

Local Government (Financial) Act 1992

No. 22 of 1992

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Victoria

No. 22 of 1992

Local Government (Financial) Act 1992

[Assented to 16 June 1992]

The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is to amend the **Local Government Act 1989**—

- (a) to provide for new reporting requirements for Councils; and
- (b) to require Councils to prepare corporate plans; and
- (c) to enable Councils to appoint the Council auditor; and
- (d) to provide for the appointment of inspectors of municipal administration by the Minister; and

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- (e) to make provision in relation to other financial matters so as to improve municipal financial management and practices.

2. Commencement

- (1) This Act (other than sections 3, 19 and 20) comes into operation on the day on which it receives the Royal Assent.
- (2) Section 3 comes into operation on a day to be proclaimed.
- (3) Section 19 comes into operation on 1 October 1992.
- (4) Section 20 comes into operation on 1 October 1992.

3. Insurance cover

After section 76 of the Local Government Act 1989 insert—

“76A. Council must take out insurance cover

A Council must take out and maintain insurance against—

- (a) public liability for an amount of at least \$30 million or such higher amount as may be fixed by Order in Council; and
- (b) professional liability for an amount of at least \$5 million or such higher amount as may be fixed by Order in Council.”

4. Appointment of inspectors of municipal administration

- (1) Sections 102 (2) (a) (vii) and 103 (1) (a) (vii) and clause 1 (b) (vi) of Schedule 7 of the Local Government Act 1989 are repealed.
- (2) For section 130 of the Local Government Act 1989 substitute—

“130. *Appointment of inspectors of municipal administration*

- (1) The Minister may appoint any person who in the opinion of the Minister has appropriate skills or expertise to be an inspector of municipal administration.
- (2) An appointment of an inspector of municipal administration may be general or specific and may be made subject to any conditions determined by the Minister.
- (3) A person appointed as an inspector of municipal administration who is not subject to the Public Service Act 1974 is entitled to be paid remuneration of the amount and on the terms and conditions fixed by the Minister.
- (4) A person is not, by reason only of being appointed as an inspector of municipal administration, subject to the Public Service Act 1974.
- (5) An inspector of municipal administration may examine or investigate any matter relating to a Council’s operations.”

5. *Annual Report*

- (1) In section 126 of the Local Government Act 1989—
 - (a) In sub-section (1) (b) after “(b)” insert “audited”;
 - (b) For sub-section (2) substitute—

“(2) The annual report must be submitted to the Minister within 3 months of the end of each financial year or such longer period as the Minister may permit in a particular case.”;
 - (c) For sub-section (4) (b) substitute—

“(b) be submitted in their finalised form to the auditor for auditing as soon as possible after the end of the financial year.”;
 - (d) For sub-section (5) substitute—

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“(5) If a Council fails to submit its annual report within the time allowed under sub-section (2), the Minister must ensure that details of the failure are published in the annual report of the Ministry or Department administering this Act.”.

- (2) Sections 126A and 127 (1) of the **Local Government Act 1989** are repealed.
- (3) Despite the amendments made to the **Local Government Act 1989** by sub-section (1) the following provisions apply for a period of 2 years from the commencement of those amendments—
 - (a) A Council may submit the annual report to the Minister within 5 months of the end of the financial year;
 - (b) A Council may submit the finalised financial statements to the auditor for auditing within 3 months of the end of the financial year.

6. Examining and settling of financial statements

For section 128 of the **Local Government Act 1989** substitute—

“128. Examining and settling of financial statements

- (1) The financial statements must be signed by the prescribed persons before the auditor’s report can be signed.
- (2) As soon as practicable after the financial statements have been audited, the Council must hold a meeting of which at least 14 days public notice has been given to consider the financial statements and the auditor’s report.
- (3) Part 2 of Schedule 8A has effect with respect to the meeting held under this section.”.

