



# LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT ACT 1992

No. 43 of 1992

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**ELIZABETHAE II REGINAE**

**A.D. 1992**

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**No. 43 of 1992**

**An Act to amend the Local Government Act 1934.**

*[Assented to 10 September 1992]*

The Parliament of South Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Local Government (Miscellaneous Provisions) Amendment Act 1992*.

**Commencement**

2. This Act will come into operation on a day to fixed by proclamation.

**Interpretation**

3. Section 5 of the principal Act is amended by inserting in subsection (1) after the definition of "authorized person" the following definition:

"business day" means any day except Saturday, Sunday or a public holiday.

**Local Government Superannuation Scheme**

4. Section 73 of the principal Act is amended by striking out from subsection (6) the definition of "officer" or "employee".

**Date of elections**

5. Section 94 of the principal Act is amended by striking out subsections (1b) and (1c).

**Insertion of s. 166a**

6. The following section is inserted immediately after section 166 of the principal Act:

**Duty to insure against liability**

166a. (1) A council must take out and maintain insurance to cover its civil liabilities to the extent prescribed by the regulations.

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

(3) Membership of the *Local Government Association Mutual Liability Scheme* constitutes insurance for the purposes of this section.

#### Rateability of land

7. Section 168 of the principal Act is amended—

(a) by striking out from subsection (2) (l) “or any controlling authority”;

and

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

(m) land occupied by a controlling authority where such land is situated in the area of—

(i) the council that established the controlling authority (*see* section 199);

or

(ii) a constituent council (*see* section 200).

#### Basis of differential rates

8. Section 176 of the principal Act is amended by striking out subsection (6) and substituting the following subsection:

(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 (with, at the discretion of the council, a separate differentiation according to zones);

(c) where there are two or more townships in the area—there may be differentiation according to the township in which the land is situated (with, at the discretion of the council, a separate differentiation in relation to land outside the townships and, at the discretion of the council, a separate differentiation according to zones).

#### Liability for rates

9. Section 183 of the principal Act is amended—

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

(2) If—

(a) the name of an occupier is entered in the assessment book as the principal ratepayer in respect of land;

or

(b) the land is held from the council under a lease or licence,

the occupier of the land (rather than the owner) will be regarded as the principal ratepayer.;

and

(b) by inserting after subsection (4) the following subsections:

(4a) Where the council gives a notice under subsection (4), an additional charge of five per cent of the amount in arrears is payable and recoverable as part of those rates.

(4b) A council may remit the charge payable under subsection (4a) in whole or in part.

(4c) If—

(a) the council gives a notice to a lessee or licensee under subsection (4);

(b) the council, by written notice to the owner of the land, informs the owner of the imposition of the requirement under subsection (4);

and

(c) the lessee or licensee, contrary to the terms of the notice under subsection (4), makes a payment to the owner instead of to the council,

the owner, must within one clear business day after receipt of the payment, pay the amount received to the council in satisfaction of the liability for rates.

Penalty: \$200.

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

**10.** Section 191 of the principal Act is amended—

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

(a) any amount overpaid must be refunded or, if the council so determines, credited against future liabilities for rates on the land subject to the rates;;

(b) by striking out subsections (3) and (4) and substituting the following subsections:

(3) Interest is payable on any amount that is refunded or is for the time being credited under subsection (2) (a).

(4) The interest—

(a) accrues on the expiration of each month from the day that the amount was paid to the council;

(b) will be payable at the prescribed rate;

and

(c) until the amount is refunded or ceases to be in credit, will be compounded on a monthly basis.;

(c) by striking out from subsection (5) “subsection (3)” and substituting “subsection (2) (a)”;

and

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

(6) In this section—

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

$$p = \frac{\text{PBR}}{12}$$

where—

*p* is the prescribed rate

PBR is the prime bank rate for that financial year.

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

11. Section 192 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) If land (other than land that becomes ratable after the rate is declared) 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 but there will be a proportionate reduction in the amount of rates.

#### Insertion of s. 194a

12. The following section is inserted immediately after section 194 of the principal Act:

##### Contiguous land

194a. For the purposes of this Part, land will be regarded as being contiguous to other land if the land—

(a) abuts on the other land;

or

(b) is separated from the other land only by—

(i) a road, street, lane, footway, court, alley, railway or thoroughfare;

(ii) a watercourse;

or

(iii) a reserve or other similar open space.

#### Substitution of heading

13. The heading to Part XII of the principal Act is repealed and the following heading is substituted:

#### PART XII PROJECTS.

#### Procedures to be observed in relation to certain activities

14. Section 197 of the principal Act is amended—

(a) by striking out paragraph (i) of subsection (3);

(b) by inserting after subsection (3) the following subsections:

(3a) The council must, before submitting an application to the Minister under this section, cause notice of the project or proposal to be published in a newspaper circulating in its area.

(3b) A notice published under subsection (3a)—

(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 submissions 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).

(3c) The council must consider any representations made in response to the notice and, as part of its application, report to the Minister on—

(a) those representations;

and

(b) any other consultation that the council has undertaken with members of the public in relation to the project or proposal.;

(c) by striking out paragraph (c) of subsection (5);

and

(d) by striking out subsections (6), (7) and (8).

#### **Controlling authorities established by one council**

15. Section 199 of the principal Act is amended by inserting after subsection (9) the following subsections:

(10) A controlling authority must, on or before the prescribed day in each year, prepare a report containing the prescribed information and documents relating to the operations of the controlling authority.

(11) The report must be incorporated into the annual report of the council.

#### **Controlling authorities established by two or more councils**

16. Section 200 of the principal Act is amended—

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

(a) to carry out any project on behalf of the councils.;

(b) by inserting after subsection (16) the following subsections:

(16a) 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.

(16b) A liability that would, but for subsection (16a), lie against a member of the controlling authority lies against the controlling authority;

and

(c) by inserting after subsection (17) the following subsections:

(18) A controlling authority must, on or before the prescribed day in each year, prepare a report containing the prescribed information and documents relating to the operations of the controlling authority.

(19) The report must be incorporated into the annual reports of each constituent council.

**Erection of safety islands, etc.**

17. Section 358 of the principal Act is amended by striking out the penalty at the foot of subsection (2) and substituting the following penalty:

Penalty: \$500.

**Insertion of s. 370**

18. The following section is inserted after section 369 of the principal Act:

**Moveable business signs**

370. (1) In this section—

“moveable sign” means any free-standing or moveable sign, but does not include a sign of a kind excluded from the ambit of this definition by the regulations.

(2) A council may, by by-law—

(a) provide that any moveable sign (or moveable sign of a specified class) placed on a specified public street, road or footpath within its area, on a public street, road or footpath within a specified part of its area, or on a public street, road or footpath within its area generally, must—

(i) be placed in a manner, and subject to conditions, specified by the by-law;

and

(ii) comply with such standards (if any) as are specified by the by-law.

(b) prohibit the placing of moveable signs (or moveable signs of a specified class) on a specified public street, road or footpath within its area, or on a public street, road or footpath within a specified part of its area.

(3) A council must not make a by-law under subsection (2) (b) unless it is satisfied—

(a) that the prohibition is reasonably necessary to protect public safety;

or

(b) that the prohibition is reasonably necessary to protect or enhance the amenity of a particular locality.

(4) A by-law under subsection (2) (b) cannot operate in relation to—

(a) a sign designed to direct people to the open inspection of any land or building that is available for purchase or lease;

or

(b) a sign of a prescribed class.

(5) A person may, without further authorization from the council, place a moveable sign on any public street, road or footpath if—

(a) to do so does not contravene a by-law under subsection (2);

and

(b) the sign does not, by being so placed, unreasonably endanger the safety of any member of the public who might use that street, road or footpath, or unreasonably obstruct or hinder the free and proper use of that street, road or footpath by any member of the public.

(6) A person who places a sign on any public street, road or footpath in contravention of a by-law under subsection (2) is guilty of an offence.

Penalty: \$200.

(7) An authorized person may remove from any public street, road or footpath a sign that has been placed on the public street, road or footpath in contravention of a by-law under this section.

(8) If an authorized person removes a sign pursuant to subsection (7)—

(a) the authorized person must take reasonable steps to give notice of his or her action to the owner of the sign, or to a person who was apparently involved in placing the sign on the public street, road or footpath;

and

(b) if the sign is not claimed within 30 days, the authorized person may sell, destroy or otherwise dispose of the sign as he or she thinks fit.

(9) A person is not entitled to the return of a sign removed under this section unless the person pays to the council the reasonable costs incurred by the council in removing and storing the sign.

(10) Except as otherwise recovered under this section, the council may recover any reasonable costs incurred in removing, storing or disposing of a sign under this section as a debt due to the council from the person who placed the sign on the public street, road or footpath.

(11) If a sign is sold pursuant to subsection (8) (b), the proceeds of sale must be applied towards any costs recoverable by the council under this section and any excess must be paid to the owner of the sign (unless that person cannot be ascertained or located by the council after making reasonable inquiries, in which case the excess belongs to the council).

(12) No action lies against a council, an officer or employee of a council, or an authorized person, on account of—

(a) anything done, or omitted to be done, in good faith in relation to the operation of this section;

(b) any damage or injury suffered as a result of a moveable sign being placed on a public street, road or footpath by a person (other than by a person acting on behalf of the council).

#### **Evidentiary provision**

**19.** Section 475e of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1);

and

(b) by striking out the word “or” immediately preceding paragraph (d) of subsection (1).



**Septic tanks**

20. Section 530c of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsection:

(1) If a council proposes to undertake a scheme for the disposal of septic tank effluent, the council must give notice of the proposed scheme to the owners of land in the part of its area affected by the scheme.;

(b) by striking out from subsection (3) “subsection (2)” and substituting “subsection (1)”;

(c) by striking out from subsection (5) “(subject to the council obtaining the approval of the South Australian Health Commission to the modified scheme)”;

and

(d) by inserting after subsection (9) the following subsections:

(10) The regulations may prescribe guidelines to assist councils in undertaking schemes for the disposal of septic tank effluent.

(11) A regulation may incorporate, adopt, apply or make prescriptions by reference to, with or without modification, any code or standard prepared or published by any body or authority as in force at the time the regulation is made or as in force from time to time.

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

**By-laws**

21. Section 667 of the principal Act is amended—

(a) by inserting after subparagraph VIII of paragraph 4 the following subparagraph:

IX. for regulating or preventing within a municipality or a township within a district the slaughtering of any cattle, buffalo, sheep, goat, pig, deer, horse or other similar animal prescribed by the council (other than at a licensed abattoir or a licensed slaughterhouse under the *Meat Hygiene Act 1980* or in a situation that falls within the scope of an exemption under that Act);;

and

(b) by inserting after subparagraph VII of paragraph 5 the following subparagraph:

VIII. for limiting the number of cats that can be kept on any premises within the area, or a prescribed part of the area, and providing that the council may grant exemptions from such a limitation subject to conditions (if any) determined by the council.;

**Repeal of s. 704a**

22. Section 704a of the principal Act is repealed.

**Facilitation of proof**

23. Section 743 of the principal Act is amended by striking out paragraph (f) and substituting the following paragraph:

(f) that a specified person was the owner, or one of the owners, of a specified vehicle on a specified day..

**Substitution of s. 789b**

24. Section 789b of the principal Act is repealed and the following section is substituted:

**Owner of vehicle guilty of offence**

789b. Without derogating from the liability of any other person, but subject to this Act, where it is an offence against this Act for a person to drive, draw, propel, park or stand a vehicle in particular circumstances, the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

**Proceedings against owner of vehicle or person named as driver by owner**

25. Section 789d of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) In proceedings against the owner or driver of a vehicle for an offence against this Act, an allegation in the complaint that a notice has been sent in accordance with this section and the owner or driver allowed the opportunity to take action in accordance with the terms of the notice within the period specified in the notice will be accepted as proof, in the absence of proof to the contrary of the facts so alleged.

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

ROMA MITCHELL Governor