



Western Australia

Local Government Amendment Act 2024

Local Government Amendment Act 2024

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Western Australia

Local Government Amendment Act 2024

No. 47 of 2024

An Act to amend the *Local Government Act 1995* and to make amendments relating to local governments to other Acts.

[Assented to 6 December 2024]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Local Government Amendment Act 2024*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 (but only sections 3, 4(3), 5, 6, 7, 14(1) and (3), 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 34, 35, 37, 38, 39, 41, 42, 43, 50, 58, 59(2), 72(2), 84, 89, 115(2), 126, 127, 128, 130, 132, 135, 138, 141, 144, 152, 153, 154, 159, 160 and 161) — on the day after assent day;
- (c) section 52(2) —
 - (i) if the *Local Government Amendment Act 2023* section 67 comes into operation before the day on which section 61 comes into operation under paragraph (i) — on the day on which section 61 comes into operation; or
 - (ii) otherwise — immediately after the *Local Government Amendment Act 2023* section 67 comes into operation;
- (d) section 60 —
 - (i) if the *Local Government Amendment Act 2023* section 78 comes into operation on or before assent day — on the day after assent day; or
 - (ii) otherwise — immediately after the *Local Government Amendment Act 2023* section 78 comes into operation;

- (e) section 64(1) —
 - (i) if section 125 comes into operation under paragraph (i) on or before the day on which section 63 comes into operation under paragraph (i) — immediately after section 63 comes into operation;
 - (ii) otherwise — on the day on which section 125 comes into operation;
- (f) section 64(2) —
 - (i) if section 72(3) comes into operation under paragraph (i) on or before the day on which section 63 comes into operation under paragraph (i) — immediately after section 63 comes into operation;
 - (ii) otherwise — on the day on which section 72(3) comes into operation;
- (g) Part 3 (but only Divisions 3, 5, 6 and 7) — on the day after assent day;
- (h) Part 3 Division 4 —
 - (i) if the *Local Government Amendment Act 2023* section 62 comes into operation on or before the day on which section 125 comes into operation under paragraph (i) — immediately after section 125 comes into operation; or
 - (ii) otherwise — on the day on which the *Local Government Amendment Act 2023* section 62 comes into operation;
- (i) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

s. 2

- (2) If section 52(1) does not come into operation under subsection (1)(i) before the *Local Government Amendment Act 2023* section 67 comes into operation, section 52(1) —
 - (a) does not come into operation; and
 - (b) is deleted when the *Local Government Amendment Act 2023* section 67 comes into operation.

- (3) If section 88 does not come into operation under subsection (1)(i) before the *Local Government Act 1995* Part 7 Division 2 is deleted under the *Local Government Amendment (Auditing) Act 2017* section 22, section 88 —
 - (a) does not come into operation; and
 - (b) is deleted when the *Local Government Act 1995* Part 7 Division 2 is deleted.

Part 2 — *Local Government Act 1995* amended

3. Act amended

This Part amends the *Local Government Act 1995*.

4. Section 1.4 amended

- (1) In section 1.4 delete the definition of *Inquiry Panel*.
- (2) In section 1.4 insert in alphabetical order:

adjudicator means the Principal Adjudicator or a Deputy Adjudicator;

authorised officer has the meaning given in section 8B.42;

behavioural breach has the meaning given in section 8A.2(2);

conduct breach has the meaning given in section 8A.3;

Deputy Adjudicator means a person appointed as a Deputy Adjudicator under section 8B.19(2);

Independent Inquiry means an Independent Inquiry constituted under section 8.16;

Inspector means the person holding the office of Local Government Inspector established by section 8B.1;

inspectorate officer means —

- (a) a public service officer appointed for the purposes of section 8B.32(1); or
- (b) a public service officer referred to in section 8B.32(2);

Inspector's website means a website maintained by, or on behalf of, the Inspector;

investigator means a person designated as an investigator under section 8B.33;

monitor means a person appointed as a monitor for a local government under section 8B.37;

Principal Adjudicator means the person appointed as the Principal Adjudicator under section 8B.19(1);

recurrent breach has the meaning given in section 8A.3(4);

specified breach has the meaning given in section 8A.4;

- (3) In section 1.4 insert in alphabetical order:

senior employee means a senior employee under section 5.37;

5. Section 2.7 replaced

Delete section 2.7 and insert:

2.7. Role of council

- (1) The council governs the local government's affairs and, as the local government's governing body, is responsible for the performance of the local government's functions.
- (2) The council's governing role includes the following —
 - (a) overseeing the allocation of the local government's finances and resources;
 - (b) determining the local government's policies;
 - (c) planning strategically for the future of the district;
 - (d) determining the services and facilities to be provided by the local government in the district;

- (e) selecting the CEO and reviewing the CEO's performance;
 - (f) providing strategic direction to the CEO.
- (3) For the purpose of ensuring proper governance of the local government's affairs, the council must have regard to the following principles —
- (a) the council's governing role is separate from the CEO's executive role as described in section 5.41;
 - (b) it is important that the council respects that separation.
- (4) The council must make its decisions —
- (a) on the basis of evidence, on the merits and in accordance with the law; and
 - (b) taking into account the local government's finances and resources.
- (5) The council must have regard to the need to support an organisational culture for the local government that promotes the respectful and fair treatment of the local government's employees.
- (6) The council has the other functions given to it under this Act or any other written law.

6. Section 2.8 amended

Delete section 2.8(1) and insert:

- (1) The mayor or president —
- (a) provides leadership and guidance to the council and council members, including guidance as to the roles of the council and council members; and

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- (b) acts as the principal spokesperson for the local government, and carries out civic and ceremonial duties on behalf of the local government, at all times acting consistently with council decisions; and
- (c) presides at meetings of the council, ensuring that meetings are orderly and held in accordance with this Act; and
- (d) promotes, facilitates and supports positive and constructive working relationships among council members; and
- (e) liaises with the CEO on the local government's affairs and the performance of its functions.

Note for this subsection:

The role of the mayor or president as described in this subsection can be affected by other provisions of this Act or by another written law. For example, section 5.67 prohibits the mayor or president from presiding at a meeting of the council in the circumstances described in that section.

- (1A) The mayor or president has the other functions given to the mayor or president under this Act or any other written law.

7. Section 2.10 replaced

Delete section 2.10 and insert:

2.10. Role of councillors

- (1) A councillor —
 - (a) represents the interests of the electors, ratepayers and residents of the district and takes account of the interests of other persons who work in, or visit, the district; and

- (b) participates in the deliberation and decision-making of the local government at council and committee meetings; and
- (c) facilitates communication with the community about council decisions; and
- (d) facilitates and maintains good working relationships with other councillors, the mayor or president and the CEO; and
- (e) acts consistently with section 2.7(3) to (5); and
- (f) maintains and develops the requisite skills to effectively perform their role.

Note for this subsection:

The role of a councillor as described in this subsection can be affected by other provisions of this Act or by another written law. For example, section 5.67 prohibits a councillor from participating in a meeting of the council or a committee in the circumstances described in that section.

- (2) A councillor has the other functions given to the councillor under this Act or any other written law.

8. Section 2.19 amended

- (1) In section 2.19(1):
 - (a) after paragraph (d) insert:
 - (da) is not disqualified under section 2.25A(3) from holding office as a member of a council; and
 - (b) in paragraph (e) delete “under section 5.113, 5.117 or 5.119” and insert:

under section 8A.14(5), 8A.21(2)(b), 8A.25(1)(b)(viii) or 8A.27(2)(b)

(2) Delete section 2.19(2) and insert:

- (2) A person is not qualified under subsection (1)(b) if, but for being a nominee of a body corporate under section 4.31(1G), the person would not be eligible for enrolment under section 4.30(1)(a) and (b).

9. Section 2.21 amended

In section 2.21 delete “is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth.” and insert:

is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws.

10. Section 2.22 amended

- (1) In section 2.22(3) delete the definition of *former provisions*.
- (2) In section 2.22(3) delete the definition of *serious local government offence* and insert:

serious local government offence means an offence against this Act for which an offender —

- (a) could be sentenced to imprisonment; or
- (b) could be sentenced to pay a fine of or exceeding \$10 000.

11. Section 2.25 amended

(1) Delete section 2.25(5)(b)(iiia) and (iii) and insert:

- (iii) while the member is suspended by an order made under Part 8; or
- (iv) while the member is suspended by an order made under Part 8A; or
- (v) while the election of the member is disputed and proceedings relating to the disputed election have been commenced and are pending;

(2) After section 2.25(5) insert:

(5BA) Subsection (5)(b)(iv) does not apply if the scope of the suspension is limited so that the suspension does not apply to the member's attendance at the ordinary meeting.

(3) Delete section 2.25(6).

12. Section 2.25A inserted

After section 2.25 insert:

2.25A. Disqualification because of recurrent suspension

- (1) For the purposes of this section, a *suspension event* occurs in relation to a person if the person is suspended by an order made under section 8A.14(5), 8A.18(4), 8A.21(2)(b), 8A.25(1)(b) or 8A.27(2)(b).

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- (2) A *recurrent suspension event* occurs in relation to a person if —
 - (a) 2 or more suspension events have occurred in relation to the person; and
 - (b) after the occurrence of the suspension events, a further suspension event occurs in relation to the person.
- (3) If a recurrent suspension event occurs in relation to a person, the person is disqualified from holding office as a member of a council for the period of 10 years after the end of the period of suspension related to the recurrent suspension event.
- (4) For the purposes of this section, it does not matter if the scope of a suspension is limited under the order suspending the person.
- (5) For the purposes of this section, it does not matter if a suspension event or recurrent suspension event occurred in relation to a person —
 - (a) in a different term of office to another suspension event that occurred in relation to the person; or
 - (b) while the person was a member of a different council than the council of which the person was a member when another suspension event occurred in relation to the person.

13. Section 2.27 amended

In section 2.27(1) in the definition of *disqualified*:

- (a) in paragraph (c) delete “2.25.” and insert:

2.25; or

(b) after paragraph (c) insert:

(d) disqualified from holding office as a member of a council under section 2.25A(3).

14. Section 2.32 amended

(1) In section 2.32 delete “The” and insert:

(1) The

(2) In section 2.32(1):

(a) in paragraph (da) delete “5.113, 5.117 or 5.119” and insert:

8A.14(5), 8A.21(2)(b), 8A.25(1)(b)(viii) or 8A.27(2)(b)

(b) in paragraph (db) after “section” insert:

8.11(2),

(3) At the end of section 2.32 insert:

(2) The CEO must notify the Departmental CEO if an office becomes vacant under this section.

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15. Section 2.34 amended

After section 2.34(2) insert:

- (3) The CEO must notify the Departmental CEO if an office becomes vacant under this section.

16. Section 2.36 amended

- (1) In section 2.36(1) delete “section 8.25(1)” and insert:

section 8.11(1) or 8.25(1),

- (2) In section 2.36(2) after “section” insert:

8.11(2),

17. Section 2.43 amended

At the end of section 2.43 insert:

Note for this section:

See also sections 5.105(2) and 8A.9(5).

18. Section 3.10 amended

In section 3.10(1) delete “\$5 000.” and insert:

\$10 000.

19. Section 3.12 amended

(1) In section 3.12(3):

(a) delete “The” and insert:

Subject to subsection (3A), the

(b) in paragraph (a)(i) delete “summarized” and insert:

summarised

(c) delete paragraph (b) and insert:

(b) as soon as the notice is given, give a copy of the proposed local law and a copy of the notice to —

(i) the Departmental CEO; and

(ii) if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made — the chief executive officer of that other department;

and

(2) After section 3.12(3) insert:

(3A) The local government may, at the council meeting referred to in subsection (2), determine to proceed under subsection (3C) instead of subsection (3) if all the proposed local law would do is adopt, wholly and without modification —

(a) a model local law; or

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- (b) a model local law except certain provisions that the local government determines, at the council meeting referred to in subsection (2), are not relevant to the local government and the district.
- (3B) In subsection (3A)(a) and (b), references to a model local law include an amendment of a model local law.
- (3C) If the local government determines to proceed under this subsection, the local government must —
 - (a) publish a notice on the local government’s official website stating that —
 - (i) the local government proposes to make a local law the purpose and effect of which is summarised in the notice; and
 - (ii) a copy of the proposed local law may be inspected or obtained at any place specified in the notice; and
 - (iii) submissions about the proposed local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 3 weeks after the notice is published;
 - and
 - (b) as soon as the notice is published, give a copy of the notice to —
 - (i) the Departmental CEO; and
 - (ii) if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is proposed to be made — the chief executive officer of that other department;

and

- (c) provide a copy of the proposed local law, in accordance with the notice, to any person requesting it.

- (3) In section 3.12(4) delete “submissions,” and insert:

submissions under subsection (3) or (3C) (as the case requires),

- (4) Delete section 3.12(5) and insert:

- (5) After making a local law, the local government must —

- (a) publish the local law in the *Gazette*; and
- (b) give a copy of the local law to —
 - (i) the Departmental CEO; and
 - (ii) if a department of the Public Service other than the Department assists in the administration of an Act under which the local law is made — the chief executive officer of that other department.

- (5) In section 3.12(6):

- (a) delete “local public notice —” and insert:

notice in the required way —

(b) in paragraph (b) delete “summarizing” and insert:

summarising

(6) After section 3.12(6) insert:

(6A) For the purposes of subsection (6), the **required way** for giving a notice is as follows —

- (a) if the local government proceeded under subsection (3) — by local public notice;
- (b) if the local government proceeded under subsection (3C) — by notice published on the local government’s official website.

20. Section 3.16 amended

(1) Delete section 3.16(1) and insert:

(1) Within a period of 15 years after the day on which a local law commenced or a determination in respect of the local law was last made under subsection (4), as the case requires, a local government must carry out a review of the local law to determine whether it considers that the local law should be repealed, be amended or remain unchanged.

(2) Delete section 3.16(4) and insert:

(4) After the report has been submitted to its council, the local government must determine* whether it considers

that the local law should be repealed, be amended or remain unchanged.

** Absolute majority required.*

- (5) If no determination is made under subsection (4) within the applicable 15-year period under subsection (1), the local law is repealed at the end of that period.
- (6) If a local law is repealed by subsection (5), the local government must, not later than 14 days after the end of the applicable 15-year period —
 - (a) give notice of the repeal to —
 - (i) the Departmental CEO; and
 - (ii) if a department of the Public Service other than the Department assists in the administration of an Act under which the local law was made — the chief executive officer of that other department;
 - and
 - (b) publish notice of the repeal in the *Gazette*; and
 - (c) give local public notice of the repeal.
- (7) If different provisions of a local law commenced on different days, the local law is taken, for the purposes of this section, to have commenced on the earliest of those days.
- (8) This section does not apply to a local law if all it does is amend the text of, or repeal, a local law.

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21. Section 3.25 amended

At the end of section 3.25(6) insert:

Penalty for this subsection:

- (a) a fine of \$10 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

22. Section 3.36 amended

At the end of section 3.36(5) insert:

Penalty for this subsection: a fine of \$5 000.

23. Section 3.66 amended

In section 3.66(3)(a) delete “2.32(e)” and insert:

2.32(1)(e)

24. Section 3.69 amended

Delete section 3.69(1) and insert:

- (1) Two or more local governments may, with the Minister’s approval and in accordance with the regulations, form a subsidiary body (called a *regional subsidiary*) to provide services or otherwise to carry on activities.

25. Section 3.70 amended

(1) After section 3.70(1) insert:

(1A) The respective interests, rights and duties of the local governments under the charter do not have to be equal or otherwise the same.

Examples for this subsection:

1. If the charter includes a requirement to make financial contributions to the regional subsidiary —
 - (a) the required financial contributions do not have to be the same for each local government; and
 - (b) the requirement does not have to apply to all of the local governments.
2. If the regional subsidiary is required under the charter to provide services in the local governments' districts —
 - (a) the type and scope of the services required to be provided does not have to be the same for each district; and
 - (b) the regional subsidiary does not have to be required to provide services in all of the districts.

(2) After section 3.70(3) insert:

(4) The Minister's approval under subsection (3) may be given subject to specified changes being made to the charter or amendment, in which event the charter or amendment has no effect unless the changes are made.

26. Section 3.70B inserted

After section 3.70A insert:

3.70B. Principles affecting employment by regional subsidiaries

- (1) The principles mentioned in section 5.40(a) to (f) apply to a regional subsidiary in respect of its employees as if —
 - (a) references to employees were to employees of the regional subsidiary; and
 - (b) references to a local government were to the regional subsidiary.
- (2) For the purposes of subsection (1), regulations may provide for any principle prescribed for the purposes of section 5.40(f) to apply with modifications in relation to a regional subsidiary.

27. Section 3.70C inserted

Before section 3.71 insert:

3.70C. Land transactions and trading undertakings

- (1) For the purposes of this section, the definitions of *land transaction* and *trading undertaking* in section 3.59(1) apply but as if references in those definitions to a local government were to a regional subsidiary.
- (2) Without limiting section 3.70(1) but subject to regulations made for the purposes of subsection (3), the charter of a regional subsidiary may give the regional

subsidiary power to do either or both of the following —

- (a) enter into land transactions;
 - (b) carry on trading undertakings.
- (3) Without limiting section 3.71, regulations may do any of the following —
- (a) prohibit a regional subsidiary from doing either or both of the following —
 - (i) entering into land transactions;
 - (ii) carrying on trading undertakings;
 - (b) regulate the exercise by a regional subsidiary of a power to enter into land transactions or carry on trading undertakings;
 - (c) otherwise make provision in relation to —
 - (i) a regional subsidiary's power to enter into land transactions or carry on trading undertakings; or
 - (ii) anything done, or proposed to be done, in or as a result of the exercise of such a power.
- (4) Without limiting subsection (3), regulations made for the purposes of that subsection may do any of the following —
- (a) prescribe restrictions on the purposes for which, or the circumstances in which, a regional subsidiary's power to enter into land transactions, or carry on trading undertakings, may be exercised;
 - (b) prescribe other restrictions on the exercise of such a power;

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- (c) prescribe procedures that must be followed in relation to the exercise of such a power.

28. Section 3.71 amended

- (1) In section 3.71(c) after “Act” insert:

(including the regulations)

- (2) After section 3.71(c) insert:

- (ca) make provision in relation to the selection, employment and functions of employees of a regional subsidiary; and

29. Section 3.73 amended

In section 3.73(1) delete the definition of *senior employee*.

30. Section 4.1 amended

- (1) In section 4.1 insert in alphabetical order:

postal election has the meaning given in section 4.61(1);

voting in person election has the meaning given in section 4.61(1).

- (2) In section 4.1 in the definition of *this Act* delete “Part.” and insert:

Part;

31. Sections 4.1C and 4.1D inserted

At the end of Part 4 Division 1 insert:

**4.1C. Orders mandating method of conducting election:
postal elections**

- (1) The Governor may, on the recommendation of the Minister, by order provide that, until the order is revoked, each election for a specified local government must be conducted as a postal election.
- (2) In subsection (1) —
specified means specified in the order.
- (3) An order under subsection (1) —
 - (a) applies despite section 4.61; and
 - (b) does not require an election to be conducted as a postal election if election day is on or before the 80th day after the day on which the order is published in the *Gazette*; and
 - (c) may include other exceptions to the requirement that each election must be conducted as a postal election.
- (4) In relation to an election that must be conducted as a postal election —
 - (a) the local government is taken to have made, on the 80th day referred to in section 4.20(5), a declaration under section 4.20(4) that the Electoral Commissioner is to be responsible for the conduct of the election; and
 - (b) that declaration cannot be rescinded; and
 - (c) the Electoral Commissioner must, under section 4.20(4), appoint a person to be the

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returning officer for the local government for the election accordingly.

- (5) The Minister can make a recommendation under subsection (1) in relation to a local government only if satisfied that —
- (a) for the purpose of promoting participation in voting at elections for the local government, postal elections, as opposed to voting in person elections, are the more suitable type of election; and
 - (b) because of particular circumstances relating to the local government or its district, it is appropriate to make postal elections mandatory for the local government.
- (6) Subsection (5) does not apply to a recommendation to revoke an order made under subsection (1).

Note for this subsection:

The power to make an order under subsection (1) includes power to revoke the order — see section 9.65(2).

- (7) Before making a recommendation under subsection (1), the Minister must consult the Electoral Commissioner.
- (8) The *Interpretation Act 1984* section 42 applies to an order made under subsection (1) as if the order were regulations made under this Act.

4.1D. Orders mandating method of conducting election: voting in person elections

- (1) The Governor may, on the recommendation of the Minister, by order provide that, until the order is revoked, each election for a specified local government must be conducted as a voting in person election.
- (2) In subsection (1) —
specified means specified in the order.

- (3) An order under subsection (1) —
- (a) applies despite section 4.61; and
 - (b) does not require an election to be conducted as a voting in person election if election day is on or before the 80th day after the day on which the order is published in the *Gazette*; and
 - (c) may include other exceptions to the requirement that each election must be conducted as a voting in person election.
- (4) The Minister can make a recommendation under subsection (1) in relation to a local government only if satisfied that —
- (a) for the purpose of promoting participation in voting at elections for the local government, voting in person elections, as opposed to postal elections, are the more suitable type of election; and
 - (b) because of particular circumstances relating to the local government or its district, it is appropriate to make voting in person elections mandatory for the local government.
- (5) Subsection (4) does not apply to a recommendation to revoke an order made under subsection (1).
- Note for this subsection:
- The power to make an order under subsection (1) includes power to revoke the order — see section 9.65(2).
- (6) Before making a recommendation under subsection (1), the Minister must consult the Electoral Commissioner.
- (7) The *Interpretation Act 1984* section 42 applies to an order made under subsection (1) as if the order were regulations made under this Act.

32. Section 4.31 amended

- (1) At the end of section 4.31(1E) insert:

Notes for this subsection:

1. In cases involving 1 or more bodies corporate, this subsection interacts with subsection (1G) in accordance with subsections (1GB), (1GC) and (1GD).
2. See also example 1 at the end of this section.

- (2) At the end of section 4.31(1F) insert:

Notes for this subsection:

1. In cases involving 1 or more bodies corporate, this subsection interacts with subsection (1G) in accordance with subsections (1GB), (1GC) and (1GE).
2. See also example 2 at the end of this section.

- (3) Delete section 4.31(1G) and insert:

- (1G) If a body corporate owns or occupies rateable property, the owners or occupiers are 2 people each of whom —
- (a) is an officer or employee of the body corporate; and
 - (b) is eligible under section 4.30(1)(a); and
 - (c) is nominated as an owner or occupier by the body corporate.

- (1GA) In subsection (1G)(a) —
- officer**, in relation to a body corporate, means any of the following —
- (a) a director of the body corporate or other member of its governing body;

- (b) the chief executive officer, or equivalent, of the body corporate;
- (c) the secretary, or equivalent, of the body corporate.

(1GB) Subsections (1GC) to (1GE) apply if —

- (a) rateable property is owned or occupied by 2 or more persons in conjunction with each other; and
- (b) 1 or more of those persons is a body corporate.

Note for this subsection:

See examples 1 and 2 at the end of this section.

(1GC) Subsection (1G) must be applied to the body corporate or, if there is more than 1 body corporate, to each body corporate separately (before subsection (1E) or (1F) (as the case requires) is applied to the rateable property).

Note for this subsection:

See examples 1 and 2 at the end of this section.

(1GD) In the case of ownership, for the purposes of subsection (1E), the people who own the rateable property in conjunction with each other —

- (a) do not include the body corporate or the bodies corporate; but
- (b) include any nominee of the body corporate, or of any of the bodies corporate, who is an owner of the rateable property under subsection (1G).

Note for this subsection:

See example 1 at the end of this section.

(1GE) In the case of occupation, for the purposes of subsection (1F), the people who occupy the rateable property in conjunction with each other —

- (a) do not include the body corporate or the bodies corporate; but

- (b) include any nominee of the body corporate, or of any of the bodies corporate, who is an occupier of the rateable property under subsection (1G).

Note for this subsection:

See example 2 at the end of this section.

- (4) At the end of section 4.31 insert:

Examples for this section:

1. The following is an example of the way in which subsection (1E) interacts with subsection (1G) in accordance with subsections (1GB), (1GC) and (1GD).
 - (a) Rateable property is owned by 2 persons in conjunction with each other.
 - (b) Each of the persons is a body corporate.
 - (c) Under subsection (1G), each body corporate separately nominates 2 people to be owners of the rateable property.
 - (d) Under subsection (1E), the 4 people nominated under subsection (1G) nominate 2 of their number to be owners of the rateable property.
 - (e) The 2 people nominated under subsection (1E) may make an enrolment eligibility claim under section 4.32 on the basis of ownership of the rateable property.
2. The following is an example of the way in which subsection (1F) interacts with subsection (1G) in accordance with subsections (1GB), (1GC) and (1GE).
 - (a) Rateable property is occupied by 2 persons in conjunction with each other.
 - (b) Each of the persons is a body corporate.
 - (c) Under subsection (1G), each body corporate separately nominates 2 people to be occupiers of the rateable property.
 - (d) Under subsection (1F), the 4 people nominated under subsection (1G) nominate 2 of their number to be occupiers of the rateable property.

- (e) The 2 people nominated under subsection (1F) may make an enrolment eligibility claim under section 4.32 on the basis of occupation of the rateable property.

33. Section 4.32 amended

After section 4.32(3) insert:

- (3AA) Without limiting the application of section 4.31(1G) for the purposes of this Division, if the claimant is a nominee of a body corporate under section 4.31(1G), references to the claimant in subsection (3)(a) to (d) are to be read as references to the body corporate.

Note: The heading to amended section 4.32 is to read:

How to claim eligibility to enrol under s. 4.30

34. Section 4.73A amended

In section 4.73A(1)(b) delete “2.32(f)” and insert:

2.32(1)(f)

35. Section 4.92 amended

- (1) In section 4.92:
 - (a) delete “A candidate” and insert:
 - (1) A candidate
 - (b) delete “expressly”;

- (c) delete the Penalty and insert:

Penalty for this subsection: imprisonment for
24 months and a fine of \$24 000.

- (2) At the end of section 4.92 insert:

- (2) For the purposes of the application of subsection (1) to a person authorised to act on behalf of a candidate in connection with an election, it does not matter if the person was not authorised to do the act referred to in subsection (1)(a), (b), (c) or (d).

Note: The heading to amended section 4.92 is to read:

Offences relating to postal votes

36. Section 4.96 amended

- (1) In section 4.96(3) delete “person has under Part 8, Division 1.” and insert:

officer has under Part 8B Division 6.

- (2) In section 4.96(4) delete “Section 8.11” and insert:

Section 8B.57

- (3) In section 4.96(7):

- (a) delete “Part 8 and” and insert:

Parts 8, 8A and 8B and, except as provided in those
Parts,

(b) delete “that Part.” and insert:

those Parts.

37. Section 5.3 amended

At the beginning of section 5.3 insert:

(1A) A council deliberates, and makes its decisions, at meetings held in accordance with this Act.