7. Appointment of auditors

- (1) For section 129 of the **Local Government Act 1989** substitute—

“129. Appointment of auditors

- (1) A Council must appoint a person or firm to be the auditor for the Council.
- (2) The Council must pay all reasonable fees and expenses of the audit.
- (3) Part 1 of Schedule 8A has effect with respect to auditors and the auditor's report.
- (4) A Council must make its first appointment of an auditor under this section within the period of 3 months after the beginning of the financial year commencing immediately after the commencement of section 7 of the **Local Government (Financial) Act 1992**.

129A. Duties of auditors

- (1) An auditor must—
 - (a) audit the financial statements in accordance with the prescribed standards; and
 - (b) state in his or her report to the ratepayers—
 - (i) whether in his or her opinion the financial statements are properly drawn up so as to present fairly the results of the operations of the Council for the financial year and the financial position of the Council at the end of the financial year in accordance with the provisions of this Act and in accordance with statements of accounting concepts and applicable Australian accounting standards; and

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- (ii) whether or not he or she had obtained all the information and explanations he or she required; and
 - (iii) whether or not proper accounting records and other records, including registers, have been kept by the Council as required by this Act; and
 - (iv) particulars of any material deficiency, failure or shortcoming in respect of the matters specified in subparagraphs (ii) and (iii).
- (2) If in the course of the performance of duties as auditor of a Council, the auditor is satisfied beyond reasonable doubt that—
- (a) there has been a contravention of the Act; and
 - (b) the circumstances are such that the matter has not been and will not be adequately dealt with by comment in the auditor's report or by bringing it to the notice of the Council—

the auditor must report the matter to the Minister by notice in writing.

129B. *Qualified privilege*

- (1) An auditor is not, in the absence of malice on his or her part, liable to any action for defamation at the suit of any person in respect of any oral or written statement which he or she makes in the course of duties as auditor.
- (2) A person is not in the absence of malice on his or her part liable to any action for defamation at the suit of any person in respect of the publishing of any document prepared by an auditor in the course of duties as auditor under this Act.
- (3) This section does not limit or affect any other right, privilege or immunity that an auditor or

other person has as defendant in an action for defamation.”.

(2) In the Local Government Act 1989—

- (a) Sections 102 (2) (a) (vi) and 103 (1) (a) (vi) and clause 1 (1) (b) (v) of Schedule 7 are repealed;
- (b) In section 127 for “municipal auditor” (wherever occurring) substitute “auditor”.

8. *Repeal of requirement to keep separate funds*

In the Local Government Act 1989—

- (a) Section 135 is repealed;
- (b) In section 136 omit “in the municipal fund”;
- (c) Section 138 (2) is repealed;
- (d) Section 141 (3) is repealed;

9. *Investments*

In section 138 (1) of the Local Government Act 1989 for paragraph (c) substitute—

- “(c) with a bank; or
- (ca) with any financial institution guaranteed by the Government of Victoria;”.

10. *Re-financing of overdrafts by borrowings*

In section 140 (3) of the Local Government Act 1989 after “143 (3)” insert “unless the approval of the Minister has been obtained and any conditions imposed by the Minister are complied with”.

11. *Security for borrowings*

- (1) In section 141 (1) of the Local Government Act 1989 after “secured” insert “by entering into a security”.
- (2) In section 143 (1) of the Local Government Act 1989 for “on” substitute “by entering into a security over”.

12. Budget and revised budget

- (1) For sections 144 to 148 of the Local Government Act 1989 substitute—

“144. Preparation of budget and revised budget

- (1) A Council must prepare a budget for each financial year commencing 1 October.
- (2) Subject to any prescribed conditions, a Council may prepare a revised budget.
- (3) A budget or revised budget must contain the prescribed particulars.

145. Budget or revised budget must include proposed borrowings

- (1) A Council cannot borrow money under section 139 (3) or 139 (4) unless the proposed borrowings were included in a budget or revised budget.
- (2) If the proposed borrowings are to re-finance existing loans, the Council does not have to include the proposed borrowings in a budget or revised budget.

