



Western Australia

# Local Government Act 1995

**Incorporating the amendments proposed  
by the *Local Government Amendment  
(Suspension and Dismissal) Bill 2018*  
(Bill No. 60-1)**

**Note:**

Pt. 2 Div. 1-4, Pt. 3, Pt. 5 Div. 1-8, Pt. 6, 7 and 9 and Sch. 2.1-9.2 have  
been omitted as they are not amended by the Bill.]



# Local Government Act 1995

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Western Australia

## **Local Government Act 1995**

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

## **Part 1 — Introductory matters**

### ***What this Part is about***

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

*In particular —*

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

#### **1.1. Short title**

This Act may be cited as the *Local Government Act 1995*<sup>1</sup>.

#### **1.2. Commencement**

This Act comes into operation on 1 July 1996.

#### **1.3. Content and intent**

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

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

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

#### **1.4. Terms used**

In this Act, unless the contrary intention appears —

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

**absolute majority** —

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

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

**auditor** means —

- (a) in relation to an audit, other than a performance audit —
  - (i) in relation to a local government that has an audit contract that is in force — a person for the time being appointed under Part 7 Division 2 to be the auditor of the local government; and
  - (ii) in relation to a local government that does not have an audit contract that is in force — the Auditor General;

and

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

**CEO** means the chief executive officer of a local government;

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

**council** means the council of a local government;

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

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

**Crown lands** means lands of the Crown —

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

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

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

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

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

**Departmental CEO** means the chief executive officer of the Department;

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

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

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

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

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

***electoral requirements*** has the meaning given by section 4.1;

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

***extraordinary election*** has the meaning given by section 4.8;

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

***inaugural election*** has the meaning given by section 4.2;

***Inquiry Panel*** means an Inquiry Panel constituted under section 8.16;

***local government*** means a local government established under this Act;

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

***local public notice*** has the meaning given by section 1.7;

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

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

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

***municipal fund*** means the municipal fund established under section 6.6;

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

***ordinary election*** has the meaning given by section 4.4;

***ordinary elections day*** in relation to a local government, means a day fixed by section 4.6 or under section 4.7(2) for holding the

**s. 1.4**

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polls for ordinary elections for that local government (whether or not any polls are actually held);

**owner**, where used in relation to land —

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

or

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

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

or

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

***prescribed*** means prescribed by regulations;

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

***regional subsidiary*** means a regional subsidiary established under section 3.69;

***Statewide public notice*** has the meaning given by section 1.8;

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

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

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

*[Section 1.4 amended by No. 1 of 1998 s. 4 and 6(2); No. 64 of 1998 s. 4(2); No. 49 of 2004 s. 11 and 16(1); No. 38 of 2005 s. 15; No. 28 of 2006 s. 361; No. 35 of 2007 s. 99(2); No. 26 of 2016 s. 4; No. 5 of 2017 s. 4(1).]*

### **1.5. Descriptions in italics not part of the law**

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

### **1.6. Crown not generally bound**

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

**s. 1.7**

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**1.7. Local public notice**

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

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

**1.8. Statewide public notice**

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

**1.9. Decisions by absolute majority**

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

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



**1.10. Decisions by special majority**

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

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

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**Part 2** Constitution of local government

**Division 5** Qualifications for holding office on the council

**s. 2.19**

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## **Part 2 — Constitution of local government**

### ***What this Part is about***

*This Part deals with the constitutional framework of the system of elected local government in this State maintained as required by Part III B of the Constitution Act 1889.*

*In particular it deals with —*

- (a) the division of the State into districts and wards for local government purposes; and*
- (b) the creation of local governments; and*
- (c) the creation and membership of elected councils; and*
- (d) the qualifications of members of councils; and*
- (e) the terms of office of members of councils and how their offices may become vacant; and*
- (f) commissioners of local governments.*

***[Div. 1-4 (s. 2.1-2.18) have been omitted as they are not amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018.]***

## **Division 5 — Qualifications for holding office on the council**

### **2.19. Qualifications for election to council**

- (1) A person is qualified to be elected as a member of a council if the person —
  - (a) is of or over the age of 18 years; and
  - (b) is an elector of the district; and
  - [(c) deleted]*
  - (d) is not disqualified for membership of the council under section 2.20, 2.21, 2.22, 2.23 or 2.24; and
  - (e) is not disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council.
- (2) A person is not qualified under subsection (1)(b) if he or she is only eligible for enrolment under section 4.30(1)(a) and (b) —
  - (a) as the nominee of a body corporate under section 4.31; or
  - (b) because of Schedule 9.3, clause 12(2).

- (3) A person who is qualified under subsection (1) can be elected as a councillor for a ward whether or not he or she is an elector of that ward.

*[Section 2.19 amended by No. 1 of 1998 s. 5(1); No. 1 of 2007 s. 4; No. 2 of 2012 s. 4.]*

#### **2.20. Members of parliament disqualified**

- (1) A person is disqualified for membership of a council if the person is a member of a parliament.

- (2) In this section —

***member of a parliament*** means —

- (a) a member of the Legislative Assembly; or
- (b) a member of the Legislative Council, including a person who has been elected as a member of that House but is not yet entitled to sit or vote in that House because of section 8(2) of the *Constitution Acts Amendment Act 1899*; or
- (c) a member of the House of Representatives; or
- (d) a senator, including a person who has been elected as a senator but whose term of service as a senator has not yet begun.

*[Section 2.20 amended by No. 2 of 2012 s. 5.]*

#### **2.21. Disqualification because of insolvency**

A person is disqualified for membership of a council if the person is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth.

*[Section 2.21 amended by No. 10 of 2001 s. 121.]*

#### **2.22. Disqualification because of convictions**

- (1) A person is disqualified for membership of a council if the person —

- (a) has been convicted of a crime and is in prison serving a sentence for that crime; or
- (b) has been convicted in the preceding 5 years of a serious local government offence; or
- (c) has been convicted ~~on indictment~~ of an offence for which the indictable penalty was or included —
  - (i) imprisonment for life; or

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**Part 2** Constitution of local government

**Division 5** Qualifications for holding office on the council

**s. 2.23**

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- (ii) imprisonment for more than 5 years.
- (2) A court that has sentenced a person for a serious local government offence may make an order —
- (a) waiving the application of subsection (1)(b); or
  - (b) reducing the period of 5 years mentioned in subsection (1)(b),

and the court's order has effect in accordance with its terms.

- (3) In this section —

**former provisions** means the *Local Government Act 1960*<sup>4</sup> as in force before the commencement of this Act;

**indictable penalty** means the penalty that the relevant law specified for the offence in the event of a person being convicted of the offence on indictment;

**offence** means an offence against a law of this State, the Commonwealth, another State or a Territory;

**serious local government offence** means an offence against this Act or the former provisions for which an offender —

- (a) could be sentenced to imprisonment for a term of, or exceeding the period prescribed for the purposes of this section; or
- (b) could be sentenced to pay a fine of or exceeding the amount prescribed for the purposes of this section.

[Section 2.22 amended by No. 2 of 2012 s. 12; [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 4.](#)]

**2.23. Disqualification because of membership of another council**

A person is disqualified for membership of a council if the person is a member of another council.

**2.24. Disqualification because of misapplication of funds or property**

A person is disqualified for membership of a council if section 8.43(1), or an order under section 8.43(3), applies to the person.

**2.25. Disqualification for failure to attend meetings**

- (1) A council may, by resolution, grant leave of absence, to a member.
- (2) Leave is not to be granted to a member in respect of more than 6 consecutive ordinary meetings of the council without the approval of the Minister, unless all of the meetings are within a period of 3 months.
- (3A) Leave is not to be granted in respect of —
  - (a) a meeting that has concluded; or
  - (b) the part of a meeting before the granting of leave.
- (3) The granting of the leave, or refusal to grant the leave and reasons for that refusal, is to be recorded in the minutes of the meeting.
- (4) A member who is absent, without obtaining leave of the council, throughout 3 consecutive ordinary meetings of the council is disqualified from continuing his or her membership of the council, unless all of the meetings are within a 2 month period.
- (5A) If a council holds 3 or more ordinary meetings within a 2 month period, and a member is absent without leave throughout each of those meetings, the member is disqualified if he or she is absent without leave throughout the ordinary meeting of the council immediately following the end of that period.
- (5) The non-attendance of a member at the time and place appointed for an ordinary meeting of the council does not constitute absence from an ordinary meeting of the council —
  - (a) if no meeting of the council at which a quorum is present is actually held on that day; or
  - (b) if the non-attendance occurs —
    - (i) while the member has ceased to act as a member after written notice has been given to the member under section 2.27(3) and before written notice has been given to the member under section 2.27(5); or
    - (ii) while proceedings in connection with the disqualification of the member have been commenced and are pending; or

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**Division 5** Qualifications for holding office on the council

**s. 2.26**

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- (iia) while the member is suspended under [section 5.117\(1\)\(a\)\(iv\) or Part 8](#); ~~or [section 5.117\(1\)\(a\)\(iv\)](#); or~~
  - (iii) while the election of the member is disputed and proceedings relating to the disputed election have been commenced and are pending.
- (6) A member who before the commencement of the *Local Government Amendment Act 2009* section 5<sup>1</sup> was granted leave during an ordinary meeting of the council from which the member was absent is to be taken to have first obtained leave for the remainder of that meeting.

*[Section 2.25 amended by No. 49 of 2004 s. 19(1); No. 17 of 2009 s. 5; [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 5.](#)]*

**2.26. Election to council terminates employment with local government**

If a person who is employed by a local government is declared to be elected as a member of the local government's council then, by operation of this section, the person's employment with the local government ends when the person begins his or her term of office as a member.

**2.27. Procedure to determine qualification to retain membership of council**

- (1) In this section —
- disqualified***, in relation to a member of a council, means —
- (a) not qualified under section 2.19(1)(b) to be elected as a member of the council; or
  - (b) disqualified for membership of the council under section 2.20, 2.21, 2.22, 2.23 or 2.24; or
  - (c) disqualified from continuing his or her membership of the council under section 2.25.
- (2) A member who considers that he or she is disqualified is to advise the CEO in writing without delay.
- (3) If the CEO has reason (other than through receiving a notice under subsection (2)) to believe that a member of a council is disqualified the CEO is to give the member a written notice without delay indicating the reasons why the CEO believes the member to be disqualified.

- (4) The CEO's notice under subsection (3) has to inform the member —
- (a) that if the member believes that he or she is not disqualified, he or she may advise the CEO in writing within 14 days from the date of the service of the notice; and
  - (b) that if the member accepts that he or she is disqualified in accordance with the terms of the notice, he or she is to advise the CEO in writing.
- (5) If, within 28 days from the date of service of the CEO's notice under subsection (3), the member satisfies the CEO that the member is not disqualified, the CEO is to give the member a written notice to that effect.
- (6) Unless, within 28 days from the date of service of the CEO's notice under subsection (3), the member —
- (a) satisfies the CEO that the member is not disqualified; or
  - (b) applies to the State Administrative Tribunal asking for a declaration as to whether or not the member is disqualified and gives a copy of the application to the CEO,

the member is taken to have been disqualified for the reasons indicated in the CEO's notice.

- (7A) If subsection (6) applies to a member the CEO is to give the member a written notice to that effect.
- (7) The CEO or any other person may, at any time, apply to the State Administrative Tribunal for a declaration as to whether or not a member of a council is disqualified.
- [(8) deleted]*
- (9) A person who acts as a member of a council while disqualified commits an offence.  
Penalty: \$5 000 or imprisonment for one year.
- (10) This section as in force immediately before the commencement of the *Local Government Amendment Act 2009* section 6<sup>1</sup> applies to and in respect of a notice given under section 2.27(3) before that commencement.

*[Section 2.27 amended by No. 55 of 2004 s. 685; No. 17 of 2009 s. 6; No. 2 of 2012 s. 6.]*

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**Part 2** Constitution of local government

**Division 6** Terms of office on the council and vacation of office

**s. 2.28**

**Division 6 — Terms of office on the council and vacation of office**

**2.28. Days on which terms begin and end**

- (1) The days on which the term of a person holding an office on a council begins and ends depend on the nature of the office and the circumstances in which the person is elected to hold the office.
- (2) The days are to be determined in accordance with the Table to this section.

**Table to section 2.28  
Terms of office**

<b>Item</b>	<b>Kind of office</b>	<b>How elected</b>	<b>Term begins</b>	<b>Term ends</b>
1.	Elector mayor or president	Elected at an inaugural election, or a section 4.11, 4.12, 4.13 or 4.14 election, in an election year	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day on which a poll would have been held	On the third Saturday in October in the fourth year after the year in which the term began (but note sections 2.14 and 2.30)
2.	Elector mayor or president	Elected at an inaugural election, or a section 4.11, 4.12, 4.13 or 4.14 election, in a year other than an election year	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day on which a poll would have been held	On the third Saturday in October in the third year after the year in which the term began (but note sections 2.14 and 2.30)
3.	Councillor	Elected at an inaugural election or any other election not dealt with in item 4, 5, 6, 8 or 9	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day on which a poll would have been held	On the day determined by the returning officer under section 4.78 (but note section 2.30)



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<b>Item</b>	<b>Kind of office</b>	<b>How elected</b>	<b>Term begins</b>	<b>Term ends</b>
4.	Elector mayor or president OR councillor	Elected at an ordinary election	On the day after the ordinary elections day	On the third Saturday in October in the fourth year after the year in which the term began (but note sections 2.14 and 2.30)
5.	Elector mayor or president OR councillor	Elected at an extraordinary election not dealt with in item 6, 7 or 8	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day of nomination	On the day on which the term of office of the person whose office has become vacant would have ended if the vacancy had not occurred
6.	Elector mayor or president OR councillor	Elected at an extraordinary election to fill a vacancy arising by resignation including an election required under section 4.57 or 4.58 in respect of such an extraordinary election	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the nomination day, unless the office has not then become vacant in which case the term begins when the office becomes vacant	On the day on which the term of office of the person whose office has or will become vacant would have ended if the vacancy had not occurred
7.	Elector mayor or president	Elected at an extraordinary election required under section 4.57 or 4.58 in respect of an ordinary election	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day of nomination	On the third Saturday in October in the fourth year after the year in which the term began (but note sections 2.14 and 2.30)
8.	Councillor	Elected at an extraordinary election required under section 4.57 or 4.58 in respect of an ordinary election	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day of nomination	On the day determined by the returning officer under section 4.78 (but note section 2.30)

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Item	Kind of office	How elected	Term begins	Term ends
9.	Elector mayor or president OR councillor	Elected at a section 4.15 election	On the day after — (a) the day on which the poll is held; or (b) if no poll is held, the day of nomination	On the day ascertained as if the election were the election that has been declared invalid
10.	Elector mayor president OR councillor	Appointed under section 4.57(3)	On the day on which — (a) the person is appointed; or (b) the person's term would have begun if the person had been elected under section 4.57(1), whichever is later	On the day on which the term would have ended if the person had been elected under section 4.57(1) (but see Schedule 4.2, clause 9)
11.	Councillor mayor or president	Elected at any election	When the person is elected	When the mayor or president is next elected at or after the local government's next ordinary elections
12.	Deputy mayor or deputy president	Elected at any election	When the person is elected	At the start of the first meeting of the council after the local government's next ordinary elections

*[Section 2.28 amended by No. 66 of 2006 s. 4; No. 2 of 2012 s. 7.]*

**2.29. Declaration**

- (1) A person elected as an elector mayor or president or as a councillor has to make a declaration in the prescribed form before acting in the office.
- (2) A person elected by the council as mayor, president, deputy mayor or deputy president has to make a declaration in the prescribed form before acting in the office.
- (3) A declaration required by this section is to be taken or made before a prescribed person.

- (4) A person who acts in an office contrary to this section commits an offence.

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

*[Section 2.29 amended by No. 24 of 2005 s. 57.]*

**2.30. Terms extended if ordinary elections delayed**

Where an ordinary election is deferred or adjourned under this Act until after the third Saturday in October in any year, a member of a council whose term of office expires on that day can continue to act in the office until the substituted election day.

*[Section 2.30 amended by No. 66 of 2006 s. 5.]*

**2.31. Resignation**

- (1) An elector mayor or president may resign from the office of mayor or president.
- (2) A councillor may —
- (a) resign from the office of councillor;
  - (b) resign from the office of councillor mayor or president, deputy mayor or deputy president.
- (3) Written notice of resignation is to be signed and dated by the person who is resigning and delivered to the CEO.
- (4) The resignation takes effect from the date of delivery of the notice or from a later day specified in the notice.

**2.32. How extraordinary vacancies occur in offices elected by electors**

The office of a member of a council as an elector mayor or president or as a councillor becomes vacant if the member —

- (a) dies; or
- (b) resigns from the office; or
- (c) does not make the declaration required by section 2.29(1) within 2 months after being declared elected to the office; or
- (d) advises or accepts under section 2.27 that he or she is disqualified, or is declared to be disqualified by the State Administrative Tribunal acting on an application under section 2.27; or

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**s. 2.34**

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(da) is disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council; or

(db) is dismissed under section 8.15L or 8.25(2); or

(e) becomes the holder of any office or position in the employment of the local government; or

(f) having been elected to an office of councillor, is elected by the electors to the office of mayor or president of the council.

*[Section 2.32 amended by No. 55 of 2004 s. 686; No. 24 of 2005 s. 58; No. 1 of 2007 s. 5; [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 6.](#)]*

*[2.33. Deleted by No. 2 of 2012 s. 8.]*

**2.34. How extraordinary vacancies occur in offices elected by council**

(1) The office of a member of a council as a councillor mayor or president, deputy mayor or deputy president becomes vacant if the member —

(a) ceases to be a councillor under section 2.32; or

(b) resigns from the office; or

(c) does not make the declaration required by section 2.29(2) within 2 months after being elected to the office; or

(d) being the deputy mayor or deputy president, is elected by the council as mayor or president of the council.

(2) A person who holds an office referred to in subsection (1) immediately before an ordinary elections day continues to hold that office after that day (whether or not he or she ceases to be a councillor on that day) until his or her term of office ends under item 11 or 12 of the Table to section 2.28.

*[Section 2.34 amended by No. 2 of 2012 s. 9.]*

**2.35. Vacancies on restructure of districts, wards or membership**

Directions given by order under section 9.62 to give effect to an order under one or more of sections 2.1, 2.2 and 2.18 may direct which offices of members (if any) of a council are to become vacant, and when those offices become vacant.

**2.36. Vacancies on dismissal of council or council member**  
~~Vacancies on dismissal of council~~

(1) If a council is dismissed under section 8.25(1) ~~If a council is dismissed under section 8.25~~ the offices of the members become vacant from the time when the order dismissing the council takes effect.

(2) If a council member is dismissed under section 8.15L or 8.25(2) the office of the member becomes vacant from the time when the order dismissing the member takes effect.

*[Section 2.36 amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 7.]*

**2.36A. Power to declare offices vacant if district to be abolished**

(1) If an order abolishing a district is made so as to take effect on a day other than the day on which that order is published in the *Gazette*, the Governor may, by order, declare all the offices of members of the council to be vacant.

(2) A declaration under this section —  
(a) has no effect if it is made more than 2 years before the date on which the district is to be abolished; and  
(b) takes effect from the time specified in it.

(3) When a declaration has been made under this section the Governor may, by order, appoint a person as commissioner of the local government until the district is abolished.

*[Section 2.36A inserted by No. 64 of 1998 s. 4(1).]*

**2.37. Power to declare offices vacant**

(1) If more than ½ of the offices of members of a council are vacant for any reason, the Governor may, by order, declare all the remaining offices of members to be vacant.

(2) If the Minister receives notification under section 5.3(3) about the failure of a council to hold a meeting, the Governor may, by order, declare all the offices of members of the council to be vacant.

(3) A declaration under this section takes effect from the time specified in the declaration.

(4) When a declaration has been made under this section the Governor may, by order, appoint a person to be the commissioner of the local government until the offices of

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**Division 7** Commissioners

**s. 2.37A**

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members of the council are filled again and the new council holds its first meeting.

- (5) An order under subsection (4) is to fix a day for any poll needed for the election of members to fill the vacant offices again.
- (6) The day fixed is to be a day that is as soon as practicable after the declaration takes effect and allows enough time for the electoral requirements to be complied with, but is not to be later than 2 years after the day on which the declaration takes effect.

*[Section 2.37 amended by No. 49 of 2004 s. 21.]*

**2.37A. Vacancies in all offices for any other reason**

- (1) If all the offices of members of a council have become vacant, or are going to become vacant, for any reason other than an order under section 2.36A(1), 2.37(1) or (2) [or 8.25\(1\)](#), ~~or 8.25~~, the Governor may, by order, appoint a person to be the commissioner of the local government until the offices of members of the council are filled again and the new council holds its first meeting.
- (2) An order under subsection (1) is to fix a day for any poll needed for the election of members to fill the vacant offices again.
- (3) The day fixed is to be a day that is as soon as practicable after the appointment takes effect and allows enough time for the electoral requirements to be complied with, but is not to be later than 2 years after the day on which the appointment takes effect.

*[Section 2.37A inserted by No. 1 of 1998 s. 6(1); amended by No. 64 of 1998 s. 4(3); No. 49 of 2004 s. 22; [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 8.](#)]*

**Division 7 — Commissioners**

**2.38. Function of commissioner**

- (1) The function of a commissioner of a local government is to exercise the powers and discharge the duties of the council of the local government and its mayor or president.
- (2) A commissioner is to be regarded as being the council.
- (3) Unless section 2.43 applies, or the contrary intention appears, a reference in this Act or another written law to a local government, a council or a member of a council includes reference to a commissioner.

**2.39. Appointment of commissioner**

- (1) A commissioner of a local government can be appointed by the Governor under the power given by section 2.6(4), 2.36A(3), 2.37(4), 2.37A(1), 8.30 or 8.33 and not otherwise.
- (2) Subsection (1) does not prevent the appointment of a person under Schedule 2.4 clause 4 to fill a vacancy in the office of commissioner.

*[Section 2.39 amended by No. 1 of 1998 s. 6(3); No. 64 of 1998 s. 4(4); No. 17 of 2009 s. 7.]*

**2.40. Joint commissioners**

- (1) A power to appoint a commissioner includes power to appoint 3 or 5 commissioners to administer the local government and to appoint one of them to be the chairperson and another to be the deputy chairperson.
- (2) If 3 or 5 commissioners are appointed —
  - (a) they are to exercise the powers and discharge the duties of the council of the local government jointly; and
  - (b) the chairperson is to exercise the powers and discharge the duties of the mayor or president; and
  - (c) the deputy chairperson is to exercise the powers and discharge the duties of the deputy mayor or deputy president.

**2.41. Appointment, tenure, meetings etc.**

Schedule 2.4 (which contains provisions about commissioners) has effect.

**2.42. Commissioner to make declaration**

- (1) A person cannot act in the office of commissioner until he or she has made a declaration in the prescribed form.
- (2) A person who acts in an office contrary to this section commits an offence.

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

*[Section 2.42 amended by No. 24 of 2005 s. 59.]*

**2.43. Applicability of certain provisions of this Act**

- (1) Division 5 does not apply to a commissioner except to the extent required by Schedule 2.4, clauses 1 and 3(c).
- (2) Division 6 does not apply to a commissioner.

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**Division 8** Local Government Advisory Board

**s. 2.44**

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- (3) Part 5, Division 6 does not apply to an interest that a commissioner has in a question relating to a payment or reimbursement under Schedule 2.4, clause 5.

**Division 8 — Local Government Advisory Board**

**2.44. Advisory Board, establishment of**

- (1) There is established a body to be known as the Local Government Advisory Board.
- (2) Schedule 2.5 (which contains provisions about the Local Government Advisory Board) has effect.

**2.45. Advisory Board, functions of**

- (1) The functions of the Advisory Board include —
- (a) considering and, if required by this Act, inquiring into any proposal made to it under this Act that an order be made to do any or all of the matters in section 2.1, 2.2, 2.3, 2.18(1) or 2.18(3); and
  - (b) making recommendations to the Minister on those proposals; and
  - (c) carrying out any other inquiries the Minister may direct; and
  - (d) considering whether as a consequence of any recommendation the Board proposes to make to the Minister, the making of an order to do any or any other of the matters in section 2.1, 2.2, 2.3, 2.18(1) or 2.18(3) in respect of a relevant district is or may be necessary.
- (2) In subsection (1)(d) —
- relevant district*** means a district to which the proposed recommendation relates or an adjoining district.
- (3) If the Advisory Board considers that the making of an order referred to in subsection (1)(d) is or may be necessary, the Board is to consider or inquire into the making of any such order as if it had received a proposal that such an order be made.

***[Pt. 3 (s. 3.1-3.72) has been omitted as it is not amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018.]***



## **Part 4 — Elections and other polls**

### **What this Part is about**

*This Part deals with elections of mayors and presidents by electors, elections of councillors, and polls and referendums, and with related matters.*

*In particular —*

- (a) *Divisions 2, 3, 4, 5 and 6 describe the different kinds of elections and direct when those elections are to be held;*
- (b) *Division 7 is about the officials who conduct elections;*
- (c) *Division 8 sets out the qualifications for enrolment to vote at elections;*
- (d) *Division 9 deals with the process of preparing for and conducting an election;*
- (e) *Division 10 deals with complaints about the results of elections;*
- (f) *Division 11 sets out a number of offences in relation to elections and provides for investigation and prosecution of offences;*
- (g) *Division 12 deals with polls and referendums.*

### **Division 1 — Preliminary**

#### **4.1. Terms used**

In this Part —

***election*** means —

- (a) an election of a mayor or president by electors; or
- (b) an election of a councillor or councillors whether in a district or in a ward;

***election day*** means the day fixed under this Act for the holding of any poll needed for an election;

***election notice*** has the meaning given by section 4.64;

***electoral officer*** means a returning officer or a deputy returning officer or electoral officer appointed by a returning officer;

***electoral requirements*** means the provisions of this Act about the preparation of electoral rolls, nomination of candidates and other preparations for the holding of elections;

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**Part 4** Elections and other polls

**Division 1** Preliminary

**s. 4.1A**

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**electoral roll** is a collective term that refers —

- (a) in the case of a district that has wards, to the ward rolls; and
- (b) in the case of any district or ward, to the residents roll or rolls and the owners and occupiers roll or rolls,

that may form the electoral roll;

**polling place** means —

- (a) in the case of a voting in person election, a place appointed under section 4.23 for the casting of votes;
- (b) in the case of a postal election, a place appointed under section 4.23 for the delivery of votes;

**this Act** means this Act or the regulations and **this Part** means this Part or the regulations made for the purposes of this Part.

