue of a newspaper, circular or pamphlet at the end of that part.

Penalty: In the case of a natural person,
10 penalty units;
In the case of a body corporate,
50 penalty units.

- (2) This section does not apply to the publication in a newspaper of—
 - (a) a leading article; or
 - (b) an article that consists solely of a report of a meeting and does not contain electoral matter, other than comment made by a speaker at the meeting.
- (3) It is sufficient compliance with subsection (1) if a newspaper containing a letter containing electoral matter sets out—
 - (a) the author's name; and
 - (b) the suburb or locality in which the author's address is located.

291 Distribution of printed electoral material

- (1) A person must not during the hours of voting within 400 metres of the entrance of, or within the building used as, a voting centre—
 - (a) hand out, distribute or otherwise make available; or
 - (b) authorise the handing out, distribution or otherwise making available—

to any person of any printed electoral material that the person knows, or should reasonably be expected to know, is not a registered how-to-vote card.

Penalty: 60 penalty units or 6 months imprisonment.

- (2) Subsection (1) does not apply to—
 - (a) the handing out, distribution, sale or otherwise making available of a newspaper by or on behalf of a newsagent, newspaper seller or distributor if the handing out, distribution, sale or making available is in

- the course of the newsagent's, newspaper seller's or distributor's employment or business; or
- (b) the handing out, distribution or otherwise making available of any printed electoral material in any room or building used as a campaign room or an office by a candidate in the election to which the material relates; or
 - (c) printed electoral material in the form of any poster or notice which is affixed or attached to any vehicle, building, hoarding or structure (whether moveable or fixed); or
 - (d) the distribution or otherwise making available of any printed electoral material during the hours of voting to any property within 400 metres of the entrance of a voting centre that is an early voting centre.

292 Power to request handing over of how-to-vote cards

- (1) The person in charge of a voting centre or a person authorised by the person in charge to act on that person's behalf under this section may request a person reasonably suspected by the person in charge of contravening section 291—
 - (a) to produce for inspection any how-to-vote cards in the person's possession; and
 - (b) to hand over all how-to-vote cards other than registered how-to-vote cards.
- (2) A person must not fail to comply with a request under subsection (1).

Penalty: 10 penalty units.

293 False or misleading information or particulars

- (1) A person must not make a statement knowing that it is false or misleading in a material particular in any information provided orally or in writing in

relation to voter enrolment or in any declaration or application in relation to an election under this Act or the regulations.

Penalty: 600 penalty units or imprisonment for 5 years.

- (2) An offence against subsection (1) is an indictable offence.

294 Voting offences

- (1) A person must not—

- (a) forge any ballot-paper, prescribed form or other form or document submitted or lodged in connection with an election; or
- (b) utter any forged ballot-paper, prescribed form or other form or document submitted or lodged in connection with an election; or
- (c) forge the signature of any person on any ballot-paper, prescribed form or other form or document submitted or lodged in connection with an election.

Penalty: 600 penalty units or imprisonment for 5 years.

- (2) An offence against subsection (1)(a), (b) or (c) is an indictable offence.

- (3) A person must not in respect of an election—

- (a) vote in the name of another person, including a dead or fictitious person; or
- (b) vote more than once; or
- (c) apply for a ballot-paper in the name of another person.

Penalty: 600 penalty units or imprisonment for 5 years.

- (4) An offence against subsection (3) is an indictable offence.

295 Offences at voting centre

- (1) A person must not during the hours of voting in respect of a voting centre—
- (a) canvass for votes; or
 - (b) solicit the vote of any voter; or
 - (c) induce or attempt to induce any voter not to vote for a particular candidate; or
 - (d) induce or attempt to induce any voter not to vote at the election; or
 - (e) exhibit any notice or sign relating to the election which is not an official notice; or
 - (f) wear or display any badge, emblem or political slogan of any candidate or political party of any candidate if the person is employed as an election official or is a scrutineer in the performance of duties or the exercise of powers under this Act or the regulations—

within 3 metres of any entrance to or within the premises used as the voting centre.

Penalty: 5 penalty units.

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

296 Tampering

- (1) Except as authorised by this Act or the regulations, a person must not—
- (a) open any sealed envelope containing a ballot-paper; or
 - (b) break the seal or open any ballot-box or parcel sealed under this Act or the regulations; or
 - (c) deal with any ballot-papers, voters' rolls or other material used at an election under this Act or the regulations.

Penalty: 600 penalty units or imprisonment for 5 years.

- (2) An offence against subsection (1)(a), (b) or (c) is an indictable offence.

297 Secrecy of vote

Except as authorised by this Act or the regulations, a person who is present when a voter votes must not—

- (a) ascertain or disclose by word, act or other means, the vote of the voter; or
- (b) directly or indirectly require, induce or attempt to induce the voter to show how the voter intends to vote; or
- (c) communicate with or assist the voter while voting or look at the voter's vote or ballot-paper.