146. Public notice

- (1) As soon as practicable after a Council has prepared a budget or revised budget, the Council must give public notice.
- (2) A public notice must—
 - (a) contain the prescribed particulars; and
 - (b) advise that copies of the budget or revised budget are available for inspection at the Council office for at least 5 days after the publication of the public notice on which the Council office is open; and
 - (c) be displayed at prescribed places within the municipal district.

- (3) A person may make a written submission within the period specified in sub-section (2) (b) to the Council on any proposal contained in a budget or revised budget.”
- (2) Section 149 of the Local Government Act 1989 is repealed.
- (3) For sections 150 and 151 of the Local Government Act 1989 substitute—

“150. *Adoption of budget or revised budget*

- (1) After a Council has complied with the procedure in this Act, the Council may adopt the budget or revised budget.
- (2) The Council must give public notice of its decision under sub-section (1).
- (3) The Council must adopt the budget by 30 November each year.

151. *Use of loan for different purpose*

A Council may only apply unexpended money previously borrowed for a particular purpose for capital works included in the current budget or a revised budget.”

13. *Deficit budgeting*

In section 153 (1) of the Local Government Act 1989 for “may in respect of any financial year” substitute “must prepare a statement for the purpose of determining the general rate in respect of any financial year which shows budgeted aggregate cash inflows and outflows and, in preparing the statement, a Council may”.

14. *Corporate plan*

After section 153 of the Local Government Act 1989 insert—

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“153A. Corporate plan

- (1) A Council must, within 12 months of the commencement of section 14 of the **Local Government (Financial) Act 1992**, prepare a corporate plan for the next 3 years containing—
 - (a) the corporate objectives of the Council; and
 - (b) the strategies for achieving the objectives; and
 - (c) indicators against which the performance of the Council can be measured; and
 - (d) any other details which are prescribed.
- (2) A new corporate plan for the next 3 years must be prepared annually thereafter.
- (3) A copy of the current corporate plan must be available for inspection at the Council office.”.

15. Rates and Charges

In the **Local Government Act 1989**—

(a) For section 158 (4) substitute—

“(4) The notice must—

- (a) contain the prescribed information; and
 - (b) state that the rates or charges may be paid annually or four times yearly on the dates fixed under section 167; and
 - (c) specify any other options for payment by instalments determined by the Council; and
 - (d) be issued at least 14 days before the date on which the first payment of the rates or charges is due.
- (4A) If the notice is not issued within the time specified under sub-section (4) (d), a ratepayer is deemed to have paid the instalment by the due date if the ratepayer makes the payment

within 14 days of the date on which the notice was issued.”;

(b) In section 167 for sub-sections (1) and (2) substitute—

“(1) A rate or charge (other than a special rate or special charge) is due and must be paid—

(a) unless paragraph (b) applies—by the date fixed under sub-section (2) as the date on which the whole of the rate or charge is due; or

(b) if the person liable to pay the rate or charge elects to pay by instalments—by the date on which the instalment is due.

(2) The Minister must by notice published in the Government Gazette on or before 1 July 1992 fix the date on which the whole of the rate or charge (other than a special rate or charge) is due and the dates on which payments by 4 instalments of the rate or charge are due.

(2A) The Minister may by notice published in the Government Gazette on or before 1 July in any subsequent year alter the dates fixed under a previous notice.”;

(c) Section 167 (5) is repealed;

(d) In section 172 (1) (b) for “by the Council” substitute “under section 167”;

(e) In section 184 (2) (a) after “rate” insert “(other than a special rate under section 221)”.

16. Rates records

Section 176 of the Local Government Act 1989 is repealed.

17. Power to enter into contracts

In section 186 of the Local Government Act 1989—

(a) In sub-section (1) after “\$50 000” insert “(or such higher amount as may be fixed by Order in Council)”;

(b) After sub-section (2) (c) insert—

“; or

(d) the contract is entered into with a Council acting as the agent for a group of Councils and the Council has otherwise complied with this Act; or

(e) the contract is entered into in accordance with arrangements approved by the Minister for the purposes of this sub-section.”.