38. Section 5.8 replaced

Delete section 5.8 and insert:

5.8. Establishment of committees

A local government may establish* committees of 3 or more persons to assist the council.

** Absolute majority required.*

Note for this section:

A local government may delegate powers and duties to a committee under section 5.16.

39. Section 5.12 replaced

Delete section 5.12 and insert:

5.12. Presiding members and deputies

(1) The local government must appoint* a member of a committee to be the presiding member of the committee.

** Absolute majority required.*

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- (2) The local government may appoint* a member of a committee to be the deputy presiding member of the committee.

** Absolute majority required.*

40. Section 5.19 amended

- (1) In section 5.19(2) delete “Subsection (3) applies” and insert:

Subsections (3) and (3A) apply

- (2) After section 5.19(3) insert:

(3A) The office held by the council member must be disregarded for the purpose of determining the quorum for the meeting if the meeting is held at a time when the council member is suspended from office under this Act.

(3B) Subsection (3A) does not apply if the scope of the suspension is limited so that the suspension does not apply to the member’s attendance at the meeting.

- (3) In section 5.19(4) delete “subsection (3),” and insert:

subsections (3) and (3A),

41. Section 5.20 amended

In section 5.20(3):

- (a) in paragraph (b) delete “2.15; or” and insert:

2.15.

- (b) delete paragraph (c).

42. Section 5.21 amended

- (1) In section 5.21(4) delete “the person presiding must cause the following information to be” and insert:

the following information must be

- (2) At the end of section 5.21(5) insert:

Penalty for this subsection: a fine of \$10 000.

43. Section 5.22 amended

Delete section 5.22(1) and insert:

- (1) The CEO must cause minutes to be kept of the proceedings of a meeting of a council or a committee.

44. Section 5.23 replaced

Delete section 5.23 and insert:

5.23. Meetings generally open to public

- (1) The following are to be open to members of the public —
 - (a) all council meetings;
 - (b) all meetings of a committee.
- (2) Despite subsection (1), if any of the following matters is to be dealt with at a meeting, the council or committee must close the meeting to members of the public to the extent necessary to ensure that the matter is dealt with at the meeting on a confidential basis —
 - (a) a matter that a committee of a House of Parliament, or a joint committee of both Houses, has advised the local government must be dealt with on a confidential basis;
 - (b) a matter relating to the recruitment or employment of the CEO or a senior employee, including the following —
 - (i) the termination of employment;
 - (ii) a review of performance under section 5.38;
 - (c) a prescribed matter;
 - (d) a matter that is the subject of a direction given under section 5.23AA(1).
- (3) Despite subsection (1), the council or committee must close a meeting to members of the public to the extent

necessary to ensure compliance with a requirement (however formulated) —

- (a) that is imposed under a written law, excluding this Act and local laws; and
 - (b) that prohibits or restricts the making public of information.
- (4) Despite subsection (1), if any of the following information is to be dealt with at a meeting, the council or committee may close the meeting to members of the public to the extent necessary to ensure that the information is dealt with at the meeting on a confidential basis —
- (a) legal advice, or other information, over which the local government holds legal professional privilege;
 - (b) information relating to the personal affairs of an individual;
 - (c) information contained in a tender received by the local government for a contract to the extent that the information —
 - (i) is a tendered price; or
 - (ii) a tendered methodology for calculating a price;
 - (d) information contained in a tender received by the local government for a contract to the extent that —
 - (i) the information discloses any technology, or any manufacturing, industrial or trade process, that the tenderer proposes to use in performing the contract; and

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- (ii) the information has not previously been made public; and
 - (iii) the making public of the information would be likely to have an adverse effect on the tenderer's business interests;
 - (e) information the making public of which would be likely to endanger the security (including cyber-security) of any of the local government's property or operations;
 - (f) information the making public of which would be likely to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
 - (g) prescribed information;
 - (h) information that is the subject of a direction given under section 5.23AA(2).
- (5) For the purpose of deciding whether to close a meeting to members of the public under subsection (4) in relation to any information, the following matters are irrelevant —
- (a) whether making the information public would cause embarrassment to any of the following —
 - (i) the local government;
 - (ii) the council or a council member;
 - (iii) a committee of the council or a member of a committee of the council;
 - (iv) an employee;

- (b) whether making the information public would —
 - (i) cause a loss of confidence in the local government; or
 - (ii) make the local government susceptible to adverse criticism;
 - (c) whether the information relates to a matter that is controversial in the district;
 - (d) a prescribed matter.
- (6) Subsection (5) does not prevent other matters from being regarded as irrelevant.
- (7) A decision to close a meeting to members of the public under subsection (2), (3) or (4) must be made (including voted on if necessary) at the meeting and while the meeting is open to members of the public.
- (8) If a decision is made to close a meeting to members of the public under subsection (2), (3) or (4), the following must be recorded in the minutes of the meeting —
- (a) the decision;
 - (b) the subsection under which the decision is made and, if that subsection is subsection (2) or (4), the paragraph of that subsection under which the decision is made;
 - (c) if the provision recorded under paragraph (b) is subsection (2)(c) or (4)(g) — the applicable regulation (including any applicable subregulation or paragraph);
 - (d) if the provision recorded under paragraph (b) is subsection (2)(d) or (4)(h) — a statement that a direction was given under section 5.23AA(1) or (2) (as the case requires);

- (e) an explanation of how the matter or information to which the decision relates falls within the scope of the provision recorded under paragraph (b);
 - (f) a summary of the steps taken to ensure that the closure to members of the public is for no longer than required or authorised under the provision recorded under paragraph (b);
 - (g) any prescribed information.
- (9) Sections 5.95(3) and 5.96A(2) do not apply to information that is required to be recorded in the minutes of a meeting under subsection (8).

5.23AA. Powers of Inspector and Departmental CEO relating to closing of meetings

- (1) The Inspector, or a person authorised by the Inspector, may, in relation to a particular matter, direct a local government for the purposes of section 5.23(2)(d) that a meeting must be closed to members of the public to the extent necessary to ensure that the matter is dealt with at the meeting on a confidential basis.
- (2) The Departmental CEO, or a person authorised by the Departmental CEO, may, in relation to any particular information, direct a local government for the purposes of section 5.23(4)(h) that a meeting may be closed to members of the public to the extent necessary to ensure that the information is dealt with at the meeting on a confidential basis.
- (3) A direction under subsection (1) or (2) may be expressed to apply to a particular meeting or to meetings of a particular class.

- (4) If the Inspector is satisfied that a meeting, or part of a meeting, was closed to members of the public in contravention of section 5.23, the Inspector may direct the local government to do 1 or more of the following —
- (a) despite section 5.95(3), make available for inspection under section 5.94 any information to which section 5.95(3) would otherwise apply because the meeting, or part of the meeting, was closed to members of the public;
 - (b) despite section 5.96A(2), publish on the local government's official website under section 5.96A(1) any information to which section 5.96A(2) would otherwise apply because the meeting, or part of the meeting, was closed to members of the public;
 - (c) despite section 5.23A(3) and any provision of regulations made for the purposes of section 5.23A, make publicly available, in accordance with the direction, any recording, or any part of a recording, that was made of the meeting or part of the meeting.
- (5) In subsection (4)(c) —
- recording** means a video recording, or an audio recording, made under regulations made for the purposes of section 5.23A.
- (6) A local government must comply with a direction given to it under subsection (4) within the time specified in the direction.

45. Section 5.23A amended

In section 5.23A(3)(b)(ii) delete “Departmental CEO or a person authorised by the Departmental CEO.” and insert:

Inspector or a person authorised by the Inspector.

46. Section 5.37A inserted

After section 5.37 insert:

5.37A. Eligibility for employment as CEO or senior employee

- (1) In this section —
 - indictable penalty* has the meaning given in section 2.22(3);
 - offence* has the meaning given in section 2.22(3);
 - serious local government offence* has the meaning given in section 2.22(3).
- (2) A person is not eligible to commence employment in the position of CEO or as a senior employee if any of the following events has happened or is happening —
 - (a) the person has been convicted in the preceding 5-year period of a serious local government offence;
 - (b) the person has been convicted of an offence for which the indictable penalty was or included —
 - (i) imprisonment for life; or
 - (ii) imprisonment for more than 5 years;
 - (c) the person is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws;

- (d) the person is disqualified under the *Associations Incorporation Act 2015* section 39 from accepting an appointment or acting as a member of a management committee of an incorporated association without the leave of the Commissioner designated under that Act;
 - (e) the person is disqualified from managing a corporation under the *Corporations Act 2001* (Commonwealth).
- (3) A court that has sentenced a person for a serious local government offence may make an order in respect of the person —
- (a) waiving the application of subsection (2)(a); or
 - (b) reducing the period of 5 years mentioned in subsection (2)(a).
- (4) An order under subsection (3) has effect according to its terms.
- (5) Subsection (2) does not apply if the event occurs after the person commences employment as a CEO or senior employee.

Note for this section:

Section 5.39 provides for termination under a contract of employment.

47. Section 5.39 amended

After section 5.39(6) insert:

- (6A) Without limiting the events that may be specified in a contract under subsection (6), the contract may provide that it may be terminated if any of the following events

occurs after the person commences employment as a CEO or senior employee —

- (a) the person is convicted of a serious local government offence (as defined in section 2.22(3));
- (b) the person is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws;
- (c) the person is disqualified under the *Associations Incorporation Act 2015* section 39 from accepting an appointment or acting as a member of a management committee of an incorporated association without the leave of the Commissioner designated under that Act;
- (d) the person is disqualified from managing a corporation under the *Corporations Act 2001* (Commonwealth).

48. Section 5.39A amended

After section 5.39A(1) insert:

- (1A) The model standards may include separate provisions for cases involving shared CEOs under section 5.39BA.

49. Sections 5.39BA to 5.39BC inserted

After section 5.39B insert:

5.39BA. Shared CEO agreements

- (1) A local government may enter* into an agreement with 1 or more other local governments (a *shared CEO*

agreement) for the same person to be the CEO (a *shared CEO*) of each of them.

** Absolute majority required.*

- (2) A shared CEO agreement must deal with the following —
- (a) the respective roles of the local governments in relation to the following —
 - (i) the recruitment of a shared CEO;
 - (ii) the review of the performance of a shared CEO;
 - (iii) the termination of the position of a shared CEO;
 - (b) how a shared CEO is to divide their time between the local governments;
 - (c) how a shared CEO's remuneration is to be divided between the local governments;
 - (d) any prescribed matters;
 - (e) any other matters that the local governments consider appropriate.
- (3) A shared CEO agreement may be amended if each local government that is a party to the shared CEO agreement agrees* to the amendment.

** Absolute majority required.*

- (4) Before a person is chosen to be a shared CEO under a shared CEO agreement —
- (a) the position must be advertised by the local governments in the prescribed manner, using an advertisement containing the prescribed information; and

- (b) the council of each local government that is a party to the shared CEO agreement must comply with section 5.36(2) in relation to the person.
- (5) For the avoidance of doubt, subsection (4)(a) does not impose a requirement to advertise the shared CEO's position before any contract under section 5.39BB(1)(b) is renewed.

5.39BB. Employment of shared CEO

- (1) If a person is chosen to be a shared CEO under a shared CEO agreement, each local government —
 - (a) must separately employ the person as its CEO; and
 - (b) for the purposes of paragraph (a), must enter with the person into its own written contract governing the employment of the person as its CEO.
- (2) Section 5.39(2)(b), (3)(a) and (b) and (4) to (6A) apply to a contract under subsection (1)(b) as if it were a contract under section 5.39.
- (3) A contract under subsection (1)(b) is of no effect unless any matter that has been prescribed as a matter to be included in the contract has been included.
- (4) Regulations may prescribe how, or by whom, a shared CEO's remuneration is to be determined (despite the *Salaries and Allowances Act 1975* section 7A).
- (5) Without limiting subsection (4), regulations made for the purposes of that subsection may —
 - (a) provide for the Salaries and Allowances Tribunal to make a determination under the *Salaries and Allowances Act 1975* section 7A

that applies to a particular shared CEO or to shared CEOs generally; or

- (b) apply, with or without modifications, a determination otherwise made by the Tribunal under that section.
- (6) For the purposes of this Act and any other written law, a shared CEO is the CEO of each local government employing the CEO.

5.39BC. Shared senior employee agreements

- (1) A local government may enter into an agreement with 1 or more other local governments (a *shared senior employee agreement*) for the same person to be a senior employee (a *shared senior employee*) of each of them.
- (2) Regulations may make provision in relation to shared senior employee agreements or shared senior employees.
- (3) Without limiting subsection (2), regulations made for the purposes of that subsection may do the following —
 - (a) make provision that applies instead of any provision of sections 5.36 to 5.39;
 - (b) make provision that corresponds (wholly or partly) to any provision of section 5.39BA or 5.39BB.
- (4) For the purposes of this Act and any other written law, a shared senior employee is a senior employee of each local government employing the senior employee.

50. Section 5.41 replaced

Delete section 5.41 and insert:

5.41. Role of CEO

- (1) The CEO, as the local government's chief executive officer, is responsible for managing the local government's administration and operations.
- (2) The CEO's executive role includes the following —
 - (a) causing council decisions to be implemented;
 - (b) managing the provision of services and facilities that the council has determined the local government is to provide in the district;
 - (c) determining procedures and systems for —
 - (i) implementing the local government's policies as determined by the council; and
 - (ii) otherwise managing the local government's administration and operations;
 - (d) being responsible for the employment, management, supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees);
 - (e) ensuring that records and documents of the local government are properly kept for the purposes of this Act and any other written law.
- (3) The CEO is the council's principal advisor and, as such, does the following —
 - (a) advises, and procures advice for, the council in relation to the local government's affairs and

- the performance of the local government's functions;
- (b) ensures that the council has the information and advice it needs to make informed and timely decisions.
- (4) The CEO —
- (a) liaises with the mayor or president on the local government's affairs and the performance of the local government's functions; and
- (b) speaks on behalf of the local government if the mayor or president agrees.
- (5) The CEO performs any other function specified or delegated by the local government or imposed under this Act or another written law as a function to be performed by the CEO.

51. Section 5.48 amended

In section 5.48(1) in the definition of *employee* after “of” insert:

a regional subsidiary or

52. Section 5.53 amended

(1) Delete section 5.53(2)(hb) and insert:

- (hb) details of entries made under section 5.96C in the record of information about conduct; and

(2) Delete section 5.53(3)(f) and insert:

- (f) details of entries made under section 5.96C in the record of information about conduct.

53. Section 5.56AA inserted

At the end of Part 5 Division 5 insert:

5.56AA. Rates and revenue policy

- (1) A local government must prepare and adopt* a policy (a *rates and revenue policy*) setting out information about the local government's projected revenue from rates and other sources of projected revenue.

** Absolute majority required.*

- (2) The rates and revenue policy must be adopted every calendar year before 1 March.
- (3) The local government may amend* the rates and revenue policy.

** Absolute majority required.*

- (4) The regulations may prescribe information and other content that must be contained in a rates and revenue policy.
- (5) The CEO must publish an up-to-date version of the rates and revenue policy on the local government's official website.

54. Section 5.63 amended

After section 5.63(1)(c)(i) insert:

- (ia) the payment of a superannuation contribution payment under section 5.99B; or

55. Section 5.75 amended

- (1) At the end of section 5.75(1) and (2) insert:

Penalty for this subsection:

- (a) a fine of \$10 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

- (2) At the end of section 5.75 delete the Penalty.

56. Section 5.76 amended

- (1) At the end of section 5.76(1) and (2) insert:

Penalty for this subsection:

- (a) a fine of \$10 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

- (2) At the end of section 5.76 delete the Penalty.

57. Section 5.87AA inserted

At the end of Part 5 Division 6 Subdivision 2 insert:

5.87AA. Inspector must be notified of failure to lodge returns and errors and omissions in returns

- (1) The CEO must notify the Inspector if —
 - (a) a relevant person does not lodge a primary return or an annual return with the CEO in accordance with this Subdivision; or
 - (b) the CEO believes that a primary return or an annual return lodged by a relevant person with the CEO contains errors or omissions.
- (2) The mayor or president must notify the Inspector if —
 - (a) the CEO does not lodge a primary return or an annual return with the mayor or president in accordance with this Subdivision; or
 - (b) the mayor or president believes that a primary return or an annual return lodged by the CEO with the mayor or president contains errors or omissions.
- (3) A notification under subsection (1)(b) or (2)(b) must include a copy of the primary return or annual return in question.
- (4) A notification under subsection (1) or (2) must —
 - (a) be made in a form approved by the Inspector; and
 - (b) be given to the Inspector within 14 days after the day on which the CEO, or the mayor or president, as the case requires, becomes aware that the primary return or annual return has not been lodged as required or forms their belief

that the primary return or annual return contains errors or omissions.

58. Section 5.92 amended

At the end of section 5.92 insert:

- (4) This section does not give a council member or committee member the right to have access to the following information —
- (a) a contract with an employee, other than the CEO or a senior employee, entered into by the local government;
 - (b) documents relating to a contract with an employee, other than the CEO or a senior employee, proposed to be entered into by the local government;
 - (c) any employment record of an employee;
 - (d) personal information about an individual that is not relevant to a matter on which the council or committee is to make a decision;
 - (e) information the local government is prohibited or restricted from disclosing to the council member or committee member under a secrecy provision;
 - (f) information that is not relevant to the functions of the council member or committee member under this Act or another written law;
 - (g) information of a kind prescribed by the regulations.

- (5) In subsection (4) —
- personal information* means information about an individual whose identity is apparent or can reasonably be ascertained from the information;
- secrecy provision* means a provision of a written law that prohibits or regulates the handling of information.

59. Section 5.94 amended

- (1) Delete section 5.94(ab).
- (2) In section 5.94:
- (a) after paragraph (g) insert:
- (ga) any proposed local law in respect of which the local government has published a notice on its official website under section 3.12(3C);
- (b) in paragraph (j)(ii) delete “3.12(3);” and insert:
- 3.12(3); or
- (c) after paragraph (j)(ii) insert:
- (iii) would be adopted by a proposed local law in respect of which the local government has published a notice on its official website under section 3.12(3C);

60. Section 5.96B amended

- (1) In section 5.96B(2)(d) delete “2005.” and insert:

2005;

- (2) After section 5.96B(2)(d) insert:

(e) training completed by council members.

61. Section 5.96C inserted

Before section 5.97 insert:

5.96C. Record of information about conduct

- (1) The CEO must maintain a record of information about the following —
- (a) behavioural breaches by a council member that are found under the local government’s code of conduct to have occurred;
 - (b) recurrent breaches that are found under section 8A.14(4) to have been committed by a council member;
 - (c) conduct breaches by a council member that are found under section 8A.18 to have occurred;
 - (d) specified breaches that are found under section 8A.25 to have been committed by a council member;
 - (e) orders made under section 8A.14(5), 8A.18(4), 8A.21(2)(b), 8A.25 or 8A.27(2)(b) in respect of a council member;

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- (f) any other prescribed information about the conduct of a person who is, or of a person when they were, a council member, the CEO or another employee.
- (2) In subsection (1)(a) to (e), references to a council member include a former council member.
- (3) The CEO must publish an up-to-date version of the record of information on the local government's official website.
- (4) Regulations may specify any of the following —
 - (a) information that must be included in a record of information;
 - (b) information that must not be included in a record of information;
 - (c) the period for which information must be kept in a record of information;
 - (d) the period for which information included in a record of information must be kept on the local government's official website under subsection (3) (which may be shorter than the period for which the information must be kept in the record of information under paragraph (c)).

62. Section 5.98 amended

After section 5.98(6) insert:

- (6A) Neither subsection (6), nor any other provision of this Act, prevents a local government from doing the following —
 - (a) making a unanimous resolution as referred to in the *Taxation Administration Act 1953*

(Commonwealth) Schedule 1
section 12-45(1)(e);

- (b) if the local government makes such a resolution — doing anything under the *Taxation Administration Act 1953* (Commonwealth), the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth) or any other law of the Commonwealth as a result of the making of the resolution.

Note: The heading to amended section 5.98 is to read:

Fees, reimbursements and allowances for council members

63. Sections 5.99B to 5.99E inserted

After section 5.99A insert:

5.99B. Superannuation for council members: main provisions

- (1) In this section and sections 5.99C to 5.99E —
remuneration has the same meaning that it has in the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth) section 11(1)(e);
superannuation contribution payment, in relation to a council member, means —
 - (a) a payment of a prescribed type that is towards, or otherwise relates to, superannuation or retirement benefits for the council member; or
 - (b) in the absence of regulations made for the purposes of paragraph (a) — a payment that is a contribution to an account that —
 - (i) is nominated by the council member to the local government; and

- (ii) is for superannuation or retirement benefits from a scheme or fund to which the *Superannuation Guarantee (Administration) Act 1992* (Commonwealth) applies.
- (2) A local government may decide* to pay superannuation contribution payments for its council members under this section.

** Absolute majority required.*
- (3) A local government may revoke* a decision made by it under subsection (2).

** Absolute majority required.*
- (4) Regulations may require a local government, for which no decision under subsection (2) is in effect, to pay superannuation contribution payments for its council members under this section.
- (5) Regulations may make provision for determining —
 - (a) when a superannuation contribution payment for a council member is payable; and
 - (b) the amount of a superannuation contribution payment for a council member.
- (6) Subsections (7) and (8) apply in the absence of regulations made for the purposes of subsection (5).
- (7) A superannuation contribution payment for a council member is payable with, and at the same time as, any remuneration of the council member paid by the local government.
- (8) The amount of the superannuation contribution payment is the amount that the local government would have been required to contribute under the

Superannuation Guarantee (Administration) Act 1992
(Commonwealth) as superannuation if —

- (a) the council member were an employee of the local government for the purposes of that Act; and
 - (b) the remuneration were salary or wages of the council member for the purposes of that Act.
- (9) This section is subject to sections 5.99C and 5.99D.

5.99C. Superannuation for council members: opt outs

- (1) This section applies to a local government —
 - (a) for which a decision under section 5.99B(2) is in effect; or
 - (b) to which a requirement under regulations made for the purposes of section 5.99B(4) applies.
- (2) A council member may, by written notice to the CEO (an *opt-out notice*), opt out of superannuation contribution payments.
- (3) An opt-out notice remains in effect unless, and until, the council member, by written notice to the CEO, revokes the opt-out notice.
- (4) If an opt-out notice is in effect, the local government cannot pay a superannuation contribution payment for the council member under section 5.99B.

Note for this subsection:

If an opt-out notice is revoked, the local government cannot pay a superannuation contribution payment for the council member that the local government could not previously pay because of this subsection.

5.99D. Superannuation for council members: other exceptions

- (1) This section applies to a local government —
 - (a) for which a decision under section 5.99B(2) is in effect; or
 - (b) to which a requirement under regulations made for the purposes of section 5.99B(4) applies.
- (2) A local government cannot pay a superannuation contribution payment for a council member under section 5.99B at any time when the *Taxation Administration Act 1953* (Commonwealth) Schedule 1 section 12-45(1)(e) applies in relation to the local government.
- (3) Subsection (4) applies in the absence of regulations made for the purposes of paragraph (a) of the definition of *superannuation contribution payment* in section 5.99B(1).
- (4) A local government cannot pay a superannuation contribution payment for a council member under section 5.99B if the council member has not, before the time at which the superannuation contribution payment must be paid, nominated an account to the local government as referred to in paragraph (b) of the definition of *superannuation contribution payment* in section 5.99B(1).
- (5) Regulations may prescribe circumstances in which a local government —
 - (a) cannot pay a superannuation contribution payment for a council member under section 5.99B; or
 - (b) can pay only a portion of the amount of each superannuation contribution payment for a council member under section 5.99B.

- (6) Regulations may make provision for determining the portion referred to in subsection (5)(b).

Note for this section:

A superannuation contribution payment, or a portion of a superannuation contribution payment, that a local government cannot pay for a council member under subsection (2) or (4), or under a provision of regulations made for the purposes of subsection (5), cannot be paid by the local government after the subsection or provision of regulations has ceased to apply. For example, if a local government cannot pay a superannuation contribution payment for a council member under subsection (2), the local government cannot pay the superannuation contribution payment after the *Taxation Administration Act 1953* (Commonwealth) Schedule 1 section 12-45(1)(e) ceases to apply in relation to the local government.

**5.99E. Superannuation for council members:
supplementary provisions**

- (1) For the purposes of subsection (2), this subsection applies to a case in which —
- (a) section 5.102AB, 8.29(5)(b) or 8.30B(4)(b) applies in relation to an annual allowance or annual fee paid in advance to a person (the *relevant person*); and
 - (b) the local government paid a superannuation contribution payment for the relevant person under section 5.99B wholly or partly by reference to, or otherwise in connection with, the annual allowance or annual fee.
- (2) Regulations may, in respect of a case to which subsection (1) applies, make provision —
- (a) requiring the relevant person to pay the local government an amount (the *returnable amount*) that is equal to a percentage of the amount of the superannuation contribution payment; and

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- (b) for determining that percentage (which may be 100%); and
 - (c) for the local government to recover the returnable amount if it is not paid.
- (3) In making a determination under the *Salaries and Allowances Act 1975* section 7B, the Salaries and Allowances Tribunal must not take into account either of the following —
 - (a) the payment of superannuation contribution payments by a local government under section 5.99B;
 - (b) a local government’s power to decide to pay, or its duty to pay, superannuation contribution payments under section 5.99B.
- (4) Nothing in section 5.99B, 5.99C or 5.99D or this section, or that is done under section 5.99B, 5.99C or 5.99D or this section, makes a council member an employee of the local government.
- (5) A superannuation contribution payment paid by a local government under section 5.99B is not salary for the purposes of any written law.

64. Section 5.99E amended

- (1) In section 5.99E(1)(a) delete “8.29(5)(b) or 8.30B(4)(b)” and insert:

8.29(5)(b), 8.30B(4)(b) or 8A.25(4)(b)

- (2) In section 5.99E(1)(a) delete “applies” and insert:

applies, or regulations made for the purposes of
section 5.126(3)(b) apply,

65. Part 5 Division 8A inserted

After Part 5 Division 8 insert:

Division 8A — Official titles

5.102AD. Use of official titles

- (1) A person who is a mayor or president, a deputy mayor or president or a councillor must observe the principle that they should not use that title except when acting in their capacity as mayor or president, as deputy mayor or president or as councillor.
- (2) Without limiting section 5.103(2), the model code of conduct under section 5.103 may include provisions to give effect to the principle referred to in subsection (1).

66. Part 5 Division 9 heading amended

In the heading to Part 5 Division 9 delete “**Conduct**” and insert:

Code of conduct

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67. Section 5.102A amended

- (1) In section 5.102A delete the definitions of:
- breach*
 - complaints officer*
 - minor breach*
 - party*
 - primary standards panel*
 - recurrent breach*
 - serious breach*
 - standards panel*
- (2) In section 5.102A in the definition of *rule of conduct* delete “conduct;” and insert:
- conduct.

