



ANNO TRICESIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1988

No. 33 of 1988

An Act to amend the Local Government Act, 1934; and to make related amendments to the Rates and Land Tax Remission Act, 1986.

[Assented to 21 April 1988]

The Parliament of South Australia enacts as follows:

- Short title.** 1. (1) This Act may be cited as the *Local Government Act Amendment Act, 1988*.
- (2) The *Local Government Act, 1934*, is in this Act referred to as “the principal Act”.
- Commencement.** 2. (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.
- Repeal of s. 3.** 3. Section 3 of the principal Act is repealed.
- Interpretation.** 4. Section 5 of the principal Act is amended—
- (a) by striking out the definitions of “assessment”, “assessment book” and “assessed value”;
- (b) by inserting after the definition of “the Commission” the following definition:
- “company” means a company incorporated under the *Companies (South Australia) Code* or a corresponding law in force in another State or in a Territory;;
- (c) by striking out the definition of “Crown lands”;
- (d) by inserting after the definition of “district council” the following definition:
- “domestic premises” means any building or structure occupied, or intended for occupation as a place of residence and includes any appurtenant grounds;;

- (e) by striking out the definitions of "Government assessment", "Government assessment of capital value", "Government assessment of annual value", "Government assessment of land value" and "land value" and substituting the following definition:

"land" includes—

- (a) all buildings and structures on land;
- (b) all other improvements to land;
- (c) a strata unit;

- (f) by striking out the definition of "owner" and substituting the following definition:

"owner" of land means—

- (a) where the land has been granted in fee simple—
 - (i) the holder of an estate in fee simple, or a life estate, in the land;
 - (ii) the holder of a leasehold estate in the land who is not in occupation of the land;
 - (iii) a mortgagee in possession of the land (or a receiver appointed by such a mortgagee);
 - (b) where the land is held from the Crown under a lease, licence or agreement to purchase—the lessee, licensee or purchaser;
- or
- (c) any person who has arrogated to himself or herself (lawfully or unlawfully) the rights of an owner of the land,

and includes the executor of the will, or administrator of the estate, of any such person;

- (g) by inserting after the definition of "presiding officer" the following definition:

"prime bank rate", for a particular financial year, means the rate (expressed as a percentage per annum) fixed by the State Bank of South Australia at the commencement of that financial year as its indicator lending rate;

- (h) by inserting after the definition of "principal office" the following definition:

"project" includes—

- (a) any form of scheme, work or undertaking;
- (b) the provision of facilities or services;
- (c) any other activity;

- (i) by striking out the definition of "ratable property" and substituting the following definition:

"ratable land" or "ratable property" means land that is ratable under Part X;

(j) by inserting the following definition after the definition of “returning officer”:

“site value” means site value as defined in the Valuation of Land Act, 1971;;

(k) by inserting after the definition of “township” the following definitions:

“trustee investment” means an investment in which trust money may, by Act of Parliament, be invested:

“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 an agreement to purchase;

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

(l) by striking out the definition of “urban farm land” and substituting the following definition:

“valuation” means a determination or assessment of value;;

and

(m) by striking out subsection (8).

Amendment of
s. 36—
Nature and
general powers of
a council.

5. Section 36 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) A council—

(a) is a body corporate;

(b) has the powers, functions and duties conferred on it by or under this or any other Act;

(c) subject to this or any other Act—

(i) may acquire, deal with and dispose of real and personal property (wherever situated), and rights in relation to real and personal property;

(ii) may sue and be sued;

and

(iii) may enter into any kind of contract or arrangement;

and

(d) has power to do anything else necessary or convenient for, or incidental to, the exercise performance or discharge of its powers, functions or duties under this or any other Act.

(4) No contract with a council is void by reason of any deficiency in the council’s juristic capacity but this subsection does not prevent an action to restrain a council from entering into such a contract.

6. Section 37 of the principal Act is amended by striking out from subsection (1) "in pursuance of" and substituting "to give effect to".

Amendment of s. 37—
The common seal.

7. The following section is inserted immediately after section 37 of the principal Act:

Insertion of new s. 37a.

37a. A council contracts as follows:

Provision relating to contracts and transactions.

(a) a contract may be entered into under the common seal of the council;

or

(b) a contract may be entered into by an officer, employee or agent authorized by the council to enter into the contract on its behalf.

8. Section 41 of the principal Act is amended—

Amendment of s. 41—
Delegation of powers of council.

(a) by striking out paragraphs (a) and (b) of subsection (2) and substituting:

(a) power to declare rates or to impose charges under Part X;

(b) power to borrow money or to obtain other forms of financial accommodation;;

(b) by inserting after paragraph (e) of subsection (2) the following:

(ea) power to establish a controlling authority;

(eb) power to adopt, reconsider or revise financial estimates;;

and

(c) by inserting after subsection (5) the following subsection:

(6) A council may not make a delegation under this section to an advisory committee.

9. The following section is inserted immediately after section 57 of the principal Act:

Insertion of new s. 57a.

57a. (1) The provisions of this Division extend to members of controlling authorities as if—

Application of Division to members of controlling authorities.

(a) a controlling authority were a council;

and

(b) a member of a controlling authority were a member of a council.

(2) Where a person is convicted of an offence against this Division as a member of a controlling authority—

(a) the person is disqualified for further appointment as a member of a controlling authority during the seven years next ensuing after the date of conviction;

and

(b) if the person is, at the time of conviction, a member of a controlling authority, his or her office as such immediately becomes vacant.

Repeal of Parts X to XV and substitution of new Parts.

10. Parts X to XV of the principal Act (comprising sections 164 to 298b) are repealed and the following new Parts are substituted:

PART IX

FINANCIAL MANAGEMENT

DIVISION I—COUNCIL REVENUES

Sources of council revenue.

152. A council may raise revenue in any of the following ways:

- (a) by imposing rates and charges in accordance with this Act;
- (b) by borrowing money and obtaining other forms of financial accommodation;
- (c) by selling property;
- (d) by leasing or hiring out property;
- (e) by obtaining grants and other allocations of money;
- (f) by carrying out commercial activities;
- (g) by recovering fees, charges, penalties or other money payable to the council.

Borrowing.

153. (1) A council may, for the purpose of raising a loan or obtaining any other form of financial accommodation, provide any of the following forms of security—

- (a) debentures charged on the general revenue of the council;
- (b) bills of sale, mortgages or other charges;
- (c) guarantees.

(2) Whenever a council proposes to issue debentures for the purpose of raising money—

- (a) it must assign a distinguishing classification to the debentures to be included in the issue so as to distinguish them from those included or to be included in previous or subsequent issues;

and

- (b) where the debentures are being offered generally to members of the public, it must appoint a trustee for the debenture holders.

(3) The holders of debentures of a particular classification rank equally and have priority over the holders of debentures included in a subsequent issue.

(4) If a council defaults in carrying out its obligations under a loan secured by debenture charged on the general revenue of the council, the Supreme Court may, on the application of a creditor or trustee for debenture holders—

- (a) (i) direct the council to appropriate a specified portion of its revenue to the satisfaction of its obligations under the loan;

or

- (ii) require the council to raise a specified amount by way of rates and direct that the amount raised be applied

towards satisfaction of the council's obligations under the loan;

and

(b) give such incidental or ancillary directions as may be necessary or desirable.

(5) The rights of a creditor or trustee under subsection (4) are in addition to any other right that exists independently of that subsection.

(6) In this section—

“debenture” includes any form of charge on the general revenue of a council.

DIVISION II—EXPENDITURE OF REVENUE

154. Subject to this Act, a council may expend its revenue as the council thinks fit in the council's various activities. Expenditure of revenue.

155. If a separate rate is declared to raise revenue for a particular purpose and— Revenue raised by a separate rate.

(a) the council resolves not to carry the purpose into effect;

or

(b) there is an excess of funds over the amount required for that purpose,

the revenue raised by the rate or the excess (as the case may be) must, according to the determination of the council, be—

(c) credited against future liabilities for rates in respect of the land on which the separate rate was imposed;

or

(d) refunded to the persons who paid the rate,

in proportion to the amounts paid by each person.

156. The revenue raised from rates in respect of a particular financial year need not be completely expended in that financial year. Council not obliged to expend rate revenue in the financial year in which it is raised.

DIVISION III—INVESTMENT

157. (1) Subject to subsection (2), a council may invest money in trustee investments. Investment.

(2) Where a council proposes—

(a) to invest money in stocks, shares or debentures issued by a company;

or

(b) to invest money on deposit with a company,

in circumstances where, if the council were a trustee, it would be required to obtain the advice of an independent expert, the council must first obtain written advice from an independent expert on the

soundness of the investment and must then obtain the consent of the Minister.

(3) A council may invest money in any other form of investment approved by the Minister.

(4) An approval of the Minister under this section may be given on such conditions as the Minister thinks fit.

(5) In this section—

“independent expert” means a person who carries on business as an investment adviser and who is licensed as such under the Securities Industry Act, 1979, or a person who is a member of a Stock Exchange that is a member of the Australian Associated Stock Exchanges.

DIVISION IV—ACCOUNTS AND RESERVES

Accounts and reserves.

158. (1) Subject to this section, a council must hold its money in a general operating account.

(2) A council may establish special purpose accounts for such purposes as it thinks fit.

(3) Any money affected by a specific trust must be held in a special purpose account established for the purposes of the trust.

(4) A council may establish such reserves as it thinks fit.

(5) A council must establish a reserve to cover its liabilities in relation to the long service leave entitlements of its officers and employees and, after a day fixed by the Minister for the purposes of this subsection, the amount of the reserve must be sufficient to cover the council's liabilities for long service leave (or payment in lieu of long service leave) under the Long Service Leave Act, 1987, as such liabilities arise.

(6) If money (not being money affected by a specific trust) that is held for a specific purpose is not immediately required for that purpose, it may be advanced for use towards general operating expenses or for some other specific purpose but the amount advanced must be recredited—

(a) as soon as it is required for the purpose for which it was being held;

or

(b) if it is not earlier required, at the end of the financial year in which it is advanced.

(7) If money is being held for a specific purpose in excess of the amount required for that purpose or money is no longer required for a purpose for which it is being held (not being money affected by a specific trust or raised by a separate rate declared to raise revenue for that purpose), it may be diverted to general operating expenses or for some other purpose.

DIVISION V—FINANCIAL ESTIMATES

Estimates.

159. (1) The chief executive officer must have estimates of the council's income and expenditure for each financial year prepared.

(2) The estimates must be in the prescribed form and in the preparation of those estimates any accounting standards or principles prescribed by the regulations must be observed.

(3) The estimates must be adopted by the council (with or without alteration) on or before the thirty-first day of August of the financial year to which they relate.

(4) The estimates for a financial year must not be adopted more than one month before the commencement of that year.

(5) A copy of the estimates adopted by the council must be submitted by the council to the Minister within 28 days after their adoption.

(6) The council must, as required by the regulations, reconsider the estimates during the course of a financial year and, if necessary, revise them.

DIVISION VI—ACCOUNTS

160. The chief executive officer of a council must ensure that proper accounts of the council's income and expenditure are kept. Accounts to be kept.

161. (1) The chief executive officer must have financial statements prepared for each financial year consisting of— Financial statements.

(a) a statement of the council's income and expenditure for the financial year;

(b) a balance sheet showing the council's assets and liabilities as at the end of the financial year;

and

(c) a statement containing such other financial information as may be prescribed.

(2) The financial statements must be in the prescribed form and in the preparation of those statements any accounting standards or principles prescribed by the regulations must be observed.

(3) The financial statements prepared for each financial year must be audited by the council's auditor.

(4) A copy of the audited financial statements for each financial year must be submitted by the council to the Minister, and any other prescribed person or body, on or before a day prescribed by the regulations.

(5) A member of the council is entitled, at any reasonable time, to inspect the financial statements of the council prepared under this section.

DIVISION VII—AUDIT

162. (1) A council must have an auditor. The auditor.