18. *Right of inspection*

In section 222 of the **Local Government Act 1989** for “prescribed accounts and records” (wherever occurring) substitute “documents containing prescribed matters”.

19. *Interest on overdue money*

After section 227 of the **Local Government Act 1989** insert—

“227A. *Council may charge interest on unpaid money*

(1) A Council may require a person to pay interest on any amount of money (other than rates and charges)—

(a) which that person owes to the Council; and

(b) which has not been paid by the due date.

(2) The interest—

(a) is to be calculated at the rate set from time to time for the purposes of this section by the Council; and

(b) becomes payable—

(i) on and from the date on which the money became due; or

(ii) in the case of a court order requiring payment of the money, on and from the date of the court order; and

- (c) continues to be payable until the payment or recovery of the money.
- (3) The interest rate specified by the Council must not be more than the rate fixed from time to time for the purposes of this section by Order in Council.
- (4) The Governor in Council may fix a maximum rate—
 - (a) by expressing it as a percentage; or
 - (b) by tying it to a specified floating institutional rate charged for loans or paid for borrowings by a public or commercial institution.
- (5) If the Council sets a new interest rate, the new rate takes effect on the date set by the Council and applies from that date to all money (other than interest) owing to the Council on that date.”.

20. *New Schedule 8A inserted*

After Schedule 8 of the **Local Government Act 1989** insert—

“SCHEDULE 8A

PROVISIONS RELATING TO AUDITING

PART I—AUDITORS AND AUDITORS' REPORTS

1. *Who is a qualified auditor?*

- (1) A person is a qualified auditor if he or she—
 - (a) is a registered company auditor; or
 - (b) is at the commencement of section 20 of the **Local Government (Financial) Act 1992** the holder of a certificate of qualification from the Local Government Qualifications Board as a municipal auditor.
- (2) Sub-section (1) (b) expires on the expiry of 3 years from the commencement of section 20 of the **Local Government (Financial) Act 1992**.

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2. Eligibility of person to be appointed as an auditor

- (1) A person must not consent to being appointed as the auditor of a Council if he or she—
 - (a) is not a qualified auditor; or
 - (b) owes more than \$5000 (or a higher amount fixed by Order in Council) to the Council; or
 - (c) is a member of Council staff; or
 - (d) is a Councillor of the Council.
- (2) A firm must not consent to being appointed as the auditor of a Council if—
 - (a) no member of the firm is a qualified auditor; or
 - (b) any member of the firm owes more than \$5000 (or a higher amount fixed by Order in Council) to the Council; or
 - (c) any member of the firm is a member of Council staff; or
 - (d) any member of the firm is a Councillor of the Council.

3. Appointment of auditor

- (1) Before a Council appoints an auditor, the Council must call for tenders.
- (2) Two or more Councils may jointly call for tenders.
- (3) The appointment of an auditor must be made by a resolution of the Council.
- (4) An appointment of an auditor has no effect unless the auditor has consented in writing to be appointed as auditor.
- (5) If a firm is appointed as auditor, the firm must nominate a member of the firm who is a qualified auditor to be the member responsible for the audit.

4. Term of appointment

- (1) A person must be appointed as an auditor for a term of not less than 3 years and not more than 7 years.
- (2) A firm must be appointed as an auditor for a term of not less than 3 years and not more than 7 years.
- (3) A person or a member of a firm cannot be responsible for the audit for more than 7 consecutive years.
- (4) If a firm is re-appointed, a different member of the firm must be responsible for the audit for at least 3 years.

5. Removal of auditor

- (1) An auditor can only be removed during the term of appointment if—
 - (a) the Council passes a resolution to remove the auditor in accordance with this clause; and
 - (b) the Minister approves the removal.

- (2) A Council must—
 - (a) give notice of the proposed resolution to the auditor and to the Minister; and
 - (b) allow the auditor at least 14 days to make a written submission to the Council; and
 - (c) distribute a copy of the auditor's submission to all Councillors prior to the meeting at which the resolution is to be considered.
- (3) If the auditor is a person, that person, or if the auditor is a firm, a member of the firm, has the right to address the Council meeting.
- (4) The Council meeting must be open to members of the public while it is considering the question of the removal of the auditor notwithstanding anything to the contrary in section 89 (2).
- (5) If the Council passes the resolution, the Council must give written notice to the auditor of the resolution.
- (6) The Minister must allow the auditor at least 14 days to make a written submission to the Minister in relation to the removal of the auditor by the Council.

6. Resignation of auditor

- (1) An auditor may resign as auditor of a Council if the auditor obtains the approval of the Minister.
- (2) An auditor must—
 - (a) specify the reasons for wanting to resign in the application to the Minister; and
 - (b) notify the Council that the approval of the Minister to the proposed resignation has been applied for.
- (3) Any statement made in the application or in answer to any inquiry made by the Minister in relation to the application—
 - (a) is not admissible in evidence in any proceedings against the auditor; and
 - (b) may not be used in any prosecution, suit or action against the auditor.
- (4) A resignation takes effect from which ever of the following occurs last—
 - (a) The day proposed in the notice of resignation;
 - (b) The day on which the Minister approves the resignation;
 - (c) The day fixed by the Minister as the date of resignation.

7. Vacancy in the office of auditor

If the person appointed as auditor dies, or if the person or firm appointed as auditor resigns or is removed or becomes ineligible or the term of appointment expires, the Council must appoint a new auditor within 3 months of the vacancy occurring.

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8. Power of Minister to appoint auditor

If a Council fails to appoint an auditor within the time required under this Act—

- (a) the Council must give the Minister notice of that fact; and
- (b) the Minister (whether or not notice is given) may appoint an auditor to the Council to carry out the audit for the financial year specified in the appointment.

9. Auditor's report

- (1) The auditor's report must be attached to the financial statements submitted to the Minister as part of the Council's annual report.
- (2) The auditor's report must be signed—
 - (a) by the auditor; or
 - (b) if the auditor is a firm—by the member of that firm who is responsible for the audit or, if that person is not available, his or her delegate.

PART 2—PROVISIONS RELATING TO THE MEETING TO CONSIDER THE AUDITED STATEMENTS

10. Notice of meeting

A Council must give the auditor 14 days notice of the meeting at which the audited financial statements are to be considered.

11. Auditor entitled to address meeting

The auditor is entitled to address the meeting on any matter that concerns the auditor in the capacity of an auditor.

12. Council may require auditor to attend

The auditor must attend the meeting if requested to do so by the Council.

13. Auditor must attend if report qualified

The auditor must attend the meeting if the audit report contains a qualification and must address the meeting on the matter.

14. Meeting to be open

The Council meeting must be open to members of the public while it is considering the audited financial statements, notwithstanding anything to the contrary in section 89 (2)."

21. Statute Law Revision

- (1) For section 2 of the **Local Government (Rating) Act 1991** substitute—

“2. Commencement

- (1) Sections 19 and 26 are deemed to have come into operation on 1 November 1989.
- (2) Section 25 comes into operation on 1 October 1992.
- (3) Section 28 (1) is deemed to have come into operation on 9 May 1989.
- (4) Section 28 (2) is deemed to have come into operation on 8 May 1990.
- (5) The other provisions of this Act come into operation on the day on which this Act receives the Royal Assent.”
- (2) In section 20 of the **Local Government (Rating) Act 1991** in the proposed section 259 (11) of the **Water Act 1989** for “19” substitute “20”.
- (3) The **Local Government (Rating) Act 1991** is deemed to have been enacted as amended by sub-sections (1) and (2).

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 9 April 1992

Legislative Council: 26 May 1992

2. The long title for the Bill for this Act was “A Bill to amend the **Local Government Act 1989** to make further provision in relation to financial matters and for other purposes.”.
3. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**).