68. Section 5.103 amended

- (1) After section 5.103(3) insert:
- (3A) Without limiting subsection (3), the provisions of the model code of conduct may —
- (a) provide for the Inspector to appoint a monitor for a local government to assist the local government to deal with matters raised by a complaint of a behavioural breach; and
 - (b) confer other functions on the Inspector in relation to a complaint of a behavioural breach.

- (2) In section 5.103(4) delete “minor breach under section 5.105(1)(a), also be a serious breach under section 5.105(3).” and insert:

conduct breach, also be a specified breach.

69. Section 5.105 replaced

Delete section 5.105 and insert:

5.105. Dealing with complaint alleging behavioural breach

- (1) A complaint made by a person (the *complainant*) to a local government alleging a behavioural breach under the local government’s code of conduct by a person (the *respondent*) must be dealt with under the code of conduct unless —
- (a) regulations made for the purposes of subsection (3) require the complaint to be referred to the Inspector; and
 - (b) the Inspector refers the complaint to be dealt with under Part 8A Division 5.
- (2) A complaint under subsection (1) cannot allege a behavioural breach by a commissioner.
- (3) Regulations may set out circumstances in which a complaint made to a local government alleging a behavioural breach under the local government’s code of conduct must be referred by the local government to the Inspector to be dealt with under section 8A.12(1).
- (4) Neither the complainant nor the respondent may —
- (a) preside at any part of a council or committee meeting relating to the complaint; or

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- (b) participate in, or be present during, any discussion or decision-making procedure of a council or committee relating to the complaint.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

- (5) Subsection (4) does not restrict the right of the complainant and the respondent to be given a reasonable opportunity to be heard and to present evidence.

Note for this section:

Section 8A.36 imposes confidentiality requirements in relation to complaints.

70. Section 5.106 amended

In section 5.106 delete “a breach” and insert:

a behavioural breach

Note: The heading to amended section 5.106 is to read:

Deciding whether behavioural breach occurred

71. Sections 5.107 to 5.125 deleted

Delete sections 5.107 to 5.125.

72. Section 5.126 amended

- (1) After section 5.126(2)(c) insert:

- (ca) provide for a council member to be required to provide, in accordance with the regulations, the CEO with a declaration in respect of the council member’s compliance with subsection (1); and

- (2) In section 5.126(2)(d) delete “\$5 000” and insert:

\$10 000

- (3) After section 5.126(2) insert:

- (3) Regulations may provide as follows, despite Division 8, in relation to a council member who contravenes subsection (1) or does not provide the CEO with a declaration in accordance with regulations made for the purposes of subsection (2)(ca) —
- (a) for the council member to lose, to the extent determined in accordance with the regulations, their entitlements to fees, reimbursement of expenses and allowances under Division 8;
 - (b) if the local government has paid an annual allowance or annual fee under Division 8 to the council member in advance —
 - (i) for the council member to be required to repay to the local government, to the extent determined in accordance with the regulations, the advance payment; and
 - (ii) for the local government to recover any amount repayable if it is not repaid.
- (4) Without limiting section 9.61(b), regulations made for the purposes of subsection (2)(ca) may do the following —
- (a) provide that a council member commits an offence if the council member provides the

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CEO with a declaration that contains information that the council member knows —

- (i) is false or misleading in a material particular; or
 - (ii) is likely to deceive in a material way;
- (b) prescribe a fine not exceeding \$10 000 for the offence.

73. Section 5.127 deleted

Delete section 5.127.

74. Part 5 Division 11 inserted

At the end of Part 5 insert:

Division 11 — Restricting communication about complaints

5.130. CEO may restrict communication about complaints

- (1) In this section —
complaint includes a communication in the nature of a complaint, and a part of a complaint, but does not include a complaint mentioned in section 5.105.
- (2) This section applies if a person (the *complainant*) makes a complaint (the *complaint*) to a local government and —
 - (a) the CEO is satisfied —
 - (i) that the local government has previously responded to the complainant regarding the subject matter of the complaint; and

- (ii) that to respond to the complaint would divert an unreasonable portion of the local government's resources away from its other operations;
- or
- (b) the CEO is satisfied —
 - (i) that the current complaint is vexatious, misconceived, frivolous or without substance; and
 - (ii) that to respond to the current complaint would divert an unreasonable portion of the local government's resources away from its other operations.
- (3) The CEO may decide that the local government will not communicate or otherwise deal with the complainant with respect to —
 - (a) the subject matter of the current complaint; or
 - (b) a category of subject matter into which the subject matter of the current complaint falls.
- (4) If the CEO makes a decision under subsection (3), the CEO must give the complainant a notice in a form approved by the Inspector setting out —
 - (a) the decision; and
 - (b) the subject matter or category of subject matter to which the decision applies under subsection (3)(a) or (b); and
 - (c) the period during which the decision will apply.
- (5) Regulations may —
 - (a) prescribe other matters that must be included in the notice; and
 - (b) prescribe the maximum period during which a decision under subsection (3) can apply.

- (6) Nothing in this section applies to a council member or a committee member or restricts a person from —
 - (a) attending a council meeting or raising a question at a council meeting in accordance with this Act; or
 - (b) participating in an election (as defined in section 4.1); or
 - (c) inspecting information referred to in section 5.94 in accordance with that section; or
 - (d) taking any other action prescribed by the regulations.

5.131. Guidelines for restricting communication

- (1) The Minister may issue guidelines under section 9.69AA in relation to the making of a decision under section 5.130(3).
- (2) Without limiting subsection (1), the guidelines may include provision for the circumstances in which the CEO may decide not to continue to communicate concerning the subject matter or category of subject matter in a complaint.
- (3) The guidelines are intended to —
 - (a) assist the CEO in the making of a decision under section 5.130(3); and
 - (b) provide information to any person or body that might be affected by section 5.130.
- (4) In making a decision under section 5.130(3) the CEO must take into account the guidelines that relate to the making of the decision.
- (5) Nothing in subsection (4) —
 - (a) derogates from the CEO's duty to exercise the CEO's discretion in a particular case; or

- (b) precludes the CEO from taking into account matters not set out in guidelines; or
- (c) requires the CEO to take into account guidelines that are inconsistent with a provision of this Act.

5.132. Inspector may direct CEO to revoke decision

- (1) The Inspector may direct the CEO to revoke a decision made under section 5.130(3) if, on a complaint made under Part 8A Division 7, a finding is made that the CEO —
 - (a) breached a requirement of this Act in relation to the decision; or
 - (b) made a decision that does not take into account the guidelines mentioned in section 5.131.
- (2) A direction under subsection (1) must —
 - (a) be in writing; and
 - (b) specify the time within which the CEO must comply with the direction.
- (3) The CEO must —
 - (a) comply with the direction within the time specified; and
 - (b) notify the person to whom notice of the decision was given under section 5.130(4) that the decision is revoked.

5.133. Other laws concerning access to information not affected

Nothing in this Division affects the operation of any other written law concerning access to information.

75. Section 6.14A inserted

At the end of Part 6 Division 4 insert:

6.14A. Prohibitions on certain payments connected with legal matters

(1) In this section —

council member includes a former council member;

insurance policy includes any contract of insurance;

legal matter —

(a) means any of the following —

(i) a complaint, an investigation or proceedings under Part 8A;

(ii) proceedings before the State Administrative Tribunal or any other tribunal;

(iii) criminal proceedings, including an infringement notice under Part 9 or any similar type of notice under another written law;

(iv) a criminal investigation;

(v) any other type of statutory investigation or proceedings;

but

(b) does not include any of the following —

(i) an inquiry under Part 8;

(ii) civil proceedings before a court (but subject to subsection (4));

(iii) a prescribed investigation, proceedings or other matter;

liability includes the following —

- (a) a cost or expense incurred for, or in respect of, legal advice, representation or other services;
 - (b) any other type of cost or expense;
 - (c) a fine or modified penalty in respect of an offence.
- (2) Regulations may provide for prohibitions on a local government (directly or indirectly) —
 - (a) paying (wholly or partly) a liability incurred by a council member that arises from, or is otherwise connected with, a legal matter or potential legal matter; or
 - (b) paying (wholly or partly) a premium in respect of an insurance policy that would or might indemnify (wholly or partly) a council member against a liability of the kind referred to in paragraph (a); or
 - (c) providing, or procuring the provision of, legal advice, representation or other services to or for a council member in respect of a legal matter or potential legal matter.
- (3) For the purposes of subsection (2)(a) and (b), references to paying a liability or premium include the following —
 - (a) reimbursing for the payment of the liability or premium;
 - (b) otherwise funding, or meeting the cost of, the payment of the liability or premium.
- (4) Despite paragraph (b)(ii) of the definition of *legal matter* in subsection (1), regulations made for the purposes of subsection (2)(a) or (b) may apply in relation to a liability for exemplary or punitive damages that are awarded in civil proceedings before a

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court as if civil proceedings before a court were a legal matter.

- (5) Regulations made for the purposes of subsection (2)(c) may provide (without limitation) that a local government is taken to provide, or to procure the provision of, legal advice, representation or other services if an employee of the local government does so with or without the local government's authority.
- (6) This section does not limit section 5.98(6).

Note for this section:

A council member has certain protections from liability under section 9.56.

76. Section 6.19A inserted

At the beginning of Part 6 Division 5 Subdivision 3 insert:

6.19A. Term used: general funds

In this Subdivision —

general funds, in relation to a local government, means the local government's revenue or income from —

- (a) general rates; and
- (b) Government grants which were not given to the local government for a specific purpose; and
- (c) such other sources as are prescribed.

77. Section 6.21 amended

- (1) In section 6.21(1):
 - (a) delete “only —” and insert:

only as follows —
 - (b) in paragraph (a) delete “government; or” and insert:

government;
 - (c) in paragraph (b) delete “purpose; or” and insert:

purpose;
 - (d) delete paragraph (c) and insert:
 - (c) to the extent agreed by a participant, by the participant giving security over either or both of the following —
 - (i) the participant’s general funds;
 - (ii) land in which the participant holds an estate of freehold.
- (2) Delete section 6.21(1a) and (2) and insert:
 - (1A) Despite subsection (1)(a), security cannot be given over the financial contributions of a particular participant if the participant is not a party to the activity or transaction for which the money is to be borrowed by, the credit is to be obtained for, or the financial accommodation is to be extended to, the regional local government.

- (1B) Despite subsection (1)(c), security cannot be given over the general funds or land of a particular participant if the participant is not a party to the activity or transaction for which the money is to be borrowed by, the credit is to be obtained for, or the financial accommodation is to be extended to, the regional local government.
- (2) If, under section 6.20(1), a local government (other than a regional local government) borrows money, obtains credit or arranges for financial accommodation to be extended to the local government, that money, credit or financial accommodation is to be secured only by giving security over either or both of the following —
 - (a) the local government's general funds;
 - (b) land in which the local government holds an estate of freehold.
- (3) Delete section 6.21(4).

78. Sections 6.21A and 6.21B inserted

After section 6.21 insert:

6.21A. Regional subsidiaries may be given power to borrow

- (1) Without limiting section 3.70(1) but subject to regulations made for the purposes of subsection (2), the charter of a regional subsidiary may give the regional subsidiary power to do 1 or more of the following for the purpose of enabling the regional subsidiary to provide services, or otherwise to carry on activities, specified in the charter —
 - (a) borrow or re-borrow money;

- (b) obtain credit;
 - (c) otherwise arrange for financial accommodation to be extended to the regional subsidiary.
- (2) Without limiting section 3.71, regulations may do any of the following —
- (a) prohibit a regional subsidiary from doing 1 or more of the following —
 - (i) borrowing or re-borrowing money;
 - (ii) obtaining credit;
 - (iii) otherwise arranging for financial accommodation to be extended to the regional subsidiary;
 - (b) regulate the exercise by a regional subsidiary of any of the following powers —
 - (i) a power to borrow or re-borrow money;
 - (ii) a power to obtain credit;
 - (iii) a power otherwise to arrange for financial accommodation to be extended to the regional subsidiary;
 - (c) otherwise make provision in relation to —
 - (i) a power of a regional subsidiary referred to in paragraph (b); or
 - (ii) anything done, or proposed to be done, in or as a result of the exercise of such a power.
- (3) Without limiting subsection (2), regulations made for the purposes of that subsection may do any of the following —
- (a) prescribe monetary limits on any of the following —
 - (i) amounts that a regional subsidiary may borrow or re-borrow;

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- (ii) the credit that a regional subsidiary may obtain;
 - (iii) amounts for which other types of financial accommodation may be arranged by a regional subsidiary;
 - (b) prescribe restrictions on the purposes for which, or the circumstances in which, a power of a regional subsidiary referred to in subsection (2)(b) may be exercised;
 - (c) prescribe other restrictions on the exercise of a power of a regional subsidiary referred to in subsection (2)(b);
 - (d) prescribe procedures that must be followed in relation to the exercise of a power of a regional subsidiary referred to in subsection (2)(b);
 - (e) prohibit, or provide for or regulate any matter relating to, the provision of security or guarantees for amounts that are owed, or that might be owed, by a regional subsidiary as a result of the exercise of a power of the regional subsidiary referred to in subsection (2)(b).
- (4) The Treasurer, or a person authorised for that purpose by the Treasurer, may give a direction in writing to a regional subsidiary with respect to the exercise of a power referred to in subsection (2)(b) either generally or in relation to a particular proposed borrowing.
- (5) If there is any conflict or inconsistency between a direction under subsection (4) and a provision of this Act (including the regulations), the provision prevails to the extent of the conflict or inconsistency.
- (6) Except as provided in subsection (5), a regional subsidiary must give effect to a direction under subsection (4).

6.21B. Restrictions on security for borrowing by regional subsidiary

(1) In this section —

local government participants means the local governments that form a regional subsidiary.

(2) If a regional subsidiary borrows money, obtains credit or otherwise arranges for financial accommodation to be extended to the regional subsidiary, that money, credit or financial accommodation is to be secured only as follows (subject to any regulations made for the purposes of section 6.21A(3)(e)) —

- (a) by the regional subsidiary giving security over the financial contributions of the local government participants to the regional subsidiary's funds as set out or provided for in the regional subsidiary's charter;
- (b) by the regional subsidiary giving security over Government grants that were not given to the regional subsidiary for a specific purpose;
- (c) by the regional subsidiary giving security over land in which the regional subsidiary holds an estate of freehold;
- (d) to the extent agreed to by a local government participant, by the local government participant giving security over either or both of the following —
 - (i) the local government participant's general funds;
 - (ii) land in which the local government participant holds an estate of freehold.

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79. Section 6.22 amended

- (1) In section 6.22(1):
 - (a) after “local government” insert:

or regional subsidiary
 - (b) delete “security.” and insert:

security that is not a security over land.
- (2) In section 6.22(2) delete “local government.” and insert:

local government or regional subsidiary.
- (3) In section 6.22(3) delete “so appointed” and insert:

appointed under this section
- (4) In section 6.22(4) after “receiver” insert:

appointed under this section
- (5) In section 6.22(5) after “receiver” (1st and 3rd occurrences) insert:

appointed under this section

(6) After section 6.22(5) insert:

(6) In sections 6.23 and 6.24, references to a *receiver* are to a receiver appointed under this section.

80. Section 6.23 amended

(1) In section 6.23(1) delete “A” and insert:

In relation to a local government other than a regional local government, a

(2) In section 6.23(3)(c) delete “either”.

(3) In section 6.23(4):

(a) in paragraph (a) before “participants” insert:

local government

(b) delete paragraph (c) and insert:

(c) the general funds of a local government participant to the extent that those funds secure money borrowed by, credit obtained for, or financial accommodation extended to, the regional subsidiary.

81. Section 6.24 amended

In section 6.24 delete “local government.” and insert:

local government or regional subsidiary.

82. Section 6.24A inserted

At the end of Part 6 Division 5 Subdivision 3 insert:

6.24A. Default on principal money or interest secured by land

- (1) Regulations may regulate, or otherwise make provision in relation to, cases in which a local government or regional subsidiary defaults in the payment of any principal money or interest secured by a security over land.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may do the following —
 - (a) provide for the enforcement of securities, including the following —
 - (i) the appointment of receivers;
 - (ii) the functions of receivers;
 - (iii) other procedures for the enforcement of securities;
 - (b) otherwise prescribe or limit the rights of security holders.

83. Section 6.26 amended

After section 6.26(2)(c) insert:

- (ca) land in a district while it is owned by a regional subsidiary and is used for the purposes of that regional subsidiary other than for the purposes of a trading undertaking (as that term is defined

in and for the purpose of section 3.70C) of the regional subsidiary; and

84. Section 6.61 amended

At the end of section 6.61(2) insert:

Penalty for this subsection: a fine of \$5 000.

85. Part 6 Division 7 inserted

At the end of Part 6 insert:

Division 7 — Financing of environmental or heritage upgrade works

6.83. Terms used

In this Division —

cultural heritage significance has the meaning given in the *Heritage Act 2018* section 5;

environmental upgrade works means works in respect of a building —

- (a) that, in the opinion of the local government concerned, will improve the energy, water or environmental efficiency or sustainability of the building; or
- (b) that are works of a class prescribed as environmental upgrade works;

finance provider has the meaning given in section 6.84(1)(b);

heritage upgrade works means works in respect of a building —

- (a) that, in the opinion of the local government concerned, will contribute to the conservation (as defined in the *Heritage Act 2018* section 4) of the building as a place of cultural heritage significance; or
- (b) that are works of a class prescribed as heritage upgrade works;

upgrade charge has the meaning given in section 6.84(1)(c);

upgrade finance agreement has the meaning given in section 6.84(1);

upgrade works means environmental upgrade works or heritage upgrade works.

6.84. Upgrade finance agreements

- (1) Regulations may authorise a local government to enter into an agreement (an ***upgrade finance agreement***) under which —
 - (a) an owner of land agrees to carry out upgrade works in respect of a building on the land; and
 - (b) a person (the ***finance provider***) agrees to advance funds to the owner to finance the upgrade works; and
 - (c) the local government agrees to impose a charge (an ***upgrade charge***) on the owner for the purpose of repaying (wholly or partly) the advance to the finance provider.
- (2) Regulations may make provision in relation to upgrade finance agreements.

- (3) Without limiting subsection (2), regulations made for the purposes of that subsection may do any of the following —
- (a) make provision in relation to the form or content of an upgrade finance agreement;
 - (b) make provision in relation to the variation or termination of an upgrade finance agreement;
 - (c) make provision in relation to insurance required to be taken out and maintained by the owner of land in relation to an upgrade finance agreement;
 - (d) authorise a local government to charge a fee to cover costs incurred by the local government —
 - (i) in entering into, performing or administering an upgrade finance agreement; or
 - (ii) otherwise in respect of an upgrade finance agreement;
 - (e) restrict the buildings or works in respect of which, or otherwise the circumstances in which, a local government can enter into an upgrade finance agreement;
 - (f) allow for a person to be a party to an upgrade finance agreement in addition to the parties referred to in subsection (1)(a) to (c).

6.85. Upgrade charges

- (1) Regulations may make provision in relation to upgrade charges.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may do any of the following —
 - (a) prescribe monetary limits on upgrade charges;

- (b) prescribe methods for calculating upgrade charges;
 - (c) make provision in relation to the date or dates on which an upgrade charge may be imposed;
 - (d) make provision in relation to the date or dates by which an upgrade charge must be paid;
 - (e) make provision in relation to the adjustment of an upgrade charge if it is not paid on time;
 - (f) make provision for a local government to pay the finance provider amounts received by the local government by way of an upgrade charge;
 - (g) authorise a local government to deduct, from amounts received by the local government by way of an upgrade charge, amounts to meet any fee charged by the local government as referred to in section 6.84(3)(d);
 - (h) require amounts received by a local government by way of an upgrade charge to be held in trust by the local government, and credited to its trust fund, pending the payment of the amounts to the finance provider;
 - (i) provide for any provision of this Part to apply (with or without modifications) to an upgrade charge as if it were a service charge;
 - (j) make, in relation to an upgrade charge, provision that corresponds (wholly or partly) to a provision of this Part that applies to a service charge.
- (3) A local government must use its best endeavours to recover an upgrade charge in accordance with any requirements imposed on the local government by the upgrade finance agreement.

- (4) However, a local government is not liable for any failure by a person to pay an upgrade charge or part of an upgrade charge.
- (5) Accordingly, any such failure does not make the local government liable to pay any outstanding amount to the finance provider.

6.86 Strata title schemes and community titles schemes

- (1) In this section —
community titles scheme has the meaning given in the *Community Titles Act 2018* section 3(1);
strata titles scheme has the meaning given in the *Strata Titles Act 1985* section 3(1).
- (2) In relation to land that is subject to a strata titles scheme or community titles scheme, regulations may —
 - (a) prescribe the person or persons who are taken to be the owner of the land for the purposes of section 6.84(1)(a) or (c) or any other provision of this Division; and
 - (b) make other provision for purposes connected with upgrade works, upgrade finance agreements or upgrade charges.
- (3) Regulations made for the purposes of subsection (2) may be expressed to apply despite any provision of the *Community Titles Act 2018* or the *Strata Titles Act 1985*.

6.87. Reporting

Regulations may require a local government to report, publicly or otherwise and in accordance with regulations, on either or both of the following —

- (a) any upgrade finance agreement into which it enters;
- (b) any other prescribed matters relating to this Division.

86. Section 7.1 amended

- (1) In section 7.1 delete the definition of *audit committee*.
- (2) In section 7.1 insert in alphabetical order:

audit, risk and improvement committee means an audit, risk and improvement committee established under section 7.1A, subject to section 7.1CB;

87. Part 7 Division 1A replaced

Delete Part 7 Division 1A and insert:

Division 1A — Audit, risk and improvement committee

7.1A. Establishment of audit, risk and improvement committee

- (1) A local government must establish a committee of its council under section 5.8 to be called the audit, risk and improvement committee.

- (2) The following provisions apply in respect of the membership of the audit, risk and improvement committee —
 - (a) an employee of the local government is not to be a member;
 - (b) no member is to be nominated by, or is to be appointed to represent, any employee of the local government;
 - (c) section 5.10(1)(b) does not apply.
- (3) The presiding member of the audit, risk and improvement committee cannot be a council member of the local government or of any other local government.
- (4) Any deputy presiding member of the audit, risk and improvement committee cannot be a council member of the local government or of any other local government.

7.1B. Deputy of presiding member or of deputy presiding member

- (1) The local government must appoint a person under section 5.11A to be a deputy of the presiding member of the audit, risk and improvement committee.
- (2) In addition to the requirement of section 5.11A(2)(c), the deputy of the presiding member cannot be a council member of any other local government.
- (3) If section 5.14 applies to a meeting of the audit, risk and improvement committee, the committee members present at the meeting must choose the deputy of the presiding member, if present, to preside at the meeting.

- (4) If the local government appoints a person under section 5.11A to be a deputy of the deputy presiding member of the audit, risk and improvement committee, in addition to the requirement of section 5.11A(2)(c), the appointed deputy cannot be a council member of any other local government.

7.1C. Delegation to audit, risk and improvement committee

- (1) The only powers and duties that the local government may delegate to the audit, risk and improvement committee under section 5.16 are as follows —
 - (a) any of its powers and duties under this Part;
 - (b) any prescribed power or duty.
- (2) The provision that may be made by regulations for the purposes of subsection (1)(b) is not limited by the other subject matter of this Part.
- (3) The local government's power to delegate to the audit, risk and improvement committee is not limited by section 5.17.

7.1CA. Decisions of audit, risk and improvement committee

Despite section 5.20, a decision of the audit, risk and improvement committee is to be made by a simple majority.

7.1CB. Two or more local governments may have shared audit, risk and improvement committee

- (1) Two or more local governments may agree to establish a single committee to be the audit, risk and improvement committee of each of their councils (a *shared committee*).

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- (2) The following provisions apply to the establishment of a shared committee —
- (a) each member, including the presiding member or any deputy presiding member, must be appointed by the local governments in accordance with their agreement;
 - (b) each local government must approve* each member's appointment;
 - (c) each local government must approve* the appointment of the presiding member and of any deputy presiding member;
 - (d) there must be at least 3 members;
 - (e) no employee of any of the local governments is to be a member;
 - (f) no member is to be nominated by, or is to be appointed to represent, any employee of any of the local governments;
 - (g) neither the presiding member nor any deputy presiding member can be a council member of any of the local governments or of any other local government.

** Absolute majority required.*

- (3) In sections 5.98(1) and 5.99, references to a committee meeting include a meeting of a shared committee.
- (4) Section 5.100 applies to a member of a shared committee, except a member who is a council member of any of the local governments.
- (5) For the purposes of subsection (4), the local governments' agreement must —
 - (a) provide for the payment of fees, and for the reimbursement of expenses, under section 5.100 to be split between the local

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- governments in accordance with the agreement;
and
 - (b) provide for any discretion of a local government under section 5.100 to be exercised by the local governments in accordance with the agreement.
- (6) Regulations may make provision in relation to shared committees, including local governments' agreements to establish them.
- (7) Without limiting subsection (6), regulations made for the purposes of that subsection may do the following —
- (a) provide for this Division, Part 5 Division 2 Subdivision 2 or any other provision of this Act that applies in relation to committees of a council to apply in relation to shared committees with or without modifications;
 - (b) make provision in relation to the matters that must be included in an agreement under subsection (5).

88. Section 7.3 amended

In section 7.3(1) delete “audit” and insert:

audit, risk and improvement

89. Section 7.4 amended

In section 7.4(1) delete “may” and insert:

must

90. Section 7.13 amended

- (1) In section 7.13(1):
 - (a) in paragraph (ab) delete “audit committee,” and insert:

audit, risk and improvement committee,
 - (b) in paragraph (ab)(v) delete “law;” and insert:

law; and
 - (c) after paragraph (ab)(v) insert:
 - (vi) any other matters;
- (2) In section 7.13(1)(i) delete “Minister,” and insert:

Inspector,
- (3) After section 7.13(1) insert:
 - (1A) The provision that may be made by regulations for the purposes of subsection (1)(ab) is not limited by the other subject matter of this Part.
- (4) Delete section 7.13(2).

91. Part 8 Division 1 replaced

Delete Part 8 Division 1 and insert:

Division 1 — Inquiry by Inspector

8.1. Terms used

In this Division —

inquiry means an inquiry under section 8.2(1) or (2);

Inspector's report means a report prepared under section 8.4.

8.2. Inquiry by Inspector

- (1) The Inspector may, on the Inspector's own initiative, conduct an inquiry into a local government and its operations and affairs.
- (2) The Minister may direct the Inspector to conduct an inquiry into a local government and its operations and affairs and, if so directed, the Inspector must conduct the inquiry accordingly.
- (3) A direction under subsection (2) may be a direction to conduct a general inquiry or an inquiry into a specific matter.
- (4) Even though the Inspector is directed by the Minister to conduct an inquiry into a specific matter, the Inspector may inquire into any other matter that comes to the Inspector's attention during the inquiry if the Inspector considers it necessary or expedient to inquire into that matter.