(2) The auditor will, subject to this section, be appointed by the council.

(3) No person except—

(a) the Auditor-General;

or

- (b) a person who holds an auditor's certificate of registration issued by the Local Government Qualifications Committee,

is eligible for appointment as a council's auditor.

(4) A person who has an interest (directly or indirectly) in a contract with the council (other than a contract to act as the council's auditor) is not eligible for appointment as the council's auditor.

(5) A member of the council is not eligible for appointment as the auditor and the auditor is not eligible to stand for election as a member of the council.

(6) If a council, having been requested by the Minister to appoint an auditor, fails to make such an appointment within the time allowed in the request, the Auditor-General will be the auditor until the Minister otherwise determines.

(7) The office of auditor becomes vacant if—

- (a) the auditor dies;
- (b) the auditor resigns by notice in writing to the chief executive officer;
- (c) the auditor's certificate of registration is suspended or revoked;
- (d) the auditor accepts any other remunerated office or employment from the council;
- (e) the auditor becomes interested (directly or indirectly) in a contract with the council (other than the auditor's contract to act as such);

or

- (f) the auditor is removed from office by resolution of the council.

(8) The resignation of an auditor takes effect on receipt by the chief executive officer of the notice of resignation or on such later date, not more than 28 days from the date of the notice, as may be specified in the notice (but once the notice is received by the chief executive officer the resignation cannot be withdrawn).

(9) An auditor will not be regarded as having an interest in a contract with the council if the interest exists by reason only of the fact that the auditor is a director or shareholder in a company with 20 or more shareholders that is a party to, or otherwise interested in, the contract.

(10) If an auditor is removed from office by a council—

- (a) the council must inform the Minister in writing of the reasons for the removal;

and

- (b) the auditor must, if the Minister so determines, complete an audit commenced before the date of the removal (and in respect of that work will be entitled to remuneration from the council at a rate determined by the Minister on the advice of the Auditor-General).

163. (1) The chief executive officer of a council must, at the request of the auditor, produce any accounts or other financial records of the council for the auditor's inspection. Officers to assist auditor.

(2) The chief executive officer of a council must, at the request of the auditor, provide the auditor with any explanations or information that the auditor requires for the purposes of an audit.

(3) A chief executive officer who, without reasonable excuse—

(a) fails to produce any accounts or other financial records in accordance with a request under subsection (1);

or

(b) fails to provide an explanation or information in accordance with a request under subsection (2),

is guilty of an offence.

Penalty: \$10 000.

164. (1) The auditor must refer to the chief executive officer and, if the auditor thinks fit, the council, any irregularity in the council's accounting practices or the management of the council's financial affairs identified by the auditor in the course of the audit of the council's financial statements. Reporting of certain irregularities.

(2) Subject to subsection (3), an auditor must report to the Minister—

(a) any irregularity referred to the chief executive officer or council under subsection (1) that is not promptly rectified;

(b) any breach of this Act that comes to the auditor's attention in the course of an audit;

(c) any case in which the council's current liabilities exceed the council's current assets (as described in the relevant accounting regulations) by an amount equal to or greater than 3 per cent of the council's net general rates for that financial year.

Penalty: \$5 000.

(3) A report need not be made under subsection (2) in respect of a minor irregularity or breach.

(4) The Minister may, on the basis of an auditor's report under subsection (2), appoint an investigator to carry out an investigation, and make a report, to the Minister under Division XIII of Part II.

DIVISION VIII—MISCELLANEOUS

165. (1) A council may, by resolution, write off any debts owed to the council— Writing off bad debts.

(a) if the council has no reasonable prospect of recovering the debts;

or

(b) if the costs of recovery are likely to equal or exceed the amount to be recovered.

(2) A council must not write off a debt under subsection (1) unless the chief executive officer has certified—

(a) that reasonable attempts have been made to recover the debt;

or

(b) that the costs of recovery are likely to equal or exceed the amount to be recovered.

Gifts to a council.

166. (1) A council may accept any gift made to the council.

(2) If a gift is affected by a trust, the council is empowered to carry out the terms of the trust.

(3) A council may apply to the Supreme Court for an order varying the terms of a trust in relation to which the council has been constituted a trustee.

(4) Notice of an application under subsection (3) describing the nature of the variation sought in the terms of the trust must be given—

(a) in the *Gazette*;

(b) in a newspaper circulating generally in the State;

and

(c) in such other manner as may be directed by the Supreme Court.

(5) The Supreme Court may vary the terms of a trust if it is satisfied that it is impracticable for the council to give effect to the trust in its existing form.

(6) The council must, within 28 days after an order is made under subsection (5), publish a copy of the order in the *Gazette*.

PART X

RATES AND CHARGES ON LAND

DIVISION I—PRELIMINARY

Rates and charges that a council may impose.

167. A council may under this Part impose rates and charges of the following kinds on land within its area:

(a) general rates;

(b) separate rates;

(c) service rates;

(d) service charges.

Ratability of land.

168. (1) Subject to subsection (2), all land within an area is ratable.

(2) The following is not ratable:

(a) unalienated Crown land;

- (b) land used or held by the Crown or an instrumentality of the Crown for a public purpose (including an educational purpose), except any such land—
- (i) that is held or occupied by the Crown or instrumentality under a lease or licence;
- or
- (ii) that constitutes domestic premises;
- (c) (i) a church or chapel and its grounds;
- or
- (ii) land used solely for religious purposes;
- (d) a public cemetery;
- (e) land (not including domestic premises) occupied by—
- (i) a university, college of advanced education or other tertiary educational institution established by special Act of Parliament;
- or
- (ii) a college of technical and further education established under the Technical and Further Education Act, 1976;
- (f) land used exclusively for educational purposes (not being land of a school or other educational institution at which fees are charged);
- (g) land occupied by an institute that is a member of the Institutes Association of South Australia under the Libraries Act, 1982;
- (h) land, owned or used by a proclaimed body, that is exempted from rates by proclamation on the ground—
- (i) that it constitutes, or is used for the purposes of, a hospital;
 - (ii) that it is used for the purpose of providing assistance or relief to disadvantaged persons;
- or
- (iii) that it is used for the rehabilitation of persons addicted to alcohol or drugs;
- (i) land (not including domestic premises) owned by, or under the care, control and management of, the Royal Zoological Society of South Australia Incorporated;
- (j) land that is exempt from rates or taxes by virtue of the Recreation Grounds Rates and Taxes Exemption Act, 1981;
- (k) land that is exempt from council rates under or by virtue of any other Act;
- (l) land occupied by the council or any controlling authority.
- (3) A proclamation cannot be made for the purposes of subsection (2) (h) unless the council for the area in which the land is situated

has been notified of the terms of the proposed proclamation and allowed a reasonable opportunity to comment on the proposal.

(4) Where land is divided by a strata plan—

(a) rates will be assessed against the units and not against the common property;

but

(b) the equitable interest in the common property that attaches to each unit will be regarded, for the purpose of valuation, as part of the unit.

(5) Rates may be assessed against—

(a) any piece or section of land subject to separate ownership or occupation;

or

(b) any aggregation of contiguous land subject to the same ownership or occupation.

DIVISION II—BASIS OF RATING

Basis of rating.

169. (1) Subject to this section, a rate must be based on the value of the land subject to the rate.

(2) A general rate may consist of two separate components—

(a) one being based on the value of the land subject to the rate;

and

(b) the other being a fixed charge.

(3) A fixed charge can only be imposed as follows—

(a) (i) the fixed charge cannot be imposed against land that constitutes less than the whole of a single allotment;

and

(ii) if two or more pieces of contiguous ratable land are owned by the same owner and occupied by the same occupier, only one fixed charge may be imposed against the whole of that land;

(b) except as provided by paragraph (a), the fixed charge must apply equally to each separately valued piece of ratable land in the area;

and

(c) the charge must be calculated so as to ensure that the revenue raised from the charge does not exceed the council's total recurrent general administrative expenditure (as described in the relevant accounting regulations) for the previous financial year.

(4) A separate rate or a service rate may be declared on some basis other than the value of the land subject to the rate but, in that event, the basis of the rate must be approved by the Minister.

(5) For the purposes of this section, an allotment is—

(a) the whole of the land comprised in a certificate of title;

or

(b) the whole of the land subject to a separate lease or a separate licence coupled with an interest in land.

170. (1) Subject to subsection (2), the value of land for the purpose of rating is its capital value.

Value of land for rating purposes.

(2) A council may declare rates on the basis of the annual value or site value of land if—

(a) the council declared rates in respect of that land on that basis for the previous financial year;

or

(b) the council declared rates in respect of that land on the basis of capital value for the previous 3 financial years.

DIVISION III—VALUATION OF LAND FOR THE PURPOSE OF RATING

171. (1) A council must not declare a rate for a particular financial year without first adopting the valuations that are to apply to land within its area for rating purposes for that year.

Valuation of land for the purpose of rating.

(2) A council must, for the purposes of subsection (1), adopt—

(a) valuations made by the Valuer-General;

or

(b) valuations made by a licensed valuer employed or engaged by the council.

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

(a) where a council adopts valuations of the Valuer-General, the most recent valuations available to the council at the time that the council adopts its estimates of income and expenditure under Part IX will govern the assessment of rates for the financial year;

(b) where a council adopts valuations of a licensed valuer employed or engaged by the council, the valuations may be up to five years old.

(4) A notice of the adoption of valuations must be published in the *Gazette* within 21 days after the date of the adoption.

172. (1) The Valuer-General must, at the request of a council, value any land within the council's area (being land that is capable of being separately rated) specified in the request.

Valuation of land.

(2) A council may, instead of using the Valuer-General's services, employ or engage a licensed valuer to value land for the purpose of rating.

(3) Where a licensed valuer is employed or engaged by a council to value land for the purpose of rating—

(a) the licensed valuer may, for the purposes of the valuation—

- (i) enter land and make inspections, measurements or surveys;
 - (ii) require a person to answer questions or to furnish returns of information relevant to the valuation;
- (b) the council must, as soon as practicable after the valuation is made, enter the valuation in the assessment book;
- and
- (c) notice of the valuation must be given by the council to the owner of the land in accordance with the regulations (although a valuation is not invalidated by failure to give the notice).
- (4) A person who, without reasonable excuse—
- (a) hinders or obstructs a valuer acting under this section;
 - (b) having been asked a question by a valuer under this section, does not answer the question to the best of his or her knowledge, information and belief;
- or
- (c) fails to make a return of information as required under this section, or furnishes a return that is false or misleading in a material particular,

is guilty of an offence.

Penalty: \$500.

Objections to
valuations made
by council.

173. (1) A person who is dissatisfied with a valuation made by a licensed valuer employed or engaged by a council may—

(a) object to the valuation;

or

(b) appeal against the valuation to the Land and Valuation Court.

(2) An objection cannot be taken under subsection (1) (a) if it involves a question of law.

(3) An objection to a valuation—

(a) must be made to the council in writing (setting out a full and detailed statement of the grounds on which the objection is based);

and

(b) must be made within 21 days after the objector receives notice of the valuation to which the objection relates (unless the council, in its discretion, allows an extension of time for making the objection).

(4) The council must refer the objection to the valuer who made the valuation and request the valuer to reconsider the valuation.

(5) If, on reconsideration, the valuer thinks that the valuation should be altered, the valuation will be altered in accordance with the valuer's opinion.

(6) The council must give the objector written notice of the outcome of his or her objection.

(7) If the objector remains dissatisfied with the valuation, the objector may request the council to refer the valuation to the Valuer-General for further review.

(8) A request under subsection (7)—

(a) must be made in writing;

(b) must be made within 21 days after the objector receives notice of the outcome of his or her initial objection (unless the council, in its discretion, allows an extension of time for making the request);

and

(c) must be accompanied by the prescribed fee.

(9) The council must refer the request to the Valuer-General, who will refer the matter to a licensed valuer from a panel of licensed valuers constituted under Part IV of the Valuation of Land Act, 1971.

