



ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 58 of 1984

An Act to amend the Local Government Act, 1934.

[Assented to 31 May 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the “Local Government Act Amendment Act (No. 3), 1984”. Short title.

(2) The Local Government Act, 1934, is in this Act referred to as “the principal Act”.

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(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.

3. Section 3 of the principal Act is amended—

(a) by striking out all items from (and including) the item “PART I—Preliminary” up to (and including) the item “PART IXAA—Enquiries into Dismissals, or Reductions in Status, of Officers” and substituting the following items:

Amendment of
s. 3—
Arrangement of
Act.

PART I—PRELIMINARY

PART II—THE STRUCTURE OF LOCAL GOVERNMENT

DIVISION I—CONSTITUTION OF COUNCILS

DIVISION II—AMALGAMATION OF COUNCILS

DIVISION III—NAMES

DIVISION IV—CONSTITUTION AS A MUNICIPAL COUNCIL
OR DISTRICT COUNCIL

DIVISION V—ALTERATION OF THE COMPOSITION OF A COUNCIL

DIVISION VI—ALTERATION OF THE BOUNDARIES OF COUNCIL AREAS

DIVISION VII—FORMATION, ALTERATION OR ABOLITION OF WARDS

DIVISION VIII—ABOLITION OF COUNCILS

DIVISION IX—PROVISIONS AS TO MAKING OF PROCLAMATIONS

DIVISION X—THE LOCAL GOVERNMENT ADVISORY COMMISSION

DIVISION XI—PERIODICAL REVIEWS BY COUNCILS

DIVISION XII—INDICATIVE POLLS

DIVISION XIII—POWERS EXERCISABLE IN RELATION TO DEFICIENCIES OR IRREGULARITIES IN LOCAL GOVERNMENT

DIVISION XIV—THE LOCAL GOVERNMENT ASSOCIATION

PART III—THE COUNCIL

DIVISION I—GENERAL NATURE OF COUNCIL'S RESPONSIBILITIES

DIVISION II—COUNCIL TO BE BODY CORPORATE

DIVISION III—COUNCIL COMMITTEES

DIVISION IV—SAVING PROVISION

DIVISION V—DELEGATION

DIVISION VI—OFFICE OF THE COUNCIL

PART IV—MEMBERS OF COUNCIL

DIVISION I—THE MAYOR OR CHAIRMAN

DIVISION II—ALDERMEN

DIVISION III—COUNCILLORS

DIVISION IV—TERM OF OFFICE OF MEMBERS OF COUNCILS

DIVISION V—ALLOWANCES, ETC.

DIVISION VI—PROTECTION OF MEMBERS

DIVISION VII—DECLARATION TO BE MADE BY MEMBERS OF COUNCILS

DIVISION VIII—CONFLICT OF INTEREST

PART V—MEETINGS OF COUNCIL, COMMITTEES AND ELECTORS

DIVISION I—MEETINGS OF COUNCIL

DIVISION II—MEETINGS OF COUNCIL COMMITTEES

- DIVISION III—PROCEEDINGS OF COUNCIL AND COUNCIL COMMITTEES TO BE CONDUCTED IN PUBLIC
- DIVISION IV—MEETINGS OF ELECTORS
- DIVISION V—PROVISIONS OF GENERAL APPLICATION
- PART VI—OFFICERS AND EMPLOYEES OF COUNCIL
- DIVISION I—APPOINTMENT OF OFFICERS AND EMPLOYEES
- DIVISION II—THE LOCAL GOVERNMENT QUALIFICATIONS COMMITTEE
- DIVISION III—CONDITIONS OF SERVICE (OTHER THAN SUPERANNUATION)
- DIVISION IV—SUPERANNUATION
- DIVISION V—CONDUCT OF OFFICERS AND EMPLOYEES
- DIVISION VI—AUTHORIZED PERSONS
- DIVISION VII—IMMUNITY FROM PERSONAL LIABILITY
- PART VII—ELECTIONS AND POLLS
- DIVISION I—PRELIMINARY
- DIVISION II—ADMINISTRATIVE PROVISIONS
- DIVISION III—ENROLMENT
- DIVISION IV—ENTITLEMENT TO VOTE
- DIVISION V—SPECIAL PROVISIONS RELATING TO ELECTIONS
- DIVISION VI—SPECIAL PROVISIONS RELATING TO POLLS
- DIVISION VII—VOTING IN ADVANCE
- DIVISION VIII—VOTING AT POLLING PLACES
- DIVISION IX—COUNTING OF VOTES
- DIVISION X—ILLEGAL PRACTICES
- DIVISION XI—DISPUTED RETURNS
- PART VIII—REGISTER OF INTERESTS

and

(b) by striking out the following items:

- PART XLIII—MEETINGS AND POLLS OF ELECTORS
- PART XLIV—VOTING BY POST.

4. Section 4 of the principal Act is repealed and the following section is substituted:

4. (1) Subject to this Act—

- (a) all councils, council committees, areas and wards in existence immediately before the commencement of the 1984 amending Act shall continue in existence under the same names after that commencement;

Repeal of s. 4.
and substitution
of new section.

Transitional
provisions

(b) all persons holding office under or by virtue of this Act immediately before the commencement of the 1984 amending Act shall continue to hold office after that commencement;

(c) all voters rolls for areas or wards in force immediately before the commencement of the 1984 amending Act shall, until revised, continue to be in force after that commencement.

(2) A reference in any Act or instrument of any kind to a clerk of a council shall, on and after the commencement of the 1984 amending Act, be read as a reference to the chief executive officer of the council.

(3) The term of office of members of a council who were in office immediately before the commencement of the 1984 amending Act shall, subject to this Act, expire at the conclusion of the periodical elections first occurring after that commencement.

(4) Where, immediately before the commencement of the 1984 amending Act, the total number of aldermen for an area exceeded the limit fixed by this Act—

(a) the total number of aldermen for the area shall, notwithstanding the provisions of this Act, remain the same until the conclusion of the periodical elections first occurring after that commencement;

and

(b) for the purposes of that election and (subject to any proclamation altering the number of aldermen for the area) from the conclusion of that election, the total number of aldermen for the area shall by virtue of this subsection be reduced to the limit fixed by this Act.

(5) An application for enrolment on the voters roll for an area or a ward served upon the council for the area before the commencement of the 1984 amending Act shall have effect as if it were a prescribed declaration lodged with the council for the purposes of enrolment for the area or ward under the provisions of this Act as in force after that commencement.

(6) A nomination of a person to act as an elector on behalf of a body corporate or group of persons (whether an original nomination or variation) in force immediately before the commencement of the 1984 amending Act shall have effect as if it were such a nomination in force under the provisions of this Act as in force after that commencement.

(7) Where, immediately before the commencement of the 1984 amending Act, an extraordinary vacancy existed in the membership of a council and a day had not been appointed for the nomination of persons as candidates for election to that vacancy, nominations shall be made and the election held as if the vacancy occurred upon that commencement.

(8) Where, immediately before the commencement of the 1984 amending Act, an extraordinary vacancy existed in the membership of a council and a day had been appointed for the nomination of

persons to be elected to fill that vacancy, nominations shall be made and the election held as if that amending Act had not been enacted.

(9) Where, immediately before the commencement of the 1984 amending Act, a proclamation was in force under Part IIA of this Act declaring a council to be a defaulting council, the provisions of that Part shall continue to operate in relation to that defaulting council as if the amending Act had not been enacted until the council ceases to be a defaulting council under that Part.

(10) Where, immediately before the commencement of the 1984 amending Act, periods of service of an employee with more than one council were deemed to constitute a single continuous period of service, those periods of service shall continue to be deemed to constitute a single continuous period of service after that commencement.

(11) Allowances payable to mayors or chairmen immediately before the commencement of the 1984 amending Act shall continue to be so payable as if that amending Act had not been enacted and, upon the expiry of the term in relation to which the allowances were payable, the council shall fix a further allowance for a period expiring on the date of the periodical elections first occurring after that commencement.

(12) Subject to this Act, any delegation by a council in operation immediately before the commencement of the 1984 amending Act shall continue after that commencement.

(13) Where, immediately before the commencement of the 1984 amending Act, a person was the holder of a certificate of competency qualifying him for appointment as chief executive officer, engineer, surveyor, overseer or inspector, or was the holder of a Local Government Auditor's Certificate qualifying him for appointment as auditor of a council, that person shall (without being required to make application to the Local Government Qualifications Committee) be granted the certificate of registration required for such an appointment under the provisions of this Act as in force after that commencement.

(14) The Acts Interpretation Act, 1915, shall, except to the extent of any inconsistency with the provisions of this section, apply to any repeal effected by the 1984 amending Act.

(15) In this section—

“the 1984 amending Act” means the Local Government Act Amendment Act (No. 3), 1984”.

5. Section 5 of the principal Act is amended—

(a) by inserting after the definition of “absolute majority” in subsection (1) the following definition:

“alderman” means a person appointed or elected as an alderman of a council under this Act;

(b) by striking out from subsection (1) the definition of “area” and substituting the following definition:

“area” means the area in relation to which a council is constituted;

Amendment of
s. 5—
Interpretation.

- (c) by inserting after the definition of “assessed value” in subsection (1) the following definition:

“authorized person” means a person appointed by a council to be an authorized person under Division VI of Part VI;

- (d) by striking out from subsection (1) the definition of “chairman” and substituting the following definition:

“chairman” means the chairman of a council and includes a deputy chairman or other member acting in the office of chairman;

- (e) by striking out from subsection (1) the definition of “clerk” and substituting the following definition:

“chief executive officer” means the chief executive officer of a council and includes his deputy or another person acting in the office of chief executive officer;

- (f) by striking out from subsection (1) the definition of “the Commission” and substituting the following definition:

“the Commission” means the Local Government Advisory Commission established under Division X of Part II;

- (g) by striking out from subsection (1) the definitions of “council” and “councillor” and substituting the following definitions:

“council” means a council constituted under this Act:

“council committee” means a committee of a council established under this Act and includes a sub-committee of any such committee and an advisory committee established by a council:

“councillor” means a person appointed or elected as a councillor of a council under this Act;

- (h) by striking out from subsection (1) the definition of “deputy returning officer”;

- (i) by striking out from subsection (1) the definitions of “district” and “district clerk” and substituting the following definition:

“district” means the area of a district council;

- (j) by striking out from subsection (1) the definition of “district office”;

- (k) by striking out from subsection (1) the definition of “elector” and substituting the following definition:

“elector” means a person enrolled on the voters roll for a council and includes the nominated agent of a body corporate or group of persons enrolled on the voters roll for a council;

- (l) by inserting after the definition of “the Electoral Commissioner” in subsection (1) the following definition:

“electoral officer” means a person appointed as an electoral officer under this Act and includes the returning officer and deputy returning officer;

- (m) by striking out from subsection (1) the definition of “Government assessment” and substituting the following definition:

“Government assessment” means the Government assessment of annual value, capital value or land value, as the context may require;

- (n) by striking out from subsection (1) the definition of “Mayor” and substituting the following definition:

“mayor” means the mayor of a council and includes a deputy mayor or other member acting in the office of mayor;

- (o) by striking out from subsection (1) the definition of “member” and substituting the following definition:

“member” of a council means the mayor or chairman, an alderman or a councillor of the council;

- (p) by striking out from subsection (1) the definitions of “metropolitan municipal council”, “metropolitan district council” and “metropolitan council”;

- (q) by striking out from subsection (1) the definition of “municipality” and substituting the following definition:

“municipality” means the area of a municipal council;

- (r) by striking out from subsection (1) the definition of “nominated agent” and substituting the following definition:

“nominated agent” means a person nominated under Part VII to act as an elector on behalf of a body corporate or group of persons;

- (s) by striking out from subsection (1) the definition of “office” and substituting the following definition:

“office” means any office of a council;

- (t) by striking out from subsection (1) the definition of “officer”;

- (u) by striking out from subsection (1) the definition of “outlying district”;

- (v) by striking out from subsection (1) the definition of “presiding officer” and substituting the following definitions:

“periodical election” means an election to fill an office or offices of a council held on a date fixed by section 94 (1):

“presiding officer”, in relation to an election or poll, means an electoral officer assigned by a returning officer to be presiding officer at a polling place and, if the returning officer or a deputy returning officer presides at a polling place, includes the returning officer or deputy returning officer while so presiding:

“principal office” means the office of a council maintained as its principal office;

- (w) by striking out from subsection (1) the definition of “returning officer” and substituting the following definitions:

“returning officer” means a person appointed by a council to be its returning officer and includes a deputy returning officer acting in the office of returning officer;;

“spouse” includes a *de facto* spouse;;

(x) by striking out from subsection (1) the definitions of “town clerk” and “town office”;

(y) by inserting after the definition of “vehicle” in subsection (1) the following definition:

“voters roll” means a voters roll compiled under Part VII and includes a copy of such a roll;;

(z) by striking out subsection (7) and substituting the following subsection:

(7) For the purposes of this Act, a reference in relation to a council—

(a) to the conclusion of periodical elections is a reference—

(i) where the number of candidates nominated to contest each of the elections for the council does not exceed the number of persons required to be elected—to the first Saturday of May of the year of the elections;

or

(ii) in any other case—to the time at which the last result of the periodical elections is certified by the returning officer under Division IX of Part VII;

or

(b) to the conclusion of a supplementary election is a reference—

(i) where the number of candidates nominated to contest the election does not exceed the number of persons required to be elected—to the time at which the nominated candidate or candidates are declared elected by the returning officer under Division V of Part VII;

or

(ii) in any other case—to the time at which the result of the election is certified by the returning officer under Division IX of Part VII.

and

(za) by striking out subsections (10) and (11).

6. Sections 6 and 6a of the principal Act are repealed.

7. Parts II to IXAA (inclusive) of the principal Act are repealed and the following Parts are substituted:

Repeal of Parts II to IXAA and substitution of new Parts.

PART II

THE STRUCTURE OF LOCAL GOVERNMENT

DIVISION I—CONSTITUTION OF COUNCILS

6. (1) The Governor may, by proclamation, constitute a council in relation to a part of the State specified in the proclamation.

Constitution of councils.

(2) A proclamation under this section must—

(a) determine whether the council is to be a municipal council or a district council;

(b) assign a name to the area of the council;

(c) assign a name to the council;

(d) determine whether the council is to have a mayor or a chairman;

(e) determine the number of councillors who are to constitute, or to be included in, the membership of the council;

(f) where—

(i) the council is to be a municipal council—

(A) divide the area into wards;

(B) determine the boundaries of each ward and the number of councillors to be elected for each ward (which number may vary from ward to ward);

and

(C) determine whether the membership of the council is to include aldermen and, if so, how many;

or

(ii) the council is to be a district council—determine whether the area is to be divided into wards and, if so—

(A) determine the boundaries of each ward and the number of councillors to be elected for each ward (which number may vary from ward to ward);

and

(B) determine whether the membership of the council is to include aldermen and, if so, how many;

and

(g) appoint, or provide for the election of, the first members of the council.

(3) A proclamation under this section may make any other provision that may be necessary or desirable in view of the constitution of the council.

DIVISION II—AMALGAMATION OF COUNCILS

Amalgamation of
councils.

7. (1) The Governor may, by proclamation, amalgamate two or more councils.

(2) An amalgamation may, according to the terms of the proclamation, result in the formation of a single council or of two or more councils (being a lesser number than the number of councils subject to amalgamation).

(3) A proclamation under this section must—

- (a) define the area in relation to which the council to be formed by the amalgamation or each such council is to be constituted;
- (b) determine in relation to the council to be formed by the amalgamation or each such council whether it is to be a municipal council or a district council;
- (c) assign a name to the area of the council or each of the councils to be formed by the amalgamation;
- (d) assign a name to the council or each of the councils to be formed by the amalgamation;
- (e) determine in relation to the council to be formed by the amalgamation or each such council—
 - (i) whether it is to have a mayor or a chairman;and
 - (ii) the number of councillors who are to constitute, or to be included in, its membership;
- (f) where—
 - (i) the council to be formed by the amalgamation or any such council is to be a municipal council—
 - (A) divide its area into wards;
 - (B) determine the boundaries of each ward and the number of councillors to be elected for each ward (which number may vary from ward to ward);and
 - (C) determine whether the membership of the council is to include aldermen and, if so, how many;

or

- (ii) the council to be formed by the amalgamation or any such council is to be a district council—determine whether its area is to be divided into wards and, if so—

(A) determine the boundaries of each ward and the number of councillors to be elected for each ward (which number may vary from ward to ward);

and

(B) determine whether its membership is to include aldermen and, if so, how many;

(g) appoint, or make provision for the election of, the first members of the council to be formed by the amalgamation or each such council;

and

(h) except where the councils that are to be amalgamated under this section employ the same method of assessing ratable property throughout their combined areas—determine the method or methods of assessment to apply in relation to the council to be formed by the amalgamation or each such council.

(4) A proclamation under this section may—

(a) make any provision in relation to the by-laws that are to apply in an area in relation to which a council is to be constituted;

(b) make, subject to the provisions of any relevant Act, award or industrial agreement, any provision in relation to the various rights and interests of the officers and employees of the councils which are to be amalgamated under this section;

(c) make any other provision that may be necessary or desirable in view of the amalgamation.