- (5) The Inspector must —
 - (a) advise the Minister and the local government concerned if and when an inquiry is commenced under subsection (1); and
 - (b) advise the local government concerned if the Inspector is directed by the Minister to conduct an inquiry under subsection (2).
- (6) If the Electoral Commissioner is responsible for the conduct of an election (as defined in section 4.1) —
 - (a) the validity of the election cannot be the subject of an inquiry; and
 - (b) the Inspector must obtain the written agreement of the Electoral Commissioner before any other aspect of the election becomes the subject of an inquiry.
- (7) Nothing in this section limits the authority of the Inspector, or another authorised officer, to exercise the powers conferred under Parts 8A and 8B to conduct an investigation into a local government and its operations and affairs, whether in response to a complaint or on the Inspector’s own initiative.

8.3 Delegation by Inspector

- (1) The Inspector may delegate the power to conduct and report on an inquiry to an inspectorate officer, another public service officer or an employee as defined in the *Public Sector Management Act 1994* section 3(1).
- (2) A delegation under subsection (1) may include a delegation of any power of the Inspector under Part 8B Division 6 for the purpose of conducting the inquiry or preparing the report on the outcome of the inquiry.

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- (3) The Inspector cannot delegate the power to conduct and report on an inquiry to a monitor.
- (4) A delegation under subsection (1) must be in writing signed by the Inspector.
- (5) A person to whom a power is delegated under subsection (1) cannot delegate that power.
- (6) A person exercising or performing a power that has been delegated to the person under subsection (1) is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) This section does not limit the power of the Inspector to perform a function through an officer or agent.

8.4. Report on inquiry

- (1) The Inspector must —
 - (a) prepare a report on the outcome of an inquiry conducted by the Inspector; and
 - (b) give a copy of the report to the Minister.
- (2) The Inspector's report —
 - (a) must include —
 - (i) a summary of the powers that were exercised; and
 - (ii) the relevant findings of the inquiry;and
 - (b) may include any recommendations that the Inspector considers appropriate.
- (3) Without limiting subsection (2)(b), the Inspector may recommend —
 - (a) that a council be dismissed; or

- (b) that a council that has been suspended be reinstated; or
 - (c) if subsection (4) applies — that a council member be dismissed; or
 - (d) that a council member who has been suspended be reinstated.
- (4) The Inspector can recommend that a council member be dismissed only if the Inspector is satisfied on reasonable grounds that —
- (a) at least 1 of the following applies —
 - (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 makes it inappropriate for the member to continue to be a member of the governing body of the local government.

8.5. Copies of report to be given to local government and suspended council members

- (1) Unless the Minister directs otherwise, the Inspector must give a copy of the Inspector's report to —
 - (a) the local government concerned; and

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- (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), the Inspector 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 Inspector considers ought, for any other reason, to be removed.
- (3) Unless the Minister directs otherwise, the Inspector is not required to act under subsection (1) if —
 - (a) the report contains no findings adverse to the local government concerned, its council, a council member or any other person; or
 - (b) the Inspector is satisfied that it would not be in the public interest to act under that subsection.

8.6. Advice from local government and council members

- (1) Within 21 days after receiving an Inspector's report that includes recommendations, or within a longer period allowed by the Minister, the local government must give the Minister and the Inspector written advice setting out —
 - (a) the things that the local government has done or proposes to do to give effect to the recommendations; and

- (b) if the report recommends that the council be dismissed, its comments on that recommendation.
- (2) A council member who is suspended or who is a member of a council that is suspended may, within 21 days after receiving an Inspector's report or a longer period allowed by the Minister, give the Minister and the Inspector written advice setting out the member's comments on the recommendations.

8.7. Minister may take action to ensure recommendations are put into effect

- (1) The Minister may, if the Minister thinks fit, order the local government, or any member of its council or any of its employees, to give effect to any 1 or more of the recommendations in the Inspector's report in a manner and within a time specified in the order.
- (2) The Minister must not make an order under subsection (1) until —
- (a) the Minister has received advice in respect of the recommendations —
 - (i) under section 8.6(1); and
 - (ii) under section 8.6(2) if the report was provided to a council member;
 - or
 - (b) the time allowed by section 8.6(1) or (2) runs out, if no advice has been received by then.
- (3) If an order by the Minister under subsection (1) is not complied with according to its terms, the Minister may, by order, suspend the council or the council member.

8.8. Reinstatement of suspended council or council member on recommendation of Inspector

- (1) Subsection (2) applies if —
 - (a) a council is suspended under section 8.15C while an inquiry is held that relates to the council; and
 - (b) the Inspector recommends in an Inspector’s report that the council be reinstated.
- (2) The Minister must by order reinstate the council.
- (3) Subsection (4) applies if —
 - (a) a council member is suspended under section 8.15E while an inquiry is held that relates to the council member; and
 - (b) the Inspector recommends in an Inspector’s report that the council member be reinstated.
- (4) The Minister must by order reinstate the council member.
- (5) Nothing in this section restricts the Minister from —
 - (a) reinstating a council by order under section 8.28(3); or
 - (b) reinstating a council member by order under section 8.30D.

Note for this section:

Section 8.15H sets out other circumstances in which a suspended council member must be reinstated after an inquiry.

8.9. Minister may recommend that council be dismissed

- (1) This section applies if the Inspector recommends in an Inspector’s report that a council be dismissed.

- (2) The Minister must decide whether to make a recommendation under subsection (4) in respect of the Inspector's recommendation.
- (3) The Minister must not make a decision under subsection (2) until —
 - (a) the Minister has received advice under section 8.6(1)(b) in respect of the recommendation or
 - (b) the time allowed by section 8.6(1) runs out, if no advice has been received by then.
- (4) The Minister may recommend that the Governor dismiss the council, but the Minister does not have to make that recommendation.
- (5) If the council has been suspended, the Minister may, by order under section 8.28(3), reinstate the council even if the Inspector has recommended its dismissal.

8.10. Minister may recommend that council member be dismissed

- (1) This section applies if the Inspector recommends in an Inspector's report that a council member be dismissed.
- (2) The Minister must decide whether to make a recommendation under subsection (4) in respect of the Inspector's recommendation.
- (3) The Minister must not make a decision under subsection (2) until —
 - (a) the Minister has received advice under section 8.6(2) in respect of the recommendation; or
 - (b) the time allowed by section 8.6(2) runs out, if no advice has been received by then.

- (4) The Minister may recommend that the Governor dismiss the council member, but the Minister does not have to make that recommendation.
- (5) If a council member has been suspended, the Minister may, by order under section 8.30D, reinstate the member even if the Inspector has recommended the member's dismissal.

8.11. Dismissal of council or council member by Governor

- (1) The Governor may, by order made on the recommendation of the Minister under section 8.9(4), dismiss a council.
- (2) The Governor may, by order made on the recommendation of the Minister under section 8.10(4), dismiss a council member.

8.12. Referral to other authorities

The Inspector 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 the Inspector has obtained in the course of the inquiry.

8.13. Local government may have to meet inquiry costs

- (1) The Minister may order a local government to pay to the State all or part of the costs of an inquiry if —
 - (a) an Inspector's report contains findings adverse to the local government, or to its council or any member, or to any of its employees; or

- (b) the inquiry was instituted at the request of the local government.
- (2) The local government must comply with the order.

92. Section 8.15C amended

- (1) In section 8.15C(1) delete “ government, whether or not there has been an inquiry under Division 1.” and insert:

government.

- (2) After section 8.15C(1) insert:

- (1A) Subsection (1) applies irrespective of whether an inquiry under Division 1 is proposed, is in progress or has happened.

- (3) In section 8.15C(3)(a) delete “Inquiry Panel” and insert:

Independent Inquiry

- (4) In section 8.15C(3)(b) after “section” insert:

8.8(2) or

93. Section 8.15CA inserted

At the end of Part 8 Division 1A Subdivision 1 insert:

8.15CA. Suspension of council may be extended while inquiry conducted

- (1) The Minister may, by order, extend the suspension of a council already suspended by an order (the *original order*) under section 8.15C(2)(c) if —
 - (a) an inquiry is being conducted under Division 1 in relation to the council; and
 - (b) the Inspector has advised the Minister that, in the Inspector's opinion, the original order suspending the council will cease to have effect under section 8.15C(3)(c) before the inquiry is completed.
- (2) For the purposes of this Act, the extended suspension of a council the subject of an order under subsection (1) is taken to have effect under the original order.

94. Section 8.15E amended

- (1) Delete section 8.15E(2)(b) and insert:
 - (b) the Inspector has, under section 8A.14, made an allegation to the State Administrative Tribunal that the member has committed a recurrent breach;
 - (ba) the Inspector has, under section 8A.24, made an allegation to the State Administrative Tribunal that the member has committed a specified breach;

- (2) In section 8.15E(3)(a) delete “Departmental CEO” (each occurrence) and insert:

Inspector

- (3) In section 8.15E(4)(b) delete “Departmental CEO.” and insert:

Inspector.

95. Section 8.15F amended

In section 8.15F(2):

- (a) in paragraph (b) delete “serious” and insert:

specified

- (b) in paragraph (b)(i) delete “described in section 5.117” and insert:

imposing a sanction described in 8A.25(1)(b)(i) to (x)

96. Section 8.15G amended

- (1) In section 8.15G(1)(a) delete “or 2”.

- (2) In section 8.15G(1)(b):

- (a) delete “Departmental CEO” and insert:

Inspector

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- (b) delete “CEO’s” and insert:

Inspector’s

97. Section 8.15H amended

In section 8.15H:

- (a) delete “Departmental CEO” and insert:

Inspector

- (b) delete “the CEO” and insert:

the Inspector

- (c) in paragraph (b) delete “5.116(2)” and insert:

8A.24(1)

- (d) in paragraph (b) delete “serious” and insert:

specified

98. Section 8.15J amended

- (1) At the end of section 8.15J(1) insert:

Penalty for this subsection: a fine of \$10 000.

- (2) In section 8.15J(2):
 - (a) delete “disqualifying” and insert:

disqualification
 - (b) delete “Departmental CEO” and insert:

Inspector

99. Section 8.15K amended

- (1) In section 8.15K(2)(a) delete “Departmental CEO,” and insert:

Inspector,
- (2) Delete section 8.15K(4) and insert:
 - (4) The power conferred on the Minister under subsection (1) is in addition to, and does not derogate from, these powers conferred on the Minister —
 - (a) the power under section 8.10(4) to take action in respect of an Inspector’s report under Division 1; or
 - (b) the power under section 8.24(4A) to take action in respect of an Independent Inquiry’s report under Division 2.

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100. Part 8 Division 2 heading amended

In the heading to Part 8 Division 2 delete “**Inquiry Panels**” and insert:

Independent Inquiry

101. Section 8.16 amended

(1) In section 8.16(1):

(a) delete “Inquiry Panel” and insert:

Independent Inquiry

(b) delete “person or 3 people” and insert:

person, or 3 people, suitably qualified

(2) Delete section 8.16(2) and insert:

(2) If an Independent Inquiry consists of 3 people —

(a) 1 must be a legal practitioner; and

(b) the Minister must specify which person presides at meetings of the Independent Inquiry.

(3) If an Independent Inquiry consists of 1 person, that person must be a legal practitioner.

102. Sections 8.16A and 8.16B inserted

After section 8.16 insert:

8.16A. Terms of appointment

- (1) A member of an Independent Inquiry holds office for the duration of the inquiry unless —
 - (a) the member dies; or
 - (b) the member resigns by written notice to the Minister; or
 - (c) the member's appointment is terminated by the Minister by written notice.
- (2) If a member ceases to hold office, the Minister may appoint a replacement member.

8.16B. Procedures and remuneration

- (1) If an Independent Inquiry consists of 3 people, all 3 members are required to be present to constitute a quorum.
- (2) The members of an Independent Inquiry are entitled to the remuneration and allowances determined from time to time by the Minister on the recommendation of the Public Sector Commissioner.
- (3) Subsection (2) does not apply to a member who is a public service officer.

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103. Section 8.17 amended

In section 8.17:

- (a) delete “an Inquiry Panel is to” and insert:

an Independent Inquiry must

- (b) in paragraph (b) delete “Inquiry Panel; and” and insert:

Independent Inquiry; and

104. Section 8.18 amended

In section 8.18:

- (a) delete “Inquiry Panel” and insert:

Independent Inquiry

- (b) delete “panel” and insert:

Independent Inquiry

105. Section 8.19 amended

In section 8.19(1) and (2) delete “Inquiry Panel” and insert:

Independent Inquiry

106. Section 8.19A amended

In section 8.19A(1) and (2) delete “Inquiry Panel” and insert:

Independent Inquiry

107. Section 8.20 replaced

Delete section 8.20 and insert:

8.20. Powers of Independent Inquiry

- (1) In this section —
presiding member means the person who presides at meetings of the Independent Inquiry, or, if the Independent Inquiry consists of 1 person, that person.
- (2) For the purposes of an inquiry and report under this Division —
 - (a) an Independent Inquiry has the powers of a Royal Commission; and
 - (b) the presiding member has the powers of the chairman of a Royal Commission.
- (3) For the purposes of subsection (2), the provisions of the *Royal Commissions Act 1968* have effect as if they were enacted in this Act with any necessary changes and in terms made applicable to the inquiry and report by the Independent Inquiry.
- (4) Without limiting subsection (3), an Independent Inquiry is not limited by any other provision of this Act in respect of the exercise of its powers under the *Royal Commissions Act 1968* and may exercise those powers in relation to the following:
 - (a) the Inspector;

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- (b) inspectorate officers;
- (c) the Departmental CEO;
- (d) officers and employees of the Department.

108. Section 8.21 amended

In section 8.21 delete “Inquiry Panel” and insert:

Independent Inquiry

109. Section 8.22 amended

- (1) In section 8.22(1) delete “Inquiry Panel’s” and insert:

Independent Inquiry’s

- (2) In section 8.22(1), (2) and (2A) delete “Inquiry Panel” (each occurrence) and insert:

Independent Inquiry

Note: The heading to amended section 8.22 is to read:

Report of Independent Inquiry

110. Section 8.23 amended

In section 8.23(1), (2) and (3) delete “Inquiry Panel” and insert:

Independent Inquiry

111. Section 8.24 amended

- (1) In section 8.24(1) delete “Inquiry Panel’s” and insert:

Independent Inquiry’s

- (2) In section 8.24(3), (4), (4A), (4B) and (5) delete “Inquiry Panel” (each occurrence) and insert:

Independent Inquiry

Note: The heading to amended section 8.24 is to read:

Minister to decide action on Independent Inquiry’s report

112. Section 8.27 amended

In section 8.27(a) and (b) delete “Inquiry Panel” and insert:

Independent Inquiry

113. Section 8.30A amended

- (1) In section 8.30A(1) delete “section 8.15I(1)” and insert:

section 8.7(3), 8.15I(1)

- (2) After section 8.30A(1) insert:

- (1A) An order under section 8.7(3) suspending a council member ceases to have effect on whichever of the following occurs first —
- (a) the period of suspension expires;

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- (b) the term of office of the member ends, or the member's office becomes vacant;
- (c) the member is reinstated by the Minister by order under section 8.30D.

(3) In section 8.30A(2)(c) before “under” insert:

by order

Note: The heading to amended section 8.30A is to read:

**Period of suspension for orders under sections 8.7, 8.15I
and 8.19A**

114. Section 8.30B amended

In section 8.30B(3) delete “The” and insert:

Except as provided in section 2.25A, the

115. Section 8.30C amended

(1) In section 8.30C(1)(a) before “Division 1A” insert:

section 8.7(3),

(2) In section 8.30C(1)(a)(ii) delete “2.32(b), (e) or (f),” and insert:

2.32(1)(b), (e) or (f),

116. Section 8.31 amended

In section 8.31(1) delete “section 8.25(1).” and insert:

section 8.11(1) or 8.25(1).

Note: The heading to amended section 8.31 is to read:

No dismissal of council except on Minister’s recommendation

117. Section 8.34A amended

In section 8.34A(1) after “section” insert:

8.11(2),

Note: The heading to amended section 8.34A is to read:

No dismissal of council member except on Minister’s recommendation

118. Section 8.35 amended

In section 8.35(3) in the definition of *authorised person* delete paragraphs (a) and (b) and insert:

(a) the Inspector; or

119. Section 8.36 amended

In section 8.36(1) delete “Departmental CEO” and insert:

Inspector

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120. Section 8.37 deleted

Delete section 8.37.

121. Section 8.41 amended

(1) In section 8.41(2):

(a) delete “Departmental CEO” and insert:

Inspector

(b) delete “Departmental CEO.” and insert:

Inspector.

(2) In section 8.41(3) and (4) delete “he or she is to” and insert:

the authorised person must

122. Section 8.42 amended

In section 8.42(2) delete “he or she is to” and insert:

the authorised person must

123. Section 8.43 amended

In section 8.43(2) delete “Departmental CEO” and insert:

Inspector

124. Section 8.44 amended

In section 8.44:

- (a) delete “Departmental CEO” and insert:

Inspector

- (b) delete “Departmental CEO.” and insert:

Inspector.

125. Parts 8A and 8B inserted

After section 8.44 insert:

Part 8A — Breach complaints and general complaints

What this Part is about

This Part contains provisions about —

- (a) *types of breaches;*
- (b) *making and dealing with complaints about breaches;*
- (c) *dealing with breaches;*
- (d) *making and dealing with general complaints.*

Division 1 — Preliminary

8A.1. Terms used

In this Part —

breach complaint means a complaint —

(a) made to the Inspector under section 8A.5; or

(b) referred to the Inspector under section 5.105;

complainant, in relation to a breach complaint or general complaint, means the person who made the complaint;

dealt with by infringement notice, in relation to a breach complaint or general complaint, means that —

(a) an infringement notice has been issued under this Act or another written law in relation to the matter the subject of the complaint; and

(b) the matter has been dealt with by the payment of an amount in accordance with the infringement notice;

general complaint means a complaint made to the Inspector under section 8A.28(2);

respondent, in relation to a breach complaint or general complaint, means the person who is the subject of the complaint;

rule of conduct has the meaning given in section 5.102A.

Division 2 — Types and occurrences of breaches

8A.2. Behavioural breaches

(1) In this section —

adopted code of conduct, of a local government, means the code of conduct adopted by the local government under section 5.104.

(2) A council member commits a **behavioural breach** if the member breaches a requirement referred to in section 5.103(2)(b) or 5.104(3) that is included in the local government's adopted code of conduct.

- (3) Subsection (2) extends to a breach that occurred when the council member was a candidate for election as a council member.

8A.3. Conduct breaches and recurrent breaches

- (1) A council member commits a *conduct breach* if the member —
 - (a) contravenes a rule of conduct; or
 - (b) contravenes a local law made under this Act, contravention of which the regulations specify to be a conduct breach.
- (2) Subsection (1) extends to the contravention of a rule of conduct that occurred when the council member was a candidate for election as a council member.
- (3) Regulations cannot specify that contravention of a local law under this Act is a conduct breach if contravention of the local law would, in addition to being a conduct breach under subsection (1), also be a specified breach under section 8A.4.
- (4) A conduct breach is a *recurrent breach* if it occurs after the council member has been found under this Part to have committed 2 or more other conduct breaches.

8A.4. Specified breaches

- (1) A council member who commits a specified offence commits a *specified breach*.
- (2) For the purposes of subsection (1), a *specified offence* is —
 - (a) an offence under a provision specified in Schedule 8A.1; or

- (b) an offence under a written law, other than a local law made under this Act, that is prescribed by the regulations to be a specified offence.
- (3) An offence cannot be prescribed under subsection (2)(b) unless it is an element of the offence that the offender is a council member or is a person of a description that specifically includes a council member.
- (4) Subsection (1) extends to the commission of a specified offence that occurred when the council member was a candidate for election as a council member.

Division 3 — Making breach complaint and preliminary matters

8A.5. Breach complaints

- (1) A person may make a complaint to the Inspector in accordance with subsection (2) if the person has reason to believe that a person who is a council member at the time the complaint is made has committed a behavioural breach, a conduct breach or a specified breach.
- (2) A complaint must —
 - (a) be made in the manner and form approved by the Inspector; and
 - (b) give details of the following —
 - (i) the complainant;
 - (ii) the council member who is the subject of the complaint;
 - (iii) the alleged breach;and

- (c) include any other information required by the regulations.
- (3) A breach complaint may be dealt with under this Part even if the council member resigns, is disqualified, is not re-elected or otherwise ceases to hold office as a council member after the complaint is made.

8A.6. Acknowledgment of breach complaint

The Inspector must, within 14 days after the day on which the Inspector receives a breach complaint, give the complainant an acknowledgment in writing that the complaint has been received.

8A.7. Preliminary assessment of breach complaint

- (1) The Inspector may conduct a preliminary assessment of a breach complaint for the purpose of deciding the following —
 - (a) the type of breach alleged;
 - (b) whether to accept the breach complaint.
- (2) For the purpose of a preliminary assessment the Inspector may make such inquiries and examine such matters as the Inspector considers necessary.
- (3) Without limiting subsection (2), the Inspector may by written notice request any person to —
 - (a) attend before the Inspector for the purpose of discussing the subject matter of the breach complaint; or
 - (b) give the Inspector any information or document specified in the notice.
- (4) If the complaint is accepted, the Inspector must —
 - (a) notify the complainant of the type of breach alleged; and

- (b) notify the respondent of the complaint and the type of breach alleged.

Note for this subsection:

Section 8A.37(2) sets out circumstances in which the requirements to notify under this subsection do not apply.

8A.8. Inspector may decline to accept, or to continue to deal with, breach complaint

- (1) The Inspector may decline to accept a breach complaint (the *complaint*) if the Inspector is satisfied —
 - (a) that the complaint is frivolous, trivial, vexatious, misconceived or without substance; or
 - (b) that there is insufficient evidence available to deal with the complaint; or
 - (c) that the matter the subject of the complaint has been the subject of a previous breach complaint (whether by the current complainant or anyone else) and that it is not appropriate to allow the further breach complaint to be made; or
 - (d) that the complainant has not complied with a request under section 8A.7(3).
- (2) The Inspector may, at any time before a breach complaint is referred under section 8A.11 or 8A.13, or dealt with under section 8A.14(1)(b) or 8A.23(2), decline to continue dealing with the breach complaint if the Inspector is satisfied that the complainant —
 - (a) has not complied with a requirement to provide information to the Inspector under section 8B.43; or
 - (b) has not complied with a direction under section 8B.45; or

- (c) has not otherwise cooperated with the Inspector in relation to the complaint.
- (3) If the Inspector declines to accept a breach complaint under subsection (1), the Inspector must notify the complainant of the decision to decline and of the reason for the decision.
- (4) If the Inspector declines to continue dealing with a breach complaint under subsection (2), the Inspector must notify the complainant and the respondent of the decision to decline and of the reason for the decision.

Note for this subsection:

Section 8A.37(2) sets out circumstances in which the requirement to notify under this subsection does not apply.

- (5) A decision of the Inspector under this section to decline to accept a breach complaint, or to decline to continue dealing with a breach complaint, is not reviewable by the State Administrative Tribunal.

Note for this section:

Section 8A.10 provides that the Inspector may defer consideration of a complaint if the Inspector appoints a monitor to report to the Inspector on the matter the subject of the complaint or matters that include the subject of the complaint.

8A.9. Inspector must decline to accept certain breach complaints

- (1) The Inspector must decline to accept a complaint the Inspector decides alleges a conduct breach if the Inspector is satisfied that the conduct the subject of the complaint occurred more than 12 months before the Inspector received the complaint.
- (2) Subsection (3) applies to a breach complaint alleging an offence if there is a limit on the time within which proceedings may be commenced for the offence.

- (3) The Inspector must decline to accept the complaint if the Inspector is satisfied that the Inspector received the complaint after the time referred to in subsection (2) had expired.
- (4) The Inspector must decline to accept a complaint the Inspector decides alleges a conduct breach or a specified breach if the Inspector is satisfied that —
 - (a) the respondent is being or has been prosecuted for the offence to which the alleged breach relates; or
 - (b) the offence to which the alleged breach relates has been dealt with by infringement notice.
- (5) The Inspector must decline to accept a complaint the Inspector decides alleges a behavioural breach or a conduct breach by a commissioner.
- (6) If the Inspector declines to deal with a complaint under this section, the Inspector must notify the complainant of the decision to decline and of the reason for the decision.

8A.10. Inspector may defer dealing with complaint until report from monitor received

- (1) This section applies in relation to a breach complaint if —
 - (a) a request has been made under section 8B.38 to appoint a monitor to deal with matters that are relevant to the complaint and the Inspector has not made a decision on the request; or
 - (b) a monitor is appointed under section 8B.37 to assist a local government to deal with matters that are relevant to the complaint.

- (2) The Inspector may defer accepting the complaint, or, if the complaint is accepted, further dealing with the complaint, until —
 - (a) the Inspector decides not to appoint a monitor; or
 - (b) the appointed monitor reports to the Inspector on the outcome of the monitoring assignment.
- (3) Nothing in subsection (2) limits or restricts the Inspector from dealing with the complaint, or a further complaint on the matter the subject of the complaint, or from exercising other powers under this Act in relation to the matter.

8A.11. Inspector may refer certain complaints to local government

- (1) The Inspector may refer a complaint the Inspector decides alleges a conduct breach or a specified breach to the local government concerned if the Inspector is satisfied that it is more appropriate for the local government to deal with the complaint than for the complaint to be dealt with under this Part.
- (2) The Inspector cannot refer a complaint under subsection (1) if —
 - (a) the complaint has been referred under section 8A.11 or 8A.13; or
 - (b) the complaint has been dealt with under section 8A.14(1)(b) or 8A.23(2); or
 - (c) the Inspector is satisfied that —
 - (i) the respondent is being or has been prosecuted for an offence in respect of the matter the subject of the complaint; or

- (ii) the matter the subject of the complaint has been dealt with by infringement notice;
 - or
 - (d) the Inspector could not accept the complaint because of section 8A.9.
- (3) If the Inspector refers a complaint under subsection (1) —
 - (a) this Part ceases to apply to the complaint; and
 - (b) the Inspector must notify the complainant and the respondent of the referral and of the reason for the decision.

Note for this subsection:

Section 8A.37(2) sets out circumstances in which the requirement to notify under paragraph (b) does not apply.

Notes for this section:

1. Section 8A.12 provides for the referral of a complaint alleging a behavioural breach.
2. The Inspector may refer a matter to a public officer or body under section 8B.58.

Division 4 — Dealing with behavioural breach

8A.12. Regulations about complaint alleging behavioural breach

- (1) If the Inspector decides that a breach complaint made to the Inspector or referred to the Inspector under section 5.105 alleges a behavioural breach, the Inspector must deal with the complaint in accordance with the regulations.

- (2) Regulations for the purpose of subsection (1) may —
- (a) require the Inspector to —
 - (i) refer the complaint to the local government concerned to be dealt with under the local government’s code of conduct; or
 - (ii) refer the complaint to be dealt with under Division 5 as if it were a breach complaint alleging a conduct breach;
 - and
 - (b) regulate the procedure for determining how and to whom the complaint is to be referred; and
 - (c) provide for limitations or other requirements as to how a referred complaint must be dealt with and the findings and orders that can be made; and
 - (d) provide for any other matter in relation to a referred complaint.

Notes for this section:

1. Section 5.105 sets out how a local government must deal with a complaint alleging a behavioural breach.
2. Section 8A.10 sets out circumstances in which the Inspector can defer dealing with a breach complaint.
3. Section 8B.37 provides that the Inspector may appoint a monitor to assist a local government to deal with a complaint.

Division 5 — Dealing with conduct breach

8A.13. Referral of complaint alleging conduct breach

- (1) If the Inspector decides that a breach complaint alleges a conduct breach, other than a recurrent breach, the Inspector must —
- (a) refer the complaint to the Principal Adjudicator; and

- (b) give the Principal Adjudicator anything the Inspector has that is relevant to the complaint.
- (2) The Principal Adjudicator may —
- (a) deal with a breach complaint referred under subsection (1)(a); or
 - (b) allocate the breach complaint to a Deputy Adjudicator to deal with.

Note for this section:

Section 8A.10 sets out circumstances in which the Inspector can defer dealing with a breach complaint.

8A.14. Dealing with recurrent breach

- (1) If the Inspector decides that a breach complaint alleges a conduct breach that is a recurrent breach, the Inspector must —
- (a) refer the complaint under section 8A.13(1)(a) to be dealt with as a conduct breach but not a recurrent breach; or
 - (b) make an allegation to the State Administrative Tribunal that the council member committed a recurrent breach.
- (2) The Inspector must notify the complainant and the respondent of any action taken under subsection (1)(a) or (b).

Note for this subsection:

Section 8A.37(2) sets out circumstances in which the requirement to notify under this subsection does not apply.

- (3) The fact that the person who made the breach complaint does not want an allegation arising from the complaint to be made to the State Administrative Tribunal does not prevent the Inspector from making the allegation.

- (4) The State Administrative Tribunal must make a finding as to whether the respondent committed a recurrent breach.
- (5) If the State Administrative Tribunal finds that the respondent committed a recurrent breach, the Tribunal may treat the recurrent breach as if it were a specified breach and —
 - (a) make an order mentioned in section 8A.25(1)(a); or
 - (b) order 1 or more of the sanctions described in section 8A.25(1)(b)(i) to (x).
- (6) Section 8A.25(4), (5) and (6) extend to an order made under subsection (5).

Note for this section:

Section 8A.10 sets out circumstances in which the Inspector can defer dealing with a breach complaint.

8A.15. Mediation

- (1) An adjudicator may —
 - (a) request the complainant and the respondent to participate in mediation in relation to a breach complaint referred under section 8A.13(1)(a); and
 - (b) if the parties agree to the request, defer the making of a finding under section 8A.18 pending the outcome of the mediation.
- (2) Regulations may provide for or regulate matters relating to mediation under this section, including —
 - (a) the appointment of mediators; and
 - (b) the procedures to be followed when mediation is undertaken; and

- (c) the time allowed for mediation; and
- (d) payment and recovery of the costs of mediation.

8A.16. Withdrawal of complaint referred to adjudicator

- (1) A person who has made a breach complaint that has been referred under section 8A.13(1)(a) can withdraw the complaint at any time before an adjudicator makes a finding under section 8A.18.
- (2) A withdrawal under subsection (1) —
 - (a) must be made in writing; and
 - (b) must be given to the adjudicator.
- (3) If a breach complaint is withdrawn under subsection (1), the adjudicator must —
 - (a) give the complainant an acknowledgment in writing that the withdrawal of the complaint has been received; and
 - (b) notify the respondent that the complaint has been withdrawn.
- (4) However, subsection (3) does not apply if the adjudicator is satisfied that it is appropriate for the breach complaint to be dealt with under this Division despite its withdrawal, in which event —
 - (a) this Division continues to apply as if the complaint had not been withdrawn; and
 - (b) the adjudicator must notify the complainant accordingly.

8A.17. Practice and procedure

- (1) In exercising a power under this Act, an adjudicator must have regard to —
 - (a) the provision of good government by local governments; and
 - (b) the public interest.
- (2) For the purpose of helping to deal with a breach complaint, an adjudicator may request the Inspector to provide anything further that the adjudicator requires.
- (3) The Inspector must comply with a request under subsection (2) so far as it is practicable to do so.
- (4) To the extent that the practice and procedure of an adjudicator are not prescribed under this Act, they are to be as the Principal Adjudicator determines.

Note for this section:

See also section 8B.30.

8A.18. Finding as to whether conduct breach has occurred

- (1) If a breach complaint is referred under section 8A.13(1)(a), the adjudicator must make a finding as to whether or not a conduct breach has occurred.
- (2) Before making a finding under subsection (1) or an order under subsection (4), the adjudicator must give the respondent a reasonable opportunity to make submissions on the matter.

Note for this subsection:

Section 8B.30(1)(c) provides that an adjudicator may receive written or oral submissions as the adjudicator thinks appropriate.

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- (3) When determining how a conduct breach should be dealt with under subsection (4), the adjudicator may take into account —
- (a) the outcome of mediation requested under section 8A.15; or
 - (b) a refusal by a person to participate in mediation requested under section 8A.15.
- (4) The conduct breach must be dealt with by —
- (a) ordering that no sanction be imposed; or
 - (b) ordering that the respondent —
 - (i) be publicly censured as specified in the order; or
 - (ii) apologise publicly as specified in the order; or
 - (iii) undertake counselling as specified in the order; or
 - (iv) undertake training as specified in the order; or
 - (v) is not entitled to be paid, in respect of a period of not more than 3 months specified in the order, the fees and allowances which the person would otherwise be entitled to be paid under Part 5 Division 8 in respect of the specified period; or
 - (vi) is not entitled to attend a meeting of a committee of a council for a period of not more than 3 months specified in the order; or
 - (vii) is suspended for a period of not more than 3 months specified in the order;

or

- (c) ordering 2 or more of the sanctions described in paragraph (b)(i) to (vii).
- (5) If a sanction described in subsection (4)(b)(ii), (iii) or (iv) is ordered, the respondent must notify the Inspector when the respondent has complied with the order.
- (6) If the respondent cannot comply with an order ordering a sanction described in subsection (4)(b)(ii), the local government may apologise on behalf of the respondent and notify the Inspector accordingly.
- (7) If a sanction described in subsection (4)(b)(v) is ordered, section 8A.25(4) and (5) apply as if the sanction were ordered under section 8A.25(1)(b)(v).
- (8) If a sanction described in subsection (4)(b)(vii) is ordered, section 8A.25(6) applies as if the sanction were ordered under section 8A.25(1)(b)(vii).
- (9) The adjudicator must give notice of how the adjudicator deals with the matter under subsection (4) to the complainant, the respondent and the Inspector.
- (10) A finding that a conduct breach has occurred must be based on evidence from which it may be concluded that it is more likely that the conduct breach occurred than that it did not occur.

8A.19. Costs of adjudication

- (1) To the extent that an adjudicator's remuneration and allowances relate to a particular breach complaint, an amount equal to the amount of the remuneration and allowances, as certified by the Principal Adjudicator, must be paid to the State by the local government of the council member who is the subject of the complaint.

- (2) If the adjudicator finds that a conduct breach has occurred, the adjudicator may order that the respondent pay to the local government specified in the order an amount equal to the amount to be paid by the local government to the State in relation to the complaint under subsection (1).
- (3) An amount certified under subsection (1) or ordered to be paid under subsection (2) is recoverable by the State or the local government, as the case requires, in a court of competent jurisdiction as a debt due to the State or the local government.

8A.20. Publication of censures and orders

- (1) The Inspector must publish on the Inspector's website —
 - (a) any finding by an adjudicator as to whether or not a conduct breach has occurred; and
 - (b) any order made under section 8A.18(4) by an adjudicator; and
 - (c) the terms of any censure ordered by an adjudicator under section 8A.18(4)(b)(i) or (c).
- (2) Regulations may specify the period for which information referred to in subsection (1) must be kept on the Inspector's website.

Note for this section:

See also section 5.96C in relation to the recording and publication of information.

8A.21. SAT's enforcement powers

- (1) The Inspector may refer to the State Administrative Tribunal any failure of a person to comply with an

order ordering a sanction described in section 8A.18(4)(b)(ii), (iii) or (iv).

- (2) The State Administrative Tribunal may, if satisfied that the person failed to comply with the order —
 - (a) make an order mentioned in section 8A.18(4)(a); or
 - (b) order 1 or more of the sanctions described in section 8A.25(1)(b)(v) to (x) as if the failure to comply were a specified breach.
- (3) Section 8A.25(4), (5) and (6) extend to an order made under subsection (2).

8A.22. Review of adjudicator decision

- (1) A complainant or respondent may apply to the State Administrative Tribunal for a review of a decision of an adjudicator to make an order under section 8A.18(4).
- (2) The application may be made, and the review carried out, irrespective of whether the complainant or respondent is a council member.

Division 6 — Dealing with specified breach

8A.23. Investigation and report of complaint alleging specified breach

- (1) If the Inspector decides that a breach complaint alleges a specified breach, the Inspector may —
 - (a) allocate the complaint to an investigator for investigation and report; or
 - (b) take any other action authorised under this Act.

- (2) After receiving a report from an investigator —
- (a) the Inspector may deal with the complaint by —
 - (i) making an allegation under section 8A.24(1); or
 - (ii) commencing a prosecution for an offence; or
 - (iii) issuing a caution to the respondent; or
 - (iv) declining to take any action;
 - or
 - (b) if section 9.22D applies, an infringement notice may be issued under that section.
- (3) The Inspector must notify the complainant and the respondent of any action taken under subsection (2).

Note for this subsection:

Section 8A.37(2) sets out circumstances in which the requirement to notify under this subsection does not apply.

Notes for this section:

1. Section 8A.10 sets out circumstances in which the Inspector can defer dealing with a breach complaint.
2. The Inspector may conduct an inquiry under Part 8 Division 1.

8A.24. Allegation to SAT of specified breach

- (1) If the Inspector considers it appropriate to do so, the Inspector may, on the Inspector's own initiative or after investigation of a breach complaint under section 8A.23, make an allegation to the State Administrative Tribunal that a council member has committed a specified breach.
- (2) In deciding whether it would be appropriate to make an allegation to the State Administrative Tribunal, the Inspector must consider whether it would be more

appropriate for the matter to be dealt with in another way.

- (3) The Inspector cannot make an allegation under subsection (1) if the council member has already been tried by a court for the offence the commission of which is the specified breach.
- (4) The Inspector cannot make an allegation under subsection (1) in respect of a commissioner.
- (5) The fact that a person who made a breach complaint does not want an allegation arising from the complaint to be made to the State Administrative Tribunal does not prevent the Inspector from making the allegation.

8A.25. Sanction for specified breach

- (1) If, on an allegation under section 8A.24(1), the State Administrative Tribunal finds that the person against whom the allegation was made committed a specified breach, it may —
 - (a) order that no sanction be imposed; or
 - (b) order that the person —
 - (i) be publicly censured as specified in the order; or
 - (ii) apologise publicly as specified in the order; or
 - (iii) undertake counselling as specified in the order; or
 - (iv) undertake training as specified in the order; or
 - (v) is not entitled to be paid, in respect of a period of not more than 6 months specified in the order, the fees and allowances which the person would

otherwise be entitled to be paid under Part 5 Division 8 in respect of the specified period; or

- (vi) is not entitled to attend a meeting of a committee of a council for a period of not more than 6 months specified in the order; or
- (vii) is suspended for a period of not more than 6 months specified in the order; or
- (viii) 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
- (ix) is disqualified from holding office as mayor or president for the rest of the person's term as council member, if, for the local government concerned, the method of filling the office of mayor or president is election by the council; or
- (x) is disqualified from holding office as deputy mayor or deputy president for the rest of the person's term as council member;

or

- (c) order 2 or more of the sanctions described in paragraph (b)(i) to (x).
- (2) If a sanction described in subsection (1)(b)(ii), (iii) or (iv) is ordered, the person must notify the Inspector when the person has complied with the order.
 - (3) If the person cannot comply with an order ordering a sanction described in subsection (1)(b)(ii), the local government may apologise on behalf of the person and notify the Inspector accordingly.

- (4) If a sanction described in subsection (1)(b)(v) is ordered —
- (a) the order may provide that —
 - (i) the sanction applies only to a proportion of the fees and allowances as specified in the order; or
 - (ii) the scope of the sanction is otherwise limited as specified in the order;and
 - (b) if the local government concerned pays an annual allowance or annual fee under Part 5 Division 8 to the person in advance (either wholly or in part) — the person must repay the advance payment to the extent determined in accordance with regulations.
- (5) Regulations may provide for the local government to recover any amount repayable under subsection (4)(b) if it is not repaid.
- (6) If a sanction described in subsection (1)(b)(vii) is ordered —
- (a) the order may provide that —
 - (i) the suspension does not apply to activities of a kind specified in the order; or
 - (ii) the scope of the suspension is otherwise limited as specified in the order;and
 - (b) subject to paragraph (a), the person cannot, while suspended, perform the person's powers and duties as a council member; and

- (c) the suspension does not prevent the term of office of the person from continuing to run while the person is suspended; and
- (d) except as provided in section 2.25A, the suspension does not affect —
 - (i) the application of Part 4 Divisions 3 and 4 in relation to the person's office; or
 - (ii) the eligibility of the person to be a candidate to be elected as a member of a council, including to fill the office from which the person is suspended.

8A.26. Publication of censures and SAT orders

- (1) The Inspector must publish on the Inspector's website —
 - (a) any finding or order made under section 8A.14(5), 8A.21(2), 8A.25(1) or 8A.27(2); and
 - (b) the terms of any censure ordered under section 8A.14(5), 8A.21(2) or 8A.25(1)(b)(i); and
 - (c) any other prescribed information.
- (2) Subsection (1)(a) does not apply in relation to a finding or order to the extent that —
 - (a) the finding or order includes protected matter (as defined in the *State Administrative Tribunal Act 2004* section 3(1)); or
 - (b) the State Administrative Tribunal has ordered that the order or parts of the order not be published.

- (3) The Inspector —
 - (a) must publish a finding or order within the period of 14 days after the finding or order is given to the Inspector; and
 - (b) if the finding or order is subject to appeal, must include a note to that effect.
- (4) Regulations may specify the period for which information referred to in subsection (1) must be kept on the Inspector's website.

Note for this section:

See also section 5.96C in relation to the recording and publication of information.

8A.27. SAT's enforcement powers

- (1) The Inspector may refer to the State Administrative Tribunal any failure of a person to comply with an order made under section 8A.25(1)(b)(ii), (iii) or (iv).
- (2) The State Administrative Tribunal may, if satisfied that the person failed to comply with the order, treat the failure to comply as if it were a specified breach and —
 - (a) make an order mentioned in section 8A.25(1)(a); or
 - (b) order 1 or more of the sanctions described in section 8A.25(1)(b)(v) to (x).
- (3) Section 8A.25(4), (5) and (6) extend to an order made under subsection (2).
- (4) Nothing in this section restricts the operation of the *State Administrative Tribunal Act 2004* sections 85 and 86.

Division 7 — General complaints

8A.28. General complaint

- (1) In this section —
relevant person means —
 - (a) a person who is or has been —
 - (i) a member of a council; or
 - (ii) a member of a committee of a council;
or
 - (iii) an employee;
or
 - (b) a person who is or has been a candidate for election as a council member; or
 - (c) a person or body with whom a local government or a person referred to in paragraph (a) has, has had, may have or may have had a financial or other association.
- (2) A person may make a complaint to the Inspector in accordance with subsection (5) if the person has reason to believe that a relevant person or local government has contravened, or is contravening, a provision of this Act or the regulations.
- (3) A complaint cannot be made under subsection (2) about a matter which, if found to have occurred, would constitute a behavioural breach, a conduct breach or a specified breach.
- (4) A complaint made under subsection (2) is a **general complaint**.
- (5) A general complaint must —
 - (a) be made in the manner and form approved by the Inspector; and

- (b) give details of the following —
 - (i) the person making the complaint;
 - (ii) the person who is the subject of the complaint;
 - (iii) the contravention;and
- (c) include any other information required by the regulations.

8A.29. Acknowledgment of general complaint

The Inspector must, within 14 days after the day on which the Inspector receives a general complaint, give the complainant an acknowledgment in writing that the complaint has been received.

8A.30. Preliminary assessment of general complaint

- (1) The Inspector may conduct a preliminary assessment of a general complaint for the purpose of deciding whether to accept the complaint.
- (2) For the purpose of a preliminary assessment, the Inspector may make such inquiries and examine such matters as the Inspector considers necessary.
- (3) Without limiting subsection (2), the Inspector may, by written notice, request any person to —
 - (a) attend before the Inspector for the purpose of discussing the subject matter of the general complaint; or
 - (b) give the Inspector any information or document specified in the notice.

- (4) The Inspector must notify the complainant and the respondent if the complaint is accepted.

Note for this subsection:

Section 8A.37(2) sets out circumstances in which the requirement to notify under this subsection does not apply.

8A.31. Inspector may decline to accept, or to continue to deal with, general complaint

- (1) The Inspector may decline to accept a general complaint if the Inspector is satisfied that —
- (a) the complaint is frivolous, trivial, vexatious, misconceived or without substance; or
 - (b) there is insufficient evidence available to deal with the complaint; or
 - (c) it is not in the public interest, or an effective allocation of resources, to deal with the complaint; or
 - (d) the matter the subject of the complaint has been the subject of a previous general complaint (whether by the current complainant or anyone else) and the Inspector is satisfied that it is not appropriate to allow the further general complaint to be made; or
 - (e) the complainant has not complied with a request under section 8A.30(3).
- (2) The Inspector may decline to continue dealing with a general complaint if the Inspector is satisfied that the complainant —
- (a) has not complied with a requirement to provide information to the Inspector under section 8B.43; or
 - (b) has not complied with a direction under section 8B.45; or

- (c) has not otherwise cooperated with the Inspector in relation to the complaint.
- (3) If the Inspector declines to accept a general complaint under subsection (1), the Inspector must notify the complainant of the decision to decline and of the Inspector's reasons for being satisfied as referred to in subsection (1).
- (4) If the Inspector declines to continue dealing with a general complaint under subsection (2), the Inspector must notify the complainant and the respondent of the decision to decline and of the Inspector's reasons for being satisfied as referred to in subsection (2).

Note for this subsection:

Section 8A.37(2) sets out circumstances in which the requirement to notify under this subsection does not apply.

8A.32. Inspector must decline to accept certain general complaints

- (1) The Inspector must decline to accept a general complaint (the *complaint*) if the Inspector is satisfied that the conduct the subject of the complaint occurred more than 5 years before the Inspector received the complaint.
- (2) Subsection (3) applies to a general complaint alleging an offence if there is a limit on the time within which proceedings may be commenced for the offence.
- (3) The Inspector must decline to accept the complaint if the Inspector is satisfied that the Inspector received the complaint after the time referred to in subsection (2) had expired.
- (4) The Inspector must decline to accept a general complaint if the Inspector is satisfied that the

respondent has been tried by a court for the offence to which the complaint relates.

- (5) If the Electoral Commissioner is responsible for the conduct of an election (as defined in section 4.1), the Inspector must —
 - (a) obtain the written agreement of the Electoral Commissioner before accepting a general complaint about the election; or
 - (b) decline to accept the complaint.
- (6) The Inspector must decline to accept a general complaint if the complaint is an invalidity complaint as defined in section 4.80(2).

Note for this subsection:

Under section 4.81 an invalidity complaint may be made to a Court of Disputed Returns.

- (7) If the Inspector declines to accept a general complaint under this section, the Inspector must notify the complainant of the decision to decline and of the Inspector's reasons for the decision.

8A.33. Inspector may refer general complaint to local government

- (1) The Inspector may refer a general complaint to the local government concerned if the Inspector is satisfied that it is more appropriate for the local government to deal with the complaint than having the complaint dealt with under this Part.
- (2) If the complaint relates to the CEO, the Inspector may issue instructions to the local government as to how the complaint is to be dealt with by the local government and the local government must comply with the instructions.

- (3) The local government must, within the time specified by the Inspector in instructions issued under subsection (2) or a longer period as allowed by the Inspector, advise the Inspector as to how instructions have been dealt with by the local government.
- (4) The Inspector cannot refer a complaint under subsection (1) if —
 - (a) the respondent is being or has been prosecuted for an offence in respect of the matter the subject of the complaint; or
 - (b) the matter the subject of the complaint has been dealt with by infringement notice.
- (5) If the Inspector refers a complaint under subsection (1) —
 - (a) this Division ceases to apply to the complaint; and
 - (b) the Inspector must notify the complainant and the respondent of the referral.
- (6) Regulations may, in relation to the dealing with of a complaint relating to the CEO that is referred to a council under subsection (1), provide for a function of the CEO to be performed by the mayor or president or another employee.

8A.34. Dealing with general complaints

- (1) If the Inspector accepts a general complaint, the Inspector may —
 - (a) allocate the complaint or matter to an investigator for investigation and report; or
 - (b) take any other action authorised under this Act.

- (2) Section 8A.10 applies to a general complaint as if it were a breach complaint.
- (3) The Inspector may —
 - (a) request the complainant and the respondent to participate in mediation in relation to the general complaint; and
 - (b) if the parties agree to the request — defer the making of a decision under subsection (5) pending the outcome of the mediation.
- (4) Regulations made for the purposes of section 8A.15(2) apply for the purposes of subsection (3).
- (5) If, after receiving a report from an investigator, the Inspector is of the view that a person or local government has contravened, or is contravening, a provision of this Act or the regulations —
 - (a) the Inspector may deal with the general complaint by —
 - (i) commencing a prosecution for an offence; or
 - (ii) issuing a caution to the respondent; or
 - (iii) referring the matter to the local government to take action; or
 - (iv) declining to take any action;or
 - (b) if section 9.22D applies, an infringement notice may be issued under that section.
- (6) In addition to, or instead of, acting under subsection (5), the Inspector may give the respondent a compliance notice under section 8B.61.

8A.35. Report if finding is about CEO

- (1) Nothing in this section limits the operation of section 8A.34(5).
- (2) If the Inspector acts under section 8A.34(5) in relation to a CEO, the Inspector may give the investigator's report to the local government and —
 - (a) make recommendations to the local government as to action that should be taken by the local government in consequence of the investigator's report; and
 - (b) require the local government to give the Inspector written advice setting out the things that the local government has done or proposes to do to give effect to the recommendations of the Inspector; and
 - (c) issue instructions to the local government as to the procedure to be followed by the local government in dealing with the investigator's report.
- (3) The advice required under subsection (2)(b) must be given to the Inspector within the time specified by the Inspector as part of the requirement or a longer period allowed by the Inspector.
- (4) The local government must —
 - (a) comply with the instructions issued under subsection (2)(c); and
 - (b) within the time specified by the Inspector in the instructions or a longer period allowed by the Inspector, advise the Inspector as to how the local government has complied with the instructions.

- (5) Regulations may, in relation to the dealing with of an investigator's report given to a local government under this section, provide for a function of the CEO to be performed by the mayor or president or another employee.

Division 8 — Miscellaneous

8A.36. Confidentiality about complaints

- (1) In this section —
complaint means —
- (a) a complaint to which section 5.105 applies; or
 - (b) a breach complaint; or
 - (c) a general complaint about an individual.
- (2) A person to whom this subsection applies in relation to a complaint must not, directly or indirectly, disclose or use information that the complaint has been made or information about any detail of the complaint.
Penalty for this subsection: a fine of \$10 000.
- (3) Subsection (2) applies to the following —
- (a) a complainant;
 - (b) an individual who is the subject of a complaint;
 - (c) a person who performs a function under this Act in respect of a complaint;
 - (d) a person who, as a result of anything done under this Act, becomes aware of any detail of a complaint knowing it to be relevant to the complaint.
- (4) Subsection (2) does not apply to the disclosure or use of information that is —
- (a) already in the public domain; or

- (b) statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (5) A person does not commit an offence under subsection (2) if the disclosure or use of the information is authorised under subsection (6).
- (6) The disclosure or use of information to which subsection (2) applies is authorised if the information is disclosed or used in any of the following circumstances —
 - (a) for the purpose of, or in connection with the performance of, a function under this Act;
 - (b) for the purpose of, or in connection with, the Minister performing a function in relation to a local government;
 - (c) as required under a written law;
 - (d) for the purpose of, or in connection with, obtaining or providing legal advice or representation in relation to the complaint;
 - (e) for the purpose of any legal proceedings under this Act;
 - (f) if a sanction has been imposed under a local government's code of conduct or under section 8A.14(5), 8A.18(4), 8A.21(2), 8A.25(1) or a complaint has been dealt with under section 8A.34(5) or (6);
 - (g) if the Inspector directs that the disclosure or use is in the public interest;
 - (h) other circumstances prescribed by the regulations.
- (7) Subsection (6) does not limit the operation of section 8B.46 in relation to the disclosure of information.

8A.37. When Inspector may exercise discretion regarding notification requirement

(1) In this section —

notification requirement means a requirement to notify under any of the following provisions —

- (a) section 8A.7(4)(a) or (b);
- (b) section 8A.8(4);
- (c) section 8A.11(3)(b);
- (d) section 8A.14(2);
- (e) section 8A.23(3);
- (f) section 8A.30(4);
- (g) section 8A.31(4).

(2) A notification requirement does not apply if the Inspector is of the opinion that giving the notification would be contrary to the public interest, including because it might prejudice —

- (a) a person's fair trial; or
- (b) an investigation or inquiry under this Act; or
- (c) any other investigation that is being undertaken by another public officer or body of the State, the Commonwealth, another State or a Territory; or
- (d) any action taken as a result of an investigation or inquiry under this Act or an investigation mentioned in paragraph (c).

8A.38. 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.

Penalty for this subsection: a fine of \$10 000.

- (2) The circumstances in which subsection (1) applies are —
- (a) when the information is given in a complaint under section 5.105, 8A.5 or 8A.28; or
 - (b) when the information is given to a person for the purposes of an investigation of whether or not a breach has occurred; or
 - (c) when the information is given to the Inspector or an adjudicator for the purposes of this Part.

Part 8B — Local Government Inspector, adjudicators and authorised officers

What this Part is about

This Part contains provisions about —

- (a) the Local Government Inspector; and*
- (b) adjudicators; and*
- (c) investigators; and*
- (d) monitors; and*
- (e) powers that may be exercised by authorised officers.*

Division 1 — Local Government Inspector

Subdivision 1 — Appointment and terms and conditions of appointment

8B.1. Local Government Inspector

The office of Local Government Inspector is established.

8B.2. Appointment

- (1) The Governor is to appoint an eligible person to the office of Local Government Inspector.
- (2) A person is eligible for appointment if the person is, in the opinion of the Governor, a person who is suitably qualified to perform the functions of the Inspector.
- (3) A person who is a council member is not eligible to hold the office of Local Government Inspector.
- (4) Subject to section 8B.4, the Inspector holds office for the period, not exceeding 5 years, specified in the instrument of appointment.
- (5) A person who has been appointed to the office of Local Government Inspector is eligible for reappointment once or more than once.

8B.3. Remuneration and terms and conditions of service

- (1) In this section —
remuneration has the meaning given in the *Salaries and Allowances Act 1975* section 4(1).
- (2) Subject to the *Salaries and Allowances Act 1975*, the Inspector is entitled to be paid the remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.
- (3) The Minister may, on the recommendation of the Public Sector Commissioner, determine —
 - (a) the leave of absence to which the Inspector is entitled; and
 - (b) other terms and conditions of service that apply to the Inspector.

8B.4. When office becomes vacant

The office of Local Government Inspector becomes vacant if —

- (a) the period for which the Inspector holds the office expires; or
- (b) the person holding the office —
 - (i) dies; or
 - (ii) becomes ineligible, because of section 8B.2(3), to hold the office; or
 - (iii) resigns under section 8B.5; or
 - (iv) is removed from office under section 8B.6.

8B.5. Resignation

- (1) The Inspector may at any time resign from office by written notice addressed to the Governor.
- (2) The resignation takes effect on the day on which the notice is given to the Governor or on a later day specified in the notice.

8B.6. Removal from office

- (1) The Governor may remove a person from the office of Local Government Inspector if —
 - (a) the person becomes permanently or indefinitely incapable of performing the duties of the office; or
 - (b) the person engages in paid employment outside the duties of the office, otherwise than with the approval of the Minister; or
 - (c) the person is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

- (d) the person has been incompetent in performing the duties of the office or has neglected to perform the duties of the office; or
 - (e) the person has been guilty of misconduct; or
 - (f) the person is nominated as a candidate to fill an office of councillor, elector mayor or president and the nomination is accepted.
- (2) In subsection (1)(e) —
misconduct includes conduct that renders the person unfit to hold office even though the conduct does not relate to a duty of the office of Inspector.

8B.7. Outside employment

The Inspector must not engage in paid employment outside the Inspector's functions under this Act without the approval of the Minister.

8B.8. Public service officer appointed as Inspector

- (1) If a person who is a public service officer is appointed to the office of Local Government Inspector, the person is entitled to retain any accruing and existing rights, including any rights under the *State Superannuation Act 2000*, as if service as the Inspector were a continuation of service as a public service officer.
- (2) If a person ceases to hold the office of Local Government Inspector and becomes a public service officer, the person's service as the Inspector is to be regarded as service in the Public Service for the purpose of determining that person's rights as a public service officer and, if applicable, for the purposes of the *State Superannuation Act 2000*.

- (3) Subsection (4) applies to a person if —
- (a) immediately before the person is appointed to the office of Local Government Inspector, the person occupies an office under the *Public Sector Management Act 1994* Part 3; and
 - (b) the person serves 1 or more continuous terms of appointment in the office of Local Government Inspector; and
 - (c) the period of the last of those appointments expires by the passage of time and the person is not again appointed to that office.
- (4) The person is entitled to be appointed to an office under the *Public Sector Management Act 1994* Part 3 of at least the equivalent level of classification as the office under that Part referred to in subsection (3)(a).

8B.9. Appointment of person to act as Inspector

- (1) The Minister may appoint a person to act in the office of Local Government Inspector on a temporary basis if —
- (a) the office is vacant; or
 - (b) the person holding the office is unable to perform the functions of the Inspector because of sickness, absence or other cause.
- (2) An appointment —
- (a) may be terminated at any time by the Minister; and
 - (b) may be expressed to have effect only in the circumstances specified by the Minister.
- (3) The period of an appointment must not exceed 3 months.

- (4) While acting in accordance with the terms of their appointment, a person acting in the office of Local Government Inspector has all of the functions of the Inspector and the entitlements of that office.
- (5) No act or omission of a person purporting to act in the office of Local Government Inspector can be questioned on the ground that the occasion for their appointment or so acting had not arisen or had ceased.

Subdivision 2 — Functions of Inspector

8B.10. Functions of Inspector

- (1) The Inspector —
 - (a) has the following functions in relation to local governments and their operations and affairs —
 - (i) to monitor conduct;
 - (ii) to receive and deal with complaints under Part 8A;
 - (iii) to conduct investigations into local governments and their operations and affairs, whether in response to a complaint or on the Inspector’s own initiative;
 - (iv) to conduct inquiries under Part 8 Division 1;
 - (v) to provide education and information to assist in compliance with this Act and to guide the conduct of local governments;
 - and
 - (b) has any other functions conferred on the Inspector by this Act or any other written law.

- (2) It is a function of the Inspector to do anything incidental or conducive to the performance of any of the Inspector's other functions.
- (3) The Inspector performs education and information functions under subsection (1)(a)(v) by doing the following —
 - (a) appointing monitors to assist local governments;
 - (b) analysing information gathered in the performance of the Inspector's functions;
 - (c) analysing systems used by local governments to assist in compliance with this Act;
 - (d) using information the Inspector gathers from any source in support of the function;
 - (e) consulting with, and making recommendations to, local governments;
 - (f) providing information relevant to the function to local governments and the community.
- (4) Without limiting Division 6, the Inspector has all the powers the Inspector needs to perform the functions of the Inspector under this Act or any other written law.
- (5) If the Electoral Commissioner is responsible for the conduct of an election (as defined in section 4.1) —
 - (a) the validity of the election cannot be the subject of an investigation by the Inspector; and
 - (b) the Inspector must obtain the written agreement of the Electoral Commissioner before any other aspect of the election becomes the subject of an investigation by the Inspector.

8B.11. Conflict of interest

- (1) This section applies if the Inspector is or becomes aware that the Inspector has an interest that conflicts or may conflict with a fair and impartial performance of a function of the Inspector.
- (2) The Inspector must not take part, or take further part, in the performance of the function.
Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000.
- (3) As soon as practicable after this section applies, the Inspector must give notice about the matter to the Minister.
Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000.
- (4) If the Inspector gives notice to the Minister under subsection (3) about a matter, a person must be appointed under section 8B.9 to act in relation to the matter.

8B.12. Independence of Inspector and inspectorate officers

Except as provided under this Act, the Inspector and inspectorate officers are not subject to direction by the Minister or any other person in the performance of their functions.

Notes for this section:

1. The Minister may direct the Inspector to conduct an inquiry under section 8.4(2).
2. The Minister may give written directions to the Inspector under section 8B.13 and may request information under section 8B.14.
3. Inspectorate officers and investigators are subject to the general control and direction of the Inspector under sections 8B.32 and 8B.35.

8B.13. Minister may give Inspector directions

- (1) The Minister may give written directions to the Inspector as to the general policy to be followed in the performance of the Inspector's functions.
- (2) However, a direction under subsection (1) cannot be about the performance of a function in relation to a particular person, a particular complaint or a matter relating to a particular complaint.
- (3) The Inspector must comply with a direction given under subsection (1) unless, in the Inspector's opinion, there are reasonable grounds for not complying with the direction.
- (4) If the Inspector refuses to comply with a direction under subsection (1), the Inspector must cause the reasons for the refusal to be included in the report referred to in section 8B.17.
- (5) The Minister must cause the text of a direction given under subsection (1) to be laid before each House of Parliament, or dealt with under section 8B.18, within 14 days after the direction is given.

Note for this section:

Under section 8B.17(2) the text of a direction under this section must be included in the Inspector's annual report.

8B.14. Minister may request information

- (1) In this section —
document includes any tape, disc or other device or medium on which information is recorded or stored;
information means information specified, or of a description specified, by the Minister that relates to the Inspector's functions.

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- (2) Subject to this section, the Minister is entitled —
 - (a) to have information in the possession of the Inspector; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (3) However, the Minister is not entitled to have information that is the subject of a non-disclosure notation under section 8B.46(1).
- (4) The Minister may request the Inspector —
 - (a) to give information in the possession of the Inspector to the Minister; or
 - (b) to give the Minister access to the information.
- (5) The Inspector must comply with a request under subsection (4) unless, in the Inspector's opinion, it is not in the public interest to do so.
- (6) If the Inspector decides to comply with a request under subsection (4), the Inspector must make inspectorate officers and facilities available to the Minister for the purposes of obtaining the information and giving the Minister access to it.

8B.15. Consultation

The Inspector and the Minister, at the request of either, are to consult together, either directly or through appropriate representatives, in relation to any aspect of the Inspector's functions.

8B.16. Delegation

- (1) The Inspector may delegate any power or duty of the Inspector under another provision of this Act to an inspectorate officer.

- (2) The Inspector cannot delegate a power or duty under subsection (1) to a monitor.
- (3) A delegation under subsection (1) must be in writing signed by the Inspector.
- (4) A person to whom a power or duty is delegated under subsection (1) cannot delegate that power or duty.
- (5) A person exercising or performing a power or duty that has been delegated to the person under subsection (1) is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) This section does not limit the power of the Inspector to perform a function through an officer or agent.
- (7) This section does not operate to affect the power of the Inspector to delegate under section 8.3.

8B.17. Annual report

- (1) By 31 August in each year, the Inspector must prepare and provide to the Minister a report on the Inspector's activities during the previous financial year.
- (2) The report must include the text of any direction given under section 8B.13 during the previous financial year.
- (3) The report must not include information about a breach complaint or a general complaint that could reasonably be expected to lead to the identification of a person who made, or is the subject of, the complaint unless, in dealing with the complaint —
 - (a) a sanction has been imposed under a local government's code of conduct; or
 - (b) a sanction has been imposed under section 8A.14(5), 8A.18(4) or 8A.25(1); or

- (c) the Inspector has acted under section 8A.34(5) or (6).
- (4) The Inspector may apply to the Minister before 31 August for an extension of time in which to lodge the report and the Minister may grant an extension on such terms as the Minister thinks fit.
- (5) The Minister must cause a copy of the report to be laid before each House of Parliament within 12 sitting days of the House after receiving it.

8B.18. Supplementary provision for laying document before Parliament

- (1) This section applies if —
 - (a) at the beginning of a period referred to in section 8B.13(5) in respect of a document, a House of Parliament is not sitting; and
 - (b) in the Minister’s opinion, the House will not sit before the end of the period.
- (2) The Minister must send the document to the Clerk of the House before the end of the period.
- (3) When the document is sent to the Clerk of the House it is taken to have been laid before the House.
- (4) The laying of a copy of a document that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the document.

Division 2 — Adjudicators

Subdivision 1 — Appointment and terms and conditions of appointment

8B.19. Appointment of Principal Adjudicator and Deputy Adjudicator

- (1) The Minister may appoint 1 person who is qualified under subsection (3) to the office of Principal Adjudicator.
- (2) The Minister may appoint 1 or more persons who are qualified under subsection (3) to the office of Deputy Adjudicator.
- (3) A person is qualified to be appointed to the office of Principal Adjudicator or Deputy Adjudicator if the person is a legal practitioner with at least 5 years' legal experience.
- (4) A person is not qualified to be appointed under subsection (1) or (2) if the person is —
 - (a) a council member; or
 - (b) employed by a local government, regional subsidiary or regional local government; or
 - (c) employed by WALGA.
- (5) The offices of adjudicator are not offices in the Public Service.

8B.20. Terms and conditions of appointment

- (1) Subject to section 8B.23, an adjudicator holds office for the period, not exceeding 4 years, specified in the adjudicator's instrument of appointment.
- (2) An adjudicator is eligible for reappointment once or more than once.

- (3) Subject to this Division, an adjudicator holds office on the terms and conditions of appointment determined by the Minister.

8B.21. Remuneration

An adjudicator is entitled to be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.

8B.22. Leave of absence

- (1) The Minister may, on terms and conditions the Minister considers appropriate, grant the Principal Adjudicator leave to be absent from office.
- (2) The Principal Adjudicator may, on terms and conditions the Principal Adjudicator considers appropriate, grant a Deputy Adjudicator leave to be absent from office.

8B.23. When office becomes vacant

The office of adjudicator becomes vacant if —

- (a) the period for which the adjudicator holds the office expires; or
- (b) the person holding the office —
- (i) dies; or
 - (ii) ceases to be qualified for appointment to the office as provided by section 8B.19(3); or
 - (iii) resigns under section 8B.24; or
 - (iv) is removed from office under section 8B.25(1).

8B.24. Resignation

- (1) An adjudicator may at any time resign by giving the Minister a signed letter of resignation.
- (2) A resignation takes effect on the receipt of the letter by the Minister or on a later day specified in the letter.

8B.25. Removal from office

- (1) The Minister may remove a person from the office of adjudicator if —
 - (a) the person becomes permanently or indefinitely incapable of performing the duties of the office; or
 - (b) the person is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) the person has been incompetent in performing the duties of the office or has neglected to perform the duties of the office; or
 - (d) the person has been guilty of misconduct; or
 - (e) the person is nominated as a candidate to fill an office of councillor, elector mayor or president and the nomination is accepted.
- (2) In this section —

misconduct includes conduct that renders the adjudicator unfit to hold office as an adjudicator even though the conduct does not relate to a duty of the office.

Subdivision 2 — Functions and powers

8B.26. Functions of Principal Adjudicator

The Principal Adjudicator has the functions conferred on the Principal Adjudicator by this Act.

8B.27. Functions of Deputy Adjudicator

- (1) The functions of a Deputy Adjudicator are —
 - (a) to assist the Principal Adjudicator in performing the Principal Adjudicator's functions; and
 - (b) any other functions conferred on a Deputy Adjudicator by this Act.
- (2) In performing the functions of a Deputy Adjudicator, a Deputy Adjudicator must comply with any directions of the Principal Adjudicator.

8B.28. General freedom from direction

Except as provided under this Act, an adjudicator is not subject to direction from the Minister, the Inspector or any other person in the performance of the adjudicator's functions.

8B.29. Deputy Adjudicator acting as Principal Adjudicator

- (1) If there is a vacancy in the office of Principal Adjudicator or the Principal Adjudicator is for any reason unable to act, the Deputy Adjudicator, or the most senior Deputy Adjudicator, is to perform the functions of the Principal Adjudicator.
- (2) The Minister may resolve any question as to the seniority of Deputy Adjudicators.

- (3) An act or omission of a Deputy Adjudicator acting in the Principal Adjudicator's place cannot be questioned on the ground that the occasion to act had not arisen or had ceased.

8B.30. Procedure of adjudicators

- (1) In dealing with a breach complaint an adjudicator —
 - (a) must act with as little formality as the requirements of this Act and a proper consideration of the matters before the adjudicator permit; and
 - (b) is not bound by the rules of evidence and may inform themselves on any matter in any manner the adjudicator considers appropriate; and
 - (c) may receive written or oral submissions as the adjudicator considers appropriate.
- (2) The Principal Adjudicator may give written directions as to the procedure to be followed by adjudicators but otherwise adjudicators may determine their own procedure.

8B.31. Annual report

- (1) By 31 August in each year, the Principal Adjudicator must prepare and provide to the Minister a report on the breach complaints dealt with by all adjudicators during the previous financial year.
- (2) The report must not include information that identifies a complainant or enables the identification of a council member against whom a breach complaint was made unless the complaint was referred to the adjudicator and the adjudicator made an order under section 8A.18(4)(b) or (c).

- (3) The Principal Adjudicator may apply to the Minister before 31 August for an extension of time in which to lodge the report and the Minister may grant an extension on such terms as the Minister thinks fit.
- (4) As soon as practicable after receiving the report, the Minister is to cause a copy of it to be laid before each House of Parliament.

Division 3 — Inspectorate officers

8B.32. Inspectorate officers

- (1) Public service officers may be appointed under the *Public Sector Management Act 1994* Part 3 for the following purposes —
 - (a) to assist the Inspector in the performance of the Inspector's functions;
 - (b) to act as investigators if designated under section 8B.33;
 - (c) to assist monitors in the performance of monitors' functions;
 - (d) otherwise, to perform functions of inspectorate officers in accordance with their terms of appointment.
- (2) The Inspector may, by arrangement with the Departmental CEO or the chief executive officer of any other department of the Public Service, make use (either full-time or part-time) of the services of any public service officer in the Department or the other department.
- (3) The Inspector may, by arrangement with the Departmental CEO or the chief executive officer of any other department of the Public Service, make use of

any facilities of the Department or the other department.

- (4) An arrangement under subsection (2) or (3) must be made on terms agreed to by the parties.
- (5) In performing the functions of an inspectorate officer, the inspectorate officer is subject to the general direction and control of the Inspector.

Division 4 — Investigators

8B.33. Designating persons as investigators

- (1) The Inspector may, in writing, designate any of the following persons as an investigator for the purposes of this Part —
 - (a) an inspectorate officer;
 - (b) any person who —
 - (i) is an officer of a Public Sector agency that provides services to the Department; and
 - (ii) in the opinion of the Inspector, has appropriate skills and knowledge to perform the functions of an investigator.
- (2) A person may be designated as an investigator for a fixed or indefinite period.
- (3) The Inspector may, in writing, revoke a designation at any time.

8B.34. Identity cards

- (1) The Inspector must ensure that each investigator is issued with an identity card in a form approved by the Inspector.

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- (2) An investigator must, when exercising a power under Division 6 —
 - (a) carry the investigator’s identity card; and
 - (b) produce the investigator’s identity card if requested to do so.
- (3) In any proceedings, the production of an identity card is evidence of the designation of the investigator to whom the identity card relates.
- (4) A person must not, without reasonable excuse, fail to return the person’s identity card to the Inspector within 14 days after ceasing to be an investigator.
Penalty for this subsection: a fine of \$5 000.

8B.35. Functions and powers of investigators

- (1) An investigator has the functions that are given to an investigator under this Act.
- (2) Without limiting Division 6, an investigator has all the powers that are needed for the performance of the investigator’s functions.
- (3) In performing functions under this Act, investigators are subject to the general direction and control of the Inspector.

Division 5 — Monitors

8B.36. Terms used

In this Division —

monitoring assignment means an assignment set out under section 8B.39(2)(a) in a monitor’s terms of appointment;

monitoring officer means —

- (a) a monitor; or

- (b) an inspectorate officer assisting with a monitoring assignment.

8B.37. Inspector may appoint monitor for local government

- (1) The Inspector may, by written notice to a local government, appoint a monitor for the local government —
 - (a) for the purposes of the model code of conduct as referred to in section 5.103(3A)(a); or
 - (b) on a request made to the Inspector under section 8B.38; or
 - (c) otherwise on the Inspector’s own initiative under subsection (2).
 - (2) The Inspector may appoint a monitor for a local government on the Inspector’s own initiative if —
 - (a) the Inspector is concerned that 1 or more of the following circumstances may be occurring or about to occur —
 - (i) the local government is not properly performing 1 or more of its functions;
 - (ii) the local government is not complying with 1 or more written laws applicable to it;
 - (iii) the local government is in need of assistance in performing 1 or more of its functions or in complying with 1 or more written laws applicable to it;
 - (iv) other circumstances exist that make it in the public interest for a monitor to be appointed for the local government;
- and

- (b) in the Inspector's opinion, it is appropriate to appoint a monitor to assist the local government in relation to 1 or more of those circumstances.

8B.38. Request to appoint monitor

- (1) A request to the Inspector to appoint a monitor for a local government may be made by any of the following —

- (a) the mayor or president;
- (b) the CEO;
- (c) the local government*.

** Absolute majority required.*

- (2) A request under subsection (1) must —
 - (a) be made in writing; and
 - (b) give details of each matter in relation to which assistance is sought from a monitor; and
 - (c) include any other information required by the approved form.
- (3) The Inspector may approve a form to be used for a request under subsection (1).
- (4) For the purpose of making a decision on a request under subsection (1), the Inspector may seek further information —
 - (a) from the mayor or president who, or local government that, made the request; and
 - (b) from the CEO.

8B.39. Terms of appointment

- (1) Before appointing a monitor for a local government, the Inspector must determine the monitor's terms of appointment.

- (2) The terms of appointment —
- (a) must set out the assignment that the monitor is to perform; and
 - (b) must set out the period of appointment or how that period is to be determined; and
 - (c) must set out the remuneration and expenses required to be paid to the monitor by the local government in accordance with the regulations; and
 - (d) must specify the extent, if any, to which the monitor is authorised to exercise powers under section 8B.45; and
 - (e) must specify, which, if any, of the powers under section 8B.48 may be exercised by the monitor; and
 - (f) must provide for the monitor to report to the Inspector on the outcome of the monitoring assignment; and
 - (g) must provide for any prescribed matter; and
 - (h) may provide for any other matter that the Inspector considers appropriate.

Examples for the purposes of paragraph (b):

1. A fixed period of 6 months.
2. A period that ends when the monitor completes the monitoring assignment.
3. A period that ends when the Inspector, the monitor or the local government decides that the appointment is no longer required.

- (3) The purpose of the monitoring assignment must be —
- (a) if section 8B.37(1)(a) applies — to assist the local government to deal with matters raised by a complaint under section 5.105 or Part 8A; or

- (b) if section 8B.37(1)(b) applies — to assist the local government in relation to the matters for which assistance is sought in accordance with section 8B.38(2)(b); or
 - (c) if section 8B.37(1)(c) applies — to assist the local government in relation to the circumstances mentioned in section 8B.37(2)(a) about which the Inspector considers it appropriate to appoint a monitor.
- (4) The monitoring assignment may include any tasks or other activities that the Inspector considers appropriate for achieving that purpose.
 - (5) The terms of appointment must be included in the notice under section 8B.37(1) appointing the monitor.
 - (6) The monitor holds office on the terms of appointment.

8B.40. Functions and powers of monitor

- (1) A monitor has the function of performing the monitoring assignment and has any other functions given to the monitor under this Act or any other written law.
- (2) In addition to the powers, if any, conferred on a monitor under section 8B.39(2)(d) or (e) or prescribed under section 8B.41(i), the monitor has power to do all things necessary or convenient to be done in connection with the performance of the monitor's functions.
- (3) A monitor is entitled to attend and observe council meetings and committee meetings, including meetings that are closed to the public.

8B.41. Regulations

Regulations may make provision about monitors, including any of the following —

- (a) prescribing how, or by whom, the remuneration and expenses to be paid to a monitor are to be determined, and the remuneration and expenses to be paid;
- (b) requiring a local government to pay a monitor's remuneration and expenses;
- (c) providing for the recovery of any remuneration and expenses not paid to a monitor by a local government as required by the regulations;
- (d) prescribing matters relating to the determination by the Inspector of a monitoring assignment;
- (e) prescribing matters relating to the selection of persons to be monitors;
- (f) prescribing other matters relating to the appointment of monitors;
- (g) providing for the variation of a monitor's terms of appointment;
- (h) providing for the early termination of a monitor's appointment;
- (i) prescribing powers or duties of a monitor, including powers in relation to temporarily adjourning a council meeting or a committee meeting;
- (j) prescribing, in relation to a monitor, powers or duties of the Inspector, a local government or any other person.

Division 6 — Powers of authorised officers

Subdivision 1 — Preliminary

8B.42. Terms used

In this Division —

authorised officer means any of the following —

- (a) the Inspector;
- (b) an investigator;
- (c) subject to the monitor's terms of appointment, a monitor;

authorised purpose, in relation to an authorised officer, means the performance of a function of the authorised officer;

entry warrant has the meaning given in section 8B.50(1);

remote communication means any way of communicating at a distance, including by telephone, facsimile, radio, videoconferencing, email and other electronic means.

Subdivision 2 — General power of Inspector to require information

8B.43. Inspector may require information

- (1) The Inspector may, by written notice, require a local government, a council member or an employee to provide the Inspector with specified information —
 - (a) that concerns the local government or its operations or affairs; or
 - (b) that the Inspector otherwise requires for an authorised purpose.

- (2) The notice must specify —
 - (a) the period (of not less than 14 days) within which the information must be provided; and
 - (b) the manner in which the information must be provided, which may be by electronic means; and
 - (c) the form in which the information must be provided, which may include a requirement to include an index or summary of the information provided.
- (3) The notice must —
 - (a) be signed by the Inspector; and
 - (b) be given to the local government, member or employee required to provide the information.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement in a notice given under subsection (3)(b).

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

Note for this subsection:

Section 8B.56 provides that self-incrimination is not an excuse.

Subdivision 3 — Powers of authorised officers

8B.44. Scope of powers under s. 8B.45 and 8B.48

The powers under sections 8B.45 and 8B.48 can be exercised only in relation to —

- (a) a local government; or
- (b) a person who is or has been —
 - (i) a member of a council; or

- (ii) a member of a committee of a council;
or
- (iii) an employee;
or
- (c) a person who is or has been a candidate for election as a council member; or
- (d) a person or body with whom a local government or a person referred to in paragraph (b) has, has had, may have or may have had a financial or other association.

8B.45. Powers to obtain evidence and information

- (1) For an authorised purpose, the Inspector may by written notice direct a person (the *subject person*) to do 1 or more of the following —
 - (a) to appear in person before an authorised officer at a time and place specified in the direction;
 - (b) to give evidence (including evidence on oath) to an authorised officer;
 - (c) to produce to an authorised officer, or allow an authorised officer to have access to, specified documents, information or property;
 - (d) to do anything necessary to enable an authorised officer to have access to any document, information or property in or under the custody or control of a person other than the subject person.
- (2) A monitor may exercise a power of the Inspector under subsection (1) if authorised to do so under the monitor's terms of appointment.

- (3) An authorised officer may administer an oath for the purposes of subsection (1)(b).
- (4) A direction under subsection (1)(c) to produce documents, information or property must specify —
 - (a) the time by which, or period within which, the documents, information or property must be produced; and
 - (b) the manner in which the documents or information must be provided, which may be by electronic means; and
 - (c) the form in which the documents or information must be provided, which may include a requirement to include an index or summary of the documents or information provided.
- (5) Subsection (1)(c) and (d) extend to documents and information in or under the custody or control of banks or other financial institutions.
- (6) For an authorised purpose, an authorised officer may —
 - (a) take copies of, or extracts from, any document to which an authorised officer gains access under this section; or
 - (b) take custody or control of any document or property to which an authorised officer gains access under this section on local government property.
- (7) A direction given to a person under subsection (1) may be varied or withdrawn by further written notice given to the person.

- (8) Nothing in this section limits the authority of an authorised officer to obtain evidence or information by a voluntary record of interview.

Note for this section:

It is an offence under section 8B.57(1)(b) to refuse or fail to comply with a direction lawfully given by an authorised officer.

8B.46. Non-disclosure notation

- (1) A notice issued by the Inspector under section 8B.45(1) may include a notation (a *non-disclosure notation*) to the effect that the following are prohibited except in the circumstances, if any, specified in the notation —
- (a) disclosure of information about the notice;
 - (b) disclosure of information about the authorised purpose (whether past, present or contingent) for which the notice was issued.
- (2) The non-disclosure notation must be accompanied by a written statement setting out the rights and obligations imposed by section 8B.47.
- (3) The non-disclosure notation can be included only if the Inspector is satisfied that —
- (a) not doing so might prejudice —
 - (i) a person's safety or reputation; or
 - (ii) a person's fair trial, if the person has been charged with an offence or such a charge is imminent; or
 - (iii) the performance of the authorised purpose for which the notice is issued;
 - or
 - (b) not doing so might otherwise be contrary to the public interest.

- (4) The Inspector may cancel a non-disclosure notation if the reason for the notation no longer exists.
- (5) If the Inspector cancels the non-disclosure notation —
 - (a) the Inspector must advise the person to whom the notice was given in writing; and
 - (b) the cancellation takes effect when the person is advised.
- (6) Unless it is cancelled earlier, the non-disclosure notation ceases to have effect 5 years after the notice containing the notation is issued.

8B.47. Failure to comply with non-disclosure notation

- (1) In this section —
non-disclosure notation —
 - (a) means a notation included in a notice under section 8B.46(1); but
 - (b) does not include a notation cancelled under section 8B.46(4) or that has ceased to have effect under section 8B.46(6).
- (2) A person must not disclose —
 - (a) information about a notice that includes a non-disclosure notification; or
 - (b) information about the authorised purpose (whether past, present or contingent) for which the notice was issued.

Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000.
- (3) Subsection (2) does not apply if the disclosure is made —
 - (a) in the circumstances, if any, permitted by the notation; or

- (b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the notice; or
- (c) after the information is in the public domain.

8B.48. Entry powers

- (1) For an authorised purpose, an authorised officer may enter a place in accordance with this section.
- (2) An authorised officer may, with assistants if necessary, enter local government property with or without the consent of the local government.
- (3) An authorised officer may, with assistants if necessary, enter a place other than local government property if —
 - (a) the occupier gives informed consent to the entry; or
 - (b) the occupier has been given notice of the entry and given informed consent to the entry; or
 - (c) the entry is authorised under an entry warrant.
- (4) For the purposes of subsection (3)(a) and (b), an occupier gives informed consent to entry if the occupier consents to the entry after —
 - (a) being informed by the authorised officer —
 - (i) of the powers that the authorised officer wants to exercise in respect of the place; and
 - (ii) of the reason why the authorised officer wants to exercise those powers; and
 - (iii) that the occupier can refuse to consent to the authorised officer doing so;
 - or
 - (b) being given a notice of entry under subsection (3)(b).

- (5) A notice of entry under subsection (3)(b) must specify —
- (a) the powers that the authorised officer wants to exercise in respect of the place; and
 - (b) the reason why the authorised officer wants to exercise those powers; and
 - (c) that the occupier can refuse to consent to the authorised officer doing so.
- (6) The notice must be given not less than 24 hours before the power of entry is exercised.
- (7) Successive entries for the purpose specified in the notice are to be regarded as entries to which that notice relates.

8B.49. Application of *Criminal Investigation Act 2006* to Inspector and investigators

- (1) For the purposes of the *Criminal Investigation Act 2006* section 9(1), a designation under this Part as an investigator is taken to be an appointment to an office.
- (2) For the purposes of the *Criminal Investigation Act 2006* —
- (a) each of the following is prescribed under section 9(1)(a) of that Act —
 - (i) the office of Local Government Inspector;
 - (ii) the office of investigator;and
 - (b) the powers under Parts 6 and 7 of that Act are prescribed under section 9(1)(b) of that Act in respect of those offices.

Subdivision 4 — Entry warrants

8B.50. Application for entry warrant

- (1) An authorised officer may apply to a magistrate for a warrant (an *entry warrant*) authorising the entry of a place for an authorised purpose.
- (2) Subject to this section —
 - (a) an application for an entry warrant must be in writing and include the information prescribed by the regulations; and
 - (b) the grounds of the application must be verified by affidavit; and
 - (c) the applicant must appear in person before the magistrate to provide information in support of the application on oath.
- (3) If the warrant is needed urgently and the applicant reasonably suspects that a magistrate is not available within a reasonable distance of the applicant, an application for an entry warrant may be made by remote communication.
- (4) A magistrate must reject an application for an entry warrant made by remote communication unless satisfied that —
 - (a) the warrant is needed urgently; and
 - (b) a magistrate is not available within a reasonable distance of the applicant.
- (5) If an application for an entry warrant is made by remote communication and it is not practicable to send the magistrate written material —
 - (a) the application may be made orally; and

- (b) the magistrate must make a written record of the application and information given in support of it; and
- (c) if the warrant is issued — the applicant must, as soon as practicable, send the magistrate an affidavit verifying the application and information given in support of it.

8B.51. Issue and content of entry warrant

- (1) On an application for an entry warrant, a magistrate may issue the warrant if satisfied that it is necessary for an authorised officer to enter a place for an authorised purpose.
- (2) An entry warrant must contain the following information —
 - (a) a reasonably particular description of the place to which it relates;
 - (b) a reasonably particular description of the authorised purpose for which entry to the place is required;
 - (c) if the authorised purpose is investigating a suspected offence under this Act — the provision of the Act suspected of being contravened;
 - (d) the period, not exceeding 14 days, during which it may be executed;
 - (e) the name of the magistrate who issued it;
 - (f) the date and time when it was issued.
- (3) An entry warrant must be in the form prescribed by the regulations.

- (4) If a magistrate issues an entry warrant on an application made by remote communication —
- (a) if practicable, the magistrate must send a copy of the original warrant to the applicant by remote communication; or
 - (b) if that is not practicable —
 - (i) the magistrate must provide the applicant by remote communication with the information that must be set out in the warrant; and
 - (ii) the applicant must complete a form of warrant with the information received and give the magistrate a copy of the form as soon as practicable after doing so; and
 - (iii) the magistrate must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available for collection by the applicant.
- (5) The copy of the original warrant sent, or the form of the warrant completed, under subsection (4) has the same force and effect as the original warrant.

8B.52. Refusal of entry warrant

If a magistrate refuses to issue an entry warrant, the magistrate must record on the application, or the written record of the application, the fact of, the date and time of, and the reasons for, the refusal.

8B.53. Effect of entry warrant

- (1) An entry warrant comes into force when it is issued by a magistrate.
- (2) An entry warrant may be executed according to its terms by an authorised officer entitled to enter the place for the authorised purpose specified in the warrant.
- (3) However, if an applicant for an entry warrant contravenes section 8B.50(5)(c) or 8B.51(4)(b)(ii), evidence obtained under the entry warrant is not admissible in proceedings in a court or tribunal.

Subdivision 5 — General

8B.54. Protection from liability

- (1) In this section —
protected person means —
 - (a) the Inspector; or
 - (b) an adjudicator; or
 - (c) a monitor; or
 - (d) an investigator; or
 - (e) a person acting under the direction of the Inspector, an adjudicator or a monitor; or
 - (f) a person who was a person referred to in paragraph (a), (b), (c), (d) or (e).
- (2) No civil liability is incurred by a protected person for anything that the protected person has done, in good faith, in the performance or purported performance of a function under this Act.

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- (3) The protection given by this section applies even though the thing done as described in subsection (2) may have been capable of being done whether or not this Act had been enacted.
- (4) Despite subsection (2), the State is not relieved of any liability that it might have for a protected person having done anything described in that subsection.
- (5) In this section —
 - (a) a reference to the doing of anything includes a reference to the omission to do anything; and
 - (b) liability includes liability for defamation.

8B.55. Protection from liability for publishing official statements

- (1) This section applies to statements (in any form) made or issued by a protected person (as defined in section 8B.54(1)) in the performance or purported performance of a function under this Act.
- (2) A protected person is not liable for publishing, in good faith —
 - (a) a statement to which this section applies; or
 - (b) a fair report or summary of a statement to which this section applies.
- (3) In subsection (2) —
liable includes liable for defamation.
- (4) Nothing in this section limits section 8B.54.

8B.56. Self-incrimination

- (1) A person is not excused from complying with a requirement under section 8B.43 or a direction under section 8B.45 on the ground that the answer to a question or the production of a document, information

or property might incriminate the person or expose the person to a penalty.

- (2) However, any answer given or document, information or property produced is not admissible in evidence in any proceedings against the person other than proceedings for perjury or an offence under section 8B.57(1)(c).

8B.57. Offences

- (1) A person commits an offence if the person —
- (a) hinders or obstructs an authorised officer in the performance of a function of the authorised officer; or
 - (b) refuses or fails to comply with a direction lawfully given by an authorised officer; or
 - (c) gives information to an authorised officer that is false or misleading.

Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000.

- (2) For the purposes of subsection (1), a person gives false or misleading information if the person does 1 or more of the following —
- (a) states anything that the person knows is false or misleading in a material particular;
 - (b) omits from a statement anything without which the statement is, to the person's knowledge, misleading in a material particular;
 - (c) gives or produces any record or other document that —
 - (i) the person knows is false or misleading in a material particular; or

- (ii) omits anything without which the record or other document is, to the person's knowledge, misleading in a material particular.

8B.58. Referral to other public officers or bodies

- (1) The Inspector may —
 - (a) refer any relevant matter to a public officer or body of the State, the Commonwealth, another State or a Territory that has authority or responsibility under a law to investigate, or take action in relation to, the relevant matter or any similar matter; and
 - (b) give to that officer or body any information, document or property that the Inspector has obtained under this Act in relation to the relevant matter.
- (2) In subsection (1) —
relevant matter means a matter —
 - (a) in relation to which the Inspector performs a function; or
 - (b) that comes to the Inspector's knowledge in the course of performing a function of the Inspector; or
 - (c) that otherwise arises from, or relates to, the performance of a function of the Inspector.

8B.59. Sharing of relevant information between Inspector and Departmental CEO

- (1) The Inspector may give to the Departmental CEO any information, document or property —
 - (a) that the Inspector has obtained under this Act; and

- (b) in relation to which the Departmental CEO performs a function.
- (2) The Departmental CEO may give to the Inspector any information, document or property —
 - (a) that the Departmental CEO has obtained under this Act; and
 - (b) in relation to which the Inspector performs a function.
- (3) Nothing in subsection (1) limits the ability of the Inspector to act under subsection 8B.58.

8B.60. Confidentiality for authorised officers

- (1) A person who is or has been an authorised officer must not, directly or indirectly, disclose or use information obtained in the administration of this Act.
Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000.
- (2) Subsection (1) does not apply to the disclosure or use of information that is —
 - (a) already in the public domain; or
 - (b) statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.
- (3) A person does not commit an offence under subsection (1) if the disclosure or use of the information is authorised under subsection (4).
- (4) The disclosure or use of information to which subsection (1) applies is authorised if the information is disclosed or used in any of the following circumstances —
 - (a) for the purpose of, or in connection with the performance of, a function under this Act;

- (b) for the purpose of, or in connection with, the Minister performing a function in relation to local government;
 - (c) as required by law;
 - (d) for the purpose of, or in connection with, obtaining legal advice or representation;
 - (e) for the purposes of any legal proceedings under this Act;
 - (f) under an order of a court or other person or body acting judicially;
 - (g) with the written consent of the person to whom the information relates;
 - (h) in circumstances in which the Inspector directs that the disclosure or use is in the public interest;
 - (i) in circumstances prescribed by the regulations.
- (5) A person cannot consent under subsection (4)(g) to the disclosure or use of information if it is an offence under section 8A.36(2) or 8B.47(2) for that person to disclose or use the information.
- (6) Nothing in subsection (4) authorises the disclosure or use of information by an authorised officer if that disclosure or use is prohibited under section 8A.36.

8B.61. Inspector may give notice to prevent continuing contravention

- (1) If the Inspector considers that a local government, a council member, a CEO, an employee or a person appointed under section 9.10(2) is contravening, or has contravened, a provision of this Act contravention of which is not an offence, the Inspector may give the

person a notice (a *compliance notice*) directing the person —

- (a) to cease contravening that provision; or
 - (b) to not contravene that provision again.
- (2) A person who continues to contravene a provision of this Act, or contravenes a provision again, after being given a compliance notice in relation to a contravention of that kind commits an offence.

Penalty for this subsection:

- (a) a fine of \$10 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

126. Section 9.10 amended

At the end of section 9.10(6) insert:

Penalty for this subsection:

- (a) a fine of \$5 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

127. Section 9.11 amended

At the end of section 9.11(3) insert:

Penalty for this subsection:

- (a) a fine of \$10 000;

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- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

128. Section 9.12 amended

- (1) At the end of section 9.12(1) insert:

Penalty for this subsection:

- (a) a fine of \$10 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

- (2) At the end of section 9.12(2) insert:

Penalty for this subsection:

- (a) a fine of \$10 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

129. Section 9.13A deleted

Delete section 9.13A.

130. Section 9.14 amended

In section 9.14(a) delete “\$5 000; and” and insert:

\$10 000; and

131. Part 9 Division 2 Subdivision 2 heading amended

In the heading to Part 9 Division 2 Subdivision 2 after “**notices**” insert:

issued by authorised persons

132. Section 9.17 amended

In section 9.17(3):

- (a) delete “Unless otherwise prescribed by regulation, the” and insert:

The

- (b) delete “a local law may prescribe” and insert:

may be prescribed

- (c) delete “10%” and insert:

20%

Note: The heading to amended section 9.17 is to read:

Content of notice

133. Part 9 Division 2 Subdivision 2A inserted

After Part 9 Division 2 Subdivision 2 insert:

**Subdivision 2A — Infringement notices issued by authorised
inspectorate officer**

9.22A. Terms used

In this Subdivision —

alleged offender means a person suspected of having committed a prescribed offence;

authorised inspectorate officer, in relation to an infringement notice, means an inspectorate officer appointed as an authorised inspectorate officer under regulations made under section 9.22C;

prescribed offence means an offence prescribed under section 9.22B.

9.22B Prescribed offences and modified penalties

- (1) Regulations may prescribe an offence under this Act, or under any regulations made under this Act, to be an offence for which an infringement notice may be issued under this Subdivision.
- (2) An offence must not be prescribed under subsection (1) if the penalty for the offence is or includes imprisonment.
- (3) For each offence prescribed under subsection (1), the regulations must prescribe —
 - (a) a modified penalty that is applicable in any circumstances in which the offence is committed; or

- (b) a modified penalty that is applicable if the offence is committed in circumstances specified in the regulations.
- (4) Any modified penalty prescribed under subsection (3) for an offence must not exceed 20% of the maximum fine that could be imposed for that offence by a court.

9.22C. Other matters to be prescribed

If, under section 9.22B, regulations prescribe an offence, the regulations must also —

- (a) provide for the appointment of authorised inspectorate officers in relation to infringement notices that may be issued under this Subdivision for the prescribed offence; and
- (b) provide for the means by which authorised inspectorate officers can show they are authorised to issue infringement notices; and
- (c) prescribe the form of infringement notices that may be issued under this Subdivision for the prescribed offence; and
- (d) prescribe any other forms required to be prescribed by this Subdivision in relation to infringement notices that may be issued under this Subdivision for the prescribed offence.

9.22D. Issuing infringement notices

- (1) This section applies if an authorised inspectorate officer has reason to believe that a person has committed a prescribed offence.
- (2) The authorised inspectorate officer may, within the prescribed period after the day on which the authorised

inspectorate officer believes the alleged offence to have been committed —

- (a) issue an infringement notice; and
- (b) give the infringement notice to the alleged offender.

9.22E. Content of infringement notice

- (1) An infringement notice must comply with the *Criminal Procedure Act 2004* section 9(1)(b) to (g).
- (2) The amount stated in an infringement notice as the modified penalty must be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.
- (3) An infringement notice must not relate to more than 1 alleged offence.

9.22F. Extension of time

- (1) The Inspector may, in a particular case, extend the period of 28 days within which the modified penalty stated in an infringement notice may be paid.
- (2) The extension may be allowed whether or not the period of 28 days has elapsed.

9.22G. Withdrawal of notice

- (1) The Inspector may withdraw an infringement notice.
- (2) To withdraw an infringement notice the Inspector must give the alleged offender a notice in the prescribed form stating that the notice has been withdrawn.
- (3) An infringement notice may be withdrawn whether or not the modified penalty has been paid.

- (4) If an infringement notice is withdrawn after the modified penalty is paid, the amount paid must be refunded.

9.22H. Benefit of paying modified penalty

- (1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within the period of 28 days or any extension of it and the notice has not been withdrawn.
- (2) If this subsection applies, it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.
- (3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

9.22I. Application of modified penalties

An amount paid as a modified penalty must, subject to section 9.22G(4), be dealt with in accordance with the *Sentencing Act 1995* section 60 as if it were a fine imposed for the offence concerned.

134. Section 9.24 amended

After section 9.24(1)(a) insert:

- (aa) the Inspector or a person authorised by the Inspector to do so; or

Note: The heading to amended section 9.24 is to read:

Commencing prosecutions

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135. Section 9.25 amended

In section 9.25(1) in the Table insert in numerical order:

s. 4.46A(4)

s. 4.90(1)

s. 4.92(1)

136. Section 9.45 amended

In section 9.45:

(a) delete “by the Departmental CEO” and insert:

by the Inspector

(b) delete “Departmental CEO.” and insert:

Inspector.

137. Section 9.55A inserted

At the end of Part 9 Division 3 insert:

9.55A. Giving documents electronically

(1) In this section —

electronic means includes —

(a) an electronic database or document system; and

(b) any other means by which a document can be accessed electronically;

recipient means —

- (a) the Minister; or
 - (b) the Departmental CEO; or
 - (c) the Inspector; or
 - (d) the Electoral Commissioner.
- (2) A document that is required or permitted to be given to a recipient under this Act may be provided to a recipient in the manner the recipient thinks fit, including, if authorised by the recipient, by electronic means using contact details provided by the recipient.
- (3) The regulations may make provision for and in relation to the following —
- (a) the time at which the document is taken to have been given;
 - (b) the means of satisfying a requirement under this Act in relation to a document in writing (for example, a requirement that the original of a document be given or that a document be signed) if the document is given by electronic means.
- (4) This section applies to a requirement or permission to give a document whether the expression “give”, “send” or “serve”, or any other word or expression, is used.

138. Section 9.61 amended

In section 9.61(b) delete “\$5 000;” and insert:

\$10 000;

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139. Section 9.63A amended

In section 9.63A(1) in the definition of *excluded provision* after paragraph (d) insert:

- (da) Part 8, 8A or 8B or a provision of any of those Parts;

140. Section 9.65A inserted

At the beginning of Part 9 Division 7 insert:

9.65A. 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.

Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000.

141. Section 9.68 amended

At the end of section 9.68(4) insert:

Penalty for this subsection:

- (a) a fine of \$5 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

142. Section 9.69A amended

In section 9.69A delete “Part 5 or Part 8 affects the duty of the Departmental CEO” and insert:

Part 5, 8, 8A or 8B affects the duty of a person

143. Section 9.69AA inserted

After section 9.69 insert:

9.69AA. Good practice guidelines

- (1) The Minister may —
 - (a) issue guidelines setting out what the Minister regards as good practices that local governments, CEOs and employees should adopt in performing 1 or more of their functions; and
 - (b) amend or revoke any guidelines issued under paragraph (a).
- (2) The Departmental CEO must ensure that up-to-date versions of all guidelines are publicly available on a website maintained by or on behalf of the Department.
- (3) Guidelines issued under this section are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (4) If there is a conflict or inconsistency between a provision of this Act and a provision of guidelines issued under this section, the provision of this Act prevails.

144. Section 9.69B inserted

At the end of Part 9 Division 7 insert:

9.69B. DAP functions

(1) In this section —

DAP function means a function under DAP regulations that relates to prescribed development applications;

DAP regulations means regulations made under the *Planning and Development Act 2005* Part 11A;

prescribed development application has the meaning given in the *Planning and Development Act 2005* section 171A(1).

(2) Regulations under section 9.59 may —

(a) provide that a DAP function of a local government —

- (i) must be performed for and on behalf of the local government by the CEO or employees authorised by the CEO; and
- (ii) cannot be performed by the local government in any other manner (for example, by the council or a committee of the council);

and

(b) otherwise deal with or regulate —

- (i) the performance of a DAP function of a local government as referred to in paragraph (a); and
- (ii) authorisations referred to in paragraph (a)(i); and
- (iii) supplementary or incidental matters.

- (3) Regulations made for the purposes of subsection (2) have effect despite any other provision of this Act.

145. Schedule 2.3 clauses 8 and 9 replaced

Delete Schedule 2.3 clauses 8 and 9 and insert:

8. How deputy mayor or deputy president is elected

- (1) The council is to elect a councillor (other than the mayor or president) to fill the office.
- (2) The election is to be conducted by the CEO in accordance with the procedure prescribed.
- (3) Nominations for the office are to be given to the CEO in writing before the meeting or during the meeting before the close of nominations.
- (4) Nominations close at the meeting at a time announced by the CEO, which is to be a sufficient time after the announcement by the CEO that nominations are about to close to allow for any nominations made to be dealt with.
- (5) If a councillor is nominated by another council member, the CEO is not to accept the nomination unless the nominee has advised the CEO, orally or in writing, that they are willing to be nominated for the office.
- (6) The council members are to vote on the matter by secret ballot as if they were electors voting at an election.
- (7) Subject to clause 9(1), the votes cast under subclause (6) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 (which deals with determining the result of an election) as if those votes were votes cast at an election.
- (8) As soon as is practicable after the result of the election is known, the CEO is to declare and give notice of the result in accordance with regulations, if any.

9. Votes may be cast a second time

- (1) If when the votes cast under clause 8(6) are counted there is an equality of votes between 2 or more candidates who are the only candidates in, or remaining in, the count, the count is to be discontinued and the meeting is to be adjourned for not more than 7 days.
- (2) Any nomination for the office may be withdrawn, and further nominations may be made, before or when the meeting resumes.
- (3) When the meeting resumes the council members are to vote again on the matter by secret ballot as if they were electors voting at an election.
- (4) The votes cast under subclause (3) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 as if those votes were votes cast at an election.

146. Schedule 2.5 clause 2 replaced

In Schedule 2.5 delete clause 2 and insert:

2. Membership of Advisory Board

- (1) The Advisory Board consists of 5 members appointed by the Minister.
- (2) The members are to be persons who, in the opinion of the Minister, have knowledge and experience relevant to local government.

2A. Chairperson and deputy chairperson

- (1) The Minister must, in writing, designate —
 - (a) a member to be the chairperson of the Advisory Board; and
 - (b) another member to be deputy chairperson of the Advisory Board.

- (2) A member may be designated as the chairperson or deputy chairperson at the same time as the person is appointed as a member or at any time after the person is appointed as a member.
- (3) Subject to this Schedule, the chairperson or deputy chairperson holds office for the term, ending not later than the term of appointment as a member, stated in the instrument of designation as chairperson or deputy chairperson.
- (4) A vacancy arises in the office of chairperson or deputy chairperson of the Advisory Board if the person holding the office —
 - (a) resigns the office by written resignation given to the Minister; or
 - (b) ceases to be a member of the Advisory Board.
- (5) A person resigning the office of chairperson or deputy chairperson of the Advisory Board may continue to be a member.

2B. Deputy chairperson acting as chairperson

- (1) The deputy chairperson of the Advisory Board must act as chairperson —
 - (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or for another reason cannot perform the duties of the office.
- (2) An act or omission of the deputy chairperson acting in the place of the chairperson is not to be questioned on the ground that the occasion for acting had not arisen or had ceased.

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147. Schedule 2.5 clause 3 amended

- (1) In Schedule 2.5 clause 3(1):
 - (a) delete “Governor” and insert:

Minister
 - (b) delete “clause 2(b), (c) or (d).” and insert:

clause 2, other than the member designated as chairperson.
- (2) Delete Schedule 2.5 clause 3(3).
- (3) In Schedule 2.5 clause 3(4):
 - (a) in paragraph (aa) delete “appointed under clause 2(d) and is presiding at a meeting under clause 7(2),” and insert:

designated as deputy chairperson and acting as chairperson under clause 2B(1),
 - (b) in paragraph (b) delete “himself or herself” and insert:

themselves
 - (c) in paragraph (c) delete “member,” and insert:

member.
 - (d) delete the passage that begins with “and a deputy” and continues to the end of the clause.

(4) After Schedule 2.5 clause 3(4) insert:

(5) A deputy attending a meeting or acting in place of a member under subclause (4) has all the functions and protection of a member.

148. Schedule 2.5 clause 4 deleted

Delete Schedule 2.5 clause 4.

149. Schedule 2.5 clause 6 amended

In Schedule 2.5 clause 6(2):

(a) delete “Governor” and insert:

Minister

(b) delete paragraph (d);

(c) in paragraph (e) delete “Governor” and insert:

Minister

150. Schedule 2.5 clause 7 amended

(1) In Schedule 2.5 clause 7(1) delete “member appointed under clause 2(a) is to” and insert:

chairperson must

(2) Delete Schedule 2.5 clause 7(2).

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- (3) In Schedule 2.5 clause 7(3) delete “one of whom must be the member appointed under clause 2(a) or the member appointed under clause 2(d).” and insert:

members.

151. Schedule 2.5 clause 11 amended

- (1) Delete Schedule 2.5 clause 11(2) to (3b) and insert:
- (2) A committee appointed under subclause (1) is to consist of not less than 3 persons with knowledge and experience relevant to local government.
- (3) The Advisory Board must designate —
- (a) a member of the committee to preside at committee meetings at which the member is present; and
 - (b) a member of the committee to preside at committee meetings at which the member designated under paragraph (a) is not present.
- (3A) The quorum for a meeting of a committee is 50% of the members appointed.
- (2) In Schedule 2.5 clause 11(7) delete “appointed under subclause (2)(b), (c) or (d)”.

152. Schedule 2.5 clause 15 amended

At the end of Schedule 2.5 clause 15 insert:

Penalty:

- (a) a fine of \$10 000;
- (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues.

153. Schedule 4.1A amended

- (1) In Schedule 4.1A in the provisions listed in the Table delete “2.32(b)” and insert:

2.32(1)(b)

Table

| | |
|-----------------|-----------------|
| cl. 2(6) | cl. 4(3)(b) |
| cl. 6(3)(b) | cl. 7(4)(b) |
| cl. 9(3)(b) | cl. 10(4)(b) |
| cl. 12(3)(b) | cl. 13(4)(b) |
| cl. 15(2)(d)(i) | cl. 16(2)(d)(i) |
| cl. 17(2)(d)(i) | |

- (2) In Schedule 4.1A clause 2 in the note for clause 2 delete “2.32(f)” and insert:

2.32(1)(f)

154. Schedule 4.1B clause 1 amended

In Schedule 4.1B clause 1(1)(b) delete “2.32(f);” and insert:

2.32(1)(f);

155. Schedule 5.1 deleted

Delete Schedule 5.1.

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156. Schedule 8.1 deleted

Delete Schedule 8.1.

157. Schedule 8A.1 inserted

Before Schedule 9.1 insert:

Schedule 8A.1 — Specified offences

[s. 8A.4]

Table

| Item | Offences under this Act Provision |
|-------------|--|
| 1. | s. 5.21(5) |
| 2. | s. 5.65(1) |
| 3. | s. 5.67 |
| 4. | s. 5.69(4) |
| 5. | s. 5.69A(4) |
| 6. | s. 5.75(1) |
| 7. | s. 5.76(1) |
| 8. | s. 5.78(1) |
| 9. | s. 5.87A(1) |
| 10. | s. 5.93 |
| 11. | s. 8.15J(1) |
| 12. | s. 8A.36(2) |
| 13. | s. 8A.38(1) |
| 14. | s. 8B.43(4) |
| 15. | s. 8B.57(1) |

| | |
|--|------------------|
| 16. | s. 8B.61(2) |
| 17. | s. 9.65A(2) |
| Offences under <i>The Criminal Code</i> | |
| Item | Provision |
| 18. | s. 82 |
| 19. | s. 83 |
| 20, | s. 85 |

158. Schedule 9.3 clause 12 deleted

Delete Schedule 9.3 clause 12.

159. Schedule 9.3 Division 7 inserted

At the end of Schedule 9.3 insert:

Division 7 — Provisions for *Local Government Amendment Act 2024*

Subdivision 1 — Preliminary

63. Term used: 2024 amendment Act

In this Division —

2024 amendment Act means the *Local Government Amendment Act 2024*.

Subdivision 2 — Serious local government offences

64. Conviction for serious local government offence

A person convicted of a serious local government offence (as defined in section 2.22(3)) before section 10(2) of the 2024 amendment Act comes into operation is taken to have

been convicted of a serious local government offence for the purposes of section 2.22 as amended by the 2024 amendment Act.

Subdivision 3 — Local laws

65. Periodic review of local laws

- (1) In this clause —
amendment day means the day on which section 20 of the 2024 amendment Act comes into operation;
pre-amendment local law means a local law that commenced before amendment day;
relevant pre-amendment period means the period of 8 years ending on the day before amendment day.
- (2) Section 3.16, as amended by section 20 of the 2024 amendment Act, applies on and after amendment day to pre-amendment local laws, but subject to subclauses (3) to (10) where applicable.
- (3) Subclause (4) applies to a pre-amendment local law if —
 - (a) on 1 or more occasions during the relevant pre-amendment period, the local government gave local public notice in respect of a review of the pre-amendment local law under section 3.16(2); and
 - (b) on that occasion or on the last of those occasions, the local government completed the review before amendment day.
- (4) Section 3.16, as amended by section 20 of the 2024 amendment Act, applies on and after amendment day as if the local government had made, on the day on which the local government completed the review, a determination under section 3.16(4) in respect of the pre-amendment local law.

- (5) Subclauses (6) and (7) apply to a pre-amendment local law if —
- (a) during the relevant pre-amendment period, the local government gave local public notice in respect of a review of the pre-amendment local law under section 3.16(2); but
 - (b) the local government did not complete the review before amendment day.
- (6) The local government must complete the review on or after amendment day as if section 3.16 had not been amended by section 20 of the 2024 amendment Act.
- (7) Section 3.16, as amended by section 20 of the 2024 amendment Act, applies after the day on which the local government completes the review as if the local government had made, on that day, a determination under section 3.16(4) in respect of the pre-amendment local law.
- (8) For the purposes of subclauses (3) to (7), a local government completes a review of a pre-amendment local law when —
- (a) the local government has, under section 3.16(3), considered any submissions made and has caused a report of the review to be prepared and submitted to its council; and
 - (b) its council has then completed its consideration of the report.
- (9) Subclause (10) applies to a pre-amendment local law if —
- (a) the pre-amendment local law commenced before the relevant pre-amendment period; and
 - (b) during the relevant pre-amendment period, the local government gave no local public notice in respect of a review of the pre-amendment local law under section 3.16(2).
- (10) Section 3.16, as amended by section 20 of the 2024 amendment Act, applies on and after amendment day as if the period of 15 years after the day on which the

pre-amendment local law commenced ends at the end of the period of 2 years beginning on amendment day.

- (11) If different provisions of a local law commenced on different days, for the purposes of this clause, the local law is taken to have commenced on the earliest of those days.

Subdivision 4 — Committees

66. Establishment of committees

- (1) In this clause —

amendment day means the day on which section 38 of the 2024 amendment Act comes into operation;

existing committee means a committee of a council that is in place under section 5.8 immediately before amendment day.

- (2) On and after amendment day, an existing committee continues in place as if it were established under section 5.8 as inserted by section 38 of the 2024 amendment Act.

67. Presiding members

- (1) In this clause —

amendment day means the day on which section 39 of the 2024 amendment Act comes into operation;

existing committee means a committee of the council of a local government that is in place immediately before amendment day;

new section 5.12(1) means section 5.12(1) as inserted by section 39 of the 2024 amendment Act.

- (2) For each of its existing committees, a local government must make its first appointment of the presiding member under new section 5.12(1) no later than 1 July 2025.
- (3) Until the first appointment is made, the person who, immediately before amendment day, is the presiding member of the existing committee may continue to be the presiding member.

- (4) If that person goes out of office before the first appointment is made, the person's replacement as presiding member must be appointed by the local government under new section 5.12(1) as soon as practicable (but no later than 1 July 2025).

68. Deputy presiding members

- (1) In this clause —
amendment day means the day on which section 39 of the 2024 amendment Act comes into operation;
existing deputy presiding member means a person who, immediately before amendment day, is the deputy presiding member of a committee of the council of a local government;
new section 5.12(2) means section 5.12(2) as inserted by section 39 of the 2024 amendment Act.
- (2) An existing deputy presiding member may continue to be the deputy presiding member of their committee until the end of 30 June 2025.
- (3) Subclause (2) ceases to apply if the existing deputy presiding member, or another person, is appointed by the local government as the deputy presiding member of the committee under new section 5.12(2).

69. Audit, risk and improvement committees

- (1) In this clause —
amendment day means the day on which section 87 of the 2024 amendment Act comes into operation;
audit, risk and improvement committee includes a shared committee under section 7.1CB as inserted by section 87 of the 2024 amendment Act;
existing audit committee means a local government's audit committee that, immediately before amendment day, is in place under old Part 7 Division 1A;

new Part 7 Division 1A means Part 7 Division 1A as inserted by section 87 of the 2024 amendment Act;

old Part 7 Division 1A means Part 7 Division 1A as in force immediately before amendment day.

- (2) A local government must, in accordance with new Part 7 Division 1A, establish its audit, risk and improvement committee no later than 6 months after amendment day.
- (3) On and after amendment day, until the audit, risk and improvement committee is established —
 - (a) the local government's existing audit committee continues in place in accordance with old Part 7 Division 1A; and
 - (b) the local government may, as and when required, appoint members to the existing audit committee in accordance with old Part 7 Division 1A; and
 - (c) the existing audit committee's functions are those of the audit, risk and improvement committee.

Subdivision 5 — Electoral matters

70. Nominee of body corporate

- (1) In this clause —

amendment day means the day on which section 32 of the 2024 amendment Act comes into operation;

officer, in relation to a body corporate, has the meaning given in section 4.31(1GA) as inserted by section 32 of the 2024 amendment Act.
- (2) This clause applies to a nomination by a body corporate that is in force under section 4.31(1G) immediately before amendment day.
- (3) On and after amendment day —
 - (a) the nomination continues in force as if it were made under section 4.31(1G) as inserted by section 32 of the 2024 amendment Act; but

- (b) despite section 4.31(1G)(a) as inserted by section 32 of the 2024 amendment Act, the nominee does not have to be an officer or employee of the body corporate in order to be an owner or occupier of rateable property on the basis of the nomination.

71. Saving for cl. 12

- (1) In this clause —
amendment day means the day on which section 158 of the 2024 amendment Act comes into operation;
enrolment eligibility claim means a claim under section 4.32.
- (2) Clause 12, as in force immediately before amendment day, continues to apply, on and after amendment day, in relation to the following as if clause 12 had not been deleted by section 158 of the 2024 amendment Act —
 - (a) an enrolment eligibility claim made before amendment day;
 - (b) a person who is an elector by virtue of an enrolment eligibility claim made before amendment day.
- (3) On and after amendment day, a person is not qualified under section 2.19(1)(b) if the person is only eligible for enrolment under section 4.30(1)(a) and (b) because of subclause (2).

Subdivision 6 — Conduct breaches and disciplinary matters

72. Terms used

- (1) In this Subdivision —
amendment day means the day on which section 71 of the 2024 amendment Act comes into operation;
new Part 8A means Part 8A of this Act as in force after amendment day;
old Schedule means Schedule 5.1 of this Act as in force immediately before amendment day;

old section means a section of this Act as in force immediately before amendment day;

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

- (2) A term used in this Subdivision that is given a meaning in this Act (including as amended by the 2024 amendment Act) has the same meaning.

73. Pending conduct matters: minor breach, recurrent breach, serious breach

- (1) This subclause applies if, on amendment day, a standards panel is dealing with a complaint allocated to the standards panel under old section 5.110 but has not acted under subsection (2) of that section in respect of the complaint.
- (2) If subclause (1) applies, the standards panel may deal with the complaint under old section 5.110 and the old Schedule continues to apply for that purpose.
- (3) Despite subclause (2), if the breach alleged in the complaint might be a recurrent breach if found to have been committed, the standards panel must give the complaint to the Inspector to be dealt with under new Part 8A as if it were a complaint alleging a conduct breach.
- (4) Old section 5.125 continues to apply in relation to a decision of a standards panel.
- (5) If, before amendment day, the Departmental CEO has received a complaint under old section 5.114 alleging a serious breach, and the Departmental CEO considers that it may be appropriate to make an allegation to the State Administrative Tribunal in relation to the matter, the Departmental CEO must send the complaint to the Inspector to be dealt with under new Part 8A as if it were a complaint of a specified breach.
- (6) If, on amendment day, an allegation under old section 5.112 or old section 5.116 is pending before the State Administrative Tribunal, the Tribunal must deal with the

allegation as if it were an allegation of a recurrent breach or specified breach made to the Tribunal under this Act as amended.

74. Findings about minor, recurrent and serious breaches committed before amendment day

- (1) A minor breach found before amendment day or under clause 73 to have been committed is taken to have been found to be a conduct breach for the purposes of this Act.
- (2) A recurrent breach found before amendment day to have been committed is taken to have been found to be a recurrent breach for the purposes of this Act.
- (3) A serious breach found before amendment day to have been committed is taken to have been found to be a specified breach for the purposes of this Act.

75. Order made before amendment day

- (1) An order imposing a sanction under old section 5.110(6), old section 5.113 or old section 5.117(1) may be enforced as if it were —
 - (a) in the case of an order under old section 5.110(6) — an order under new Part 8A section 8A.18(4);
 - (b) in the case of an order under old section 5.113 — an order under new Part 8A section 8A.14(5);
 - (c) in the case of an order under old section 5.117(1) — an order under new Part 8A section 8A.25(1).
- (2) Except in section 2.25A as inserted by section 12 of the 2024 amendment Act, a person suspended by order under old section 5.113 or old section 5.117(1) is taken to be or to have been suspended by order under new Part 8A section 8A.14(5), 8A.18(4) or 8A.25(1).
- (3) A person disqualified by order under old section 5.113 or old section 5.117(1) from holding office as a member of a council is taken to be or to have been disqualified by order under new Part 8A section 8A.14(5) or 8A.25(1).

76. Primary standards panel annual report

- (1) In this clause —
primary standards panel means the standards panel established under old section 5.122(1).
- (2) The primary standards panel must, as soon as practicable after amendment day, prepare and provide to the Minister a report on the complaints dealt with by all standards panels (including complaints dealt with under clause 72) after the last report was given to the Minister under the old Schedule clause 11.
- (3) For the purposes of subclause (2), the old Schedule continues to apply to the primary standards panel.
- (4) The Minister must cause a copy of the report to be laid before each House of Parliament.

Subdivision 7 — Inquiries and Ministerial intervention

77. Current inquiries by, or authorised by, Departmental CEO

- (1) In this clause —
amendment day means the day on which section 91 of the 2024 amendment Act comes into operation;
current inquiry means an inquiry commenced under former Division 1 that is current or continuing under former Division 1 immediately before amendment day;
former Division 1 means Part 8 Division 1 as in force immediately before amendment day;
old section means a section of this Act as in force immediately before amendment day.
- (2) An inquiry has commenced under former Division 1 if —
 - (a) the Departmental CEO has commenced the inquiry under old section 8.3(1); or
 - (b) the Departmental CEO has authorised the inquiry under old section 8.3(2).

- (3) A current inquiry must be conducted in the manner provided by former Division 1, and its provisions apply accordingly.

78. Inquiry Panels

- (1) In this clause —
amendment day means the day on which section 101 of the 2024 amendment Act comes into operation;
Inquiry Panel means an Inquiry Panel appointed under section 8.16 as in force immediately before amendment day.
- (2) An Inquiry Panel conducting an inquiry immediately before amendment day is taken to have been appointed as an Independent Inquiry and —
- (a) this Act as amended by the 2024 amendment Act applies accordingly; and
 - (b) any member of the Inquiry Panel —
 - (i) continues in office as a member of the Independent Inquiry; and
 - (ii) subject to this Act, holds the office for the duration of the inquiry.

79. Ministerial intervention

- (1) In this clause —
amendment day means the day on which section 91 of the 2024 amendment Act comes into operation.
- (2) For the purposes of Part 8 Division 1A —
- (a) a reference in section 8.15E(2)(b) to an allegation includes a reference to an allegation mentioned in section 8.15E(2)(b) as in force immediately before amendment day;
 - (b) a reference in sections 8.15E(3) and (4) and 8.15K(2) to advice of the Inspector includes a reference to advice provided by the Departmental CEO before amendment day.

Subdivision 8 — Misapplication of funds and property

80. Part 8 Division 4 authorisations and Departmental CEO actions and approvals

- (1) In this clause —
amendment day means the day on which section 119 of the 2024 amendment Act comes into operation;
existing authorisation means an authorisation in operation under section 8.36 immediately before amendment day.
- (2) A person authorised to act under an existing authorisation may continue to act as if the authorisation were an authorisation under section 8.36 as amended by section 119 of the 2024 amendment Act.
- (3) The Departmental CEO may continue to carry out any inquiry or other action commenced by the Departmental CEO under Part 8 Division 4 before amendment day, and for that purpose may exercise any of the powers of the Inspector under Part 8 Division 4 as amended by the 2024 amendment Act.
- (4) An approval given by the Departmental CEO under section 8.41(2) before amendment day continues to have effect as if it were given by the Inspector under section 8.41(2) as amended by section 121 of the 2024 amendment Act.

Subdivision 9 — General

81. Transitional regulations

- (1) In this clause —
specified means specified or described in the regulations;
transitional matter —
 - (a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this

Act, or to any other written law, made by the 2024 amendment Act; and

- (b) includes a saving or application matter.
- (2) Regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter.
- (3) Without limiting subclause (2), regulations made for the purposes of that subclause may provide that specified provisions of this Act or any other written law —
 - (a) do not apply to, or in relation to, a specified matter or thing; or
 - (b) apply with specified modifications to, or in relation to, a specified matter or thing.
- (4) If regulations made for the purposes of subclause (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a) but not earlier than the day on which section 159 of the 2024 amendment Act comes into operation, the regulations have effect according to their terms.
- (5) If regulations made for the purposes of subclause (2) contain a provision of a kind described in subclause (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

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160. Various references to gender removed

Amend the provisions listed in the Table as set out in the Table.

Table

| Provision | Delete | Insert |
|---|-----------------------------|---------------|
| s. 2.14 s. 2.25(4) | his or her | their |
| s. 2.19(3) s. 2.34(2) s. 2.42(1) s. 4.32(1) s. 4.94(c) s. 5.72 s. 5.84(1)(a) s. 5.87(b) Sch. 2.4 cl. 1(1) | he or she (each occurrence) | the person |
| s. 2.25(5A) s. 2.27(2) and (4) s. 2.32(d) s. 5.65(2) | he or she (each occurrence) | the member |

| Provision | Delete | Insert |
|--|------------|----------------------------|
| s. 2.26 s. 2.34(2) s. 4.29(2) s. 4.30(2) s. 5.79(2)(b) s. 5.80(2)(a)(ii) s. 5.85(2)(d)(ii) s. 5.87 s. 5.92(1) s. 5.93 s. 9.24(1)(b) and (2)(a) Sch. 9.3 cl. 12(2)(b) | his or her | the person's |
| s. 2.27(1) def. of <i>disqualified</i> par. (c) | his or her | |
| s. 4.22(3) s. 4.75(1) | his or her | the returning officer's |
| s. 4.26(1) | his or her | the Commissioner's |
| s. 4.26(2) | his or her | the returning officer's |
| s. 4.38(2) | his or her | an elector's |
| s. 4.42(1) | he or she | the returning officer |

s. 160

| Provision | Delete | Insert |
|---|---------------|--------------------------|
| s. 4.58(2) | his or her | the candidate's |
| s. 4.94(d) | his or her | the electoral officer's |
| s. 5.10(4) | his or her | the mayor or president's |
| s. 5.10(5) s. 5.45(2)(b) | his or her | the CEO's |
| s. 5.28(4) s. 5.98(5) Sch. 2.3 cl. 8(2) | he or she | the mayor or president |
| s. 5.39(1a)(a) s. 5.71(b) | he or she | the employee |
| s. 5.51(1) | his or her | the employee's |
| s. 5.71(a) | he or she | the CEO |
| s. 5.74(1) def. of <i>start day</i> paragraph (a) | he or she | the council member |
| s. 5.95(8) | his or her | the elector's |
| s. 6.24 | his or her | the receiver's |
| s. 7.6(2)(a) and (b) and (3)(b) | his or her | the auditor's |
| s. 7.6(2)(c) | he or she | the auditor |

| Provision | Delete | Insert |
|--|---------------|-----------------------|
| s. 7.12(1) | his or her | an |
| s. 8.40(1) | he or she | the authorised person |
| Sch. 2.3 cl. 4(4) Sch. 2.3 cl. 8(4) | he or she | the nominee |
| Sch. 2.4 cl. 3(c) | he or she | the commissioner |
| Sch. 2.4 cl. 6(1)(c) | his or her | the chairperson’s |
| Sch. 2.5 cl. 7(1) | he or she | the chairperson |
| Sch. 4.2 cl. 8 | his or her | the councillor’s |
| Sch. 4.2 cl. 8(a) | he or she | the councillor |

161. Various penalties amended

Amend the provisions listed in the Table as set out in the Table.

Table

| Provision | Delete | Insert |
|------------------|--|---|
| s. 2.27(9) | Penalty: \$5 000 or imprisonment for one year. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |

s. 161

| Provision | Delete | Insert |
|---------------------|--|---|
| s. 2.29 | Penalty: \$5 000 or imprisonment for one year. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |
| s. 2.42 | Penalty: \$5 000 or imprisonment for one year. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |
| s. 4.46A(2) | 1 year and a fine of \$5 000 | 12 months and a fine of \$12 000 |
| s. 4.46A(4) | 1 year and a fine of \$10 000 | 24 months and a fine of \$24 000 |
| s. 4.46A(5) and (6) | 1 year and a fine of \$5 000 | 12 months and a fine of \$12 000 |
| s. 4.46A(8) | 1 year and a fine of \$10 000 | 12 months and a fine of \$12 000 |
| s. 4.85(1) | Penalty: \$10 000 or imprisonment for 2 years. | Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000. |
| s. 4.85(2) | Penalty: \$10 000 or imprisonment for 2 years. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |

| Provision | Delete | Insert |
|------------------|--|---|
| s. 4.86 | \$10 000 or imprisonment for 2 years | imprisonment for 12 months and a fine of \$12 000 |
| s. 4.87(1) | Penalty: \$2 000. | Penalty for this subsection: a fine of \$5 000. |
| s. 4.88(1) | Penalty: a fine of \$5 000 or imprisonment for one year. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |
| s. 4.89(1) | Penalty: \$2 000. | Penalty for this subsection: a fine of \$5 000. |
| s. 4.90(1) | Penalty: \$5 000 or imprisonment for one year. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |
| s. 4.91(1) | Penalty: \$10 000 or imprisonment for 2 years. | Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000. |
| s. 4.91(2) | Penalty: \$5 000 or imprisonment for one year. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |

s. 161

| Provision | Delete | Insert |
|------------------|--|--|
| s. 4.91(3) | Penalty: \$2 000. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |
| s. 4.93 | \$5 000 or imprisonment for one year. | imprisonment for 12 months and a fine of \$12 000. |
| s. 4.94 | \$2 000 | a fine of \$5 000 |
| s. 5.65(1) | Penalty: \$10 000 or imprisonment for 2 years. | Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000. |
| s. 5.67 | \$10 000 or imprisonment for 2 years | imprisonment for 24 months and a fine of \$24 000 |
| s. 5.69(4) | Penalty: \$10 000 or imprisonment for 2 years. | Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000. |
| s. 5.69A(4) | Penalty: \$10 000 or imprisonment for 2 years. | Penalty for this subsection: imprisonment for 24 months and a fine of \$24 000. |

| Provision | Delete | Insert |
|--------------------------|--|---|
| s. 5.70(2) and (3) | a fine of \$10 000 or imprisonment for 2 years | imprisonment for 24 months and a fine of \$24 000 |
| s. 5.71 | Penalty: \$10 000 or imprisonment for 2 years. | Penalty: imprisonment for 24 months and a fine of \$24 000. |
| s. 5.71A(1), (2) and (3) | a fine of \$10 000 or imprisonment for 2 years | imprisonment for 24 months and a fine of \$24 000 |
| s. 5.78(1) | Penalty: \$10 000 or imprisonment for 2 years. | Penalty for this subsection: imprisonment for 12 months and a fine of \$12 000. |
| s. 5.87A(1) | Penalty for this subsection: a fine of \$10 000 or imprisonment for 2 years. | Penalty for this subsection: (a) a fine of \$10 000; (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues. |

s. 161

| Provision | Delete | Insert |
|------------------|--|---|
| s. 5.87B(1) | Penalty for this subsection: a fine of \$10 000 or imprisonment for 2 years. | Penalty for this subsection: (a) a fine of \$10 000; (b) a daily penalty of a fine of \$500 for each day or part of a day during which the offence continues. |
| s. 5.89 | \$10 000 or imprisonment for 2 years | imprisonment for 24 months and a fine of \$24 000 |
| s. 5.90(1) | Penalty: \$5 000 or imprisonment for 1 year. | Penalty for this subsection: a fine of \$5 000. |
| s. 5.93 | \$10 000 or imprisonment for 2 years | imprisonment for 24 months and a fine of \$24 000 |

Note: The headings to the amended sections listed in the Table are to read as set out in the Table.

Table

| Amended section | Section heading |
|------------------------|--|
| s. 4.58 | Death of candidate after close of nominations |
| s. 4.91 | Offences relating to nomination papers, ballot papers and ballot boxes |
| s. 5.10 | Appointment of committee members |

Part 3 — Amendments to other Acts

Division 1 — *Constitution Acts Amendment Act 1899* amended

162. Act amended

This Division amends the *Constitution Acts Amendment Act 1899*.

163. Schedule V amended

In Schedule V Part 1 Division 2 after the item relating to the Inspector of Custodial Services insert:

Local Government Inspector appointed under the *Local Government Act 1995*.

Division 2 — *Corruption, Crime and Misconduct Act 2003* amended

164. Act amended

This Division amends the *Corruption, Crime and Misconduct Act 2003*.

165. Section 43 amended

In section 43(3)(a) delete “Inquiry Panel” and insert:

Independent Inquiry

166. Section 45X amended

In section 45X(3)(a)(i) delete “Inquiry Panel” and insert:

Independent Inquiry

**Division 3 — *Health (Miscellaneous Provisions) Act 1911*
amended**

167. Act amended

This Division amends the *Health (Miscellaneous Provisions) Act 1911*.

168. Section 342 amended

In section 342(4) delete “3.12(3) and” and insert:

3.12(3) to

Division 4 — *Local Government Act 1995* amended

169. Act amended

This Division amends the *Local Government Act 1995*.

170. Section 8A.3 amended

(1) After section 8A.3(1)(a) insert:

- (aa) contravenes a provision of regulations made for the purposes of section 5.33A(1), contravention of which the regulations specify to be a conduct breach; and

(2) After section 8A.3(2) insert:

(2A) Regulations cannot specify that contravention of a provision of regulations made for the purposes of section 5.33A(1) is a conduct breach if contravention of the provision would, in addition to being a conduct breach under subsection (1), also be a specified breach under section 8A.4.

(3) After section 8A.3(4) insert:

(5) In this section, references to a provision of regulations made for the purposes of section 5.33A(1) include a model provision prescribed as referred to in section 5.33A(6) that has been adopted by the local government.

Division 5 — *Local Government Amendment Act 2023* amended

171. Act amended

This Division amends the *Local Government Amendment Act 2023*.

172. Section 2 amended

(1) In section 2 delete “This” and insert:

(1) This

- (2) At the end of section 2 insert:
- (2) If section 81 does not come into operation under subsection (1)(d) before the *Local Government Amendment Act 2024* section 69 comes into operation, section 81 —
- (a) does not come into operation; and
 - (b) is deleted when the *Local Government Amendment Act 2024* section 69 comes into operation.
- (3) If section 85 does not come into operation under subsection (1)(d) before the *Local Government Amendment Act 2024* section 90(4) comes into operation, section 85 —
- (a) does not come into operation; and
 - (b) is deleted when the *Local Government Amendment Act 2024* section 90(4) comes into operation.

Division 6 — *Local Government Legislation Amendment Act 2019* amended

173. Act amended

This Division amends the *Local Government Legislation Amendment Act 2019*.

174. Section 39 amended

Delete section 39(2).

**Division 7 — *Waste Avoidance and Resource Recovery Act 2007*
amended**

175. Act amended

This Division amends the *Waste Avoidance and Resource Recovery Act 2007*.

176. Section 61 amended

(1) Delete section 61(1) and insert:

(1) A local government may, and must if the CEO directs, make local laws in accordance with the *Local Government Act 1995* Part 3 Division 2 Subdivision 2 for the purposes specified in section 64 or generally for carrying into effect the provisions of this Part.

(2) Delete section 61(3) and insert:

(3) The CEO must consult the local government before giving a direction under this section.

(3) Delete section 61(5) and insert:

(5) A local government aggrieved by a direction of the CEO under this section may apply to the State Administrative Tribunal for a review of the direction.

(4) In section 61(7):

(a) delete “3.12(3) and” and insert:

3.12(3) to

- (b) delete “subsection (1)(b) or (2).” and insert:

this section.