(10) The licensed valuer to whom the matter is referred under subsection (9) will carry out the review in the same manner as a review under the Valuation of Land Act, 1971 (and both the objector and the council may make representations to the licensed valuer on the subject matter of the review).

(11) If the licensed valuer considers that the valuation should be altered, the valuation will, subject to subsection (12), be altered in accordance with the valuer's opinion.

(12) A valuation will not be altered on the review if the alteration would have the effect of increasing or decreasing the valuation by a proportion of one-tenth or less.

(13) If a valuation is reduced on the review, the fee paid by the objector under subsection (8) must be refunded.

(14) If an objector, or the council, is dissatisfied with the valuation after the further review, the objector or the council may, in accordance with the appropriate rules of the Supreme Court, appeal against the valuation to the Land and Valuation Court.

(15) A prescribed fee is payable by the council to the Valuer-General in relation to a review conducted on the Valuer-General's reference under this section.

(16) No objection to a valuation may be made under this section if—

(a) the valuation is yet to be adopted by the council;

or

(b) the valuation was adopted by the council in relation to a previous financial year.

DIVISION IV—DECLARATION OF RATES AND IMPOSITION OF CHARGES

174. (1) A council may, after considering and adopting estimates of expenditure for a particular financial year—

Declaration of
general rates.

(a) declare a general rate on ratable land within its area for that financial year;

or

(b) declare differential general rates on ratable land within its area for that financial year.

(2) A rate may not be declared under subsection (1) more than one month before the commencement of the financial year to which it relates.

(3) A council may not, without the approval of the Minister, declare a rate under subsection (1) after the thirty-first day of August of the financial year to which it relates.

Declaration of
separate rates.

175. (1) A council may declare a separate rate or differential separate rates on ratable land within a part of its area for the purpose of planning, carrying out, making available, maintaining or improving a project that is, or is intended to be, of particular benefit to the land, or the occupiers of the land, within that part of the area, or to persons who resort to that part of the area.

(2) A separate rate must not be declared more than one month before the commencement of the financial year to which it relates.

Basis of
differential rates.

176. (1) Differential rates may vary—

(a) according to the use of the land;

(b) according to the locality of the land;

(c) according to the locality of the land and its use;

or

(d) on some other basis approved by the Minister.

(2) An approval under subsection (1) (d)—

(a) may be limited to a specified period;

and

(b) may be given on such conditions as the Minister thinks fit.

(3) Where land has more than one use, the use of the land will, for the purpose of rating, be taken to be its predominant use.

(4) A particular land use must not be used as a differentiating factor affecting the incidence of differential rates unless the land use is declared by the regulations to be a permissible differentiating factor.

(5) If land is vacant, the non-use of the land is capable of constituting a land use for the purpose of the declaration of differential rates.

(6) The locality of land may only be used as a differentiating factor as follows:

(a) there may be differentiation according to the zone in which the land is situated;

(b) there may be differentiation according to whether the land is situated within or outside a township;

or

(c) where there are two or more townships in an area—there may be differentiation according to the township in which the land is situated.

(7) Where a council declares differential rates, the council must, in each account for rates, specify the differentiating factor or combination of factors that governs the calculation of rates on the land to which the account relates.

(8) A change in the use of land after differential rates are declared does not affect the incidence of the rates.

(9) A ratepayer, if of the opinion that a particular land use has been wrongly attributed to the ratepayer's land by the council for the purpose of levying differential rates, may object to the attribution of that land use to the land.

(10) An objection under subsection (9)—

(a) must be in writing;

(b) must set out—

(i) the grounds of the objection;

and

(ii) the land use (being a land use being used by the council as a differentiating factor) that should, in the objector's opinion, have been attributed to the land;

and

(c) must be made within 21 days after the objector receives notice of the attribution of the particular land use to which the objection relates (unless the council, in its discretion, allows an extension of time for making the objection).

(11) The council may decide any such objection as it thinks fit and must notify the objector in writing of its decision.

(12) The objector, if dissatisfied with the council's decision on the objection may, subject to the relevant rules of the Supreme Court, appeal against the decision to the Land and Valuation Court.

(13) Except as provided by this section, the attribution of a particular land use to land for the purpose of levying differential rates cannot be challenged.

(14) A regulation cannot be made for the purposes of this section except after consultation with the Local Government Association of South Australia.

(15) In this section—

“zone” means a zone established by regulation under the Building Act, 1970, or defined as a zone, precinct or locality by or under the Planning Act, 1982, or the City of Adelaide Development Control Act, 1976.

177. (1) In this section—

“prescribed service” means any of the following services provided in relation to land:

Service rates and
service charges.

- (a) water supply;
 - (b) septic tank effluent disposal;
 - (c) any other service approved by the Minister for the purposes of this section.
- (2) A council may, by notice in the *Gazette*, impose—
- (a) a service rate, an annual service charge, or a combination of a service rate and an annual service charge, on ratable land within its area to which it provides, or makes available, a prescribed service;
 - (b) an annual service charge on non-ratable land to which it provides, or makes available, a prescribed service.
- (3) A service rate, or annual service charge, may vary according to whether the land to which it applies is vacant or occupied.
- (4) Where a council provides more than one prescribed service of a particular kind in its area, a different service rate or service charge may be imposed in respect of each service.
- (5) A council must not seek to recover in relation to a prescribed service an amount by way of service rate, service charge, or a combination of both exceeding the cost to the council of establishing, operating, maintaining, replacing and improving the service in its area.
- (6) The Minister may, by notice in the *Gazette*—
- (a) prescribe a method or various methods for the calculation of service charges under this section;
- and
- (b) fix the maximum amount that a council may impose as a charge for any prescribed service in a particular financial year.
- (7) A service charge imposed by a council under this section is recoverable as if it were a rate (even as against non-ratable land).

DIVISION V—THE ASSESSMENT BOOK

178. (1) The chief executive officer of a council must ensure that a record (the “assessment book”) is kept in which is entered—

- (a) (i) a brief description of each separate piece of ratable land in the area;
- (ii) the ratable value of the land;
- (b) if a service charge is imposed by the council on non-ratable land in the area—a brief description of that land;
- (c) the name and address of the owner of the land;
- (d) if the owner is not the principal ratepayer in respect of the land—the name and address of the principal ratepayer;
- (e) so far as is known to the chief executive officer, the name of any occupier of the land (not being an owner or principal ratepayer in respect of the land);

Chief executive officer to keep assessment book.

(f) if the land is rated on the basis of a particular land use—
that land use;

and

(g) such other information as may be prescribed.

(2) An occupier of land may, with the consent of the owner, apply to the chief executive officer of a council in a manner and form approved by the chief executive officer, to have the occupier's name entered in the assessment book as the principal ratepayer in respect of the land.

(3) Where an application is duly made under subsection (2), the chief executive officer must enter the occupier's name in the assessment book as the principal ratepayer.

(4) Notwithstanding subsection (1), where the chief executive officer is satisfied that the inclusion in the assessment book of the address of any person would place at risk the personal safety of that person, a member of that person's family or any other person, the chief executive officer may suppress the address from the assessment book.

(5) The chief executive officer may, as he or she thinks fit—

(a) keep the assessment book in any form that allows for the accurate recording of information and easy access to that information;

and

(b) make any alteration to the assessment book that may be necessary to keep the book in a correct and up-to-date form.

179. (1) Application may be made to the chief executive officer of a council for an alteration of the assessment book—

Alterations to
assessment book.

(a) by an owner or occupier of land, on the ground that particular information entered in the assessment book is incorrect or has not been recorded in accordance with this Act;

or

(b) by an occupier of land who is also the principal ratepayer in respect of the land, on the ground that the person no longer wishes to be the principal ratepayer.

(2) An application under subsection (1) must be made in a manner and form approved by the chief executive officer.

(3) If a person is dissatisfied with the outcome of his or her application, the person may request the council to review the matter.

(4) A request under subsection (3) must be made to the council in writing (setting out a full and detailed statement of the grounds on which the request is made).

(5) The procedure before the council on a review under this section will be as determined by the council and the council may, in its absolute discretion, decide whether to permit the person who

requested the review to appear personally or by representative before it.

(6) The council must give the person written notice of its decision on a review.

(7) A person who is dissatisfied with the decision of the council on a review may apply to the Supreme Court for an order for rectification of the assessment book.

Inspection of
assessment book.

180. (1) A person is entitled to inspect the assessment book at the council's principal office from one hour after the commencement of ordinary office hours to one hour before the close of ordinary office hours.

(2) A person is entitled, on payment of a fee fixed by the council, to a copy of any entry made in the assessment book.

DIVISION VI—IMPOSITION AND RECOVERY OF RATES AND CHARGES

Preliminary.

181. In this Division—

“rates” includes any service charge imposed under Division IV.

Rates are charges
against land.

182. Rates imposed on land are a charge on the land.

Liability for rates.

183. (1) Subject to subsection (2), the owner of land is the principal ratepayer in respect of the land.

(2) If the name of an occupier is entered in the assessment book as the principal ratepayer in respect of land, that person rather than the owner will be regarded as the principal ratepayer.

(3) Subject to subsection (6), rates may be recovered as a debt from—

(a) the principal ratepayer;

(b) any other person (not being a principal ratepayer) who is an owner or occupier of the land;

or

(c) any other person who was at the time of the declaration of the rates an owner or occupier of the land.

(4) The council may, by written notice to a lessee or licensee of land in respect of which rates have fallen due, require him or her to pay to the council any rent or other consideration payable under the lease or licence in satisfaction of the liability for rates.

(5) If rates are paid by, or recovered from, a person who is not the principal ratepayer, that person may, subject to any agreement to the contrary—

(a) recover the amount as a debt from the principal ratepayer;

or

(b) if the person is a lessee or licensee—set off the amount paid to the council against a liability under the lease or licence (and a lessor or tenant against whom such an

amount is set off may in turn set off the amount against a prior lessor or tenant from whom his or her interest in or in relation to the land is derived).

(6) Where an occupier of land derives his or her right of occupancy from a residential tenancy agreement under the Residential Tenancies Act, 1978, no amount by way of rates may be recovered from the occupier unless that amount has fallen due by virtue of a requirement imposed under subsection (4).

184. (1) Subject to this section, rates imposed in respect of a particular financial year will fall due (according to the council's decision)— Payment of rates.

- (a) in four equal or approximately equal instalments;
 - (b) in two equal or approximately equal instalments;
- or
- (c) in a single instalment.

(2) For the purposes of subsection (1)—

(a) where a council decides that rates of a particular kind will be payable in four instalments—

- (i) the instalments will be payable in the months of September, December, March and June of the financial year for which the rates are declared;
- (ii) the day on which each instalment falls due will (subject to subparagraph (i)) be determined by the council;

and

(iii) the council cannot decide that rates of the same kind for a subsequent financial year will be payable in a lesser number of instalments unless:

— the council has obtained the Minister's approval;

or

— rates of that kind for the previous three financial years have been payable in four instalments and the proposed change is that rates of that kind are to be payable in two instalments;

(b) where a council decides that rates of a particular kind will be payable in two instalments—

- (i) the instalments will be payable in the months of September and March of the financial year for which the rates are declared;
- (ii) the day on which each instalment falls due will (subject to subparagraph (i)) be determined by the council;

and

(iii) the council cannot decide that rates of the same kind for a subsequent financial year will be payable in a single instalment unless:

— the council has obtained the Minister's approval;

or

— rates of that kind for the previous three financial years have been payable in two instalments;

and

(c) where a council decides that rates will be payable in a single instalment, the instalment will fall due on a day determined by the council, being a day that does not fall before the first day of September of the financial year for which the rates are declared.

(3) The Minister should only give an approval under subsection (2) if satisfied that the approval is necessary to alleviate extraordinary administrative difficulties that the council would experience if the approval were not given.

(4) An approval under subsection (2) may be limited to a specified period or given on such conditions as the Minister thinks fit.