(5) Where two or more councils are amalgamated under this section so as to form a single council, the rights and liabilities of the councils subject to the amalgamation shall, upon the amalgamation, vest in or attach to the council formed by the amalgamation.

(6) Where three or more councils are amalgamated under this section so as to form more than one council, the rights and liabilities of the councils subject to the amalgamation shall, upon the amalgamation, be apportioned between the councils formed by the amalgamation in such manner as is specified in the proclamation.

DIVISION III—NAMES

8. The Governor may, by proclamation, change the name of a council. Change of name of council.

9. (1) The Governor may, by proclamation, change the name of the area of a council. Name of areas and wards.

(2) A name may be assigned to a ward either by the proclamation under which the ward is established or by resolution of the council, and a name so assigned may be altered by resolution of the council.

DIVISION IV—CONSTITUTION AS A MUNICIPAL COUNCIL
OR DISTRICT COUNCIL

Constitution as a
municipal council
or district council.

10. The Governor may, by proclamation—

- (a) where a council is a district council—determine that the council is to be a municipal council rather than a district council;
- (b) where a council is a municipal council—determine that the council is to be a district council rather than a municipal council.

DIVISION V—ALTERATION OF THE COMPOSITION OF A COUNCIL

Alteration of the
composition of a
council.

11. (1) The Governor may, by proclamation—

- (a) where a council has a chairman—determine that the council is to have a mayor rather than a chairman;
- (b) where a council has no aldermen but its area is divided into wards—determine that the council is to have a specified number of aldermen;
- (c) where a council has aldermen—determine that the council is to cease to have aldermen or that the number of aldermen is to be increased or decreased;
- (d) determine that the number of councillors for an area, or for each or any ward in an area, is to be increased or decreased;
- (e) where a new ward or new wards are formed in the area of a council—determine the number of councillors for the new ward or each new ward (which number may vary from ward to ward);
- (f) where the division of the area of a council into wards is abolished—determine the number of councillors for the area.

(2) Where the Governor makes a proclamation under subsection (1) providing for new or additional offices in the membership of a council, the Governor may, if he thinks fit, by the same proclamation or by a subsequent proclamation, appoint the first persons to fill the offices.

DIVISION VI—ALTERATION OF THE BOUNDARIES OF COUNCIL AREAS

Alteration of the
boundaries of
council areas.

12. (1) The Governor may, by proclamation, alter the boundaries of the area of a council.

(2) 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—

- (a) make, or make provision for, an adjustment of rights and liabilities as between those councils;
- (b) make any special provision that may be necessary or desirable in relation to the by-laws that are to apply in parts of the areas affected by the alteration of boundaries;
- (c) make any other provision that may be necessary or desirable in view of the alteration of boundaries.

DIVISION VII—FORMATION, ALTERATION OR ABOLITION OF WARDS

13. (1) Subject to this section, the Governor may, by proclamation—

Formation, alteration or abolition of wards.

- (a) divide an area into wards;
 - (b) redivide an area into wards or make any alteration to the division of an area into wards including, where land is added to an area as a result of the alteration of its boundaries—
 - (i) the constitution of the additional land, or part of it, as an additional ward or wards;
 - (ii) the incorporation of the additional land, or part of it, within an existing ward or existing wards;
 - (c) abolish the division of an area into wards.
- (2) The area of a municipal council must be divided into wards.

DIVISION VIII—ABOLITION OF COUNCILS

14. (1) The Governor may, by proclamation, abolish a council.

Abolition of councils.

(2) Upon abolition of a council, the rights and liabilities of the council, as at the date of abolition, shall, if the Governor so directs by the proclamation abolishing the council, vest in, or attach to, some other council or councils named in the proclamation or, if no such direction is given, they shall vest in, or attach to, the Crown.

DIVISION IX—PROVISIONS AS TO MAKING OF PROCLAMATIONS

15. The Governor shall not make a proclamation under any of the preceding Divisions of this Part except—

Proclamations under preceding Divisions.

- (a) in pursuance of an address from both Houses of Parliament;
- (b) upon the recommendation of the Advisory Commission;
- or
- (c) in the case of a proclamation under Division III or IV—upon the recommendation of the council affected by the making of the proclamation.

16. Matters for which provision may be made by proclamations under separate provisions of this Part may, if the Governor thinks fit, be provided for by the same proclamation.

Provision for separate matters by same proclamation.

17. The provisions of a proclamation under this Part shall have effect as from the date or dates fixed in the proclamation or, if no date or dates are so fixed, as from the date of the publication of the proclamation.

Date of operation of proclamations.

18. (1) Where, in the opinion of the Governor, there is an error or deficiency in an address from both Houses of Parliament or a recommendation of the Advisory Commission or of a council, the Governor may, by proclamation, correct the error or supply the deficiency.

Error or deficiency in an address, recommendation or proclamation.

(2) The power conferred by subsection (1) may be exercised notwithstanding that a proclamation has been made under a preceding Division of this Part upon the basis of the address or recommendation.

(3) Where, in the opinion of the Governor, there is an error or deficiency in a proclamation under this Part, the Governor may, by subsequent proclamation, correct the error or supply the deficiency.

(4) A proclamation under this section shall, if it so provides, be deemed to have had effect as from the making of the address, recommendation or proclamation to which it relates.

DIVISION X—THE LOCAL GOVERNMENT ADVISORY COMMISSION

Establishment of the Commission

Establishment of
Commission.

19. There shall be a commission entitled the "Local Government Advisory Commission".

Constitution of
Commission.

20. (1) The Commission shall consist of five members, of whom—

(a) one shall be a legal practitioner of not less than seven years standing who shall be appointed by the Governor to be the Chairman of the Commission;

(b) three shall be persons appointed by the Governor—

(i) one being a member or former member of a council selected from a panel of three persons nominated by the Local Government Association of South Australia;

(ii) one being a person selected from a panel of three persons nominated by the United Trades and Labor Council of South Australia;

and

(iii) one being a person with experience in local government nominated by the Minister;

and

(c) one shall be the person holding or acting in such office of the Department of the Minister as may be nominated by the Minister.

(2) Where the Minister, by notice in writing, requests—

(a) the Local Government Association of South Australia;

or

(b) the United Trades and Labor Council of South Australia,

to make a nomination for the purposes of this section, and the body to which the request was addressed fails to make such a nomination within the time (being not less than one month) allowed in the notice, the Minister may select a person for appointment as a member of the Commission in lieu of a nominee of that body, and a person so selected may then be appointed to membership of the Commission as if he had been nominated by the body to which the request was addressed.

(3) A member of the Commission appointed under subsection (1) (b) shall be appointed for a term of office, not exceeding four years, specified in the instrument of his appointment and shall, at the expiration of his term of office, be eligible for reappointment.

(4) The office of a member of the Commission appointed under subsection (1) (b) shall become vacant if—

(a) he dies;

(b) he resigns by written notice addressed to the Minister;

or

(c) he is removed from office by the Governor on the ground of mental or physical incapacity to carry out satisfactorily the duties of his office, neglect of duty or dishonourable conduct.

(5) The Governor may appoint a suitable person to be a deputy of a member of the Commission, and that person, while acting in the absence of that member, shall be deemed to be a member of the Commission.

(6) A member of the Commission is disqualified from acting as such in relation to a matter before the Commission involving a council of which he is a member or officer.

21. A member of the Commission shall be entitled to such allowances and expenses as may be determined by the Governor.

Allowances and expenses.

22. (1) There shall be a Secretary to the Commission.

The Secretary.

(2) The Secretary shall be appointed, and shall hold office, subject to and in accordance with the Public Service Act, 1967.

(3) The office of the Secretary may be held in conjunction with any other office in the Public Service of the State.

23. (1) An act or proceeding of the Commission shall not be invalid by reason only of a vacancy in the membership of the Commission.

Validity of acts of Commission and immunity of its members.

(2) No liability shall attach to the Commission or a member of the Commission for an act or omission by the Commission or the member in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this Act.

24. (1) Three members of the Commission (one of whom must be either the Chairman or his deputy) shall constitute a quorum of the Commission.

Quorum and decisions of Commission.

(2) A decision in which any three members of the Commission concur shall be a decision of the Commission.

25. The Commission shall have the powers of a Royal Commission under the Royal Commissions Act, 1917, and that Act shall apply in relation to the Commission as if—

Powers of Commission.

(a) the Commission were a commission to which a Commission of Inquiry had been issued by the Governor under his hand and the public seal of the State;

and

(b) the Chairman of the Commission were the chairman of such a commission and the other members of the Commission were members of such a commission.

Reference of Proposals to the Advisory Commission

Reference of proposals to the Advisory Commission.

26. (1) The Minister may of his own motion, and shall on an application under subsection (2), refer a proposal for the making of a proclamation under this Part to the Commission for inquiry and recommendations.

(2) An application for referral of a proposal to the Commission under subsection (1) may be made to the Minister—

(a) where the proposal relates to an area or portion of an area (whether or not it affects any other area or portion)—

(i) by the council for the area;

or

(ii) by twenty per centum or more of the electors for the area or portion;

or

(b) where the proposal relates to a part of the State that is not within an area—by twenty per centum or more of the persons who would, if the part were within an area, be electors for the area.

(3) For the purposes of subsection (2), a person is an elector for portion of an area if he is enrolled on the voters roll for the area as an elector in respect of a place of residence or ratable property within that portion of the area.

(4) An application under subsection (2) must set out in general terms the nature and effect of the proposal to which it relates.

(5) A proposal, the subject of an application under subsection (2), shall not be referred to the Commission if a previous application to the same or substantially similar effect has been reported upon by the Commission within three years before the date of the application.

(6) Upon referral of a proposal to the Commission, the Commission shall, unless satisfied that the change proposed is of a minor nature only, cause public notice to be given—

(a) setting out the substance of the proposal;

and

(b) inviting interested persons to make submissions in writing on the proposals within one month after the date of the notice or such longer period as may be specified in the notice.

(7) Where public notice has been given under subsection (6), the Commission shall, after the expiration of the time allowed for sub-

missions, hold a hearing in relation to the proposal (which hearing may be held, according to the determination of the Commission, in public or in private or partially in public and partially in private).

(8) At a hearing held pursuant to subsection (7)—

(a) any person who made written submissions to the Commission shall be entitled to appear personally or by representative and be heard upon his submissions;

and

(b) the Commission may hear and consider such other evidence and representations as it thinks fit.

(9) The Commission may (whether or not it holds a hearing referred to above) conduct such private inquiries into the proposal as it thinks expedient.

(10) After the completion of its inquiries in relation to the proposal, the Commission shall report to the Minister upon the proposal and any evidence and submissions received by the Commission in relation to the proposal and may recommend to the Minister—

(a) that the proposal be carried into effect;

(b) that some alternative proposal be carried into effect;

or

(c) that the proposal should not be carried into effect.

(11) Where public notice had been given under subsection (6) in relation to the original proposal, the Commission shall not recommend an alternative proposal under subsection (10) (b) unless—

(a) a fresh public notice has been given under subsection (6) in relation to the alternative proposal and a hearing has been held under subsection (7) in relation to that proposal;

or

(b) the Commission is satisfied—

(i) that those who may be affected by the alternative proposal have had an opportunity to consider that proposal and to make submissions to the Commission in relation to that proposal;

or

(ii) that the alternative proposal differs from the original proposal in minor respects only.

(12) The Commission shall, in the performance of its functions under this section, act as expeditiously as is possible.

27. (1) The Minister may refer any matter affecting local government to the Commission for advice.

General advisory
function of the
Advisory
Commission.

(2) The Commission shall consider any matter referred to it under this section and shall advise the Minister on that matter as it thinks fit.

DIVISION XI—PERIODICAL REVIEWS BY COUNCILS

Periodical
reviews.

28. (1) A council shall carry out periodical reviews for the purpose of determining whether its electors would be more adequately and fairly represented if—

(a) some change were made in pursuance of this Part in the composition of the council;

(b) in the case of a council whose area is not divided into wards—the area were divided into wards;

or

(c) in the case of a council whose area is divided into wards—the area were redivided into wards or the division of the area into wards were altered or abolished.

(2) A council shall give public notice of a review to be carried out under this section and the notice must contain an invitation to interested persons to make written submissions to the council on the subject of the review within two months of the date of the notice or such longer period as may be allowed by the notice.

(3) A council shall give any person who makes written submissions in response to an invitation under subsection (2) an opportunity to appear personally or by representative before the council or a council committee and be heard upon his submissions.

(4) The Commission may, at the request of a council, furnish advice on any matters arising in the course of a review under this section.

(5) Upon completion of a review, the council shall report to the Minister on the review and may, if it considers it necessary in order to achieve adequate and fair representation of the electors for the area, propose—

(a) that a specified change be made in the composition of the council;

(b) if the council's area is not divided into wards—that it should be so divided in a manner set forth in the proposals;

(c) if the council's area is divided into wards—

(i) that the area should be redivided into wards, or the division of the area into wards should be altered, in a manner set forth in the proposal;

or

(ii) that the division of the area into wards should be abolished.

(6) The Minister shall refer a proposal contained in a report of a council under this section to the Commission.

(7) The Commission shall, after making such inquiries as it thinks fit, report to the Minister upon the proposal and, if it thinks fit to do so—

(a) recommend to the Minister that the proposal be carried into effect;

or

- (b) recommend to the Minister that some alternative proposal be carried into effect, being an alternative that it is satisfied differs from the original proposal in minor respects only.

(8) The first review to be carried out by a council under this section shall be conducted within such a period as the Minister may, by written notice to the council, determine, and each subsequent review shall be completed within seven years of the completion of the previous review.

(9) If a council fails to complete a review within the time allowed under this section, the Commission shall carry out the review and may make recommendations upon any matter with respect to which the council might have made a proposal if it had completed such a review.

DIVISION XII—INDICATIVE POLLS

29. (1) The Minister may direct that a proposal for the making of a proclamation under this Part be submitted to a poll of those who are directly affected by the proposal. Indicative polls.

(2) The Minister shall determine the basis of entitlement to vote at a poll under this section and the manner in which the poll is conducted.

(3) The Minister may, or the Commission shall at the request of the Minister, prepare a summary of the arguments for and against implementation of the proposal that is to be the subject of a poll under this section.

(4) Where a summary of arguments is prepared under this section, copies of the summary shall be made available for public inspection at the principal office of the council or councils affected by the proposal.

(5) The Minister may—

- (a) direct the council or councils affected by the proposal to conduct a poll under this section;

or

- (b) direct the Electoral Commissioner to conduct a poll under this section and in that event the Electoral Commissioner may, if the Minister so determines, recover the cost or a proportion of the cost of the poll from the council or councils affected by the proposal.

DIVISION XIII—POWERS EXERCISABLE IN RELATION TO DEFICIENCIES OR IRREGULARITIES IN LOCAL GOVERNMENT

30. (1) Where the Minister has reason to believe that—

- (a) a council has failed to discharge a responsibility under this Act or any other Act;

or

Powers of investigation.

- (b) an irregularity has occurred in the conduct of the affairs of a council (either in relation to matters arising under this Act or some other Act),

the Minister may appoint an investigator or investigators to carry out an investigation and report to him upon the council and the conduct of its affairs.

(2) For the purposes of an investigation under this section, an investigator may—

- (a) require any member, officer or employee of the council to answer, orally or in writing, any question put to him by the investigator to the best of his knowledge, information and belief;
- (b) require any person to whom questions are put under paragraph (a) to verify his answers to those questions by declaration;
- (c) require any person to produce for examination by the investigator books, papers or other records relevant to the subject matter of the investigation;
- (d) retain books, papers or other records produced under paragraph (c) for such reasonable period as the investigator thinks fit and make copies of any of them or of any of their contents.

(3) Subject to subsection (4), a person who refuses or fails to comply with a requirement under subsection (2) shall be guilty of an offence and liable to a penalty not exceeding ten thousand dollars.

(4) A person is not obliged to answer a question or to produce books, papers or other records (other than books, papers or other records of the council) under this section if the answer to the question or the contents of the books, papers or other records would tend to incriminate him of an offence.

(5) At the conclusion of an investigation under this section, the investigator or investigators shall present a written report to the Minister on the results of the investigation.

(6) The Minister shall supply the council with a copy of a report presented to him under subsection (5).

(7) No action in defamation lies in respect of the contents of a report under this section.

Power to make recommendations.

31. Upon receipt by the Minister of a report under this Division, the Minister may make recommendations to the council in view of matters raised in the report.

Power to give directions.

32. (1) Where a report to the Minister under this Division or a report made by the Ombudsman in relation to a council pursuant to the Ombudsman Act, 1972, discloses that—

- (a) the council has failed to discharge a responsibility under this Act or any other Act;

or

- (b) an irregularity has occurred in the conduct of the affairs of the council (either in relation to matters arising under this Act or some other Act),

the Minister may give directions to the council designed to prevent the recurrence of such a failure or irregularity.

