

South Australia



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ELIZABETHAE II REGINAE
A.D. 2002

**LOCAL GOVERNMENT (ACCESS TO MEETINGS AND DOCUMENTS)
AMENDMENT ACT 2002**

No. 46 of 2002

[Assented to 12 December 2002]

An Act to amend the Local Government Act 1999.

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The Parliament of South Australia enacts as follows:**Short title**

1. (1) This Act may be cited as the *Local Government (Access to Meetings and Documents) Amendment Act 2002*.

(2) The *Local Government Act 1999* is referred to in this Act as "the principal Act".

Commencement

2. (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.

(2) Section 7 will come into operation on assent.

(3) Section 22(b) will be taken to have come into operation on 1 January 2000.

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by striking out from the definition of "company" in subsection (1) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth";

(b) by striking out paragraph (a) of the definition of "owner" of land in subsection (1) and substituting the following paragraph:

(a) if the land is unalienated Crown land—the Crown;

(c) by striking out from paragraph (b) of the definition of "owner" of land in subsection (1) "is alienated from the Crown by grant in fee simple" and substituting "has been granted in fee simple (and is not unalienated Crown land)";

(d) by inserting after the definition of "township" in subsection (1) the following definition:

"unalienated Crown land" means all land of the Crown except—

(a) land held in fee simple by an agency or instrumentality (other than a Minister) of the Crown;

(b) land subject to a lease or licence (other than a lease or licence relating to exploration for, or recovery of, minerals or petroleum);

(c) land subject to an agreement to purchase;

Amendment of s. 12—Composition and wards

4. Section 12 of the principal Act is amended by striking out the item at the end of subsection (24) beginning with "*For the purposes of this subsection—*" and substituting the following subsection:

(25) For the purposes of subsection (24)—

- (a) if two or more councillors represent a ward, the number of electors represented by each councillor will be taken to be the number of electors for the ward (as at a date determined by the Electoral Commissioner) divided by the number of councillors who represent the ward (ignoring any fractions resulting from the division); and
- (b) the ward quota is the number of electors for the area (as at a date determined by the Electoral Commissioner) divided by the number of councillors for the area of the council who represent wards (ignoring any fractions resulting from the division).

Amendment of s. 28—Public initiated submissions

5. Section 28 of the principal Act is amended by striking out from subsection (22) "structure reform proposal" and substituting "structural reform proposal".

Amendment of s. 33—Ward quotas

6. Section 33 of the principal Act is amended by striking out the item at the end of subsection (2) beginning with "*For the purposes of this subsection—*" and substituting the following subsection:

(2a) For the purposes of subsection (2)—

- (a) if it is proposed that two or more councillors represent a particular ward, the number of electors represented by each councillor will be taken to be the number of electors for the ward (as at the relevant date) divided by the number of proposed councillors for the ward (ignoring any fractions resulting from the division); and
- (b) the ward quota will be taken to be the number of electors for the area (as at the relevant date) divided by the number of councillors for the area who represent wards (assuming that the proposal were in operation and ignoring any fractions resulting from the division); and
- (c) the relevant date, in relation to a proposal that relates to the formation or alternation of wards of the council, will be taken to be the date on which the proposal is finalised for the purposes of this Chapter.

Amendment of s. 54—Casual vacancies

7. Section 54 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) Subsection (2) does not apply if the member is not elected to the office for which the member stood and the conclusion of the election for that office falls within five months before polling day for a general election (the date of that general election being known at that time).

Amendment of s. 83—Notice of ordinary or special meetings

8. Section 83 of the principal Act is amended by striking out from subsection (5) ", after consultation with the principal member of the council,".

Amendment of s. 84—Public notice of council meetings

9. Section 84 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) The chief executive officer may also give notice to the public of the time and place of a meeting of the council in such other manner as the chief executive officer considers appropriate after taking into account—

- (a) the characteristics of the council's community and area; and
- (b) the best ways to bring notice of a meeting of the council to the public's attention; and
- (c) such other matters as the chief executive officer thinks fit.

Amendment of s. 87—Calling and timing of committee meetings

10. Section 87 of the principal Act is amended by striking out from subsection (10) ", after consultation with the presiding member of the council committee,".

Amendment of s. 88—Public notice of committee meetings

11. Section 88 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) The chief executive officer may also give notice to the public of the time and place of a meeting of a council committee in such other manner as the chief executive officer considers appropriate after taking into account—

- (a) the work of the committee and the characteristics of the council's community and area; and
- (b) the best ways to bring notice of a meeting of the committee to the public's attention; and
- (c) such other matters as the chief executive officer thinks fit.

Amendment of s. 90—Meetings to be held in public except in special circumstances

12. Section 90 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) A council or council committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).;

(b) by striking out paragraphs (a), (b), (c) and (d) of subsection (3) and substituting the following paragraphs:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

- (b) information the disclosure of which—
- (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
 - (ii) would, on balance, be contrary to the public interest;
- (c) information the disclosure of which would reveal a trade secret;
- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
- (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (ii) would, on balance, be contrary to the public interest;;
- (c) by inserting in subsection (3)(e) ", or the safety of any person" after "council property";
- (d) by striking out paragraph (f) of subsection (3) and substituting the following paragraph:
- (f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;;
- (e) by striking out paragraphs (h), (i), and (j) of subsection (3) and substituting the following paragraphs:
- (h) legal advice;
- (i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;
- (j) information the disclosure of which—
- (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
 - (ii) would, on balance, be contrary to the public interest;;
- (f) by striking out paragraph (l) of subsection (3);
- (g) by inserting at the end of the section the following subsection:

(9) In this section—

"personal affairs" of a person includes—

- (a) that person's—
 - (i) financial affairs;
 - (ii) criminal records;
 - (iii) marital or other personal relationships;
 - (iv) personal qualities, attributes or health status;
- (b) that person's employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person,

but does not include the personal affairs of a body corporate.

Amendment of s. 91—Minutes and release of documents

13. Section 91 of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (8) the following paragraph:

(ba) to prevent the disclosure of the amount or amounts payable by the council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the council after the contract has been entered into by all parties to the contract; or;

(b) by inserting in subsection (9)(a) ", and, in any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year" after "must be reviewed".

Amendment of s. 92—Access to meetings and documents—code of practice

14. Section 92 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A council must, within 12 months after the conclusion of each periodic election, review the operation of its code of practice under this section.

Insertion of s. 93A

15. The following section is inserted after the heading to Part 7 of Chapter 6 of the principal Act:

Audits by Ombudsman

93A. (1) The Ombudsman may, if the Ombudsman considers it to be in the public interest to do so, conduct a review of the practices and procedures (or of any aspect of the practices or procedures) of one or more councils or council committees under Part 3 or Part 4.

(2) The Ombudsman may, in carrying out a review under this section, exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed.

(3) At the conclusion of a review under this section, the Ombudsman may prepare a report on any aspect of the review.

(4) A report may make recommendations to a council or councils.

(5) The Ombudsman must supply a copy of any report to—

(a) the Minister; and

(b) any council that was under review, or that has (or had) a council committee that was under review,

and may also publish any report, a part of any report, or a summary of any report, in such manner as the Ombudsman thinks fit.

(6) The Minister may also publish any report, a part of any report, or a summary of any report, in such manner as the Minister thinks fit.

(7) This section does not limit powers of investigation under other provisions of this or another Act.

Amendment of s. 94—Investigation by Ombudsman

16. Section 94 of the principal Act is amended—

(a) by inserting in subsection (4) ", and may also publish the report, a part of the report, or a summary of the report, in such manner as the Ombudsman thinks fit" after "a copy of the report";

(b) by inserting after subsection (7) the following subsection:

(7a) The Minister may also publish the report, a part of the report, or a summary of the report, in such manner as the Minister thinks fit.

Insertion of s. 94A

17. The following section is inserted after section 94 of the principal Act:

Meeting information on website

94A. The chief executive officer of a council must, so far as is reasonably practicable, make available for inspection on the Internet an up-to-date schedule of the dates, times and places set for meetings of the council and council committees.

Amendment of s. 159—Preliminary

18. Section 159 of the principal Act is amended by striking out subsection (5).

Amendment of s. 166—Discretionary rebates of rates

19. Section 166 of the principal Act is amended—

(a) by striking out paragraph (l) of subsection (1) and substituting the following paragraph:

(l) where the rebate is considered by the council to be appropriate to provide relief against what would otherwise amount to a substantial change in rates payable by a ratepayer due to—

- (i) a redistribution of the rates burden within the community arising from a change to the basis or structure of the council's rates; or
- (ii) a change to the basis on which land is valued for the purpose of rating, rapid changes in valuations, or anomalies in valuations.;

(b) by inserting after subsection (1) the following subsection:

(1a) A council must, in deciding whether to grant a rebate of rates or charges under subsection (1)(d), (e), (f), (g), (h), (i) or (j), take into account—

- (a) the nature and extent of council services provided in respect of the land for which the rebate is sought in comparison to similar services provided elsewhere in its area; and
- (b) the community need that is being met by activities carried out on the land for which the rebate is sought; and
- (c) the extent to which activities carried out on the land for which the rebate is sought provides assistance or relief to disadvantaged persons,

and may take into account other matters considered relevant by the council.;

(c) by inserting after subsection (3) the following subsection:

(3a) A rebate of rates or charges under subsection (1)(l) may be granted for a period exceeding one year, but not exceeding three years.

Amendment of s. 171—Publication of rating policy

20. Section 171 of the principal Act is amended by striking out from subsection (4) "each rates notice sent to ratepayers under this Chapter" and substituting "the first rates notice sent to ratepayers under this Chapter after the declaration of rates for a particular financial year".

Amendment of s. 188—Fees and charges

21. Section 188 of the principal Act is amended by inserting after subsection (2) the following subsection:

(2a) Fees or charges under subsection (1)(d) must not exceed a reasonable estimate of the direct cost to the council in providing the information, materials, copies or extracts.

Amendment of s. 193—Classification

22. Section 193 of the principal Act is amended—

(a) by inserting after subsection (4) the following subsection:

(4a) Land that formed a road or part of a road that is vested in a council after the closure of the road under the *Roads (Opening and Closing) Act 1991* is taken to have been classified as community land unless the council resolves before, or at the time of, the making of the relevant road process order under that Act that it is to be excluded from classification as community land under this section.;

(b) by inserting after subsection (6) the following subsection:

(7) For the purposes of this section, local government land does not include easements or rights of way.

Amendment of s. 196—Management plans

23. Section 196 of the principal Act is amended by striking out from subsection (7)(a) "(other than for the Adelaide Park Lands—see Division 7)".

Amendment of s. 201—Sale or disposal of local government land

24. Section 201 of the principal Act is amended—

(a) by inserting in subsection (2) "a road or" after "land forming";

(b) by inserting in subsection (2)(b) "a road or" after "land that formed";

(c) by inserting after paragraph (c) of subsection (2) the following paragraphs:

(d) the council may grant an easement (including a right of way) over community land;

(e) the council may grant an easement (excluding a right of way) over a road or part of a road.

Amendment of s. 205—Management plan

25. Section 205 of the principal Act is amended by striking out from subsection (1) "three years" and substituting "five years".

Amendment of s. 221—Alteration of road

26. Section 221 of the principal Act is amended by striking out from subsection (3)(b) "indicated on a plan approved" and substituting "approved as part of a development authorisation".

Amendment of s. 223—Public consultation

27. Section 223 of the principal Act is amended—

(a) by striking out paragraphs (a) and (b) of subsection (1) and substituting the following paragraph:

(a) that would result in any part of a road being fenced, enclosed or partitioned so as to impede the passage of traffic to a material degree; or;

(b) by inserting after subsection (2) the following subsection:

(3) The regulations may prescribe exceptions to the operation of subsection (1)(a).

Amendment of s. 246—Power to make by-laws

28. Section 246 of the principal Act is amended by inserting in subsection (3)(g) ", and in the case of a continuing offence fix a further penalty not exceeding \$50 for every day on which the offence or breach of the by-law continues" after "\$750".

Amendment of s. 250—Model by-laws

29. Section 250 of the principal Act is amended by inserting in subsection (2) ", or an alteration to a model by-law" after "A model by-law".

Amendment of s. 254—Power to make orders

30. Section 254 of the principal Act is amended by striking out from item 2(1) in Column 1 of the table "drain fill" and substituting "drain, fill".

Amendment of s. 257—Action on non-compliance

31. Section 257 of the principal Act is amended by striking out from subsection (1) "within" and substituting "with in".

Amendment of Sched. 2

32. Schedule 2 of the principal Act is amended—

- (a) by striking out subclause (3) of clause 14;
- (b) by striking out subclauses (2) and (3) of clause 31.

Amendment of Sched. 4

33. Schedule 4 of the principal Act is amended—

- (a) by striking out paragraph (e) of clause 1 and substituting the following paragraph:
 - (e) a copy of its most recent information statement under the *Freedom of Information Act 1991*;;
- (b) by inserting after paragraph (g) of clause 1 the following paragraphs:
 - (ga) a report on the use of sections 90(2) and 91(7) by the council and its council committees containing the information required by the regulations;
 - (gb) a report on the applications made to the council under the *Freedom of Information Act 1991* during the relevant financial year containing the information required by the regulations;;
- (c) by inserting after paragraph (h) of clause 1 the following paragraph:
 - (ha) the annual report of any subsidiary received by the council under schedule 2 for the relevant financial year;;
- (d) by striking out from clause 3 "councillors" and substituting "members".

Amendment of Sched. 5

34. Schedule 5 of the principal Act is amended—

- (a) by inserting "(other than delegations made by the Minister)" after "Record of delegations under this Act";

- (b) by striking out "Assessment record" and substituting "Extracts from the council's assessment record";
- (c) by inserting at the end of the list under the heading "Policy and administrative documents" the following items:
- The most recent information statement of the council under the *Freedom of Information Act 1991*.
 - Any policy document of the council within the meaning of the *Freedom of Information Act 1991* (if not already referred to above).