(5) Where a council decides to allow payment of general rates in four instalments under subsection (1) (a), the first instalment payable in the first financial year in which rates are so payable need not approximate the other three instalments, but may not be more than twice the amount of each of those other three instalments.

(6) A council may agree with a principal ratepayer that rates will be payable in such instalments falling due on such days as the council thinks fit and in that event, that ratepayer's rates will be payable accordingly.

(7) A council must, in relation to each instalment of rates, send an account to the principal ratepayer shown in the assessment book in respect of the land at the address shown in the assessment book showing the amount of the instalment and the date on which it falls due and the account must be sent—

(a) where rates are payable in two or more instalments—at least 30 days but not more than 60 days before an instalment falls due;

or

(b) where rates are payable in a single instalment—at least 60 days before the instalment falls due.

(8) If an instalment of rates is not paid on or before the date on which it falls due—

(a) the instalment will be regarded as being in arrears;

(b) a fine of 5 per cent of the amount of the instalment is payable;

and

(c) on the expiration of each month from that date, interest of the prescribed percentage of the amount in arrears (including the amount of any previous unpaid fine and interest) is payable.

(9) A council may remit any amount payable under subsection (8) in whole or in part.

(10) Any amount payable under subsection (8) in respect of outstanding rates is recoverable as a part of those rates.

(11) A council may grant discounts or other incentives in order to encourage early or prompt payment of rates.

(12) A council may, with the consent of the Minister, by notice in the *Gazette*, impose requirements differing from those imposed by this section in relation to the payment of rates other than general rates.

(13) In this section—

“the prescribed percentage” is to be calculated as follows:

$$p = \frac{\text{PBR} + 3\%}{12}$$

where—

p is the prescribed percentage

PBR is the prime bank rate for that financial year.

185. (1) If a council is satisfied on the application of a ratepayer that payment of rates in accordance with this Act would cause hardship, the council may—

Remission and
postponement of
payment.

(a) remit the rates in whole or in part;

or

(b) postpone payment for such period as the council thinks fit.

(2) A postponement under subsection (1)—

(a) may, if the council thinks fit, be granted on condition that the ratepayer pay interest on the amount affected by the postponement at a rate fixed by the council (but not exceeding the prime bank rate);

(b) may be granted on such other conditions as the council thinks fit;

and

(c) ceases to operate if—

(i) the council in its discretion revokes the postponement (in which case the council must give the ratepayer at least 30 days written notice of the revocation before taking action to recover rates affected by the postponement);

or

(ii) the ratepayer ceases to own or occupy the land in respect of which the rates are imposed (in which case the rates are immediately payable).

(3) A council may grant other or additional remissions of rates—

(a) on the same basis as applies under the Rates and Land Tax Remission Act, 1986 (and such remissions will be in addition to the remissions that are available under that Act);

or

(b) on any other basis determined by the council.

(4) A council may require a ratepayer who claims to be entitled to a remission of rates by virtue of a determination under subsection (3) to provide evidence verifying his or her entitlement.

(5) A council may revoke a determination under subsection (3) at any time (but the revocation will not affect any entitlement to remission in relation to rates declared before the revocation takes effect).

Application of money in respect of rates.

186. Where a council receives or recovers an amount in respect of rates, the amount will be applied as follows—

(a) firstly—in payment of any costs awarded to, or recoverable by, the council in any court proceedings undertaken by the council for the recovery of the rates;

(b) secondly—in satisfaction of any liability for interest;

(c) thirdly—in payment of any fine;

and

(d) fourthly—in satisfaction of liabilities for rates in the order in which those liabilities arose.

Sale of land for non-payment of rates.

187. (1) Where any amount payable by way of rates in respect of land has been in arrears for three years or more, the council may sell the land.

(2) Before a council sells land in pursuance of this section, it must send a notice to the principal ratepayer at the address appearing in the assessment book—

(a) stating the period for which the rates have been in arrears;

(b) stating the amount of the total liability for rates presently outstanding in relation to the land;

and

(c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the council may allow), the council intends to sell the land for non-payment of rates.

(3) A copy of a notice sent to a principal ratepayer under subsection (2) must be sent—

(a) to any owner of the land who is not the principal ratepayer;

(b) to any registered mortgagee of the land;

and

(c) if the land is held from the Crown under a lease, licence or agreement to purchase—to the Minister of Lands.

(4) If—

(a) a council cannot, after making reasonable inquiries, ascertain the name and address of a person to whom a notice is to be sent under subsection (2) or (3);

or

(b) a council considers that it is unlikely that a notice sent under subsection (2) or (3) would come to the attention of the person to whom it is to be sent,

the council may effect service of the notice by—

(c) placing a copy of the notice in a newspaper circulating generally in the State;

and

(d) leaving a copy of the notice in a conspicuous place on the land.

(5) If the outstanding amount is not paid in full within the time allowed under subsection (2), the council may proceed to have the land sold.

(6) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the council may set a reserve price for the purposes of the auction).

(7) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating generally throughout the State.

(8) If, before the date of such an auction, the outstanding amount and the costs incurred by the council in proceeding under this section are paid to the council, the council must call off the auction.

(9) If—

(a) an auction fails;

or

(b) the land is held from the Crown under a lease, licence or agreement to purchase,

the council may sell the land by private contract for the best price that it can reasonably obtain.

(10) Any money received by the council in respect of the sale of land under this section will be applied as follows:

(a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;

(b) secondly—in discharging any liabilities to the council in respect of the land;

(c) thirdly—in discharging any liability to the Crown for rates or taxes, or any prescribed liability to the Crown in respect of the land;

(d) fourthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;

(e) fifthly—in discharging any other mortgages, encumbrances and charges of which the council has notice;

and

(f) sixthly—in payment to the owner of the land.

(11) If the owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the owner must be dealt with as unclaimed money under the Unclaimed Moneys Act, 1891.

(12) Where land is sold in pursuance of this section, an instrument of transfer under the council's common seal will operate to vest title to the land in the purchaser.

(13) The title vested in a purchaser under subsection (12) will be free of—

(a) all mortgages and charges;

and

(b) except in the case of land held from the Crown under lease, licence or agreement to purchase—all leases and licences.

(14) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the chief executive officer of the council stating that the requirements of this section in relation to the sale of the land have been observed.

(15) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section, the Registrar-General may register the transfer notwithstanding the non-production of the duplicate, but in that event will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.

(16) A reference in this section to land or title to land is, in relation to land held from the Crown under lease, licence or agreement for purchase, a reference to the interest of the lessee, licensee or purchaser in the land.

(17) This section does not authorize the sale of non-ratable land on account of the non-payment of a service charge.

188. (1) If after a council has made reasonable attempts to sell land on account of arrears of rates it appears that the council has no reasonable prospect of selling the land within a reasonable time, the council may apply to the Minister of Lands for an order under this section.

(2) On the receipt of an application by a council under subsection (1), the Minister of Lands may, after consultation with the council and being satisfied that it is appropriate to do so, order—

(a) in the case of land held from the Crown under a lease, licence or agreement for purchase—that the land be forfeited to the Crown;

(b) in any other case—that the land be transferred to the Crown or to the council.

- (3) An order under subsection (2)—
- (a) must be in writing and signed by the Minister of Lands;
- and
- (b) (i) in the case of land held from the Crown under a lease, licence or agreement for purchase—operates to cancel the lease, licence or agreement;
 - (ii) in any other case—operates as an instrument of transfer passing title to the land to which it relates.
- (4) No stamp duty is payable on an order under subsection (2).
- (5) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is subject to an order under subsection (2), the Registrar-General may, on application, register the order notwithstanding the non-production of the duplicate, but in that event will cancel the existing certificate of title for the land and issue a new certificate.
- (6) If an order is made under this section—
- (a) the land to which the order relates is freed of any charge against the land that exists in favour of the council;
- and
- (b) any outstanding liability to the council in respect of the land is discharged.

DIVISION VII—MISCELLANEOUS

189. Notice of the declaration of a rate or service charge must be published in the *Gazette* and in a newspaper circulating in the area within 21 days after the date of the declaration.

Notice of
declaration of
rates.

190. (1) Subject to this Act, a council may fix a minimum amount payable by way of rates in respect of ratable land within its area (or a part of its area).

Minimum
amount payable
by way of rates.

- (2) A minimum amount can only be imposed as follows—
- (a) the minimum amount cannot be imposed against land that constitutes less than the whole of a single allotment;
- and
- (b) if two or more pieces of contiguous ratable land are owned by the same owner and occupied by the same occupier, the minimum amount may only be imposed against the whole of the land and not against individual pieces of it.

(3) After the financial year 1991/1992, the number of properties in an area subjected to an increase in the amount payable by way of rates because of the fixing of a minimum amount under this section may not exceed 35 per cent of the total number of properties in the area subject to the separate assessment of rates.

(4) If a council has included a fixed charge as a component of a general rate, it cannot fix a minimum amount under this section.

(5) For the purposes of this section, an allotment is—

(a) the whole of the land comprised in a certificate of title;

or

(b) the whole of the land subject to a separate lease or a separate licence coupled with an interest in land.

Recovery of rates not affected by an objection, review or appeal.

191. (1) The right of a council to recover rates is not suspended by—

(a) an objection, review or appeal in respect of a valuation (whether under this Act or the Valuation of Land Act, 1971);

or

(b) an objection or appeal in respect of the attribution of a particular land use to land.

(2) If an objection, review or appeal results in the alteration of a valuation or of a decision to attribute a particular land use to land, a due adjustment must be made and—

(a) any amount overpaid must, subject to this section, be refunded;

or

(b) any additional amount payable on account of an alteration of the valuation or decision may be recovered as arrears (but action to recover any such amount must not be taken until at least 30 days have expired from the date on which notification of the alteration is given to the person who initiated the objection, review or appeal).

(3) A council may, instead of refunding an amount under subsection (2), credit that amount, with interest at the prime bank rate for the financial year in which the amount is paid, against future liabilities for rates on the land subject to the rates.

(4) Interest payable on an amount in credit under subsection (3) is payable on so much of the amount as may from time to time be in credit and accrues from the day that the amount was paid to the council.

(5) The council must, on being satisfied by a person in whose favour an amount has been credited under subsection (3) that he or she has ceased to be a ratepayer in respect of the land, refund the amount (including interest) then standing to the person's credit.

Liability for rates where land is not ratable for the whole of a financial year.

192. (1) Subject to this section, if land is ratable for portion, but not for the whole, of a financial year, the land will be subject to rates imposed for the financial year (even if the land becomes ratable after the rate is declared) but there will be a proportionate reduction in the amount of the rates.

(2) If during the course of a financial year land is excised from the area of one council (council A) and added to the area of another council (council B)—

(a) the land remains subject to rates imposed by council A for the financial year;

and

(b) the land does not become subject to rates imposed by council B until the following financial year.

(3) If land ceases to be ratable land by reason of transfer or surrender to the Crown during the course of a financial year, the land remains subject to rates imposed for the financial year.

193. (1) The rates on land predominantly used for educational purposes will be rebated by 75 per cent or such greater percentage as is fixed by the council. Rebates of rates.

(2) Land is only eligible for a rebate under subsection (1) if the land is being used by—

(a) a non-government school registered under Part V of the Education Act, 1972;

(b) a school or institution licensed under Part V of the Technical and Further Education Act, 1976;

or

(c) some other body approved by the Minister for the purposes of this section by notice in the *Gazette*.

(3) Subject to the regulations, the rates on land (not being domestic premises) predominantly used for agricultural, horticultural or floricultural exhibitions will be rebated by 50 per cent or such greater percentage as is fixed by the council.

(4) A council may grant a rebate of rates or service charges in any of the following cases—

(a) where the rebate is desirable for the purpose of securing the proper development of the area (or a part of the area);

(b) where the rebate will conduce to the preservation of buildings or places of historic significance;

(c) where the land is used to provide facilities or services for children or young persons;

(d) where the land is used for providing accommodation for the aged or disabled;

or

(e) where the land is used for a purpose prescribed by the regulations.