(2) A direction shall not be given under this section unless the council has been given a reasonable opportunity to make submissions to the Minister in relation to the report.

(3) A council to which directions are given under this section shall comply with those directions.

33. (1) Where, upon receipt of a report under this Division, the Minister is satisfied that the report discloses—

Declaration of council as a defaulting council.

- (a) such serious failure on the part of the council properly to discharge responsibilities under this Act or any other Act;

or

- (b) such serious irregularities in the conduct of the affairs of the council (either in relation to matters arising under this Act or some other Act),

that the council should be declared a defaulting council under this Division, the Minister may recommend to the Governor that the council be declared to be a defaulting council.

(2) A recommendation shall not be made under this section unless the council has been given a reasonable opportunity to make submissions to the Minister in relation to the report under this Division.

(3) Where the Minister makes a recommendation under subsection (1), the Governor may, by proclamation—

- (a) declare the council to be a defaulting council;

and

- (b) appoint a suitable person or suitable persons to be administrator or administrators of the affairs of the council.

(4) Where a proclamation is made under subsection (3), the Minister shall, within the first five sitting days after the date of the proclamation, cause a report to be laid before both Houses of Parliament of the circumstances giving rise to the making of the proclamation.

(5) Where the Governor makes a proclamation under subsection (3), the Governor may by the same or a subsequent proclamation provide for any matter incidental to, or consequential upon, the declaration of the council as a defaulting council.

(6) Upon the making of a proclamation under subsection (3), all the members of the defaulting council shall be suspended from their respective offices until the council ceases to be a defaulting council.

(7) An administrator or administrators appointed under this section shall, until the council ceases to be a defaulting council, administer the affairs of the defaulting council in the name of and on behalf of

the council (and for that purpose shall have all the powers, functions and duties of the council).

(8) Where two or more administrators are appointed under this section, any disagreement between them shall be settled by the decision of the majority or, where they are equally divided in opinion, by determination of the Minister.

(9) The remuneration of an administrator (which shall be determined by the Governor) and any liability incurred by an administrator in the course of his administration shall be paid or satisfied out of the funds of the defaulting council.

(10) The Governor may, by proclamation, declare that the provisions of this or any other Act shall, while the council is a defaulting council, apply subject to exclusions or modifications specified in the proclamation, and those provisions shall apply accordingly.

(11) The administrator or administrators appointed under this section shall report to the Minister at intervals of not more than three months on the administration of the affairs of the defaulting council.

(12) The Governor may, by proclamation, vary or revoke a proclamation under this section.

(13) The Governor may, upon the recommendation of the Minister made not earlier than the expiration of three months from the date on which the council was declared to be a defaulting council, by proclamation, declare the offices of all the members of the defaulting council to be vacant.

(14) A council shall cease to be a defaulting council under this Division—

(a) upon the making of a proclamation revoking the proclamation by which the council was declared to be a defaulting council;

(b) where a proclamation is made declaring the offices of all members of the defaulting council to be vacant—upon the conclusion of the elections to fill the vacant offices;

or

(c) unless a proclamation referred to in paragraph (a) or (b) is sooner made—upon the expiration of twelve months from the date on which the council was declared to be a defaulting council.

DIVISION XIV—THE LOCAL GOVERNMENT ASSOCIATION

34. (1) The Local Government Association of South Australia shall continue in existence.

(2) The Association—

(a) shall continue to be a body corporate with perpetual succession and a common seal;

(b) shall be capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;

and

(c) shall be capable of acquiring or incurring any other rights or liabilities and of suing and being sued in its corporate name.

(3) The Association shall have the objects prescribed by its constitution.

(4) The constitution and rules of the Association shall not be altered or revoked without the approval of the Minister.

PART III

THE COUNCIL

DIVISION I—GENERAL NATURE OF COUNCIL'S RESPONSIBILITIES

35. A council is responsible for—

(a) the management of the affairs of the area in relation to which it is constituted;

and

(b) the exercise, performance and discharge of the powers, functions and duties of local government conferred on the council by this or any other Act in, and in relation to, the area for which it is constituted.

General nature of council's responsibilities.

DIVISION II—COUNCIL TO BE BODY CORPORATE

36. (1) A council shall consist of the members appointed or elected to the council in accordance with this Act.

Nature and general powers of a council.

(2) A council shall bear the name assigned to it by or under this Act.

(3) A council—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;

(c) shall be capable of acquiring or incurring any other rights or liabilities and of suing and being sued in its corporate name;

and

(d) shall have the powers, functions and duties conferred on it by or under this or any other Act.

37. (1) The common seal of a council shall not be affixed to a document except in pursuance of a resolution of the council.

The common seal.

(2) The affixation of the common seal must be attested by the mayor or chairman of the council and the chief executive officer.

(3) An apparently genuine document purporting to bear the common seal of a council and the signatures of the mayor or chairman of the council and the chief executive officer attesting the affixation of the seal shall, in the absence of proof to the contrary, be deemed to have been duly executed by the council.

DIVISION III—COUNCIL COMMITTEES

Council committees.

38. (1) A council may establish committees of its members for the purpose of—

- (a) inquiring into and reporting to the council on any matters within the ambit of the council's responsibilities;
- (b) exercising, performing or discharging delegated powers, functions or duties.

(2) A member of a committee established under this section holds office as such at the pleasure of the council.

(3) A committee may establish sub-committees for the purpose of inquiring into, and reporting on, any matters within the ambit of the committee's responsibilities.

(4) The mayor or chairman of a council shall be, *ex officio*, a member of any committee or sub-committee.

Advisory committees.

39. (1) A council may establish advisory committees consisting of, or including, persons who are not members of the council for the purpose of inquiring into and reporting to the council on any matters within the ambit of the council's responsibilities.

(2) A member of an advisory committee established under this section holds office as such at the pleasure of the council.

(3) The mayor or chairman of a council shall be, *ex officio*, a member of any advisory committee established under this section.

DIVISION IV—SAVING PROVISION

Saving provision.

40. No act or proceeding of a council or a committee is invalid by reason of—

- (a) a vacancy or vacancies in the membership of the council or committee;
- (b) a defect in the election or appointment of a member or members of the council or committee;

or

- (c) the fact that the election of a member or members of the council or committee is subsequently declared void by a court of competent jurisdiction.

DIVISION V—DELEGATION

Delegation of powers of council.

41. (1) Subject to this section, a council may by resolution delegate to a council committee or an officer or employee of the council any of its powers, functions or duties under this or any other Act.

(2) A council may not delegate—

- (a) power to make or fix any rates, assessments, charges or fees;
- (b) power to borrow money;

- (c) power to approve expenditure of moneys on the works, services or operations of the council not set out in a budget approved by the council;
- (d) power to approve the payment of expenses or allowances on account of expenses incurred or to be incurred by members of the council;
- (e) power to make an application or recommendation or to report or to give a notice, to the Governor or the Minister, being an application, recommendation, report or notice for which provision is made by or under this or any other Act;

or

- (f) any prescribed power, function or duty.

(3) A delegation by a council shall be subject to such limitations and conditions as may be determined by the council or as may be prescribed.

(4) A delegation by a council shall be revocable by resolution of the council and shall not derogate from the power of the council to act itself in any matter.

(5) The council shall cause a separate record to be kept of all delegations under this section, and shall at least once in every financial year review the delegations for the time being in force under this section.

DIVISION VI—OFFICE OF THE COUNCIL

42. (1) A council shall maintain a suitable office as its principal office.

Council to maintain office.

(2) A council may maintain such other offices as it thinks fit.

(3) The principal office of the council shall be open to the public for the transaction of business during such hours as may be determined by the council.

(4) The name of the council and the hours for which the principal office of the council is open for the transaction of business must be displayed at or near the main public entrance to the principal office.

PART IV

MEMBERS OF COUNCIL

DIVISION I—THE MAYOR OR CHAIRMAN

43. (1) The mayor or chairman of a council is the principal member of the council.

The mayor or chairman.

(2) Where a council is constituted with a mayor, he shall—

- (a) be appointed;

or

(b) be elected by the electors of the area,
as a representative of the area as a whole.

(3) Where a council is constituted with a chairman, he shall be chosen by the members of the council from amongst their number and shall hold office for such term (not exceeding two years) as may be determined by the council.

(4) Where a council has a mayor, there shall also, if the council so resolves, be a deputy mayor and where a council has a chairman, there shall also, if the council so resolves, be a deputy chairman.

(5) Where there is to be a deputy mayor or deputy chairman, he shall be chosen by the members of the council from amongst their own number and shall hold office for such term (not exceeding two years) as may be determined by the council.

(6) Upon the expiration of a term of office, a chairman, deputy mayor or deputy chairman of a council is eligible to be chosen for a further term.

(7) In the absence of the mayor or chairman, a deputy mayor or deputy chairman may act in the office of mayor or chairman.

(8) Where the mayor or chairman is absent from the duties of his office and there is no deputy mayor or deputy chairman, or the deputy mayor or deputy chairman is not available to act in the office of mayor or chairman, a member chosen by the council may act in the office of mayor or chairman.

(9) Where a person is to be chosen by the members of the council to fill an office under this section and the votes for two or more candidates for the office are equal, lots shall be drawn to determine which of the candidates shall fill the office.

44. The mayor of the City of Adelaide shall be entitled to the rank and title of Lord Mayor.

The Lord Mayor
of the City of
Adelaide

DIVISION II—ALDERMEN

Aldermen.

45. (1) Where a council is constituted with aldermen, they shall—

(a) be appointed;

or

(b) be elected by the electors of the area,

as representatives of the area as a whole.

(2) The total number of aldermen for an area shall not exceed one-half of the total number of councillors for the area.

DIVISION III—COUNCILLORS

Councillors.

46. (1) Councillors for an area—

(a) where the area is not divided into wards—

(i) shall be appointed;

or

(ii) shall be elected by the electors of the area,
as representatives of the area as a whole;

or

(b) where the area is divided into wards—

(i) shall be appointed;

or

(ii) shall be elected by the electors of the individual
wards,

as representatives of the wards.

(2) Where an area is divided into wards, no more than four councillors may be appointed or elected as representatives of each ward.

DIVISION IV—TERM OF OFFICE OF MEMBERS OF COUNCILS

47. (1) Subject to this Act, the term of office of a member of a council shall be a term expiring at the conclusion of the next periodical elections held after his appointment or election as a member of the council. Term of office.

(2) The term of office of a member of a council, as provided for by subsection (1), shall not be affected by a proclamation made under Division V, VI or VII of Part II.

48. (1) The office of member of a council shall become vacant Vacancies. if—

(a) he dies;

(b) he is removed from office by the Governor on the ground of mental or physical incapacity to carry out satisfactorily the duties of his office;

(c) he is declared bankrupt;

(d) he is convicted of an indictable offence;

(e) he is absent, without leave of the council, from three or more consecutive ordinary meetings of the council (being meetings the first of which is held three months or more before the last), and the council, by resolution, declares his office vacant;

(f) he becomes an officer or employee of the council;

or

(g) he resigns by notice in writing to the chief executive officer (which resignation shall become effective upon receipt by the chief executive officer of the notice of resignation).

(2) The office of a member of a council does not become vacant by reason only of the fact that the member, after his election or appointment, ceases to be an elector for the area.

(3) Where a member of a council has been nominated for election to some office in the council other than one that he presently holds

and does not withdraw the nomination, the office in the council presently held by the member shall become vacant upon the conclusion of that election.

DIVISION V—ALLOWANCES, ETC.

Allowances and expenses.

49. (1) Subject to this section, each member of a council shall receive from the council—

(a) an annual allowance for expenses (other than expenses referred to in paragraph (b)) incurred in performing the duties of his office;

and

(b) reimbursement of expenses of a prescribed kind incurred in performing those duties.

(2) Each council shall, at its first ordinary meeting held after the first Saturday of May in each year (but not, where periodical elections are held in that year, before the conclusion of those elections), fix (subject to prescribed limits) the rates of the annual allowances to be payable to its members.

(3) An annual allowance payable by virtue of this section shall be payable for the period commencing on the day on which it is fixed and expiring on the day immediately preceding the first Saturday in the next succeeding month of May.

(4) The rates of the annual allowances and the prescribed limits upon the rates may vary in relation to different offices of members.

(5) Allowances under this section shall be payable in arrears and monthly, quarterly, or annually as the council resolves.

(6) Where a member of a council holds an office for part only of the period for which the allowance for that office is payable, he shall only be entitled to receive a proportion of that allowance equal to the proportion that the period for which he held the office during that period bears to that period.

Insurance of members and spouses.

50. A council shall take out a policy of insurance—

(a) insuring members of the council against death or injury arising out of, or in the course of, carrying out their official functions;

and

(b) insuring spouses or other members of the families of members of the council against death or injury arising out of, or in the course of, activities of the council.

DIVISION VI—PROTECTION OF MEMBERS

Protection of members.

51. (1) No liability shall attach to a member of a council for an act or omission by the council or the member in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this Act or any other Act.

(2) A liability that would, but for subsection (1), lie against a member of a council shall lie against the council.

DIVISION VII—DECLARATION TO BE MADE BY
MEMBERS OF COUNCILS

52. At or before the first meeting of a council or council committee to be attended by a member after his election or appointment, he shall make a declaration in the prescribed manner and form to the effect that he will discharge the duties of his office conscientiously and to the best of his ability.

Declaration to be made by council members.

DIVISION VIII—CONFLICT OF INTEREST

53. (1) A member of a council has an interest in a matter before the council or a council committee of which he is a member if—

Conflict of interest.

(a) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment;

or

(b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,

(not being a benefit or detriment that would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the area or a ward or some other substantial class of persons).

(2) A person is closely associated with a member of a council—

- (a) if that person is a body corporate of which the member is a director or a member of the governing body;
- (b) if that person is a proprietary company in which the member is a shareholder;
- (c) if that person is a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;
- (d) if that person is a partner of the member;
- (e) if that person is the employer or an employee of the member;
- (f) if that person is a person from whom the member has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services;

or

(g) if that person is the spouse or a child of the member.

(3) A member of a council shall be regarded as having an interest in a matter before the council or a council committee of which he is a member by virtue of the fact that he is an officer or employee of the Crown, or a member, officer or employee of an agency or instru-

mentality of the Crown if the matter directly concerns the particular department or agency or instrumentality in which he is employed or of which he is a member, but not otherwise.

(4) In this section—

“agency or instrumentality of the Crown” includes any body corporate comprised of or including, or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown.

Members to disclose interests.

54. (1) A member of a council who has an interest in a matter before the council or a council committee of which he is a member shall disclose the fact that he has such an interest to the council or committee.

Penalty: Ten thousand dollars or imprisonment for one year.

(2) A disclosure made under subsection (1) shall be recorded in the minutes of the council or council committee.

(3) Subject to subsection (4), no member of a council who has an interest in a matter before the council or a council committee of which he is a member shall—

(a) take part in discussion by the council or committee relating to that matter;

(b) while such discussion is taking place, be in, or in the close vicinity of, the room in which or other place at which that matter is being discussed;

or

(c) vote in relation to that matter.

Penalty: Ten thousand dollars or imprisonment for one year.

(4) Subsection (3) does not apply in relation to a matter in which the member has an interest by virtue only of the fact—

(a) that he is a member of, or director or member of the governing body of, a non-profit association;

or

(b) that he is a member of a body (whether corporate or unincorporate) comprised of or including, or having a governing body comprised of or including, a person or persons appointed by the council.

(5) It shall be a defence to a charge of an offence against subsection (1) or (3) for the defendant to prove that he was, at the time of the alleged offence, unaware of his interest in the matter.

(6) Subsections (1) and (3) do not apply—

(a) to questions relating to allowances or benefits that a council is empowered to pay to, or confer on, members, their spouses or members of their families;

(b) to matters of a class exempted by regulation from the provisions of those subsections;

or

- (c) to matters in relation to which the Minister has granted an exemption from the provisions of those subsections.

(7) The fact that a member or members of a council or a council committee have failed to comply with this section in relation to a matter in which he or they have an interest does not, of itself, invalidate a resolution or decision on that matter but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the council, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary or consequential orders as it thinks fit.

(8) In this section—

“non-profit association” means a body (whether corporate or unincorporate)—

- (a) that does not have as its principal object or one of its principal objects the carrying on of a trade or the making of a profit;

and

- (b) that is so constituted that its profits (if any) must be applied towards the purposes for which it is established and may not be distributed to its members,

and includes the Local Government Association.

55. A member of a council shall not use confidential information gained by him by virtue of his office for the purpose of securing for himself or some other person a private benefit.

Misuse of confidential information.

Penalty: Five thousand dollars or imprisonment for one year.

56. (1) A person who offers a bribe to a member of a council shall be guilty of an offence.

Bribes.

Penalty: Ten thousand dollars or imprisonment for one year.

(2) A member of a council who accepts a bribe shall be guilty of an offence.

Penalty: Ten thousand dollars or imprisonment for one year.

57. (1) Subject to subsection (2), where a person is convicted of an offence against this Division—

Consequences of conviction of an offence against this Division.

- (a) he shall be disqualified for election as a member of a council during the seven years next ensuing after the date of his conviction;

and

- (b) if he is, at the time of conviction, a member of a council, his office as such shall forthwith become vacant.

(2) The court by which a person is convicted of an offence against this Division may in an appropriate case—

(a) exempt the convicted person from the operation of subsection (1);

or

(b) reduce the period of disqualification prescribed by that subsection.

(3) Where a person is convicted of an offence against this Division and it appears to the court by which that person is convicted that a council has suffered loss or damage as a result of the commission of the offence, the court may order the convicted person to pay such compensation to the council as the court considers just.

PART V

MEETINGS OF COUNCIL, COMMITTEES AND ELECTORS

DIVISION I—MEETINGS OF COUNCIL

Meetings of
council.

58. (1) Subject to this section, ordinary meetings of a council shall be held at times and places appointed by the council, but there must be at least one ordinary meeting in each month.

(2) Where a time and a place has not been appointed for the holding of an ordinary meeting during any month, the chief executive officer shall appoint, subject to this section, a time and a place for the holding of an ordinary meeting during that month.

(3) At least three clear days before the date of an ordinary meeting of the council, the chief executive officer shall—

(a) give notice of the meeting;

and

(b) supply a copy of the agenda for that meeting,

to all members of the council.

(4) Ordinary meetings of a council—

(a) may not be held on Sundays, or on public holidays;

and

(b) in the case of a municipal council, may not be held before 5 p.m. unless the council resolves otherwise by a resolution supported unanimously by all members of the council.

(5) A resolution under subsection (4) (b) shall not operate in relation to a meeting held after the conclusion of the periodical elections next following the making of the resolution.

(6) The chief executive officer shall, at the request of the mayor or chairman, or any three members, of the council, call a special meeting of the council.

(7) Special meetings of a council may be held at any time.

(8) Notice of a special meeting of a council shall be given to all members of the council at least four hours before the commencement of the meeting.

(9) Notice of a meeting of a council under this section shall—

(a) be in writing;

(b) set out the date, time and place of the meeting;

(c) be signed by the chief executive officer;

and

(d) in the case of a special meeting—contain, or be accompanied by, the agenda for the meeting.

(10) Notice may be given under this section personally, or by delivery (whether by post or otherwise), to the usual place of residence of the member or such other place as the member may authorize in writing.

(11) The chief executive officer shall maintain a record of all notices of meetings given under this section to members.

59. (1) The prescribed number of members of a council shall constitute a quorum of the council and no business shall be transacted at a meeting unless a quorum is present. Quorum.

(2) In this section, a reference to the prescribed number of members of a council means a number ascertained by dividing the total number of members of the council for the time being in office by two, ignoring any fraction resulting from the division, and adding one.

60. (1) The mayor or chairman of a council shall preside at a meeting of the council. Procedure at meetings.

(2) Where the mayor or chairman is absent from a meeting of a council and there is a deputy mayor or deputy chairman available to preside at the meeting, he shall preside but, if there is no deputy mayor or deputy chairman, or he is not available to preside at the meeting, a member of the council chosen by those present at the meeting shall preside.

(3) Subject to this Act, a question arising for decision at a meeting of a council shall be decided by a majority of the votes of the members present at the meeting.

(4) Each member present at a meeting of a council shall, subject to any provision of this Act to the contrary, vote on a question arising for decision at that meeting.

(5) The mayor of a council, or, in his absence, any other member, presiding at a meeting of the council shall not have a deliberative vote on a question arising for decision at the meeting, but shall, in the event of an equality of votes, have a casting vote.

(6) The chairman of a council, or, in his absence, any other member, presiding at a meeting of the council shall have a deliberative vote on a question arising for decision at the meeting, but shall not, in the event of an equality of votes, have a casting vote.

(7) Subject to this Act, the procedure to be observed at a meeting of a council shall be as determined by the council.

DIVISION II—MEETINGS OF COUNCIL COMMITTEES

Meetings of
council
committees.

61. (1) Subject to this Act, the procedure to be observed in relation to the convening and conduct of meetings of a council committee shall be—

- (a) as prescribed by regulation;
- (b) insofar as the procedure is not prescribed by regulation—
as determined by the council;
- (c) insofar as the procedure is not prescribed by regulation or
determined by the council—as determined by the council
committee itself.

(2) In the case of a municipal council, meetings of a council committee may not be held before 5 p.m. unless the council committee resolves otherwise by a resolution supported unanimously by all members of the council committee.

(3) A resolution under subsection (2) shall not operate in relation to a meeting held after the conclusion of the periodical elections next following the making of the resolution.

DIVISION III—PROCEEDINGS OF COUNCIL AND COUNCIL COMMITTEES
TO BE CONDUCTED IN PUBLIC

Meetings to be
held in public
subject to certain
exceptions.

62. (1) Subject to this section, a meeting of a council or a council committee shall be conducted in a place open to the public.

(2) A council or council committee may order that the public be excluded from attendance at the meeting in order to enable the meeting to consider in confidence—

- (a) legal or other professional advice;
- (b) complaints against an officer or employee of the council;
- (c) proposals for the appointment, suspension, demotion, disciplining or dismissal of an officer or employee of the council;
- (d) proposals relating to the remuneration or conditions of service of an officer or employee of the council;
- (e) tenders for the supply of goods or the carrying out of works;
- (f) proposals relating to the acquisition or disposal of land;
- (g) information relating to the health or financial position of any person;
- (h) a report recommending that the council be declared a defaulting council;
- (i) matters relating to the contents of the Register of Interests or a statement prepared under Part VIII or any actual or possible conflict of interest of a member of the council;
- (j) information given to the council on the explicit understanding that it would be treated by the council as confidential;
- (k) matters relating to actual or possible litigation involving the council or an officer or employee of the council;

or

(l) any matter of a prescribed class.

(3) Where a person, 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, he shall be guilty of an offence and liable to a penalty of five hundred dollars and, if he fails to leave the room on request, it shall be lawful for an officer of the council or a member of the police force forcibly to remove him from the room.

(4) Subsection (3) does not apply to—

(a) a member of the council or the council committee;

or

(b) any other person permitted to be in the room by the council or the council committee.

(5) Where an order is made under subsection (2), a note shall be made in the minutes of the making of the order and of the grounds on which it was made.

DIVISION IV—MEETINGS OF ELECTORS

63. (1) A council may convene a meeting of electors of the area or a part of the area. Meetings of electors.

(2) The chief executive officer shall, by advertisement in a newspaper circulating in the area, give notice of the time and place of a meeting of electors, and of the nature of the business to be transacted at the meeting, at least fourteen days and not more than twenty-eight days before the date of the meeting.

(3) The following persons shall be entitled to attend and vote at a meeting convened under this section—

(a) in the case of a meeting of electors of an area—any person who is enrolled on the voters roll for the area as an elector;

and

(b) in the case of a meeting of electors of a part of an area—any person who is enrolled on the voters roll for the area as an elector—

(i) in respect of a place of residence within that part of the area;

or

(ii) in respect of ratable property within that part of the area.

(4) A meeting of electors under this section shall not proceed unless at least one member of the council is present at the meeting.

(5) Where the mayor or chairman is present and available to preside at a meeting of electors held under this section, he shall preside at the meeting.

(6) Where the mayor or chairman is absent from a meeting of electors held under this section or is not available to preside at the meeting, the following provisions apply:

- (a) if there is a deputy mayor or deputy chairman available to preside at the meeting—he shall preside;
- (b) if there is no deputy mayor or deputy chairman or he is not available to preside—a member of the council appointed by the council shall preside;
- (c) if no member of the council is so appointed or a member so appointed is absent from the meeting—a member chosen by the electors present at the meeting shall preside.

(7) A question to be decided at a meeting of electors shall be decided by a majority of the votes of the electors present and voting at the meeting.

(8) Each elector present at the meeting shall be entitled to one vote on a question arising for decision at the meeting.

(9) The member presiding at a meeting of electors shall not, in the event of an equality of votes, have a casting vote.

(10) The member presiding at a meeting of electors shall transmit any resolutions passed at a meeting held under this section to the council.

(11) Subject to this Act, the procedure to be observed at a meeting of electors shall be as determined by the person presiding at the meeting.

DIVISION V—PROVISIONS OF GENERAL APPLICATION

Minutes.

64. (1) The chief executive officer shall cause minutes to be kept of the proceedings at every meeting of the council, of council committees and of electors.

(2) Each member of the council shall, within five days after a meeting of the council, of a council committee or of electors, be supplied with a copy of all minutes of the proceedings of the meeting kept under subsection (1).

(3) Subject to subsection (6), a copy of the minutes of a meeting of the council must be placed on public display in the principal office of the council within five days after the meeting and kept on such display for a period of one month.

(4) Subject to subsection (6), a person shall be entitled to inspect, without payment of a fee, at the principal office of the council—

- (a) minutes kept under this section;
- (b) reports to the council or a council committee received at a meeting of the council or committee;
- (c) recommendations presented to the council in writing and adopted by resolution of the council;
- (d) budgetary or other financial statements adopted by the council.

(5) Subject to subsection (6), a person shall be entitled, upon payment of a fee fixed by the council, to obtain a copy of any documents available for inspection under subsection (4).

(6) Subsections (3), (4) and (5) do not apply in relation to a document or part of a document if—

(a) the document or part relates to a matter of a kind referred to in section 62 (2);

and

(b) the council or council committee orders that the document or part be kept confidential.

(7) Where an order is made under subsection (6), a note shall be made in the minutes of the making of the order and of the grounds on which it was made.

(8) A document purporting to be minutes of proceedings at a meeting of a council, of a council committee or of electors, or to be a copy of or extract from such minutes and to be signed by the chief executive officer, shall be accepted as proof, in the absence of proof to the contrary, of the matters contained in the document.

65. A meeting of a council, of a council committee or of electors may be adjourned from time to time and from place to place.

Adjournment of meetings.

PART VI

OFFICERS AND EMPLOYEES OF COUNCIL

DIVISION I—APPOINTMENT OF OFFICERS AND EMPLOYEES

66. (1) There shall be an officer for every area (in this Act referred to as the “chief executive officer”) who—

Chief executive officer.

(a) shall be responsible to the council for the execution of its decisions;

and

(b) shall have such other powers, functions and duties as may be conferred upon the chief executive officer by or under this or any other Act.

(2) There shall, if the council so determines, be a deputy to the chief executive officer.

(3) The title of the office provided for by subsection (1) or (2) shall be at the discretion of the council.

(4) In the absence of the chief executive officer, his deputy or, if there is no deputy or he is absent, some other suitable person appointed by the council may act in the office of the chief executive officer.

(5) A person is not eligible for appointment as chief executive officer of a council unless—

(a) he holds the certificate of registration issued by the Local Government Qualifications Committee in relation to the office of chief executive officer;

or

(b) his appointment has been approved by the Minister.

(6) The Minister may grant an approval under subsection (5) upon such terms and conditions as he thinks fit.

(7) A council shall from time to time, as occasion requires, make appointments to the office of chief executive officer and, if there is to be a deputy to the chief executive officer, to that office.

(8) Notice of the appointment of a chief executive officer of a council shall be published in the *Gazette*.

(9) A chief executive officer may resign his office by notice in writing delivered to the mayor or chairman at least two months before the resignation is to take effect.

Other offices and positions.

67. (1) A council may appoint such other officers and employees as are necessary for the proper administration of the affairs of the council.

(2) A council shall, unless the Minister approves otherwise, appoint a person as engineer for its area upon a full time basis.

(3) The Minister may grant an approval under subsection (2)—

(a) upon the condition that the council appoints—

(i) a person as an engineer upon a part time or consultative basis;

(ii) a person as an overseer of works upon a full time basis;

or

(iii) both a person as an engineer upon a part time or consultative basis and a person as an overseer of works upon a full time basis;

and

(b) upon such other terms and conditions as he thinks fit.

(4) A council shall not appoint a person to the office of engineer, overseer of works or any other prescribed office or to perform prescribed functions unless—

(a) he holds the certificate of registration issued by the Local Government Qualifications Committee in relation to the office or functions;

or

(b) his appointment has been approved by the Minister.

(5) The Minister may grant an approval under subsection (4) upon such terms and conditions as he thinks fit.

(6) Except as otherwise provided by this Act or any other Act, a council may appoint the same person to hold any two or more offices.

DIVISION II—THE LOCAL GOVERNMENT QUALIFICATIONS COMMITTEE

The Local Government Qualifications Committee.

68. (1) There shall be a committee entitled the “Local Government Qualifications Committee”.

(2) The Committee shall consist of seven members appointed by the Governor on the nomination of the Minister of whom—

(a) one (the chairman) shall be an officer of the Department of the Minister;

and

(b) one shall be a person nominated by the Local Government Association.

(3) The members of the Committee shall hold office on terms and conditions determined by the Governor.

(4) A member of the Committee shall be entitled to such allowances and expenses as may be determined by the Governor.

(5) The Committee may, with the approval of the Minister, establish advisory committees and sub-committees for the purpose of assisting it in carrying out its functions.

(6) Subject to the regulations, the Committee may conduct its business as it thinks fit.

69. (1) A person may apply to the Local Government Qualifications Committee for the grant of a certificate of registration required for appointment to a prescribed office, or to an office or position involving the performance of prescribed functions.

Issue, suspension and cancellation of certificates of registration.

(2) An application to the Committee under subsection (1) must be made in the prescribed manner and form.

(3) Where, upon an application for the grant of a certificate of registration required in relation to any office or functions and upon payment of the prescribed fee, the Committee is satisfied that the applicant—

(a) holds educational qualifications prescribed in relation to the office or functions or holds other educational qualifications appropriate for the discharge of the duties of the office or the performance of those functions;

(b) has obtained practical experience appropriate for the discharge of the duties of the office or the performance of those functions;

and

(c) is a fit and proper person to be granted the certificate,

the Committee may grant the certificate to the applicant.

(4) The regulations may—

(a) empower the Committee to suspend or cancel a certificate issued under this section on grounds specified in the regulations;

(b) provide for appeals against decisions of the Committee;

(c) empower the Committee to conduct examinations in specified fields relating to local government and provide that the successful completion of any such examination shall constitute an appropriate educational qualification for

the discharge of the duties of any specified office or the performance of specified functions;

(d) prescribe or provide for any other powers or functions of the Committee.

(5) The Committee has the function (in addition to its other functions under this Act) of promoting the establishment and development of courses of study for qualifications required for the grant of certificates of registration under this section.

DIVISION III—CONDITIONS OF SERVICE (OTHER THAN SUPERANNUATION)

Salary, etc.

70. Subject to the provisions of any relevant Act, award or industrial agreement, the salary or wages and other conditions of service of an officer or employee of a council shall be as determined by the council.

Power to suspend or dismiss.

71. (1) A council may, subject to the provisions of any relevant Act, award or industrial agreement, suspend or dismiss an officer or employee of the council.

(2) Suspension of an officer or employee under subsection (1) does not affect his right to remuneration in respect of the period of suspension.

Certain periods of service to be regarded continuous.

72. (1) Where an officer or employee has left the service of one council and, within thirteen weeks of having done so, enters the service of another council without having commenced any other remunerated employment within that intervening period, the periods of service shall, for the purpose of calculating his present and accruing rights to long service leave and sick leave, be deemed to constitute a single continuous period of service.

(2) Where an officer or employee engaged by a council is entitled to the benefit of subsection (1), that council shall be entitled to receive from the council with which the officer or employee formerly served a contribution of an amount calculated in accordance with the regulations.

(3) Payment of a contribution under this section shall be made within one month after receipt of a written notice requiring that payment.

(4) Upon default of payment, the amount of a contribution payable under this section may be recovered as a debt.

(5) A council shall at the request of another council supply that other council with details of the service of any officer or employee or former officer or employee of the council.

(6) The amount of any contribution received by a council pursuant to this section shall be held and applied in accordance with the regulations.

(7) In this section—

“council” includes a controlling authority constituted under this Act or an authority or body declared by regulation to be one to which this section applies.

DIVISION IV—SUPERANNUATION

73. (1) The Minister may—

(a) approve a scheme providing for superannuation and related benefits for the officers and employees of every council (in this Division referred to as “the superannuation scheme”);

and

(b) approve any amendments to the superannuation scheme.

(2) The Minister shall, upon approving a scheme as the superannuation scheme or upon approving an amendment to the superannuation scheme—

(a) cause the scheme, or amendment to the scheme, to be published in the *Gazette*;

and

(b) cause a copy of the scheme, or amendment to the scheme, to be laid before each House of Parliament.

(3) A scheme approved by the Minister as the superannuation scheme, or an amendment to the superannuation scheme, is subject to disallowance by resolution of either House of Parliament (notice of which resolution must be given without fourteen sitting days of the House after the copy of the scheme or amendment is laid before the House).

(4) Subject to this section, the provisions of the superannuation scheme, or an amendment to the scheme, shall have effect as from the date or dates fixed by the scheme or amendment, or if no date or dates are so fixed, as from the date on which the scheme or amendment is published in the *Gazette*.

(5) Every council is bound to comply with the provisions of the superannuation scheme as from time to time in force pursuant to this section.

(6) In this section—

“council” includes a controlling authority constituted under this Act or an authority or body declared by the superannuation scheme to be an authority or body to which the scheme applies:

“officer” or “employee” of a council means an officer or employee of a class declared by the superannuation scheme to be officers or employees to whom the scheme applies.

74. (1) There shall be a board entitled the “Local Government Superannuation Board” to administer the superannuation scheme.

(2) The Board—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;

Local
Government
Superannuation
Board.

Local
Government
Superannuation
Board.

(c) shall be capable of acquiring or incurring any other rights or liabilities and of suing or being sued in its corporate name.

(3) The Board shall consist of six members of whom—

(a) five shall be persons appointed by the Governor—

(i) one being a person nominated by the Minister, who shall be the chairman of the Board;

(ii) two being persons nominated by the Local Government Association of South Australia;

(iii) one being a person nominated by the Municipal Officers Association of Australia (South Australian Branch);

and

(iv) one being a person nominated by the Australian Workers Union (South Australian Branch);

and

(b) one shall be the person holding or acting in the office of the Public Actuary or his nominee.

(4) Subject to this Act, the constitution, powers, functions and duties of the Board shall be as set out in the superannuation scheme.

Investment of funds generated under the scheme.

75. The investment of funds generated under the superannuation scheme shall be carried out on behalf of the Local Government Superannuation Board by investment managers appointed by the Board with the approval of the Minister.

Auditing of accounts of Superannuation Board.

76. (1) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Local Government Superannuation Board.

(2) For the purposes of an audit under subsection (1), the Auditor-General may exercise in relation to the accounts of the Board and the members and employees of the Board the powers that are vested in the Auditor-General by the Audit Act, 1921, in respect of public accounts and accounting officers.

Annual report by Superannuation Board.

77. (1) The Local Government Superannuation Board shall, on or before the thirtieth day of September in each year, deliver to the Minister a report upon the operations of the Board during the preceding financial year.

(2) The report must incorporate the audited statement of accounts of the Board for the financial year to which the report relates.

(3) The Minister shall, as soon as practicable after his receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Actuarial review of scheme.

78. (1) Within four years after the commencement of the superannuation scheme and at least once in every three years thereafter, the Local Government Superannuation Board shall obtain a report from an actuary on the state and sufficiency of the funds generated under the superannuation scheme.

(2) The Board shall, within two months after its receipt of the report, forward a copy to the Minister together with any recommendations it thinks fit to make as a result of the report.

(3) The Minister shall, as soon as practicable after his receipt of the report and any recommendations of the Board, cause a copy of the report and recommendations (if any) to be laid before each House of Parliament.

(4) In this section—

“actuary” means a person who is a Fellow of the Institute of Actuaries of Australia.

DIVISION V—CONDUCT OF OFFICERS AND EMPLOYEES

79. An officer or employee of a council shall not use confidential information gained by him by reason of his position as such for the purpose of obtaining a private benefit for himself or some other person. Misuse of information.

Penalty: Five thousand dollars or imprisonment for one year.

80. (1) Where an officer or employee of a council has an interest in a matter in relation to which he is required or authorized to act in the course of his duties, the officer or employee— Disclosure of private interests.

(a) shall disclose that he has such an interest to the council;

and

(b) shall not, unless the council otherwise determines, act in relation to that matter.

Penalty: Five thousand dollars or imprisonment for one year.

(2) It shall be a defence to a charge of an offence against subsection (1) for the defendant to prove that, at the relevant time, he was unaware of his interest.

(3) An officer or employee has an interest in a matter in relation to which he is required or authorized to act if the officer or employee, or a person with whom the officer or employee is closely associated, would, if the officer or employee acted in a particular manner in relation to the matter, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment or a non-pecuniary detriment.

(4) A person is closely associated with an officer or employee of a council—

(a) if that person is a body corporate of which the officer or employee is a director or a member of the governing body;

(b) if that person is a proprietary company in which the officer or employee is a shareholder;

(c) if that person is a beneficiary under a trust or an object of a discretionary trust of which the officer or employee is a trustee;

- (d) if that person is a partner of the officer or employee;
- (e) if that person is the employer or an employee of the officer or employee;
- (f) if that person is a person from whom the officer or employee has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services;

or

- (g) if that person is the spouse or a child of the officer or employee.

(5) Subsection (1) does not apply to matters in relation to which the Minister has granted an exemption from that subsection.

Bribes.

81. (1) A person who offers a bribe to an officer or employee of a council shall be guilty of an offence.

Penalty: Ten thousand dollars or imprisonment for one year.

(2) An officer or employee of a council who accepts a bribe shall be guilty of an offence.

Penalty: Ten thousand dollars or imprisonment for one year.

DIVISION VI—AUTHORIZED PERSONS

Authorized persons.

82. (1) A council may, by instrument in writing, appoint a person (other than a member of the council) to be an authorized person under this Act.

(2) The council may, in the instrument of appointment, limit the powers of the authorized person to the enforcement of specified provisions of this Act and any such limitation shall have effect according to its terms.

(3) The council shall issue to an authorized person an identity card in the prescribed form identifying the person and stating that he is an authorized person under this Act.

(4) Where the powers of an authorized person have been limited pursuant to subsection (2), the identity card issued to the authorized person shall contain a statement of the limitations upon his powers.

(5) An authorized person shall, upon demand by any person in relation to whom he is exercising or proposing to exercise any of his powers under this Act, produce his identity card for inspection by that person.

Powers of authorized persons.

83. (1) Subject to this Act, an authorized person may—

- (a) require a person who is reasonably suspected by the authorized person of having committed a breach of this Act to state his full name and address;
- (b) after giving such notice as may be reasonable to the owner or occupier of premises, enter the premises for purposes related to the enforcement of this Act;
- (c) if so authorized by warrant of a justice, break into premises for purposes related to the enforcement of this Act.

(2) A person who—

(a) obstructs an authorized person in the exercise of powers conferred by this section;

or

(b) refuses or fails to comply with a requirement of an authorized person under this section,

shall be guilty of an offence.

Penalty: One thousand dollars.

DIVISION VII—IMMUNITY FROM PERSONAL LIABILITY

84. (1) No liability shall attach to an officer or employee of a council or an authorized person for any act or omission by him in good faith and in the exercise, performance or discharge, or purported exercise, performance or discharge, of his powers, functions or duties under this Act or any other Act.

Immunity from personal liability.

(2) A liability that would, but for subsection (1), lie against an officer, employee or authorized person shall lie against the council that appointed him to his office or position.

PART VII

ELECTIONS AND POLLS

DIVISION I—PRELIMINARY

85. In this Part—

Interpretation.

“the Court” means the Court of Disputed Returns constituted under Division XI:

“declaration vote” means a vote made under section 107 or 115:

“electoral material” means any advertisement, notice, statement or representation calculated to affect the result of an election or poll:

“illegal practice” means the commission of an offence against Division X:

“voting compartment” means a place set apart for voting:

“voting material” means—

(a) ballot papers;

(b) applications for advance voting papers;

(c) declarations made by persons voting or claiming to vote;

and

(d) voters rolls.

DIVISION II—ADMINISTRATIVE PROVISIONS

86. (1) There shall be a returning officer and one or more deputy returning officers for each area.

The returning officer and deputy returning officer.

(2) In the absence of the returning officer, a deputy returning officer shall act in the office of the returning officer.

(3) The council shall from time to time, as occasion requires, make such appointments as are necessary to fill any vacancy in the office of returning officer or deputy returning officer of the council.

(4) No member of a council is eligible for appointment as returning officer or deputy returning officer for that council and no returning officer or deputy returning officer for a council is eligible to stand for election as a member of that council.

Appointment of other electoral officers.

87. (1) The returning officer may engage electoral officers on a temporary basis to assist him in the conduct of an election or poll.

(2) No member of a council, or candidate for election as a member of a council, may be engaged as an electoral officer by the returning officer for that council.

Delegation by returning officer.

88. (1) The returning officer may, by instrument in writing, delegate to an electoral officer any of his powers, functions or duties.

(2) A delegation by the returning officer shall be revocable by instrument in writing, and shall not derogate from the power of the returning officer to act himself in any matter.

(3) In any legal proceedings, an apparently genuine document purporting to be a certificate signed by the returning officer containing particulars of a delegation under this section shall, in the absence of proof to the contrary, be accepted as proof of those particulars.

Polling places and places for counting of votes.

89. (1) A council shall appoint such polling places and such place or places for the counting of votes as may be necessary for the purposes of an election or poll.

(2) Subject to subsection (3), public notice of the location of polling places and the place or places for the counting of votes appointed under this section shall be given at least seven and not more than twenty-eight days before the date of the election or poll.

(3) In case of emergency, the returning officer may, without giving public notice under subsection (2), appoint a polling place or a place for the counting of votes for the purpose of an election or poll in substitution for, or in addition to, any place or places previously appointed under this section.

(4) A polling place shall contain voting compartments to which a voter may resort for the purpose of recording his vote.

(5) The returning officer shall assign a suitable electoral officer to preside at each polling place.

Costs and expenses.

90. All costs and expenses incurred by a returning officer in carrying out the duties of his office shall be defrayed from the funds of the council.

DIVISION III—ENROLMENT

Qualification for enrolment.

91. (1) Subject to this Act—

(a) a natural person of or above the age of majority is entitled to be enrolled on the voters roll for an area or ward if—

- (i) he is enrolled as an elector for the House of Assembly in respect of a place of residence within the area or ward;
 - (ii) his place of residence is situated within the area or ward and he has after taking up residence in that place made and lodged with the council the prescribed declaration;
- or
- (iii) he is a ratepayer in respect of ratable property within the area or ward and he is the sole owner or the sole occupier of that ratable property;
- (b) a body corporate is entitled to be enrolled on the voters roll for an area or ward if—
- (i) it is a ratepayer in respect of ratable property within the area or ward;
- and
- (ii) it is the sole owner or the sole occupier of the ratable property;
- and
- (c) a group of persons (whether the group consists of natural persons, bodies corporate or partly of natural persons and partly of bodies corporate) is entitled to be enrolled as a group on the voters roll for an area or ward if—
- (i) the members of the group are all ratepayers in respect of ratable property within the area or ward;
 - (ii) the members of the group are joint owners, owners in common or joint occupiers of the ratable property;
- and
- (iii) at least one member of the group (being a body corporate or a natural person of or above the age of majority) is not enrolled on the relevant voters roll pursuant to paragraph (a) or (b).
- (2) A body corporate or a group that is entitled to be enrolled on a voters roll in pursuance of subsection (1) may, by notice in writing (being a notice in the prescribed form and containing the prescribed declarations) lodged with the council—
- (a) nominate a natural person of or above the age of majority to act as an elector on its behalf;
- or
- (b) cancel a previous nomination made under this subsection and make a fresh nomination in its place.
- (3) A nomination in force under this section shall be recorded in the voters roll alongside the name of the body corporate or group by which the nomination was made.

(4) A person whose name is recorded in the voters roll as a nominated agent shall be regarded as having been enrolled as an elector.

The voters roll.

92. (1) The chief executive officer shall be responsible for the maintenance of a voters roll for the area.

(2) The voters roll must set out in relation to each person enrolled—

(a) the full name of the person;

(b) in the case of a natural person—the address of his place of residence;

(c) the address of the place of residence or ratable property (as the case may be) by virtue of which the person is entitled to be enrolled;

and

(d) any prescribed particulars.

(3) Where an area is divided into wards the voters roll must differentiate the electors enrolled on the roll according to the wards in respect of which they are entitled to vote.

(4) The voters roll shall be revised twice in each year, the first revision being made so that the roll reflects entitlements to enrolment as they existed on the second Thursday of March and the second revision being made so that the roll reflects entitlements to enrolment as they existed on the second Thursday of September (the “closing dates”).

(5) Where the voters roll is to be revised under this section, the revision must be completed on or before the first Thursday of the month next following the month in which the relevant closing date occurred, and the roll, as revised, must be used for the purposes of any election or poll held after the date of completion of the revision and before completion of the next revision.

(6) The Electoral Commissioner shall, within fourteen days of each closing date, supply the chief executive officer of each council with a list of the persons who are, as at the closing date, enrolled as electors for the House of Assembly in respect of a place of residence within the area.

(7) Where the area of a council is divided into wards, the list supplied under subsection (6) must differentiate the electors according to the wards in relation to which they are enrolled.

(8) The Electoral Commissioner shall be entitled to recover as a debt from a council a fee of an amount determined by him for the supply of a list under this section.

(9) A council shall make copies of its voters roll available at its principal office for public inspection or for purchase at a fee determined by the council.

(10) The chief executive officer shall supply the returning officer with sufficient copies of the voters roll, certified by him, for use at an election or poll.

(11) The chief executive officer is not responsible to check the accuracy of a list supplied by the Electoral Commissioner under this section and is entitled to assume that a list supplied by the Electoral Commissioner is accurate.

(12) The validity of a voters roll is not affected by any misdescription or other error in the roll.

(13) A voters roll is conclusive evidence of the entitlement of any person whose name appears in the roll as an elector to vote at an election or poll at which the roll is used.

DIVISION IV—ENTITLEMENT TO VOTE

93. (1) A person whose name appears in the voters roll used for an election or poll shall be entitled to vote at that election or poll. Entitlement to vote.

(2) Where an elector's name appears in the voters roll used for an election or poll both as an elector in his own right and as a nominated agent, he shall be entitled to vote at the election or poll both in his own right and in his capacity as a nominated agent.

(3) Where an elector's name appears in the voters roll used for an election or poll as a nominated agent under a number of separate nominations, he shall be entitled to vote at the election or poll in respect of each of those nominations.

(4) Where a person is entitled to vote at an election or poll in more than one capacity, the provisions of this Part shall be construed so that they may apply to the person distinctively in relation to each such capacity.

(5) A person whose name has been omitted in error from a voters roll used for an election or poll shall, subject to this Part, be entitled to vote at the election or poll as if the error had not occurred.

DIVISION V—SPECIAL PROVISIONS RELATING TO ELECTIONS

94. (1) Elections shall be held to determine the membership of each council on the first Saturday of May in 1985, on the first Saturday of May in 1987, on the first Saturday of May in 1989, and so on at intervals of two years. Date of elections.

(2) If—

(a) a periodical election for a council wholly or partially fails or is declared void;

or

(b) the office of a member of a council becomes vacant not less than six months before the date of the next periodical elections;

a supplementary election shall be held to fill the office or offices not filled by the periodical election or the office that has become vacant.

(3) A supplementary election shall be held on a day (which must be a Saturday) determined by the returning officer.

95. (1) Subject to this Act, a person is eligible to be a candidate for election as a member of a council if— Eligibility to stand for election.

(a) he is an elector for the area;

or

(b) his name has been omitted in error from the voters roll for the area.

(2) A person is not eligible to be a candidate for election as a member of a council if—

(a) he is an undischarged bankrupt;

(b) he—

(i) has been sentenced to imprisonment for an offence; and

(ii) he is, or could upon the happening of some contingency become, liable to serve the sentence or the remainder of the sentence;

(c) he is disqualified from election as a member of a council by virtue of the provisions of section 57;

or

(d) he is an officer or employee of the council.

(3) A person is not eligible to be a candidate for election as a member of a council if—

(a) in the case of a supplementary election—he is a member of some other council;

or

(b) in the case of any election—he is a candidate for election as a member of some other council.

(4) A person is not eligible to be a candidate for election to the office of mayor or alderman unless he has held office as a member of a council for not less than twelve months.

Nominations.

96. (1) A person who is eligible to be a candidate for election to an office of a council may be nominated in the prescribed manner and form as a candidate for election to the office—

(a) in the case of an office other than that of councillor for a ward—by any two or more electors for the area;

or

(b) in the case of an office of councillor for a ward—by any two or more electors for the ward.

(2) The nomination must be accompanied by a declaration in the prescribed form made by the person nominated to the effect that he is not ineligible to be a candidate for election to the office by reason of any matter referred to in section 95.

(3) A nomination must be lodged with the returning officer not earlier than twenty-one days before the day on which nominations close.

(4) The returning officer shall cause a note to be made of the date and time of the receipt of a nomination form under this section.

(5) Nominations shall close—

(a) in the case of a periodical election—at twelve noon on the first Thursday of April in the year in which the periodical election is to be held;

or

(b) in the case of a supplementary election—at twelve noon on the second Thursday of the month immediately preceding the month in which the supplementary election is to be held.

(6) The returning officer shall—

(a) in the case of a periodical election—not later than the second Thursday of March in the year in which the periodical election is to be held;

or

(b) in the case of a supplementary election—not later than twenty-one days before the day on which nominations close,

give public notice stating the vacancies to be filled at the election and inviting nomination of candidates for election to the vacancies.

(7) Upon receipt of a form of nomination, the returning officer shall, if he considers that there is any deficiency that might render the nomination invalid, take all such steps to notify the nominated candidate of the deficiency as are reasonable in order to enable the candidate to cure the deficiency before the close of nominations.

(8) Any dispute as to the validity of a nomination shall be determined summarily by the returning officer.

(9) The returning officer shall, as soon as is practicable after their receipt, cause copies of all valid nominations to be displayed in the principal office of the council.

(10) A nominated candidate may at any time before the close of nominations, by notice in writing given to the returning officer, withdraw his nomination.

(11) Where, at the close of nominations, it appears that the same person has been nominated for election to two or more vacancies, both or all the nominations shall be void.

(12) Where, after nominations have closed, it appears that the number of candidates nominated to contest the election does not exceed the number of persons required to be elected, the returning officer shall declare the nominated candidate or candidates elected.

(13) Where a candidate is declared elected under subsection (12)—

(a) in the case of a supplementary election—the election of the candidate shall take effect forthwith;

(b) in the case of a periodical election—the election of the candidate shall take effect at the conclusion of the periodical elections for the council.

(14) The returning officer shall within fourteen days of the close of nominations give public notice and notice in writing to the candidates setting forth—

- (a) the names of the candidates nominated and the offices for which they were nominated;
 - (b) the names of any candidates declared elected in pursuance of this section;
- and
- (c) the day on which the election (if any) is to be held and the hours of voting.

Effect of death of candidate after close of nominations.

97. Where a candidate nominated to contest an election dies after the close of nominations but before or on the day of the election, the election shall be deemed to have wholly failed.

Failure or avoidance of supplementary election.

98. (1) Where a supplementary election wholly or partially fails or is declared void, the council shall appoint a person or persons (being an elector or electors for the area) to the office or offices not filled by the supplementary election.

(2) A council shall not appoint a person to an office pursuant to subsection (1) unless the person has first made a declaration in the prescribed form to the effect that if an election were held for that office he would not be ineligible to be a candidate for election to the office by reason of any matter referred to in section 95.

Ballot papers for elections.

99. (1) Where an election is to be held for the office of mayor, a separate ballot paper showing the names of all candidates for election to that office shall be prepared.

(2) Where an election is to be held for the office of alderman, a separate ballot paper showing the names of all candidates seeking election as aldermen in that election shall be prepared.

(3) Where an election is to be held for the office of councillor, a separate ballot paper showing the names of all candidates seeking election as councillors in that election shall be prepared—

(a) if the area is not divided into wards—in relation to the whole area;

or

(b) if the area is divided into wards—in relation to each ward.

(4) The names of the candidates shall be arranged on the ballot paper, one under the other, in an order determined by lot.

(5) The drawing of lots for the purposes of subsection (4) shall be conducted by the returning officer forthwith upon the close of nominations in the presence of two electors and such other persons who may wish to be present.

(6) A square shall be placed to the left of each name appearing on the ballot paper.

Method of voting in elections.

100. (1) A person voting at an election (whether the election is held to fill one vacancy or more than one vacancy) shall mark his vote on the ballot paper—

(a) where the method of counting votes applying at the election is the method set out in section 121 (3)—by placing the

number 1 in the square opposite the name of the candidate for whom he votes as his first preference and by continuing, if he so desires, his votes for other candidates by placing consecutive numbers beginning with the number 2 in the squares opposite their names in the order of his preference for them;

or

(b) where the method of counting votes applying at the election is the method set out in section 121 (4)—by placing consecutive numbers beginning with the number 1 in the square opposite the names of the candidates for whom he votes in the order of his preference for them until he has indicated his vote for a number of candidates not less than the number of candidates required to be elected.

(2) A ballot paper shall not be informal by reason of non-compliance with this section if the voter's intention is clearly indicated on the ballot paper.

101. (1) Each candidate may appoint one or more scrutineers.

Appointment of scrutineers.

(2) Where a candidate appoints more than one scrutineer—

(a) not more than one of them may be present in any one polling place at the same time during the poll;

and

(b) not more than two of them may be present in the place for the counting of votes at the same time during the counting of votes.

(3) An appointment under this section is ineffective unless the candidate has given notice in writing, or by telegram, to the returning officer or a presiding officer of the appointment.

DIVISION VI—SPECIAL PROVISIONS RELATING TO POLLS

102. The returning officer of a council shall, at the direction of the council, conduct a poll on any matter within the ambit of the council's responsibilities.

Subject matter of polls.

103. A ballot paper for a poll must contain—

Ballot papers for polls.

(a) a statement (determined by resolution of the council) of the proposition to be submitted to the electors;

and

(b) two squares, one being clearly differentiated as the square to be marked by voters desiring to vote in favour of the proposition and the other being clearly differentiated as the square to be marked by voters who are not in favour of the proposition.

104. (1) A person voting at a poll shall vote by placing an X on the ballot paper in a square indicating either that he is in favour or not in favour of the proposition submitted to the electors at the poll.

Method of voting at polls.

(2) A ballot paper shall not be informal by reason of non-compliance with this section if the voter's intention is clearly indicated on the ballot paper.

Scrutineers for
polls.

105. The council may appoint suitable persons to act as scrutineers at a poll.

DIVISION VII—VOTING IN ADVANCE

Issue of advance
voting papers.

106. (1) Where a person desires to vote at an election or poll but believes that he will, for any reason, be unable to attend at a polling place, he may apply to the returning officer for advance voting papers.

(2) The application must be made by the applicant—

(a) personally to the returning officer not later than 5 p.m. on the day before the day appointed for the election or poll;

or

(b) by writing addressed to the returning officer and delivered to the principal office of the council not later than 5 p.m. on the day before the day appointed for the election or poll.

(3) Advance voting papers consist of—

(a) a ballot paper;

and

(b) an opaque envelope on the outside of which are printed—

(i) two declarations—

(A) one being a declaration in the prescribed form to be subscribed by the voter to the effect that the ballot paper contained in the envelope contains his vote;

and

(B) the other being a declaration in the prescribed form to be subscribed by a witness of or above the age of majority to the effect that he has no reason to believe that the vote has been influenced by fraud or undue influence;

or

(ii) three declarations—

(A) one being a declaration in the prescribed form to be subscribed by the voter in which the voter sets out grounds on which he claims to be entitled to vote;

and

(B) the other two being the declarations referred to in subparagraph (i).

(4) Where application for advance voting papers is made to the returning officer not later than 5 p.m. on the day before the day appointed for the election or poll, advance voting papers shall be initialled by the returning officer and—

(a) where the applicant made personal application, shall be delivered to the applicant personally by the returning officer;

or

(b) in any other case, shall be delivered by post addressed to the applicant at his place of residence.

(5) Advance voting papers issued pursuant to subsection (5) shall—

(a) in the case of an applicant whose name appears in the voters roll—include an envelope of the kind referred to in subsection (3) (b) (i);

or

(b) in the case of an applicant whose name does not appear in the voters roll—include an envelope of the kind referred to in subsection (3) (b) (ii).

(6) The returning officer shall keep a record of the persons to whom advance voting papers have been issued distinguishing between those persons who have been issued with envelopes of the kind referred to in subsection (3) (b) (i) and those persons who have been issued with envelopes of the kind referred to in subsection (3) (b) (ii).

(7) The record kept by the returning officer pursuant to subsection (6) shall not be available for public inspection.

(8) Where the returning officer issues advance voting papers to a person whose name appears in the voters roll, he shall, for the purposes of the election, rule a line through the person's name on the roll.

107. (1) Where a person to whom advance voting papers have been issued desires to vote in advance, the following procedure shall be followed:

Procedure to be followed for advance voting.

(a) he shall mark his vote in the manner prescribed by this Act on the ballot paper supplied;

(b) he shall fold the ballot paper so that the vote cannot be seen and, in the presence of a witness of or above the age of majority, insert the folded ballot paper into the envelope and seal the envelope;

(c) he and the witness shall sign the respective declarations on the envelope;

(d) the sealed envelope shall then be delivered to an electoral officer not later than the close of voting.

(2) Each envelope bearing declarations apparently completed in accordance with this section that is received by an electoral officer before the close of voting shall be forthwith deposited unopened in a locked and sealed ballot box.

A voter may be assisted in certain circumstances.

108. Where a person desiring to vote is illiterate or physically unable to carry out a procedure set forth in this Division, then a person of his choice (being of or above the age of majority but not being the witness who subscribes the declaration) may, in accordance with his directions, assist him in carrying out the procedure, or carry it out on his behalf.

Issue of fresh voting papers where those previously issued are inadvertently spoiled.

109. Where advance voting papers have been inadvertently spoiled and are returned to the returning officer by the person to whom they were issued, the returning officer may issue fresh advance voting papers to the person and, upon doing so, shall forthwith cancel the spoiled papers.

Person to whom advance voting papers have been issued not to vote at polling place except on certain conditions.

110. A person to whom advance voting papers have been issued shall not be entitled to vote at a polling place unless he has delivered to the presiding officer the advance voting papers for cancellation.

Advance voting papers to be available twenty-one days before an election or poll.

111. Advance voting papers must be available for use under this Division from not later than twenty-one days before the day on which an election or poll is to be held.

DIVISION VIII—VOTING AT POLLING PLACES

Hours of voting.

112. On the day appointed for an election or poll, voting shall commence at 8 a.m. and close at 6 p.m. but, if a person who is entitled to vote but has not voted is present in a polling place at 6 p.m., he shall be allowed a reasonable opportunity to vote.

Inspection of ballot boxes.

113. Before any vote is taken at an election or poll, the presiding officer shall inspect the ballot boxes to ascertain that they are empty, exhibit them empty to any scrutineers or electors who may be present and then lock and seal them.

Procedure to be followed in relation to voting.

114. (1) Subject to this Part, a person desiring to vote at an election or poll shall follow the following procedure in relation to voting at a polling place:

- (a) the person shall present himself to an electoral officer and state his full name, his place of residence and, where applicable, the address of the ratable property within the area by virtue of which he is entitled to be enrolled on the voters roll;
- (b) the electoral officer shall ask the person whether he has already voted at the election or poll; -
- (c) if the person is an elector and the question referred to in paragraph (b) is answered in the negative, a line shall be ruled through the person's name on the voters roll and a ballot paper shall then be initialled by the electoral officer and handed to the person;
- (d) the person shall then retire to a voting compartment, mark the ballot paper with his vote, fold it so as to conceal the vote and deposit it in a ballot box provided for the purpose of the election or poll.

(2) Subsection (1) shall not operate so as to prevent a person from voting at the election or poll in different capacities at different times.

115. (1) Where a person who desires to vote at an election or poll and is present at a polling place for that purpose claims that his name has been omitted in error during the compilation of the voters roll under this Part, he shall be entitled to vote subject to the following provisions:

Declaration voting at an election or poll.

- (a) the person shall before the presiding officer sign a declaration in the prescribed form setting out the grounds on which he claims to be entitled to vote (being a declaration printed on the outside of an opaque envelope);
- (b) he shall then mark his ballot paper with his vote, fold it so as to conceal his vote and return it so folded to the presiding officer;
- (c) the presiding officer shall then, in the presence of the voter, and without unfolding the ballot paper, insert it in the envelope, seal the envelope and deposit it forthwith in a ballot box provided for the purpose of the election or poll.

(2) The presiding officer at a polling place shall keep a record of declaration votes made under this section at the polling place.

116. A person who desires to vote but is illiterate or physically unable to vote without assistance shall, upon request being made to the presiding officer at a polling place, be permitted to be accompanied by an assistant of his choice (being a person of or above the age of majority) who may render him such assistance as may be necessary in the circumstances or may vote on his behalf in accordance with his directions.

Voter may be assisted in certain circumstances.

117. Where a ballot paper has been inadvertently spoiled and is returned to the presiding officer by the person to whom it was issued, the presiding officer may issue a fresh ballot paper to the person and, upon doing so, shall forthwith cancel the spoiled ballot paper.

Issue of fresh ballot paper where inadvertently spoiled.

118. (1) No person shall be present in a polling place unless—

- (a) he is an electoral officer whose duties require him to be present;
 - (b) he is a scrutineer appointed under this Part;
 - (c) he is engaged in voting or about to vote;
 - (d) he is a person chosen by another person to assist that other person in voting;
- or
- (e) he is a person permitted by the presiding officer to be present at the polling place.

Persons who may be present at polling place.

Penalty: Five hundred dollars.

(2) A scrutineer shall not, without reasonable excuse, communicate with a person who is in a polling place for the purpose of voting.

Penalty: Five hundred dollars.

119. (1) A presiding officer—

Powers of presiding officer to keep order.

(a) may cause to be removed from a polling place or the vicinity of a polling place any person who obstructs persons desiring to vote, who attempts to influence a person in the casting of his vote or who behaves in a disorderly manner;

and

(b) may cause to be arrested and brought before a justice any person who is reasonably suspected of having committed, or attempted to commit, an offence against this Part.

(2) A member of the police force shall, at the request of a presiding officer, come to the assistance of the presiding officer and may exercise the powers of removal or arrest contemplated by this section.

Adjournment of election or poll.

120. (1) If for any reason it becomes impracticable to proceed with the conduct of an election or poll on the day appointed under this Part, the returning officer may adjourn the election or poll for a period not exceeding twenty-one days.

(2) Subject to subsection (3), any votes cast prior to the adjournment shall be disregarded and the taking of votes shall be recommenced.

(3) The returning officer may, in his discretion, retain for the purposes of the election or poll advance voting papers received prior to the adjournment.

DIVISION IX—COUNTING OF VOTES

Procedure to be followed at close of voting at elections.

121. (1) At the close of voting at an election, every presiding officer shall, in the presence of any other electoral officers and any scrutineers who may be present—

- (a) mark and certify a return to the returning officer showing—
- (i) the number of ballot papers entrusted to him;
 - (ii) the number of declaration votes made at the polling place;
 - (iii) the number of ballot papers issued but returned unused;
 - (iv) the number of ballot papers issued but returned spoiled;
 - (v) the number of ballot papers not issued;

and

(b) transmit to the returning officer all ballot boxes used at the polling place, all ballot papers in his possession that are not deposited in ballot boxes and the return referred to in paragraph (a).

(2) The returning officer shall, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

- (a) open all the ballot boxes used in the election, remove the contents and exhibit the ballot boxes empty;

- (b) separate the envelopes used for declaration votes from the ballot papers not contained in such envelopes;
- (c) examine all the ballot papers not contained in such envelopes and reject any informal ballot papers;
- (d) examine the declarations on all the envelopes used for declaration votes and determine which votes are to be admitted to the count and which rejected from the count, rejecting from the count the vote of any person whose name does not appear on the voters roll in the capacity in which he claims to be entitled to vote unless the person's name was omitted from the roll in error;
- (e) remove the ballot papers from all the envelopes which are by the determination under paragraph (d) to be admitted to the count;
- (f) examine all the ballot papers removed from such envelopes and reject any informal ballot papers;
- (g) arrange all the unrejected ballot papers under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate.

(3) Where the council has so determined under section 122, the returning officer shall, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present, conduct the counting of the votes according to the following method:

- (a) the returning officer shall exclude from the count the candidate who has the fewest ballot papers in his parcel and place each ballot paper that was in his parcel in the parcel of the candidate next in order of the voter's preference, or, if the voter has not indicated a preference for another candidate, set the ballot paper aside as finally dealt with;
- (b) if the number of candidates not excluded from the count equals the number of candidates required to be elected at the election, the returning officer shall make a provisional declaration that the continuing candidate or candidates have been elected;
- (c) if the number of continuing candidates does not equal the number of candidates required to be elected at the election, the candidate who then has the fewest ballot papers in his parcel shall be excluded from the count and each ballot paper that was in his parcel shall be placed in the parcel of the continuing candidate next in order of the voter's preference or, if the voter has not indicated a preference for a continuing candidate, the ballot paper shall be set aside as finally dealt with;
- (d) if the number of continuing candidates then equals the number of candidates required to be elected at the election, the returning officer shall make a provisional declaration that the continuing candidate or candidates have been elected but, in any other case, the process referred

to in paragraph (c) shall be repeated until the number of continuing candidates equals the number of candidates required to be elected at the election and, in that event, the returning officer shall make the provisional declaration that the continuing candidate or candidates have been elected;

- (e) if during the process of counting two or more candidates have an equal number of ballot papers in their parcels and one of them has to be excluded from the count, the returning officer shall, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be excluded.

(4) Where the council has so determined under section 122, the returning officer shall, with the assistance of any other electoral officers who may be present and in the presence of any scrutineers who may be present, conduct the counting of the votes according to the following method:

- (a) the number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by one more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by one and, where any candidate has received a number of first preference votes equal to or greater than the quota, the returning officer shall make a provisional declaration that the candidate has been elected;

- (b) notwithstanding the provisions of paragraph (a) or any other paragraph of this subsection, where the total number of all first preference votes does not exceed—

(i) one hundred and fifty;

or

- (ii) where a different number is prescribed for the purposes of this paragraph—that number,

the number of votes of any kind contained in the ballot papers shall, for the purposes of any counting or calculation under paragraph (a) or any other paragraph of this subsection, be taken to be the number obtained by multiplying the number of votes of that kind contained in the ballot papers by one hundred;

- (c) unless all the vacancies have been filled, the surplus votes of each elected candidate shall be transferred to the continuing candidates as follows:

- (i) the number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by him and the resulting fraction shall be the transfer value;

- (ii) the total number of the first preference votes for the elected candidate that are contained in ballot papers that express the next available preference

for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot papers shall be transferred to the continuing candidate,

and, where any continuing candidate has received a number of votes equal to or greater than the quota on the completion of any such transfer, the returning officer shall make a provisional declaration that the candidate has been elected;

- (d) unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under paragraph (c), or elected subsequently under this paragraph, shall be transferred to the continuing candidates in accordance with paragraph (c) (i) and (ii) and, where any continuing candidate has received a number of votes equal to or greater than the quota on the completion of any such transfer, the returning officer shall make a provisional declaration that the candidate has been elected;
- (e) where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under paragraph (c) or (d) of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate;
- (f) for the purposes of the application of paragraph (c) (i) and (ii) in relation to a transfer under paragraph (d) or (h) of the surplus votes of an elected candidate, each ballot paper of the elected candidate that was obtained by him on a transfer under this subsection shall be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously elected or excluded had not been on the ballot paper and as if the numbers indicating subsequent preferences had been altered accordingly;
- (g) where, after the counting of first preference votes or the election of a candidate and the transfer of the surplus votes (if any) of the elected candidate that are capable of being transferred, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes shall be excluded and all his votes shall be transferred to the continuing candidates as follows:
- (i) the total number of the first preference votes for the excluded candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate shall be transferred, each first preference vote at a transfer value of one, to the continuing candidate and added to the number of votes of

the continuing candidate and all those ballot papers shall be transferred to the continuing candidate;

(ii) the total number (if any) of other votes obtained by the excluded candidate on transfers under this subsection shall be transferred from the excluded candidate in the order of the transfers on which he obtained them, the votes obtained on the earliest transfer being transferred first, as follows:

(A) the total number of votes transferred to the excluded candidate from a particular candidate that are contained in ballot papers that express the next available preference for a particular continuing candidate shall be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;

(B) the number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;

(C) all those ballot papers shall be transferred to the continuing candidate;

(h) where any continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under paragraph (g) or (i) of votes of an excluded candidate, the returning officer shall make a provisional declaration that the candidate has been elected and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with paragraph (c) (i) and (ii), except that, where the candidate so elected is elected before all the votes of the excluded candidate have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until the remaining votes of the excluded candidate have been transferred in accordance with paragraph (g) (i) and (ii) to continuing candidates;

(i) subject to paragraph (k), where, after the exclusion of a candidate and the transfer of the votes (if any) of the excluded candidate that are capable of being transferred, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who has the fewest votes shall be excluded and his votes shall be transferred in accordance with paragraph (g) (i) and (ii);

(j) where a candidate is elected as a result of a transfer of the first preference votes of an excluded candidate or a transfer of all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate, no other votes of the excluded candidate shall be transferred to the candidate so elected;

- (k) in respect of the last vacancy for which two continuing candidates remain, the returning officer shall make a provisional declaration that the continuing candidate who has the larger number of votes has been elected notwithstanding that that number is below the quota and, if those candidates have an equal number of votes, the returning officer shall, in the presence of any scrutineers who may be present, draw lots to determine which of the candidates is to be elected;
- (l) notwithstanding any other provision of this subsection, where, on the completion of a transfer of votes under this subsection, the number of continuing candidates is equal to the number of remaining unfilled vacancies, the returning officer shall make a provisional declaration that those candidates have been elected;
- (m) for the purposes of this subsection—
- (i) the order of election of candidates shall be taken to be in accordance with the order of the count or transfer as a result of which they were elected, the candidates (if any) elected on the count of first preference votes being taken to be the earliest elected;
- and
- (ii) where two or more candidates are elected as a result of the same count or transfer, the order in which they shall be taken to have been elected shall be in accordance with the relative numbers of their votes, the candidate with the largest number of votes being taken to be the earliest elected but, if any two or more of those candidates each have the same number of votes, the order in which they shall be taken to have been elected shall be taken to be in accordance with the relative numbers of their votes at the last count or transfer before their election at which each of them had a different number of votes, the candidate with the largest number of votes at that count or transfer being taken to be the earliest elected and, if there has been no such count or transfer, the returning officer shall, in the presence of any scrutineers who may be present, draw lots to determine the order in which they shall be taken to have been elected;
- (n) subject to paragraphs (o) and (p), where, after any count or transfer under this subsection, two or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first;
- (o) subject to paragraph (p), where, after any count or transfer under this subsection, two or more candidates have

equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first but, if there has been no such count or transfer, the returning officer shall, in the presence of any scrutineers who may be present, draw lots to determine the order in which the surpluses shall be dealt with;

- (p) where, after any count or transfer under this subsection, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer;
- (q) where the candidate who has the fewest votes is required to be excluded and two or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes shall be excluded but, if there has been no such count or transfer, the returning officer shall, in the presence of any scrutineers who may be present, draw lots to determine which candidate shall be excluded;
- (r) where a candidate is elected by reason that the number of first preference votes received by him, or the aggregate of first preference votes received by him and all other votes obtained by him on transfers under this subsection, is equal to the quota, all the ballot papers expressing those votes shall be set aside as finally dealt with;
- (s) a ballot paper shall be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate;
- (t) for the purposes of this subsection, a transfer under paragraph (c), (d) or (h) of the surplus votes of any elected candidate, a transfer in accordance with paragraph (g) (i) of all first preference votes of an excluded candidate or a transfer in accordance with paragraph (g) (ii) of all the votes of an excluded candidate that were transferred to him from a particular candidate shall each be regarded as constituting a separate transfer.

(5) In subsection (3) or (4)—

“continuing candidate” means a candidate not already elected or excluded from the count:

“election” of a candidate means the making by the returning officer of a provisional declaration that the candidate has been elected, and “elected” has a corresponding meaning:

“surplus votes” of an elected candidate means the excess (if any) over the quota of the elected candidate’s votes.

(6) In subsection (4), a reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer under that subsection.

(7) At any time within seventy-two hours after the returning officer has made a provisional declaration under subsection (3) or (4), a candidate (not being a candidate in whose favour the provisional declaration was made) may, by notice in writing lodged with the returning officer, request a recount of the votes cast in relation to the relevant vacancy or vacancies and, in the event of such a request being made, the returning officer shall cause a recount of votes to be made in accordance with the request.

(8) The returning officer may, of his own motion, during the period of seventy-two hours referred to in subsection (7) cause a recount to be made of the votes cast in relation to any vacancy or vacancies.

(9) If the period for requesting a recount expires without such a request having been made and the returning officer has not caused a recount to be made pursuant to subsection (8), the returning officer shall confirm his provisional declaration, and forthwith make out a return to the chief executive officer certifying the election of specified candidates to specified vacancies.

(10) Where a recount is made, the returning officer shall, according to the result of the recount—

(a) confirm his provisional declaration;

or

(b) revoke his provisional declaration and make a final declaration in accordance with the result of the recount,

and then forthwith make out a return to the chief executive officer certifying the result of the election accordingly.

(11) The returning officer—

(a) shall notify all candidates, in writing, of the result of the election;

and

(b) shall within one month after the conclusion of the election cause public notice to be given of the result of the election.

(12) Where the returning officer certifies the result of an election under subsection (9) or (10)—

(a) in the case of a supplementary election—the election of the candidate or candidates shall take effect forthwith;

(b) in the case of a periodical election—the election of the candidate or candidates shall take effect at the conclusion of the periodical elections for the council.

122. (1) Subject to this section, a council may determine that the method of counting votes to apply at elections for the council shall be—

Council may determine method of counting at elections.

(a) the method set out in section 121 (3) rather than the method set out in section 121 (4);

or

(b) the method set out in section 121 (4) rather than the method set out in section 121 (3).

(2) A council may not determine that the method of voting set out in section 121 (4) shall apply at elections for the council if the area of the council is divided into wards.

(3) The following provisions shall apply in relation to a determination under subsection (1):

(a) the determination may be made only within the period of two months following the commencement of this section or following the conclusion of any periodical elections for the council;

(b) the council must forthwith, upon the making of the determination, cause notice in the prescribed form to be given to the Minister and to be published in the *Gazette*;

(c) the determination shall have effect to determine the method of counting to apply at subsequent periodical elections and at supplementary elections occurring after the periodical elections next following the making of the determination;

(d) the method of counting votes at elections for the council applying at the time of the making of the determination shall continue to apply until the determination comes into effect.

(4) Where no determination by a council has come into effect under this section, the method of counting votes at elections for the council shall be the method set out in section 121 (3).

Procedure to be followed at close of voting at polls.

123. (1) At the close of voting at a poll every presiding officer shall, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

(a) open all the ballot boxes used at the polling place, remove the contents and exhibit the ballot boxes empty;

(b) separate the envelopes used for declaration votes from the ballot papers not contained in such envelopes;

(c) parcel up all the envelopes used for declaration votes and transmit the parcel to the returning officer;

(d) examine all the ballot papers not contained in such envelopes and reject any informal ballot papers;

(e) count the votes recorded on the ballot papers (other than those rejected as informal);

(f) mark and certify a return to the returning officer showing—

(i) the number of votes counted for, and the number of votes counted against, the proposition submitted to the electors at the poll;

(ii) the number of ballot papers entrusted to him;

- (iii) the number of ballot papers deposited in ballot boxes (excluding those related to declaration votes);
- (iv) the number of ballot papers rejected as informal;
- (v) the number of declaration votes made at the polling place;
- (vi) the number of ballot papers issued but returned unused;
- (vii) the number of ballot papers issued but returned spoiled;
- (viii) the number of ballot papers not issued;
- (ix) the number of ballot papers not accounted for;

and

(g) transmit to the returning officer all ballot papers in his possession and the return referred to in paragraph (f).

(2) The presiding officer shall comply with any directions of the returning officer as to procedures to be observed when acting under subsection (1).

(3) At the close of voting at the poll, the returning officer shall, with the assistance of any other electoral officers who may be present, and in the presence of any scrutineers who may be present—

- (a) open all the ballot boxes and parcels containing declaration votes, remove the contents and, in the case of the ballot boxes, exhibit them empty;
- (b) examine the declarations and determine which votes are to be admitted to the count and which rejected from the count;
- (c) remove the ballot papers from envelopes which are by the determination under paragraph (b) to be admitted to the count, examine the ballot papers, reject any informal ballot papers and count the votes recorded on the ballot papers (other than those rejected as informal).

(4) The vote of a person whose name does not appear on the voters roll in the capacity in which he claims to be entitled to vote shall not be admitted to the count unless his name was omitted in error from the voters roll.

(5) When the result of the poll becomes apparent, the returning officer shall make a provisional declaration of whether or not the proposition submitted to the electors has been carried at the poll.

(6) At any time within seventy-two hours after the returning officer has made a provisional declaration under subsection (5), a scrutineer may, by notice in writing lodged with the returning officer, request a recount of the votes cast at the poll and, in the event of such a request being made, the returning officer shall cause a recount of votes to be made in accordance with the request.

(7) The returning officer may, of his own motion, during the period of seventy-two hours referred to in subsection (6), cause a recount to be made of the votes cast at the poll.

(8) If the period for requesting a recount expires without such a request having been made and the returning officer has not caused a recount to be made pursuant to subsection (7), the returning officer shall confirm his provisional declaration, and make out a return to the council certifying the result of the poll.

(9) Where a recount is made, the returning officer shall, according to the result of the recount—

(a) confirm his provisional declaration;

or

(b) revoke his provisional declaration and make a final declaration in accordance with the result of the recount,

and make out a return to the council certifying the result of the poll accordingly.

(10) The returning officer shall within one month after the conclusion of the poll cause public notice to be given of the result of the poll.

Retention of
voting material
relating to an
election or poll.

124. A returning officer shall retain all voting material relating to an election or poll for not less than six months after the date of an election or poll.

DIVISION X—ILLEGAL PRACTICES

Violence,
intimidation,
bribery, etc.

125. (1) A person who exercises violence or intimidation, or offers or gives a bribe, with a view to—

(a) inducing a person to submit or withdraw candidature for election;

(b) influencing the vote of any person at an election or poll;

(c) otherwise interfering with the due course of an election or poll,

shall be guilty of an indictable offence.

Penalty: Ten thousand dollars or imprisonment for five years.

(2) A person who receives a bribe offered in contravention of subsection (1) shall be guilty of an indictable offence and liable to a penalty not exceeding ten thousand dollars or imprisonment for five years.

(3) In this section—

“bribe” includes any pecuniary sum or material advantage including food, drink or entertainment.

Dishonest
artifices.

126. (1) A person who dishonestly exercises, or attempts to exercise, a vote at an election or poll to which he is not entitled shall be guilty of an indictable offence and liable to a penalty not exceeding five thousand dollars or imprisonment for two years.

(2) A person who dishonestly influences or attempts to influence the result of an election or poll shall be guilty of an indictable offence and liable to a penalty not exceeding five thousand dollars or imprisonment for two years.

127. A person who exercises undue influence with a view to influencing the vote of any person at an election or poll shall be guilty of an indictable offence and liable to a penalty not exceeding two thousand dollars or imprisonment for one year.

Undue influence.

128. No declaration of public policy or promise of public action shall be regarded as bribery or undue influence.

Exception.

129. While voting is in progress at a polling place, a person shall not, within six metres of the entrance to the polling place, solicit the vote of any person or distribute or display electoral material.

Certain activity not to be carried on in close vicinity to polling place.

Penalty: Two hundred dollars.

130. While voting is in progress at a polling place—

(a) no person other than an electoral officer shall have a voters roll in his possession at the polling place or make a record of persons voting at the polling place;

Offences as to information about persons voting or not voting on polling day.

and

(b) no electoral officer shall disclose to any other person not being an electoral officer any information as to the persons who have or have not voted at the polling place.

Penalty: One thousand dollars.

131. A scrutineer shall not interfere with or attempt to influence any person voting or proposing to vote at an election.

Scrutineer not to interfere with voters, etc.

Penalty: One thousand dollars or imprisonment for three months.

132. (1) No person who is a candidate for election or acting on behalf of such a candidate (whether with or without his authority) shall act as a witness or as an assistant to a person voting at the election.

Persons acting on behalf of candidates not to act as witnesses, etc.

Penalty: One thousand dollars or imprisonment for three months.

(2) Without limiting the generality of subsection (1), a person acts as an assistant to a person for the purposes of that subsection if he assists him in obtaining, completing, or returning advance voting papers.

133. (1) A person shall not publish electoral material or cause electoral material to be published unless the material contains—

(a) the name and address of the person who authorizes publication of the material;

Publication of electoral material to contain statement of authority, etc., under which it is published.

and

(b) in the case of printed electoral material—the name and address of the printer.

Penalty: Two thousand dollars.

(2) Where electoral material is published in a newspaper that has been published at intervals of one month or less over a period of at least six months immediately preceding the publication of the electoral material, the name and address of the printer need not be contained in the electoral material.

DIVISION XI—DISPUTED RETURNS

Constitution of
the Court.

134. (1) There shall be, for the purposes of this Act, a Court of Disputed Returns.

(2) The Court shall be constituted of a District Court Judge.

(3) The Court, separately constituted under this section, may sit contemporaneously to hear separate proceedings.

(4) The Court shall be a court of record.

(5) Subject to this Part, the procedure and powers of the Court shall be the same as those of a District Court when exercising its civil jurisdiction.

The clerk of the
Court.

135. (1) There shall be a clerk of the Court.

(2) The clerk shall be appointed, and shall hold office, subject to and in accordance with the Public Service Act, 1967.

(3) The office of clerk of the Court may be held in conjunction with any other office in the Public Service of the State.

Jurisdiction of the
Court.

136. The Court shall have jurisdiction to hear and determine any petition addressed to it disputing the validity of an election under this Part.

Procedure upon
petition.

137. (1) A petition to the Court must—

(a) set out the facts relied upon to invalidate the election;

(b) set out the relief to which the petitioner claims to be entitled;

(c) be signed by a candidate at the election in dispute or by an elector for that election;

(d) be attested by two witnesses whose occupations and addresses are stated;

(e) be lodged with the clerk of the Court within twenty-eight days after the conclusion of the election;

(f) be accompanied by the prescribed amount as security for costs.

(2) A copy of the petition must be served upon any person declared elected in the disputed election.

(3) If a person served under subsection (2) proposes to contest the petition, he shall, within seven days after service, or such further time as may be allowed by the Court (upon application made either before or after the expiration of the period of seven days), lodge with the clerk of the Court, and serve on the petitioner, a reply.

(4) A reply must—

(a) set out the facts upon which the replicant proposes to rely;

(b) ask for any relief to which the replicant claims to be entitled;

(c) be signed by the replicant;

and

(d) be attested by two witnesses whose occupations and addresses are stated.

138. (1) The Court shall sit as an open court, and its powers shall include the following: Powers of Court.

- (a) to adjourn;
- (b) to compel the attendance of witnesses and the production of documents;
- (c) to examine witnesses upon oath, affirmation or declaration;
- (d) with the consent of the parties to the proceedings, to receive evidence on affidavit or by statutory declaration;
- (e) subject to this Part and the rules, to determine its procedure in each case;
- (f) to declare—
 - (i) that a person who was returned as elected was not duly elected;
 - and
 - (ii) that a candidate who was not returned as elected was duly elected;
- (g) to declare an election void;
- (h) to dismiss or uphold a petition, in whole or in part;
- (i) to amend or allow the amendment of a petition or reply;
- (j) to punish contempt of its authority by fine or imprisonment.

(2) The Court may exercise all or any of its powers under this section on such grounds as the Court in its discretion thinks just and sufficient.

(3) The Court is not bound by the rules of evidence.

(4) The Court shall act according to good conscience and the substantial merits of the case without regard to legal technicalities.

(5) A decision of the Court shall be final and without appeal.

139. The entitlement to vote of any person whose name appears on the voters roll as an elector shall not be called in question by the Court. Certain matters not to be called in question.

140. (1) The Court shall not declare an election void, or that a candidate returned as elected was not duly elected, on the ground of an illegal practice found by the Court to have been committed unless the Court is satisfied, on the balance of probabilities, that the result of the election was affected by the illegal practice. Illegal practices.

(2) Where an illegal practice under section 125, 126 or 127 is found by the Court to have been committed, the illegal practice shall be deemed to have affected the result of the election unless the contrary is proved on the balance of probabilities.

(3) No finding by the Court as to whether an illegal practice was committed shall constitute a bar to criminal proceedings in relation

to the illegal practice or be admitted as evidence in any such proceedings.

(4) Where the Court finds that an illegal practice occurred in relation to an election or poll, the clerk of the Court shall report the finding to the Minister.

Effect of decision.

141. (1) Where pursuant to this Division a person returned is declared not to have been duly elected, he shall cease to be a member of the council, and the person declared to have been duly elected shall take his place accordingly.

(2) Where pursuant to this Division an election is declared void, a person returned as elected at the election shall cease to be a member of the council.

Right of appearance.

142. A party to proceedings before the Court may appear personally or be represented by counsel.

Case stated.

143. The Court may, of its own motion or on the application of a party to proceedings, state a question of law for the opinion of the Full Court of the Supreme Court.

Costs.

144. (1) The Court may make such orders for costs as it thinks just.

(2) An order under subsection (1) may be enforced as an order of the District Court.

Rules of the Court.

145. The Senior District Court Judge may make rules—

- (a) regulating the practices and procedures of the Court;
 - (b) fixing fees to be paid in respect of proceedings before the Court;
- and
- (c) making any other provisions necessary or expedient for the purposes of this Division.

PART VIII

REGISTER OF INTERESTS

Interpretation.

146. In this Part, unless the contrary intention appears—

“family”, in relation to a member of a council, means—

(a) a spouse of the member;

and

(b) a child of the member who is under the age of eighteen years and normally resides with the member.

“financial benefit”, in relation to a member of a council, means—

(a) any remuneration, fee or other pecuniary sum exceeding five hundred dollars received by the member in respect of a contract of service entered into, or paid office held, by the member;

and

(b) the total of all remuneration, fees or other pecuniary sums received by the member in respect of a trade, profession, business or vocation engaged in by the member where that total exceeds five hundred dollars,

but does not include an annual allowance or expenses payable to him under Part IV:

“income source”, in relation to a member of a council, means—

(a) any person or body of persons with whom the member entered into a contract of service or held any paid office:

and

(b) any trade, vocation, business or profession engaged in by the member:

“Register” means the Register of Interests kept by the chief executive officer for the purposes of this Part:

“return period”, in relation to an ordinary return of a member of a council, means—

(a) in the case of a member whose last return was a primary return—the period between the date of the primary return and the thirtieth day of June next following;

and

(b) in the case of any other member—the period of twelve months expiring on the thirtieth day of June on or within sixty days after which the ordinary return is required to be submitted:

147. (1) Every person who is a member of a council on the first day of September, 1984, shall, on or before the thirtieth day of September, 1984, submit to the chief executive officer a primary return.

Lodging of primary returns.

(2) Every person who, after the first day of September, 1984, is elected as a member of a council (other than a person who was a member of that council immediately before the conclusion of that election) or is appointed as a member of a council shall, within thirty days after his election or appointment, submit to the chief executive officer a primary return.

148. Every member of a council shall, on or within sixty days after the thirtieth day of June in 1985 and each succeeding year, submit to the chief executive officer an ordinary return.

Lodging of ordinary returns.

149. (1) For the purposes of this Part, a primary return shall be in the prescribed form and contain the following information:

Content of returns.

(a) a statement of any income source that the member required to submit the return or a member of his family has or expects to have in the period of twelve months after the date of the primary return;

(b) the name of any company or other body, corporate or unincorporate, in which the member or a member of his family holds any office whether as director or otherwise;

and

(c) the information required by subsection (3).

(2) For the purposes of this Part, an ordinary return shall be in the prescribed form and shall contain the following information:

(a) where the member required to submit the return or a member of his family received, or was entitled to receive, a financial benefit during any part of the return period—the income source of the financial benefit;

(b) where the member or a member of his family held an office whether as director or otherwise in any company or other body, corporate or unincorporate, during the return period—the name of the company or other body;

(c) particulars (including the name of the donor) of any gift of or above the amount or value of five hundred dollars received by the member or a member of his family during the return period from a person other than a person related by blood or marriage;

(d) where the member or a member of his family has had the use of any real property during the whole or a substantial part of the return period otherwise than by virtue of an interest disclosed under subsection (3) (c) and the person conferring the right to use the property is not related by blood or marriage—the name and address of that person;

and

(e) the information required by subsection (3).

(3) For the purposes of this Part, a return (whether primary or ordinary) shall contain the following information:

(a) the name or description of any company, partnership, association or other body in which the member required to submit the return or a member of his family holds a beneficial interest;

(b) a concise description of any trust in which the member or a member of his family holds a beneficial interest and a concise description of any discretionary trust of which the member or a member of his family is a trustee or object;

(c) the address or description of any land in which the member or a member of his family has any beneficial interest other than by way of security for any debt;

(d) where the member or a member of his family is indebted to another person (not being related by blood or marriage)

in an amount of or exceeding five thousand dollars—
the name and address of that other person;

and

(e) any other substantial interest whether of a pecuniary nature or not of the member or of a member of his family of which the member is aware and which he considers might appear to raise a material conflict between his private interest and the duties that he has or may subsequently have as a member of a council.

(4) Nothing in this section requires a member of a council to include in an ordinary return any information which has been disclosed in a previous return made by him under this Part.

(5) A member of a council who has submitted a return under this Part may at any time notify the chief executive officer of any change or variation in the information appearing on the Register in respect of himself or a member of his family.

(6) A member of a council may include in a return such additional information as he thinks fit.

(7) Nothing in this section shall be taken to prevent a member of a council from disclosing the information required by this section in such a way that no distinction is made between information relating to himself personally and information relating to members of his family.

(8) Nothing in this section shall be taken to require disclosure of the actual amount or extent of any financial benefit, gift, contribution or interest.

150. (1) Each chief executive officer shall maintain a Register of Interests and shall cause to be entered in the Register all information furnished to him pursuant to this Part.

Register of
Interests.

(2) A chief executive officer shall, at the request of any member of the council, permit him to inspect the Register maintained by him.

(3) Each chief executive officer shall, as soon as practicable after the receipt of primary or ordinary returns from members, prepare a statement constituting a compilation of the information contained in the Register relating to those members.

(4) Each chief executive officer shall cause a copy of a statement prepared by him pursuant to subsection (3) to be laid before the council for which he is chief executive officer within one month of its preparation.

151. (1) A person shall not disclose to any other person any information furnished by a member of a council pursuant to this Part unless the disclosure—

Offences.

(a) is necessary for the purposes of the preparation of the Register and statement under section 150;

or

(b) is made at a meeting of the council or a council committee (not being an advisory committee) at a time at which

an order is in force under section 62 excluding the public from attendance at the meeting.

Penalty: Ten thousand dollars or imprisonment for three months.

(2) Any person who wilfully contravenes, or fails to comply with, any of the provisions of this Part (other than subsection (1)) shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars.

Amendment of s. 168—
Rating of land added to area.

8. Section 168 of the principal Act is amended by striking out the word “annexed” and substituting the word “added”.

Amendment of s. 169—
Assessment of certain land and buildings.

9. Section 169 of the principal Act is amended by striking out from subsection (2) the passage “metropolitan municipality” and substituting the passage “prescribed municipality”.

Amendment of s. 201—
Appointment of assessment revision committee.

10. Section 201 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “annual election” and substituting the passage “periodical elections”;

and

(b) by striking out subsection (5).

Amendment of s. 227—
Right of electors to demand poll.

11. Section 227 of the principal Act is amended by striking out from subsection (4) the passage “Part XLIII” and substituting the passage “Part VII”.

Amendment of s. 281—
Change in boundaries of area.

12. Section 281 of the principal Act is amended by striking out the passage “or constitution”.

Amendment of s. 287a—
Power to contribute to purchase of land by the Housing Trust.

13. Section 287a of the principal Act is amended by striking out from subsection (1) the passage “a metropolitan council” and substituting the passage “a council”.

Amendment of s. 288a—
Additional powers for expenditure of revenue by municipal councils.

14. Section 288a of the principal Act is amended by striking out the passage “, other than a metropolitan municipal council,”.

Amendment of s. 290—
Limitation of expenditure for salaries, printing, etc., by district councils.

15. Section 290 of the principal Act is amended by striking out the word “constables,” and substituting the passage “authorized persons”.

Insertion of new s. 291.

16. The following section is inserted after section 290d of the principal Act:

The auditor.

291. (1) There shall be an auditor for every area.

(2) The council shall from time to time, as occasion requires, appoint a suitable person as auditor for the area.

(3) A person is not eligible for appointment as an auditor for an area unless—

(a) he is the Auditor-General;

or

(b) he holds the certificate of registration issued by the Local Government Qualifications Committee in relation to the office of auditor.

(4) If a council fails to appoint an auditor under this section after being requested to do so by the Minister, the Auditor-General shall be the auditor for the area until the Minister determines otherwise.

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

(6) Notice shall be published in the *Gazette* of the appointment of an auditor.

(7) The office of auditor for an area shall become vacant if—

(a) the auditor dies;

(b) the auditor's certificate of registration is suspended or revoked;

(c) the auditor accepts any other remunerated office or employment from the council;

(d) the auditor is directly or indirectly interested in a contract with the council (other than the contract under which he acts as auditor to the council);

or

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

(8) Where an auditor is a shareholder or director of a company consisting of twenty or more shareholders that has an interest in a contract with the council he shall not, for the purposes of subsection (7) (d), be considered as being interested in a contract with the council.

(9) Where an auditor is removed from office by resolution of a council, the council shall inform the Minister in writing of the removal of the auditor and of the grounds on which he was removed from office.

(10) Where an auditor is removed from office by the council, he shall nevertheless, if the Minister so determines, continue and complete an audit that had been commenced by him prior to the date of his removal from office and in respect of that work shall be entitled to remuneration at rates determined by the Minister on the advice of the Auditor-General from the funds of the council.

17. Section 295 of the principal Act is repealed.

Repeal of s. 295.

18. Section 325 of the principal Act is amended by striking out from subsection (2) the passage “, in any district other than a metropolitan district,”.

Amendment of s. 325—
Power to place barriers across roads, etc., during alteration and repair.

19. Section 377 of the principal Act is amended by striking out subsections (4) and (5).

Amendment of s. 377—
Power of council to make, vary and discharge contracts.

20. Section 449 of the principal Act is amended by striking out paragraphs (a) and (b) of subsection (1) and substituting the passage “one-half of the last year's income of the council”.

Amendment of s. 449—
Overdrafts.

Amendment of
s. 457—
Powers to let
grounds vested in
the council.

21. Section 457 of the principal Act is amended—

(a) by inserting in subsection (4) after the word “electors” the passage “(held in accordance with Division IV of Part V)”;

(b) by striking out from subsection (4) the passage “, and, if a poll is demanded, or if the council resolves that a poll be held, until the poll has resulted in favour of the resolution”;

and

(c) by striking out subsection (5).

Amendment of
s. 459—
Cultivation of
parklands.

22. Section 459 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “(other than a metropolitan council)”;

and

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

(3) A council shall not act under subsection (1) unless at a meeting of electors (held in accordance with Division IV of Part V) a resolution has been passed in favour of the cultivation, or leasing for cultivation purposes, of the parklands by the council.

Repeal of s. 661.

23. Section 661 of the principal Act is repealed.

Amendment of
s. 677—
By-laws.

24. Section 667 of the principal Act is amended—

(a) by striking out paragraph 1 (comprising subparagraphs I and II) of subsection (1);

and

(b) by striking out from subparagraph XVIII of paragraph 8 of subsection (1) the passage “other constables” and substituting the passage “authorized persons”.

Amendment of
s. 681—
Adoption of
by-laws on
amalgamation.

25. Section 681 of the principal Act is amended—

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

(1) Where two or more councils are amalgamated, the council formed by the amalgamation may, subject to the provisions of any proclamation under Division II of Part II, by a majority at any meeting at which two-thirds of the members of the council are present, adopt any by-law previously in force in the areas of the councils that have been amalgamated.;

and

(b) by striking out from subsection (4) the passage “the united area” and substituting the passage “the area formed by the amalgamation”.

Amendment of
s. 691—
Power of
Governor to
make regulations.

26. Section 691 of the principal Act is amended by striking out paragraphs (f) and (g) of subsection (1) and substituting the following paragraph:

(f) regulating the procedure to be observed at meetings of councils.

27. Section 718 of the principal Act is repealed. Repeal of s. 718.
28. Section 724 of the principal Act is repealed. Repeal of s. 724.
29. Section 733 of the principal Act is amended by striking out the numerals "724,". Amendment of s. 733—
Saving of rights to bring evidence.
30. Section 736 of the principal Act is repealed. Repeal of s. 736.
31. Section 737 of the principal Act is repealed. Repeal of s. 737.
32. Section 741 of the principal Act is repealed. Repeal of s. 741.
33. Section 744 of the principal Act is repealed and the following section is substituted: Repeal of s. 744 and substitution of new section.
744. It shall not be necessary in any legal proceedings to prove the existence or constitution of a council, the appointment of any officer of a council or the appointment of an authorized person. Evidence of constitution of council, appointment of officers, etc.
34. Section 745 of the principal Act is amended by striking out the passage "inspector or officer" and substituting the passage "officer or authorized person". Amendment of s. 745—
Evidence of boundaries.
35. Sections 753, 755, 755a and 755b of the principal Act are repealed. Repeal of ss. 753, 755, 755a and 755b.
36. Sections 756 to 766 (inclusive) of the principal Act are repealed. Repeal of ss. 756 to 766.
37. Section 768 of the principal Act is amended by inserting after the word "council" the passage " , at a meeting of a council committee". Amendment of s. 768—
Obstructing meetings.
38. Sections 769 and 770 of the principal Act are repealed. Repeal of ss. 769 and 770.
39. Section 775 of the principal Act is repealed. Repeal of s. 775.
40. Section 776 of the principal Act is repealed. Repeal of s. 776.
41. Parts XLIII and XLIV of the principal Act are repealed. Repeal of Parts XLIII and XLIV.
42. Section 858 of the principal Act is amended by striking out from paragraph IX the passage "and be signed by the Lord Mayor and countersigned by the town clerk,". Amendment of s. 858—
Regulation of borrowing.
43. The following section is inserted after section 879 of the principal Act: Insertion of new s. 879a.
- 879a. Every mayor or chairman for the time being shall, *ex officio*, be a justice from such time as he takes the oath of allegiance and the judicial oath as required by the Justices Act, 1921, and shall continue to be a justice without again taking those oaths for so long as he continues to be re-elected or re-chosen for successive terms of office. Mayors and chairmen to be justices.
44. The second, fifth and sixth schedules to the principal Act are repealed. Repeal of second, fifth and sixth schedules.

Repeal of
eighteenth and
nineteenth
schedules.

45. The eighteenth and nineteenth schedules to the principal Act are repealed.

Repeal of twenty-
third schedule.

46. The twenty-third schedule to the principal Act is repealed.

Amendment of
principal Act.

47. The principal Act is amended by striking out from Parts X to XLVIII (inclusive) and the schedules to the Act—

- (a) the passage “town clerk” wherever it occurs and substituting, in each case, the passage “chief executive officer”;
- (b) the passage “Town (or District) Clerk” wherever it occurs and substituting, in each case, the passage “Chief Executive Officer”;
- (c) the word “clerk” wherever else it occurs (being used in reference to an officer of a council) and substituting, in each case, the passage “chief executive officer”;
- (d) the word “Clerk” wherever else it occurs (being used in reference to an officer of a council) and substituting, in each case, the passage “Chief Executive Officer”;

and

- (e) the word “clerks” wherever it occurs (being used in reference to officers of councils) and substituting, in each case, the passage “chief executive officers”.

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

D. B. DUNSTAN, Governor