

# LOCAL GOVERNMENT AMENDMENT BILL 2023

## EXPLANATORY MEMORANDUM

### OVERVIEW OF THE BILL

The *Local Government Act 1995* provides the framework for local governments within Western Australia. Local government is an integral tier of government and makes a significant contribution to the Western Australian way of life. Local government is a major provider of government services and infrastructure and supports economic development, community vibrancy and inclusiveness.

The Local Government Amendment Bill 2023 (the Bill) provides for local government representation and electoral-related reforms, including:

- the abolition of wards for smaller local governments;
- mandatory public election of the mayor or president for larger local governments;
- tiered limits on the size of a council, based on the size of the population of the district;
- the introduction of optional preferential voting for all local government elections;
- new provisions for filling extraordinary council vacancies in various scenarios, including by back-filling vacancies if there is an eligible candidate from a recent ordinary election;
- reforms to electoral eligibility in relation to non-resident occupiers; and
- state-wide caretaker periods during ordinary elections.

In addition, the Bill provides for non-electoral reforms to local government, including:

- provision for standardised meeting procedures for all local governments;
- parental leave entitlements for council members; and
- publication of annual performance indicators and results for local government chief executive officers.

## CLAUSE NOTES

Contained below is a brief description of each clause contained in the Local Government Amendment Bill 2023 (the Bill).

### Part 1 – Preliminary

#### Clause 1 – Short title

Clause 1 cites the short title of the *Local Government Amendment Act 2023*.

#### Clause 2 – Commencement

Clause 2 provides that Part 1 will commence on the day on which the Act receives Royal Assent, with sections 3, 60, 86, 87 and 99 of Part 2 and Division 2 of Part 3 coming into operation on the following day.

The remainder of the Act will come into effect on a day to be fixed by proclamation to allow for the necessary administrative arrangements to be made for commencement.

### Part 2 – *Local Government Act 1995* amended

#### Clause 3 – Act Amended

Clause 3 provides that Part 2 amends the *Local Government Act 1995* (the Act).

#### Clause 4 – Section 1.3 amended

Clause 4 deletes section 1.3(3), which relates to the content and intent of the Act. Subsection (3) is a general principle, which is replaced by section 3.1(1A) that inserts new guiding principles at clause 21.

#### Clause 5 – Section 1.4 amended

Clause 5 amends several definitions contained in section 1.4 to reflect the amendments made by this Act.

#### Clause 6 – Section 1.4A inserted

Clause 6 defines the ***caretaker period*** and sets out the requirements in relation to the operation of the caretaker period.

The caretaker period takes effect from the close of nominations under section 4.49(a) and ends on the day after the returning officer declares the result of the election under section 4.77, or the day after the day on which nominations close if section 4.57(1) applies, or the day after the day the candidate dies if the ordinary elections become void under section 4.58(1).

New section 3.73 places restrictions on what a local government can do during the caretaker period (see clause 23).

The caretaker period applies in relation to ordinary elections or inaugural elections.

The caretaker period also applies with respect to elections held under sections 4.11, 4.12, 4.13, 4.14 or 4.15. These sections relate to elections that occur for the following reasons –

- 4.11. Elections after the restructure of districts, wards or membership.
- 4.12. Elections after reinstatement of council.
- 4.13. Elections after all members' offices become vacant.
- 4.14. Elections after council is dismissed.
- 4.15. Fresh election after election declared invalid.

For the purposes of the caretaker period, these elections are defined as **relevant elections** under subsection (2).

The caretaker period does not apply with respect to extraordinary elections.

#### **Clause 7 – Section 2.2 amended**

Clause 7 deals with local government district wards. This clause amends section 2.2 by providing that a Governor's Order cannot be made to divide a district into wards if the Order is in relation to a prescribed local government for the purposes of new section 2.2A.

In effect, this amendment provides that a local government cannot be divided into wards if so prescribed in regulations.

#### **Clause 8 – Section 2.2A inserted**

Clause 8 inserts new section 2.2A which provides the power to make regulations to prescribe that a local government district cannot be divided into wards, or to abolish all existing wards if a prescribed local government is already divided into wards. In effect, section 2.2A provides the power to prescribe which local governments may not have wards.

Subsection (2)(a) provides that regulations made for the purposes of abolishing wards may apply only with respect to the abolition of the wards and does not of itself cause a change in the number of offices of councillor on the council.

Subsection (2)(b) provides the regulation-making power to give directions in advance of the abolition of wards taking effect, for the purposes of preparing and conducting an election. In effect, regulations may prescribe matters in relation to preparing for and conducting an election ahead of directions abolishing wards taking effect.

Subsection (2)(c) provides that Part 4 of the Act is modified to the extent necessary to give effect to directions that relate to the abolition of wards and preparing for and conducting elections. Part 4 of the Act deals with elections and other polls.

Subsection (2)(d) is a regulation-making power that provides for directions, including directions that modify the operation of the Act, for the express purpose of giving effect to the abolition of wards under section 2.2A.

#### **Clause 9 – Section 2.11 amended**

Clause 9 amends section 2.11 which deals with alternative methods for filling the office of mayor or president. Subsection (5) provides that the methods for filling the office of

mayor or president are subject to regulations which may require the method for election to be by the electors.

The new section 2.12B (clause 10) provides the power to make regulations for this purpose.

#### **Clause 10 – Section 2.12B inserted**

Clause 10 inserts a new section that provides the power to make regulations requiring specified local governments to fill the office of mayor or president by an election by the electors method and that cannot be changed to the election by council method.

Subsections (2) and (3) provides that regulations may specify when the change takes effect and give directions which may modify the Act to give effect to that change where the Minister is satisfied that is appropriate because of the particular circumstances. Examples of relevant circumstances are provided by notes 1 and 2.

#### **Clause 11 – Section 2.13 amended**

Clause 11 makes consequential amendments to section 2.13 that clarifies that when regulations are made under section 2.12B that the election by electors method applies from then on.

The new subclause (5) provides that if a local government is no longer required by regulations to elect the mayor or president by the election by electors method, that method remains in place unless the local government carries out the process under section 2.11(4) to change the method to election by the council.

#### **Clause 12 – Section 2.14 amended**

Clause 12 makes consequential amendments to section 2.14 to reflect the defining of the term 'elector mayor or president'.

#### **Clause 13 – Section 2.17 replaced**

Clause 13 replaces current section 2.17 with new sections 2.16A, 2.16B, 2.17 and 2.17A, which set out the requirements for the membership of a council to be tied to its population.

The new section 2.16A provides definitions relating to this new division for election, election day, ordinary election day and population.

The new section 2.16B provides for the Governor, on the Minister's recommendation, to make an order specifying the estimated population of a local government district for the purposes of section 2.17 and 2.17A.

Subsections (2) and (3) requires this order is to have effect on either the ordinary election day or another election day for that local government, where the Minister is satisfied an alternative election day is appropriate.

Subsections (4) to (8) require in making this order the Minister must have consulted with the Government Statistician and an estimate of the district's population must be either published in accordance with section 14 of the *Statistics Act 1907* or are otherwise approved by the Government Statistician. The Minister must review this order at least once every five years which aligns with the cycle of the census in

Australia. The Government Statistician is required to assist the Minister with these matters.

This order will be subject to section 42 of the *Interpretation Act 1984* allowing its review and disallowance by Parliament.

The new section 2.17 provides for the membership of a council where the mayor or president is elected by the electors. Namely that the council consists of that elected mayor and president, and:

- between 4 – 6 councillors if the population of the district is less than 5 000; or
- between 4 – 8 councillors if the population of the district is between 5 000 and 75 000; or
- between 8 – 14 councillors if the population of the district is more than 75 000.

The note provided under subsection (1) clarifies that the *City of Perth Act 2016* provides for the membership of council (which is in accordance with the thresholds set by the reforms).

This section likewise provides in subsection (2) for the deputy mayor or deputy president to be one of the councillors.

The new section 2.17A provides for the membership of a council where the mayor or president is elected by the Council. Namely it provides that the council consists of:

- between 5 – 7 councillors if the population of the district is less than 5 000; or
- between 5 – 9 councillors if the population of the district is between 5 000 and 75 000; or
- between 9 – 15 councillors if the population of the district is more than 75 000.

#### **Clause 14 – Part 2 Division 4 Subdivision 3 heading inserted**

Clause 14 inserts a new heading for the ease of the reader.

#### **Clause 15 – Section 2.18 amended**

Clause 15 clarifies that section 2.18 is subject to the new section 2.18A.

#### **Clause 16 – Section 2.18A inserted**

Clause 16 inserts a new section 2.18A. This section empowers the Governor to make orders as a consequence of the changes made by regulations under the amendments to the Act.

Subsection (1) empowers the Governor, on recommendation by the Minister, to make the order which specifies the number of councillors a local government is to have, and if required, the number in each ward.

Subsection (2) provides that the Minister's recommendation to the Governor is to provide:

- where there is a change to the way the mayor or president is elected, an increase or decrease in the size of the council by 1; and
- where the population of a local government district requires a minimum number of councillors, increasing the number of councillors to at least the minimum number; and
- where the population of the local government district requires a maximum number of councillors, decreasing the number of councillors to that maximum number.

Subsection (3) provides that such an order can only be effective on the next ordinary election day or on another election day determined by that order, subject to subsection (6).

Subsection (4) assists in the transition of local governments by permitting the transition to occur over two election cycles where the change in the number of councillors increases or decreases by more than 1.

Subsection (5) clarifies that any increase or decrease applies despite other sections 2.17 and 2.17A.

Subsection (6) provides that appointing an election day, other than the ordinary election day, requires the Minister to be appropriately satisfied because of the particular circumstances of that local government.

Subsection (7) provides that if a district is divided into wards, those wards may be abolished by a change order.

Subsection (8) provides the change order may direct a 'spill' of the whole council or of the councillors of a ward, by allowing the order to change the terms of office of the councillors (as applicable) to end on an ordinary election day.

Subsection (9) consequentially provides for such a spill to require an election for all offices of councillors for the district or for a ward (as applicable), as modified by the change order on the next ordinary election day.

Subsection (10) permits other orders made under Part 2 of the *Local Government Act 1995* to apply to a district despite a change order.

Subsection (11) provides that any change order is subject to section 42 of the *Interpretation Act 1984* and as a result, subject to scrutiny and disallowance.

#### **Clause 17 – Section 2.19 amended**

Clause 17 amends section 2.19 by inserting subsection (2) which provides a regulation-making power to deal with eligibility requirements for an occupier in relation to the owner occupier roll.

#### **Clause 18 – Section 2.25 amended**

Clause 18 amends the existing section relating to leave of absence by council members by permitting a council member to take parental leave where the council member gives birth or adopts a child, for a period up to 6 months on each occasion.