(5) A rebate of rates or charges under subsection (4) may be granted on such conditions as the council thinks fit.

194. (1) A council must, on application by or on behalf of a person who has an interest in land within the area, issue to that person a certificate stating— Certificate of liabilities.

(a) the amount of any liability for rates or charges on the land imposed under this Part (including rates and charges under this Part that have not yet fallen due for payment, and outstanding interest or fines payable in respect of rates and charges under this Part);

- (b) any amount received on account of rates or charges on the land imposed under this Part that is held in credit against future liabilities for rates or charges in relation to the land.
- (2) A person has an interest in land for the purposes of this section if and only if that person is—
- (a) the owner of a registered estate or interest in the land;
 - (b) an occupier of the land;
 - (c) a person who has entered or proposes to enter into a contract to purchase the land;
 - (d) a mortgagee or prospective mortgagee of the land.
- (3) An application for a certificate under this section—
- (a) must be in writing;
 - (b) must identify the land to which the application relates;
 - (c) must state the nature of the applicant's interest in the land;
 - (d) should be directed to the chief executive officer of the council;
- and
- (e) must be accompanied by the prescribed fee.
- (4) Where a certificate is issued under this section, the council is, as against the person to whom it is issued, estopped from asserting that any liabilities to the council for rates or charges on the land under this Part existed, as at the date of the certificate, in respect of the land to which the certificate relates beyond the liabilities disclosed in the certificate.
- (5) Except as provided by subsection (4), a council incurs no liability in respect of a certificate issued under this section.

PART XI

FEES AND CHARGES

Fees and charges.

195. (1) A council may impose fees and charges—
- (a) for the use of any property or facility owned, controlled, managed or maintained by the council;
 - (b) for services supplied to a person at his or her request;
 - (c) for carrying out work at a person's request;
 - (d) for providing information or materials, or copies of, or extracts from, council records;
 - (e) in respect of any application to the council;
 - (f) in respect of any licence, permit or authorization granted by the council;
 - (g) in relation to any other prescribed matter.
- (2) Fees or charges under subsection (1) (a), (b) or (c) need not be fixed by reference to the cost to the council.

(3) A council may provide for—

- (a) specific fees and charges;
- (b) maximum fees and charges and minimum fees and charges;
- (c) annual fees and charges;
- (d) the imposition of fees or charges according to specified conditions or circumstances;
- (e) the variation of fees or charges according to specified factors;
- (f) the reduction, waiver or refund, in whole or in part, of fees or charges.

(4) Where—

- (a) a fee or charge is fixed or prescribed by or under this Act or by or under any other Act in respect of a particular matter;

or

- (b) this or any other Act provides that no fee or charge is payable in respect of a particular matter,

a council may not fix or impose a fee or charge in respect of that matter.

(5) Fees and charges may be fixed, varied or revoked—

- (a) by by-law;

or

- (b) by resolution of the council.

(6) The council must keep a list of fees and charges imposed under this section on public display (during ordinary office hours) at the principal office of the council.

(7) Where a council—

- (a) fixes a fee or charge under this section;

or

- (b) varies a fee or charge under this section,

the council must up-date the list referred to in subsection (6) and take reasonable steps to bring the fee or charge, or the variation of the fee or charge, to the notice of persons who may be affected.

PART XII

PROJECTS WITHIN A COUNCIL AREA

196. (1) The functions of a council include the following:

- (a) to provide for the development of its area;
- (b) to provide services and facilities that benefit the area, its ratepayers and residents and those who resort to it;
- (c) to protect health and treat illness;

Various projects that may be carried on by a council.

- (d) to provide for the welfare, well-being and interests of individuals and groups within the community;
- (e) to represent and promote the interests of its ratepayers and residents;
- (f) to establish or support organizations and programmes that benefit people in its area or local government generally;
- (g) to protect the environment and improve amenity;
- (h) to provide the infrastructure for industry;
- (i) to attract commerce, industry and tourism;
- (j) to act to benefit, improve and develop its area in other ways;
- (k) to manage, improve and develop resources available to the council;
- (l) any other function approved by the Minister.

(2) A council may, in the performance of its functions, undertake such projects as it thinks fit.

(3) A council may—

- (a) undertake a project in conjunction with any other council, authority or person;
- (b) (i) participate in the formation of a trust, partnership or other body (not being a company);
 - (ii) acquire and dispose of units in a trust;
 - (iii) acquire and dispose of interests in a partnership or other body (not being a company);
 - (iv) enter into arrangements for profit sharing;
- (c) enter into various forms of commercial activity or enterprise;
- (d) undertake a project for the purpose of raising revenue.

(4) Where a reason for proposing a project (other than an incidental reason) is to raise revenue, the council must, before determining whether to undertake the project, consider—

- (a) the impact that the project might have on other services or facilities, or businesses, provided or carried on in the proximity;

and

- (b) the objectives of any Development Plan that applies in relation to its area.

197. (1) Subject to subsection (2), the following require Ministerial approval—

(a) a project—

- (i) that will involve expenditure by a council in excess of 20 per cent of the council's total recurrent expenditure for the previous financial year;

(ii) in relation to which the council proposes to borrow or obtain some other form of financial accommodation, or to give a guarantee, where—

— the council is already expending an amount equal to or exceeding 30 per cent of its annual rate revenue in interest (including credit charges) and capital repayments;

and

— the effect of the proposal would be (assuming no increases in net general rate revenue and no decreases in rates of interest or credit charges) to commit a further amount equal to or exceeding 10 per cent of its annual rate revenue to such expenditure;

or

(iii) that is of a kind prescribed by the regulations;

(b) a proposal of a council—

(i) to participate in the formation of a trust, partnership or other body;

or

(ii) to acquire an interest in a trust, partnership or other body.

(2) The following do not require Ministerial approval—

(a) road construction or maintenance;

(b) drainage works;

(c) the construction of car parking facilities;

(d) the construction of civic buildings and work depots;

or

(e) a proposal to form a partnership or other body with another council or with an agency or instrumentality of the Crown.

(3) An application for Ministerial approval under this section must be accompanied by such information as the Minister may require, which may include—

(a) a detailed statement setting out the purpose of the project or proposal;

(b) details of any alternative project or proposal that was considered by the council;

(c) details of any cost-sharing or profit-sharing arrangements, and other organizational and business arrangements, that the council intends to enter into;

(d) a report on the feasibility of the project or proposal;

(e) written advice from an independent expert or consultant relating to the feasibility of the project or proposal;

- (f) financial information in relation to the project or proposal including—
- (i) the manner in which it is to be financed;
 - (ii) a report on any financial risks to which the council would be exposed;
 - (iii) a report on the financial position of any other parties;
 - (iv) a statement of any security to be given by the council;
- (g) a report on the economic, social or environmental impact of the project or proposal, including a statement of its impact on services, facilities and businesses in the proximity;
- (h) information as to the project or proposal's possible effects on employment and any other industrial ramifications;
- (i) details of any consultation that the council has undertaken with members of the public, and the outcome of that consultation;
- (j) copies of any intended contract relating to the project or proposal;
- (k) written valuations of properties proposed to be affected by the project or proposal.
- (4) The Minister may—
- (a) approve a project or proposal unconditionally;
 - (b) approve a project or proposal with such modifications or subject to such conditions as the Minister thinks fit;
- or
- (c) direct that a project or proposal should not be carried out.
- (5) Before making a decision under subsection (4), the Minister may direct the council—
- (a) to obtain other approvals specified by the Minister;
 - (b) to consult with other authorities or bodies specified by the Minister;
 - (c) to invite representations from the public on the project or proposal.
- (6) If the Minister gives a direction under subsection (5) (c), the council must cause notice of the project or proposal to be published, at the direction of the Minister—
- (a) in a newspaper circulating generally throughout the State;
- or
- (b) in a newspaper circulating in its area.
- (7) A notice published under subsection (6)—
- (a) must describe the project or proposal with reasonable particularity;

(b) in relation to a project—

(i) must state the estimated cost to the council of carrying out the project and the means by which the project is to be financed;

and

(ii) must identify any land that would be directly affected by the project;

and

(c) must invite interested persons to make written representations to the council in relation to the project or proposal on or before a date stated in the notice (which must be a date falling at least one month after the date of publication of the notice).

(8) A council must consider any representations made in response to the notice and must then report to the Minister.

(9) The Minister must not—

(a) impose modifications or conditions in relation to a project or proposal;

or

(b) direct that a project or proposal should not be carried out, without first consulting with the council.

(10) If the Minister directs that a project or proposal should not be carried out, the Minister must furnish the council with written reasons for the decision.

(11) The Minister may at any time, on the application of a council, approve (on such conditions as the Minister thinks fit) the modification of a project or proposal that has been previously approved by the Minister.

(12) The Minister may—

(a) exempt (on such conditions as the Minister thinks fit)—

(i) a council, or councils of a specified class, from a requirement of this section;

(ii) a project or proposal, or projects or proposals of a specified class, from a requirement of this section;

or

(iii) on approving a project or proposal, a council from any other requirement of this Act;

and

(b) impose any other requirement in substitution.

(13) A regulation cannot be made for the purposes of this section except after consultation by the Minister with the Local Government Association of South Australia.

Acquisition of
land.

198. (1) A council may, with the approval of the Minister, acquire land under the Land Acquisition Act, 1969, for the purposes of carrying out a project.

(2) An application for Ministerial approval under this section must be accompanied by such information as the Minister may require.

(3) The Minister may—

(a) grant an approval unconditionally;

(b) grant an approval subject to such conditions as the Minister thinks fit;

or

(c) refuse to grant an approval.

(4) Ministerial approval to acquire land under the Land Acquisition Act, 1969, is not required under this section where the council is authorized to acquire the land under another provision of this or any other Act.

PART XIII

CONTROLLING AUTHORITIES

Controlling
authorities
established by one
council.

199. (1) A council may establish a controlling authority—

(a) to carry out a project on behalf of the council;

(b) to manage or administer any property or facilities on behalf of the council;

or

(c) to carry out any other work on the council's behalf.

(2) The council may make provision for—

(a) the membership of the controlling authority (which may, but need not consist of, or include, members of the council);

(b) the term of office of members of the controlling authority;

(c) the proceedings of the controlling authority;

(d) the powers, functions and duties of the controlling authority;

and

(e) rules for the conduct of the business of the controlling authority.

(3) A person may be removed from membership of the controlling authority by resolution of the council.

(4) The council may, subject to conditions determined by the council, delegate to the controlling authority—

(a) the power to receive and expend revenue;

(b) any other of the council's powers that are reasonably required to enable it to carry out the functions for which it is established,

but the power to make by-laws may not be delegated.

(5) A liability incurred by a controlling authority may be enforced against the controlling authority or the council by which it was established.

(6) No liability attaches to a member of the controlling authority for an honest act or omission by that member or the controlling authority in the performance or discharge, or purported performance or discharge, of the member's or the controlling authority's functions or duties.

(7) A liability that would, but for subsection (6) lie against a member of the controlling authority lies against the council.

(8) The council may at any time abolish the controlling authority and, in that event, the rights and liabilities of the controlling authority vest in the council.

(9) The establishment of a controlling authority under this section does not derogate from the powers of the council to act in any matter itself.

200. (1) Two or more councils ("the constituent councils") may, with the approval of the Minister, establish a controlling authority—

Controlling
authorities
established by
two or more
councils.

(a) to carry out any project in any part of the areas of the councils;

or

(b) to perform any function or duty of the councils under this or any other Act.

(2) An application for the approval of the Minister under subsection (1)—

(a) must be in a form approved by the Minister;

(b) must be accompanied by such information as the Minister may require;

and

(c) must be accompanied by a copy of the proposed rules of the controlling authority.

(3) Before approving an application the Minister may investigate whether it would be appropriate to include any other council as a constituent council and may, if he or she thinks fit, approve a controlling authority that includes another council or other councils as constituent councils.