**4.1A. Conflict with Commonwealth or State election or referendum**

- (1) On a day fixed as polling day for a district or region under the *Electoral Act 1907*, no election, referendum or other poll is to be held under this Act in, or in any part of, that district or region.
- (2) On a day fixed for the holding of a referendum, as defined in the *Electoral Act 1907*, no election, referendum or other poll is to be held under this Act.
- (3) On a day appointed under the *Commonwealth Electoral Act 1918* as polling day for an election of Senators for the State, no election, referendum or other poll is to be held under this Act.
- (4) On a day appointed as polling day for an election of the House of Representatives for an Electoral Division in the State under the *Commonwealth Electoral Act 1918*, no election, referendum or other poll is to be held under this Act in, or in any part of, that Electoral Division.
- (5) On a day fixed as voting day in the State, or an Electoral Division in the State under the *Referendum (Machinery Provisions) Act 1984* of the Commonwealth, no election, referendum or other poll is to be held under this Act in the State, or in any part of that Electoral Division, as is relevant.

- (6) In this section —  
*Electoral Division* has the same meaning as it has in the  
*Commonwealth Electoral Act 1918*.

*[Section 4.1A inserted by No. 49 of 2004 s. 30(1).]*

**4.1B. Polling day may be changed where conflict with Commonwealth or State election or referendum**

- (1) Despite anything else in this Act and subject to subsection (2), where a poll cannot be held on the day fixed under this Act due to section 4.1A, the Governor may, before the day fixed for the poll, by order under section 9.62 fix a later day for the holding of the poll.
- (2) The time for the holding of a poll is not to be extended under this section by more than 14 days later than the time originally fixed.

*[Section 4.1B inserted by No. 49 of 2004 s. 30(1).]*

**Division 2 — Inaugural elections**

**4.2. Inaugural elections**

- (1) When a local government is newly established elections are to be held —
- (a) to elect the councillors of the first council; and
  - (b) if the method of filling the office of mayor or president is by election by the electors, to elect the first mayor or president.
- (2) An election under this section is called an *inaugural election*.

**4.3. Polling day for inaugural election**

- (1) Any poll needed for an inaugural election is to be held on a day fixed by the Governor by order under section 9.62.
- (2) The day fixed is to be a day that is as soon as practicable after the establishment of the local government and allows enough time for the electoral requirements to be complied with, but is not to be later than one year after the establishment of the local government.

### **Division 3 — Ordinary elections**

#### **4.4. Ordinary elections**

- (1) When the term of office of an elector mayor or president or a councillor is going to end under the Table to section 2.28 an election to fill the office is to be held.
- (2) An election under this section is called an *ordinary election*.
- (3) This section does not apply to the office of mayor or president if, under section 2.11, the next mayor or president is to be elected by the council.

#### **4.5. Frequency of ordinary elections**

A local government is to hold ordinary elections every 2 years.

#### **4.6. Election day for ordinary elections**

Any poll needed for an ordinary election is to be held on the day on which the previous term of office referred to in section 4.4(1) ends.

#### **4.7. Ordinary elections day usually third Saturday in October**

- (1) The effect of section 4.6 is that —
  - (a) polls for ordinary elections to elect an elector mayor or president will be held on the third Saturday in October every 4 years; and
  - (b) polls for ordinary elections to elect councillors will be held on the third Saturday in October every 2 years.
- (2) If in respect of a particular year in which ordinary elections are required to be held the Electoral Commissioner is of the opinion that it would not be in the public interest to hold polls for those ordinary elections on the third Saturday in October, the Electoral Commissioner may, by notice in the *Gazette*, fix a later Saturday in October, or the first, second or third Saturday in November, to be the day for holding any polls needed for those ordinary elections.
- (3) The election day can be deferred under subsection (2) —
  - (a) for all local governments; or
  - (b) for a local government or local governments specified in the notice; or
  - (c) for a class or classes of local governments specified in the notice.



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**Part 4** Elections and other polls

**Division 5** Other elections

**s. 4.10**

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**4.10. Extraordinary election can be held before resignation has taken effect**

If a member resigns —

- (a) the vacancy is to be regarded for the purposes of sections 4.8(1) and 4.9 as occurring when the CEO receives the notice of resignation even if the resignation takes effect on a later day; but
- (b) the election day fixed for the extraordinary election cannot be earlier than one month before the resignation actually takes effect.

**Division 5 — Other elections**

**4.11. Elections after restructure of districts, wards or membership**

Any poll needed for an election to give effect to an order under section 2.1(1) changing the boundaries of a district or under section 2.2 or 2.18 is to be held on the day fixed by the Governor by order under section 9.62.

**4.12. Elections after reinstatement of council**

Any poll needed for an election to fill offices of members that are vacant when a suspended council is reinstated is to be held on the day fixed by order under section 8.29(4).

**4.13. Elections after all members' offices become vacant**

Any poll needed for an election to fill the vacant offices after the offices of members have been declared vacant under section 2.37 is to be held on the day fixed by order under section 2.37(5).

**4.14. Elections after council is dismissed**

Any poll needed for an election to elect a new council after a council has been dismissed under [section 8.25\(1\)](#)~~section 8.25~~ is to be held on the day fixed by order under section 8.34(1).

*[\[Section 4.14 amended by the Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 9.\]](#)*

**4.15. Fresh election after election declared invalid**

Any poll needed for a fresh election after an election is declared invalid is to be held on the day fixed by the Court of Disputed Returns under section 4.81(3).

*[Div. 6-12 (s. 4.16-4.99) have been omitted as they are not amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018.]*

## **Part 5 — Administration**

### **What this Part is about**

*This Part deals with —*

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

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

***[Div. 1-8 (s. 5.1-5.102AC) have been omitted as they are not amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018.]***

### **Division 9 — Conduct of certain officials**

*[Heading inserted by No. 1 of 2007 s. 8.]*

#### **5.102A. Terms used**

In this Division —

***breach*** means a minor breach or a serious breach;

***complaints officer*** means the person who is the complaints officer under section 5.120 for the local government concerned;

***minor breach*** has the meaning given in section 5.105(1), and it includes a recurrent breach;

***party***, when used in connection with a complaint, means —

- (a) the person who made the complaint; or
- (b) the person against whom the complaint was made;



**primary standards panel** means the standards panel established under section 5.122(1);

**recurrent breach** has the meaning given in section 5.105(2);

**rules of conduct** means rules of conduct for council members referred to in section 5.104(1);

**serious breach** has the meaning given in section 5.105(3);

**standards panel** means a standards panel established under section 5.122(1) or (2).

*[Section 5.102A inserted by No. 1 of 2007 s. 9.]*

### **5.103. Codes of conduct**

- (1) Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.

*[(2) deleted]*

- (3) Regulations may prescribe codes of conduct or the content of, and matters in relation to, codes of conduct and any code of conduct or provision of a code of conduct applying to a local government under subsection (1) is of effect only to the extent to which it is not inconsistent with regulations.

*[Section 5.103 amended by No. 49 of 2004 s. 55; No. 1 of 2007 s. 10.]*

### **5.104. Other regulations about conduct of council members**

- (1) Regulations may prescribe rules, to be known as the rules of conduct for council members, that council members are required to observe.
- (2) The rules of conduct for council members apply, to the extent stated in the regulations, to a council member when acting as a committee member.
- (3) The rules of conduct may contain provisions dealing with any aspect of the conduct of council members whether or not it is otherwise dealt with in this Act.
- (4) Regulations cannot prescribe a rule of conduct if contravention of the rule would, in addition to being a minor breach under section 5.105(1)(a), also be a serious breach under section 5.105(3).

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- (5) Regulations cannot specify that contravention of a local law under this Act is a minor breach if contravention of the local law would, in addition to being a minor breach under section 5.105(1)(b), also be a serious breach under section 5.105(3).
- (6) The rules of conduct do not limit what a code of conduct under section 5.103 may contain.
- (7) The regulations may, in addition to rules of conduct, prescribe general principles to guide the behaviour of council members.  
*[Section 5.104 inserted by No. 1 of 2007 s. 11.]*

**5.105. Breaches by council members**

- (1) A council member commits a minor breach if he or she contravenes —
  - (a) a rule of conduct under section 5.104(1); or
  - (b) a local law under this Act, contravention of which the regulations specify to be a minor breach.
- (2) A minor breach is a recurrent breach if it occurs after the council member has been found under this Division to have committed 2 or more other minor breaches.
- (3) A council member who commits any offence under a written law, other than a local law made under this Act, of which it is an element that the offender is a council member or is a person of a description that specifically includes a council member commits a serious breach.  
*[Section 5.105 inserted by No. 1 of 2007 s. 11.]*

**5.106. Deciding whether breach occurred**

A finding that a breach has occurred is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.

*[Section 5.106 inserted by No. 1 of 2007 s. 11.]*

**5.107. Complaining to complaints officer of minor breach**

- (1) A person who has reason to believe that a council member has committed a minor breach may complain of the breach by sending to the complaints officer a complaint in accordance with subsection (2).

- (2) The complaint has to be made in writing, in a form approved by the Minister, giving details of —
- (a) who is making the complaint; and
  - (b) who is alleged to have committed the breach; and
  - (c) the contravention that is alleged to have resulted in the breach; and
  - (d) any other information that the regulations may require.
- (3) Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —
- (a) give to the person making the complaint an acknowledgment in writing that the complaint has been received; and
  - (b) give to the council member about whom the complaint is made a copy of the complaint; and
  - (c) send —
    - (i) the complaint; and
    - (ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).
- (4) A person can make a complaint under this section within 2 years after the breach alleged in the complaint occurred, but not later.  
*[Section 5.107 inserted by No. 1 of 2007 s. 11.]*

**5.108. Departmental CEO may send complaint of minor breach to complaints officer**

- (1) If it appears to the Departmental CEO that a complaint a person seeks to make under section 5.114 discloses a minor breach, the Departmental CEO may send the complaint to the complaints officer of the local government concerned.
- (2) Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —
- (a) give to the person who sent the complaint to the Departmental CEO written notice that the complaint is to be dealt with as a complaint of a minor breach; and

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- (b) give to the council member about whom the complaint is made a copy of the complaint; and
  - (c) send —
    - (i) the complaint; and
    - (ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).
- (3) The Departmental CEO can send a complaint to a complaints officer under this section within 2 years after the breach alleged in the complaint occurred, but not later.

*[Section 5.108 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]*

**5.109. Complaint initiated by complaints officer**

- (1) A person who is a complaints officer may make a complaint of a minor breach by —
- (a) preparing the complaint in the form required under section 5.107(2); and
  - (b) giving the council member about whom the complaint is made a copy of the complaint; and
  - (c) sending —
    - (i) the complaint; and
    - (ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).
- (2) A complaints officer can make a complaint under this section within 2 years after the breach alleged in the complaint occurred, but not later.

*[Section 5.109 inserted by No. 1 of 2007 s. 11.]*

**5.110A. Withdrawal of complaint of minor breach**

- (1) This section applies to the following complaints —
  - (a) a complaint made under section 5.107, other than a complaint that, under section 5.115, the complaints officer has sent to the Departmental CEO;
  - (b) a complaint made under section 5.114 that, under section 5.108, the Departmental CEO has sent to the complaints officer;
  - (c) a complaint made under section 5.109.
- (2) A person who has made a complaint to which this section applies can withdraw the complaint at any time before a standards panel does either of the things that it is required to do under section 5.110(2) in relation to the complaint.
- (3) A withdrawal of a complaint —
  - (a) must be in writing; and
  - (b) must be sent to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).
- (4) If a complaint is withdrawn —
  - (a) the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) must, as soon as practicable after receiving the withdrawal —
    - (i) give to the person who made the complaint an acknowledgment in writing that the withdrawal of the complaint has been received; and
    - (ii) notify the council member about whom the complaint was made and the complaints officer that the complaint has been withdrawn;and
  - (b) neither the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) nor a standards panel is to take any action or, as the case requires, any further action under section 5.110 in relation to the complaint; and
  - (c) a further complaint about the matter that is the subject of the withdrawn complaint cannot be made (whether by the original complainant or anyone else) unless the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) is satisfied that it is appropriate to do so in the circumstances.

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- (5) Without limiting subsection (2), a complaint cannot be withdrawn if, under section 5.111, a standards panel has sent the complaint to the Departmental CEO, even if the Departmental CEO subsequently decides not to make an allegation under section 5.112(2).
- (6) Despite subsection (4) —
  - (a) even though a complaint has been withdrawn, a standards panel can deal with the complaint as if it had not been withdrawn if the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) is satisfied that it is appropriate to do so in the circumstances; and
  - (b) if paragraph (a) applies, the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a) must notify the parties and the complaints officer that a standards panel is to deal with the complaint.

*[Section 5.110A inserted by No. 26 of 2016 s. 15.]*

**5.110. Dealing with complaint of minor breach**

- (1) The member of the primary standards panel who receives a complaint from a complaints officer under section 5.107(3)(c), 5.108(2)(c) or 5.109(1)(c) is to —
  - (a) allocate that complaint to a standards panel; and
  - (b) send the complaint and anything received from the complaints officer to the member of that standards panel who is appointed under Schedule 5.1 clause 2(a).
- (2) After receiving a complaint allocated to it under subsection (1), a standards panel is required to —
  - (a) make a finding as to whether the breach alleged in the complaint occurred; or
  - (b) send the complaint to the Departmental CEO under section 5.111.
- (3A) However, a standards panel can at any stage of its proceedings refuse to deal with a complaint if the standards panel is satisfied that the complaint is frivolous, trivial, vexatious, misconceived or without substance.
- (3) For the purpose of helping it to deal with a complaint, a standards panel may request the complaints officer to provide anything further that the standards panel requires, and the

complaints officer is required to comply with the request so far as it is practicable to do so.

- (4) A standards panel must give each party written notice of the reasons for —
- (a) any finding it makes under subsection (2); or
  - (b) any refusal under subsection (3A) to deal with a complaint.
- (5) If a standards panel finds that a council member has committed a minor breach, the standards panel is required to give the council member an opportunity to make submissions about how the breach should be dealt with under subsection (6).
- (6) The breach is to be dealt with by —
- (a) dismissing the complaint; or
  - (b) ordering that —
    - (i) the person against whom the complaint was made be publicly censured as specified in the order; or
    - (ii) the person against whom the complaint was made apologise publicly as specified in the order; or
    - (iii) the person against whom the complaint was made undertake training as specified in the order;
- or
- (c) ordering 2 or more of the sanctions described in paragraph (b).
- (7) A standards panel is required to give to each party and the complaints officer notice of how it deals with the matter under subsection (6).

*[Section 5.110 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44; No. 26 of 2016 s. 16.]*

#### **5.111. Dealing with recurrent breach**

- (1) If a standards panel is allocated a complaint as described in section 5.110(1) and the breach alleged, if it were found to have been committed, would be a recurrent breach, the standards panel may send the complaint to the Departmental CEO or proceed under section 5.110 to make a finding and deal with the complaint.

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- (2) If a standards panel sends the complaint to the Departmental CEO under subsection (1), the standards panel is required to notify —
- (a) each of the parties; and
  - (b) the complaints officer.

*[Section 5.111 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]*

**5.112. Allegation of recurrent breach**

- (1) If a standards panel sends to the Departmental CEO, under section 5.111, a complaint of a minor breach that, if it were found to have been committed, would be a recurrent breach, the Departmental CEO has to decide whether to make an allegation under subsection (2).
- (2) If the Departmental CEO considers it appropriate to do so, the Departmental CEO may make an allegation to the State Administrative Tribunal that the council member committed the breach.
- (3) The Departmental CEO is required to give the complaints officer and each of the parties notice in writing of the decision.
- (4) If the Departmental CEO decides not to make an allegation to the State Administrative Tribunal —
- (a) the Departmental CEO is required to send the complaint to the standards panel that sent the complaint to the Departmental CEO; and
  - (b) the standards panel is required to notify each of the parties and the complaints officer that the complaint will be dealt with by the standards panel; and
  - (c) the standards panel is required to deal with the complaint under section 5.110.
- (5) The fact that the person who made the complaint does not want an allegation to be made to the State Administrative Tribunal does not prevent the Departmental CEO from making the allegation.

*[Section 5.112 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]*



**5.113. Punishment for recurrent breach**

If, on an allegation under section 5.112, the State Administrative Tribunal finds that a person committed a recurrent breach, it may make any of the orders described in section 5.117.

*[Section 5.113 inserted by No. 1 of 2007 s. 11.]*

**5.114. Making complaint of serious breach**

- (1) A person who has reason to believe that a council member has committed a serious breach may complain to the Departmental CEO as described in subsection (2).
- (2) The complaint has to be made in writing in a form approved by the Minister, giving details of —
  - (a) who is making the complaint; and
  - (b) who is alleged to have committed the breach; and
  - (c) the offence that is alleged to have resulted in the breach; and
  - (d) any other information that the regulations may require,and sent to the Departmental CEO.
- (3) If there is a limit on the time within which proceedings may be commenced for the offence to which a complaint of a serious breach relates, the complaint cannot be made after that time has elapsed.

*[Section 5.114 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]*

**5.115. Complaints officer to send complaint of serious breach to Departmental CEO**

- (1) If it appears to a complaints officer that a complaint a person seeks to make under section 5.107 discloses a serious breach, the complaints officer is required to send the complaint to the Departmental CEO.
- (2) If the complaints officer sends the complaint to the Departmental CEO, the complaints officer is required to notify each of the parties.

*[Section 5.115 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]*

**5.116. Allegation by Departmental CEO of serious breach**

- (1) If —
  - (a) a person sends to the Departmental CEO a complaint under section 5.114(1) that a council member has committed a serious breach; or
  - (b) a complaints officer sends to the Departmental CEO, under section 5.115(1), a complaint that appears to disclose a serious breach,

the Departmental CEO has to decide whether to make an allegation under subsection (2).
- (2) If the Departmental CEO considers it appropriate to do so, the Departmental CEO may, whether or not a complaint has been sent to the Departmental CEO, make an allegation to the State Administrative Tribunal that the council member committed a serious breach.
- (3) In deciding whether it would be appropriate to make an allegation to the State Administrative Tribunal, the Departmental CEO has to consider whether it would be more appropriate for the matter to be dealt with in another way.
- (4) The Departmental CEO cannot make an allegation under subsection (2) if the council member has already been tried by a court for the offence the commission of which is the serious breach.
- (5) Within 14 days after the day on which the Departmental CEO receives a complaint that is sent to the Departmental CEO under section 5.114 or 5.115, the Departmental CEO is required to give each party notice in writing —
  - (a) acknowledging that the complaint is in accordance with the Act; and
  - (b) stating that the Departmental CEO will decide whether to make an allegation under subsection (2).
- (6) The fact that a person who made a complaint does not want an allegation arising from the complaint to be made to the State Administrative Tribunal does not prevent the Departmental CEO from making the allegation.

*[Section 5.116 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]*

**5.117. Punishment for serious breach**

- (1) If, on an allegation under section 5.116(2), the State Administrative Tribunal finds that a person committed a serious breach, it may —
- (a) order that —
    - (i) the person against whom the allegation was made be publicly censured as specified in the order; or
    - (ii) the person against whom the allegation was made apologise publicly as specified in the order; or
    - (iii) the person against whom the allegation was made undertake training as specified in the order; or
    - (iv) the person against whom the allegation was made is suspended for a period of not more than 6 months specified in the order; or
    - (v) the person against whom the allegation was made is, for a period of not more than 5 years specified in the order, disqualified from holding office as a member of a council;
- or
- (b) order 2 or more of the sanctions described in paragraph (a).
- (2) An order described in subsection (1)(a)(iv) or (v) may be expressed in such a way that the order —
- (a) only takes effect if, on finding that the person subject to the order has not complied with a condition specified in the order, the State Administrative Tribunal directs under subsection (7) that the order take effect; and
  - (b) lapses if it has not taken effect within a period specified in the order,
- and an order so expressed is called a *suspended order*.
- (3) The period referred to in subsection (2)(b) cannot exceed 2 years.
- (4) The Departmental CEO may make an allegation to the State Administrative Tribunal that a person subject to a suspended order has failed to comply with a condition specified in the order.
- (5) The Departmental CEO must give a person notice in writing of a decision to make an allegation about the person under subsection (4).

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- (6) If the State Administrative Tribunal receives an allegation under subsection (4), it must make a finding as to whether the alleged failure occurred.
- (7) If the State Administrative Tribunal finds that a person failed to comply with a condition of a suspended order, it may if it considers it appropriate to do so direct that the suspended order take effect.
- (8) When a council member is suspended under subsection (1)(a)(iv), [section 8.30B applies to the member](#). ~~section 8.29 applies to the member as if the council had been suspended.~~

*[Section 5.117 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44; [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 10.](#)]*

**5.118. Carrying out orders**

- (1) The CEO of the local government concerned is required to arrange the publication of any censure ordered under section 5.110(6) by a standards panel and is to refer to the State Administrative Tribunal any failure to comply with any other order made under that subsection.
- (2) The Departmental CEO is required to arrange the publication of any censure ordered under section 5.113 or 5.117 by the State Administrative Tribunal and is to refer to the State Administrative Tribunal any failure to comply with any other order made under either of those sections.

*[Section 5.118 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]*

**5.119. SAT's enforcement powers**

- (1) If, under section 5.118, the CEO of a local government or the Departmental CEO refers to the State Administrative Tribunal a failure of a person to comply with an order of a standards panel or the State Administrative Tribunal, the State Administrative Tribunal may, if satisfied that the person failed to comply with the order, make an order described in section 5.117(1)(a)(iv) or (v).
- (2) Section 5.117(2) extends to an order made under subsection (1).

*[Section 5.119 inserted by No. 1 of 2007 s. 11; amended by No. 17 of 2009 s. 44.]*

**5.120. Complaints officer**

- (1) Each local government is to designate a senior employee, as defined under section 5.37, to be its complaints officer.
- (2) If a local government does not have any other person as its complaints officer, the person holding office as, or acting as, its CEO is its complaints officer.

*[Section 5.120 inserted by No. 1 of 2007 s. 11.]*

**5.121. Register of certain complaints of minor breaches**

- (1) The complaints officer for each local government is required to maintain a register of complaints which records all complaints that result in action under section 5.110(6)(b) or (c).
- (2) The register of complaints is to include, for each recorded complaint —
  - (a) the name of the council member about whom the complaint is made; and
  - (b) the name of the person who makes the complaint; and
  - (c) a description of the minor breach that the standards panel finds has occurred; and
  - (d) details of the action taken under section 5.110(6)(b) or (c).

*[Section 5.121 inserted by No. 1 of 2007 s. 11.]*

**5.122. Standards panels**

- (1) The Minister is to establish a standards panel (the *primary standards panel*).
- (2) The Minister may establish other standards panels.
- (3) Schedule 5.1 applies to a standards panel.

*[Section 5.122 inserted by No. 1 of 2007 s. 11.]*

**5.123. Confidentiality**

- (1) A person who —
  - (a) makes a complaint during a campaign period; or
  - (b) performs a function under this Act in respect of a complaint made during a campaign period; or
  - (c) as a result of anything done under this Division, becomes aware of any detail of a complaint made during

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a campaign period knowing it to be relevant to the complaint,

and during the campaign period discloses information that the complaint has been made, or discloses information of any detail of the complaint, commits an offence.

- (2) It is not an offence against subsection (1) to disclose information if —
- (a) the disclosure is made for the purposes of investigating or dealing with the complaint; or
  - (b) the disclosure is required under a written law; or
  - (c) the complaint to which the information relates is a complaint of a minor breach and a standards panel has dealt with the breach under section 5.110(6)(b) or (c); or
  - (d) the complaint to which the information relates is a complaint of a serious breach and the State Administrative Tribunal has made an order under section 5.117(1).
- (3) In this section —

*campaign period* means the period beginning on the first day of the period referred to in section 4.49(a) and ending on election day as that term is defined in section 4.1.

*[Section 5.123 inserted by No. 1 of 2007 s. 11.]*

**5.124. Giving false or misleading information**

- (1) A person commits an offence if the person gives information, in any of the circumstances described in subsection (2), knowing the information to be false or misleading in a material particular.
- (2) The circumstances in which subsection (1) applies are —
- (a) when the information is given in a complaint under section 5.107 or 5.114; or
  - (b) when the information is given to a person for the purposes of an investigation of whether or not a breach has been committed; or
  - (c) when the information is given to a standards panel.

*[Section 5.124 inserted by No. 1 of 2007 s. 11.]*

**5.125. Review of certain decisions**

- (1) A party may apply to the State Administrative Tribunal for a review of a decision of a standards panel.
- (2) In subsection (1) —  
**decision** means a decision to dismiss a complaint or to make an order.

*[Section 5.125 inserted by No. 1 of 2007 s. 11.]*

***[Pt. 6-7 (s. 6.1-7.13) have been omitted as they are not amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018.]***

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**Part 8** Scrutiny of the affairs of local governments

**Division 1** Inquiries by the Minister or an authorised person

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## **Part 8 — Scrutiny of the affairs of local governments**

### **What this Part is about**

*This Part deals with —*

- (a) *inquiring into the affairs and performance of local governments; and*
- (b) *suspending and dismissing [councils and members of councils](#); ~~and councils; and~~*
- (c) *making members or local government employees accountable for the misapplication of property.*

### **Division 1 — Inquiries by the Minister or an authorised person**

#### **8.1. Terms used**

In this Division —

**authorised person** means the Departmental CEO or any other person authorised to conduct an inquiry;

**inquiry** means an inquiry under section 8.3.

*[Section 8.1 amended by No. 28 of 2006 s. 364.]*

#### **8.2. Minister or Departmental CEO may require information**

- (1) The Minister or Departmental CEO may in a written notice require a local government, a member of a council, a CEO or an employee to provide information of a kind specified in the notice concerning the local government or its operations or affairs.
- (2) A person who fails to comply with a notice under subsection (1) commits an offence.

*[Section 8.2 amended by No. 28 of 2006 s. 364; No. 17 of 2009 s. 41.]*

#### **8.3. Inquiries by, or authorised by, Departmental CEO**

- (1) The Departmental CEO has authority to inquire into all local governments and their operations and affairs.
- (2) The Departmental CEO may, by written authorisation, authorise a person to inquire into and report on any aspect of a local government or its operations or affairs.
- (3) The Minister may direct the Departmental CEO to authorise an inquiry under this section.



- (4) The Departmental CEO is to advise the Minister if and when an inquiry is authorised under this section.
- (5) An election (within the meaning of Part 4) is not to be the subject of an inquiry under this section if the Electoral Commissioner was responsible for the conduct of the election.
- (6) If 2 or more people are authorised to conduct an inquiry —
  - (a) a reference in section 8.4, 8.12, 8.13, 8.14 or 8.15A to **the authorised person** or **an authorised person** is a reference to those people; and
  - (b) a reference in section 8.5, 8.6, 8.8, 8.9, 8.10 or 8.11 to **an authorised person** is a reference to any of those people.

*[Section 8.3 amended by No. 64 of 1998 s. 41, No. 28 of 2006 s. 364.]*

#### **8.4. Scope and duration of authorisation**

- (1) An authorisation under section 8.3(2) may confer a general power to conduct inquiries or a power to conduct a specific inquiry.
- (2) Even though a specific inquiry is authorised, the authorised person may inquire into any other matter that comes to the person's attention during the inquiry if the person considers it necessary or expedient to inquire into that matter and notifies the Departmental CEO accordingly.
- (3) The authorisation is to set out —
  - (a) the name of the authorised person; and
  - (b) the functions of the authorised person; and
  - (c) any limit imposed on the duration of the authorisation.
- (4) The authorisation may be withdrawn by the Departmental CEO by written notice given to the authorised person.

*[Section 8.4 amended by No. 28 of 2006 s. 364.]*

#### **8.5. Powers of authorised person**

- (1) So as to perform his or her functions an authorised person may direct a person to do any one or more of the following —
  - (a) to appear in person before the authorised person at a time and place specified in the direction;
  - (b) to give evidence (including evidence on oath);

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- (c) to produce to the authorised person, or allow the authorised person to have access to, any document, information or property that is in or under the person's custody or control;
  - (d) to do anything necessary to enable the authorised person to have access to any document, information or property in or under the custody or control of another person.
- (2) An authorised person may administer an oath for the purposes of this section.
- (3) Subsection (1)(c) and (d) extend to documents and information in or under the custody or control of banks or other financial institutions.
- (4) An authorised person may —
  - (a) take copies of or extracts from any document to which he or she gains access under this section; or
  - (b) take custody or control of any document or property to which he or she gains access under this section on local government property.
- (5) Evidence given by a person as directed under subsection (1) is not admissible in any civil or criminal proceedings against the person other than proceedings under section 8.11.

**8.6. Power to enter property**

- (1) For the purpose of performing his or her functions an authorised person may enter land, premises or things in accordance with this section.
- (2) An authorised person may enter local government property with or without the consent of the local government.
- (3) An authorised person may, with assistants if necessary, enter land, premises or things other than local government property if —
  - (a) the consent of the owner or occupier has been obtained; or
  - (b) the owner or occupier has been given notice of the entry and does not object to the entry; or
  - (c) the entry is authorised by the warrant of a justice.

**8.7. Notice of entry**

- (1) A notice of entry under section 8.6(3)(b) is to specify the purpose for which the entry is required and continues to have effect for so long as that requirement continues.
- (2) The notice is to be given not less than 24 hours before the power of entry is exercised.
- (3) Successive entries for the purpose specified in the notice are to be regarded as entries to which that notice relates.

**8.8. Entry under warrant**

- (1) In the circumstances described in subsection (2), a justice may by warrant authorise an authorised person, together with such other persons as are named or described in the warrant, or a police officer, to enter any land, premises or thing using such force as is necessary.
- (2) A warrant may be granted under subsection (1) where a justice is satisfied that the entry is reasonably required by an authorised person for the purpose of performing any of his or her functions, but —
  - (a) entry has been refused or is opposed or prevented; or
  - (b) entry cannot be obtained; or
  - (c) notice cannot be given under section 8.6(3)(b) without unreasonable difficulty or without unreasonably delaying entry.
- (3) A warrant granted under subsection (1) —
  - (a) is to be in the prescribed form; and
  - (b) is to specify the purpose for which the land, premises or thing may be entered; and
  - (c) continues to have effect until the purpose for which it was granted has been satisfied.

**8.9. Exercise of powers**

An authorised person's powers can be exercised in relation to —

- (a) a person who is or has been a council member, or member of a committee, or employee of the local government concerned; or
- (b) a person or body with whom the local government or a person referred to in paragraph (a) has, has had, may have or may have had a financial or other association.

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**8.10. Protection from liability**

- (1) An action in tort does not lie against an authorised person for anything that the person has done, in good faith, in the exercise or purported exercise of a power under this Division.
- (2) This section does not relieve the State of any liability that it might have for the doing of anything by an authorised person.

**8.11. Failure to comply with directions**

A person who —

- (a) hinders or obstructs an authorised person in the performance of his or her functions; or
- (b) fails to comply with a direction lawfully given by an authorised person; or
- (c) knowingly gives false or misleading evidence to an authorised person,

commits an offence.

**8.12. Referral to other authorities**

An authorised person may refer any matter arising out of an inquiry to an authority of the State, the Commonwealth, another State or a Territory that has power under a law to investigate or take action in relation to a matter of that kind, and may pass to that authority any document or property that he or she has obtained under this Division.

**8.13. Authorised person's report**

- (1) An authorised person is to compile a report on the outcome of any inquiry he or she conducts.
- (2) The report is to contain any recommendations that the authorised person considers appropriate.
- (3) The report of an authorised person other than the Departmental CEO is to be given to the Departmental CEO.
- (4) The Departmental CEO is to give a copy of the report to the Minister.

*[Section 8.13 amended by No. 28 of 2006 s. 364.]*

**8.14. Copies to be given to local government and suspended council members**~~Copy to be given to local government concerned~~

- (1) Unless the Minister directs otherwise, the Departmental CEO is to give a copy of a report under section 8.13 ~~to — to the local government concerned.~~
- (a) the local government concerned; and
  - (b) if the council of the local government is suspended — each council member; and
  - (c) if a council member is suspended — that member.
- (2) Before giving the report, as required under subsection (1), ~~report to the local government~~ the Departmental CEO may remove from the report anything that —
- (a) could prejudice any legal action arising from the inquiry; or
  - (b) could prejudice any inquiry that the Minister may wish to institute under Division 2; or
  - (c) could be considered defamatory; or
  - (d) the Departmental CEO considers ought, for any other reason, to be removed.
- (3) Within 35 days after receiving the report or such longer period as the Minister allows, the local government is to give the Minister written advice setting out the things that it has done or proposes to do to give effect to the recommendations of the authorised person.
- (4) A council member who is suspended or who is a member of a council that is suspended may, within 35 days after receiving the report or such longer period as the Minister allows, give the Minister written advice setting out the member's comments on the recommendations in the report.

*[Section 8.14 amended by No. 64 of 1998 s. 42; No. 28 of 2006 s. 364; Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 11.]*

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**8.15. Minister can take action to ensure that recommendations are put into effect**

- (1) The Minister may, if he or she thinks fit —
- (a) after receiving [advice under section 8.14\(3\) or \(4\)](#); ~~or the local government's advice; or~~
  - (b) after the time allowed by or under [section 8.14\(3\) or \(4\)](#) ~~section 8.14(3)~~ runs out, if no advice has been received by then,

order the local government, or any of its council members or employees, to give effect to any one or more of the recommendations in the report in a manner and within a time ordered by the Minister.

- (2) If the Minister's order under subsection (1) is not complied with according to its terms the Minister may, by order, suspend the council of the local government.

*[\[Section 8.15 amended by the Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 12.\]](#)*

**8.15A. Local government may have to meet inquiry costs**

If —

- (a) an authorised person makes findings adverse to a local government, or to its council or any member, or to any of its employees; or
- (b) an inquiry by an authorised person was instituted at the request of a local government,

the Minister may order the local government to pay all or part of the costs of the inquiry and the local government is to comply with that order.

*[Section 8.15A inserted by No. 64 of 1998 s. 43.]*

**Division 1A — Intervention by the Minister in  
certain circumstances**

*[Heading inserted by the Local Government Amendment  
(Suspension and Dismissal) Bill 2018 cl. 13.]*

**Subdivision 1 — Council may be suspended or required to undertake  
remedial action**

*[Heading inserted by the Local Government Amendment  
(Suspension and Dismissal) Bill 2018 cl. 13.]*

~~**Division 2A — Council may be peremptorily suspended or  
required to undertake remedial action**~~

~~*[Heading inserted by No. 2 of 2012 s. 22.]*~~

**8.15B. Notice that council may be peremptorily suspended or  
required to undertake remedial action**

- (1) Before the Minister makes an order under section 8.15C(2), the Minister is to give a notice (a *show cause notice*) in writing to the local government of the intention to do one or both of the following —
  - (a) suspend the council of the local government;
  - (b) require the council, or one or more of the members of the council, to undertake such remedial action as is specified in the notice.
- (2) Within 21 days of receiving a show cause notice, or such longer period as the Minister allows, the local government is to give the Minister a written response to the notice.

*[Section 8.15B inserted by No. 2 of 2012 s. 22.]*

**8.15C. Minister may order that council be peremptorily suspended  
or required to undertake remedial action**

- (1) This section applies if the Minister thinks that —
  - (a) the seriousness or duration of a suspected failure of the council of a local government to ensure that the local government performs its functions properly; or
  - (b) such other factors as the Minister considers relevant,make it inappropriate for the council to act, or to continue to act, without intervention under this section, as the governing body of the local government, whether or not there has been an inquiry under Division 1.

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- (2) The Minister may —
- (a) after receiving the local government's response under section 8.15B(2); or
  - (b) after the time allowed by or under section 8.15B(2) runs out, if no response has been received by then,
- by order, do one or more of the following —
- (c) suspend the council;
  - (d) require the council, or one or more of the members of the council, to undertake such remedial action as is specified in [the order within the time specified in the order](#).~~the order.~~
- (3) An order under this section suspending a council ceases to have effect when —
- (a) an Inquiry Panel is appointed to conduct an inquiry and make a report about the local government; or
  - (b) the council is reinstated by the Minister under section 8.28(3); or
  - (c) the period of 6 months from when the order was made ends,

whichever happens soonest.

*[Section 8.15C inserted by No. 2 of 2012 s. 22; amended by the [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 14.](#)]*

**Subdivision 2 — Council member may be suspended or required to undertake remedial action**

*[Heading inserted by the [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 15.](#)]*

**8.15D. Terms used**

In this Subdivision —

**disqualification offence** means —

- (a) a serious local government offence, as defined in [section 2.22\(3\)](#); or
- (b) an offence against a law of this State, the Commonwealth, another State or a Territory, for which [the indictable penalty, as defined in section 2.22\(3\)](#), is —
  - (i) imprisonment for life; or



(ii) imprisonment for more than 5 years;

on which the order is based, in relation to —

(a) a factor — means a factor set out in section 8.15E(2) specified in an order in accordance with section 8.15E(4)(a); and

(b) a type of failure or conduct — means a type of failure or conduct set out in section 8.15E(3)(a) specified in an order in accordance with section 8.15E(4)(b);

reinstatement, of a member, means the reinstatement of the member under section 8.15H, 8.24(4B) or 8.30D.

[Section 8.15D inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]

**8.15E. Minister may suspend council member or require member to undertake remedial action**

(1) If satisfied that it is appropriate to intervene under this section, the Minister may, by order, do either or both of the following —

(a) suspend a council member;

(b) require a council member to undertake any remedial action specified in the order within the time specified in the order.

(2) The Minister can only be satisfied that it is appropriate to intervene under this section if one or more of the following factors exist —

(a) the member has been charged with a disqualification offence;

(b) the Departmental CEO has, under Part 5 Division 9, made an allegation to the State Administrative Tribunal that the member has committed a serious breach or a recurrent breach, as those terms are defined in section 5.102A;

(c) the circumstances set out in subsection (3) have occurred.

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(3) The circumstances referred to in subsection (2)(c) are that —

(a) the Departmental CEO has advised the Minister in writing that the Departmental CEO suspects on reasonable grounds that at least one of the following apply —

(i) the member has failed, or is failing, to perform the member's role, functions or duties under this Act;

(ii) the member's conduct has adversely affected, or is adversely affecting, the ability of another person to perform their role, functions or duties under this Act;

(iii) the member's conduct has adversely affected, or is adversely affecting, the ability of the local government to comply with the principles that apply to it under section 5.40;

and

(b) the Minister is satisfied that the seriousness or duration of the suspected failure or conduct requires intervention under this section.

(4) An order made under subsection (1) must specify —

(a) each paragraph of subsection (2) that sets out a factor on which the order is based; and

(b) if subsection (2)(c) is a factor on which the order is based — each subparagraph of subsection (3)(a) that sets out a type of failure or conduct about which the Minister has received advice from the Departmental CEO.

(5) Before making an order under subsection (1) the Minister must —

(a) give to the member written notice of the proposed order that provides a description of the facts of —

(i) each factor on which it is proposed that the order be based; and

(ii) if relevant, each type of failure or conduct on which it is proposed that the order be based;

and

(b) give the member the opportunity to show cause in writing, within 21 days of receiving the notice or such

longer period as the Minister allows, as to why the Minister should not make the proposed order; and

(c) take into consideration the member's response, if any.

[Section 8.15E inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]

**8.15F. Period of suspension: order under section 8.15E**

(1) An order under section 8.15E(1) suspending a council member ceases to have effect on whichever of the following occurs first —

(a) the term of office of the member ends, or the member's office becomes vacant;

(b) the member is reinstated by the Minister;

(c) if section 8.15E(2)(a) or (b) is a factor on which the order is based — the matter is resolved as described in subsection (2);

(d) if section 8.15E(2)(c) is the only factor on which the order is based — the period of suspension described in subsection (3) expires.

(2) A matter is resolved for the purposes of subsection (1)(c) when —

(a) if section 8.15E(2)(a) is a factor on which the order is based — one of the following has occurred in respect of each charge for a disqualification offence —

(i) the member is convicted of the offence and any appeal has been determined, or any period for appeal has expired;

(ii) the member is acquitted of the offence and any appeal has been determined, or any period for appeal has expired;

(iii) the prosecution for the offence is discontinued;

(b) if section 8.15E(2)(b) is a factor on which the order is based — one of the following has occurred in respect of each allegation to the State Administrative Tribunal that the member has committed a serious breach or a recurrent breach —

(i) the Tribunal makes an order described in section 5.117 and any appeal has been determined, or any period for appeal has expired;

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(ii) the Tribunal decides that the member did not commit the breach and any appeal has been determined, or any period for appeal has expired.

(3) The period of suspension for the purposes of subsection (1)(d) is —

(a) the period of not more than 6 months specified in the order, or if no period is specified in the order, the period of 6 months from when the order was made; and

(b) if the period of suspension has been extended by an order under section 8.15G(1) (an *extension order*), the additional period of not more than 6 months specified in the extension order, or if no period is specified in the extension order, the additional period of 6 months.

*[Section 8.15F inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]*

**8.15G. Suspension of certain council members may be extended while inquiry conducted**

(1) The Minister may, by order, extend the suspension of a council member who is already suspended by an order (the *original order*) under section 8.15E(1) if section 8.15E(2)(c) is the only factor on which the order is based where —

(a) an inquiry is being conducted under Division 1 or 2 into any failure or conduct on which the original order was based; and

(b) the Departmental CEO has advised the Minister that, in the CEO's opinion, the original order suspending the member will cease to have effect under section 8.15F(1)(d) and (3)(a) before the inquiry is completed; and

(c) the Minister is satisfied that each type of failure or conduct on which the original order was based still exists.

(2) For the purposes of this Act, the extended suspension of a member the subject of an order under subsection (1) is to be taken to have effect under the original order.

*[Section 8.15G inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]*

**8.15H. Reinstatement of council member whose suspension was extended under section 8.15G**

The Minister must, by order, reinstate a council member the subject of an order under section 8.15G(1) if the Departmental CEO advises the Minister in writing that, taking into account the recommendations in the report on the outcome of the inquiry, the CEO considers that it is not appropriate —

- (a) that the member be charged with a serious local government offence, as defined in section 2.22(3); or
- (b) to make an allegation to the State Administrative Tribunal under section 5.116(2) that the member has committed a serious breach.

*[Section 8.15H inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]*

**8.15I. Minister may suspend council member if member fails to undertake remedial action as ordered**

(1) If the Minister is satisfied that an order by the Minister under section 8.15C(2)(d) or 8.15E(1)(b), requiring a member of a council to take remedial action, has not been complied with according to its terms, the Minister may, by order, suspend the member.

(2) Before making an order under subsection (1) the Minister must —

- (a) give to the member written notice of the proposed order and provide information, and if available, evidence as to why the Minister is satisfied that the order has not been complied with; and
- (b) give the member the opportunity to show cause in writing, within 21 days of receiving the notice or such longer period as the Minister allows, as to why the Minister should not make the proposed order; and
- (c) take into consideration the member's response, if any.

(3) If a member is already suspended, then an order may be made under subsection (1) extending the suspension of the member and, for the purpose of this Act, such an order is to be taken to be an order suspending the member made under this section.

*[Section 8.15I inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]*

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**8.15J. Council member must inform CEO if charged with disqualification offence**

(1) A member of a council of a local government who has been charged with a disqualification offence and does not advise the CEO of the local government in writing of the charge without delay commits an offence.

(2) If a CEO receives a notice under subsection (1), or becomes aware by other means that a council member has been charged with a disqualifying offence, the CEO must, as soon as is practicable, give the Departmental CEO written notice that the member has been so charged.

*[Section 8.15J inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]*

**Subdivision 3 — Council member may be dismissed**

*[Heading inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]*

**8.15K. Minister may recommend that council member be dismissed**

(1) If satisfied that it is appropriate to intervene under this section, the Minister may recommend that the Governor dismiss a council member.

(2) The Minister can only be satisfied that it is appropriate to intervene under this section if the Minister —

(a) is of the opinion, based on the advice in writing of the Departmental CEO, that either or both of the following apply —

(i) the member is impeding the ability of the local government to perform its functions and duties under this Act;

(ii) it is in the best interests of the local government that the member be dismissed;

and

(b) is satisfied that the seriousness of the situation for the local government requires intervention under this section.

(3) Before making a recommendation under subsection (1) the Minister must —

(a) give to the member a report that contains —

(i) the proposed recommendation; and

(ii) the grounds on which the Minister proposes to make the recommendation;

and

(b) give the member the opportunity to show cause in writing, within 21 days of receiving the report or such longer period as the Minister allows, as to why the Minister should not make the proposed recommendation; and

(c) take into consideration the member's response, if any.

(4) The power conferred on the Minister under subsection (1) is in addition to, and does not derogate from, the power conferred on the Minister under section 8.24(4A) to take action in respect of an Inquiry Panel's report under Division 2.

*[Section 8.15K inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]*

### **8.15L. Governor may dismiss council member on recommendation of the Minister**

The Governor may, by order made on the recommendation of the Minister under section 8.15K(1), dismiss a member of a council.

*[Section 8.15L inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]*

### **8.15M. Report setting out grounds to be made available to the public**

(1) On the day an order dismissing a council member under section 8.15L takes effect, the Minister is to make available to the public in any manner that the Minister thinks fit a report that contains the grounds on which the Minister made the recommendation to dismiss the member under section 8.15K(1).

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- (2) Despite subsection (1), the Minister may withhold the report, or any part of its contents, to the extent that the Minister considers that making it available might prejudice a matter that is likely to come before a court of law or to be the subject of an allegation to the State Administrative Tribunal.

[Section 8.15M inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 15.]

### **Division 2 — Inquiries by Inquiry Panels**

#### **8.16. Minister may institute inquiry**

- (1) The Minister may by written notice appoint an Inquiry Panel consisting of one person or 3 people to inquire into and report on any aspect of a local government or its operations or affairs.
- (2) Schedule 8.1 (which contains provisions about Inquiry Panels) has effect.

*[Section 8.16 amended by No. 64 of 1998 s. 44(1).]*

#### **8.17. Scope and duration of inquiry**

The notice appointing an Inquiry Panel is to set out —

- (a) the nature of the inquiry to be conducted; and
- (b) the functions of the Inquiry Panel; and
- (c) any limit imposed on the duration of the inquiry.

#### **8.18. Local government to be informed**

The Minister is to give a copy of the notice appointing an Inquiry Panel to the local government concerned as soon as is practicable after the members of the panel have been notified of their appointments.

#### **8.19. Suspension of council while inquiry is held**

- (1) Before or after appointing an Inquiry Panel to conduct an inquiry and make a report about a local government the Minister may, by order, suspend the council —
- (a) if the Minister thinks that —
- (i) the seriousness or duration of a suspected failure of the council to ensure that the local government performs its functions properly; or



- (ii) such other factors as the Minister considers relevant,  
make it inappropriate for the council to act, or to continue to act, as the governing body of the local government; or
  - (b) if the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the council were to act, or to continue to act, as the governing body of the local government.
- (2) If an Inquiry Panel has not been appointed when the suspension under an order made under this section takes place the Minister is to appoint one within 6 months after the suspension.
- (3) If a council is already suspended under section 8.15C, then an order may be made under subsection (1) extending the suspension of the council and, for the purpose of this Act, such an order is to be taken to be an order suspending the council made under this section.

*[Section 8.19 amended by No. 2 of 2012 s. 23.]*

**8.19A. Suspension of council member while inquiry is held**

- (1) Before or after appointing an Inquiry Panel to conduct an inquiry and make a report about a local government, the Minister may, by order, suspend a member of the council of the local government if the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the member were not suspended.
- (2) If an Inquiry Panel has not been appointed when the suspension under an order made under this section takes place the Minister is to appoint one within 6 months after the suspension.
- (3) Before making an order under subsection (1) the Minister must —
- (a) give to the member written notice of the proposed order and the reasons why the Minister thinks that the conduct of the inquiry would be likely to be seriously prejudiced if the member were not suspended; and
  - (b) give the member the opportunity to show cause in writing, within 21 days of receiving the notice or such longer period as the Minister allows, as to why the Minister should not make the proposed order; and
  - (c) take into consideration the member's response, if any.

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- (4) If a member is already suspended, then an order may be made under subsection (1) extending the suspension of the member and, for the purpose of this Act, such an order is to be taken to be an order suspending the member made under this section.

[Section 8.19A inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 16.]

**8.20. Powers of Inquiry Panel**

For the purposes of an inquiry and report under this Division —

- (a) an Inquiry Panel has the powers of a Royal Commission; and
- (b) the person appointed to preside at meetings of the Inquiry Panel, or if the Inquiry Panel consists of one person that person, has the powers of the chairman of a Royal Commission,

whether under the *Royal Commissions Act 1968* or otherwise, and the provisions of that Act have effect as if they were enacted in this Act with such modifications as are required and in terms made applicable to the inquiry and report by the Inquiry Panel.

*[Section 8.20 inserted by No. 64 of 1998 s. 45.]*

**8.21. Referral to other authorities**

An Inquiry Panel may refer any matter arising out of an inquiry to an authority of the State, the Commonwealth, another State or a Territory that has power under a law to investigate or take action in relation to a matter of that kind, and may pass to that authority any document that it has obtained in the course of the inquiry.

*[Section 8.21 amended by No. 64 of 1998 s. 46.]*

**8.22. Report of Inquiry Panel**

- (1) An Inquiry Panel's report is to contain any recommendations that the Inquiry Panel considers appropriate.
- (2) Without limiting subsection (1) the Inquiry Panel may recommend —
  - (a) that a council be dismissed; or
  - (b) that a council that has been suspended be [reinstated](#); ~~or reinstated.~~

(c) if subsection (2A) applies, that a council member be dismissed; or

(d) that a council member who has been suspended be reinstated.

(2A) The Inquiry Panel can only recommend that a council member be dismissed if the Inquiry Panel is satisfied, on reasonable grounds, that —

(a) at least one of the following apply —

(i) the member has failed, or is failing, to perform the member's role, functions or duties under this Act;

(ii) the member's conduct has impeded, or is impeding, the ability of another person to perform their role, functions or duties under this Act;

(iii) the member's conduct has impeded, or is impeding, the ability of the local government to comply with the principles that apply to it under section 5.40;

and

(b) the seriousness or duration of that failure or conduct make it inappropriate for the member to continue to be a member of the governing body of the local government.

(3) The report is to be given to the Minister.

[Section 8.22 amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 17.]

**8.23. Copies to be given to local government and suspended council members, and made available to public**  
~~**Copies to be given to local government concerned and made available to public**~~

(1) If the Minister receives a report from an Inquiry Panel under section 8.22(3), the Minister is to give a copy of the report to —

(a) the local government concerned; and

(b) if the council of the local government is suspended — each council member; and

(c) if a council member is suspended — that member.

~~(1) The Minister is to give a copy of the Inquiry Panel's report to the local government concerned and, if its council is suspended, to each council member.~~

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- (2) After subsection (1) has been complied with, the Minister is to make the report of an Inquiry Panel available to the public in any manner that the Minister thinks fit.
- (3) Despite subsections (1) and (2), the Minister may withhold a report, or its contents, to the extent that the Inquiry Panel has indicated that it considers that making it available might prejudice a matter that is likely to come before a court of [law or to be the subject of an allegation to the State Administrative Tribunal.](#)~~law.~~
- (4) Within 35 days after receiving the report or such longer period as the Minister allows, the local government is to give the Minister written advice setting out —
  - (a) the things that it has done or proposes to do to give effect to the recommendations in the report; or
  - (b) if the report recommends that the council be dismissed, its comments on that recommendation.
- (5) [A council member who is suspended, or who is a member of a council that is suspended.](#) ~~If the council is suspended each council~~ member may, within 35 days after receiving the report or such longer period as the Minister allows, give the Minister written advice setting out the member's comments on the recommendations in the report.

*[Section 8.23 amended by No. 64 of 1998 s. 47; [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 18.](#)]*

**8.24. Minister to decide what action to take on Inquiry Panel's report**

- (1) The Minister is to decide what action (if any) to take under this section in respect of an Inquiry Panel's report.
- (2) If the Minister has given the local government concerned a copy of the report, the decision is to be made —
  - (a) after receiving [advice under section 8.23\(4\) or \(5\); or the advice of the local government; or](#)
  - (b) after the time allowed by or under [section 8.23\(4\) or \(5\)](#) ~~section 8.23(4)~~ runs out, if no advice has been received by then.
- (3) If, and only if, the Inquiry Panel has recommended that the council be dismissed, the Minister may recommend that the

Governor dismiss the council, but the Minister does not have to so recommend.

- (4) If the council has been suspended the Minister —
- (a) must, by order, reinstate the council if the Inquiry Panel has not recommended its dismissal; and
  - (b) may, by order under [section 8.28\(3\)](#), ~~section 8.28~~, reinstate the council even if the Inquiry Panel has recommended its dismissal.

(4A) If, and only if, the Inquiry Panel has recommended that a council member be dismissed, the Minister may recommend that the Governor dismiss the member, but the Minister does not have to so recommend.

(4B) If a council member has been suspended the Minister —

- (a) must, by order, reinstate the member if the Inquiry Panel has not recommended the member's dismissal; and
- (b) may, by order under section 8.30D, reinstate the member even if the Inquiry Panel has recommended the member's dismissal.

(4C) Subsection (4B)(a) does not apply in respect of a member the subject of an order under section 8.15G(1) unless there is also a duty to reinstate the member under section 8.15H.

- (5) The Minister may order the local government, or any member of its council ~~any of its council members~~ (if the council, or the member, ~~the council~~ is not suspended or dismissed) or any of its employees to give effect to any one or more of the recommendations of the Inquiry Panel in a manner and within a time ordered by the Minister.

*[Section 8.24 amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 19.]*

**8.25. Dismissal of council or council member by Governor**  
**~~Dismissal of council by Governor~~**

- (1) ~~The Governor~~ may, by order made on the recommendation of the Minister under section 8.24(3), dismiss a council.

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(2) The Governor may, by order made on the recommendation of the Minister under section 8.24(4A), dismiss a member of a council.

[Section 8.25 amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 20.]

**8.26. Suspension of council if Minister's order not complied with**

If an order by the Minister under section 8.24(5) is not complied with according to its terms and the council has not already been suspended, the Minister may, by order, suspend the council.

**8.27. Local government may have to meet inquiry costs**

If —

- (a) an Inquiry Panel makes findings adverse to a local government, or to its council or any member, or to any of its employees; or
- (b) an inquiry by an Inquiry Panel was instituted at the request of a local government,

the Minister may order the local government to pay all or part of the costs of the inquiry and the local government is to comply with that order.

**Division 3 — General provisions about suspension and dismissal of councils and council members**

[Heading amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 21.]

**Subdivision 1 — Provisions about suspension of councils**

[Heading inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 22.]

**8.28. Period of suspension: reinstatement of council**

- (1) An order suspending a council, other than an order made under section 8.15C(2), has effect for the period, not exceeding 2 years, specified in the order or, if no period is so specified, for the period of 2 years from when the order was made.
- (2) An order suspending a council, other than an order made under section 8.15C(2), ceases to have effect when —
  - (a) the period of suspension expires; or
  - (b) the council is dismissed under Division 2; or

- (c) the council is reinstated by the Minister under [subsection \(3\) or section 8.24\(4\)\(a\)](#), ~~subsection (3)~~, whichever happens soonest.
- (3) The Minister [may by order, if the Minister](#) ~~may, if he or she~~ thinks fit, reinstate a suspended council with effect from the time specified in the order.

*[Section 8.28 amended by No. 2 of 2012 s. 24; [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 23.](#)]*

### **8.29. Effect of suspension of council**

- (1) While a council is suspended, the powers and duties of the council or of any member cannot be performed by the council or member.
- (2) The suspension of a council does not prevent the term of office of any member from continuing to run while the council is suspended.
- (3) Despite Part 4, Divisions 3 and 4, an office of member that becomes vacant while a council is suspended is not to be filled for a term that begins before the suspension ceases to have effect.
- (4) An order reinstating a suspended council is to fix a day for any poll needed for an election to fill any offices of member that are vacant.

### **8.30. Appointment of commissioner while council is suspended**

An order suspending a council is to include an order appointing a person as commissioner of the local government while the council is suspended and, if it is reinstated, until it holds its first meeting after being reinstated.

#### **Subdivision 2 — Provisions about suspension of council members**

*[Heading inserted by the [Local Government Amendment \(Suspension and Dismissal\) Bill 2018 cl. 24.](#)]*

#### **8.30A. Period of suspension: orders under sections 8.15I and 8.19A**

- (1) [An order under section 8.15I\(1\) or 8.19A\(1\) suspending a council member has effect for the period, not exceeding 2 years, specified in the order or, if no period is so specified, for the period of 2 years from when the order was made.](#)

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(2) An order under section 8.15I(1) or 8.19A(1) suspending a council member ceases to have effect on whichever of the following occurs first —

- (a) the period of suspension expires;
- (b) the term of office of the member ends, or the member's office becomes vacant;
- (c) the member is reinstated by the Minister under section 8.24(4B) or 8.30D.

*[Section 8.30A inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 24.]*

**8.30B. Effect of suspension of council member**

(1) While a council member is suspended, the powers and duties of the member cannot be performed by the member.

(2) The suspension of a council member does not prevent the term of office of the member from continuing to run while the member is suspended.

(3) The suspension of a council member does not affect —

- (a) the application of Part 4 Divisions 3 and 4, in relation to the member's office; or
- (b) the eligibility of the member to be a candidate to be elected as a member of a council, including to fill the office vacated by the member.

*[Section 8.30B inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 24.]*

**8.30C. Continuing effect of suspension**

(1) This section applies if —

- (a) an order under Division 1A Subdivision 2 or section 8.19A(1) suspending a council member ceases to have effect under section 8.15F(1)(a) or 8.30A(2)(b) because —

(i) the term of office of the member ended under the Table to section 2.28; or

(ii) the member's office became vacant under section 2.32(b), (e) or (f), 2.36A(1) or 2.37(1) or (2);

and



(b) the suspended council member is elected as a member of a council, including to fill the office vacated by the suspended member.

(2) Despite anything else in this Act —

(a) an order described in subsection (1)(a) is taken to continue to have effect in respect of the suspended council member as if the term of office of the member had not ended or the office of the member had not become vacant; and

(b) for that purpose, the order is taken to extend to the member holding office as a member of a council, as described in subsection (1)(b).

*[Section 8.30C inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 24.]*

#### **8.30D. Reinstatement of suspended council member**

The Minister may by order, if the Minister thinks fit, reinstate a suspended council member with effect from the time specified in the order.

*[Section 8.30D inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 24.]*

#### **Subdivision 3 — Provisions about dismissal of councils**

*[Heading inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 25.]*

#### **8.31. No dismissal of council except on Inquiry Panel's recommendation**

- (1) A council cannot be dismissed otherwise than under section 8.25(1)~~section 8.25~~.
- (2) Subsection (1) does not affect the operation of section 2.36A or 2.37.

*[Section 8.31 amended by No. 64 of 1998 s. 4(5); Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 26.]*

#### **8.32. When dismissal of council takes effect**

An order dismissing a council has effect from the day specified in the order.

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**8.33. Appointment of commissioner on dismissal of council**

An order dismissing a council is to include an order appointing a person as commissioner of the local government until a new council is elected and holds its first meeting.

**8.34. Elections following dismissal of council**

- (1) An order dismissing a council is to fix a day for any poll needed for the election of a new council.
- (2) The day fixed is to be a day that is as soon as practicable after the dismissal has effect and allows enough time for the electoral requirements to be complied with, but is not to be later than 2 years after the dismissal has effect.

*[Section 8.34 amended by No. 1 of 1998 s. 22.]*

**Subdivision 4 — Provisions about dismissal of council members**

*[Heading inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 27]*

**8.34A. No dismissal of council member except on recommendation of Minister or Inquiry Panel**

- (1) A council member cannot be dismissed otherwise than under section 8.15L or 8.25(2).
- (2) Subsection (1) does not affect the operation of section 2.36A or 2.37.

*[Section 8.34A inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 27.]*

**8.34B. When dismissal of council member takes effect**

An order dismissing a council member has effect from the day specified in the order.

*[Section 8.34B inserted by the Local Government Amendment (Suspension and Dismissal) Bill 2018 cl. 27.]*

**Division 4 — Misapplication of funds and property**

**8.35. Interpretation**

- (1) For the purposes of this Division, funds of a local government are misapplied if any moneys paid from, or due to, any fund or account of the local government are misapplied to purposes not authorised by law.

(2) For the purposes of this Division, local government property is misapplied if anything that belongs to the local government is dealt with in a way that is not authorised by law and causes the local government to suffer loss.

(3) In this Division —

**amount misapplied** means —

- (a) an amount of money misapplied as referred to in subsection (1); or
- (b) the amount of a loss suffered as referred to in subsection (2);

**authorised person** means —

- (a) the Departmental CEO; or
- (b) any other person authorised to conduct an inquiry under section 8.3; or
- (c) any person authorised under section 8.36.

*[Section 8.35 amended by No. 28 of 2006 s. 364.]*

#### **8.36. Authorisation**

- (1) The Departmental CEO may, by written authorisation, authorise a person to take actions under and subject to this Division.
- (2) An authorisation under subsection (1) may confer a general power to take actions or a power to take actions in respect of a specific matter.
- (3) The authorisation is to set out —
  - (a) the name of the authorised person; and
  - (b) any limit imposed on the duration of the authorisation.

*[Section 8.36 amended by No. 28 of 2006 s. 364.]*

#### **8.37. Powers related to inquiries**

The authorisation conferred by this Division on a person authorised to conduct an inquiry under section 8.3 is limited to matters to which the inquiry relates and is subject to any limit imposed on the duration of the authorisation under section 8.4(3).

#### **8.38. Liability for misapplication of funds or property**

- (1) If —
  - (a) there has been a misapplication of funds of a local government or of local government property; and

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- (b) any council member or employee of the local government, has wilfully or through culpable negligence misapplied the funds or property or connived at or concurred in the misapplication,

that council member or employee is personally liable to pay the amount misapplied to the local government.

- (2) If 2 or more people are liable to pay the amount misapplied, their liability is joint and several.
- (3) A person's liability to pay the amount misapplied continues whether or not the person is still a council member or employee of the local government.

**8.39. Action to recover amounts misapplied**

If a person is liable under section 8.38 to pay an amount misapplied, an authorised person may, subject to sections 8.40 and 8.41, recover that amount by action in a court of competent jurisdiction.

**8.40. Notice to be given before action is taken**

- (1) Before taking action under section 8.39 to recover an amount misapplied, an authorised person is to give the person against whom he or she proposes to take that action notice that the person may, within 30 days after the notice is given, advance written reasons why that action should not be taken.
- (2) A notice under subsection (1) is to —
  - (a) be in writing; and
  - (b) include details of the grounds upon which the authorised person proposes to take action; and
  - (c) state the amount in question.

**8.41. Decision whether or not to proceed with action**

- (1) After considering any reasons advanced by a person to whom notice has been given under section 8.40(1) and all the circumstances of the case, the authorised person is to decide whether or not to proceed with the action.
- (2) An authorised person other than the Departmental CEO cannot decide to proceed with the action without the express approval of the Departmental CEO.

- (3) If the authorised person decides to proceed with the action, he or she is to give written notice of the decision to the local government concerned.
- (4) If the authorised person decides not to proceed with the action, he or she is to give written notice of the decision to the local government concerned and to any person to whom notice has been given under section 8.40(1).

*[Section 8.41 amended by No. 28 of 2006 s. 364.]*

#### **8.42. Power of court to order payment**

- (1) If in any proceedings brought under this Division, the court before which the proceedings are brought is satisfied that the person against whom the proceedings have been brought is personally liable, under section 8.38, to pay an amount misapplied to a local government, that court may order that person to pay an amount of money stated in the order of the court and that order is enforceable in all respects as a final judgment of the court.
- (2) If an authorised person recovers money in proceedings under this Division, he or she is to pay it to the local government concerned.

#### **8.43. Disqualification of person who has misapplied funds or property**

- (1) If an order has been made under section 8.42(1), the person against whom the order is made is disqualified from being a member of a council for a period of 5 years beginning on the date of the order, but the court making that order may, if it is satisfied that in the circumstances of the case it is appropriate to do so —
  - (a) order that the period of disqualification will be a period of less than 5 years that is specified in the order and begins on a date specified in the order; or
  - (b) order that the person is not disqualified.
- (2) If at any time after a notice is given under section 8.40(1) but before a court makes an order under section 8.42(1), the person to whom the notice is given pays to the local government concerned or an authorised person part or all of the amount stated in the notice, the Departmental CEO may apply to a court before which an action to recover the amount so paid has been or could have been brought for an order that the person be disqualified from being a member of a council.

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- (3) A court to which an application is made under subsection (2) may, if it is satisfied that in the circumstances of the case it is appropriate to do so, order that the person is disqualified from being a member of a council for a period (not exceeding 5 years) that is specified in the order and begins on a date specified in the order.

*[Section 8.43 amended by No. 28 of 2006 s. 364.]*

**8.44. Evidence of authorisation**

In proceedings brought under this Division, a document purporting to be an authorisation or approval given by the Departmental CEO to a person, is *prima facie* evidence of the authorisation or approval having been given, and of the signature of the Departmental CEO.

*[Section 8.44 amended by No. 28 of 2006 s. 364.]*

*[Pt. 9 (s. 9.1-9.71) has been omitted as it is not amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018.]*

*[Sch. 2.1-9.3 have been omitted as they are not amended by the Local Government Amendment (Suspension and Dismissal) Bill 2018.]*

**Notes**

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

**Compilation table**

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

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



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

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

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Local Government Amendment Act 2009</i>	17 of 2009	16 Sep 2009	s. 1 and 2: 16 Sep 2009 (see s. 2(a)); Act other than s. 1, 2 and 34: 21 Nov 2009 (see s. 2(b) and <i>Gazette</i> 20 Nov 2009 p. 4649); s. 34: 4 May 2011 (see s. 2(b) and <i>Gazette</i> 3 May 2011 p. 1577)
<i>Co-operatives Act 2009</i> s. 506 and 516	24 of 2009	22 Oct 2009	s. 506: 16 May 2011 (see s. 2(d) and <i>Gazette</i> 24 Jun 2011 p. 2516); s. 516: 1 Sep 2012 (see s. 2(c) and <i>Gazette</i> 13 Aug 2010 p. 3975)
<b>Reprint 5: The Local Government Act 1995 as at 5 Feb 2010</b> (includes amendments listed above except those in the <i>Local Government Amendment Act 2009</i> s. 34 and the <i>Co-operatives Act 2009</i> )			
<i>Standardisation of Formatting Act 2010</i> s. 44(2) and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Approvals and Related Reforms (No. 4) (Planning) Act 2010</i> s. 34 and Pt. 5 Div 2	28 of 2010	19 Aug 2010	22 Nov 2010 (see s. 2(b) and <i>Gazette</i> 19 Nov 2010 p. 5709)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Acts Amendment (Fair Trading) Act 2010</i> s. 182	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and <i>Gazette</i> 24 Dec 2010 p. 6805)
<i>Building Act 2011</i> s. 166	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<i>Statutes (Repeals and Minor Amendments) Act 2011</i> s. 16	47 of 2011	25 Oct 2011	26 Oct 2011 (see s. 2(b))
<i>Local Government Amendment Act 2012</i> Pt. 2	2 of 2012	4 Apr 2012	Pt. 2 other than s. 13-18: 21 Apr 2012 (see s. 2(b) and <i>Gazette</i> 20 Apr 2012 p. 1695); s. 13: 1 Jul 2012 (see s. 2(b) and <i>Gazette</i> 20 Apr 2012 p. 1695); s. 14-18: 1 Jul 2013 (see s. 2(b) and <i>Gazette</i> 8 Feb 2013 p. 863)
<i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 29	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)
<b>Reprint 6: The Local Government Act 1995 as at 3 Aug 2012</b> (includes amendments listed above except those in the <i>Co-operatives Act 2009</i> s. 516, <i>Local Government Amendment Act 2012</i> s. 14-18 (correction in <i>Gazette</i> 7 Sep 2012 p. 4329 and 28 Mar 2013 p. 1317) and the <i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 29)			
<i>Commercial Arbitration Act 2012</i> s. 45 it. 12	23 of 2012	29 Aug 2012	7 Aug 2013 (see s. 1B(b) and <i>Gazette</i> 6 Aug 2013 p. 3677)

## Local Government Act 1995

Short title	Number and year	Assent	Commencement
<i>Corruption and Crime Commission Amendment (Misconduct) Act 2014</i> s. 35	35 of 2014	9 Dec 2014	1 Jul 2015 (see s. 2(b) and <i>Gazette</i> 26 Jun 2015 p. 2235)
<i>Associations Incorporation Act 2015</i> s. 223	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and <i>Gazette</i> 24 Jun 2016 p. 2291-2)
<i>City of Perth Act 2016</i> Pt. 4 Div. 4	2 of 2016	3 Mar 2016	4 Mar 2016 (see s. 2(b))
<b>Reprint 7: The Local Government Act 1995 as at 13 May 2016</b> (includes amendments listed above except those in the <i>Associations Incorporation Act 2015</i> )			
<i>Graffiti Vandalism Act 2016</i> Pt. 6 Div. 2	16 of 2016	11 Jul 2016	12 Oct 2016 (see s. 2(b) and <i>Gazette</i> 11 Oct 2016 p. 4531)
<i>Public Health (Consequential Provisions) Act 2016</i> Pt. 3 Div. 18	19 of 2016	25 Jul 2016	24 Jan 2017 (see s. 2(1)(c) and <i>Gazette</i> 10 Jan 2017 p. 165)
<i>Local Government Legislation Amendment Act 2016</i> Pt. 2	26 of 2016	21 Sep 2016	Pt. 2 (other than s. 4, 6-9, 11 and 17): 12 Nov 2016 (see s. 2(b) and <i>Gazette</i> 11 Nov 2016 p. 5035); s. 4, 6-9, 11 and 17: 21 Jan 2017 (see s. 2(b) and <i>Gazette</i> 20 Jan 2017 p. 648)
<i>Local Government Amendment (Auditing) Act 2017</i> (other than s. 4(2) and 7(2)) <sup>29</sup>	5 of 2017	1 Sep 2017	s. 1 and 2: 1 Sep 2017 (see s. 2(a)); Act other than s. 1, 2, 4(2) and 7(2): 28 Oct 2017 (see s. 2(b) and <i>Gazette</i> 27 Oct 2017 p. 5413)
<a href="#"><u>Local Government Amendment (Suspension and Dismissal) Bill 2018</u></a>	<a href="#"><u>Current Bill</u></a>	<a href="#"><u>No. 60-1</u></a>	

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Local Government Amendment (Auditing) Act 2017</i> s. 4(2) and 7(2) <sup>28</sup>	5 of 2017	1 Sep 2017	To be proclaimed (see s. 2(c))

<sup>2</sup> The provisions in this Act amending the *Local Government Act 1960* have been omitted under the *Reprints Act 1984* s. 7(4)(e).

<sup>3</sup> Repealed by the *Mining Act 1978*.

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- <sup>4</sup> The short title of the *Local Government Act 1960* was amended to the *Local Government (Miscellaneous Provisions) Act 1960* by Sch. 9.2 cl. 2 of this Act. That provision has now been omitted.
- <sup>5</sup> Under the *Land Administration Act 1997* s. 281(3) a reference in a written law to the *Land Act 1933* is, unless the contrary intention appears, to be read and construed as if that reference were a reference to the *Land Administration Act 1997*.
- <sup>6</sup> There is no s. 4.31(1)(c) because this provision was amended and renumbered by the *Standardisation of Formatting Act 2010* s. 51 Table item 42.
- <sup>7</sup> *The Criminal Code* s. 348 and 349 were deleted by the *Defamation Act 2005* s. 47.
- <sup>8</sup> The provisions of the *Local Government Act 1960* Pt. VIA as continued by Sch. 9.3 cl. 16 of this Act and amended by the *Local Government (Amendment of Part VIA – Employee Superannuation) Regulations 2006* r. 4 and 5 (published in *Gazette* 26 May 2006 p. 1877-8) read as follows:

## Part VIA — Employee Superannuation

### 170A. Interpretation

- (1) In this Part —

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

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

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

**municipality** includes a regional council;

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

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

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

### 170B. Municipalities to use industry scheme

- (1) To provide superannuation and other benefits for its employees and their dependants, a municipality shall participate in and comply with the industry scheme.
- (2) A municipality shall exercise such powers and discharge such obligations as are necessary to give effect to the industry scheme.
- (3) Subsections (1) and (2) do not apply in respect of an employee if under section 170D, or the *City of Perth Act 2016* section 23, a municipality has to participate in and comply with the City of Perth scheme in respect of that employee.

- (4) Subsections (1) and (2) apply to the City of Perth only in respect of those of its employees who are not members of the City of Perth scheme.
- (5) If, in respect of an employee for any period —
- (a) there is a chosen fund for the employee throughout the period; and
  - (b) the chosen fund is not the industry scheme; and
  - (c) the municipality makes the minimum SG contributions for the employee for that period to the chosen fund,
- the amount that the municipality would, but for this subsection, be required under subsection (1) and the industry scheme trust deed to contribute to the industry scheme for that employee for that period is reduced by the amount of those minimum SG contributions made to the chosen fund.
- (6) In subsection (5) —
- (a) the following terms have the same meanings as they have in the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) —
    - (i) chosen fund for the employer;
    - (ii) individual superannuation guarantee shortfall;and
  - (b) a reference to a municipality making the minimum SG contributions for an employee for a period is a reference to the municipality making the contributions necessary for it to avoid incurring an individual superannuation guarantee shortfall in respect of the employee in respect of that period.

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

**170C. City of Perth scheme**

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

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

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

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

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

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

**170E. Other superannuation schemes**

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

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

**36. Payment in place of local government rates**

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

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

**67. Presence of pipeline does not constitute occupation of land**

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

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

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

**7. Transitional matters relating to by-laws**

- (1) If, when this Act comes into operation —
  - (a) a local government has resolved to make a by-law under the *Bush Fires Act 1954*, the *City of Perth Parking Facilities Act 1956* or the *Health Act 1911*; but
  - (b) the by-law has not been published in the *Gazette*,  
the process of making, confirming or approving, and publishing the by-law may be completed as if this Act and the *Local Government Act 1995* had not come into operation.
- (2) If, when this Act comes into operation —
  - (a) a local government has —
    - (i) resolved to make a by-law under the *Cemeteries Act 1986*, the *Control of Vehicles (Off-road Areas) Act 1978* or the *Dog Act 1976*; and
    - (ii) caused a notice of intention to submit the by-law for confirmation or approval by the Governor to be published;

but

  - (b) the by-law has not been published in the *Gazette*,  
the process of making, confirming or approving, and publishing the by-law may be completed as if this Act and the *Local Government Act 1995* had not come into operation.
- (3) A by-law that is made, confirmed or approved, or published in accordance with subsection (1) or (2) becomes a local law as soon as it is published in the *Gazette*.
- (4) If, when this Act comes into operation —
  - (a) a local government has resolved to make a by-law under the *Cemeteries Act 1986*, the *Control of Vehicles (Off-road Areas) Act 1978* or the *Dog Act 1976*; but



- (b) a notice of intention to submit the by-law for confirmation or approval by the Governor has not been published,

the resolution ceases to have effect as a resolution to make a by-law and instead has effect as if it were a resolution under that Act as amended by this Act proposing to make a local law to the same effect.

- (5) This section ceases to operate on the day 6 months after this Act comes into operation.

**8. Transitional regulations**

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, the Governor may make regulations prescribing all matters that are required, or are necessary or convenient, for dealing with that transitional matter.
- (2) Regulations made under subsection (1) may have effect before the day on which they are published in the *Gazette*.
- (3) To the extent that a regulation made under subsection (1) may have effect before the day of its publication in the *Gazette*, it does not —
- (a) affect in a manner prejudicial to any person (other than the State or a local government), the rights of that person existing before the day of its publication; or
- (b) impose liabilities on any person (other than the State or a local government) in respect of anything done or omitted to be done before the day of its publication.
- (4) In subsection (1) —

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

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

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

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

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

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

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

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

**2. Commencement**

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

**3. Interpretation**

In this Part —

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

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

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

**4. Validation**

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
  - (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
  - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

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

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

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

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

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

**14. Transitional and validation provisions — Schedule 2**  
Schedule 2 has effect.

Schedule 2 reads as follows:

**Schedule 2 — Transitional and validation provisions — WALGA**

[s. 14]

**1. Interpretation**

In this Schedule —

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

*commencement* means the commencement of section 10;

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

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

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

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

(2) In particular —

- (a) each body previously constituted under section 9.58 is dissolved;
- (b) the property of each body previously constituted under section 9.58 becomes the property of WALGA;
- (c) all assets, liabilities, rights and duties of the body previously constituted under section 9.58 becomes the assets, liabilities, rights and duties of WALGA;

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

**3. Agreements and instruments**

Any agreement or instrument subsisting immediately before the commencement —

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

has effect after the commencement as if —

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

**4. Validation**

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

**5. Interpretation Act 1984 not affected**

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

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

**73. Schedule 9.3 amended and validation**

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

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

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

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

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

<sup>26</sup> The *State Administrative Tribunal Regulations 2004* r. 56 reads as follows:

**56. Local Government Act 1995**

(1) In this regulation —

**commencement day** means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 76 comes into operation;  
**the LG Act** means the *Local Government Act 1995*.

(2) If a local government receives, before the commencement day, a notice in accordance with the LG Act section 6.77 (as in force when the notice was received by the local government) but does not before the commencement day refer the decision referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the local government must refer the notice to the State Administrative Tribunal and the notice is to be taken to be an application to the Tribunal for a review of the decision under the LG Act section 6.77.

(3) If a local government receives, before the commencement day, a notice in accordance with the LG Act section 6.78 (as in force when the notice was received by the local government) but does not before the commencement day refer the decision referred to in the notice to a Land Valuation Tribunal as an appeal, on and after the commencement day the local government must refer the notice to the State Administrative Tribunal and the notice is to be taken to be an application to the Tribunal for a review of the decision under the LG Act section 6.78.

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

<sup>28</sup> On the date as at which this compilation was prepared, the *Local Government Amendment (Auditing) Act 2017* s. 4(2) and 7(2) had not come into operation. They read as follows:

**4. Section 1.4 amended**

- (2) In section 1.4 delete the definition of *auditor* and insert:

*auditor* means the Auditor General;

**7. Section 5.53 amended**

- (2) Delete section 5.53(2)(h) and insert:

- (h) the auditor's report prepared under section 7.12AD(1) for the financial year; and

<sup>29</sup> The *Local Government Amendment (Auditing) Act 2017* s. 22 reads as follows:

**22. Superseded provisions to be deleted**

- (1) In this section —

*superseded provisions* means the following provisions of the *Local Government Act 1995* —

- (a) section 5.43(c);
  - (b) in section 7.1, the definitions of *approved auditor*, *disqualified person*, *qualified person* and *registered company auditor*;
  - (c) Part 7 Division 2;
  - (d) Part 7 Division 3;
  - (e) section 7.12AA;
  - (f) section 7.12AF;
  - (g) section 7.13(1)(ab)(i), (ac), (a)-(e), (g) and (h).
- (2) The superseded provisions are deleted on a day fixed by proclamation.
- (3) A proclamation cannot be made under subsection (2) unless the Minister is satisfied that there is no reason for the superseded provisions to remain in operation.
- (4) This section is deleted immediately after the superseded provisions are deleted.

Note for Part 7:

The description at the beginning of Part 7 is to be altered by:

- (a) deleting "*the financial accounts of*";
- (b) deleting paragraph (a) and inserting:
  - (a) *the establishment of audit committees; and*