### **Clause 19 – Section 2.28 amended**

Clause 19 amends section 2.28 and the table to section 2.28 which provides for the terms of office of a council member as a consequence of other amendments. These amendments address the terms of office of council members who are elected as a result of the following:

- a change order requiring alteration of terms of office;
- a council member elected through the process under Schedule 4.1A;
- a council member elected to fill an additional vacancy arising as a sitting council member was elected as mayor or president under Schedule 4.1B.

### **Clause 20 – Section 2.32 amended**

Clause 20 amends section 2.32 to make provision for a vacancy in the office of councillor when a councillor is elected as mayor or president as a result of the process under Schedule 4.1B.

### **Clause 21 – Section 3.1 amended**

Clause 21 amends section 3.1 to amend the functions of a local government. The general function of a local government remains to provide for the good government of the persons of its district.

This function is now supplemented by requiring a local government to have regard to the following:

- the promotion of the three pillars of sustainability (being economic, social and environmental sustainability) for the district;
- to plan for and mitigate risks associated with climate change;
- to make decisions with consideration of the potential long-term consequences for future generations.

A local government is likewise required to have regard to the particular interests of Aboriginal people and involve Aboriginal people in their decision-making processes.

A local government is additionally required to have regard to the need to consider collaboration with other local governments in providing good government.

### **Clause 22 – Section 3.59 amended**

Clause 22 amends section 3.59 and is a consequential amendment to update references from a 'plan for the future' to be the 'council plan'.

### **Clause 23 – Part 3 Division 5 inserted**

Clause 23 inserts a new Division and section to provide for a uniform caretaker period for all local governments.

Subsection (1) provides for a series of definitions for the purpose of this section. The first five definitions refer to other legislation or sections of the Act. The definition of

significant act is the most consequential as it provides for the following actions which are restricted by a local government during a caretaker period:

- making or amending of a local law, given it requires public consultation and can create or remove offences;
- entering into, renewing or terminating the contract of a chief executive officer (CEO) or senior employee, given the significant consequences of that decision;
- entering into a major land transaction or land transaction that is preparatory for a major land transaction, given this is considered to be a significant financial action;
- commencing a major trading undertaking, given this is considered to be a significant financial action;
- entering into contracts in prescribed circumstances (for example over a certain monetary value);
- inviting tenders in circumstances to be prescribed in regulations;
- making a decision that one of the above actions are to occur; or
- an act done under a written law that is prescribed as a 'significant act' in regulations.

Subsection (2) forbids a local government from doing a significant act during a caretaker period. As a result, any decision by a local government to do a significant act is of no effect.

Subsection (3) establishes that there are 3 exceptions to this prohibition, set out in subsections (4), (5) and (6).

Subsection (4) provides that a local government may undertake a significant act if the decision was made prior to the caretaker period and any requirements in regulations are met.

Subsection (5) provides that a local government may undertake a significant act if it is required to comply with:

- a written law;
- a Court or Tribunal order;
- a contractual obligation – provided the contract was entered into prior to the caretaker period.

Subsection (6) further provides the CEO of the department assisting the Minister with the administration of the Act (i.e., the Director General DLGSC) may authorise a local government to do a significant act under necessary circumstances such as:

- in the event of an emergency; or
- to ensure the proper functioning of a local government.



This section also provides that the notes at the start of Part 5 are amended to reflect changes.

#### **Clause 24 – Section 4.4 amended**

Clause 24 amends section 4.4 and is a consequential amendment to reflect that the requirements relating to council elected mayors or presidents are subject to additional provisions, all of which are contained in Part 2 Division 3.

#### **Clause 25 – Section 4.8 amended**

Clause 25 amends section 4.8 to provide for extraordinary vacancies of council offices (councillors and elector mayor or president) to be filled by an election unless the vacancy is filled by the process under Schedule 4.1A or 4.1B.

#### **Clause 26 – Section 4.13 amended**

Clause 26 amends section 4.13 to have this section apply where the all the offices of a council become vacant for any reason under section 2.37 or 2.37A.

#### **Clause 27 – Section 4.16 amended**

Clause 27 amends section 4.16 to alter the requirements to hold an extraordinary election to allow a local government, with the approval of the Electoral Commissioner, to not fill a vacancy in the office of a councillor that arises between 12 months (third Saturday in October in the year before an election year) and 3 months (third Saturday in July in an election year) before the next ordinary election.

#### **Clause 28 – Section 4.17 amended**

Clause 28, consistent with clause 27, amends section 4.17 to alter the requirements to hold an extraordinary election to allow a local government, with the approval of the Electoral Commissioner, to not fill a vacancy in the office of a councillor that arises between 12 months and 3 months before the next ordinary election.

This clause subsequently deletes the existing subsections (3), (4A) and (4). As a result, the previous allowance for up to 20 per cent of positions to remain vacant in a district with no wards or a ward with more than 5 councillors will no longer apply.

This is on the basis that for the first 12 months following an election a councillor vacancy would be filled by the process under Schedule 4.1A or 4.1B, if applicable. Then for the following 9 months the vacancy can be deferred to the next ordinary election. For the final 3 months before an election where a member's office becomes vacant, sections 4.16(2) and 4.16(3) provide that, if possible, the election to fill the vacancy is held on the ordinary election day. As a consequence, generally a local government would not need to hold an extraordinary election, except in the third year of a vacating members term, unless there were no candidates available to fill the vacancy by the process under Schedule 4.1A or 4.1B.

#### **Clause 29 – Section 4.31 amended**

Clause 29 amends section 4.31 to insert new subsections (1CA) and (1CB).

Subsections (1CA) and (1CB) provide for regulation-making powers in relation to occupying rateable property, including requirements relating to whether any person is

enrolled, or is regarded under section 4.29(2) as being enrolled, as an elector for the Legislative Assembly in respect of a residence that is the rateable property and other requirements relating to the current, past or future ownership, occupation or use of the rateable property.

### **Clause 30 – Section 4.32 amended**

Clause 30 amends section 4.32 to replace existing subsections (2) and (3) and (4) with new subsections (2), (3), (3A), (3B), (3C), (3D), (3E) and (4).

The replacement subsection (2) provides for regulations regarding documents to be lodged with a claim for enrolment. This is intended to allow the prescribing of requirements regarding provision of a copy of the lease, tenancy agreement or other written legal instrument under which the person claims a right of occupation. Subsection (2)(b) provides that without limiting subsection (2)(a), the claim must include or be accompanied by any information or documentation as prescribed, which may also include a statutory declaration. If under subsection (3)(b) and (d) a minimum amount of rent was prescribed, this could also include requiring the claimant to provide proof of payment.

The replacement subsection (3) requires a person claiming a right of occupation for enrolment, in addition to the requirement to have a lease for at least 3 months beginning on the day the claim is made, to have had a lease for 12 months prior to making the claim. This is intended to prevent the procurement of a short lease for the sole purpose of obtaining a vote or standing for election. The existing ability to prescribe a minimum amount of rent to be paid remains. Subsection (3)(e) provides a power to provide additional requirements in regulations.

New subsection (3A) provides that the leases used to claim a right of occupation may be for other properties for the purposes of making up the 12-month period.

New subsection (3B) provides that for the purpose of making the claim of right of occupation for enrolment the lease must be for at least 3 months from the date of claim, as required by subsection (3)(c).

New subsection (3C) provides that regulations made under subsection (3)(e) may include matters that may be prescribed for the purposes of enrolment relevant to a rateable property. Subsection (3C) deals with other requirements, as prescribed that may deal with the current, past or future ownership, occupation or use of a relevant property.

New subsection (3D) extends matters regarding the relevant rateable property to include any property related to the claim or separate and distinguishable portions of that property (described under section 4.31(1D)(a) or (b)) to which the claim relates.

New subsection (4) reaffirms the requirement that the local government CEO (or delegate under section 5.44) determine the enrolment eligibility claim within 14 days and in doing so decide if they are eligible under section 4.30(1)(a) and (b) as well as the new requirements found under section 4.32(3) inserted by this Act.

New subsections (7A) and (8A) provide for regulation-making powers in relation to how the CEO's reasons for accepting or rejecting a claim are set out, and the conduct of an appeal, including (without limitation) restricting, or authorising the Electoral

Commissioner to restrict, the information, documents or items upon which an appellant can rely.

#### **Clause 31 – Section 4.33 amended**

Clause 31 amends section 4.33.

Subsection (1) addresses the expiry of enrolled occupiers by inserting subsection (1A). Occupier's eligibility currently expires 6 months after the right to vote for 2 ordinary elections. The amendment provides for an additional expiry date to be when the person no longer occupies the property, such as on the expiry date of the lease provided, or on the date that is 6 months after the second ordinary election after the claim. This could also be because the CEO of the local government becomes aware the person no longer occupies the property.

A note in this subsection is included that clarifies that the reference to the person ceasing to occupy the property must be construed in accordance with section 4.31(1C) and any regulations made for the purposes of section 4.31(1CA).

Subsections (2) and (3) amend the dates for calculating the expiry date of an occupier enrolment by moving them earlier by 7 days. This is aligned with other reforms that increase the election period by 7 days.

#### **Clause 32 – Section 4.35 amended**

Clause 32 amends section 4.35 to insert a regulation-making power in relation to the conduct of an appeal, including (without limitation) provisions restricting, or authorising the Electoral Commissioner to restrict the information, documents or items upon which an appellant can rely. See also the regulation-making power at clause 30(8A).

#### **Clause 33 – Section 4.39 amended**

Clause 33 amends section 4.39 to move the date for the close of enrolments and giving notice of close of enrolments earlier by 7 days to provide more time for postal voting.

#### **Clause 34 – Section 4.40 amended**

Clause 34 amends section 4.40 to move the dates for the supply of the residents roll to a local government to 7 days earlier to provide more time for postal voting.

#### **Clause 35 – Section 4.41 amended**

Clause 35 amends section 4.41 to move the dates for the supply of the owners and occupiers roll to 7 days earlier to provide more time for postal voting.

#### **Clause 36 – Section 4.42 amended**

Clause 36 amends section 4.42 which currently provides for copies of the electoral roll to be supplied to council members and candidates. These amendments allow for regulations that may provide the requirement for a person to destroy or delete the copy of the electoral roll supplied to them, including any documents or information derived from the roll and make a statutory declaration to that effect.

### **Clause 37 – Section 4.43 amended**

Clause 37 amends section 4.43 to move the dates for the deletion of duplicate enrolments to 7 days earlier to provide more time for postal voting.

### **Clause 38 – Section 4.46A inserted**

Clause 38 adds a new section to the Act to prevent unlawful use of the information contained in electoral rolls supplied to council members and candidates.

Subsection (1) defines enrolment information to mean both information supplied to a person through the supply of the roll and includes information they derived from the roll supplied to them. It further defines 'supply' to include disclose and 'use' to include supply.

Subsection (2) provides that a person provided with a copy of the roll must not use the enrolment information for any purpose except for their candidature in the election or the performance of their functions as a council member if they are elected to council. Additional purposes may be prescribed if they are identified. A person using enrolment information contrary to the permitted identified purposes commits an offence and may be subject to imprisonment for up to a year and a fine of \$5 000.

Subsection (3) provides that none of the permitted uses in subsection (2) permit the use of the enrolment information for a commercial purpose.

Subsection (4) provides that a person supplied a copy of the roll who uses the enrolment information for a commercial purpose commits an offence and may be subject to of imprisonment for up to a year and a fine of \$10 000.

Subsection (5) requires a person supplied a copy of the role to ensure that any person that they subsequently supply enrolment information to, such as supporters of their campaign, is informed at the time they are supplied the enrolment information of their obligation to only use that information for the purposes that are permitted under subsection (2). A person using enrolment information contrary to the requirements of this subsection commits an offence and may be subject to imprisonment for up to a year and a fine of \$5 000.

Subsection (6) requires a person to not use enrolment information if they have been informed or have reasonable grounds to believe that the information was from the electoral roll or derived from the electoral roll. A person using enrolment information contrary to the requirements of this subsection commits an offence and may be subject to imprisonment for up to a year and a fine of \$5 000.

Subsection (7) permits a person affected by subsection (6) to use the information contained in an electoral roll for the same purposes as a candidate or council member.

Subsection (8) prohibits a person from using any enrolment information for a commercial purpose if they have been informed or have otherwise come to know or has reasonable grounds to believe that the information was enrolment information or derived from enrolment information. A person using enrolment information contrary to the requirements of this subsection commits an offence and may be subject to imprisonment for up to a year and a fine of \$10 000.

Subsection (9) provides that the Electoral Commissioner or a person authorised by them may commence prosecution for the offences stipulated in this section or section 4.95 for attempting to commit an offence against this section.

Subsection (10) provides that nothing in section 4.46A prevents a person from doing anything to comply with regulations made under section 4.42(3), which relate to the destruction, deletion (or the making of a statutory declaration relating to the destruction or deletion) of the supplied copy of the roll.

#### **Clause 39 – Section 4.47 amended**

Clause 39 amends section 4.47 to move the dates for the call for nominations to 7 days earlier to provide more time for postal voting.

#### **Clause 40 – Section 4.49 amended**

Clause 40 amends section 4.49 for two purposes. Subsection (1) moves the nomination period to 7 days earlier to provide more time for postal voting. Subsection (2) provides for additional information to be provided with a nomination for the elector. This may include requiring a candidate to disclose the basis of their nomination (resident, owner or occupier).

#### **Clause 41 – Section 4.51 amended**

Clause 41 amends section 4.51 by inserting subsection (1)(bb) which provides the basis for rejecting an applicant's enrolment nomination. This subsection provides that a candidate is not qualified to be elected as a member of council due to failure to meet prescribed requirements under new section 2.19(2A).

#### **Clause 42 – Section 4.52 replaced**

Clause 42 replaces section 4.52 to require a greater amount of information about a candidate to be published on a local government's official website.

The new subsection (1) requires any additional prescribed information under the new subsection 4.49(ba) to be published on the local government's website as well as other matters which may be prescribed.

Subsections (2) and (3) require the returning officer to ensure information is published until the result is declared or the close of the poll at 6pm on the election day.

Subsection (4) provides that regulations may prescribe how this information is to be published and may require local governments to make this information available to electors, such as through the local government social media channels.

#### **Clause 43 – Section 4.53 amended**

Clause 43 consequentially amends section 4.53 to provide that nominations are now published on a local government's website by ensuring any information relating to a withdrawn nomination is removed and notice of the withdrawal is published on the website instead.

#### **Clause 44 – Section 4.64 amended**

Clause 44 amends section 4.64 to move the date for the notice of election to 7 days earlier to provide more time for postal voting.

#### **Clause 45 – Section 4.69 replaced**

Clause 45 replaces section 4.69 to reflect how votes are cast. Section 4.69 introduces optional preferential voting by way of a single transferrable vote.

The optional preferential voting system provides for an elector to number the candidates on the ballot paper in the order of their choice. Electors may vote for just one candidate or provide preferences for some or all candidates.

The elector has control over their preferences and which candidate, if any, they are directed to.

Subsection (1) provides that this section sets out how a vote is to be cast.

Subsection (2) provides that an elector must cast a first-preference vote by writing on the ballot paper the number “1” in the square beside the candidate who is their first preference.

Subsection (3) provides that if there are 2 or more other candidates an elector may subsequently cast preference votes by providing additional numbers starting from “2” in sequence in the other boxes by candidates’ names on the ballot paper in the order of the elector’s preference.

Subsection (4) clarifies that an elector may cast preference votes but does not have to provide preferences for all candidates.

Subsection (5) requires regulations to be made to provide for the form of the ballot paper and it must have squares beside the names of the candidates.

#### **Clause 46 – Section 4.72 amended**

Clause 46 amends section 4.72 to provide the determining of the outcome may require re-counts of the votes.

#### **Clause 47 – Section 4.72A inserted**

Clause 47 provides for re-counts of votes.

Subsection (1) provides that the returning officer may arrange for the votes to be re-counted if they consider it appropriate.

Subsection (2) allows the returning officer to arrange a re-count if they do so on their own initiative, or if a candidate or scrutineer provides a written request before the declaration of the result outlining their reasons for the recount.

Subsection (3) provides regulations may prescribe when a re-count must occur.

Subsection (4) clarifies that during a re-count the returning officer may admit a ballot paper previously rejected or reject a ballot paper previously accepted.

Subsection (5) requires a re-count to be conducted before the returning officer declares the result.

#### **Clause 48 – Section 4.73 amended**

Clause 48 amends section 4.73, which currently deals with the scenario when a person stands for both mayor or president and councillor at the same election. It requires the election for mayor or president to be concluded first before the result of the election for councillors is finalised. For the reason that a person cannot be both the mayor or president and a councillor. Under the first past the post system, where a person was a candidate for both mayor or president and councillor and elected as mayor or president, subsection (5) requires all votes for them, for the office of councillor, be disregarded.

This clause replaces subsection (5) to obtain the benefit of a preferential voting system by allowing the first-preference votes and other preference votes cast for that successful candidate, for the office of councillor, to transfer to the next preference candidate.

#### **Clause 49 – Section 4.73A inserted**

Clause 49 inserts a new section associated with Schedule 4.1B to provide an alternative means to fill a vacancy created in an office of councillor when that councillor is elected as mayor or president, but their office of councillor was not up for election.

Subsection (1) establishes the circumstances where this section applies, namely that:

- an election has been held to fill the office of mayor or president;
- a candidate is a councillor whose office will become vacant if they are elected as mayor or president; and
- on the election day, there will be an election in the district or in the ward for which they are a councillor.

Subsection (2) requires the result of the election of mayor or president to be ascertained before the election of the affected councillor positions.

#### **Clause 50 – Section 4.75 amended**

Clause 50 amends section 4.75(1) to delete the reference to regulations and refer to the applicable section (section 4.69).

New subsection (3) inserts a regulation-making power which may prescribe what constitutes a formal vote or an informal vote.

#### **Clause 51 – Section 4.76 amended**

Clause 51 amends section 4.76 relating to review of decisions on ballot papers to reflect the re-count process created by the new section 4.72A.

#### **Clause 52 – Section 4.77 amended**

Clause 52 adds a note at the end of section 4.77 relating to giving notice of election results to reflect that additional notice requirements apply under Schedules 4.1A and 4.1B.

#### **Clause 53 – Section 4.80 amended**

Clause 53 replaces subsection (2) of section 4.80 to extend an invalidity complaint regarding an election to the processes under Schedules 4.1A and 4.1B.

#### **Clause 54 – Section 4.81 amended**

Clause 54 amends section 4.81 to empower the court of disputed returns to consider and address complaints arising out of the processes in Schedules 4.1A and 4.1B.

New subsection (5)(c) provides that the court may make orders in relation to a person who was elected under Schedules 4.1A or 4.1B.

Under subsection (5)(c)(i) an order may require that the person elected does not act as a member of the council. Under subsection (5)(c)(ii) an order may require that a person is to be regarded as elected to council under Schedule 4.1A or 4.1B. Under subsection (5)(c)(iii) an order may require that Schedule 4.1A or 4.1B be applied or reapplied to fill a vacancy specified by the order.

#### **Clause 55 – Section 5.18A inserted**

Clause 55 inserts new section 5.18A to allow regulations to make provisions relating to the functions of committees or the functions of types of committees as a consequence of clause 59, which deletes section 5.25.

#### **Clause 56 – Section 5.19 amended**

Clause 56 amends section 5.19 which currently provides for the quorum of a meeting of council or a committee. This section is amended to provide for the automatic reduction of quorum where a council member is taking parental leave based upon new section 2.25(5B).

Subsection (4) guarantees that a quorum can never be less than 2. The calculation of an absolute majority is remains unchanged.

#### **Clause 57 – Section 5.21 amended**

Clause 56 amends section 5.21 to require the individual votes of each council member to be recorded in the minutes of a meeting, except where that vote is by secret ballot under Schedule 2.3. It further provides regulations may prescribe how voting information is to be recorded.

#### **Clause 58 – Section 5.23A inserted**

Clause 58 inserts a new section 5.23A for the purpose of regulating the livestreaming of meetings of council or a committee.

Subsection (1) provides definitions.

Subsection (2) provides that regulations may require, regulate and otherwise make provision for the broadcasting and recording, live or with a delay, of council meetings.



Subsection (3) restricts the making of regulations so that they cannot require the broadcast of any council meeting that is closed to the public or require a recording of a closed council meeting to be made publicly available.

Subsection (4) provides that regulations may prescribe circumstances where a local government, or any other person, will not be liable for an action in defamation as a result of the requirement to broadcast a meeting.

#### **Clause 59 – Section 5.25 deleted**

Clause 59 deletes section 5.25 regarding the making of regulations about meetings as a consequence of clause 60, which inserts a new section 5.33A.

#### **Clause 60 – Section 5.28 amended**

Clause 60 increases the number of signatures required to convene a special electors meeting from 100 to 300 and empowers a mayor or president to decide not to hold a special electors meeting or permit a particular matter to be discussed at a special electors meeting if a meeting has already been held in the last 12 months on the subject, in whole or in part, or if a special electors meeting has already been convened for that purpose. When this power is exercised the mayor or president is required to raise the matter to be discussed at the next ordinary meeting of the council. A local government is likewise required to give local public notice of the decision of the mayor or president and the reasons for it.

#### **Clause 61 – Section 5.31 deleted**

Clause 61 deletes section 5.31 regarding the procedure for electors' meetings as a consequence of new section 5.33A which deals with meeting procedures.

#### **Clause 62 – Part 5 Division 2 Subdivision 5 inserted**

Clause 62 inserts a new section 5.33A to provide for uniform meeting procedures for all local governments.

Subsections (1) and (2) provides that regulations may prescribe provisions for meetings of council, committees and electors. This includes powers for the exclusion of council or committee members, or members of the public who fail to comply with directions of the person presiding or whose conduct is offensive or disruptive to a meeting and the steps to be taken if that person refuses to leave.

Subsection (3) allows for modification of the Act to enable electronic meetings to be held. Subsection (3) retains an existing provision provided under section 5.25.

Subsection (4) addresses the types of documents relating to meetings about which regulations may be made.

Subsection (5) provides regulations may deal with how members of the public who raise questions are to be dealt with in meeting documents. This may include how the person is recorded in meeting minutes in relation to their question.

Subsection (6) provides that regulations may prescribe model provisions that must or may be adopted by a local government.

### **Clause 63 – Section 5.38 replaced**

Clause 63 replaces the existing section 5.38 to amend the process relating to the CEO performance review.

Subsection (1) continues to require a local government to review the performance of a CEO who has been employed for more than a year.

Subsection (2) continues to require this performance review to occur each year of the CEO's performance.

Subsection (3) requires a report to be prepared on the review of the CEO's performance and a copy of that report must be provided to the CEO with a reasonable opportunity to respond.

Subsection (4) provides that this report must set out the performance criteria that was used to assess the CEO's performance and if that criteria was met. It further provides that regulations may be made to set out information that must be included in the report.

Subsection (5) requires that the CEO's response may include statements responding to those matters under subsection (4).

Subsection (6) provides that the form or content of the report must comply with any prescribed requirements.

### **Clause 64 – Section 5.39AA inserted**

Clause 64 inserts a new section requiring the publication of information regarding the performance of a local government CEO.

Subsection (1) requires the publication of:

- the CEO's performance criteria as set out in their contract; and
- any report prepared under the new section 5.38(4) relating to the CEO's performance; and
- the CEO's response to any report given under new section 5.38(5) to the statements under section 5.38(4).

Subsection (2) allows the Departmental CEO (being the Director General of the DLGSC), if satisfied it is in the public interest, to direct that any, or part of any of the information required to be published under subsection (1) not be published.

### **Clause 65 – Section 5.39A amended**

Clause 65 inserts 3 new subsections to section 5.39A which allows the making and amending of regulations relating to the model standards for recruitment, performance review and termination of local government CEOs.

The new subsection (3) allows for the model standards to provide that a local government must include on a selection panel a member from a panel of persons established by the DLGSC, confer functions on those panel members and allow the Departmental CEO (being the Director General of DLGSC) to authorise a local government to not involve a person on a panel if they would be required to do so.

The new subsection (4) and (5) allow for regulations to provide for the establishment of the panel of persons referred to in subsection (3) and provide for their payment and reimbursement of their expenses and provide that the revised section 5.100 can apply to members of that panel as though they were a committee member.

#### **Clause 66 – Section 5.43 amended**

Clause 66 amends the limits on delegation to the CEO to include the adoption of a policy regarding the creation of an allowance for professional development as a matter that cannot be delegated to the CEO.

#### **Clause 67 – Section 5.53 amended**

Clause 67 amends section 5.53 which currently prescribes the content of annual reports. New section 5.53(2) provides that regulations may prescribe information and the content of an annual report, pending regulations regarding council plans, with the exception of the auditor's report and the report required under section 29(2) of the *Disability Services Act 1993* regarding a disability access and inclusion plan.

#### **Clause 68 – Section 5.56 replaced**

Clause 68 replaces existing requirements in the Act regarding plans for the future. Instead, subsection (1) prescribes that regulations will require a local government to prepare, publish, review and modify a council plan in accordance with regulations.

Subsection (2) requires a council plan to plan for the future services and facilities for a district that a local government will provide, in addition to prescribed matters.

Subsection (3) provides that regulations may prescribe certain requirements regarding the council plan.

#### **Clause 69 – Part 5 Division 5A inserted**

Clause 69 inserts a new division 5A to provide for community engagement charters and community engagement surveys.

The new section 5.56A requires a local government to prepare and adopt a community engagement charter which will set out the things to be done by a local government to engage with its community. This charter must be published on the local government's website. Regulations may prescribe requirements regarding community engagement charters.

The new section 5.56B provides that regulations may prescribe requirements regarding surveys to be conducted by local governments to ascertain feedback from their community on prescribed matters, or otherwise receive feedback on prescribed matters. Regulations may also prescribe how, when and what is to occur and for publication of the results.

#### **Clause 70 – Section 5.63 amended**

Clause 70 amends section 5.63 which provides for interests that do not need to be disclosed by council members and local government employees. This amendment provides that the policy for paying fees and expenses for training undertaken by council members is not a matter about which council members or local government

employees need to disclose an interest. This is consistent with the approach taken with council members fixing their own fees and allowances.

#### **Clause 71 – Section 5.68 amended**

Clause 71 amends section 5.68 which allows a council to resolve to set aside a council member's interest. This amendment prevents a council from waiving an interest arising because of an electoral gift. Following this amendment this interest can only be waived by application to the Minister.

#### **Clause 72 – Section 5.88 amended**

Clause 72 amends section 5.88 to require a local government CEO to publish an up-to-date register of all the disclosures of interest made under sections 5.65, 5.70, 5.71 and 5.71A on the local government's website.

#### **Clause 73 – Section 5.92 amended**

Clause 73 amends section 5.92 to require a council or committee member to seek information under this section in accordance with the communications agreement required under new sections 5.92A to 5.92C.

#### **Clause 74 – Sections 5.92A to 5.92C inserted**

Clause 74 inserts new sections regarding the requirement for local governments to implement a communications agreement. New section 5.92A requires a local government to have a communications agreement which is a written agreement between the CEO and the council. This agreement will regulate communications between the council, the CEO and the local government administration and address matters such as:

- how council members request and obtain information; and
- how communications occur between council and committee members and employees.

Council members, committee members and employees must, when carrying out their duties, comply with the communications agreement. Regulations may prescribe the content and other provisions relating to a communications agreement.

New section 5.92B provides for the Minister, by order, to set out a form of communications agreement that serves as the default communications agreement. This default agreement will be the communications agreement of a local government which does not have its own agreement. This section also allows the Minister to have different agreements for different classes of local government.

New section 5.92C sets out how a local government adopts its own communications agreement, which it cannot adopt or amend during a caretaker period. The communications agreement has effect until the next time a caretaker period ends unless the CEO changes. A communications agreement cannot be adopted without the CEO's agreement and if a local government does adopt an agreement of its own, the CEO must publish the agreement on the local government's website.

### **Clause 75 – Section 5.94 amended**

Clause 75 provides for a consequential amendment to section 5.94 to reflect that a council plan has replaced the plan for the future of the district.

### **Clause 76 – Section 5.95 amended**

Clause 76 is a consequential amendment that makes the right to inspect minutes and meeting papers subject to any uniform meeting procedures made under section 5.33A.

Subsection (9) provides that information may be prescribed as information that is required for public inspection under section 5.94(u)(ii), regardless of whether or not that information is required to be generated, obtained, provided or kept under any other provision of the Act.

This clause also inserts a note that the heading for section 5.95 is amended to reflect these changes (as outlined above).

### **Clause 77 – Section 5.96A amended**

Clause 77 makes consequential amendments to section 5.96A.

Subsection (1) is a consequential amendment arising from the plan for the future becoming the council plan.

Subsection (2) is a consequential amendment that makes the publication of minutes and meeting papers on a local government website subject to any uniform meeting procedures made under section 5.33A.

Subsection (3) sets out that the publication of the kind of information that may be prescribed irrespective of whether that information is required to be generated, obtained, provided or kept under the requirements of the Act.

### **Clause 78 – Section 5.96B inserted**

Clause 78 provides that regulations may require a local government CEO to keep registers which must be published on the local government's website. These regulations may include the form of the register and requirements for timely updating. It is intended for these registers include:

- a register of leases the local government is party to;
- a register of grants and sponsorship given by a local government;
- a register of all the contracts for goods and services the local government has entered into; and
- registers of matters relating to the function of the local government under the *Planning and Development Act 2005*.

### **Clause 79 – Section 5.98 amended**

Clause 79 makes two consequential amendments to section 5.98.

Subsection (1) is a consequential amendment arising from the introduction of the ability of local governments to adopt a policy to make payments for fees and expenses

for training council members as it provides a new avenue for a council member to receive a payment.

Subsection (2) deletes subsection (7) as payments to committee members who are not council members or employees will be permitted in accordance with the amendments set out in clause 80.

#### **Clause 80 – Section 5.100 replaced**

Clause 80 replaces the existing section 5.100 to allow committee members who are not council members or employees (e.g., independent committee members) to receive fees and expenses for their services.

Subsection (1) defines a committee member and provides that the determination of the fees and expenses to be reimbursed will be determined by the Salaries and Allowances Tribunal under the *Salaries and Allowances Act 1975*.

Subsection (2) provides an independent committee member may be paid the fee determined by the Salaries and Allowances Tribunal, or if that determination was a range, the amount in that range the local government has set.

Subsection (3) provides for independent committee members who attend a prescribed type of meeting to likewise be paid the determined fee or if that determination was a range, the amount in that range the local government has set.

Subsection (4) provides that reimbursement of expenses under subsection (5) applies if the expense incurred is prescribed as being a permitted reimbursement or is one which a local government may, or has approved for reimbursement.

Subsection (5) provides a committee member may be reimbursed for an expense at the extent determined by the Salaries and Allowances Tribunal, or if the local government has set that extent, that extent.

Subsection (6) provides that if a local government is permitted to approve a reimbursement, the local government may approve generally or individual reimbursements to independent committee members.

Subsection (7) restricts the ability of a local government to make reimbursement payments unless the payment is in accordance with this section.

#### **Clause 81 – Section 5.105 amended**

Clause 81 amends section 5.105 which deals with minor breaches of the Act. The insertion of new section 5.105(1)(aa) applies an existing provision provided by subsection (1)(b) in relation to model meeting local laws, to also apply with respect to new section 5.33A(1). Subsection (1)(aa) provides that a council member commits a minor breach if they contravene regulations under section 5.33A(1) which specify a minor breach.

New subsection (1AA) provides that regulations cannot specify contravention of a provision of regulations to be a minor breach if the contravention, in addition to being a minor breach, would also constitute a serious breach.

New subsection (4) clarifies that references to regulations made for the purposes of 5.33A(1) also apply with respect to model provisions adopted by a local government.

### **Clause 82 – Section 5.129 inserted**

Clause 82 inserts a new section 5.129 to provide for local governments to adopt a policy to pay fees to council members or reimburse their expenses relating to participation in mandatory training or training under the policy adopted under section 5.128 for continuing professional development.

Subsections (2) and (3) provide the local government may amend or revoke the policy at any time and the policy must be published on the local government's website.

Subsection (4) provides that regulations may prescribe requirements regarding restrictions on the amount of money that can be spent or what it may be spent on in relation to the policy.

Subsection (5) provides a power is also provided for the Departmental CEO (being the Director General of the DLGSC) to approve a local government to apply its policy despite an inconsistency with the regulations.

Subsection (6) provides that this policy sits on top of any determination made by the Salaries and Allowances Tribunal and is unaffected by that determination.

### **Clause 83 – Section 6.2 amended**

Clause 83 makes two amendments to section 6.2 of the Act.

Subclause (1) is a consequential amendment that reflects the replacement of a plan for the future with the council plan.

Subclause (2) modifies the existing requirements for a local government's annual budget in the previous subsection (4) to transfer them to the regulations.

### **Clause 84 – Section 6.4 amended**

Clause 84 makes a minor amendment to widen the requirements regulations may prescribe regarding the annual financial report to include matters other than information.

### **Clause 85 – Section 7.13 amended**

Clause 85 is a consequential amendment to reflect that regulations regarding committee meetings will now be made under section 5.33A instead of the deleted section 5.25.

### **Clause 86 – Section 9.61A inserted**

Clause 86 clarifies the power of the Governor to make regulations under this Act that apply in different ways to different local governments. As a result, this allows the development of a regulatory regime that consider the specific context of respective local governments, including the class, size and scale of local governments.

Subsection (1) provides that regulations may be made that only apply to certain local governments, or local governments of a certain class or to make different provisions for different local governments or classes of local governments.

Subsection (2) provides a power for an order made by the Minister to specify or make provisions for determining which local governments or class of local governments that particular regulations apply to.

Subsection (3) provides that making regulations or orders related to bands determined by the Salaries and Allowances Tribunal may be applied.

Subsection (4) clarifies that these provisions do not apply as a limitation to section 43(7) or (8) of the *Interpretation Act 1984* in respect of power to make subsidiary legislation.

### **Clause 87 – Section 9.63A inserted**

Clause 87 inserts a new section to allow the Minister to grant exemptions from compliance with the Act.

Subsection (1) provides definitions of what constitutes an **emergency** and what constitutes an **excluded provision** (which includes provisions related to electoral matters, representation and making local laws).

Subsection (2) provides for a local government to apply to the Minister for an exemption from compliance with this Act where it is responding to an emergency or to respond on a temporary basis to unusual circumstances.

Subsection (3) provides that the provision that the local government wishes to be exempt from needs to be in its application.

Subsection (4) provides the power for the Minister to grant the exemption if the Minister is satisfied of the following:

- it would not exempt a local government from an excluded provision;
- that the exemption is reasonably necessary to respond to the emergency or unusual circumstances;
- if it was an emergency application that the application was made as soon as was reasonably practicable;
- that the exemption will not undermine the good governance of the local government;
- that it is in the public interest.

Subsection (5) requires an exemption to be granted for a specified period.

Subsection (6) allows an emergency exemption to be for a period prior to the exemption being granted.

Subsection (7) provides that the exemption may be limited.

Subsection (8) provides that the exemption may be subject to conditions.

Subsection (9) provides that if an exemption was conditional, at any time those conditions are contravened the exemption is of no effect.



Subsection (10) requires a local government to give local public notice of the exemption.

#### **Clause 88 – Section 9.63A amended**

Clause 88 amends section 9.63A by providing that the definition of an excluded provision at paragraph (e) is replaced by a reference to Schedules 4.1A, 4.1B, 4.1 or 4.2 or a provision of any of those Schedules.

The reason for this amendment is that clause 87 will come into operation at Royal Assent (see clause 2(b)). Clause 91, which inserts new Schedules 4.1A and 4.1B, will come into operation by proclamation. Therefore, clause 88, which is to be brought into operation at the same time as clause 91, will amend section 9.63A to insert references to the new Schedules 4.1A and 4.1B.

#### **Clause 89 – Schedule 2.2 clause 3 amended**

Clause 88 amends Schedule 2.2 of the Act to clarify that members of the public cannot lodge a submission to commence a ward and representation review if that local government is not permitted to have wards.

#### **Clause 90 – Schedule 2.2 clause 6 amended**

Clause 90 amends Schedule 2.2 of the Act regarding a ward and representation review.

Subsection (1) extends the time period for conducting a ward and presentation review to 10 years instead of 8 years.

Subsection (2) requires that when a ward system is established for a district, the wards and representation review must be conducted 10 years following that establishment.

Subsection (3) deletes the requirement for a local government that does not have wards to conduct a ward and representation review.

Subsection (4) is a consequential amendment reflecting the deletion made by subsection (3).

#### **Clause 91 – Schedules 4.1A and 4.1B inserted**

Clause 91 inserts two new schedules, Schedules 4.1A and 4.1B, to the Act.

##### **Schedule 4.1A – Filling extraordinary vacancy without extraordinary election**

Schedule 4.1A is to provide for the filling of extraordinary vacancies without an extraordinary election by providing the next placed candidate to fill the vacancy, by consent.

##### Division 1 – Preliminary

##### Cl. 1 – Terms used

Cl. 1 defines terms such as former member, vacancy day and working day for the purposes of this Schedule.

## Division 2 – Application of Schedule

### Cl. 2 – Certain extraordinary vacancies to be filled under Schedule instead of by extraordinary election

Subcl. (1) provides where this cl. applies, namely where a vacancy arises within 12 months of a member's election and is not required to be filled by an extraordinary election.

Subcl. (2) requires the CEO of the local government to determine if the vacancy can be filled under this Schedule.

Subcl. (3) requires the CEO to determine the second placed and third placed candidate or the first unelected candidate and second unelected candidate to do so by reference to the notice of election issued under section 4.77.

Subcl. (4) requires if the vacancy is filled, the CEO must declare and give notice of election in accordance with the regulations.

Subcl. (5) requires the CEO to advise the council, at a meeting, if the vacancy cannot be filled under this Schedule, in which event the council may need to hold an extraordinary election.

Subcl. (6) address how a notice of resignation that does not take immediate effect affects the application of this Schedule.

## Division 3 – One office elections

### Subdivision 1 – One office election: 2 candidates

#### Cl. 3 – Application of subdivision

Cl. 3 applies this subdivision to elections under cl. 2 of Schedule 4.1, which are those elections for a single vacancy where there were only 2 candidates.

#### Cl. 4 – Filling of vacancy by unsuccessful candidate

Cl. 4 addresses the procedure for filling the vacancy.

Subcl. (1) requires the CEO within 5 working days to advise the unsuccessful candidate that they may fill the vacancy.

Subcl. (2) then requires that the candidate must within 5 working days advise the CEO they wish to fill the vacancy and that they remain eligible.

Subcl. (3) then provides that the candidate is elected to the vacant office on either the day the CEO is notified or the day the resignation of the former office holder takes effect.

Subcl. (4) provides for circumstances where the candidate cannot fill the vacancy and includes that regulations may prescribe additional circumstances where this process cannot apply.

Subdivision 2 – One office election: 3 or more candidates where former member elected under Schedule 4.1 clause 4

Cl. 5 – Application of Subdivision

Cl. 5 applies this subdivision to elections under cl. 4 of Schedule 4.1, which are those elections for a single vacancy where there were more than 2 candidates, but preferences did not need to be distributed as the winning candidate received more than 50% of the vote.

Subcl. (2) and (3) provide for determining who is considered the ‘second placed candidate’ and ‘third placed candidate’.

Cl. 6 – Filling of vacancy by second placed candidate

Cl. 6 addresses the procedure for filling the vacancy by inviting the second placed candidate to do so.

Subcl. (1) requires the CEO within 5 working days to advise the second placed candidate that they may fill the vacancy.

Subcl. (2) then requires that the second placed candidate must, within 5 working days, advise the CEO they wish to fill the vacancy and remain eligible to do so.

Subcl. (3) then provides that second placed candidate is elected to the vacant office on either the day the CEO is notified or, if later, the day the resignation of the former office holder takes effect.

Subcl. (4) provides for circumstances where the second placed candidate cannot fill the vacancy and includes that regulations may prescribe additional circumstances where this process cannot apply.

Cl. 7 – Filling of vacancy by third placed candidate

Cl. 7 addresses the procedure for filling the vacancy by inviting the third placed candidate to do so if the second placed candidate could not fill the vacancy.

Subcl. (2) requires the CEO within 15 working days after the vacancy day to advise the third placed candidate that they may fill the vacancy.

Subcl. (3) requires that the third placed candidate must within 5 working days advise the CEO they wish to fill the vacancy and remain eligible to do so.

Subcl. (4) provides that the third placed candidate is elected to the vacant office on either the day the CEO is notified or the day the resignation of the former office holder takes effect.

Subcl. (5) provides for circumstances where the third placed candidate cannot fill the vacancy and includes that regulations may prescribe additional circumstances where this process cannot apply.

Subdivision 3 – One office election: 3 or more candidates where former member elected under Schedule 4.1 clause 5

Cl. 8 – Application of Subdivision

Cl. 8 applies this subdivision to elections under cl. 5 of Schedule 4.1, which are those elections for a single vacancy where there were more than 2 candidates and preferences were distributed to determine the winner.

Subcl. (2) provides the definitions for the purposes of this subdivision.

Subcl. (3) provides for determining who is considered the 'second placed candidate' and 'third placed candidate' to be either those candidates with the highest number of votes at the last count, or the last candidate excluded in the prior step of the count.

Cl. 9 – Filling of vacancy by second placed candidate

Cl. 9 addresses the procedure for filling the vacancy by inviting the second placed candidate to do so.

Subcl. (1) requires the CEO within 5 working days to advise the second placed candidate that they may fill the vacancy.

Subcl. (2) requires that the second placed candidate must, within 5 working days, advise the CEO they wish to fill the vacancy and remain eligible to do so.

Subcl. (3) provides that second placed candidate is elected to the vacant office on either the day the CEO is notified or if later, the day the resignation of the former office holder takes effect.

Subcl. (4) provides for circumstances where the second placed candidate cannot fill the vacancy and includes that regulations may prescribe additional circumstances where this process cannot apply.

Cl. 10 – Filling of vacancy by third placed candidate

Cl. 10 addresses the procedure for filling the vacancy by inviting the third placed candidate to do so if the second placed candidate could not fill the vacancy.

Subcl. (2) requires the CEO within 15 working days to advise the third placed candidate that they may fill the vacancy.

Subcl. (3) requires that the third placed candidate must, within 5 working days, advise the CEO they wish to fill the vacancy and remain eligible to do so.

Subcl. (4) provides that the third placed candidate is elected to the vacant office on either the day the CEO is notified or if later, the day the resignation of the former office holder takes effect.

Subcl. (5) provides for circumstances where the third placed candidate cannot fill the vacancy and includes that regulations may prescribe additional circumstances where this process cannot apply.

#### Division 4 – Elections of 2 or more councillors

##### Cl. 11 – Application of Division

Cl. 11 sets out that this division applies where the original election was an election for more than one vacancy under division 3 of Schedule 4.1. It then provides definitions for determining who are the first and second unelected candidates including based upon the number of votes they had, or upon the order of exclusion.

Subcl. (3) and (4) apply with respect to determining the first and second unelected candidates in the event of a tie. The order must be determined by reference to the number of votes that each of the tied candidates had at the last count, or transfer of votes, under Schedule 4.1. In the event that there was no such count of transfer, the order must be determined by the drawing of lots in accordance with regulations.

##### Cl. 12 – Filling of vacancy by first unelected candidate

Cl. 12 addresses the procedure for filling the vacancy by inviting the first unelected candidate to do so.

Subcl. (1) requires the CEO within 5 working days to advise the first unelected candidate that they may fill the vacancy.

Subcl. (2) then requires that the first unelected candidate must, within 5 working days, advise the CEO they wish to fill the vacancy and remain eligible to do so.

Subcl. (3) then provides that first unelected candidate is elected to the vacant office on either the day the CEO is notified or the day the resignation of the former office holder takes effect.

Subcl. (4) provides for circumstances where the first unelected candidate cannot fill the vacancy and includes that regulations may prescribe additional circumstances where this process cannot apply.

##### Cl. 13 – Filling of vacancy by second unelected candidate

Cl. 13 addresses the procedure for filling the vacancy by inviting the second unelected candidate to do so if the first unelected candidate could not fill the vacancy.

Subcl. (2) requires the CEO within 15 working days to advise the second unelected candidate that they may fill the vacancy.

Subcl. (2) then requires that the second unelected candidate must, within 5 working days, advise the CEO they wish to fill the vacancy and remain eligible to do so.

Subcl. (3) then provides that the second unelected candidate is elected to the vacant office on either the day the CEO is notified or the day the resignation of the former office holder takes effect.

Subcl. (4) provides for circumstances where the second unelected candidate cannot fill the vacancy and includes that regulations may prescribe additional circumstances where this process cannot apply.

Subcl. (5) and (6) provide for circumstances where the vacancy cannot be filled.

#### Division 5 – Former member elected under cl. 6, 9 or 12

##### Cl. 14 – Terms used

Cl. 14 defines terms used for this Division.

##### Cl. 15 – Former member elected under cl. 6

Cl. 15 provides for this Schedule to be applied again where a member was elected under this Schedule to fill a vacancy and then they resigned or otherwise vacated the office, by applying the same approach and allowing the third placed candidate to take the position.

##### Cl. 16 – Former member elected under cl. 9

Cl. 16 provides for this Schedule to be applied again where a member was elected under this Schedule to fill a vacancy and then they resigned or otherwise vacated the office, by applying the same approach and allowing the third placed candidate to fill the position.

##### Cl. 17 – Former member elected under cl. 12

Cl. 17 provides for this Schedule to be applied again where a member was elected under this Schedule to fill a vacancy and then they resigned or otherwise vacated the office, by applying the same approach and allowing the second unelected candidate to fill the position.

#### Division 6 – Final provisions

##### Cl. 18 – Regulations about notifications and time periods

Cl. 18 provides a power for regulations to be made to prescribe how a CEO is to give notice of a vacancy to a candidate including giving local public notice of the vacancy instead of notifying the candidate, if they are unable to contact the candidate.

##### Cl. 19 – Declarations and notices under section 4.77 for purposes of Schedule

Cl. 19 provides a requirement for the returning officer in declaring an election under Schedule 4.1 of the Act to also ascertain and declare who is:

- In elections for a single vacancy with more than 2 candidates, the second placed candidate and third placed candidate; and

- In elections with more than one vacancy, the first and second unelected candidates.

And if necessary to draw lots to determine this.

#### **Schedule 4.1B – Filling office of councillor who is elected elector mayor or president**

Schedule 4.1B is to provide for the filling of extraordinary vacancies arising when a sitting councillor is elected as mayor or president, but their position as a councillor was not up for election, and an election was held for the councillors of their district or their ward.

##### Cl. 1 – Vacancy caused by councillor becoming elector mayor or president not to be filled by extraordinary election in certain circumstances

Cl. 1 provides where this Schedule is to apply when:

- a sitting council member was not up for election but was elected as mayor or president creating a vacancy in their office of councillor; and
- an election was held for councillors of the district or ward they represent at the same election.

It provides a power to make regulations which may prescribe when this Schedule does not apply. It further requires where notice of an election is given that will include notice of this vacancy being filled.

##### Cl. 2 – Concurrent election ascertained under Schedule 4.1 clause 2

Cl. 2 provides that if the relevant councillor election was for a single vacancy with 2 candidates then both candidates are elected, with the second placed candidate taking the spot that has been vacated with the shorter term.

##### Cl. 3 – Concurrent election ascertained under Schedule 5.1 clause 4

Cl. 3 applies to elections under cl. 4 of Schedule 4.1, which are those elections for a single vacancy where there were more than 2 candidates, but the winning candidate received 50%+1 of the vote and as a result was elected without the distribution of preferences.

In this situation the candidate who finished second on first-preference votes is elected to fill the vacant councillor position with the shorter term.

##### Cl. 4 – Concurrent election ascertained under Schedule 4.1 clause 5

Cl. 4 applies to elections under cl. 5 of Schedule 4.1, which are those elections for a single vacancy where there were more than 2 candidates, and the distribution of preferences was required.

In this situation the candidate who finished in second place will be elected to the vacant councillor spot with a shorter term. This candidate would be the only candidate remaining at the final distribution, or the second placed candidate on the last count.

### Cl. 5 – Concurrent election ascertained under Schedule 4.1 Division 3

Cl. 5 applies this subdivision to elections under Division 3 of Schedule 4.1, which are those elections for more than one vacancy.

In this situation the first placed unelected candidate, or if there is no unelected candidate on the final count, the last candidate excluded, is elected to the vacated position with the shorter term.

### **Clause 92 – Schedule 4.1 replaced**

Clause 92 replaces Schedule 4.1 by introducing the method for vote counting using a system of optional preferential voting by the single transferrable vote. Schedule 4.1 is based on the Schedule used prior to the current method of first-past-the-post.

The optional preferential voting system provides for an elector to number the candidates on the ballot paper in the order of their choice and in doing so vote for just one candidate, or provide preferences for some or all the candidates.

The elector has control over their preferences and which candidate, if any, they are directed to.

For elections with a single vacancy, such as the election of the mayor or president, the optional preferential voting system operates in a similar way to elections for the Legislative Assembly. The key difference from the Legislative Assembly is that the elector does not need to express a preference for every candidate, it is optional.

For elections with more than one vacancy, the voting system becomes a system of proportional representation by a single transferrable vote, like that which is used for the Legislative Council. The votes are counted based upon a quota system meaning the elected candidates represent a proportion of the electorate.

The elector marks their ballot paper in an identical manner as a single vacancy, expressing a first preference and then any subsequent preferences that they wish.

### **Schedule 4.1 – How to count votes and ascertain the result of an election**

#### Division 1 – Preliminary

##### Cl. 1 – Terms used

Cl. 1 introduces the terms used in Schedule 4.1.

**first-preference vote** – means a vote cast under section 4.69(2) and includes a vote as accepted as a first-preference vote by the returning officer under section 4.75(1).

Electors are required to cast a first-preference vote by marking the ballot paper with the number 1 in the square opposite the name of the candidate who is the elector's first preference to fill the vacancy.

Section 4.75 provides that the returning officer may accept a ballot paper that in their opinion, clearly indicates the elector's wishes as required, or authorised under section 4.69, even if the ballot paper is not marked in accordance with regulations. The returning officer is to have regard to any directions or



guidelines provided by the Electoral Commissioner in making that determination.

Section 4.69 deals with – How to vote.

**one office election** – means an election to fill the office of mayor or president, or an office of council.

**preference vote** – means a vote cast under section 4.69(3) using optional-preferential-voting and includes a vote accepted by the returning officer under section 4.75(1). A preference vote may indicate a person's preferred choice of candidate(s) subsequent to their first-preference vote.

#### Division 2 – One office elections

In counting votes for a single vacancy, the winning candidate must have of a majority of the total votes for all candidates remaining in the count (cl. 2(1)(b), 4(2) and 5(3)).

If no candidate has a majority, the lowest placed candidate is eliminated and the votes for that candidate re-distributed to the next most preferred candidate remaining, if any, as marked by the elector on their ballot paper (cl. 5(2)).

If no preference was marked, the vote is exhausted and set aside (cl. 5(2)(b)). Exhausted votes are not counted towards calculating the majority of votes needed to be elected (cl. 5(3)).

This process is repeated until a candidate has a majority of votes (cl. 5(1)).

In the event of a tie between two or more candidates, one of whom, needs to be eliminated to distribute their preferences (cl. 5(4)) or a tie between only two remaining candidates (cl. 2(2) and 5(5)), the returning officer is to draw lots to determine which candidate is excluded or elected (cl. 5(6)).

#### Cl. 2 – One office election: 2 candidates

Subcl. (1) applies in the case of a single vacancy where there are only 2 candidates.

Subcl. (1)(a) requires the first-preference votes for each candidate to be counted. Subcl. (1)(b) provides that the candidate with the most first-preference votes is elected.

Subcl. (2) provides that if there is a tie resulting from both candidates receiving an equal number of first-preference votes, the returning officer is required to draw lots in accordance with regulations to determine which candidate is elected.

#### Cl. 3 – One office election: 3 or more candidates

Cl. 3 provides that cl. 4 and 5 apply if there are 3 or more candidates in a one office election.

#### Cl. 4 – Count of first-preference votes

Subcl. (1) requires the first-preference votes for each candidate to be counted.

Subcl. (2) provides that a candidate is elected if they receive more than 50% of the total number of all first-preference votes received by candidates.

#### Cl. 5 – Process if no candidate elected under clause 4

If no candidate receives more than 50% of the vote after the first round of counting, candidates are excluded from the count based on the fewest votes received by each candidate.

Subcl. (1) refers to the process for determining the exclusion of candidates under subcl. (2).

Subcl. (1)(a) provides that the process under subcl. (2) must be followed if no candidate is elected on first-preference votes. Subcl. (1)(b) provides that the process under subcl. (2) must be repeated as necessary, until a candidate is elected.

Subcl. (2) outlines the process for excluding the candidate with the fewest votes.

Subcl. (2)(a) requires the candidate with the fewest votes to be excluded.

Subcl. (2)(a)(i) provides that the candidate with the fewest first-preference votes is excluded if the process is being followed for the first time.

Subcl. (2)(a)(ii) provides that if the process for excluding candidates under subcl. (2) is being repeated, the candidate with the fewest votes on the last count is excluded under subcl. (2)(d).

Subcl. (2)(b) requires any ballot paper of an excluded candidate to be set aside as finally dealt with and exhausted, if the ballot paper contains no preference votes at all, or no preference votes for any continuing candidates.

Subcl. 2(c) provides for any remaining ballot papers of the excluded candidate, that indicate a preference to a continuing candidate, to be transferred to that candidate.

It is noted that a continuing candidate is a candidate that has not yet been excluded from the count.

Subcl. 2(d) requires the number of votes for each of the continuing candidates to be ascertained by counting the total number of first-preference votes for each continuing candidate (under subcl. 2(i)).

Subcl. 2(d)(ii) provides that if this process is being undertaken for the first time, the number of first-preference votes for the continuing candidate equates to the total number of ballot papers received by the candidate because of a transfer of ballot papers from an excluded candidate under subcl. (2)(c).

Subcl. 2(d)(iii) provides that if this process is being repeated, the number of first-preference votes for the continuing candidate equates to the total number of ballot papers transferred to the continuing candidate under subcl. (2)(c) as a result of subsequent transfers.

Subcl. (3) provides that a continuing candidate is elected if, at the completion of a count under subcl. (2)(d), the candidate has acquired a total number of votes in excess of 50% of the total of all votes of the continuing candidates. In effect, the elected candidate has received more than half of the vote of the remaining candidates through the transfer of first preferences.

Subcl. (4) and (5) refers to subcl. (6) for determining the process if a result cannot be ascertained. In the case of (4)(a), 2 or more candidates have the same number of first-preference votes. Or, in the case of (4)(b), 2 or more candidates have the same number of votes on the last count (under subcl. (2)(d)) and no other candidate may be excluded with fewer votes. In effect, subcl. (6) deals with a scenario where 2 or more candidates have an equal number of votes.

Subcl. (5) refers to where 2 continuing candidates have the same number of votes.

Subcl. (6) requires the returning officer to draw lots in accordance with regulations to determine the candidate to be excluded, or the candidate to be elected, as the case requires.

Subcl. (7) sets out that a ballot paper is a ballot paper of the excluded candidate if (a) and (b) apply.

Subcl. (8) sets out that a continuing candidate is a candidate where neither (a) and (b) apply.

### Division 3 – Elections for 2 or more councillors

In counting votes for more than one vacancy, the winning candidate must achieve a quota of votes to be elected.

If a candidate has more votes than the quota, their surplus votes are transferred at a reduced value to the next available preference.

If no candidate has a quota, the candidate with the least votes is eliminated and their preferences distributed.

This process is repeated until all vacancies are filled, or there are only two candidates left, or the same number of candidates as vacancies.

As a result, the elected candidates reflect a proportional representation of the preferences of the electorate.

### Subdivision 1 – Preliminary

#### Cl. 6 – Application of Division

Cl. 6 provides that the counting system set out in this division applies to elections for more than one office. For example, the election of 2 councillors in a Ward or the election of 3 councillors for an entire district.

#### Cl. 7 – Terms used

Cl. 7 provides for the definitions of a series of terms used through the division.

## Subdivision 2 – Counting and transferring votes

### Cl. 8 – Count of first-preference votes and determination of quota

First, the votes are counted to determine the first-preference votes for each candidate and consequentially the total number of first-preference votes (cl. 8(1)). In counting the votes when there is more than once vacancy, a quota must be calculated (cl. 8(2)).

A quota for election is then calculated by dividing the total number of formal first-preference votes for the candidates by the total number of vacancies plus 1, disregarding any remainder and then adding 1. This is shown in a formula below (clause 8(3) and (4)):

$$\text{quota}(\frac{\text{total number of formal votes}}{\text{total number of vacancies} + 1}) + 1$$

Candidates to be elected must achieve a quota of votes (cl. 8(5), 9(4), 10(4), 11(6)), or when only 2 continuing candidates remain, the candidate with the greater number of votes is elected (clause 13(2)).

The quota for election is calculated once, and is not recalculated on each step of the count as votes exhaust. As a result, some elections may result in candidates being elected 'under quota' as they are the only remaining candidates.

As an example, for an election of 2 councillors in which 189 formal first-preference votes are cast the quota for election would be 64 as shown below:

$$\left(\frac{189}{2 + 1}\right) + 1 = 64$$

Once the first preferences are counted and the quota has been calculated, on every subsequent count one of four situations will arise:

1. The number of candidates meeting or exceeding the quota is equal to the number of vacancies and those candidates are declared elected and the election is concluded (cl. 8(5)).
2. One or more candidates has met or exceeds the quota, but not all vacancies have been filled (dealt with by cl. 9 and then subsequently cl. 10).
3. No candidate has met the quota. As a result, no offices have been filled, (dealt with by cl. 11).
4. In unlikely circumstances, there is a tie between the continuing candidates, one of whom needs to be excluded or have their surplus transferred (dealt with by cl. 16).

### Cl. 9 – Transfer of surplus votes (1)

Cl. 9 provides for the situation where one or more candidates has more votes than the quota, but there remain vacancies to be filled. To fill those vacancies those votes in excess of the quota must first be distributed before any candidate is excluded (cl. 8(6), cl. 9(2), cl. 9(5), cl. 11(7)).

Cl. 9 provides for the transfer of surplus votes following the initial count of first preferences in cl. 8 (cl. 9(1) and (2)).

This is done by calculating a transfer value and if required, surplus fraction for those surplus votes. This is known as the Weighted Inclusive Gregory Method. This ensures all ballot papers are transferred at a reduced value to reflect the proportional excess of the quota that the candidate has.

The transfer value is determined by dividing the number of surplus votes the elected candidate has accumulated (number of votes greater than the quota) by the number of their first-preference votes (clause 9(3)).

Taking the example above, if a candidate had 80 votes, and the quota was 64 this would mean the transfer value was 0.2:

$$\frac{(80 - 64)}{80} = 0.2$$

Once the transfer value is calculated, the votes of the elected candidate are then sorted to identify the next available preference for a continuing candidate and counted (clause 9(3)(a)). A continuing candidate is one of the candidates who has not been elected or excluded (clause 7 and 12)

The number of votes to be transferred to each remaining candidate are multiplied by the transfer value (clause 9(3)(b)), that number is then added to the votes for the continuing candidate (clause 9(3)(c)) and the ballot papers are transferred to that candidate (clause 9(3)(d)). Based on the example above, if a continuing candidate received 16 of the 80 votes:

$$16 \times 0.2 = 3.2$$

the total number of votes transferred would be 3 as any fractional amount is to be disregarded (clause 9(3)(c)). This 0.2 is recorded as a lost fraction.

Subcl. (5) provides that if the transfer of surplus votes by this clause results in the election of a candidate the process under, clause 10 is to apply.

Subcl. (6) provides that if the transfer of surplus votes by this clause does not fill any offices, cl. 11 is to apply.

#### Cl. 10 – Transfer of surplus votes (2)

Cl. 10 provides for a scenario where a candidate has exceeded the quota as a result of votes transferred to them. The candidate's surplus votes are to be dealt with in accordance with cl. 10(2), if there are remaining offices to be filled.

The surplus votes for each elected candidate who has surplus votes are transferred to continuing candidates by determining the surplus fraction and the transfer value.

The surplus fraction is determined by dividing the surplus votes for the elected candidate by the total number of votes they have received (cl. 10(3)(a)).

The transfer value is then determined as follows:

- in the case of a first-preference ballot paper, the transfer value is the surplus fraction (cl. 10(3)(b)(i));
- in the case of a transferred ballot paper, the fraction is calculated by multiplying the surplus fraction by the transfer value (cl. 10(b)(ii)).

The process of transferring surplus votes under clause 10 is done sequentially with the transfer of the elected candidates first-preference votes followed by the preference votes they have received, in the order they were received (see cl. 10(4) and (5)).

Where the process of transferring surplus votes results in a continuing candidate exceeding the quota there are no further transfers to that candidate (cl. 12(1)) and the clause is to be repeated (cl. 15(3)) once the entire surplus of the originally elected candidate has been completely transferred.

In effect, surplus votes are transferred at a reduced value to reflect the proportional excess of the quota that a candidate has received.

#### Cl. 11 – Exclusion of candidates

Cl. 11 provides for the lowest placed candidate to be excluded and for their votes to be transferred to continuing candidates by order of preference.

Subcl. (1) provides that this clause applies if after the counting of first-preference votes or the transfer of surplus votes there remain unfilled offices.

Subcl. (2) directs that the candidate with the fewest votes is to be excluded.

Subcl. (3) provides that the first-preference votes for the excluded candidate must be transferred to the next available preference for a continuing candidate with a transfer value of 1.

Subcl. (4) deals with preference votes which are any votes that were transferred to the excluded candidate prior to their exclusion. It provides that those votes are transferred, in the order they were received, with the relevant transfer value as a result of clauses 9 or 10, to the next available preference for a continuing candidate.

Subcl. (5) provides that where there are both first-preference and preference votes for the excluded candidate, the first-preference votes must be dealt with first, followed by the preference votes.

Subcl. (6) provides that if a continuing candidate meets or exceeds the quota as a result of the receipt of the votes of an excluded candidate, they are elected.

Subcl. (7) provides that where a candidate is elected under this clause and has surplus votes as a result, the surplus votes must be distributed under clause 10, but not before all remaining votes for the excluded candidate have been transferred.

Subcl. (8) provides that if no candidate reaches the quota as a result of an exclusion and transfer of votes under this clause, the process is repeated with the continuing candidate with the fewest votes after the transfer excluded.

### Subdivision 3 – Supplementary provisions

#### Cl. 12 – No further transfers to elected candidates

Cl. 12 addresses the issue where an electors next preference on a transfer of votes is for an elected candidate.

Subcl. (1) provides that if a candidate is elected on the completion of a transfer under clause 9 or 10, no further surplus votes are to be transferred to them.

Subcl. (2) provides if a candidate is elected as a result of an exclusion under clause 11, no further votes for the excluded candidate are to be transferred to an elected candidate.

#### Cl. 13 – Filling last office

Cl. 13 addresses the issue of being elected 'under quota' by providing that where only 2 continuing candidates remain, the candidate with the greatest number of votes is to be elected and where those candidates are tied, the tie is to be resolved by the drawing of lots.

#### Cl. 14 – No need for further transfers of votes if number of continuing candidates equals number of vacancies

Cl. 14 addresses the issue of being elected 'under quota' by providing that if the number of remaining candidates is equal to the number of vacancies that those candidates are elected.

#### Cl. 15 – Order of transfers of surpluses

Cl. 15 addresses the order in which candidates surplus votes are to be distributed if more than 1 candidate had votes in excess of the quota at the same time.

Subcl. (1) provides that the candidate with the largest surplus is to have their surplus transferred first.

Subcl. (2) provides that where the 2 or more candidates with a surplus have an equally sized surplus, the candidate who had the largest number of votes on the prior transfer is transferred first, or if that is unable to resolve the tie, that lots be drawn to determine which surplus to distribute first.

Subcl. (3) applies if a candidate obtains a surplus of votes as a result of the transfer of surplus votes from another candidate, their surplus is not to be distributed until the surplus of the other elected candidates is dealt with.

#### Cl. 16 – Procedure to determine excluded candidates if votes equal

Cl. 16 applies where two or more candidates are tied at a point where one of these candidates needs to be excluded.

This is to be resolved by excluding the candidate who had fewer votes on the previous step of the count, or if that does not resolve the tie, by the drawing of lots.

#### Cl. 17 – Setting aside ballot papers as finally dealt with or exhausted

Cl. 17 assists with managing the count and deals with the issue of exhausted votes.

Subcl. (1) provides that where a candidate has exactly a quota of votes, those ballot papers are to be set aside as finally dealt with (exhausted votes) as they will play no further role in the count.

Subcl. (2) and (3) provide that where a candidate has excess votes and these votes do not list any further preferences or any further preferences for a continuing candidate, they are also set aside as finally dealt with.

#### Cl. 18 – Transfers to be treated separately

Cl. 18 assists in managing the count by requiring the following to constitute a separate step in the count:

- a transfer under clause 9 and 10 of all the surplus votes of a candidate (cl. 18 (a));
- the transfer of the first-preference votes of an excluded candidate (cl. 18(b));
- the transfer of the preference votes that were transferred to the excluded candidate (cl. 18(c)).

#### **Clause 93 – Schedule 4.2 clause 6 amended**

Clause 93 amends Schedule 4.2 cl. 6, which relates to declaring elected candidates by the returning officer, unopposed, or after lots are drawn, in accordance with regulations. This is as a consequence of the new voting system amendments.

#### **Clause 94 – Schedule 4.2 clause 7 amended**

Clause 94 amends Schedule 4.2 cl. 7, which relates to declaring elected candidates by the returning officer, unopposed, or after lots are drawn, in accordance with regulations. This is as a consequence of the new voting system amendments.

#### **Clause 95 – Schedule 4.2 clauses 7A and 7B inserted**

Clause 95 amends Schedule 4.2 as a consequence of the new voting system, which relates to how the order of election to office is to be determined by the number of votes as applicable and if two or more councillors have the same number of votes, by drawing lots.

Clause 7A(d) provides that if section 4.73(3)(b) applies and a person is a candidate in two elections, the order of election of the councillors elected unopposed is determined based on the number of their first-preference votes. However, if two or more of those councillors have the same number of first-preference votes, lots must be drawn to determine the order of election.



### **Clause 96 – Schedule 4.2 clause 8 amended**

Clause 96 reflects the change to the voting system and consequentially amends the reference to votes to instead be first-preference votes. This also makes the drawing of lots under this clause subject to the process set out in the regulations.

### **Clause 97 – Schedule 4.2 clause 9 amended**

Clause 97 makes the drawing of lots subject to the regulations regarding the drawing of lots.

### **Clause 98 – Schedule 4.2 clause 10 inserted**

Clause 98 links the definition of a first-preference vote and votes, to the definitions contained in Schedule 4.1 for consistency.

### **Clause 99 – Schedule 9.3 Division 6 inserted**

Clause 99 inserts transitional provisions to assist in the transition to the new provisions of the Act.

#### Division 6 – Provisions for *Local Government Amendment Act 2023*

##### Cl. 57 – Term used: 2023 amendment Act

The new cl. 57 provides a definition of 2023 amendment Act (i.e. this legislation).

##### Cl. 58 – Continued application of repealed provisions relating to membership and size of councils

The new cl. 58 provides that despite the amendments made by this legislation, the size of a council remains the same until orders are made under section 2.16B regarding the determination of the populations of a local government.

Subcl. (3) confirms that this clause does not apply with respect to the City of Perth due to the operation of the *City of Perth Act 2016*.

##### Cl. 59 – Transitional orders relating to constitution of local government

The new cl. 59 allows the Governor to make transitional orders in respect of the constitution of a council of a local government.

Subcl. (1) provides definitions for this clause.

Subcl. (2) allows the Governor to make an order under this clause.

Subcl. (3) allows a transitional order to abolish all the wards of a local government on an election day.

Subcl. (4) allows a transitional order to specify the number of offices of councillor in a district or ward from the next election day.

Subcl. (5) allows a transitional order to introduce a change to the number of offices of councillor in the district or a ward over two elections.

Subcl. (6) provides that these transitional orders can enable a council to have more or less members than it would be permitted to have as part of the transition.

Subcl. (7) allows the transitional order to direct that all the offices of councillor of a local government fall vacant on an ordinary election day.

Subcl. (8) provides if an order is made under subclause (7) the election is then to fill all the offices of councillor, subject to any increase or decrease, and the term of office that would apply as a result of a change order in section 2.28 would also apply.

Subcl. (9) provides that a transitional order does not prevent other orders being made under Part 2 of the Act relating to the constitution of the local government.

Subcl. (10) provides that transitional orders fall within section 42 of the *Interpretation Act 1984* and as such must be tabled in the Parliament and are subject to scrutiny and potential disallowance.

#### Cl. 60 – Enrolment eligibility claims

Cl. 60 deals with transitioning provisions for existing enrolment eligibility claims and the new requirements for enrolment.

Subcl. (1) provides that enrolment eligibility claims made before the commencement of section 30(1) of the 2023 amendment Act are to be assessed under the previous requirements of section 4.32(2) to (4).

Subcl. (2) provides that the new expiry requirement of section 4.33(1A)(a) does not apply to enrolment eligibility claims made before the day that that section 31(1) of the 2023 amendment Act comes into operation.

#### Cl. 61 – Electors' special meetings

Cl. 61 deals with transitioning provisions for special meetings of electors.

Subcl. (1) defines the amendment day for this clause.

Subcl. (2) provides that the amendment made by clause 60(1) of this legislation does not affect the requirement to hold a special meeting if the request was made before the amendment day.

Subcl. (3) provides that the new power of the mayor or president to decide not to hold a special meeting of electors or discuss a matter at a special meeting of electors does not apply to a request for a special meeting that was made before the amendment day.

#### Cl. 62 – Transitional regulations

Cl. 62 allows the Governor to make regulations as may be necessary to address a transitional matter not addressed by these transitional provisions.

## **Part 3 – Other written law amended**

### **Division 1 – *City of Perth Act 2016* amended**

#### **Clause 100 – Act amended**

Clause 100 provides for Division 1 to make consequential and related amendments to the *City of Perth Act 2016*.

#### **Clause 101 – Section 20 amended**

Clause 101 inserts a new subsection (3) in section 20 of the *City of Perth Act 2016* to clarify that Schedule 4.1A, which relates to how vacancies in the office of an elector mayor or president are to be filled in certain circumstances applies to the office of Lord Mayor.

### **Division 2 – *Local Government Amendment (Auditing) Act 2017* amended**

#### **Clause 102 – Act amended**

Clause 102 provides for Division 2 to amend unproclaimed sections of the *Local Government Amendment (Auditing) Act 2017*.

#### **Clause 103 – Section 2 amended**

Clause 103 amends the commencement provisions of the *Local Government Amendment (Auditing) Act 2017* to provide that when section 64 of the 2023 amendment Act comes into operation that section 7(2) of the *Local Government Amendment (Auditing) Act 2017* does not come into operation and is instead deleted.

Clause 67 of this amendment Act amends information relating to the annual report and annual financial report to reflect an audit report will only be prepared for a local government by the Auditor General. As result this amendment is identical to that made by section 7(2) of the *Local Government Amendment (Auditing) Act 2017*.

### **Division 3 – *Salaries and Allowances Act 1975* amended**

#### **Clause 104 – Act amended**

Clause 104 provides for Division 3 to amend the *Salaries and Allowances Act 1975*.

#### **Clause 105 – Section 7BAA inserted**

Clause 105 inserts a new section 7BAA to allow the Salaries and Allowances Tribunal to inquire into and determine the fees and expenses and reimbursements payable to independent committee members.

#### **Clause 106 – Section 8 amended**

Clause 106 amends section 8 of the *Salaries and Allowances Act 1975* to insert a new paragraph (da) to ensure that not more than a year elapses between one determination by the Salaries and Allowances Tribunal for independent committee members and the next determination. In other words, this is a requirement for an annual determination for these specified matters.

#### **Clause 107 – Section 10 amended**

Clause 107 amends section 10 of the *Salaries and Allowances Act 1975* to insert a new subparagraph (iii) to ensure that the subject matter related to fees and expenses to be paid to independent committee members is covered by the person (or persons) the Minister appoints to assist the Salaries and Allowances Tribunal in an inquiry, as nominated by the chief executive officer of the department.

#### **Division 4 – *Waste Avoidance and Resource Recovery Act 2007* amended**

##### **Clause 108 – Act amended**

Clause 108 provides for Division 4 to amend the *Waste Avoidance and Resource Recovery Act 2007*.

##### **Clause 109 – Section 40 amended**

Clause 109 amends section 40 to insert the definition of a ***council plan***, which replaces the terminology of a council's 'plan for the future'. This clause also replaces this terminology in other parts of section 40. See also clause 110.

##### **Clause 110 – Section 42 amended**

Clause 110 amends section 42(2) to provide for a terminology change and replaces 'plan for the future' with 'council plan'. See also clause 109.