(4) The Minister must not include a council as a constituent under subsection (3) unless the council has been given a reasonable opportunity to make submissions to the Minister in relation to the matter.

(5) The Minister may only include a council in a controlling authority under subsection (3) if the Minister considers—

(a) that an object of the controlling authority cannot be properly fulfilled without the inclusion of the council as a constituent council;

and

(b) that it is in the interests of local government in a part of the State that the council be included as a constituent council.

(6) Where a constituent council of a controlling authority is to be a council included under subsection (3), the Minister may, after consultation with all of the constituent councils, make such consequential amendments to the rules of the controlling authority as the Minister thinks fit.

(7) If a controlling authority is approved under this section, the Minister will, by notice in the *Gazette*, specify—

(a) the name of the controlling authority;

and

(b) the purpose for which the controlling authority is established.

(8) On publication of a notice under subsection (7), a controlling authority is established under the name specified in the notice.

(9) A controlling authority established under this section—

(a) is a body corporate;

(b) has the powers, functions and duties specified in its rules;

and

(c) holds its property on behalf of the constituent councils.

(10) The rules of a controlling authority—

(a) must make provision for—

(i) the membership of the controlling authority (which may, but need not consist of, or include, members of the constituent councils);

(ii) the term of office of members of the controlling authority;

(iii) the proceedings of the controlling authority;

(iv) financial contributions to the controlling authority by the constituent councils;

(v) the manner in which property of the controlling authority is to be distributed in the event of it being wound up;

(vi) the proportions in which the constituent councils are to be responsible for the liabilities of the controlling authority in its event of its insolvency;

and

(vii) any other prescribed matter;

and

(b) may empower the controlling authority to make by-laws as if it were a council (but the power of the controlling authority to make by-laws cannot exceed the powers of the constituent councils).

(11) The rules of the controlling authority may, with the approval of the Minister, be amended by the constituent councils acting jointly.

(12) A council may, with the approval of the Minister, cease to be a constituent council of a controlling authority.

(13) A controlling authority may, with the approval of the Minister, be wound up by the constituent councils.

(14) The approval of the Minister under subsection (12) or (13) may be given subject to such conditions as the Minister thinks fit.

(15) The constituent councils must, at the direction of the Minister, wind up the controlling authority in the event of its insolvency.

(16) The constituent councils are, in the event of the insolvency of the controlling authority, responsible for the outstanding liabilities of the controlling authority in the proportions specified in the rules.

(17) The establishment of a controlling authority under this section does not derogate from the powers of a constituent council to act in any matter itself unless the council seeks to limit its powers and the limitation is specified in the notice approving the establishment of the controlling authority.

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| 11. Section 313 of the principal Act is amended by striking out from subsection (2) "of twenty-five cents" and substituting "set by the council". | Amendment of s. 313—
Entries in register. |
| 12. Parts XVIII to XXI (comprising sections 377 to 449d) are repealed. | Repeal of Parts XVIII to XXI. |
| 13. Section 476 of the principal Act is repealed. | Repeal of s. 476. |
| 14. Section 478 of the principal Act is amended by striking out "sections 476 and" and substituting "section 477". | Amendment of s. 478—
Reserve may be adjacent to foreshore although separated by a street. |
| 15. Section 504a of the principal Act is amended—
(a) by striking out paragraphs III, IV and V of subsection (2);
and
(b) by striking out subsection (3). | Amendment of s. 504a—
Sale of electric fittings. |
| 16. Section 513 of the principal Act is amended by striking out subsections (2), (3), (4) and (5). | Amendment of s. 513—
Accounts. |
| 17. Section 514 of the principal Act is repealed. | Repeal of s. 514. |
| 18. Section 514a of the principal Act is repealed. | Repeal of s. 514a. |
| 19. Section 515 of the principal Act is repealed. | Repeal of s. 515. |

Repeal of s. 530.

20. Section 530 of the principal Act is repealed.

Repeal of s. 530c and substitution of new section.

21. Section 530c of the principal Act is repealed and the following section is substituted:

Septic tanks.

530c. (1) A council must obtain the approval of the South Australian Health Commission before it undertakes a scheme for the disposal of septic tank effluent.

(2) If the council obtains the approval of the South Australian Health Commission under subsection (1), the council must give notice of the proposed scheme to the owners of land in the part of its area affected by the scheme.

(3) A notice under subsection (2) must include, or be accompanied by—

- (a) details of the proposed scheme, including a description of any land that would be benefited by the scheme;
- (b) an estimate of the costs of the scheme;
- (c) particulars of the manner in which the scheme would be financed, including the manner in which the capital and operating costs would be recovered;

and

- (d) details of any plans and specifications relating to the scheme that are available for public inspection.

(4) An owner of land within the part of the area affected by the proposed scheme may, within 21 days after the receipt of the notice, lodge an objection to the proposed scheme with the council.

(5) The council must consider any objection lodged under subsection (4) and may abandon the scheme or proceed with it with such modifications as it thinks fit (subject to the council obtaining the approval of the South Australian Health Commission to the modified scheme).

(6) If a scheme is undertaken, the owner of every building in the part of the council's area affected by the scheme must, at the request of the council, at the owner's own expense—

- (a) provide effluent drains conforming to specifications approved by the South Australian Health Commission that may be necessary for the purposes of the scheme;

and

- (b) remove any sludge that may from time to time accumulate in the tank.

(7) Where a request under subsection (6) is not complied with, the council may have the work carried out (and a person authorized to do so by the council may enter premises at any reasonable time for the purposes of carrying out the work).

(8) The council may recover as a debt costs and expenses reasonably incurred under subsection (7) from the person in default.

(9) Any costs and expenses recoverable under subsection (8) are, while they remain unpaid, a charge on the land.

22. Sections 533 and 534 of the principal Act are repealed. Repeal of ss. 533 and 534.
23. Section 537 of the principal Act is repealed. Repeal of s. 537.
24. Section 630 of the principal Act is repealed. Repeal of s. 630.
25. Section 646 of the principal Act is amended— Amendment of s. 646—
Right of appeal.
- (a) by striking out from subsection (1) “appeal against the valuation” and substituting “object to the valuation”;
- and
- (b) by striking out subsection (2) and substituting the following subsection:
- (2) Where an objection is made under subsection (1), the provisions of Part X for reconsideration or review of, or appeal against, a valuation apply, with the necessary changes, to the valuation to which objection is taken.
26. Sections 664 to 664a of the principal Act are repealed. Repeal of ss. 664 and 664a.
27. Section 666a of the principal Act is repealed. Repeal of s. 666a.
28. Section 666c of the principal Act is repealed. Repeal of s. 666c.
29. Section 680 of the principal Act is repealed. Repeal of s. 680.
30. Section 691 of the principal Act is amended— Regulations.
- (a) by inserting after paragraph (a5) of subsection (1) the following paragraph:
- (a6) prescribing the fee or charge that a council may charge in respect of a particular matter;
- and
- (b) by inserting after subsection (1) the following subsection:
- (1a) Regulations made under this Act may be of general or limited application.
31. Section 692 of the principal Act is amended— Amendment of s. 692—
Recovery of amounts due to council.
- (a) by striking out from subsection (2) “(other than in manner provided by Part XIV)” and substituting “(other than by exercising a power of sale)”;
- (b) by striking out from subsection (2) the passage:
- This subsection shall not apply to any fees, charges, expenses, or other amounts payable to the council by any person pursuant to Division II of Part XXIV.;
- (c) by inserting after subsection (2) the following subsection:
- (2a) Subsection (2) does not apply with respect to—
- (a) rates, charges, interest or fines recoverable under Part X;

(b) fees, charges, expenses or other amounts payable to a council under Division II of Part XXIV.;

(d) by striking out from subsection (3) "Part XIV" and substituting "Part X";

and

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

(4) If a fee, charge, expense or other amount that is a charge on land is not paid within 30 days of a demand by the council for payment, the amount payable will bear interest at the prime bank rate for that financial year plus 3 per cent.

Amendment of s. 694—
Service of notice on owners and occupiers.

32. Section 694 of the principal Act is amended by striking out from subsection (3) "Part XIV" and substituting "Part X".

Amendment of s. 708—
Certiorari taken away.

33. Section 708 of the principal Act is amended by striking out "No assessment, rate, order for borrowing money, or notice thereof," and substituting "No valuation, assessment or rate,".

Amendment of s. 709—
Jurisdiction to try title to certain office, etc.

34. Section 709 of the principal Act is amended by striking out from paragraph (e) "any assessment, rate, or order for borrowing money" and substituting "any rate".

Amendment of s. 710—
Proceedings to try title to certain offices, etc.

35. Section 710 of the principal Act is amended by striking out from paragraph (d) of subsection (2) "any assessment, rate, or order for borrowing money," and substituting "any rate".

Amendment of s. 714—
Time within which validity of assessment, etc., may be tried.

36. Section 714 of the principal Act is amended—

(a) by striking out from subsection (1) "any assessment rate, or loan" and substituting "any rate";

and

(b) by striking out from subsection (2) " , or the resolution for the loan was passed".

Amendment of s. 717—
Payment of fees, etc., to council.

37. Section 717 of the principal Act is amended—

(a) by inserting "in proceedings commenced by the council, an officer of the council or a controlling authority established by the council" after "recovered";

(b) by striking out "any repealed Act" and substituting "a prescribed Act";

(c) by striking out "any repealed Acts" and substituting "a prescribed Act";

and

(d) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) In subsection (1)—

"prescribed Act" means—

- (a) the Food Act, 1985;
- (b) the Public and Environmental Health Act, 1987;
- and
- (c) any other Act prescribed by regulation for the purposes of this section.

38. Sections 727 and 728 of the principal Act are repealed.

Repeal of ss. 727 and 728.

39. Section 732 of the principal Act is repealed and the following section is substituted:

Repeal of s. 732 and substitution of new section.

732. The *Gazette* containing a notice of the declaration of a rate is, except in proceedings to quash the rate, conclusive evidence that the rate was duly declared.

Evidence of the making of a rate.

40. Section 774 of the principal Act is repealed.

Repeal of s. 774.

41. Section 794a of the principal Act is amended—

Amendment of s. 794a—

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

Expiation of offences.

(1) If an authorized officer believes on reasonable grounds that a person has—

(a) committed a prescribed offence against this Act or any other prescribed Act;

or

(b) committed an offence against a by-law in relation to which an expiation fee has been set,

the authorized officer may give that person a written notice to the effect that the offence may be expiated by payment to the council of the area in which the offence is alleged to have been committed of the appropriate expiation fee within 21 days from the date on which the notice was issued.;

and

(b) by striking out from subsection (7) the definition of “appropriate expiation fee” and substituting the following definition:

“appropriate expiation fee” means—

(a) in the case of an offence against this or any other Act—a fee of the prescribed amount;

(b) in the case of an offence against a by-law—a fee of the prescribed amount or, if no such fee is prescribed, a fee set by the council in relation to the offence (not exceeding 25 per cent of the maximum fine prescribed for the offence).

42. Section 855b of the principal Act is repealed.

Repeal of s. 855b.

43. Sections 856 to 863 (inclusive) of the principal Act are repealed.

Repeal of ss. 856 to 863 (inclusive).

44. Sections 871j to 871r (inclusive) of the principal Act are repealed.

Repeal of ss. 871j to 871r (inclusive).

Amendment of
s. 871s—
Exercise of
certain powers by
council.

45. Section 871s of the principal Act is amended by striking out “, 871e, or 871j” and substituting “or 871e.”

Amendment of
s. 874—
Right of
ratepayers to
signed copy of
by-laws.

46. Section 874 is amended by striking out subsection (1) and substituting the following subsections:

(1) A person is entitled, on payment of a fee set by the council, to a certified copy of any by-law of the council in force in its area (or a part of its area) at that particular time.

(1a) The certificate referred to in subsection (1) is to be given by the mayor or chairman, or chief executive officer, of the council.

Repeal of s. 875.

47. Section 875 of the principal Act is repealed.

Insertion of new
ss. 877 and 877a.