Penalty: 120 penalty units or imprisonment for 1 year.

298 Agreement to post ballot-paper

- (1) A person who agrees to post a postal ballot-paper on behalf of a voter and who fails to post the ballot-paper in accordance with the agreement commits an offence and is liable to a fine not exceeding 20 penalty units.
- (2) Subsection (1) does not apply if the ballot-paper was received by the election manager in time for the ballot-paper to be counted in the election.

299 Offence to interfere with postal ballot materials

- (1) A person must not interfere with any material being, or to be, sent or delivered to a voter by the VEC at an election.

Penalty: 600 penalty units or imprisonment for 5 years.

- (2) An offence against subsection (1) is an indictable offence.
- (3) Subsection (1) does not apply to a person who is acting with the authority of the VEC.

300 Bribery, treating and undue influence

- (1) For the purposes of this section, *person's election conduct* means—
 - (a) the way in which the person votes at an election; or
 - (b) the person's nomination as a candidate for an election; or
 - (c) the person's support of, or opposition to, a candidate at an election; or
 - (d) the doing of any act or thing by the person the purpose of which is, or the effect of which is likely to be, to influence the preferences set out in the vote of a voter.

- (2) A person must not—
- (a) ask for, receive or obtain; or
 - (b) offer to ask for, or receive or obtain; or
 - (c) agree to ask for, or receive or obtain—
- any property or benefit of any kind for themselves or any other person, on an understanding that the person's election conduct will in any manner be influenced or affected.

Penalty: 600 penalty units or imprisonment for 5 years.

Note

Section 320 applies to an offence against subsection (2).

- (3) An offence against subsection (2)(a), (b) or (c) is an indictable offence.
- (4) A person must not, in order to influence or affect a person's election conduct—
- (a) give or confer; or
 - (b) promise to give or confer; or
 - (c) offer to give or confer—
- any property or benefit of any kind to that other person or to a third person.

Penalty: 600 penalty units or imprisonment for 5 years.

Note

Section 320 applies to an offence against subsection (4).

- (5) An offence against subsection (4) is an indictable offence.
- (6) This section does not apply in relation to a declaration of public policy or a promise of public action.

301 Interference with political liberty

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

Penalty: 600 penalty units or imprisonment for 5 years.

- (2) An offence against subsection (1) is an indictable offence.

- (3) A person must not, by violence or intimidation, influence the vote of a person at an election.

Penalty: 600 penalty units or imprisonment for 5 years.

- (4) An offence against subsection (3) is an indictable offence.

- (5) A person must not during the hours of voting within 400 metres of the entrance of, or within the building used as, a voting centre—

- (a) make any public demonstration having any reference to the election; or
- (b) use any loud speaker or amplifier or any other apparatus or device for broadcasting or disseminating any matter intended or likely to affect the result of the election.

Penalty: 1 penalty unit.

- (6) Subsections (1) and (5) do not apply to any official statement or announcement made or exhibited under the authority of this Act.

- (7) A person must not interfere with or attempt to interfere with a voter when the voter is marking their ballot-paper.

Penalty: 120 penalty units or imprisonment for 1 year.

302 Powers of election manager or election official

- (1) Any election manager or election official has the power and authority—
 - (a) to maintain order and keep the peace at any venue used for an election; and
 - (b) to cause to be removed any person who—
 - (i) obstructs the approaches to a voting centre; or
 - (ii) wilfully or unnecessarily obstructs or delays the proceedings at a voting centre; or
 - (iii) behaves in a disorderly manner; or
 - (iv) remains in a voting centre for a longer time than is reasonably necessary for the purpose of voting; or
 - (v) causes a disturbance at any election.
- (2) Police officers must aid and assist an election manager or election official in the exercise of the powers conferred by this section.

303 Offences relating to members of Council staff, election managers and election officials

- (1) A member of Council staff, an election manager or an election official must not—
 - (a) falsify any enrolment record; or
 - (b) alter a voters' roll after it has been signed and certified by the VEC without authority to do so.

Penalty: 120 penalty units.

- (2) A person must not impersonate a person appointed as an election manager or election official in the performance of duties or the exercise of powers under this Act.

Penalty: 10 penalty units.

- (3) A person appointed as an election manager or election official must not contravene a provision of this Act or the regulations which applies to the person and for which no other penalty is specified.

- (4) A person appointed as an election manager or election official must comply with any direction given to the person by the VEC.

- (5) A person must not wilfully contravene subsection (3) or (4).

Penalty: 60 penalty units or 6 months imprisonment.

- (6) A person must not negligently contravene subsection (3) or (4).

Penalty: 10 penalty units.

304 Prohibition on Councillor or member of Council staff

- (1) A Councillor or member of Council staff must not use Council resources in a way that—

- (a) is intended to; or
(b) is likely to—

affect the result of an election under this Act.

Penalty: 60 penalty units.

- (2) A Councillor or member of Council staff must not use Council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral material during the election period on behalf of, or purporting to be

on behalf of, the Council unless the electoral material only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulation.

Penalty: 60 penalty units.

305 Injunction

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence under section 287 or 288, the Supreme Court may on the application of a candidate in an election grant an injunction—
 - (a) restraining that person from engaging in the conduct; and
 - (b) if in the opinion of the Supreme Court it is desirable to do so, requiring that person to do any act or thing.
- (2) The Supreme Court may, if in the opinion of the Supreme Court it is desirable to do so, before considering an application under subsection (1), grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.
- (3) The Supreme Court may discharge or vary an injunction granted under subsection (1) or (2).
- (4) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Supreme Court to grant the injunction may be exercised—
 - (a) if the Supreme Court is satisfied that the person has engaged in conduct of that kind, whether or not it appears to the Supreme Court that the person intends to engage

- again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Supreme Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—
- (i) whether or not the person has previously engaged in conduct of that kind; and
 - (ii) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (5) If the application is for the grant of an injunction requiring a person to do a particular act or thing, the power of the Supreme Court to grant the injunction may be exercised—
- (a) if the Supreme Court is satisfied that the person has refused or failed to do that act or thing, whether or not it appears to the Supreme Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Supreme Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—
 - (i) whether or not the person has previously refused or failed to do that act or thing; and
 - (ii) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

- (6) The powers conferred on the Supreme Court under this section are in addition to, and not in derogation of, any other powers of the Supreme Court.

Division 10—Election campaign donations

306 Return by candidate

- (1) Within 40 days after election day, a person who was a candidate in the election must give an election campaign donation return to the Chief Executive Officer.
- (2) An election campaign donation return must—
- (a) be in the prescribed form; and
 - (b) contain the prescribed details in respect of any gifts received during the donation period by or on behalf of the candidate, to be used for or in connection with the election campaign, the amount or value of which is equal to or exceeds the gift disclosure threshold.
- (3) Despite subsection (2), a candidate is not required to specify the prescribed details of an amount in a return if—
- (a) the amount was a gift made in a private capacity to the candidate for the candidate's personal use; and
 - (b) the candidate has not used, and will not use, the gift solely or substantially for a purpose related to the election.
- (4) A reference in subsection (2) to a gift made by a person includes a reference to a gift made on behalf of the members of an unincorporated association.

- (5) For the purposes of this section, 2 or more gifts made by the same person to or for the benefit of a candidate are to be taken to be one donation.
- (6) A person who—
- (a) fails to give a return that the person is required to give under this section; or
 - (b) gives a return that contains particulars that the person knows are false or misleading in a material particular; or
 - (c) provides information that the person knows is false or misleading in a material particular to a person required to give a return under this section—
- is guilty of an offence and liable to a fine not exceeding 60 penalty units.
- (7) If a person is found guilty or convicted of an offence under subsection (6), a court may make an order that the offender give a return under subsection (1) that is not false or misleading in a material particular.
- (8) If no details are required to be included in a return under this section in respect of a candidate, the return—
- (a) must be given; and
 - (b) must include a statement to the effect that no gifts of a kind required to be disclosed were received.

307 Responsibilities of Chief Executive Officer

- (1) The Chief Executive Officer must, within 14 days after the period specified in section 306(1), submit a written report to the Minister specifying—
- (a) the names of the candidates in the election; and

- (b) the names of the candidates who submitted a return under section 306.
- (2) The Chief Executive Officer must ensure that, within 14 days after the period specified in section 306(1), a summary of each election campaign donation return given to the Chief Executive Officer under section 306 is made available on the Council's Internet site.
- (3) If an election campaign donation return is given after the end of the period specified in section 306(1), the Chief Executive Officer must ensure that a summary of the return is made available on the Council's Internet site.

308 Other matters relating to summaries of returns

- (1) A summary of an election campaign donation return must include the following information in respect of the candidate who gave the election campaign donation return—
 - (a) the name of the candidate;
 - (b) if a gift is included in the return, the name of the person who made the gift and the total value of the gift received from that person.
- (2) The Chief Executive Officer must ensure that a summary of an election campaign donation return is made available on the Council's Internet site until the close of the roll for the next general election.
- (3) The Chief Executive Officer must ensure that a copy of an election campaign donation return is available for inspection at the office of the Council during normal office hours for a period of 4 years from the date that it is given under section 306.

309 Certain gifts not to be accepted

- (1) It is unlawful for a candidate or a person acting on behalf of a candidate to receive during the donation period a gift made to or for the benefit of the candidate, being a gift the amount or value of which is equal to or exceeds the gift disclosure threshold unless—
 - (a) the name and address of the person making the gift are known to the person receiving the gift; or
 - (b) at the time when the gift is made—
 - (i) the person making the gift gives to the person receiving the gift the person's name and address; and
 - (ii) the person receiving the gift has no grounds to believe that the name and address so given are not the true name and address of the person making the gift.
- (2) A reference in subsection (1) or (2) to a gift made by a person include a reference to a gift made on behalf of the members of an unincorporated association.
- (3) A reference in subsection (1) or (2) to the name and address of a person making a gift is—
 - (a) in the case of a gift made on behalf of the members of an unincorporated association, a reference to—
 - (i) the name of the association; and
 - (ii) the names and addresses of the members of the executive committee (however described) of the association; and

- (b) in the case of a gift purportedly made out of a trust fund or out of the funds of a foundation, a reference to—
 - (i) the names and addresses of the trustees of the fund or of the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of the foundation.
- (4) For the purposes of subsection (1), a person who is a candidate in an election is to be taken to remain a candidate for 30 days after the election day in the election.
- (5) For the purposes of this section, 2 or more gifts made by the same person to or for the benefit of a candidate are to be taken to be one gift.

310 Certain amounts forfeited to State

- (1) If a person receives a gift that it is unlawful for the person to receive because of section 309, an amount equal to twice the amount or value of the gift is forfeited to the State.
- (2) An amount forfeited under subsection (1) may be recovered from the person who received the gift.

Division 11—Disputing the validity of an election

311 Application to VCAT for review

Within 14 days of the declaration of the result of an election—

- (a) a candidate in that election who disputes the validity of the election; or
- (b) 10 persons who were entitled to vote at the election who dispute the validity of the election; or

(c) the VEC—

may apply to VCAT for a review of the declaration of the result of the election.

312 Powers of VCAT

- (1) VCAT has the following powers in conducting a review under section 311—
 - (a) to declare that any person declared elected was not duly elected;
 - (b) to declare any candidate duly elected who was not declared elected;
 - (c) to declare an election void;
 - (d) to dismiss or uphold an application in whole or in part;
 - (e) to amend or permit the amendment of an application;
 - (f) to order the inspection of, and permit copying of, documents used in connection with an election, subject to such terms and conditions as it considers appropriate;
 - (g) to undertake a preliminary review of an application;
 - (h) to require any further information relating to an application;
 - (i) to make any declaration in relation to its powers under this section as VCAT considers appropriate in the circumstances.
- (2) VCAT may impose a financial penalty not exceeding the amount prescribed for the purposes of this section.

- (3) VCAT cannot order a recount of the whole or any part of the ballot-papers unless VCAT—
 - (a) is satisfied that a recount is justified; and
 - (b) has advised the VEC of its intention.
- (4) If VCAT has declared an election for a ward to be void, an extraordinary vacancy in each office of Councillor for the ward is caused by the declaration of VCAT on the day which the declaration is made.

Part 9—General provisions

313 Proceedings

- (1) The Secretary, a Council or a person authorised by the Council either generally or in a particular case may institute proceedings in the corporate name of the Council for—
 - (a) the recovery of any municipal rates, service charges, special purpose charges, fees or other money due to the Council under any Act, regulation or local law; or
 - (b) the enforcement of any provision of any Act, regulation or local law for which the Council is responsible; or
 - (c) the recovery of any penalty or surcharge in relation to any offence under any Act, regulation or local law the enforcement of which is the responsibility of the Council; or
 - (d) any other purpose specified by the Council.
- (2) A Chief Executive Officer or person authorised by the Council either generally or in a particular case may represent the Council in all respects as though the Chief Executive Officer or person authorised by the Council was the party concerned in any proceedings in which the Council is a party or has an interest.
- (3) Proceedings for a summary offence under this Act may be commenced within the period of 3 years after the commission of the alleged offence.

314 Service on a Council

Any document required to be served on or given to a Council may be served on or given to the Council by—

- (a) delivering the document to a member of Council staff at the Council office; or

- (b) sending the document by post to the Council's postal address.

315 Service on a person

S. 315(1)
amended by
No. 11/2021
s. 155.

- (1) Subject to sections 193 and 194, any document required to be served on or given to a person (other than a Council) under this Act, the regulations or any local law may be served on or given to the person by—
- (a) delivering the document to the person; or
 - (b) leaving the document at the person's usual or last known place of residence or business with a person apparently not less than 16 years of age and apparently residing or employed at that place; or
 - (c) sending the document by post addressed to the person at the person's last known place of residence or business.
- (2) If a document is required to be served on or given to the owner or occupier of any land and their name is not known, the document may be addressed to "the owner" or "the occupier".
- (3) The document may be put up on a conspicuous position on the land if the name and address of the owner are not known and there is no occupier of the land.
- (4) If a document required to be served on or given to an owner or occupier of any land by a Council is properly served on or given to the owner or occupier of the land, the document is binding on every subsequent owner or occupier of the land.

316 Evidence of service

A statutory declaration by a person who has served or given a document in accordance with this Act stating the manner, place, date and time the document was served or given is evidence of the document having been served or given.

317 Power of delegation

- (1) The Minister may by instrument of delegation delegate to an officer or employee of the Department any power, duty or function of the Minister other than this power of delegation.
- (2) The Secretary may by instrument of delegation delegate to an officer or employee of the Department any power, duty or function of the Secretary other than this power of delegation.

318 Obstructing Council

A person must not obstruct a Council or a member of Council staff in the performance of anything the Council or the member is empowered to do by any Act, regulation or local law.

Penalty: 60 penalty units.

319 Persons who are liable for offences

- (1) A person who aids, abets, counsels or procures or is in any way knowingly concerned in the commission of an offence against this Act or any regulation or local law made under this Act is guilty of that offence and liable to the penalty for that offence.
- (2) If 2 or more persons are responsible for the same offence against this Act or any regulation or local law made under this Act each of those persons is liable to the penalty provided for that offence and the liability of each of them is independent of the liability of any other person.

**320 Criminal liability of officers of bodies corporate—
failure to exercise due diligence**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 300(2);
 - (b) section 300(4).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
 - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

(5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(6) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

officer, in relation to a body corporate, means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

321 Imposition of a surcharge

(1) This section applies if section 43 does not apply and the Secretary considers that—

- (a) any expenditure has been incurred in contravention of any Act, regulation or local law; or
- (b) any deficiency or loss has been incurred by the unauthorised or improper action of a Councillor; or
- (c) any money which should have been brought into account has not been brought into account.

(2) The Secretary may by notice in writing require the Councillor to show cause why the Councillor should not be surcharged.

- (3) The surcharge must not exceed the amount of the expenditure, deficiency or loss or the amount which has not been brought into account.
- (4) If the Councillor does not show cause to the satisfaction of the Secretary, the Secretary may by notice in writing impose the surcharge.
- (5) A Councillor whose interests are affected by a decision of the Secretary imposing a surcharge may apply to VCAT for review of the decision.
- (6) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

322 Payment of the surcharge

- (1) A surcharge is a debt due and payable to the Council by the Councillor on whom it is imposed.
- (2) The Council is entitled to deduct any amount towards the discharge of the amount of the surcharge from any allowances or other benefit payable to the Councillor on whom the surcharge is imposed.
- (3) If a Councillor on whom a surcharge is imposed does not pay the surcharge within 3 months of it being imposed or confirmed on a review, the Councillor is suspended until the surcharge is paid and section 37 applies.

323 Evidence of ownership

Evidence that a person proceeded against is liable to be rated in respect of the land is evidence that the person is the owner or occupier of any land in any proceedings for an offence against this Act or any regulation or local law made under this Act.

324 Evidentiary provisions

- (1) Until evidence is given to the contrary, proof is not required as to any of the following—
 - (a) the constitution of a Council;
 - (b) the election of Councillors as Councillors of a Council;
 - (c) the size, location or boundaries of a municipal district;
 - (d) the size, location or boundaries of a ward;
 - (e) the fact that a place is located within a municipal district;
 - (f) the appointment of any person as a member of a committee or as a member of Council staff;
 - (g) the appointment of a member of Council staff to do an act or for a particular purpose;
 - (h) the authority to bring any proceedings;
 - (i) the making of a resolution by a Council;
 - (j) the making of a local law;
 - (k) that a document purporting to be issued by a Council was issued by the Council;
 - (l) the declaration of any rate or charge;
 - (m) the validity of the contents of any Council records or minutes;

- (n) the correctness of the markings on a voters' roll used in an election or a copy or extract certified by the election manager of that voters' roll indicating the names of voters who did not vote at the election.
- (2) A certificate certifying any matter relating to the contents of any document kept by a Council and purporting to be signed by the Chief Executive Officer is admissible in any proceedings as evidence of the matters appearing in the certificate.
- (3) All courts, judges and people acting judicially must take judicial notice of such a signature and must presume that the certificate was properly signed until the contrary is proved.

325 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) A power conferred by this Act to make regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provisions for the same case

or class of case for different purposes;
or

- (ii) any such provision either unconditionally or subject to any specified condition.

(3) Regulations made under this Act may be made—

(a) so as to apply—

- (i) at all times or at a specified time; or
- (ii) throughout the whole of the State or in a specified part of the State; or
- (iii) as specified in both subparagraphs (i) and (ii); and

(b) so as to require a matter affected by the regulations to be—

- (i) in accordance with a specified standard or specified requirement; or
- (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; and

(c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

- (i) wholly or partially or as amended by the regulations; or
- (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
- (iii) as formulated, issued, prescribed or published from time to time; and

- (d) so as to leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, Council or public authority or any officer thereof; and
 - (e) so as to confer powers or impose duties in connection with the regulations on any government department, Council or public authority or any officer thereof; and
 - (f) so as to apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time; and
 - (g) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (h) so as to impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) If under subsection (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Minister causes notice to be published in the Government Gazette of that amendment, the document, code, standard, rule, specification or method is to be taken to have not been so amended.

- (5) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees according to the value of goods or services provided for the fees;
 - (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (6) If under subsection (5)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions; or
 - (b) in respect of certain documents or classes of documents; or
 - (c) when an event happens; or
 - (d) in respect of certain persons or classes of persons; or
 - (e) in respect of any combination of matters, transactions, documents, events or persons—
- and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

- (7) A fee that may be imposed by regulation is not limited to an amount that is related to the cost of providing a service.
- (8) Any regulations made under this Act for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles.
- (9) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23(2) of the **Subordinate Legislation Act 1994** which disallowance is deemed disallowance by Parliament for the purposes of that Act.

326 Regulations relating to electoral matters

Without limiting the generality of section 325, the regulations may prescribe any matter relating to or in respect of the following—

- (a) voter entitlement and the compilation of voters' rolls;
- (b) specifying public notification requirements by the VEC in relation to the amendment of the voters' roll;
- (c) the process for nomination of candidates for an election including the fixing and payment of any fees by candidates and in relation to the form and manner of any training candidates are required to undertake before nominating;
- (d) the nomination day;
- (e) the appointment of election officials and the making of declarations by election officials;
- (f) candidate information to be provided to voters by the VEC;

- (g) the approval and registration of how-to-vote cards at attendance elections;
- (h) providing for a right of review by VCAT in relation to specified decisions relating to the approval and registration of how-to-vote cards;
- (i) the content of ballot-papers, including the determination of the order of candidates' names on the ballot-paper;
- (j) the appointment and role of scrutineers;
- (k) changes to the voting system;
- (l) the conduct of attendance elections, including early voting at voting centres and mobile voting centres;
- (m) the conduct of postal voting;
- (n) provision for unenrolled voters to lodge a vote at an election;
- (o) the close of voting and the receipt of postal votes after election day;
- (p) the counting of votes, including the use of electronic counting equipment and systems;
- (q) the declaration of candidates elected at an election;
- (r) the enforcement of compulsory voting and exemptions from compulsory voting.

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**S. 327
expired by
force of
No. 9/2020
s. 327(5).**

Part 10—Savings and transitional

328 General savings

- (1) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances appointed or created by or under the **Local Government Act 1989** or existing or continuing under the **Local Government Act 1989** immediately before the relevant provision of that Act is repealed by this Act continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if the relevant provision had not been repealed by this Act.
- (2) Without limiting the generality of subsection (1), any decision, action, proceeding or matter made, taken or commenced under a relevant provision of the **Local Government Act 1989** repealed by this Act may be implemented or continued under the **Local Government Act 1989** as if the relevant provision had not been repealed by this Act.
- (3) On and after the commencement of Part 1, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to the **Local Government Act 1989** is to be construed as a reference to the **Local Government Act 2020** unless the contrary intention appears.
- (4) Without limiting the generality of subsection (1) or section 329, a Council constituted in accordance with the **Local Government Act 1989**, the **City of Greater Geelong Act 1993** or the **City of Melbourne Act 2001**, continues to be a validly constituted Council notwithstanding that it is not constituted in accordance with Division 2 of Part 2 of this Act, until the Council is reconstituted in accordance with Part 2 of this Act.

- (5) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

329 Specific savings and transitional provisions

- (1) Despite the commencement of section 359, the **Local Government Act 1989** as in force immediately before that commencement continues to apply to, and in respect of, any election required to be held before the general elections in 2020.
- (2) If a probity auditor is conducting a probity audit under the **Local Government Act 1989** immediately before the commencement of section 359, sections 107 to 110 of the **Local Government Act 1989** continue to apply as if those sections had not been repealed.
- (3) If an electoral representation review is being conducted when section 359 comes into operation, the electoral representation review ceases on that commencement.
- (4) Despite the commencement of Division 1 of Part 11, the **City of Greater Geelong Act 1993** as in force immediately before that commencement continues to apply to, and in respect of, the following—
- (a) any election required to be held before the general elections in 2020;
 - (b) any Councillor, Mayor or Deputy Mayor in office until the general elections in 2020.
- (5) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances appointed or created by or under the **City of Greater Geelong Act 1993** or existing or continuing under the **City of Greater Geelong Act 1993** immediately before its repeal by this Act continues under and subject to this Act to
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have the same status, operation and effect as they respectively would have had if the **City of Greater Geelong Act 1993** had not been repealed by this Act.

- (6) Despite the commencement of Division 2 of Part 11, the **City of Melbourne Act 2001** as in force immediately before that commencement continues to apply to, and in respect of, the following—
- (a) any election required to be held before the general elections in 2020;
 - (b) any Councillor, Lord Mayor or Deputy Lord Mayor in office until the general elections in 2020.
- (7) Despite the commencement of section 361, the **Local Government Act 1989** as in force immediately before that commencement continues to apply to, and in respect of, the following—
- (a) any Councillor or Mayor in office until the general elections in 2020;
 - (b) the preparation of the annual report for the financial year ending 30 June 2021;
 - (c) strategic planning for the financial year ending 30 June 2021;
 - (d) any internal resolution procedure being conducted under Division 1AB of Part 4 of the **Local Government Act 1989**;
 - (e) any Councillor Conduct Panel established to hear any matter under section 81V of the **Local Government Act 1989**.
- (8) If a Commission of Inquiry appointed under section 209 of the **Local Government Act 1989** is conducting an inquiry immediately before the commencement of section 361—

S. 329(7)
amended by
No. 30/2022
s. 40.

S. 329(8)
amended by
No. 30/2022
s. 40.

- (a) the Commission of Inquiry is to be taken to have been appointed under section 200; and
 - (b) the provisions of this Act apply accordingly.
- (9) If a Municipal Monitor appointed under section 223CA of the **Local Government Act 1989** is in office immediately before the commencement of section 361—
- (a) the Municipal Monitor is to be taken to have been appointed under section 179; and
 - (b) the provisions of this Act apply accordingly.

S. 329(9)
amended by
No. 30/2022
s. 40.

330 Specific provisions apply to existing regional libraries

- (1) This section applies to a regional library that exists under section 196 of the **Local Government Act 1989** (an *existing regional library*) immediately before the repeal of sections 196 to 197G of the **Local Government Act 1989**.
- (2) Subject to this section, sections 196 to 197G of the **Local Government Act 1989** and any sections of the **Local Government Act 1989** incorporated by reference in sections 196 to 197G of the **Local Government Act 1989** and the provisions of any other Act that apply to an existing regional library, continue to apply to an existing regional library as if all of those sections had not been repealed.
- (2A) Despite subsection (2), section 197E(2)(a) of the **Local Government Act 1989** does not apply to an existing regional library on and from the commencement of this subsection as inserted by the **Regulatory Legislation Amendment (Reform) Act 2022**.
- (3) Despite subsection (2)—
 - (a) no new regional library can be formed; and

S. 330(2A)
inserted by
No. 13/2022
s. 43.

- (b) no additional Council may become a member of an existing regional library; and
 - (c) a Council that is a member of an existing regional library may cease to be a member of that existing regional library before it is wound up.
- (4) An existing regional library must be wound up in accordance with section 197G of the **Local Government Act 1989** before the expiry of the period of 10 years after the commencement of section 110.
- (5) If an existing regional library has not been wound up in accordance with subsection (4), the Minister must appoint a liquidator under section 197G of the **Local Government Act 1989** to wind up the existing regional library in accordance with that section.

S. 330A
inserted by
No. 11/2021
s. 156,
repealed by
No. 9/2020
s. 330A(4).

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S. 330B
inserted by
No. 30/2022
s. 41.

**330B Transitional provision—Local Government
Legislation Amendment (Rating and Other Matters)
Act 2022**

- (1) Section 145, as substituted by section 20 of the **Local Government Legislation Amendment (Rating and Other Matters) Act 2022**, does not apply to an application made under section 143, or an internal arbitration process commenced, before the substitution of section 145.
- (2) Section 147A does not apply to anything done or omitted to be done by an arbiter before the commencement of that section.

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*	*	*	*	*	Pt 11 (Headings and ss 331– 391) repealed by No. 9/2020 s. 391.
*	*	*	*	*	Pt 12 (Heading and ss 392–396) inserted by No. 11/2020 s. 56, amended by Nos 27/2020 ss 34, 35, 11/2021 ss 205, 206, 13/2022 ss 44, 45, repealed by No. 9/2020 s. 396 (as amended by Nos 27/2020 s. 35, 11/2021 s. 206, 13/2022 s. 45).
*	*	*	*	*	Sch. 1 repealed by No. 9/2020 s. 391.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 14 November 2019

Legislative Council: 28 November 2019

The long title for the Bill for this Act was "A Bill for an Act to reform the law relating to local government in Victoria, to repeal the **City of Greater Geelong Act 1993**, to amend the **City of Melbourne Act 2001**, the **Local Government Act 1989**, the **Victoria Grants Commission Act 1976** and the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**, and to consequentially amend certain other Acts and for other purposes."

The **Local Government Act 2020** was assented to on 24 March 2020 and came into operation as follows:

Sections 1–10, 12–17, 39, 56, 58, 87, 89, 101, 106, 224–229, 234–312, 325–328, 329(1)–(6), 331–359, 363–391, Schedule 1 (Heading and items 1.1, 3, 4, 5, 7, 8.1, 9–12, 13.1, 13.2, 13.3, 14–17, 19, 20.1, 21.1, 21.3, 21.4, 22, 23.3, 24, 26, 27, 28.1, 29, 30.1, 31–38, 39.1(a), 39.2, 40.1, 40.2, 40.7(a), 41, 42, 43.1, 44.1, 45, 45A, 46, 47.1, 47.2, 48–53, 54.1, 55, 56.1(a), 56.2, 59–63, 63A, 64, 65, 67, 68, 69.1, 69.5, 70A, 71, 72, 74, 75.1, 75.5, 76, 77.2, 77.3, 77.4, 77.7, 77.8, 77.9, 78, 79, 80, 81.1, 82.1, 82.2, 83–89, 90.2, 91–100, 102, 104–108, 110–112, 113.2, 113.3, 113.4, 113.5, 114, 115) on 6 April 2020: Special Gazette (No. 150) 24 March 2020 page 1.

Sections 11, 40–43, 47, 52–55, 57, 59–70, 313–324, 360, Schedule 1 (items 8.7, 13.4, 18.1, 40.3, 40.5, 44.3, 47.3, 47.4, 70.1, 82.6) on 1 May 2020: Special Gazette (No. 150) 24 March 2020 page 1.

Sections 18–38 on 24 October 2020: section 2(3)(a); sections 88, 90–100 on 24 October 2020: section 2(3)(b); sections 123–174 on 24 October 2020: section 2(3)(c); sections 175–223, 230–233 on 24 October 2020: section 2(3)(d); sections 329(7)–(9), 361 on 24 October 2020: section 2(3)(e); Schedule 1 (items 2, 20.2, 21.2, 23.1, 23.2, 25, 40.7(b), 43.2, 44.2, 56.1(b), 56.1(c), 56.3, 56.4, 56.5, 75.2, 75.3, 75.4, 75.6, 77.1, 77.5, 77.6, 81.2, 82.3, 82.4, 82.5, 109, 113.1) on 24 October 2020: section 2(3)(f).

Sections 44–46, 48–51, 71–86, 102–105, 107–122, 330, 362, Schedule 1 (items 1.2, 6, 8.2–8.6, 13.5, 13.6, 18.2, 21.5, 28.2, 28.3, 30.2, 39.1(b), 40.4, 40.6, 43.3, 54.2, 57, 58, 66, 69.2–69.4, 70.2, 73, 90.1, 90.3, 90.4, 101, 103) on 1.7.21: section 2(4).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

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- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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2 Table of Amendments

This publication incorporates amendments made to the **Local Government Act 2020** by Acts and subordinate instruments.

Gender Equality Act 2020, No. 5/2020 (as amended by No. 9/2020)

Assent Date: 25.2.20
Commencement Date: S. 55 on 1.7.21: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

Local Government Act 2020, No. 9/2020

Assent Date: 24.3.20
Commencement Date: Ss 327(5), 391 on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1; s. 396 inserted on 25.4.20 by No. 11/2020 s. 56: s. 2 (as amended by Nos 27/2020 s. 35, 11/2021 s. 206, 13/2022 s. 45); s. 330A(4) inserted on 26.4.21 by No. 11/2021 s. 156: s. 2(2)
Note: S. 391 repealed Pt 11 (ss 331–391), Sch. 1 on 1.7.22; s. 396 repealed Pt 12 (ss 392–396) on 2.9.22; s. 327(5) provided that s. 327 expired on 1.1.23; s. 330A(4) repealed s. 330A on 26.4.23
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

COVID-19 Omnibus (Emergency Measures) Act 2020, No. 11/2020

Assent Date: 24.4.20
Commencement Date: S. 56 on 25.4.20: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020, No. 27/2020

Assent Date: 20.10.20
Commencement Date: Ss 34, 35 on 21.10.20: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021, No. 11/2021

Assent Date: 23.3.21
Commencement Date: Ss 205, 206 on 24.3.21: s. 2(1); ss 150–156 on 26.4.21: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

Great Ocean Road and Environs Protection Amendment Act 2021, No. 42/2021

Assent Date: 19.10.21
Commencement Date: Ss 100, 101 on 1.9.22: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

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Suburban Rail Loop Act 2021, No. 43/2021

Assent Date: 19.10.21
Commencement Date: S. 219(Sch. 1 item 7) on 1.12.21: Special Gazette (No. 649) 23.11.21 p. 1
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

Sex Work Decriminalisation Act 2022, No. 7/2022

Assent Date: 1.3.22
Commencement Date: S. 33 on 10.5.22: s. 2(2)
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

Regulatory Legislation Amendment (Reform) Act 2022, No. 13/2022

Assent Date: 29.3.22
Commencement Date: Ss 44, 45 on 30.3.22: s. 2(3); ss 40–43 on 2.9.22: s. 2(5)
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

Local Government Legislation Amendment (Rating and Other Matters) Act 2022, No. 30/2022

Assent Date: 9.8.22
Commencement Date: S. 40 on 24.10.20: s. 2(2); ss 19–39, 41 on 10.8.22: s. 2(3)
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

Local Government (Moirā Shire Council) Act 2023, No. 3/2023

Assent Date: 9.3.23
Commencement Date: Ss 11, 12 on 10.3.23: s. 2
Current State: This information relates only to the provision/s amending the **Local Government Act 2020**

3 Explanatory details

No entries at date of publication.