



Western Australia

Local Government Act 1995

(Pt. 1, Pt. 3 Div. 4, Pt. 5 Div. 4-7, Pt. 7 and Sch. 9.3)

**Incorporating the amendments proposed by
the *Local Government Amendment (Auditing)*
Bill 2017 (Bill No. 3-1 - other than cl. 4(2),
7(2) and 22*)**

***These clauses will commence at a later stage.**

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Western Australia

Local Government Act 1995

An Act to provide for a system of local government in Western Australia, to amend the *Local Government Act 1960*² and for related purposes.

Part 1 — Introductory matters

What this Part is about

This Part deals with some matters that are relevant to the Act generally.

In particular —

- (a) section 1.2 provides for the commencement of the Act; and*
- (b) section 1.3 summarizes the main content of the Act and what it intends to achieve; and*
- (c) section 1.5 explains the legal status of italicized notes such as this; and*
- (d) section 1.6 states the position of the Crown; and*
- (e) other provisions define some terms and concepts used in the Act.*

1.1. Short title

This Act may be cited as the *Local Government Act 1995*¹.

1.2. Commencement

This Act comes into operation on 1 July 1996.

1.3. Content and intent

- (1) This Act provides for a system of local government by —
 - (a) providing for the constitution of elected local governments in the State; and
 - (b) describing the functions of local governments; and
 - (c) providing for the conduct of elections and other polls; and
 - (d) providing a framework for the administration and financial management of local governments and for the scrutiny of their affairs.
- (2) This Act is intended to result in —
 - (a) better decision-making by local governments; and
 - (b) greater community participation in the decisions and affairs of local governments; and
 - (c) greater accountability of local governments to their communities; and
 - (d) more efficient and effective local government.

- (3) In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

[Section 1.3 amended by No. 49 of 2004 s. 15.]

1.4. Terms used

In this Act, unless the contrary intention appears —

75% majority, in relation to a council, means a majority comprising enough of the members for the time being of the council for their number to be at least 75% of the number of offices (whether vacant or not) of member of the council;

absolute majority —

- (a) in relation to a council, means a majority comprising enough of the members for the time being of the council for their number to be more than 50% of the number of offices (whether vacant or not) of member of the council;
- (b) in relation to any other body, means a majority comprising enough of the persons for the time being constituting the body for their number to be more than 50% of the number of offices (whether vacant or not) on the body;

Advisory Board means the Local Government Advisory Board established by section 2.44;

auditor means —

- (a) in relation to an audit, other than a performance audit —

(i) in relation to a local government that has an audit contract that is in force — a person for the time being appointed under Part 7 Division 2 to be the auditor of the local government; and

(ii) in relation to a local government that does not have an audit contract that is in force — the Auditor General;

and

- (b) in relation to a performance audit — the Auditor General;

~~**auditor**, in relation to a local government means a person for the time being appointed under Part 7 to be the auditor of the local government;~~

s. 1.4

CEO means the chief executive officer of a local government;

commissioner means a commissioner appointed to a local government under sections 2.6(4), 2.36A(3), 2.37(4), 2.37A(1), 8.30 or 8.33;

council means the council of a local government;

councillor means a person who holds the office of councillor on a council (including a person who holds another office under section 2.17(2)(a) or (b) as well as the office of councillor);

councillor mayor or president means a mayor or president elected by the council from amongst the councillors;

Crown lands means lands of the Crown —

- (a) not granted or contracted to be granted in fee simple; or
- (b) not held or occupied —
 - (i) under conditional terms of purchase; or
 - (ii) with a right to acquire the fee simple;

Crown lease means a lease from the Crown of Crown lands, or a licence or concession from the Crown for taking a profit of Crown lands, but does not include —

- (a) an instrument executed or issued pursuant to a contract or arrangement with the Crown by virtue of which land is held or occupied with a right, whether subject to compliance with conditions or otherwise, to acquire the fee simple; and
- (b) a lease under the *Housing Act 1980*; and
- (c) an instrument by virtue of which lands are held or occupied subject to the payment of a peppercorn or nominal rental;

Crown lessee means a person entitled under a Crown lease to an interest or a right in or over Crown lands;

Department means the department of the Public Service assisting the Minister to administer this Act;

Departmental CEO means the chief executive officer of the Department;

district means an area of the State that is declared to be a district under section 2.1;

election year means a year in which ordinary elections for local governments are required to be held;

elector, in relation to a district or ward, means a person who is eligible to be enrolled to vote at elections for the district or ward;

elector mayor or president means a mayor or president elected by electors of a district;

Electoral Commissioner means the Electoral Commissioner appointed under the *Electoral Act 1907*;

electoral requirements has the meaning given by section 4.1;

employee means a person employed by a local government under section 5.36;

extraordinary election has the meaning given by section 4.8;

financial year means the period commencing on 1 July and ending on the next following 30 June;

inaugural election has the meaning given by section 4.2;

Inquiry Panel means an Inquiry Panel constituted under section 8.16;

local government means a local government established under this Act;

local government property means anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government;

local public notice has the meaning given by section 1.7;

member, in relation to the council of a local government, means —

- (a) an elector mayor or president of the local government;
or
- (b) a councillor on the council (including a councillor who holds another office under section 2.17(2)(a) or (b) as well as the office of councillor);

metropolitan area has the same definition as **metropolitan region** in the *Planning and Development Act 2005*;

municipal fund means the municipal fund established under section 6.6;

occupier where used in relation to land means the person by whom or on whose behalf the land is actually occupied or, if there is no occupier, the person entitled to possession of the land, and includes a person in unauthorised occupation of Crown land and where under a licence or concession there is a right to take profit of Crown land specified in the licence or concession, means the person having that right;

s. 1.4

ordinary election has the meaning given by section 4.4;

ordinary elections day in relation to a local government, means a day fixed by section 4.6 or under section 4.7(2) for holding the polls for ordinary elections for that local government (whether or not any polls are actually held);

owner, where used in relation to land —

- (a) means a person who is in possession as —
 - (i) the holder of an estate of freehold in possession in the land, including an estate or interest under a contract or an arrangement with the Crown or a person, by virtue of which contract or arrangement the land is held or occupied with a right to acquire by purchase or otherwise the fee simple; or
 - (ii) a Crown lessee or a lessee or tenant under a lease or tenancy agreement of the land which in the hands of the lessor is not rateable land under this Act, but which in the hands of the lessee or tenant is by reason of the lease or tenancy rateable land under this or another Act for the purposes of this Act; or
 - (iii) a mortgagee of the land; or
 - (iv) a trustee, executor, administrator, attorney, or agent of a holder, lessee, tenant, or mortgagee, mentioned in this paragraph;

or

- (b) where there is not a person in possession, means the person who is entitled to possession of the land in any of the capacities mentioned in paragraph (a), except that of mortgagee; or
- (c) where, under a licence or concession there is a right to take profit of Crown land specified in the licence or concession, means the person having that right; or
- (d) where a person is lawfully entitled to occupy land which is vested in the Crown, and which has no other owner according to paragraph (a), (b), or (c), means the person so entitled; or
- (e) means a person who —
 - (i) under the *Mining Act 1978*, holds in respect of the land a mining tenement within the meaning given to that expression by that Act; or

- (ii) in accordance with the *Mining Act 1978* holds, occupies, uses, or enjoys in respect of the land a mining tenement within the meaning given to that expression by the *Mining Act 1904*³; or
- (iii) under the *Petroleum and Geothermal Energy Resources Act 1967* holds in respect of the land a permit, drilling reservation, lease or licence within the meaning given to each of those expressions by that Act;

or

- (f) where a person is in the unauthorised occupation of Crown land, means the person so in occupation;

prescribed means prescribed by regulations;

regional local government means a regional local government established under section 3.61;

regional subsidiary means a regional subsidiary established under section 3.69;

Statewide public notice has the meaning given by section 1.8;

thoroughfare means a road or other thoroughfare and includes structures or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is not open at each end;

WALGA means the Western Australian Local Government Association constituted under section 9.58;

ward means one of the wards into which a district is divided under section 2.2.

[Section 1.4 amended by No. 1 of 1998 s. 4 and 6(2); No. 64 of 1998 s. 4(2); No. 49 of 2004 s. 11 and 16(1); No. 38 of 2005 s. 15; No. 28 of 2006 s. 361; No. 35 of 2007 s. 99(2); No. 26 of 2016 s. 4; [Local Government Amendment \(Auditing\) Bill 2017 cl. 4\(1\).](#)]

1.5. Descriptions in italics not part of the law

A description that is printed in italics at the beginning of a Part of this Act explaining what it is about is not part of the Act.

1.6. Crown not generally bound

This Act does not bind the Crown except to the extent expressly stated in this Act.

s. 1.7

1.7. Local public notice

- (1) Where under this Act local public notice of a matter is required to be given, a notice of the matter is to be —
 - (a) published in a newspaper circulating generally throughout the district; and
 - (b) exhibited to the public on a notice board at the local government's offices; and
 - (c) exhibited to the public on a notice board at every local government library in the district.
- (2) Unless expressly stated otherwise it is sufficient if the notice is —
 - (a) published under subsection (1)(a) on at least one occasion; and
 - (b) exhibited under subsection (1)(b) and (c) for a reasonable time, being not less than —
 - (i) the time prescribed for the purposes of this paragraph; or
 - (ii) if no time is prescribed, 7 days.

[Section 1.7 amended by No. 64 of 1998 s. 18(3).]

1.8. Statewide public notice

Where under this Act Statewide public notice of a matter is required to be given, section 1.7 applies except that the newspaper referred to in section 1.7(1)(a) is required to circulate generally throughout the State.

1.9. Decisions by absolute majority

The footnote *Absolute majority required*, applying to a power conferred in this Act, means that —

- (a) if the power is conferred on a local government, it can only be exercised by or in accordance with, a decision of an absolute majority of the council; or
- (b) if the power is conferred on any other body, it can only be exercised by or in accordance with, a decision of an absolute majority of that body.

1.10. Decisions by special majority

The footnote *Special majority required* applying to a power conferred in this Act on a local government, means that —

- (a) if there are more than 11 offices of member of the council, the power can only be exercised by, or in accordance with, a decision of a 75% majority of the council; or
- (b) if there are not more than 11 offices of member of the council, the power can only be exercised by, or in accordance with, a decision of an absolute majority of the council.

Part 3 — Functions of local governments

What this Part is about

This Part describes the functions of a local government and deals with some important issues that the performance of those functions may involve.

In particular —

- (a) *Division 1 describes the general function of a local government and contains some other general provisions;*
- (b) *Divisions 2 and 3 deal with legislative and executive functions respectively;*
- (c) *Division 4 allows functions to be performed by regional local governments.*

Division 4 — Regional local governments and regional subsidiaries

[Heading amended by No. 26 of 2016 s. 7.]

3.61. Establishing regional local government

- (1) Two or more local governments (referred to in this Division as the ***participants***) may, with the Minister's approval, establish a regional local government to do things, for the participants, for any purpose for which a local government can do things under this Act or any other Act.
- (2) An application for the Minister's approval is to be —
 - (a) in a form approved for that purpose by the Minister; and
 - (b) accompanied by a copy of an agreement between the participants to establish the regional local government (referred to in this Division as the ***establishment agreement***).
- (3) The participants are to supply the Minister any further information about the application that the Minister asks for.
- (4) If the Minister approves the application the Minister is to declare, by notice in the *Gazette*, that the regional local government is established —
 - (a) on the date; and
 - (b) under the name; and

(c) for the purpose,
set out in the notice.

3.62. Constitution and purpose of regional local government

- (1) A regional local government —
 - (a) is a body corporate with perpetual succession and a common seal; and
 - (b) is to have as its governing body a council established under the establishment agreement and consisting of members of the councils of the participants.
- (2) The purpose for which a regional local government is established (referred to in this Division as the *regional purpose*) is as set out in the establishment agreement.

3.63. Dissolution or partial dissolution of regional local government

- (1) A regional local government is to be wound up —
 - (a) at the direction of the Minister; or
 - (b) in accordance with the establishment agreement.
- (2) A participant may, in accordance with the establishment agreement, withdraw from the regional local government and cease to be a participant.

3.64. Establishment agreement, what it must contain

The following matters are to be set out or provided for in the establishment agreement for a regional local government —

- (a) the name of the regional local government; and
- (b) a description of the region for which the regional local government is established; and
- (c) the number of offices of member on the council of the regional local government and, in respect of each participant, the number of members to be appointed by that participant; and
- (d) the appointment and tenure of members and deputy members of the council of the regional local government; and
- (e) the election or appointment of a ~~chairperson~~ **chairman** and deputy ~~chairperson~~ **chairman** of the regional local government from amongst members of its council and

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s. 3.65

the term of office of a ~~chairperson~~ **chairman** and deputy ~~chairperson~~ **chairman**, which is not to exceed 2 years; and

- (f) the purpose for which the regional local government is established; and
- (g) a means of determining the financial contributions of the participants to the funds of the regional local government; and
- (h) procedures for the winding up of the regional local government or for the withdrawal of a participant from the regional local government; and
- (i) procedures for the division of assets and liabilities between the participants in the event of the regional local government being wound up or a participant withdrawing from the regional local government; and
- (j) a means of resolving disputes between participants as to matters relating to the regional local government; and
- (k) any other prescribed matter.

[Section 3.64 amended by No. 49 of 2004 s. 28; No. 17 of 2009 s. 11; [Local Government Amendment \(Auditing\) Bill 2017 cl. 5.](#)]

3.65. Establishment agreement, amendment of

- (1) The participants may amend the establishment agreement for a regional local government by agreement made with the Minister's approval, and a reference in this Division to the establishment agreement includes a reference to the establishment agreement as so amended.
- (2) The establishment agreement can be amended under subsection (1) to include another local government as a further participant if that local government is a party to the amending agreement.
- (3) Section 3.61(2) and (3) apply, with any necessary modifications, to an agreement amending the establishment agreement.

3.66. Application of enabling Acts to regional local government

- (1) Except as otherwise stated in this section, this Act and any other Act under which anything can be done for the regional purpose apply in relation to a regional local government as if—
 - (a) the participants' districts together made up a single district; and

- (b) the regional local government were the local government established for that district.
- (2) A regional local government can only do things for the regional purpose, and the application of this Act or any other Act under subsection (1) is limited accordingly.
- (3) The following provisions of this Act do not apply in relation to a regional local government —
 - (a) Part 2 (other than sections 2.7, 2.26, 2.29 and 2.32(e) and Division 7); and
 - (b) Part 4; and
 - (c) Part 5, Division 2, Subdivision 4; and
 - (d) Part 6, Division 6; and
 - (e) any provision prescribed for the purposes of this subsection.
- (4) Part 6, Division 5, Subdivision 3 does not apply in relation to a regional local government unless the establishment agreement provides that it does.
- (5) The provisions that do apply in relation to a regional local government apply to it subject to any prescribed modifications and any other necessary modifications.

[Section 3.66 amended by No. 49 of 2004 s. 29.]

3.67. Inconsistency between regional and other local laws

To the extent that a local law made by a regional local government is inconsistent with a local law made by a local government, the local law made by the regional local government prevails.

3.68. Other arrangements not affected

Nothing in sections 3.61 to 3.67 prevents local governments from making arrangements under which —

- (a) a local government performs a function for another local government; or
- (b) local governments perform a function jointly.

[Section 3.68 amended by No. 26 of 2016 s. 8.]

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s. 3.69

3.69. Regional subsidiaries

- (1) Two or more local governments making arrangements under which they are to provide a service or carry on an activity jointly may, with the Minister's approval and in accordance with the regulations, form a subsidiary body (called a **regional subsidiary**) to provide that service or carry on that activity.
- (2) If the Minister approves the formation of a regional subsidiary, the Minister must, by notice in the *Gazette*, declare that the regional subsidiary is established —
 - (a) on the date set out in the notice; and
 - (b) under the name set out in the notice.
- (3) A regional subsidiary —
 - (a) is a body corporate with perpetual succession and a common seal; and
 - (b) is to have a governing body consisting of members appointed in accordance with the regional subsidiary's charter (as approved by the Minister in accordance with section 3.70(3)).
- (4) Without limiting subsection (3)(b), a governing body may consist of or include members who are not council members or employees.

[Section 3.69 inserted by No. 26 of 2016 s. 9.]

3.70. Regional subsidiaries to have charter

- (1) Local governments proposing to form a regional subsidiary must prepare a charter addressing the following matters —
 - (a) the establishment and powers and duties of the regional subsidiary;
 - (b) the process for selecting and appointing members of the regional subsidiary's governing body;
 - (c) the qualifications that members of the regional subsidiary's governing body must have;
 - (d) the administration of the regional subsidiary, including the membership and procedures of its governing body, and the fees, allowances and expenses to be paid or reimbursed to the members of its governing body;
 - (e) the financial management, planning, auditing and reporting to be undertaken by the regional subsidiary;
 - (f) the process for amending the charter;

- (g) the winding up of the regional subsidiary;
 - (h) any other matters required by the regulations to be dealt with in a charter.
- (2) The local governments must forward the charter to the Minister when applying for approval for the formation of the regional subsidiary.
- (3) A charter, and an amendment to a charter, are of no effect unless approved by the Minister.

[Section 3.70 inserted by No. 26 of 2016 s. 9.]

3.70A. Audit requirements for regional subsidiaries

- (1) Section 7.1 and the provisions of Part 7 Divisions 3A to 4 apply in relation to a regional subsidiary as if the regional subsidiary were a local government.
- (2) The application of a provision under subsection (1) is subject to any prescribed or necessary modifications to the provision provided for in the regulations.

[Section 3.70A inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 6.]

3.71. Regulations about regional subsidiaries

Regulations may —

- (a) regulate the procedure for applying to the Minister for approval for the formation of a regional subsidiary; and
- (b) require the local governments proposing to form a regional subsidiary to consult with the community in their districts in accordance with the regulations; and
- (c) provide that a specified provision of this Act applies in relation to a regional subsidiary subject to any prescribed or necessary modifications; and
- (d) provide for or regulate any other matter that is necessary or convenient to be provided for or regulated in respect of a regional subsidiary.

[Section 3.71 inserted by No. 26 of 2016 s. 9.]

3.72. Other provisions and arrangements not affected

- (1) Section 3.69 has effect in addition to the provisions of this Division relating to regional local governments, and does not derogate from those provisions.

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- (2) Nothing in section 3.69 prevents local governments from making arrangements under which —
- (a) a local government provides a service or carries on an activity for another local government; or
 - (b) local governments provide a service or carry on an activity jointly without forming a regional subsidiary.

[Section 3.72 inserted by No. 26 of 2016 s. 9.]

Part 5 — Administration

What this Part is about

This Part deals with —

- (a) *council meetings, committees and their meetings and electors' meetings; and*
- (b) *the employment of persons by local governments and matters relating to local government employees; and*
- (c) *annual reports and plans; and*
- (d) *the disclosure of financial interests in matters affecting local government decisions and in returns; and*
- (e) *public access to local government information; and*
- (f) *the limitation of the payment of fees, expenses and allowances to council and committee members, mayors and presidents; and*
- (g) *codes of conduct.*

[Notes to Part 5 amended by No. 49 of 2004 s. 42(1).]

Division 4 — Local government employees

5.36. Local government employees

- (1) A local government is to employ —
 - (a) a person to be the CEO of the local government; and
 - (b) such other persons as the council believes are necessary to enable the functions of the local government and the functions of the council to be performed.
- (2) A person is not to be employed in the position of CEO unless the council —
 - (a) believes that the person is suitably qualified for the position; and
 - (b) is satisfied* with the provisions of the proposed employment contract.

** Absolute majority required.*

- (3) A person is not to be employed by a local government in any other position unless the CEO —
 - (a) believes that the person is suitably qualified for the position; and

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- (b) is satisfied with the proposed arrangements relating to the person's employment.
- (4) Unless subsection (5A) applies, if the position of CEO of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.
- (5A) Subsection (4) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.
- (5) For the avoidance of doubt, subsection (4) does not impose a requirement to advertise a position before the renewal of a contract referred to in section 5.39.

[Section 5.36 amended by No. 49 of 2004 s. 44; No. 17 of 2009 s. 21.]

5.37. Senior employees

- (1) A local government may designate employees or persons belonging to a class of employee to be senior employees.
- (2) The CEO is to inform the council of each proposal to employ or dismiss a senior employee, other than a senior employee referred to in section 5.39(1a), and the council may accept or reject the CEO's recommendation but if the council rejects a recommendation, it is to inform the CEO of the reasons for its doing so.
- (3) Unless subsection (4A) applies, if the position of a senior employee of a local government becomes vacant, it is to be advertised by the local government in the manner prescribed, and the advertisement is to contain such information with respect to the position as is prescribed.
- (4A) Subsection (3) does not require a position to be advertised if it is proposed that the position be filled by a person in a prescribed class.
- (4) For the avoidance of doubt, subsection (3) does not impose a requirement to advertise a position where a contract referred to in section 5.39 is renewed.

[Section 5.37 amended by No. 49 of 2004 s. 45 and 46(4); No. 17 of 2009 s. 22.]

5.38. Annual review of certain employees' performances

The performance of each employee who is employed for a term of more than one year, including the CEO and each senior employee, is to be reviewed at least once in relation to every year of the employment.

5.39. Contracts for CEO and senior employees

- (1) Subject to subsection (1a), the employment of a person who is a CEO or a senior employee is to be governed by a written contract in accordance with this section.
 - (1a) Despite subsection (1) —
 - (a) an employee may act in the position of a CEO or a senior employee for a term not exceeding one year without a written contract for the position in which he or she is acting; and
 - (b) a person may be employed by a local government as a senior employee for a term not exceeding 3 months, during any 2 year period, without a written contract.
- (2) A contract under this section —
 - (a) in the case of an acting or temporary position, cannot be for a term exceeding one year;
 - (b) in every other case, cannot be for a term exceeding 5 years.
- (3) A contract under this section is of no effect unless —
 - (a) the expiry date is specified in the contract; and
 - (b) there are specified in the contract performance criteria for the purpose of reviewing the person's performance; and
 - (c) any other matter that has been prescribed as a matter to be included in the contract has been included.
- (4) A contract under this section is to be renewable and subject to subsection (5), may be varied.
- (5) A provision in, or condition of, an agreement or arrangement has no effect if it purports to affect the application of any provision of this section.
- (6) Nothing in subsection (2) or (3)(a) prevents a contract for a period that is within the limits set out in subsection 2(a) or (b)

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from being terminated within that period on the happening of an event specified in the contract.

- (7) A CEO is to be paid or provided with such remuneration as is determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A.
- (8) A local government is to ensure that subsection (7) is complied with in entering into, or renewing, a contract of employment with a CEO.

[Section 5.39 amended by No. 49 of 2004 s. 46(1)-(3); No. 2 of 2012 s. 13 (correction to reprint in Gazette 28 Mar 2013 p. 1317).]

5.40. Principles affecting employment by local governments

The following principles apply to a local government in respect of its employees —

- (a) employees are to be selected and promoted in accordance with the principles of merit and equity; and
- (b) no power with regard to matters affecting employees is to be exercised on the basis of nepotism or patronage; and
- (c) employees are to be treated fairly and consistently; and
- (d) there is to be no unlawful discrimination against employees or persons seeking employment by a local government on a ground referred to in the *Equal Opportunity Act 1984* or on any other ground; and
- (e) employees are to be provided with safe and healthy working conditions in accordance with the *Occupational Safety and Health Act 1984*; and
- (f) such other principles, not inconsistent with this Division, as may be prescribed.

5.41. Functions of CEO

The CEO's functions are to —

- (a) advise the council in relation to the functions of a local government under this Act and other written laws; and
- (b) ensure that advice and information is available to the council so that informed decisions can be made; and
- (c) cause council decisions to be implemented; and
- (d) manage the day to day operations of the local government; and

- (e) liaise with the mayor or president on the local government's affairs and the performance of the local government's functions; and
- (f) speak on behalf of the local government if the mayor or president agrees; and
- (g) be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees); and
- (h) ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and
- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under —
 - (a) this Act other than those referred to in section 5.43; or
 - (b) the *Planning and Development Act 2005* section 214(2), (3) or (5).

* *Absolute majority required.*

- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

[Section 5.42 amended by No. 1 of 1998 s. 13; No. 28 of 2010 s. 70.]

5.43. Limits on delegations to CEO

A local government cannot delegate to a CEO any of the following powers or duties —

- (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- (c) appointing an auditor;
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;

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- (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;
- (f) borrowing money on behalf of the local government;
- (g) hearing or determining an objection of a kind referred to in section 9.5;
- (ha) the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;
- (h) any power or duty that requires the approval of the Minister or the Governor;
- (i) such other powers or duties as may be prescribed.

[Section 5.43 amended by No. 49 of 2004 s. 16(3) and 47; No. 17 of 2009 s. 23.]

5.44. CEO may delegate powers and duties to other employees

- (1) A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.
- (3) This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —
 - (a) the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and
 - (b) the exercise of that power or the discharge of that duty by the CEO's delegate,

are subject to any conditions imposed by the local government on its delegation to the CEO.

- (4) Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.
- (5) In subsections (3) and (4) —
conditions includes qualifications, limitations or exceptions.

[Section 5.44 amended by No. 1 of 1998 s. 14(1).]

5.45. Other matters relevant to delegations under this Division

- (1) Without limiting the application of sections 58 and 59 of the *Interpretation Act 1984* —
 - (a) a delegation made under this Division has effect for the period of time specified in the delegation or where no period has been specified, indefinitely; and
 - (b) any decision to amend or revoke a delegation by a local government under this Division is to be by an absolute majority.
- (2) Nothing in this Division is to be read as preventing —
 - (a) a local government from performing any of its functions by acting through a person other than the CEO; or
 - (b) a CEO from performing any of his or her functions by acting through another person.

5.46. Register of, and records relevant to, delegations to CEO and employees

- (1) The CEO is to keep a register of the delegations made under this Division to the CEO and to employees.
- (2) At least once every financial year, delegations made under this Division are to be reviewed by the delegator.
- (3) A person to whom a power or duty is delegated under this Act is to keep records in accordance with regulations in relation to the exercise of the power or the discharge of the duty.

5.47. Superannuation regulations

The Governor may make regulations about any matter relating to the provision of superannuation by a local government.

[Section 5.47 inserted by No. 17 of 2009 s. 24.]

5.48. Long service benefits for employees and employees of local government associations

- (1) In this section —

employee includes an employee of WALGA;

long service benefit means any of the following —

 - (a) long service leave with pay; or
 - (b) long service leave taken on a *pro rata* basis with pay; or
 - (c) payment in lieu of long service leave.

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- (2) Long service benefits for employees are to be provided in accordance with regulations.

[Section 5.48 amended by No. 17 of 2009 s. 25.]

5.49. Workers' compensation arrangement

- (1) In this section —

arrangement means the group self-insurance arrangement established under subsection (2);

eligible body means —

- (a) a local government; or
- (b) a regional local government; or
- (ca) a regional subsidiary; or
- (c) any other body with functions relating to local government approved in writing by the Minister;

WCIM Act means the *Workers' Compensation and Injury Management Act 1981*;

WorkCover WA has the same meaning as it has in the WCIM Act.

- (2) WALGA is to establish and manage, for the benefit of itself and any eligible body that chooses to participate, a group self-insurance arrangement against liability to pay compensation under the WCIM Act.
- (3) Subsection (2) does not apply unless the group of participants in the arrangement is exempted under section 164 of the WCIM Act.
- (4) If an eligible body wishes to join or leave the arrangement, WALGA is to apply to WorkCover WA to seek a variation in the group exemption.
- (5) Participants in the arrangement are jointly and severally liable for a liability of any participant to pay compensation under the WCIM Act, being a liability in relation to which that participant is exempted under section 164 of that Act from the requirement to insure.
- (6) WALGA is to dissolve the arrangement if exemption of the group under section 164 of the WCIM Act is cancelled.

- (7) Nothing in this section limits the application of the WCIM Act.

[Section 5.49 amended by No. 42 of 2004 s. 165; No. 49 of 2004 s. 12; No. 26 of 2016 s. 11.]

5.50. Payments to employees in addition to contract or award

- (1) A local government is to prepare a policy in relation to employees whose employment with the local government is finishing, setting out —
- (a) the circumstances in which the local government will pay an employee an amount in addition to any amount to which the employee is entitled under a contract of employment or award relating to the employee; and
 - (b) the manner of assessment of the additional amount,
- and cause local public notice to be given in relation to the policy.
- (1a) A local government must not make any payment of the kind described in subsection (1)(a) unless the local government has adopted a policy prepared under subsection (1).
- (2) A local government may make a payment —
- (a) to an employee whose employment with the local government is finishing; and
 - (b) that is more than the additional amount set out in the policy prepared under subsection (1) and adopted by the local government,
- but local public notice is to be given in relation to the payment made.
- (3) The value of a payment or payments made to a person under this section is not to exceed such amount as is prescribed or provided for by regulations.
- (4) In this section a reference to a payment to a person includes a reference to the disposition of property in favour of, or the conferral of any other financial benefit on, the person.

[Section 5.50 amended by No. 64 of 1998 s. 29.]

5.51. Employee who nominates for election to council to take leave

- (1) If an employee of a local government nominates to be a candidate for election as a member of the council and the nomination is accepted then, by operation of this subsection, the

employee is to be treated as being on leave from his or her employment on and from the day that the nomination is accepted until the day of the declaration of the poll or, if the nomination is cancelled, on the day of the cancellation.

- (2) An employee to whom subsection (1) applies may, during the period of leave, be paid leave entitlements to which the employee is entitled under a contract of employment or award relating to the employee but otherwise the leave is to be unpaid leave.

Division 5 — Annual reports and planning

[Heading amended by No. 49 of 2004 s. 42(2).]

[5.52. Deleted by No. 49 of 2004 s. 42(3).]

5.53. Annual reports

- (1) The local government is to prepare an annual report for each financial year.
- (2) The annual report is to contain —
- (a) a report from the mayor or president; and
 - (b) a report from the CEO; and
 - [(c), (d) deleted]*
 - (e) an overview of the plan for the future of the district made in accordance with section 5.56, including major initiatives that are proposed to commence or to continue in the next financial year; and
 - (f) the financial report for the financial year; and
 - (g) such information as may be prescribed in relation to the payments made to employees; and
 - (h) the auditor's report prepared under section 7.9(1) or 7.12AD(1) for the financial year; and
 - ~~(h) the auditor's report for the financial year; and~~
 - (ha) a matter on which a report must be made under section 29(2) of the *Disability Services Act 1993*; and
 - (hb) details of entries made under section 5.121 during the financial year in the register of complaints, including —
 - (i) the number of complaints recorded in the register of complaints; and

- (ii) how the recorded complaints were dealt with;
and
- (iii) any other details that the regulations may require;
and
- (i) such other information as may be prescribed.

[Section 5.53 amended by No. 44 of 1999 s. 28(3); No. 49 of 2004 s. 42(4) and (5); No. 1 of 2007 s. 6; [Local Government Amendment \(Auditing\) Bill 2017 cl. 7\(1\).](#)]

5.54. Acceptance of annual reports

- (1) Subject to subsection (2), the annual report for a financial year is to be accepted* by the local government no later than 31 December after that financial year.

** Absolute majority required.*

- (2) If the auditor's report is not available in time for the annual report for a financial year to be accepted by 31 December after that financial year, the annual report is to be accepted by the local government no later than 2 months after the auditor's report becomes available.

[Section 5.54 amended by No. 49 of 2004 s. 49.]

5.55. Notice of annual reports

The CEO is to give local public notice of the availability of the annual report as soon as practicable after the report has been accepted by the local government.

5.55A. Publication of annual reports

The CEO is to publish the annual report on the local government's official website within 14 days after the report has been accepted by the local government.

[Section 5.55A inserted by the [Local Government Amendment \(Auditing\) Bill 2017 cl. 8.](#)]

5.56. Planning for the future

- (1) A local government is to plan for the future of the district.
- (2) A local government is to ensure that plans made under subsection (1) are in accordance with any regulations made about planning for the future of the district.

[Section 5.56 inserted by No. 49 of 2004 s. 42(6).]

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Division 6 Disclosure of financial interests

s. 5.59

[5.57, 5.58. Deleted by No. 49 of 2004 s. 42(6).]

Division 6 — Disclosure of financial interests

Subdivision 1 — Disclosure of financial interests in matters affecting local government decisions

5.59. Terms used

In this Subdivision, unless the contrary intention appears —
extent, in relation to an interest, includes the value and amount of the interest;

member, in relation to a council or committee, means a council member or a member of the committee;

relevant person means a person who is either a member or a person to whom section 5.70 or 5.71 applies.

5.60. When person has an interest

For the purposes of this Subdivision, a relevant person has an interest in a matter if either —

- (a) the relevant person; or
- (b) a person with whom the relevant person is closely associated,

has —

- (c) a direct or indirect financial interest in the matter; or
- (d) a proximity interest in the matter.

[Section 5.60 inserted by No. 64 of 1998 s. 30.]

5.60A. Financial interest

For the purposes of this Subdivision, a person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government, or an employee or committee of the local government or member of the council of the local government, in a particular way, result in a financial gain, loss, benefit or detriment for the person.

[Section 5.60A inserted by No. 64 of 1998 s. 30; amended by No. 49 of 2004 s. 50.]

5.60B. Proximity interest

- (1) For the purposes of this Subdivision, a person has a proximity interest in a matter if the matter concerns —
 - (a) a proposed change to a planning scheme affecting land that adjoins the person's land; or
 - (b) a proposed change to the zoning or use of land that adjoins the person's land; or
 - (c) a proposed development (as defined in section 5.63(5)) of land that adjoins the person's land.
- (2) In this section, land (the *proposal land*) adjoins a person's land if —
 - (a) the proposal land, not being a thoroughfare, has a common boundary with the person's land; or
 - (b) the proposal land, or any part of it, is directly across a thoroughfare from, the person's land; or
 - (c) the proposal land is that part of a thoroughfare that has a common boundary with the person's land.
- (3) In this section a reference to a person's land is a reference to any land owned by the person or in which the person has any estate or interest.

[Section 5.60B inserted by No. 64 of 1998 s. 30.]

5.61. Indirect financial interests

A reference in this Subdivision to an indirect financial interest of a person in a matter includes a reference to a financial relationship between that person and another person who requires a local government decision in relation to the matter.

5.62. Closely associated persons

- (1) For the purposes of this Subdivision a person is to be treated as being closely associated with a relevant person if —
 - (a) the person is in partnership with the relevant person; or
 - (b) the person is an employer of the relevant person; or
 - (c) the person is a beneficiary under a trust, or an object of a discretionary trust, of which the relevant person is a trustee; or
 - (ca) the person belongs to a class of persons that is prescribed; or

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Division 6 Disclosure of financial interests

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- (d) the person is a body corporate —
 - (i) of which the relevant person is a director, secretary or executive officer; or
 - (ii) in which the relevant person holds shares having a total value exceeding —
 - (I) the prescribed amount; or
 - (II) the prescribed percentage of the total value of the issued share capital of the company,whichever is less;or
 - (e) the person is the spouse, de facto partner or child of the relevant person and is living with the relevant person; or
 - (ea) the relevant person is a council member and the person —
 - (i) gave a notifiable gift to the relevant person in relation to the election at which the relevant person was last elected; or
 - (ii) has given a notifiable gift to the relevant person since the relevant person was last elected;or
 - (eb) the relevant person is a council member and since the relevant person was last elected the person —
 - (i) gave to the relevant person a gift that section 5.82 requires the relevant person to disclose; or
 - (ii) made a contribution to travel undertaken by the relevant person that section 5.83 requires the relevant person to disclose;or
 - (f) the person has a relationship specified in any of paragraphs (a) to (d) in respect of the relevant person's spouse or de facto partner if the spouse or de facto partner is living with the relevant person.
- (2) In subsection (1) —
- notifiable gift** means a gift about which the relevant person was or is required by regulations under section 4.59(a) to provide information in relation to an election;

value, in relation to shares, means the value of the shares calculated in the prescribed manner or using the prescribed method.

[Section 5.62 amended by No. 64 of 1998 s. 31; No. 28 of 2003 s. 110; No. 49 of 2004 s. 51; No. 17 of 2009 s. 26.]

5.63. Some interests need not be disclosed

- (1) Sections 5.65, 5.70 and 5.71 do not apply to a relevant person who has any of the following interests in a matter —
- (a) an interest common to a significant number of electors or ratepayers; or
 - (b) an interest in the imposition of any rate, charge or fee by the local government; or
 - (c) an interest relating to —
 - (i) a fee, reimbursement of an expense or an allowance to which section 5.98, 5.98A, 5.99, 5.99A, 5.100 or 5.101(2) refers; or
 - (ii) a gift permitted by section 5.100A; or
 - (iii) reimbursement of an expense that is the subject of regulations made under section 5.101A;
- or
- (d) an interest relating to the pay, terms or conditions of an employee unless —
 - (i) the relevant person is the employee; or
 - (ii) either the relevant person's spouse, de facto partner or child is the employee if the spouse, de facto partner or child is living with the relevant person;
- or
- [(e) deleted]*
- (f) an interest arising only because the relevant person is, or intends to become, a member or office bearer of a body with non-profit making objects; or
 - (g) an interest arising only because the relevant person is, or intends to become, a member, office bearer, officer or employee of a department of the Public Service of the State or Commonwealth or a body established under this Act or any other written law; or
 - (h) a prescribed interest.

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- (2) If a relevant person has a financial interest because the valuation of land in which the person has an interest may be affected by —
- (a) any proposed change to a planning scheme for any area in the district; or
 - (b) any proposed change to the zoning or use of land in the district; or
 - (c) the proposed development of land in the district,

then, subject to subsection (3) and (4), the person is not to be treated as having an interest in a matter for the purposes of sections 5.65, 5.70 and 5.71.

- (3) If a relevant person has a financial interest because the valuation of land in which the person has an interest may be affected by —
- (a) any proposed change to a planning scheme for that land or any land adjacent to that land; or
 - (b) any proposed change to the zoning or use of that land or any land adjacent to that land; or
 - (c) the proposed development of that land or any land adjacent to that land,

then nothing in this section prevents sections 5.65, 5.70 and 5.71 from applying to the relevant person.

- (4) If a relevant person has a financial interest because any land in which the person has any interest other than an interest relating to the valuation of that land or any land adjacent to that land may be affected by —
- (a) any proposed change to a planning scheme for any area in the district; or
 - (b) any proposed change to the zoning or use of land in the district; or
 - (c) the proposed development of land in the district,

then nothing in this section prevents sections 5.65, 5.70 and 5.71 from applying to the relevant person.

- (5) A reference in subsection (2), (3) or (4) to the development of land is a reference to the development, maintenance or management of the land or of services or facilities on the land.

[Section 5.63 amended by No. 1 of 1998 s. 15; No. 64 of 1998 s. 32; No. 28 of 2003 s. 111; No. 49 of 2004 s. 52; No. 17 of 2009 s. 27; No. 26 of 2016 s. 12.]

[5.64. Deleted by No. 28 of 2003 s. 112.]

5.65. Members' interests in matters to be discussed at meetings to be disclosed

- (1) A member who has an interest in any matter to be discussed at a council or committee meeting that will be attended by the member must disclose the nature of the interest —
 - (a) in a written notice given to the CEO before the meeting;
or
 - (b) at the meeting immediately before the matter is discussed.Penalty: \$10 000 or imprisonment for 2 years.
- (2) It is a defence to a prosecution under this section if the member proves that he or she did not know —
 - (a) that he or she had an interest in the matter; or
 - (b) that the matter in which he or she had an interest would be discussed at the meeting.
- (3) This section does not apply to a person who is a member of a committee referred to in section 5.9(2)(f).

5.66. Meeting to be informed of disclosures

If a member has disclosed an interest in a written notice given to the CEO before a meeting then —

- (a) before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and
- (b) at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before the matters to which the disclosure relates are discussed.

[Section 5.66 amended by No. 1 of 1998 s. 16; No. 64 of 1998 s. 33.]

5.67. Disclosing members not to participate in meetings

A member who makes a disclosure under section 5.65 must not —

- (a) preside at the part of the meeting relating to the matter;
or

- (b) participate in, or be present during, any discussion or decision making procedure relating to the matter,

unless, and to the extent that, the disclosing member is allowed to do so under section 5.68 or 5.69.

Penalty: \$10 000 or imprisonment for 2 years.

5.68. Councils and committees may allow members disclosing interests to participate etc. in meetings

- (1) If a member has disclosed, under section 5.65, an interest in a matter, the members present at the meeting who are entitled to vote on the matter —
 - (a) may allow the disclosing member to be present during any discussion or decision making procedure relating to the matter; and
 - (b) may allow, to the extent decided by those members, the disclosing member to preside at the meeting (if otherwise qualified to preside) or to participate in discussions and the decision making procedures relating to the matter if —
 - (i) the disclosing member also discloses the extent of the interest; and
 - (ii) those members decide that the interest —
 - (I) is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct in relation to the matter; or
 - (II) is common to a significant number of electors or ratepayers.
 - (2) A decision under this section is to be recorded in the minutes of the meeting relating to the matter together with the extent of any participation allowed by the council or committee.
 - (3) This section does not prevent the disclosing member from discussing, or participating in the decision making process on, the question of whether an application should be made to the Minister under section 5.69.
- 5.69. Minister may allow members disclosing interests to participate etc. in meetings**
- (1) If a member has disclosed, under section 5.65, an interest in a matter, the council or the CEO may apply to the Minister to

allow the disclosing member to participate in the part of the meeting, and any subsequent meeting, relating to the matter.

- (2) An application made under subsection (1) is to include —
 - (a) details of the nature of the interest disclosed and the extent of the interest; and
 - (b) any other information required by the Minister for the purposes of the application.
- (3) On an application under this section the Minister may allow, on any condition determined by the Minister, the disclosing member to preside at the meeting, and at any subsequent meeting, (if otherwise qualified to preside) or to participate in discussions or the decision making procedures relating to the matter if —
 - (a) there would not otherwise be a sufficient number of members to deal with the matter; or
 - (b) the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.
- (4) A person must not contravene a condition imposed by the Minister under this section.

Penalty: \$10 000 or imprisonment for 2 years.

[Section 5.69 amended by No. 49 of 2004 s. 53.]

5.69A. Minister may exempt committee members from disclosure requirements

- (1) A council or a CEO may apply to the Minister to exempt the members of a committee from some or all of the provisions of this Subdivision relating to the disclosure of interests by committee members.
- (2) An application under subsection (1) is to include —
 - (a) the name of the committee, details of the function of the committee and the reasons why the exemption is sought; and
 - (b) any other information required by the Minister for the purposes of the application.
- (3) On an application under this section the Minister may grant the exemption, on any conditions determined by the Minister, if the Minister is of the opinion that it is in the interests of the electors or ratepayers to do so.

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- (4) A person must not contravene a condition imposed by the Minister under this section.

Penalty: \$10 000 or imprisonment for 2 years.

[Section 5.69A inserted by No. 64 of 1998 s. 34(1).]

5.70. Employees to disclose interests relating to advice or reports

- (1) In this section —

employee includes a person who, under a contract for services with the local government, provides advice or a report on a matter.

- (2) An employee who has an interest in any matter in respect of which the employee is providing advice or a report directly to the council or a committee must disclose the nature of the interest when giving the advice or report.

- (3) An employee who discloses an interest under this section must, if required to do so by the council or committee, as the case may be, disclose the extent of the interest.

Penalty: \$10 000 or imprisonment for 2 years.

5.71. Employees to disclose interests relating to delegated functions

If, under Division 4, an employee has been delegated a power or duty relating to a matter and the employee has an interest in the matter, the employee must not exercise the power or discharge the duty and —

- (a) in the case of the CEO, must disclose to the mayor or president the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter; and
- (b) in the case of any other employee, must disclose to the CEO the nature of the interest as soon as practicable after becoming aware that he or she has the interest in the matter.

Penalty: \$10 000 or imprisonment for 2 years.

5.72. Defence to prosecution

It is a defence to a prosecution under section 5.70 or 5.71 if the person proves that he or she did not know that he or she had an interest in the matter.

5.73. Disclosures to be minuted

A disclosure under section 5.65 or 5.70 is to be recorded in the minutes of the meeting relating to the disclosure.

Subdivision 2 — Disclosure of financial interests in returns

5.74. Terms used

- (1) In this Subdivision, unless the contrary intention appears —

address means —

- (a) in relation to a person other than a corporation, the last residential or business address of the person known to the person disclosing the address in a return; or
- (b) in relation to a corporation, the address of the registered office or principal place of business of the corporation in the State or, where there is no such office or place, the address of the principal office or place of business of the corporation in the place in which it is incorporated or taken to be registered; or
- (c) in relation to any real property, the postal address of the property or the particulars of title of the property;

annual return means a return required by section 5.76;

corporation means any body corporate, whether formed or incorporated within or outside the State, and includes any ***company*** or ***foreign company*** (as those terms are defined in the *Corporations Act 2001* of the Commonwealth) but does not include —

- (a) a body corporate that is incorporated within Australia or an external Territory and is a public authority or an instrumentality or agency of the Crown; or
- (b) a corporation sole; or

[(c), (d) deleted]

- (e) an association, society, institution or body incorporated, or taken to be incorporated, under the *Associations Incorporation Act 2015*;

designated employee means —

- (a) a CEO; and
- (b) an employee, other than the CEO, to whom any power or duty has been delegated under Division 4; and
- (c) an employee who is a member of a committee comprising council members and employees; and

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- (d) an employee nominated by the local government to be a designated employee;

primary return means a return required by section 5.75;

relative, in relation to a relevant person, means any of the following —

- (a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant of the relevant person or of the relevant person's spouse or de facto partner;
- (b) the relevant person's spouse or de facto partner or the spouse or de facto partner of any relative specified in paragraph (a),

whether or not the relationship is traced through, or to, a person whose parents were not actually married to each other at the time of the person's birth or subsequently, and whether the relationship is a natural relationship or a relationship established by a written law;

relevant person means a person who is a council member or a designated employee;

return means a primary or an annual return;

return period, in relation to an annual return required to be lodged by a relevant person in a particular year, means —

- (a) if the last return lodged by the relevant person was a primary return, the period commencing on the day after the start day for the primary return and ending on 30 June in that year; or
- (b) if the last return lodged by the relevant person was an annual return, the period of 12 months ending on 30 June in that year;

start day means —

- (a) in the case of a council member, the day on which he or she made the declaration referred to in section 2.29; or
- (b) in the case of a designated employee, the day on which the person became a designated employee.

- (2) A reference in this Subdivision to a disclosure concerning any income, corporation or any other thing (not being real property), includes a reference to a disclosure concerning any income derived, corporation incorporated (or taken to be registered), or other thing arising or received, outside this State.
- (3) For the purposes of this Subdivision, gifts or contributions to travel given, loans made, or goods or services supplied, to a

relevant person by 2 or more related bodies corporate (as defined in the *Corporations Act 2001* of the Commonwealth) is to be treated as having been given, made or supplied by a single corporation.

[Section 5.74 amended by No. 1 of 1998 s. 17; No. 26 of 1999 s. 92(2); No. 10 of 2001 s. 122; No. 28 of 2003 s. 113; No. 24 of 2009 s. 516; No. 30 of 2015 s. 223.]

5.75. Primary returns

- (1) A relevant person other than the CEO must lodge with the CEO a primary return in the prescribed form within 3 months of the start day.
- (2) A CEO must lodge with the mayor or president a primary return in the prescribed form within 3 months of the start day.
- (3) This section does not apply to a person who —
 - (a) has lodged a return within the previous year; or
 - (b) has, within 3 months of the start day, ceased to be a relevant person.

Penalty: \$10 000 or imprisonment for 2 years.

5.76. Annual returns

- (1) Each year, a relevant person other than the CEO must lodge with the CEO an annual return in the prescribed form by 31 August of that year.
- (2) Each year, a CEO must lodge with the mayor or president an annual return in the prescribed form by 31 August of that year.

Penalty applicable to subsections (1) and (2): \$10 000 or imprisonment for 2 years.

[Section 5.76 amended by No. 1 of 1998 s. 18; No. 66 of 2006 s. 12.]

5.77. Acknowledging receipt of returns

On receipt of a return under section 5.75 or 5.76 from a person, the CEO or the mayor or president, as the case may be, is to give the person written acknowledgment of having received the return.

5.78. Information to be disclosed in returns

- (1) A relevant person must comply with the requirements of sections 5.79, 5.80, 5.81, 5.84, 5.85 and 5.86 in relation to the disclosure of information in a return.
Penalty: \$10 000 or imprisonment for 2 years.
- (2) Nothing in this Subdivision requires a relevant person to —
 - (a) include in a return any information which has been disclosed in a previous return made by the relevant person; or
 - (b) disclose the actual value, amount or extent of any asset, income, interest, debt or disposition referred to in section 5.79, 5.80, 5.81, 5.84, 5.85 or 5.86.

[Section 5.78 amended by No. 17 of 2009 s. 28; No. 2 of 2016 s. 34.]

5.79. Real property

- (1) A relevant person is to disclose in a primary return and an annual return —
 - (a) the address of each parcel of real property, located in the district or in an adjoining district, in which the person had an interest —
 - (i) in the case of a primary return, on the start day; and
 - (ii) in the case of an annual return, at any time during the return period;
 - and
 - (b) the nature of the interest in each parcel of real property to which paragraph (a) applies.
- (2) Nothing in this Subdivision requires a relevant person to disclose in a return an interest in a parcel of real property to which subsection (1) applies if the person had the interest only —
 - (a) in the capacity of executor or administrator of the estate of a deceased person and the person was not a beneficiary under the will or did not have an entitlement under the intestacy; or
 - (b) in the capacity of trustee and the person acquired the interest in the ordinary course of an occupation of the

person which is not related to his or her duties as a council member or employee; or

(c) by way of security for a debt.

(3) In this section —

interest means any estate, interest, right or power whatever, whether at law or in equity, in or over real property.

5.80. Source of income

(1) A relevant person is to disclose —

(a) in a primary return, each source from which the person reasonably expects to receive income in the period commencing on the start day and ending on the next 30 June; and

(b) in an annual return, each source from which income was received by the person at any time during the return period.

(2) A reference in subsection (1) to each source from which income was received, or is reasonably expected to be received, by a person is a reference to —

(a) in relation to income from an occupation of the person —

(i) a description of the occupation; and

(ii) if the person is employed or the holder of an office, the name and address of his or her employer or a description of the office; and

(iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted;

and

(b) in relation to income from a trust, the name and address of the settlor and the trustee; and

(c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.

(3) Nothing in this Subdivision requires a relevant person to disclose in a return the source of any income if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed the prescribed

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amount, or is not reasonably expected to exceed the prescribed amount.

(4) In this section —

income means assessable income within the meaning of the *Income Tax Assessment Act 1936* of the Commonwealth, but does not include fees, reimbursement of expenses or allowances referred to in Division 8.

5.81. Trusts

A relevant person is to disclose in a primary return and in an annual return the name and address of the settlor and the trustee of any trust in which the person held a beneficial interest, or of any discretionary trust of which the person was a trustee or object, other than a trust to which section 5.80(2)(b) applies, in the case of —

- (a) a primary return, on the start day; and
- (b) an annual return, at any time during the return period.

5.82. Gifts

(1A) A relevant person is to disclose each gift received by the person.

(1B) The disclosure is to be made in writing to the CEO.

(1C) The disclosure is to be made within 10 days of receipt of the gift by the relevant person.

(1) The disclosure is to include the following —

- (a) a description of the gift;
- (b) the name and address of the person who made the gift;
- (c) the date on which the gift was received;
- (d) the estimated value of the gift at the time it was made;
- (e) the nature of the relationship between the relevant person and the person who made the gift.

(2) Nothing in this Subdivision requires a relevant person to disclose a gift received by the person if —

- (a) the amount of the gift did not exceed the prescribed amount unless —
 - (i) the gift was one of 2 or more gifts made by one person at any time during a year; and
 - (ii) the sum of those 2 or more gifts exceeded the prescribed amount;

or

(b) the donor was a relative of the person.

(3) For the purposes of this section, the amount of a gift comprising property, other than money, or the conferral of a financial benefit is to be treated as being an amount equal to the value of the property or the financial benefit at the time the gift was made.

(4) In this section —

gift means any disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel.

[Section 5.82 amended by No. 17 of 2009 s. 29; No. 2 of 2016 s. 35.]

5.83. Contributions to travel

(1A) A relevant person is to disclose each financial or other contribution that has been made to any travel undertaken by the person.

(1B) The disclosure is to be made in writing to the CEO.

(1C) The disclosure is to be made within 10 days of receipt of the contribution by the relevant person.

(1) The disclosure is to include the following —

- (a) a description of the contribution;
- (b) the name and address of the person who made the contribution;
- (c) the date on which the contribution was received;
- (d) the estimated value of the contribution at the time it was made;
- (e) the nature of the relationship between the relevant person and the person who made the contribution;
- (f) a description of the travel;
- (g) the date of travel.

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- (2) Nothing in this Subdivision requires a relevant person to disclose a financial or other contribution to any such travel undertaken by a person if —
- (a) the contribution was made from Commonwealth, State or local government funds; or
 - (b) the contribution was made by a relative of the person; or
 - (c) the contribution was made in the ordinary course of an occupation of the person which is not related to his or her duties as a council member or employee; or
 - (d) the amount of the contribution did not exceed the prescribed amount unless —
 - (i) the contribution was one of 2 or more contributions made by one person at any time during a year; and
 - (ii) the sum of those 2 or more contributions exceeded the prescribed amount;
- or
- (e) the contribution was made by a political party of which the person was a member and the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party.
- (3) For the purposes of subsection (2)(d) the amount of a contribution (other than a financial contribution) is to be treated as being an amount equal to the value of the contribution at the time the contribution was made.
- (4) In this section —

political party means a body or organization, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth or of the State of a candidate or candidates endorsed by it or by a body or organization of which it forms part; and

travel includes accommodation incidental to a journey.

[Section 5.83 amended by No. 17 of 2009 s. 30; No. 2 of 2016 s. 36.]

5.84. Interests and positions in corporations

- (1) A relevant person is to disclose in a primary return and in an annual return —
- (a) the name of each corporation of which the person was a member or in which he or she otherwise had an interest or held any position (whether remunerated or not) in the case of —
 - (i) a primary return, on the start day; and
 - (ii) an annual return, at any time during the return period;
 - and
 - (b) the nature of the interest, or the description of the position held, in each corporation to which paragraph (a) applies; and
 - (c) for each corporation to which paragraph (a) applies, other than corporations whose shares are quoted on a prescribed financial market in Australia —
 - (i) its address; and
 - (ii) a description of its principal business.

- (2) In this section —

interest means a relevant interest (within the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth) in any securities (within the meaning given by section 92 of that Act) issued or made available by the corporation;

prescribed financial market has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth.

[Section 5.84 inserted by No. 64 of 1998 s. 35; amended by No. 10 of 2001 s. 123; No. 21 of 2003 s. 15(2) and (3).]

5.85. Debts

- (1) A relevant person is to disclose in a primary return and an annual return the name and address of each person to whom the relevant person was liable to pay any debt —
- (a) in the case of a primary return, on the start day; or

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- (b) in the case of an annual return, at any time during the return period,

whether or not the amount, or any part of the amount, to be paid was due and payable on the start day or at any time during the return period, as the case may be.

- (2) Nothing in this Subdivision requires a relevant person to disclose in a return a liability to pay a debt if —

- (a) the amount to be paid did not exceed the prescribed amount on the start day or at any time during the return period, as the case may be, unless —
- (i) the debt was one of 2 or more debts which the person was liable to pay to one person on the start day or at any time during the return period, as the case may be; and
- (ii) the sum of the amounts to be paid exceeded the prescribed amount;

or

- (b) the person was liable to pay the debt to a relative; or
- (c) in the case of a debt arising from a loan of money, the person was liable to pay the debt to an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender; or
- (d) in the case of a debt arising from the supply of goods or services —
- (i) the goods or services were supplied in the period of 18 months immediately preceding the start day or were supplied during the return period, as the case may be; or
- (ii) the goods or services were supplied in the ordinary course of an occupation of the person which is not related to his or her duties as a council member or employee.

- (3) In subsections (1) and (2) —

debt means a debt arising from —

- (a) a loan of money; or

- (b) the supply of goods or services.

[Section 5.85 amended by No. 26 of 1999 s. 92(3).]

5.86. Dispositions of property

- (1) A relevant person is to disclose in an annual return particulars of each disposition by the person of real property —
 - (a) located in the district or in an adjoining district, in which property the person had an interest;
 - (b) by which disposition the relevant person retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time,

which was made at any time during the return period.

- (2) A relevant person is to disclose in an annual return particulars of each disposition of real property —
 - (a) located in the district or in an adjoining district, in which property the relevant person had an interest; and
 - (b) to a person by any person other than the relevant person under arrangements made by the relevant person; and
 - (c) by which disposition the relevant person obtained, either wholly or in part, the use and benefit of the property,

which was made at any time during the return period.

- (3) In this section —

disposition of real property means any conveyance, transfer, assignment, settlement, payment or other alienation of real property, and includes —

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

his own real property and to increase the value of the property of any other person.

5.87. Discretionary disclosures generally

A relevant person may, at his or her discretion, disclose in any return any direct or indirect benefits, advantages or liabilities, whether financial or not —

- (a) which are not required to be disclosed by any other provision of this Subdivision; and
- (b) which the person considers might appear to raise a conflict between the person's private interests and the person's duty as a council member or a designated employee or which he or she otherwise desires to disclose.

Subdivision 3 — General

5.88. Register of financial interests

- (1) A CEO is to keep a register of financial interests.
- (2) The register is to contain —
 - (a) the returns lodged under section 5.75 and 5.76; and
 - (b) a record of the disclosures made under sections 5.65, 5.70 and 5.71,and be in the form that is prescribed (if any).
- (3) As soon as is practicable after a person ceases to be a person who is required under section 5.75 or 5.76 to lodge a return, the CEO is to remove from the register all returns relating to that person.
- (4) Returns lodged under section 5.75 or 5.76 and removed from the register under subsection (3) are to be kept by the CEO for a period of at least 5 years after the person who lodged the return ceased to be a council member or designated employee.

5.89A. Register of gifts and contributions to travel

- (1) A CEO is to keep a register of gifts and contributions to travel.
- (2) The register is to contain a record of the disclosures made under sections 5.82 and 5.83.
- (3) The register is to be in the form that is prescribed (if any).
- (4) The CEO is to make the register available for public inspection.

- (5) The CEO is to publish the register on the local government's official website.
- (6) As soon as practicable after a person ceases to be a person who is required under section 5.82 or 5.83 to make a disclosure, the CEO is to remove from the register all records relating to that person.
- (7) Disclosures made under section 5.82 or 5.83 and removed from the register under subsection (6) are, for a period of at least 5 years after the person who made the disclosure ceases to be a person required under section 5.82 or 5.83 to make a disclosure —
 - (a) to be kept by the CEO; and
 - (b) to be made available for public inspection.

[Section 5.89A inserted by No. 2 of 2016 s. 37.]

5.89B. Offence to fail to disclose under sections 5.82 and 5.83

A relevant person must comply with the requirements of sections 5.82 and 5.83 in relation to the disclosure of information.

Penalty: a fine of \$10 000 or imprisonment for 2 years.

[Section 5.89B inserted by No. 2 of 2016 s. 37.]

5.89. Offence to give false or misleading information

A person must not, in relation to a disclosure under section 5.65, 5.70, 5.71, 5.82 or 5.83 or a return lodged under section 5.75 or 5.76, provide information in written or oral form that the person knows to be —

- (a) false or misleading in a material particular; or
- (b) likely to deceive in a material way.

Penalty: \$10 000 or imprisonment for 2 years.

[Section 5.89 amended by No. 2 of 2016 s. 38.]

5.90. Offence to publish information in certain cases

- (1) A person must not publish —
 - (a) any information derived from a register of financial interests unless that information constitutes a fair or accurate report or summary of information contained in the register and is published in good faith; or

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- (b) any comment on the facts set forth in a register of financial interests unless that comment is fair and published in good faith.

Penalty: \$5 000 or imprisonment for 1 year.

- (2) In subsection (1) —
publish has the same meaning in relation to any information or comment referred to in that subsection as it has in sections 348 and 349 of *The Criminal Code*⁷ in relation to the publication of defamatory matter.

Division 7 — Access to information

5.91. Interpretation

A reference in this Division to a council member, a committee member or an employee performing a function under a written law other than this Act does not include a reference to a council member, a committee member or an employee performing a function in a capacity other than that of council member, a committee member or an employee, as the case may be, under this Act.

5.92. Access to information by council, committee members

- (1) A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.
- (2) Without limiting subsection (1), a council member can have access to —
 - (a) all written contracts entered into by the local government; and
 - (b) all documents relating to written contracts proposed to be entered into by the local government.

5.93. Improper use of information

A person who is a council member, a committee member or an employee must not make improper use of any information acquired in the performance by the person of any of his or her functions under this Act or any other written law —

- (a) to gain directly or indirectly an advantage for the person or any other person; or

- (b) to cause detriment to the local government or any other person.

Penalty: \$10 000 or imprisonment for 2 years.

5.94. Public can inspect certain local government information

A person can attend the office of a local government during office hours and, unless it would be contrary to section 5.95, inspect, free of charge, in the form or medium in which it is held by the local government and whether or not it is current at the time of inspection —

- (a) any code of conduct;
- (aa) any regulations prescribing rules of conduct of council members referred to in section 5.104;
- (ab) any register of complaints referred to in section 5.121;
- (b) any register of financial interests;
- (c) any annual report;
- (d) any annual budget;
- (e) any schedule of fees and charges;
- (f) any plan for the future of the district made in accordance with section 5.56;
- (g) any proposed local law of which the local government has given Statewide public notice under section 3.12(3);
- (h) any local law made by the local government in accordance with section 3.12;
- (i) any regulations made by the Governor under section 9.60 that operate as if they were local laws of the local government;
- (j) any text that —
 - (i) is adopted (whether directly or indirectly) by a local law of the local government or by a regulation that is to operate as if it were a local law of the local government; or
 - (ii) would be adopted by a proposed local law of which the local government has given Statewide public notice under section 3.12(3);
- (k) any subsidiary legislation made or adopted by the local government under any written law other than under this Act;

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- (l) any written law having a provision in respect of which the local government has a power or duty to enforce;
- (m) any rates record;
- (n) any confirmed minutes of council or committee meetings;
- (o) any minutes of electors' meetings;
- (p) any notice papers and agenda relating to any council or committee meeting and reports and other documents that have been —
 - (i) tabled at a council or committee meeting; or
 - (ii) produced by the local government or a committee for presentation at a council or committee meeting and which have been presented at the meeting;
- (q) any report of a review of a local law prepared under section 3.16(3);
- (r) any business plan prepared under section 3.59;
- (s) any register of owners and occupiers under section 4.32(6) and electoral rolls;
- (t) any contract under section 5.39 and variation of such contract;
- (ta) [a report on a supplementary audit prepared under section 7.12AH\(1\);](#)
- (u) such other information relating to the local government —
 - (i) required by a provision of this Act to be available for public inspection; or
 - (ii) as may be prescribed.

[Section 5.94 amended by No. 49 of 2004 s. 42(7); No. 1 of 2007 s. 7; [Local Government Amendment \(Auditing\) Bill 2017 cl. 9.](#)]

5.95. Limits on right to inspect local government information

- (1) A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information —
 - (a) which is not current at the time of inspection; and
 - (b) which, in the CEO's opinion, would divert a substantial and unreasonable portion of the local government's resources away from its other functions.

- (2) A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (m), (n), (p) or (u) of that section if the information relates to any debt owed to the local government by a person other than the first-mentioned person.
- (3) Subject to subsection (4), a person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (n) or (p) of that section if the meeting or that part of the meeting to which the information refers —
- (a) was closed to members of the public; or
 - (b) in the CEO's opinion, could have been closed to members of the public but was not closed.
- (4) Subsection (3) does not apply in relation to information —
- (a) that is a record of the decisions made at a meeting of a council, a committee or electors; or
 - (b) of a kind prescribed as being information that can be inspected by members of the public despite subsection (3).
- (5) A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (t) of that section if —
- (a) the information relates to a matter other than the salary or the remuneration or benefits payable under the contract; and
 - (b) the information is prescribed as being of a private nature.
- (6) Subject to subsection (7), a person's right to inspect information referred to in section 5.94 does not extend to the inspection of information —
- (a) referred to in a paragraph of that section that is prescribed as being confidential information for the purposes of this subsection; or
 - (b) referred to in that section of a type prescribed as confidential for the purposes of this subsection,
- for the period of time prescribed in relation to the information.

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- (7) Subsection (6) does not apply in respect of information in relation to a local government if —
- (a) the information is prescribed as information that is confidential but that may be available for inspection if the local government so resolves; and
 - (b) the local government has resolved that the information is to be available for inspection.
- (8) A person's right to inspect information referred to in section 5.94 does not extend to the inspection of information referred to in paragraph (m) of that section if the information is information that has been omitted by regulations made under section 4.38 from the electoral roll for the protection of an elector or his or her family.

[Section 5.95 amended by No. 49 of 2004 s. 54.]

5.96. Copies of information to be available

If a person can inspect certain information under this Division, the person may request a copy of the information and, unless regulations prescribe otherwise, the local government is to ensure that copies are available and that the price at which it sells copies does not exceed the cost of providing the copies.

[Section 5.96 amended by No. 17 of 2009 s. 31.]

5.97. Freedom of Information Act 1992 not affected

Nothing in this Division affects the operation of the *Freedom of Information Act 1992*.

Part 7 — Audit

What this Part is about

This Part deals with the audit of the financial accounts of local governments, including —

- (a) *the appointment of auditors; and*
- (b) *the conduct of audits.*

Division 1 — Introduction

7.1. Terms used

In this Part, unless the contrary intention appears — ~~Part~~ —
approved auditor means a person who is approved by the Minister under section 7.5;

audit has the meaning given in the Auditor General Act section 4(1);

audit committee means an audit committee established under section 7.1A;

audit contract means an agreement in writing that —

- (a) was made under section 7.8(1); and
- (b) was in force immediately before commencement day;

Auditor General Act means the Auditor General Act 2006;

audit report means a report prepared by an auditor on a local government audit;

commencement day means the day on which the *Local Government Amendment (Auditing) Act 2017* section 10 comes into operation;

disqualified person has the meaning given by section 7.4(2);

financial audit means an audit conducted under section 7.12AB;

local government audit means —

- (a) an audit conducted under this Part; or
- (b) a performance audit;

performance audit means an examination or investigation carried out under the Auditor General Act section 18 (as applied by section 7.12AJ(1) of this Act);

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Division 1A Audit committee

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qualified person means a person who is an approved auditor or a registered company auditor and who is not a disqualified person;

registered company auditor means a person who is for the time being registered as an auditor or taken to be registered as an auditor under Part 9.2 of the *Corporations Act 2001* of the Commonwealth;

regulations means regulations made for the purposes of this

[Part](#); ~~Part.~~

supplementary audit means an audit conducted under [section 7.12AG](#).

[Section 7.1 amended by No. 10 of 2001 s. 124; No. 49 of 2004 s. 4; [Local Government Amendment \(Auditing\) Bill 2017 cl. 10.](#)]

Division 1A — Audit committee

[Heading inserted by No. 49 of 2004 s. 5.]

7.1A. Audit committee

- (1) A local government is to establish an audit committee of 3 or more persons to exercise the powers and discharge the duties conferred on it.
- (2) The members of the audit committee of a local government are to be appointed* by the local government and at least 3 of the members, and the majority of the members, are to be council members.

* Absolute majority required.

- (3) A CEO is not to be a member of an audit committee and may not nominate a person to be a member of an audit committee or have a person to represent [the CEO](#) ~~him or her~~ as a member of an audit committee.
- (4) An employee is not to be a member of an audit committee.

[Section 7.1A inserted by No. 49 of 2004 s. 5; [amended by the Local Government Amendment \(Auditing\) Bill 2017 cl. 11.](#)]

7.1B. Delegation of some powers and duties to audit committees

- (1) Despite section 5.16, the only powers and duties that a local government may delegate* to its audit committee are any of its powers and duties under this Part other than this power of delegation.

* Absolute majority required.

- (2) A delegation to an audit committee is not subject to section 5.17.

[Section 7.1B inserted by No. 49 of 2004 s. 5.]

7.1C. Decisions of audit committees

Despite section 5.20, a decision of an audit committee is to be made by a simple majority.

[Section 7.1C inserted by No. 49 of 2004 s. 5.]

Division 2 — Appointment of auditors

7.1D. Application

This Division applies in relation to a local government that has an audit contract that is in force.

[Section 7.1D inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 12.]

7.2. Audit

The accounts and annual financial report of a local government for each financial year are required to be audited by an auditor appointed by the local government.

7.3. Appointment of auditors

- (1) Subject to subsection (1A), a local ~~A local~~ government is to, from time to time whenever such an appointment is necessary or expedient, appoint* a person, on the recommendation of the audit committee, to be its auditor.

** Absolute majority required.*

(1A) A local government cannot appoint a person to be its auditor after commencement day.

- (2) The local government may appoint one or more persons as its auditor.
- (3) The local government's auditor is to be a person who is —
- (a) a registered company auditor; or
 - (b) an approved auditor.

[Section 7.3 amended by No. 49 of 2004 s. 6; Local Government Amendment (Auditing) Bill 2017 cl. 13.]

7.4. Disqualified person not to be auditor

(1) A person may not be appointed as a local government's auditor if that person is a disqualified person.

(2) In this section —

disqualified person means a person who —

(a) is a councillor or an employee of the local government;
or

(b) is a person who is in debt for more than the prescribed amount to the local government for a period of more than 35 days after —

(i) in the case of that part of the debt which is for a rate or service charge under Part 6, the date the rate notice was issued; or

(ii) in the case of that part of the debt which is not for a rate or service charge, the date an account was rendered to the person by the local government;

or

(c) is an employee of, or a member of the governing body of, an entity of a kind prescribed for the purposes of this paragraph; or

(d) is a member of a class of persons prescribed for the purposes of this subsection.

7.5. Approval of auditors

The Minister may approve a person who, immediately before the commencement of this Act —

(a) was a registered local government auditor within the meaning of that term in Part XXVII of the *Local Government Act 1960*⁴ as in force before that commencement; and

(b) was the auditor of a local government,

as an approved auditor for the purposes of this Act.

7.6. Term of office of auditor

(1) The appointment of a local government's auditor is to have effect in respect of the audit of the accounts and annual financial report of the local government for a term of not more than 5 financial years, but an auditor is eligible for re-appointment.

- (2) The appointment of an auditor of a local government ceases to have effect if —
- (a) his or her registration as a registered company auditor is cancelled; or
 - (b) his or her approval as an approved auditor is withdrawn; or
 - (c) he or she dies; or
 - (d) the auditor ceases to be qualified to hold office as auditor or becomes a disqualified person; or
 - (e) the auditor resigns by notice in writing addressed to the local government; or
 - (f) the appointment is terminated by the local government by notice in writing.
- (3) Where —
- (a) the registration of a local government's auditor as a registered company auditor is suspended; or
 - (b) a local government's auditor becomes unable or unwilling to carry out all or part of his or her duties,

the local government is to appoint* a person to conduct the audit or to complete that part of the audit which remains to be conducted, as the case requires.

* *Absolute majority required.*

7.7. Departmental CEO may appoint auditor

- (1) Subject to subsection (2), if ~~it~~ by 30 November in any year a local government has not appointed an auditor the Departmental CEO may appoint —
- (a) a qualified person; or
 - (b) in default of an appointment under paragraph (a), the Auditor General,

to be the auditor of the local government's accounts and annual financial report for the relevant financial year.

- (2) The Departmental CEO cannot appoint a person to be the auditor of a local government after commencement day.

[Section 7.7 amended by No. 28 of 2006 s. 364; *Local Government Amendment (Auditing) Bill 2017 cl. 14.*]

7.8. Terms of appointment of auditors

- (1) Subject to this Part and to any regulations, the appointment of a person as auditor of a local government is to be made by agreement in writing on such terms and conditions, including the remuneration and expenses of the person to be appointed, as are agreed between that person and the local government.
- (2) The remuneration and expenses payable to the auditor of a local government (whether appointed by the local government or by the Departmental CEO under section 7.7) are payable by the local government.

[Section 7.8 amended by No. 28 of 2006 s. 364.]

Division 3 — Conduct of audit

7.8A. Application

This Division applies in relation to a local government that has an audit contract that is in force.

[Section 7.8A inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 15.]

7.9. Audit to be conducted

- (1) An auditor is required to examine the accounts and annual financial report submitted for audit and, by the 31 December next following the financial year to which the accounts and report relate or such later date as may be prescribed, to prepare a report thereon and forward a copy of that report to —
 - (a) the mayor or president; and
 - (b) the CEO of the local government; and
 - (c) the Minister.
- (2) Without limiting the generality of subsection (1), where the auditor considers that —
 - (a) there is any error or deficiency in an account or financial report submitted for audit; or
 - (b) any money paid from, or due to, any fund or account of a local government has been or may have been misapplied to purposes not authorised by law; or

- (c) there is a matter arising from the examination of the accounts and annual financial report that needs to be addressed by the local government,
details of that error, deficiency, misapplication or matter, are to be included in the report by the auditor.
- (3) The Minister may direct the auditor of a local government to examine a particular aspect of the accounts and the annual financial report submitted for audit by that local government and to —
- (a) prepare a report thereon; and
- (b) forward a copy of that report to the Minister,
- and that direction has effect according to its terms.
- (4) If the Minister considers it appropriate to do so, the Minister is to forward a copy of the report referred to in subsection (3), or part of that report, to the CEO of the local government.
~~government to be dealt with under section 7.12A.~~

[Section 7.9 amended by No. 49 of 2004 s. 7; [Local Government Amendment \(Auditing\) Bill 2017 cl. 16.](#)]

7.10. Powers of auditor

- (1) An auditor —
- (a) has a right of access at all reasonable times to such books, accounts, documents and assets of the local government as are, in the opinion of the auditor, necessary to allow the audit to be conducted; and
- (b) may require from a member or an employee of the local government —
- (i) any book, account, document or asset of the local government; or
- (ii) any information, assistance or explanation, necessary for the performance of the duty of the auditor in relation to the audit; and
- (c) may, at the expense of the local government obtain and act upon a legal opinion on a question arising in the course of an audit.
- (2) In this section and in section 7.11 *employee* includes a person who has a contract for services with the local government.

7.11. Power to demand production of books etc.

For the purpose of an audit, ~~inspection or inquiry~~, an auditor has authority at all reasonable times and without notice to demand from the local government and its employees, the production of books, accounts, vouchers, papers, documents, records, assets and cash in hand, belonging to the local government or being in the custody or control of it or any of its employees.

[Section 7.11 amended by Local Government Amendment (Auditing) Bill 2017 cl. 17.]

7.12. Employees and financial institutions to furnish particulars of money received

- (1) An employee of a local government is to furnish to an auditor, as and when required, a statement in writing of all money received in his or her official capacity by the employee whether on account of the local government or otherwise.
- (2) A bank or other financial institution at which a local government has an account is required to furnish to an auditor, as and when required, full particulars of the account.

Division 3A — Financial audit

[Heading inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AA. Application

This Division applies in relation to a local government that does not have an audit contract that is in force.

[Section 7.12AA inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AB. Conducting a financial audit

The auditor must audit the accounts and annual financial report of a local government at least once in respect of each financial year.

[Section 7.12AB inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AC. Dispensing with a financial audit

- (1) Despite section 7.12AB, the auditor may dispense with all or any part of a financial audit if the auditor considers that the dispensation is appropriate in the circumstances.
- (2) The auditor must consult the Minister before exercising the power conferred by subsection (1).
- (3) If the auditor exercises the power conferred by subsection (1), the auditor must notify —
 - (a) the Public Accounts Committee as defined in the Auditor General Act section 4(1); and
 - (b) the Estimates and Financial Operations Committee as defined in the Auditor General Act section 4(1).

[Section 7.12AC inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AD. Reporting on a financial audit

- (1) The auditor must prepare and sign a report on a financial audit.
- (2) The auditor must give the report to —
 - (a) the mayor, president or chairperson of the local government; and
 - (b) the CEO of the local government; and
 - (c) the Minister.

[Section 7.12AD inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AE. Fees for a financial audit

- (1) The auditor must determine whether a fee is to be charged for a financial audit of a local government and if so, the amount of that fee.
- (2) A fee determined under subsection (1) must be paid by the local government.

[Section 7.12AE inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

Division 3B — Supplementary audit

[Heading inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AF. Application

This Division applies in relation to a local government that does not have an audit contract that is in force.

[Section 7.12AF inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AG. Conducting a supplementary audit

The auditor may audit any particular aspect of the accounts of a local government that the Minister requests the auditor to audit.

[Section 7.12AG inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AH. Reporting on a supplementary audit

(1) The auditor must prepare and sign a report on a supplementary audit.

(2) The auditor must give the report to the Minister.

(3) The Minister —

(a) may give a copy of the report to the mayor, president or chairperson of the local government, and to the CEO of the local government; and

(b) may request the CEO of the local government to publish the report on the local government's official website.

(4) The CEO must publish a copy of the report on the local government's official website within 14 days after receiving a request under subsection (3)(b).

[Section 7.12AH inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AI. Fees for a supplementary audit

(1) The auditor must determine whether a fee is to be charged for a supplementary audit of a local government and if so, the amount of that fee.

- (2) A fee determined under subsection (1) must be paid by the local government.

[Section 7.12AJ inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

Division 3C — Performance audit

[Heading inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AJ. Conducting a performance audit

- (1) The Auditor General Act section 18 applies in relation to a local government as if —

(a) the local government were an agency; and

(b) money collected, received or held by any person for or on behalf of the local government were public money; and

(c) money collected, received or held by the local government for or on behalf of a person other than the local government were other money; and

(d) property held for or on behalf of the local government, other than money referred to in paragraph (b), were public property; and

(e) property held by the local government for or on behalf of a person other than the local government were other property; and

(f) the reference in the Auditor General Act section 18(2)(d) to “legislative provisions, public sector policies or its own internal policies;” were a reference to “legislative provisions or its own internal policies;”.

- (2) A performance audit is taken for the purposes of the Auditor General Act to have been carried out under the Auditor General Act Part 3 Division 1.

[Section 7.12AJ inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AK. Reporting on a performance audit

- (1) The Auditor General Act section 25 applies in relation to a performance audit as if —

(a) a local government were an agency; and

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(b) the council of the local government were its accountable authority.

(2) The auditor must give a report on a performance audit to the local government.

[Section 7.12AK inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

Division 3D — Other audits

[Heading inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

7.12AL. Audits of accounts of related entities and certain subsidiary bodies

The Auditor General Act sections 16 and 17 apply in relation to a local government as if —

(a) the local government were an agency; and

(b) the council of the local government were its accountable authority.

[Section 7.12AL inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 18.]

Division 4 — General

7.12A. Duties of local government with respect to audits

(1) A local government is to do everything in its power to —

(a) assist the auditor of the local government to conduct an audit and carry out ~~the auditor's his or her~~ other duties under this Act in respect of the local government; and

(b) ensure that audits are conducted successfully and expeditiously.

(2) Without limiting the generality of subsection (1), a local government is to meet with the auditor of the local government at least once in every year.

(3) A local government ~~must — is to examine the report of the auditor prepared under section 7.9(1), and any report prepared under section 7.9(3) forwarded to it, and is to —~~

(aa) examine an audit report received by the local government; and

- (a) determine if any matters raised by the audit report, ~~report, or reports~~, require action to be taken by the local government; and
- (b) ensure that appropriate action is taken in respect of those matters.

(4) A local government must —

- (a) prepare a report addressing any matters identified as significant by the auditor in the audit report, and stating what action the local government has taken or intends to take with respect to each of those matters; and
- (b) give a copy of that report to the Minister within 3 months after the audit report is received by the local government.

(5) Within 14 days after a local government gives a report to the Minister under subsection (4)(b), the CEO must publish a copy of the report on the local government's official website.

~~(4) A local government is to —~~

- ~~(a) prepare a report on any actions under subsection (3) in respect of an audit conducted in respect of a financial year; and~~
- ~~(b) forward a copy of that report to the Minister,~~

~~by the end of the next financial year, or 6 months after the last report prepared under section 7.9 is received by the local government, whichever is the latest in time.~~

[Section 7.12A inserted by No. 49 of 2004 s. 8; amended by the Local Government Amendment (Auditing) Bill 2017 cl. 19.]

7.13. Regulations as to audits

- (1) Regulations may make provision as follows — ~~provision~~ —
 - (aa) as to the functions of a CEO in relation to —
 - (i) a local government audit; and
 - (ii) a report (an *action report*) prepared by a local government under section 7.12A(4)(a); and
 - (iii) an audit report; and
 - (iv) a report on an audit conducted by a local government under this Act or any other written law;

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(ab) as to the functions of an audit committee, including in relation to —

(i) the selection and recommendation of an auditor under Division 2; and

(ii) a local government audit; and

(iii) an action report; and

(iv) an audit report; and

(v) a report on an audit conducted by a local government under this Act or any other written law;

(ac) as to the procedure to be followed in selecting an auditor under Division 2;

~~(aa) as to the functions of the CEO and the audit committee in relation to audits carried out under this Part and reports made on those audits;~~

~~(ab) as to the functions of audit committees, including the selection and recommendation of an auditor;~~

~~(ac) as to the procedure to be followed in selecting an auditor;~~

~~(ad) as to the contents of the annual report to be prepared by an audit committee;~~

(ae) as to monitoring action taken in respect of any matters raised in an audit report; ~~a report by an auditor;~~

(a) with respect to matters to be included in an agreement in writing (agreement) made under section 7.8(1); ~~agreements between local governments and auditors;~~

(b) for notifications and reports to be given in relation to an agreement, including any variations to, or termination of an agreement;

~~(b) for notifications and reports to be given in relation to agreements between local governments and auditors, including any variations to, or termination of such agreements;~~

(ba) as to a copy of an agreement ~~the copies of agreements between local governments and auditors~~ being provided to the Department;

(c) as to the manner in which an application may be made to the Minister for approval as an auditor under section 7.5; ~~auditor;~~

- (d) in relation to approved auditors, for the following —
~~for —~~
- (i) reviews of, and reports on, the quality of audits conducted;
 - (ii) the withdrawal by the Minister of approval as an auditor;
 - (iii) applications to the State Administrative Tribunal for the review of decisions to withdraw approval;
- (e) for the exercise or performance by auditors of their powers and duties under this Part;
- (f) as to the matters to be addressed in an audit report: ~~by auditors in their reports;~~
- (g) requiring an auditor (other than the Auditor General) to provide the Minister with prescribed information as to an audit conducted by the auditor;
- (h) prescribing the circumstances in which an auditor (other than the Auditor General) is to be considered to have a conflict of interest and requiring an auditor (other than the Auditor General) to disclose in an audit report such information as to a possible conflict of interest as is prescribed;
- ~~(g) requiring auditors to provide the Minister with such information as to audits carried out by them under this Part as is prescribed;~~
- ~~(h) prescribing the circumstances in which an auditor is to be considered to have a conflict of interest and requiring auditors to disclose in their reports such information as to a possible conflict of interest as is prescribed;~~
- (i) requiring local governments to carry out, in the prescribed manner and in a form approved by the Minister, an audit of compliance with such statutory requirements as are prescribed whether those requirements are —
- (i) of a financial nature or not; or
 - (ii) under this Act or another written law.

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- (2) Regulations may also make any provision about audit committees that may be made under section 5.25 in relation to committees.

[Section 7.13 amended by No. 64 of 1998 s. 40; No. 49 of 2004 s. 9; No. 55 of 2004 s. 700; [Local Government Amendment \(Auditing\) Bill 2017 cl. 20.](#)]

Schedule 9.3 — Transitional provisions

[Section 9.71]

[Heading amended by No. 2 of 2012 s. 25.]

Division 1 — Provisions for *Local Government Act 1995*

[Heading inserted by No. 2 of 2012 s. 26.]

Subdivision 1 — Preliminary

[Heading inserted by No. 2 of 2012 s. 26.]

1. Terms used

In this Schedule unless the contrary intention appears —

commencement day means the day on which this Act comes into operation;

continuing authority means a former municipality that, on the commencement day, continues in existence as a local government;

designated employee has the meaning given by section 5.74;

former district means a district that existed under the former provisions immediately before the commencement day;

former municipality means a municipality that, under the former provisions, was constituted by the inhabitants of a former district immediately before the commencement day;

former provisions means the *Local Government Act 1960*⁴ as in force before the commencement day;

senior employee means an employee designated as a senior employee under section 5.37.

2. *Interpretation Act 1984* applies

This Schedule does not limit the operation of the *Interpretation Act 1984*.

3. Construction of references in written laws

- (1) Unless the context otherwise requires, a reference in a written law to an enactment repealed by this Act includes a reference to the corresponding provision, if any, of this Act.
- (2) A reference in a written law to a municipality under the *Local Government Act 1960*⁴ may, where the context so requires, be read as if it had been amended to include or be a reference to a local government under this Act.
- (3) A reference in a written law to a regional council under the *Local Government Act 1960*⁴ may, where the context so requires, be read as

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cl. 4

if it had been amended to include or be a reference to a regional local government under this Act.

- (4) A reference in a written law to the town clerk or shire clerk of a municipality may, where the context so requires, be read as if it had been amended to include or be a reference to the CEO of a local government.
- (5) A reference in a written law to the secretary of a regional council may, where the context so requires, be read as if it had been amended to include or be a reference to the CEO of a regional local government.

Subdivision 2 — Continuation of constitutional arrangements, membership and appointments

[Heading inserted by No. 2 of 2012 s. 27.]

4. Former districts continue as districts

- (1) On the commencement day —
 - (a) a former district becomes a district as if it had been declared to be a district under section 2.1; and
 - (b) its name is to be derived from the name of the former municipality by omitting “Town of”, “City of” or “Shire of”, as the case requires, unless subclause (2) applies.
- (2) If subclause (1)(b) would result in 2 or more districts having the same name, the name of each of those districts is to be derived by adding after the name they would have either “(Town)”, “(City)”, or “(Shire)”, as is appropriate.
- (3) The former district becomes a city, town or shire under this Act according to which of those the former municipality was under the former provisions even if it does not meet the relevant requirements under section 2.4.

5. Former municipalities continue as local governments

The local government of a former district that becomes a district under this Act is a continuation of, and the same legal entity as, the former municipality, and has the same name.

6. Former councils continue as previously constituted

- (1) On and after the commencement day, the council of a continuing authority continues as if it had been constituted, and its members had been elected, under this Act.
- (2) Without limiting subclause (1), the number of offices of councillor on the council of a continuing authority remains the same until changed under this Act even if the number does not meet the relevant requirements under section 2.17.

- (3) The Advisory Board, in a written report to the Minister, is to recommend the making of an order under section 2.18(3)(a) or (c) if in the opinion of the Advisory Board that order is necessary to ensure that the ordinary elections of a continuing authority held on 7 May 2005 are held on the basis of there being a number of offices of councillor on the council that meets the relevant requirements under section 2.17.
- (4) The Advisory Board can make a recommendation under subclause (3) whether or not the continuing authority has made a proposal to it under Schedule 2.2.
- (5) For the purposes of deciding on any recommendation it is to make under subclause (3), the Advisory Board may carry out any inquiry it thinks necessary.
- (6) The Advisory Board may recover the amount of the costs connected with an inquiry under subclause (5) from the continuing authority as if it were for a debt due.

7. Wards and representation

- (1) If, immediately before the commencement day, a former district had a ward system under the former provisions that system (including the boundaries of the wards and the numbers of offices of councillor for the wards) continues to apply on and after the commencement day until it is changed or discontinued under this Act.
- (2) If subclause (1) applies to the district of a continuing authority, the continuing authority is to carry out the first review of its ward system under Schedule 2.2, clause 6 within 8 years after the commencement day.

8. Former method of electing mayor or president continued

The method of filling the office of mayor or president of a continuing authority which had effect under the former provisions immediately before the commencement day continues to have effect on and after the commencement day until a decision under section 2.11(2) to change to the other method mentioned in section 2.11(1)(a) or (b) takes effect.

9. Commissioners continued

If, immediately before the commencement day, the functions of the council and the mayor or president of a continuing authority were being performed by a commissioner appointed under the former provisions, that appointment continues to have effect, subject to its terms, under this Act.

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10. Regional councils continued

A regional council constituted under the former provisions that was in existence immediately before the commencement day continues in existence as a regional local government on and after that day as if —

- (a) it had been constituted as a regional local government under this Act; and
- (b) the regional councillors had been appointed as members of the regional local government under this Act; and
- (c) the constitution agreement included the provisions of sections 699 to 702, 704 to 707 and 709 of the former provisions and had been approved by the Minister as an establishment agreement under this Act.

11. Local Government Associations continued

The associations constituted by Part 9, Division 5, are the same legal entities as the associations that were constituted under Part XXX of the former provisions.

Subdivision 3 — Electoral matters

[Heading inserted by No. 2 of 2012 s. 28.]

12. Enrolment of certain electors may continue

- (1) In this clause —

existing roll means an owners and occupiers roll prepared in respect of a district or ward under section 43 of the former provisions and not superseded by another owners and occupiers roll prepared under that section.

- (2) Despite section 4.30(1)(a) if a person who is not enrolled as an elector for the Legislative Assembly or the House of Representatives —

- (a) owns or occupies rateable property within a district or ward (the *electorate*); and
- (b) was named as an elector in respect of that property or any other property on an existing roll for the district, or a ward of the district, or would have been so named if his or her name had not been omitted in error; and
- (c) has owned or occupied rateable property within the district continuously since that existing roll was prepared,

the person is to be regarded for the purposes of this Act as being eligible under section 4.30(1)(a) and (b) to be enrolled to vote at elections for the electorate.

- (3) The CEO of a continuing authority is to ensure that copies of the existing roll or existing rolls relating to the former municipality are retained on a permanent basis after the commencement of this Act.

13. Existing provisions continue for elections before 1997 ordinary elections

Despite the commencement of this Act, if an election is held to fill a vacancy in the office of a councillor or a mayor or president elected by the electors and the poll for the election takes place (or would, if needed, have taken place) before 3 May 1997, the former provisions, as in force immediately before the commencement day, continue to apply in relation to the election and the filling of the vacancy as if this Act had not commenced.

14. Transition from annual to biennial election system

- (1) This clause applies to a continuing authority if, immediately before the commencement day, it was under the annual election system under the former provisions.
- (2) A continuing authority to which this clause applies may decide —
 - (a) that the terms of office of each councillor, and the mayor or president where the mode of election is by the electors, will expire on 3 May 1997 and, in that case, any of those terms of office that would, but for this clause, continue beyond that day is, by operation of this clause, reduced to the extent necessary to make it expire on that day; or
 - (b) that the terms of office of each councillor, and the mayor or president where the mode of election is by the electors, will continue unaffected by this Act and, in that case —
 - (i) the term of office of a councillor, or mayor or president, where the mode of election is by the electors, elected to fill an office that becomes vacant on 3 May 1997, is 4 years; and
 - (ii) the term of office of a mayor or president, where the mode of election is by the electors, elected to fill an office that becomes vacant on 2 May 1998, is 3 years; and
 - (iii) a term of office of either one year or 3 years shall be fixed by the returning officer for any councillor elected to fill an office that becomes vacant on 2 May 1998 so as to give effect to clauses 1 and 2 of Schedule 4.2 in relation to the years 1999 and 2001.
- (3) A decision made under subclause (2)(a) or (b) on or after 14 February 1997 has no effect.
- (4) A decision made under subclause (2)(b) has no effect unless it is approved by the Minister.
- (5) If a continuing authority to which this clause applies does not make an effective decision under subclause (2)(a) or (b) —

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- (a) the term of office of a councillor, or the mayor or president where the mode of election is by the electors, that would, but for this clause, expire on 2 May 1998 is, by operation of this clause, reduced so that it expires on 3 May 1997; and
- (b) the term of office of a councillor, or the mayor or president where the mode of election is by the electors, that expires on 3 May 1997 or 1 May 1999 continues unaffected by this clause; and
- (c) without limiting clause 5 of Schedule 4.2, a term of office of 2 years may be fixed for a councillor or councillors elected at the ordinary elections held during 1997 so as to give effect to clauses 1 and 2 of Schedule 4.2 in relation to the year 1999.

[Clause 14 amended by No. 57 of 1997 s. 81(2) and (3).]

14A. Transition to October elections

- (1) In this clause —
amending Act means the *Local Government Amendment Act 2006*;
new ordinary election day provisions means section 4.7 as amended by section 6 of the amending Act.
- (2) If by operation of —
 - (a) item 3, 8, 9 or 10 of the Table to section 2.28; and
 - (b) a determination made by the returning officer under section 4.78 before the coming into operation of section 6 of the amending Act,

the term of office of a councillor would end on the first Saturday in May in a year, that term of office is to end on the third Saturday in October in that year (but note section 2.30).

- (3) Despite section 3.64(e), the establishment agreement for a regional local government may be amended under section 3.65 in consequence of the new ordinary election day provisions even though the amendments result in the current chairman and deputy chairman of the regional local government holding office for terms exceeding 2 years.

[Clause 14A inserted by No. 66 of 2006 s. 15.]

Subdivision 4 — Administration

[Heading inserted by No. 2 of 2012 s. 29.]

15. Employees

- (1) A person employed or engaged by a continuing authority who was working for it immediately before the commencement day is to be taken as being employed by it on the same terms and conditions, including as to remuneration, as those which applied to the person immediately before the commencement day.

- (2) Under subclause (1) the person who was formerly the clerk of the continuing authority becomes its CEO.
- (3) A person to whom this clause applies retains all existing and accruing rights and benefits as if employment under this Act were a continuation of the person's employment or engagement immediately before the commencement day.

16. Superannuation schemes: transitional and savings

- (1) Despite the repeal of Part VIA (**Employee Superannuation**) of the former provisions, the provisions of that Part⁸ that applied to a municipality or to the City of Perth (within the meanings of that Part) continue to apply to the continuing authorities in respect of each such municipality or the City of Perth as if this Act had not commenced and so apply until regulations are made under section 5.47 in relation to that continuing authority.
- (2) Regulations under this Act may amend the former provisions as continued by subclause (1).

17. Long service benefits: transitional and savings

- (1) Despite the repeal of section 161 of the former provisions, the provisions of that section and regulations made under it that, immediately before the commencement day, applied to an employee as defined in that section continue to apply in respect of that person as if this Act had not commenced and so apply until regulations are made under section 5.48 in relation to that person.
- (2) Regulations under this Act may amend the provisions of section 161 of the former provisions, and regulations made under that section, as continued by subclause (1).

18. Committees continue until first ordinary elections

- (1) On and after the commencement day, any committee of a continuing authority existing under the former provisions continues as if it had been established, its members had been appointed and its presiding member had been elected, under this Act.
- (2) A committee to which subclause (1) applies is dissolved on 3 May 1997.
- (3) A committee to which subclause (1) applies —
 - (a) has, and can be delegated, the powers which it would have had, or could have been delegated, if it had been established under this Act;
 - (b) does not have, and cannot be delegated, any powers other than those referred to in paragraph (a).

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19. Delegations continue for up to a year

- (1) If a delegation under the former provisions of a power or duty of a kind that can be delegated under this Act has effect immediately before the commencement day, that delegation continues to have effect on and after the commencement day as if it had taken place under this Act.
- (2) A delegation to which subclause (1) applies continues to have effect until —
 - (a) it is revoked in accordance with the terms of the relevant power under which the delegation took place; or
 - (b) the expiration of one year from the commencement day,whichever happens first.

20. First annual report

A continuing authority is to prepare its first annual report under section 5.53 in relation to the financial year that ends on 30 June next following the commencement day.

21. First plan for principal activities

A continuing authority is to prepare its first plan for principal activities under section 5.56 for the period that begins on 1 July next following the commencement day.

22. First code of conduct

A continuing authority is to prepare or adopt its first code of conduct within one year of the commencement day.

23. First declaration by certain designated employees

If a person is or has become a designated employee of a continuing authority before 3 May 1997 then, for the purposes of Part 5, Division 6, Subdivision 2, a reference to the start day in relation to that person is a reference to 3 May 1997.

24. Previous records to be kept by continuing authorities

All registers, records and documents which a former municipality was required under the former provisions to keep are to be kept by the continuing authority for the purposes for which the registers, records or documents were required to be kept under those provisions.

Subdivision 5 — Financial management and audit

[Heading inserted by No. 2 of 2012 s. 30.]

25. Rateable land exemptions

If a notice published by a continuing authority under section 532(3d) of the former provisions is in force immediately before the commencement day —

- (a) that notice continues to have effect after the commencement day according to its terms; and
- (b) section 532(3e) and (3f) of the former provisions continue to apply to that notice while the notice is in effect as if the reference in section 532(3f)(a) to subsection (3)(c) were a reference to section 6.26(2)(g).

26. Land declared to be exempt from payment of rates

- (1) If land has been declared by the Governor under section 532(8) or (10) of the former provisions to be exempt from municipal rates and that declaration is in force immediately before the commencement day, the land is to be treated as land declared by the Minister under section 6.26(4) to be exempt from rates and the Minister may by declaration made under that subsection cancel or vary that declaration.
- (2) If land has been declared by a council under section 532(12) (as read with section 532(11)) of the former provisions to be exempt from municipal rates and that declaration is in force immediately before the commencement day, the land is to continue to be exempt from rates under this Act until the continuing authority cancels that declaration, and those subsections continue to have effect for the purposes of this clause.

27. Basis of rates

- (1) Until a determination is made by the Minister under section 6.28 a continuing authority is to continue to use the system of valuation that was applicable to it, immediately before the commencement day, under section 533 of the former provisions.
- (2) If an Order under section 533(17) of the former provisions is in force immediately before the commencement day that Order continues to have effect on and after the commencement day according to its terms but is to be taken to be a determination by the Minister under section 6.28 and may be amended by the Minister under that section.

[Clause 27 amended by No. 57 of 1997 s. 81(4).]

28. Recovery of rates

If, before the commencement day, a continuing authority has commenced proceedings under Part XXV, Subdivision B or C, of the

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former provisions, the former provisions continue to have effect in relation to those proceedings until such time as they are completed.

29. Continuation of debentures issued

If a continuing authority has —

- (a) issued a debenture under Part XXVI of the former provisions; and
- (b) established a sinking fund under section 615 of the former provisions,

sections 615 to 624 of the former provisions continue to have effect in respect of that debenture until such time as the debenture reaches maturity.

30. Reserve accounts

- (1) If a continuing authority has established a general reserve account under section 528 of the former provisions, the continuing authority is to, not later than 2 years from the commencement day —
 - (a) use the money for an authorised purpose; or
 - (b) transfer the money to a reserve account maintained for a purpose in accordance with section 6.11.
- (2) The continuing authority is to —
 - (a) disclose in its annual budget any action to be taken under subclause (1); or
 - (b) where it is proposed to take any action under subclause (1) after the adoption of the annual budget, give one month's local public notice of the proposal.
- (3) The continuing authority is to disclose action taken under subclause (1) in the annual financial report for the year in which the action is taken.

31. Borrowing: loan polls

If a continuing authority has given notice of a proposal to borrow money by the issue of debentures under Division 3 of Part XXVI of the former provisions but the notice period required under section 610 of the former provisions has not expired before the commencement day —

- (a) subject to paragraph (b), the former provisions continue to apply in relation to that proposed borrowing as if this Act had not commenced; but
- (b) the continuing authority is not required to conduct a loan poll under section 611 of the former provisions unless a demand for such a poll was delivered in accordance with that section to the local government before the commencement day.

[32. Deleted by the Local Government Amendment (Auditing) Bill 2017 cl. 21(1).]

~~**32. Auditors' appointments**~~

~~A person who was an auditor of a continuing authority immediately before the commencement day is to be regarded as having been appointed by the continuing authority under Part 7 and the provisions of that Part relating to the term of office of the auditor and the circumstances in which the appointment ceases to have effect apply to that appointment.~~

Subdivision 6 — Former by-laws, uniform general by-laws and regulations

[Heading inserted by No. 2 of 2012 s. 31.]

33. Former by-laws continued

- (1) Unless otherwise provided, a provision of an Act that, immediately before the commencement day, gave a former municipality power to make by-laws is to be read, on and after the commencement day, as if it had been amended to give a power to a local government to make local laws.
- (2) Without limiting Part 3, Division 2, Subdivision 2, any provision relating to the exercise of the former power to make by-laws applies to the exercise of the power to make local laws.
- (3) On the commencement day a by-law of a continuing authority under another Act (other than the former provisions) becomes a local law of the continuing authority under that other Act.
- (4) On the commencement day a by-law of a continuing authority under the former provisions becomes a local law of the continuing authority under this Act, but in construing terms used in it account is to be taken of the meanings those terms had before the commencement day.
- (4a) An order made under section 190(8) of the former provisions continues to have effect in respect of the application to the relevant area of —
 - (a) by-laws which applied to the area under the order immediately before the commencement day; and
 - (b) local laws amending those by-laws.
- (4b) An order made under section 190(8) of the former provisions may be revoked under section 3.6(3) as if it was an approval given under section 3.6(1).
- (5) On the commencement day a by-law of a continuing authority that was made under or for the purposes of a former provision about infringement notices is to be read, unless the context otherwise requires, as if it had been amended to the extent necessary for it to apply for the purposes of Part 9, Division 2, Subdivision 2.

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- (6) In any other written law, apart from section 42 of the *Interpretation Act 1984*, a reference to a by-law of a former municipality is to be read as if it had been amended to be a reference to a local law.
- (7) The citation of by-laws that, under this Act or section 7 of the *Local Government (Consequential Amendments) Act 1996*, become local laws (in the provision assigning the citation to the by-laws and in a reference in a written law to that citation) is to be read as if “*By-law*” or “*By-laws*”, where it occurs in that citation, had been amended to be “*Local laws*”.

[Clause 33 amended by No. 14 of 1996 s. 4; No. 49 of 2004 s. 73(2).]

34. First periodic review as a local law

For the purposes of section 3.16(1) a written law that was already in force before being continued under this Act as a local law is to be regarded as having commenced when it became a local law.

35. Former uniform general by-laws continued

- (1) A provision of the *Dog Act 1976* or the *Control of Vehicles (Off-road Areas) Act 1978* that, immediately before the commencement day, gave the Governor power to make uniform general by-laws is to be read, after the commencement day, as if it had been amended to give a power to make regulations.
- (2) Any provision relating to the exercise of the former power to make uniform general by-laws applies to the exercise of the power to make regulations.
- (3) On the commencement day a uniform general by-law made by the Governor under the *Dog Act 1976* or the *Control of Vehicles (Off-road Areas) Act 1978* becomes a regulation under that Act.
- (4) On the commencement day a uniform general by-law made by the Governor under the former provisions becomes a regulation under section 9.60, but in construing terms used in it account is to be taken of the meanings those terms had before the commencement day.
- (5) In any other written law a reference to a uniform general by-law is to be read as if it had been amended to be a reference to a regulation.

36. Former regulations continued

On the commencement day a regulation under section 245A or 433A of the former provisions becomes a regulation under section 9.60, but in construing terms used in it account is to be taken of the meanings those terms had before the commencement day.

Subdivision 7 — Miscellaneous

[Heading inserted by No. 2 of 2012 s. 32.]

37. Townsites

Land that was, under the former provisions, a townsite because it was declared to be a townsite under those provisions or under an Act repealed by the *Local Government Act 1960*⁴ is to be regarded as having been constituted a townsite, and given its name, under section 10 of the *Land Act 1933*⁵.

38. Gates across thoroughfares in cities or towns

- (1) A licence under section 333 of the former provisions continues in force after the repeal of that section if it would have done so had that section not been repealed, and that section (in subclause (2) called the **former section**) continues in operation after its repeal for the purposes of the cancellation of such a licence.
- (2) Section 9.65(1) applies to an order under the former section cancelling the order under which the licence was granted.

39. Deferments under *Rates and Charges (Rebates and Deferments) Act 1992*

The *Rates and Charges (Rebates and Deferments) Act 1992* continues to apply to the payment of an amount that had been deferred under the former provisions if, under those provisions, it applied to that payment.

40. Commercial enterprises

- (1) Section 3.59(8) does not apply in relation to an activity that —
 - (a) was commenced before the commencement day; and
 - (b) would have been a major trading undertaking before the commencement day if this Act had already been in operation,if it is not intended to carry the activity on beyond the period of 2 years after the commencement day.
- (2) If it is intended to carry the activity on beyond the period of 2 years after the commencement day, section 3.59(8) does not apply until one year after the commencement day.
- (3) Where an agreement that is a part of a land transaction was entered into before the commencement day, section 3.59(9) does not apply in relation to the doing of anything as a result of which the transaction would become a major land transaction if it is intended that the purpose of the transaction will be fulfilled within the period of 2 years after the commencement day.

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- (4) If it is not intended that the purpose of the transaction will be fulfilled within the period of 2 years after the commencement day, the application of section 3.59(9) in relation to the doing of anything during the first year after the commencement day is modified to allow the local government to comply with the requirements referred to in that subsection after the thing has been done but not later than the end of that year.

41. Evidence in proceedings under former provisions

The provisions in Part XXVIII, Division 1, Subdivision B of the former provisions continue to apply in relation to legal and other proceedings about matters that arose under the former provisions before the commencement day.

Division 2 — Provisions for the *Local Government Amendment Act 2012*

[Heading inserted by No. 2 of 2012 s. 33.]

42. Term used: amending Act

In this Division —

amending Act means the *Local Government Amendment Act 2012*.

[Clause 42 inserted by No. 2 of 2012 s. 33.]

43. Saving provisions for CEOs

- (1) In this clause —

preserved CEO, in relation to a local government, means a person who is employed, other than in an acting or temporary capacity, as the CEO of the local government on 19 October 2011.

- (2) Section 5.39(7) does not apply in respect of —

- (a) a CEO for such time as that person is employed under a contract of employment —

(i) that was entered into or renewed before section 13 of the amending Act came into operation; or

(ii) for a position that was advertised before section 13 of the amending Act came into operation;

or

- (b) a preserved CEO of a local government if —

(i) the remuneration paid or provided to the CEO on 19 October 2011 under a contract of employment was more than the amount recommended by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A to be paid or provided to the CEO at that time; and

(ii) the CEO continues to be employed as the CEO of that local government.

(3) Section 5.39(8) does not apply to a local government that is renewing a contract of employment with its preserved CEO in the circumstances set out in subsection (2)(b).

(4) Before a local government renews a contract with its preserved CEO in circumstances set out in subsection (2)(b), the local government must take into account any determination by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975* section 7A as to the remuneration to be paid or provided to a CEO of a local government that is of a comparable size and location.

[Clause 43 inserted by No. 2 of 2012 s. 33.]

44. Section 6.14(1) does not apply to existing investments

Section 6.14(1) as in force immediately before the coming into operation of section 19(1) of the amending Act (the **amending provision**) continues to operate in respect of any investment made under section 6.14(1) before the coming into operation of the amending provision but does not operate so as to allow any reinvestment under that provision.

[Clause 44 inserted by No. 2 of 2012 s. 33.]

**Division 3 — Provisions for Local Government Legislation
Amendment Act 2016**

[Heading inserted by No. 26 of 2016 s. 25.]

45. Term used: amending Act

In this Division —

amending Act means the *Local Government Legislation Amendment Act 2016*.

[Clause 45 inserted by No. 26 of 2016 s. 25.]

46. Part 5 Division 9: complaints

Sections 5.110A and 5.110 (as amended by the amending Act) apply to and in relation to a complaint whether made before or after the amending Act section 15 comes into operation.

[Clause 46 inserted by No. 26 of 2016 s. 25.]

47. Part 9 Division 2 Subdivision 2

(1) An infringement notice given under section 9.16 before the amending Act section 19 comes into operation is not invalid, and is to be taken never to have been invalid, just because the notice provided that the

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amount of the modified penalty may be paid to an authorised person at a particular place and did not state who are authorised persons for the purposes of receiving payment of modified penalties.

- (2) Any extension of time for payment given under section 9.19 before the amending Act section 20 comes into operation is to be taken to have been given by the CEO of the relevant local government.
- (3) Any withdrawal of an infringement notice before the amending Act section 21 comes into operation is to be taken to have been done by the CEO of the relevant local government.

[Clause 47 inserted by No. 26 of 2016 s. 25.]

48. Schedule 2.1: transitional arrangements

Schedule 2.1 clause 11(5A) and (5B) apply to and in relation to the termination or variation of a contract of employment whether entered into before or after the amending Act section 23 comes into operation.

[Clause 48 inserted by No. 26 of 2016 s. 25.]

Division 4 — Provisions for the *Local Government Amendment (Auditing) Act 2017*

[Heading inserted the Local Government Amendment (Auditing) Bill 2017 cl. 21(2).]

49. Terms used

In this Division —

audit contract has the meaning given in section 7.1;

commencement day has the meaning given in section 7.1.

[Clause 49 inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 21(2).]

50. Minister to publish status of audit contracts

During the period beginning on commencement day and ending on the day fixed by proclamation under the *Local Government Amendment (Auditing) Act 2017* section 22(2), the Minister must publish on a website maintained by the Department a list of —

- (a) local governments that have an audit contract that is in force;
and
- (b) local governments that do not have an audit contract that is in force.

[Clause 50 inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 21(2).]

51. Audit contracts may be terminated after completion of FY17/18 audit

(1) In this clause —

FY17/18 audit, in relation to a local government, means an audit of the local government conducted under section 7.9(1) in respect of the financial year ending on 30 June 2018.

(2) This clause applies in relation to a local government after the completion of the FY17/18 audit for the local government.

(3) The Departmental CEO may give notice (a *notice*) to a local government specifying the date (the *termination date*) on which the audit contract for the local government is to terminate.

(4) An audit contract in relation to which a notice is given is terminated by force of this provision on the termination date.

(5) The Departmental CEO may give a notice on the Departmental CEO's own initiative.

(6) The Minister may —

(a) request the Departmental CEO to give a notice to a local government; and

(b) nominate the termination date to be specified in the notice.

(7) On request by the Minister, the Departmental CEO must give a notice to the local government specifying the termination date nominated by the Minister.

(8) A notice given or request made under this clause must be in writing.

[Clause 51 inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 21(2).]

52. Audit contracts are terminated after completion of FY19/20 audit

(1) In this clause —

FY19/20 audit, in relation to a local government, means an audit of the local government conducted under section 7.9(1) in respect of the financial year ending on 30 June 2020.

(2) An audit contract for a local government, unless earlier lawfully terminated, is terminated by force of this provision on completion of the FY19/20 audit for the local government.

[Clause 52 inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 21(2).]

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53. No breach of contract

Anything that occurs by operation of this Division is not to be regarded as a breach of contract.

[Clause 53 inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 21(2).]

54. Transitional regulations

(1) In this clause —

specified means specified or described in the regulations;

transitional matter —

(a) means a matter or issue of a transitional nature that arises as a result of the enactment of the *Local Government Amendment (Auditing) Act 2017*; and

(b) includes a saving or application matter.

(2) If there is not sufficient provision in this Division for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(3) Regulations made under subclause (2) may provide that specified provisions of a written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specified modifications to or in relation to any matter.

(4) If regulations made under subclause (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day this clause comes into operation, the regulations have effect according to their terms.

(5) If regulations made under subclause (2) contain a provision referred to in subclause (4), the provision does not operate so as —

(a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

(6) Regulations made under subclause (2) in relation to a matter referred to in subclause (3) must be made within whatever period is reasonably and practicably necessary to deal with a transitional matter.

[Clause 54 inserted by the Local Government Amendment (Auditing) Bill 2017 cl. 21(2).]

Local Government Act 1995

Notes

- ¹ This is a compilation of the *Local Government Act 1995* and includes the amendments made by the other written laws referred to in the following table ^{9, 10}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Local Government Act 1995</i>	74 of 1995	9 Jan 1996	1 Jul 1996 (see s. 1.2)
<i>Local Government Act (Schedule 3.1) Amendment Regulations 1996</i> published in <i>Gazette</i> 24 Jun 1996 p. 2861-2			1 Jul 1996 (see r. 2)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4 ¹¹	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Local Government Act (Schedule 3.1) Amendment Regulations (No. 2) 1996</i> published in <i>Gazette</i> 25 Oct 1996 p. 5647			25 Oct 1996
<i>Transfer of Land Amendment Act 1996</i> s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Local Government Act (Schedule 3.1) Amendment Regulations 1997</i> published in <i>Gazette</i> 29 Apr 1997 p. 2144			29 Apr 1997
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 81	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Local Government Amendment Act 1998</i> ^{12, 13}	1 of 1998	26 Mar 1998	Act other than s. 21: 26 Mar 1998 (see s. 2(1)); s. 21: 1 Jul 1998 (see s. 2(2))
<i>Local Government Amendment Act (No. 2) 1998</i> ^{14, 15}	64 of 1998	12 Jan 1999	12 Jan 1999 (see s. 2)
<i>Perth Parking Management (Consequential Provisions) Act 1999</i> s. 7(3) ¹⁶	16 of 1999	19 May 1999	7 Aug 1999 (see s. 2 and <i>Gazette</i> 6 Aug 1999 p. 3727)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 92	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Disability Services Amendment Act 1999</i> s. 28(3)	44 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)

Local Government Act 1995

Short title	Number and year	Assent	Commencement
Reprint of the <i>Local Government Act 1995</i> as at 18 Feb 2000 (includes amendments listed above except those in the <i>School Education Act 1999</i>)			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 22	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 36	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Road Traffic Amendment (Vehicle Licensing) Act 2001</i> Pt. 3 Div. 3	28 of 2001	21 Dec 2001	4 Dec 2006 (see s. 2 and <i>Gazette</i> 28 Nov 2006 p. 4889)
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 14	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 7 ¹⁷	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 No. GN42)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 38	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 79	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 2: The <i>Local Government Act 1995</i> as at 2 Apr 2004 (includes amendments listed above except those in the <i>Road Traffic Amendment (Vehicle Licensing) Act 2001</i> (correction in <i>Gazette</i> 1 Oct 2004 p. 4283))			
<i>Workers' Compensation Reform Act 2004</i> s. 165	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)

Local Government Act 1995

Short title	Number and year	Assent	Commencement
<i>Local Government Amendment Act 2004</i> ¹⁸⁻²³	49 of 2004 (as amended by No. 8 of 2009 s. 88; No. 17 of 2009 s. 48)	12 Nov 2004	s. 1 and 2: 12 Nov 2004; s. 17, 30-37, 38(1) and (2) and 39-41: 22 Jan 2005 (see s. 2 and <i>Gazette</i> 21 Jan 2005 p. 257); s. 10-15, 18, 21, 22, 42, 46(3), 47, 48, 53, 55-58, 61-64, 67, 68, 70, 71, 73 and 74: 1 Apr 2005 (see s. 2 and <i>Gazette</i> 31 Mar 2005 p. 1029); s. 4-9, 16(4), 19(1), 23-29, 43-45, 46(1), (2) and (4), 49-52, 54, 65, 66, 69 and 72: 7 May 2005 (see s. 2 and <i>Gazette</i> 31 Mar 2005 p. 1029 and 29 Apr 2005 p. 1771); Proclamation published 31 Mar 2005 p. 1029 revoked to the extent that the proclamation applies to s. 16(1), (2), (3) and (5) and s. 19(2) (see <i>Gazette</i> 29 Apr 2005 p. 1771); s. 59 and 60: 1 Jul 2005 (see s. 2 and <i>Gazette</i> 31 Mar 2005 p. 1029)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 ²⁴	59 of 2004 (as amended by No. 2 of 2008 s. 77(13))	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 76 ^{25, 26}	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> Pt. 11 and s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 3: The Local Government Act 1995 as at 5 Aug 2005 (includes amendments listed above except those in the <i>Road Traffic Amendment (Vehicle Licensing) Act 2001</i>)			
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005</i> Pt. 14	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2(1) and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

Short title	Number and year	Assent	Commencement
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 12 Div. 3 ²⁷	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Land Information Authority Act 2006</i> s. 144	60 of 2006	16 Nov 2006	1 Jan 2007 (see s. 2(1) and <i>Gazette</i> 8 Dec 2006 p. 5369)
<i>Local Government Amendment Act 2006</i>	66 of 2006	8 Dec 2006	Act other than s. 14: 9 Dec 2006 (see s. 2(1)); s. 14: 6 Sep 2007 (see s. 2(2) and <i>Gazette</i> 21 Aug 2007 p. 4173)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and Sch. 1 cl. 102	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Local Government (Official Conduct) Amendment Act 2007</i>	1 of 2007	28 Mar 2007	s. 1 and 2: 28 Mar 2007; Act other than s. 1 and 2: 21 Oct 2007 (see s. 2 and <i>Gazette</i> 21 Aug 2007 p. 4173)
<i>Local Government Amendment Act 2007</i>	9 of 2007	25 Jun 2007	s. 1 and 2: 25 Jun 2007; Act other than s. 1 and 2: 6 Sep 2007 (see s. 2 and <i>Gazette</i> 3 Aug 2007 p. 3989)
<i>Local Government (Miscellaneous Provisions) Amendment Act 2007</i> s. 13	11 of 2007	29 Jun 2007	1 Jul 2008 (see s. 2 and <i>Gazette</i> 6 Jun 2008 p. 2179)
<i>Petroleum Amendment Act 2007</i> s. 99	35 of 2007	21 Dec 2007	31 Oct 2009 (see s. 2(b) and <i>Gazette</i> 30 Oct 2009 p. 4305)
Reprint 4: The Local Government Act 1995 as at 18 Jan 2008 (includes amendments listed above, except those in the <i>Local Government (Miscellaneous Provisions) Amendment Act 2007</i> and the <i>Petroleum Amendment Act 2007</i>)			
<i>Duties Legislation Amendment Act 2008</i> Sch. 1 cl. 21	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 87	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Local Government Amendment (Elections) Act 2009</i>	15 of 2009	17 Aug 2009	s. 1 and 2: 17 Aug 2009 (see s. 2(a)); Act other than s. 1 and 2: 29 Aug 2009 (see s. 2(b) and <i>Gazette</i> 28 Aug 2009 p. 3347)

Local Government Act 1995

Short title	Number and year	Assent	Commencement
<i>Local Government Amendment Act 2009</i>	17 of 2009	16 Sep 2009	s. 1 and 2: 16 Sep 2009 (see s. 2(a)); Act other than s. 1, 2 and 34: 21 Nov 2009 (see s. 2(b) and <i>Gazette</i> 20 Nov 2009 p. 4649); s. 34: 4 May 2011 (see s. 2(b) and <i>Gazette</i> 3 May 2011 p. 1577)
<i>Co-operatives Act 2009</i> s. 506 and 516	24 of 2009	22 Oct 2009	s. 506: 16 May 2011 (see s. 2(d) and <i>Gazette</i> 24 Jun 2011 p. 2516); s. 516: 1 Sep 2012 (see s. 2(c) and <i>Gazette</i> 13 Aug 2010 p. 3975)
Reprint 5: The Local Government Act 1995 as at 5 Feb 2010 (includes amendments listed above except those in the <i>Local Government Amendment Act 2009</i> s. 34 and the <i>Co-operatives Act 2009</i>)			
<i>Standardisation of Formatting Act 2010</i> s. 44(2) and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Approvals and Related Reforms (No. 4) (Planning) Act 2010</i> s. 34 and Pt. 5 Div 2	28 of 2010	19 Aug 2010	22 Nov 2010 (see s. 2(b) and <i>Gazette</i> 19 Nov 2010 p. 5709)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Acts Amendment (Fair Trading) Act 2010</i> s. 182	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and <i>Gazette</i> 24 Dec 2010 p. 6805)
<i>Building Act 2011</i> s. 166	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 16	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
<i>Local Government Amendment Act 2012</i> Pt. 2	2 of 2012	4 Apr 2012	Pt. 2 other than s. 13-18: 21 Apr 2012 (see s. 2(b) and <i>Gazette</i> 20 Apr 2012 p. 1695); s. 13: 1 Jul 2012 (see s. 2(b) and <i>Gazette</i> 20 Apr 2012 p. 1695); s. 14-18: 1 Jul 2013 (see s. 2(b) and <i>Gazette</i> 8 Feb 2013 p. 863)
<i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 29	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)
Reprint 6: The Local Government Act 1995 as at 3 Aug 2012 (includes amendments listed above except those in the <i>Co-operatives Act 2009</i> s. 516, <i>Local Government Amendment Act 2012</i> s. 14-18 (correction in <i>Gazette</i> 7 Sep 2012 p. 4329 and 28 Mar 2013 p. 1317) and the <i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 29)			

Short title	Number and year	Assent	Commencement
<i>Commercial Arbitration Act 2012</i> s. 45 it. 12	23 of 2012	29 Aug 2012	7 Aug 2013 (see s. 1B(b) and <i>Gazette</i> 6 Aug 2013 p. 3677)
<i>Corruption and Crime Commission Amendment (Misconduct) Act 2014</i> s. 35	35 of 2014	9 Dec 2014	1 Jul 2015 (see s. 2(b) and <i>Gazette</i> 26 Jun 2015 p. 2235)
<i>Associations Incorporation Act 2015</i> s. 223	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291-2)
<i>City of Perth Act 2016</i> Pt. 4 Div. 4	2 of 2016	3 Mar 2016	4 Mar 2016 (see s. 2(b))
Reprint 7: The Local Government Act 1995 as at 13 May 2016 (includes amendments listed above except those in the <i>Associations Incorporation Act 2015</i>)			
<i>Graffiti Vandalism Act 2016</i> Pt. 6 Div. 2	16 of 2016	11 Jul 2016	12 Oct 2016 (see s. 2(b) and <i>Gazette</i> 11 Oct 2016 p. 4531)
<i>Public Health (Consequential Provisions) Act 2016</i> Pt. 3 Div. 18	19 of 2016	25 Jul 2016	24 Jan 2017 (see s. 2(1)(c) and <i>Gazette</i> 10 Jan 2017 p. 165)
<i>Local Government Legislation Amendment Act 2016</i> Pt. 2	26 of 2016	21 Sep 2016	Pt. 2 (other than s. 4, 6-9, 11 and 17): 12 Nov 2016 (see s. 2(b) and <i>Gazette</i> 11 Nov 2016 p. 5035); s. 4, 6-9, 11 and 17: 21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)
Local Government Amendment (Auditing) Bill 2017 (other than cl. 4(2), 7(2) and 22)	Current Bill (No. 3-1)		

- ² The provisions in this Act amending the *Local Government Act 1960* have been omitted under the *Reprints Act 1984* s. 7(4)(e).
- ³ Repealed by the *Mining Act 1978*.
- ⁴ The short title of the *Local Government Act 1960* was amended to the *Local Government (Miscellaneous Provisions) Act 1960* by Sch. 9.2 cl. 2 of this Act. That provision has now been omitted.
- ⁵ Under the *Land Administration Act 1997* s. 281(3) a reference in a written law to the *Land Act 1933* is, unless the contrary intention appears, to be read and construed as if that reference were a reference to the *Land Administration Act 1997*.
- ⁶ There is no s. 4.31(1)(c) because this provision was amended and renumbered by the *Standardisation of Formatting Act 2010* s. 51 Table item 42.
- ⁷ *The Criminal Code* s. 348 and 349 were deleted by the *Defamation Act 2005* s. 47.

- ⁸ The provisions of the *Local Government Act 1960* Pt. VIA as continued by Sch. 9.3 cl. 16 of this Act and amended by the *Local Government (Amendment of Part VIA – Employee Superannuation) Regulations 2006* r. 4 and 5 (published in *Gazette* 26 May 2006 p. 1877-8) read as follows:

Part VIA — Employee Superannuation

170A. Interpretation

- (1) In this Part —

City of Perth scheme means the superannuation scheme established under section 170C;

dependant has the same definition as in section 10 of the SIS Act; *employee* and *employer* have the same definitions as in section 10 of the SIS Act;

industry scheme means the WA Local Government Superannuation Plan (formerly called the W.A. Local Government Occupational Superannuation Fund) established by a trust deed dated 21 March 1990 and continued under a trust deed dated 4 November 2004;

municipality includes a regional council;

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cwlth) as amended from time to time.

- (2) A reference in this Part to the City of Perth scheme is a reference to the scheme as it is amended from time to time.
- (3) A reference in this Part to the industry scheme is a reference to the scheme as it is amended from time to time.

[Section 170A amended in *Gazette* 26 May 2006 p. 1877.]

170B. Municipalities to use industry scheme

- (1) To provide superannuation and other benefits for its employees and their dependants, a municipality shall participate in and comply with the industry scheme.
- (2) A municipality shall exercise such powers and discharge such obligations as are necessary to give effect to the industry scheme.
- (3) Subsections (1) and (2) do not apply in respect of an employee if under section 170D, or the *City of Perth Act 2016* section 23, a municipality has to participate in and comply with the City of Perth scheme in respect of that employee.
- (4) Subsections (1) and (2) apply to the City of Perth only in respect of those of its employees who are not members of the City of Perth scheme.
- (5) If, in respect of an employee for any period —
- (a) there is a chosen fund for the employee throughout the period; and
 - (b) the chosen fund is not the industry scheme; and
 - (c) the municipality makes the minimum SG contributions for the employee for that period to the chosen fund,

the amount that the municipality would, but for this subsection, be required under subsection (1) and the industry scheme trust deed

to contribute to the industry scheme for that employee for that period is reduced by the amount of those minimum SG contributions made to the chosen fund.

- (6) In subsection (5) —
- (a) the following terms have the same meanings as they have in the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) —
 - (i) chosen fund for the employer;
 - (ii) individual superannuation guarantee shortfall;and
 - (b) a reference to a municipality making the minimum SG contributions for an employee for a period is a reference to the municipality making the contributions necessary for it to avoid incurring an individual superannuation guarantee shortfall in respect of the employee in respect of that period.

[Section 170B amended in Gazette 26 May 2006 p. 1878; No. 2 of 2016 s. 31.]

170C. City of Perth scheme

- (1) The City of Perth shall establish a scheme that accords with the SIS Act to provide superannuation and other benefits for its employees and their dependants and for those of its former employees (and their dependants) whose employers, by virtue of section 170D or the *City of Perth Act 2016* section 23, are required to participate in and comply with the scheme.
- (2) The City of Perth shall participate in and comply with the City of Perth scheme.
- (3) The City of Perth shall exercise such powers and discharge such obligations as are necessary to give effect to the City of Perth scheme.
- (4) A person who becomes an employee of the City of Perth shall be a member of and subject to the City of Perth scheme unless he or she elects to be a member of the industry scheme.

[Section 170C amended by No. 2 of 2016 s. 32.]

170D. City of Perth scheme members who become employed by a regional council

- (1) If a person —
 - (a) is a member of the City of Perth scheme; and
 - (b) becomes an employee of a regional council of which the City of Perth is a constituent municipality,

then, despite section 170B, the regional council shall, in respect of that person, participate in and comply with the City of Perth scheme in the same way and to the same extent as the City of Perth would be required to if the person were its employee; unless the person elects to become a member of the industry scheme.

- (2) A person referred to in subsection (1) does not cease to be a member of the City of Perth scheme by reason only of ceasing to be an employee of the City of Perth.

170E. Other superannuation schemes

Nothing in this Part prevents a municipality from participating, in respect of an employee of the municipality, in a superannuation scheme in addition to either the industry scheme or the City of Perth scheme (as the case may be) if the municipality and the employee agree to participate in that other scheme.

⁹ The *Local Government Act 1995* is affected by the *Dampier to Bunbury Pipeline Act 1997* Sch. 4 cl. 36, which reads as follows:

36. Payment in place of local government rates

- (1) The DBNGP Land Access Minister is not liable to pay rates in respect of land in the DBNGP corridor.
- (2) A holder of rights conferred under section 34 of this Act or the holder's nominee approved under section 34(3) of this Act is not, as the holder of those rights or the holder's nominee, liable to pay rates.
- (3) The DBNGP Land Access Minister is to pay to each local government in the district of which there is any utilized corridor land an amount equivalent to the rates that would have been assessable in the hands of an owner holding the fee simple in the land whose rates were assessable on the basis of unimproved value.
- (4) An amount payable under subclause (3) is to be treated for the purposes of Part 4 of this Act as a part of the cost of administering that Part.
- (5) In this clause —
DBNGP corridor and **DBNGP Land Access Minister** have the meanings given by section 27 of this Act;
rates means rates under the *Local Government Act 1995*;
utilized corridor land means land in the DBNGP corridor in respect of which rights under section 34 of this Act are held, regardless of whether rights are held by one holder or several holders.

¹⁰ The *Local Government Act 1995* is affected by the *Gas Corporation (Business Disposal) Act 1999* s. 67, which reads as follows:

67. Presence of pipeline does not constitute occupation of land

Despite anything to the contrary in the *Local Government Act 1995*, land is not to be regarded as being occupied for the purposes of that Act merely because —

- (a) there is on or under that land any pipe or system of pipes for or incidental to the transport of gas in respect of which a distribution licence has been issued under Part 2A of the *Energy Coordination Act 1994*; or

- (b) a person is the holder of a distribution licence under Part 2A of the *Energy Coordination Act 1994* in respect of a distribution system that is on or under that land.

¹¹ The *Local Government (Consequential Amendments) Act 1996* s. 7 and 8 read as follows:

7. Transitional matters relating to by-laws

- (1) If, when this Act comes into operation —
 - (a) a local government has resolved to make a by-law under the *Bush Fires Act 1954*, the *City of Perth Parking Facilities Act 1956* or the *Health Act 1911*; but
 - (b) the by-law has not been published in the *Gazette*,
the process of making, confirming or approving, and publishing the by-law may be completed as if this Act and the *Local Government Act 1995* had not come into operation.
- (2) If, when this Act comes into operation —
 - (a) a local government has —
 - (i) resolved to make a by-law under the *Cemeteries Act 1986*, the *Control of Vehicles (Off-road Areas) Act 1978* or the *Dog Act 1976*; and
 - (ii) caused a notice of intention to submit the by-law for confirmation or approval by the Governor to be published;
 - but
 - (b) the by-law has not been published in the *Gazette*,
the process of making, confirming or approving, and publishing the by-law may be completed as if this Act and the *Local Government Act 1995* had not come into operation.
- (3) A by-law that is made, confirmed or approved, or published in accordance with subsection (1) or (2) becomes a local law as soon as it is published in the *Gazette*.
- (4) If, when this Act comes into operation —
 - (a) a local government has resolved to make a by-law under the *Cemeteries Act 1986*, the *Control of Vehicles (Off-road Areas) Act 1978* or the *Dog Act 1976*; but
 - (b) a notice of intention to submit the by-law for confirmation or approval by the Governor has not been published,
the resolution ceases to have effect as a resolution to make a by-law and instead has effect as if it were a resolution under that Act as amended by this Act proposing to make a local law to the same effect.
- (5) This section ceases to operate on the day 6 months after this Act comes into operation.

8. Transitional regulations

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, the Governor may make regulations

prescribing all matters that are required, or are necessary or convenient, for dealing with that transitional matter.

- (2) Regulations made under subsection (1) may have effect before the day on which they are published in the *Gazette*.
- (3) To the extent that a regulation made under subsection (1) may have effect before the day of its publication in the *Gazette*, it does not —
 - (a) affect in a manner prejudicial to any person (other than the State or a local government), the rights of that person existing before the day of its publication; or
 - (b) impose liabilities on any person (other than the State or a local government) in respect of anything done or omitted to be done before the day of its publication.
- (4) In subsection (1) —

transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the Acts amended by this Act as in force before this Act comes into operation to the provisions of those Acts as in force after this Act comes into operation.

¹² The *Local Government Amendment Act 1998* s. 5(2)-(4) and 14(2) are transitional provisions that are of no further effect.

¹³ The amendment purported to be made by the *Local Government Amendment Act 1998* s. 28 is not included because prior to its commencement cl. 4(2) of Sch. 9.2 had been previously amended by the *Statutes (Repeals and Minor Amendments) Act 1997* s. 81(1).

¹⁴ The *Local Government Amendment Act (No. 2) 1998* s. 14(3) reads as follows:

- (3) The amendments made by this section have no effect in relation to a notice given under section 3.49 before the commencement of this section or anything done in consequence of such a notice.

¹⁵ The *Local Government Amendment Act (No. 2) 1998* s. 56 is a transitional provision that is of no further effect.

¹⁶ The *Perth Parking Management (Consequential Provisions) Act 1999* s. 5(2) is a transitional provision that is of no further effect.

¹⁷ The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

2. Commencement

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.
- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

3. Interpretation

In this Part —

Financial Services Reform Act means the *Financial Services Reform Act 2001* of the Commonwealth;

FSR commencement time means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

statutory rule means a regulation, rule or by-law.

4. Validation

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
 - (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
 - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,is taken not to be valid, and to never have been valid.

¹⁸ The *Local Government Amendment Act 2004* s. 30(2) reads as follows:

- (2) Despite subsection (1), if the day for an election, referendum or other poll was fixed under the *Local Government Act 1995* before the commencement of this section, sections 4.1A and 4.1B of that Act as inserted by subsection (1) do not apply in respect of that election, referendum or other poll.

¹⁹ The *Local Government Amendment Act 2004* s. 67(6) reads as follows:

- (6) Schedule 2.1 of the *Local Government Act 1995* as in force immediately before the commencement of this section applies to and in respect of any proposal made under clause 2 of that Schedule before that commencement.

²⁰ The *Local Government Amendment Act 2004* s. 14, which gives effect to Sch. 2, reads as follows:

14. Transitional and validation provisions — Schedule 2

Schedule 2 has effect.

Schedule 2 reads as follows:

Schedule 2 — Transitional and validation provisions — WALGA

[s. 14]

1. Interpretation

In this Schedule —

anything done means anything done, or omitted, or purported to be done or omitted;

commencement means the commencement of section 10;

body previously constituted under section 9.58 means a body constituted under section 9.58 of the *Local Government Act 1995* before the commencement;

WALGA means the Western Australian Local Government Association constituted under section 9.58 of the *Local Government Act 1995* after the commencement.

2. WALGA successor in law to bodies previously constituted under section 9.58

(1) On the commencement, WALGA becomes the successor in law of each body previously constituted under section 9.58.

(2) In particular —

- (a) each body previously constituted under section 9.58 is dissolved;
- (b) the property of each body previously constituted under section 9.58 becomes the property of WALGA;
- (c) all assets, liabilities, rights and duties of the body previously constituted under section 9.58 becomes the assets, liabilities, rights and duties of WALGA;
- (d) any proceedings or remedy that immediately before the commencement might have been brought or continued by or available against or to a body previously constituted under section 9.58, may be brought or continued and are available, by or against or to WALGA;
- (e) WALGA is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of each body previously constituted under section 9.58.

3. Agreements and instruments

Any agreement or instrument subsisting immediately before the commencement —

- (a) to which a body previously constituted under section 9.58 was a party; or

- (b) which contains a reference to a body previously constituted under section 9.58,

has effect after the commencement as if —

- (c) WALGA were substituted for the body previously constituted under section 9.58 as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the body previously constituted under section 9.58 were (unless the context otherwise requires) amended to be or include a reference to WALGA.

4. Validation

Anything done before the commencement under the name of WALGA, or the Western Australian Local Government Association, by, to, or in respect of, a body previously constituted under section 9.58 is as valid and effective, and is to be taken to have always been as valid and effective, as it would have been had the thing been done after the commencement by, to, or in respect of WALGA.

5. Interpretation Act 1984 not affected

Nothing in this Schedule is to be construed so as to limit the operation of the *Interpretation Act 1984*.

²¹ The *Local Government Amendment Act 2004* s. 73(3) reads as follows:

73. Schedule 9.3 amended and validation

- (3) The amendment effected by subsection (2) is to be taken to have come into operation on the day on which the *Local Government Act 1995* came into operation and any laws referred to in —
 - (a) subclause (4a)(a) of that amendment are to be taken to have applied from that day; and
 - (b) subclause (4a)(b) of that amendment are to be taken to have applied from the day on which the local law commenced.

²² The *Local Government Amendment Act 2004* s. 16(1)-(3) and (5) had not come into operation when they were deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 88.

²³ The *Local Government Amendment Act 2004* s. 19(2), 20 and 38(3) had not come into operation when they were deleted by the *Local Government Amendment Act 2009* s. 48.

²⁴ The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 28 was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

²⁵ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

²⁶ The *State Administrative Tribunal Regulations 2004* r. 56 reads as follows:

56. Local Government Act 1995

- (1) In this regulation —
commencement day means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 76 comes into operation;
the LG Act means the *Local Government Act 1995*.
- (2) If a local government receives, before the commencement day, a notice in accordance with the LG Act section 6.77 (as in force when the notice was received by the local government) but does not before the commencement day refer the decision referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the local government must refer the notice to the State Administrative Tribunal and the notice is to be taken to be an application to the Tribunal for a review of the decision under the LG Act section 6.77.
- (3) If a local government receives, before the commencement day, a notice in accordance with the LG Act section 6.78 (as in force when the notice was received by the local government) but does not before the commencement day refer the decision referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the local government must refer the notice to the State Administrative Tribunal and the notice is to be taken to be an application to the Tribunal for a review of the decision under the LG Act section 6.78.

²⁷ References to the Executive Director were replaced by references to the Departmental CEO, see the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 12 Div. 3. Section 454 of that Act is a general transitional provision that applies to references to the Executive Director in written laws.