48. The following sections are inserted after section 876 of the principal Act:

Power to enter
and occupy lands
in connection
with projects.

877. (1) Subject to this section, an officer, employee or contractor of a council may, insofar as may be reasonably necessary for carrying out a project—

(a) enter land at any reasonable time;

(b) occupy the land on behalf of the council;

(c) (i) obtain earth, minerals or timber from the land;

(ii) deposit soil on the land;

(iii) construct temporary roads and structures on the land;

(iv) deposit or store materials on the land;

(v) carry out any other incidental activity on the land.

(2) The council is, except in relation to an owner or occupier of the land, liable for any nuisance or damage caused while in occupation of the land.

(3) The council must pay to the owner or occupier of the land—

(a) rent on a quarterly or half-yearly basis, at a rate to be determined by agreement between the council and the owner or occupier or, in default of agreement, by the Land and Valuation Court;

(b) within one month after occupying the land—reasonable compensation for damage caused to any crops on the land;

and

(c) within six months of ceasing to occupy the land—reasonable compensation for any other loss or damage caused by the council, including the full value of any earth, clay, stone, gravel, sand or other minerals or resources taken from the land.

(4) Compensation payable by the council under this section may be recovered as a debt.

(5) The council must, at the request of an owner or occupier of the land, erect a fence of reasonable quality and design between the land and adjoining land.

(6) A council is not authorized under this section to enter or occupy—

- (a) land that is within 450 metres of the curtilage of a house;
- (b) a garden or a park;
- (c) a quarry, brickfield or other similar place from which materials are commonly obtained for commercial purposes.

877a. An officer, employee or contractor of a council may, insofar as may be reasonably necessary for carrying out a project, enter land at any reasonable time for the purpose of conducting surveys, taking levels and setting out land.

Power to enter land for surveys, etc.

49. The following section is inserted after section 880a of the principal Act:

Insertion of new s. 880b.

880b. Subject to the powers of a council to invest money under this Act, a council must not—

Interests in companies.

- (a) participate in the formation of a company;
- or
- (b) acquire shares in a company.

50. Section 886d of the principal Act is amended by striking out from subsection (4) “section 666c” and substituting “this Act”.

Amendment of s. 866d—
Voting of Levi Park in the Corporation of the Town of Walkerville.

51. The following section is inserted after section 888 of the principal Act:

Insertion of new s. 889.

889. (1) The Minister may delegate any power or function of the Minister under this Act (other than a power or function under Division XIII of Part II).

Delegation by Ministers.

(2) A delegation by the Minister—

- (a) may be conditional or unconditional;
- (b) is revocable at will;
- and

(c) does not derogate from the power of the Minister to act in any matter personally.

(3) A delegation under this section may be made to a specified person or may be made to the holder for the time being of a specified office.

(4) A register of delegations must be kept and made available for public inspection.

52. The seventh, eleventh, thirteenth, twentieth and twenty-second schedules to the principal Act are repealed.

Repeal of certain schedules.

53. (1) The amendments made to the principal Act by this Act do not affect—

Transitional provisions.

- (a) a memorial received by a council before the commencement of this Act or the declaration, operation or recovery of any rate in pursuance of such a memorial;

- (b) any inquiry instituted before the commencement of this Act into the disposal of land held by the council in trust for a charitable purpose and the steps that can be taken as a result of the inquiry;
- (c) any approval obtained by a council from the South Australian Planning Commission to undertake a scheme for the development of land or from the Minister to acquire land for the purposes of the scheme;
- (d) the planning and execution of any scheme for carrying out an activity for the benefit of an area where the council has before the commencement of this Act given notice of the scheme in accordance with the principal Act;
- (e) any scheme submitted to the Minister before the commencement of this Act;
- (f) the power of a council to redeem debentures issued before the commencement of this Act,

and the principal Act will continue to apply in relation to those matters as if it had not been amended by this Act.

(2) Where a council had before the commencement of this Act obtained approval to provide any of the following services—

- (a) septic tank effluent disposal;
- (b) any other service approved by the Minister for the purposes of this provision,

the council may, after the commencement of this Act, impose in respect of that service a service rate or service charge on land in accordance with Part X of the principal Act (as amended by this Act), notwithstanding that the approval obtained by the council provided for the imposition of a separate rate.

(3) A remission or postponement of rates granted by a council before the commencement of this Act will continue as a remission or postponement of rates under the principal Act as amended by this Act.

(4) A controlling body established under section 666c of the principal Act before the commencement of this Act will be regarded as a controlling authority established under section 199 of the principal Act as amended by this Act.

(5) A controlling authority incorporated under Part XIX of the principal Act before the commencement of this Act will be regarded as a controlling authority established under section 200 of the principal Act as amended by this Act.

(6) The Minister may, on application by a council, in respect of the financial year 1988/1989, permit the council to send accounts for the payment of rates to the occupiers of ratable land within its area (and not necessarily to principal ratepayers).

54. The Rates and Land Tax Remission Act, 1986, is amended—

(a) by striking out paragraph (a) of the definition of “rates” in section 3 and substituting the following paragraph:

- (a) any fees or charges payable under the Local Government Act, 1934, for the removal of sewerage;;

(b) by striking out paragraph (b) of subsection (3) of section 4 and substituting the following paragraph:

(b) general and separate rates payable under the Local Government Act, 1934;;

(c) by striking out from Schedule 2 the item:

Local Government Act, 1934 (sections 530c and 537 and any other provision imposing rates, fees or charges for the removal of sewerage)

and substituting the item:

Local Government Act, 1934 (any provision imposing rates, fees or charges for the removal of sewerage);

and

(d) by striking out from Schedule 3 the item:

Local Government Act, 1934 (Part XII)

and substituting the item:

Local Government Act, 1934—General and separate rates.

55. The principal Act is further amended as indicated in the schedule.

Statute Law
Revision
amendments.

SCHEDULE

Provision Amended	How Amended
Section 3	Delete section 3.
Section 4	Delete section 4.
Section 5 (1)	Delete "except where the context or subject matter requires a different construction" and substitute "unless the contrary intention appears".
Definition of "chief executive officer"	Delete "his" and substitute "a".
Definition of "foreshore"	Delete this definition and substitute: "foreshore" means the area between the low water mark on the seashore and the nearest boundary of— (a) a road; (b) a section; (c) a public reserve; or (d) land comprised in a land grant, Crown lease, or Crown licence.
Definition of "nomination day" or "day of nomination"	Delete "means day" and substitute "means the day".
Definition of "occupier"	Delete this definition and substitute: "occupier" means a person who, either jointly or alone, has possession of land (to the substantial exclusion of others).
Definition of "park lands"	Delete this definition and substitute: "park land" means land declared or set apart as a park or set aside for the use and enjoyment of the public.
Definition of "pave"	Delete this definition.
Definition of "this Act"	Delete this definition.
Definition of "township"	Delete this definition and substitute: "township" means— (a) any government township and any land laid out as a township where plans of the township have been deposited in the Lands Titles Registration Office, the General Registry Office or the Surveyor-General's Office; or (b) any part of the area of a council that contains at least 20 residences and that is defined as a township by the council by notice published in the <i>Gazette</i> .
Section 5 (6)	Delete this subsection.
Section 11 (2)	Delete this subsection and substitute: (2) Where the Governor— (a) makes a proclamation under subsection (1) providing for new or additional offices in the membership of a council; and (b) thinks it desirable to fill those offices by making appointments under this subsection, the Governor may, by the same or a subsequent proclamation, appoint the first persons to fill the offices.
Section 12 (2)	Delete "The Governor may, by proclamation under subsection (1) or by subsequent proclamation, where the alteration of boundaries affects the areas of two or more councils" and substitute "Where the alteration of boundaries affects the areas of two or more councils, the Governor may, by the same or a subsequent proclamation".

Provision Amended	How Amended
Section 20 (2)	Delete "he had been".
Section 20 (3)	Delete "his appointment and shall, at the expiration of his term of office" and substitute "appointment and is, at the expiration of a term of office".
Section 20 (4)	Delete this subsection and substitute: (4) The office of a member of the Commission appointed under subsection (1) (b) becomes vacant if the member— (a) dies; (b) resigns by written notice addressed to the Minister; or (c) is removed from office by the Governor on the ground of— (i) mental or physical incapacity to carry out official duties satisfactorily; (ii) neglect of duty; or (iii) dishonourable conduct.
Section 20 (6)	After "he" insert "or she".
Section 24 (1)	Delete "his deputy" and substitute "the Chairman's deputy".
Section 25 (a)	Delete "under his hand and the public seal of the State".
Section 26 (1)	Delete "of his own motion" and substitute "on his or her own initiative".
Section 26 (3)	Delete "he is".
Section 26 (8) (a)	Delete "his" and substitute "those".
Section 28 (3)	Delete "his" and substitute "those".
Section 30 (1)	Delete "to him".
Section 30 (2) (a)	Delete "put to him by the investigator to the best of his knowledge" and substitute "put by the investigator to the best of his or her knowledge".
Section 30 (2) (b)	Delete "his answers" and substitute "the answers".
Section 30 (3)	Delete "and liable to a penalty not exceeding ten thousand dollars" and insert at the foot of the subsection: Penalty: \$10 000.
Section 30 (4)	After "him" insert "or her".
Section 30 (6)	Delete "to him".
Section 33 (9)	Delete "his" and substitute "the".
Section 43 (2)	Delete "he" and substitute "the mayor".
Section 43 (3)	Delete "he" and substitute "the chairman".
Section 43 (5)	Delete "he" and substitute "he or she".
Section 43 (8)	Delete "the duties of his office" and substitute "official duties".
Section 47 (1)	After "his" insert "or her".
Section 49 (1) (a)	Delete "the duties of his office" and substitute "official duties".
Section 49 (4)	Delete "of members".
Section 49 (6)	Delete this subsection and substitute: (6) A member of a council who holds an office for part only of the period in respect of which an allowance is payable is entitled to the proportion of the allowance that the period for which the member held the office bears to the total period.

Provision Amended	How Amended
Section 52	Delete this section and substitute: 52. A member of a council or council committee must, at or before the first meeting to be attended by the member, make an undertaking in the prescribed manner and form to discharge the member's duties conscientiously and to the best of his or her ability.
Section 53 (1)	Delete "of which he is a member".
Section 53 (3) and (4)	Delete these subsections and substitute: (3) A member of a council who is a member, officer or employee of an agency or instrumentality of the Crown, will be regarded as having an interest in a matter before the council or a council committee if the matter directly concerns that agency or instrumentality but otherwise will not be regarded as having an interest in a matter by virtue of being a member, officer or employee of the agency or instrumentality. (4) In this section— "agency or instrumentality of the Crown" includes— (a) a department or administrative unit of the Public Service; (b) a body corporate comprised of, or including or having a governing body comprised of or including, a Minister or Minister of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown.
Section 54 (1)	Delete "he is a member shall disclose the fact that he has such an interest" and substitute "he or she is a member must disclose the interest".
Section 54 (3)	Delete "of which he is a member".
Section 54 (4) (a)	Delete "within the meaning of section 53 (2) of this Act,".
Section 54 (4) (b)	After "he" insert "or she".
Section 54 (5)	Delete this subsection and substitute: (5) It is a defence to a charge of an offence against subsection (1) or (3) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.
Section 54 (7)	Delete "a matter in which he or they have an interest" and substitute "a particular matter".
Section 55	Delete this section and substitute: 55. A member of a council must not use confidential information gained by the member's official position for the purpose of securing a private benefit for the member personally or for some other person. Penalty: \$5 000 or imprisonment for one year.
Section 57 (1) (a)	Delete "he" and substitute "the convicted person". Delete "his".
Section 57 (1) (b)	Delete "he" and substitute "the convicted person". After "his" insert "or her".
Section 60 (2)	Delete "he" wherever it occurs and substitute in each case "the deputy".
Section 60 (5)	Delete ", in his absence, any other member, presiding at a meeting of the council" and substitute "any other member presiding, in the absence of the mayor, at a meeting of the council".
Section 60 (6)	Delete ", in his absence, any other member, presiding at a meeting of the council" and substitute "any other member presiding, in the absence of the chairman, at a meeting of the council".

Misuse of
confidential
information.

Provision Amended	How Amended
Section 62 (3)	Delete this subsection and substitute: (3) A person who, knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held is guilty of an offence and liable to a penalty not exceeding \$500 and if such a person fails to leave the room on request it is lawful for an officer of the council or a member of the police force forcibly to remove him or her from the room.
Section 63 (5)	After "he" insert "or she".
Section 63 (6) (a)	Delete "he" and insert "the deputy".
Section 63 (6) (b)	After "he" insert "or she".
Section 64 (2)	Delete "subsection (1) or (1a)" and substitute "this section".
Section 66 (4) (a)	Delete "he" and substitute "the deputy".
Section 66 (4) (b)	Delete "he" and substitute "the deputy".
Section 66 (5)	Delete "he" and substitute "the person". Delete "his" and substitute "the".
Section 66 (6)	Delete this subsection and substitute: (6) An approval may be granted under subsection (5) or (5a) on such terms and conditions as the Minister thinks fit.
Section 66 (9)	Delete "his office".
Section 67 (3) (b)	Delete "he" and substitute "the Minister".
Section 67 (4) (a)	Delete "he" and substitute "the person".
Section 67 (4) (b)	Delete "his" and substitute "the".
Section 67 (5)	Delete this subsection and substitute: (5) An approval may be granted under subsection (4) on such terms and conditions as the Minister thinks fit.
Section 71 (2)	Delete "his right" and substitute "a right".
Section 72 (1)	Delete "his".
Section 74 (3) (b)	Delete this paragraph and substitute: (b) one shall be the Public Actuary or a nominee of the Public Actuary.
Section 77 (3)	Delete "his".
Section 78 (3)	Delete "his".
Section 79	Delete this section and substitute: 79. An officer or employee of a council must not use confidential information gained by virtue of the officer's or employee's position as such for the purpose of securing a private benefit for the officer or employee personally or for some other person. Penalty: \$5 000 or imprisonment for one year.
Section 80 (1) and (2)	Delete these subsections and substitute: (1) An officer or employee of a council who has an interest in a matter in relation to which he or she is required or authorized to act in the course of official duties— (a) must disclose the interest to the council; and (b) must not, unless the council otherwise determines, act in relation to that matter. Penalty: \$5 000 or imprisonment for one year. (2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

Misuse of
confidential
information.

Provision Amended	How Amended
Section 80 (3)	Delete "in relation to which he is required or authorized to act".
Section 82 (3)	After "he" insert "or she".
Section 82 (4)	Delete "upon his powers".
Section 82 (5)	Delete this subsection and substitute: (5) An authorized person shall, on demand by a person in relation to whom the authorized person is exercising or proposing to exercise powers under this Act, produce his or her identity card for inspection by that person.
Section 83 (1) (a)	After "his" insert "or her".
Section 84 (1)	Delete "by him". Delete "his".
Section 84 (2)	Delete "that appointed him to his office or position" and substitute "by which the officer, employee or authorized person was appointed".
Section 87 (1)	Delete "him".
Section 88 (1)	Delete "his" and substitute "the returning officer's".
Section 88 (2)	Delete "himself" and substitute "personally".
Section 89 (4)	After "his" insert "or her".
Section 90	Delete "the duties of his office" and substitute "official duties".
Section 92 (2) (b)	Delete "his" and substitute "the person's".
Section 92 (8)	Delete "by him" and substitute "by the Commissioner".
Section 92 (10)	Delete "him" and substitute "the chief executive officer".
Section 92 (11)	Delete "is entitled to assume that a list supplied by the Electoral Commissioner is accurate" and substitute "is entitled to assume that such a list is accurate".
Section 93 (1)	After "his" insert "or her".
Section 93 (2)	After "his" where it occurs for the first and second time insert "or her". Delete "he" and substitute "the elector". Delete "in his capacity".
Section 93 (3)	Delete "he" and substitute "the elector".
Section 95 (1) (a)	Delete "he" and substitute "the person".
Section 95 (1) (b)	Delete "his" and substitute "the person's".
Section 95 (2)	Delete this subsection and substitute: (2) A person is not eligible to be a candidate for election as a member of a council if the person— (a) is an undischarged bankrupt; (b) has been sentenced to imprisonment and is, or could on the happening of some contingency become, liable to serve the sentence or the remainder of the sentence; (c) is disqualified from election by virtue of section 57; or (d) is an officer or employee of the council.
Section 95 (3)	After "if" insert "the person". Delete "he" from paragraphs (a) and (b).
Section 95 (4)	After "he" insert "or she".
Section 96 (2)	Delete this subsection and substitute: (2) The nomination must be accompanied by a declaration of eligibility made in the prescribed form by the nominated candidate.

Provision Amended	How Amended
Section 96 (7)	Delete "he considers" and substitute "of the opinion".
Section 96 (10)	Delete "his" and substitute "the".
Section 98 (2)	Delete this subsection and substitute: (2) A council must not appoint a person to an office in pursuance of subsection (1) unless the person— (a) would, if an election were held to fill the office, be eligible to stand as a candidate for election to the office; and (b) has made a declaration of eligibility in the prescribed form.
Section 104 (1)	Delete "he" and substitute "the voter".
Section 106 (1)	Delete this subsection and substitute: (1) Where a person desires to vote at an election or poll but expects to be, for any reason, unable to attend at a polling place, that person may apply to the returning officer for advance voting papers.
Section 106 (3) (b) (i) (A)	After "his" insert "or her".
Section 106 (3) (b) (i) (B)	Delete "he" and substitute "the witness".
Section 106 (3) (b) (ii) (A)	Delete "the voter sets out grounds on which he claims to be entitled to vote" and substitute "are set out the grounds on which the voter claims to be entitled to vote".
Section 106 (8)	Delete "he" and substitute "the returning officer".
Section 107 (1) (a)	Delete "he shall mark his" and substitute "the voter shall mark a".
Section 107 (1) (b)	Delete "he" and substitute "the voter".
Section 107 (1) (c)	Delete "he" and substitute "the voter".
Section 108	Delete "his choice" and substitute "the voter's choice". Delete "in accordance with his directions, assist him in carrying out the procedure, or carry it out on his behalf" and substitute "in accordance with the voter's directions, assist the voter in carrying out the procedure or carry it out on the voter's behalf".
Section 110	Delete "he" and substitute "that person".
Section 112	Delete "he" and substitute "that person".
Section 114 (1)	Delete this subsection and substitute: (1) Subject to this Part, the following procedure must be followed in relation to voting at a polling place: (a) a person desiring to vote must present himself or herself to an electoral officer and state his or her full name, place of residence and, where applicable, the address of ratable property in the area by virtue of which the person is entitled to be enrolled as an elector; (b) the electoral officer must then ask the person whether he or she has already voted at the election or poll; (c) if the person is an elector and answers the question referred to in paragraph (b) in the negative, a line must be ruled through the person's name on the voters roll and a ballot paper must then be initialled by the electoral officer and handed to the person; (d) the person must then retire to a voting compartment, mark a vote on the ballot paper, fold it so as to conceal the vote and deposit it in the ballot box.

Provision Amended	How Amended
Section 115 (1)	Delete "his name" and substitute "his or her name". Delete "he shall be" and substitute "the person is".
Section 115 (1) (a)	Delete "he" and substitute "the person".
Section 115 (1) (b)	Delete this paragraph and substitute: (b) the person shall then mark a vote on the ballot paper, fold it so as to conceal the vote and return it so folded to the presiding officer.
Section 116	Delete "his choice" and substitute "the voter's choice". Delete "who may render him such assistance as may be necessary in the circumstances or may vote on his behalf in accordance with his directions" and substitute "who may render such assistance as may be necessary in the circumstances or may vote on behalf of the voter in accordance with his or her directions".
Section 118 (1)	Delete this subsection and substitute: (1) No person may be present in a polling place except— (a) an electoral officer; (b) a scrutineer; (c) a person engaged in voting or about to vote; (d) a person chosen by another person to assist that other person in voting; or (e) a person permitted by the presiding officer to be present. Penalty: \$500.
Section 119 (1) (a)	Delete "his" and substitute "a".
Section 120 (3)	Delete "in his discretion" and substitute "if of the opinion that it is desirable to do so".
Section 121 (1) (a) (i)	Delete "him" and substitute "the presiding officer".
Section 121 (2) (d)	Delete "he" and substitute "the voter".
Section 121 (3) (a)	After "his" wherever it occurs insert "or her".
Section 121 (3) (c)	After "his" wherever it occurs insert "or her".
Section 121 (4) (c) (i)	Delete "him" and substitute "that candidate".
Section 121 (4) (f)	Delete "by him".
Section 121 (4) (g)	Delete "his" and substitute "the excluded candidate's".
Section 121 (4) (g) (ii)	Delete "he obtained them" and substitute "they were obtained".
Section 121 (4) (i)	After "his" insert "or her".
Section 121 (4) (r)	Delete "by him" wherever it occurs.
Section 121 (4) (t)	Delete "to him".
Section 121 (8)	Delete "of his own motion" and substitute "if of the opinion that it is desirable to do so".
Section 121 (9)	Delete "his" and substitute "the".
Section 121 (10)	Delete "his" from paragraphs (a) and (b) and substitute "the" in each case.
Section 123 (1) (f) (ii)	Delete "him" and substitute "the presiding officer".
Section 123 (1) (g)	Delete "his possession" and substitute "the possession of the presiding officer".
Section 123 (4)	Delete "he" and substitute "the voter". Delete "his" and substitute "the voter's".
Section 123 (7)	Delete "of his own motion" and substitute "if of the opinion that it is desirable to do so".

Provision Amended	How Amended
Section 123 (8)	Delete "his" and substitute "the".
Section 123 (9)	Delete "his" from paragraphs (a) and (b) and substitute "the" in each case.
Section 126 (1)	Delete "he" and substitute "that person".
Section 130 (a)	Delete "have a voters roll in his possession" and substitute "have possession of a voters roll".
Section 132 (1)	Delete "his" and substitute "the candidate's".
Section 132 (2)	Delete this subsection and substitute: (2) Without limiting the generality of subsection (1), a person acts as an assistant by assisting another to obtain, complete or return advance voting papers.
Section 137 (3)	Delete "If a person served under subsection (2) proposes to contest the petition, he" and substitute "A person served under subsection (2) who proposes to contest the petition".
Section 141 (1)	Delete "he" and substitute "that person". After "his" insert "or her".
Section 146 Definition of "financial benefit"	Delete "him" and substitute "the member".
Section 147 (1)	Delete this subsection.
Section 147 (2)	Delete ", after the first day of September, 1984,". Delete "his".
Section 148	Delete "in 1985 and each succeeding year" and substitute "in each year".
Section 149 (1)	After "his" in paragraphs (a) and (b) insert "or her" in each case.
Section 149 (2)	After "his" in paragraphs (a), (b), (c) and (d) insert "or her" in each case.
Section 149 (3)	After "his" in paragraphs (a), (b), (c), (d) and (e) insert "or her" in each case.
Section 149 (3) (e)	Delete "he" twice occurring and substitute, in each case, "the member".
Section 149 (5)	Delete "himself or a member of his family" and substitute "the member or a member of his or her family".
Section 149 (6)	Delete "he" and insert "the member".
Section 149 (7)	Delete "himself personally and information relating to members of his family" and substitute "the member personally or a member of his or her family".
Section 150 (1)	Delete "to him".
Section 150 (2)	Delete "permit him to inspect the Register maintained by him" and substitute "permit the member to inspect the Register".
Section 151 (2)	Delete this subsection and substitute: (2) A member of a council who submits a return under this Part that is to the knowledge of the member false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence. Penalty: \$5 000.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor