

Local Government (Further Amendment) Act 1995

No. 33 of 1995

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Victoria

No. 33 of 1995

Local Government (Further Amendment) Act 1995

[Assented to 6 June 1995]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is—

- (a) to amend the **Local Government Act 1989** to enable the Minister to limit the amount of general rates and charges that municipal councils may levy in the next 3 financial years; and
- (b) to amend the **Local Government Act 1989** and the **Audit Act 1994** to make the Auditor-General responsible for the auditing of municipal councils; and

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- (c) to amend the **Local Government Act 1989** to make various changes concerning elections for the Melbourne City Council; and
- (d) to extend transitional provisions concerning the change of the dates of the municipal financial year in the **Local Government (Amendment) Act 1994**; and
- (e) to make various miscellaneous amendments to the **Local Government Act 1989**.

2. Commencement

- (1) This Act (other than sections 4 and 5) comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 4 and 5 come into operation on 1 July 1995.

PART 2—AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1989

3. Insertion of Part 8A

After section 185 of the **Local Government Act 1989** insert—

‘PART 8A—MINISTER MAY LIMIT INCOME FROM RATES AND CHARGES

185A. Definition

In this Part—

“**general income**” means the amount declared by a Council under section 158 to be the amount which the Council intends to raise by general rates, municipal charges, service rates and service charges.

185B. Minister may give directions concerning rates and charges

- (1) The Minister may, by Order published in the Government Gazette, direct that a Council's general income in respect of a financial year—
 - (a) is not to exceed the Council's general income in respect of a specified previous financial year; or
 - (b) is not to exceed a specified percentage of the Council's general income in respect of a specified previous financial year.
- (2) The Minister may specify a percentage of more than, or less than, 100% under sub-section (1) (b).
- (3) The Minister may specify in the Order that it is to apply to all Councils or to one or more particular Councils (or classes of Councils) or to all Councils other than one or more particular Councils (or classes of Councils).
- (4) An Order has no effect—
 - (a) with respect to the 1995–1996 financial year unless it is published in the Government Gazette before 30 June 1995;
 - (b) with respect to any other financial year unless it is published in the Government Gazette at least 1 month before the start of that financial year.
- (5) Sub-section (4) also applies to any Order that amends a previous Order made under this section unless—
 - (a) the amendment is to correct a typographical error or a mathematical miscalculation (or anything stemming from a

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mathematical miscalculation) or any error that is apparent on the face of the previous Order; or

(b) the amendment has the sole effect of removing or reducing a restriction placed, or to be placed, on one or more Councils by an Order made under this section.

(6) If a provision in an Order is inconsistent with a provision in a previous Order, the provision of the later Order prevails.

(7) For the purpose of giving effect to a direction—

(a) an Order may specify how changes in the number of rateable properties in a municipal district between 2 relevant periods are to be taken into account;

(b) if the boundaries of a municipal district have changed, or the Council responsible for a municipal district has been restructured or reconstituted, an Order may specify what the general income of the Council is to be taken as having been—

(i) in the financial year in which the change or restructuring occurred;

(ii) in any subsequent financial year in respect of which the Council did not make a declaration under section 158 or was deemed to have made a declaration.

(c) if a Council did not make a declaration under section 158 during a financial year, an Order may specify what the general income of

- the Council is to be taken as having been in that financial year.
- (8) If an Order applies to a number of Councils that have been restructured or reconstituted, or whose boundaries have changed, the Order may specify how the general income of those Councils is to be calculated for—
- (a) the financial year in which the restructuring or reconstitution or boundary change occurred; or
 - (b) any subsequent financial year in respect of which the Council did not make a declaration under section 158 or was deemed to have made a declaration.
- (9) For the purposes of this section, the general income of a Council for the 1996–1997 financial year is the general income of the Council for that year multiplied by 1.33.
- (10) The Minister may only give a direction under this section in respect of the 1995–1996, 1996–1997 and 1997–1998 financial years.

185C. Councils must comply with Minister's direction

- (1) A Council must comply with any direction under section 185B that applies to it.
- (2) If a Council fails to comply with such a direction—
- (a) the failure does not affect the validity of any rates or charges levied in respect of the financial year in respect of which the failure occurred; but

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- (b) any rate or charge that contributes to general income and that is declared with respect to the following financial year is invalid for all purposes unless—
 - (i) before it is declared the Council gives the Minister all the information the Minister requires regarding it and the proposal to declare it; and
 - (ii) the Minister approves its making in writing; and
 - (iii) it complies with any conditions specified by the Minister in granting that approval.
- (3) Sub-section (2) (b) may apply with respect to the 1998–1999 financial year.
- (4) A Council must give the Minister any information that the Minister requires to enable him or her to determine whether the Council has complied with a direction under section 185B or a condition under sub-section (2) and must do so in the form and within the time specified by the Minister.

4. Auditor-General to be responsible for council audits

- (1) In section 3 of the **Audit Act 1994**, in the definition of “**public body**”, after paragraph (e) insert—

“or

- (f) a municipal council; or
- (g) a corporation, all the shares in which are owned by or on behalf of one or more municipal councils, whether directly or indirectly; or
- (h) a trustee of a trust of which a municipal council is the principal beneficiary or of which several municipal councils are the principal beneficiaries; or

- (i) a regional library under section 196 of the **Local Government Act 1989**;
- (2) In the **Local Government Act 1989**—
 - (a) in section 3 (1), after the definition of “accounts” insert—
 - “auditor” means the Auditor-General;
 - (b) in section 126 (1) (ac), for “by its auditor under section 129A (1) (c)” substitute “under section 127B”;
 - (c) sections 129, 129A, 129B and 197C are **repealed**;
 - (d) in section 128 (2), after “have been audited” insert “and the Council has received a copy of the signed auditor’s report”;
 - (e) Part 1 of Schedule 8A is **repealed**.
- (3) After section 126 (6) of the **Local Government Act 1989** insert—
 - (7) After it has received a copy of the report of the auditor under section 9 of the **Audit Act 1994**, a Council must—
 - (a) give public notice that it has received the copy and that the copy can be inspected at the Council office;
 - (b) ensure that the copy is available for public inspection at any time that the Council office is open to the public.”.

5. Substitution of section 127

For section 127 of the **Local Government Act 1989** substitute—

“127. Council must keep its records up to date

It is the duty of a Council to keep its accounts and records up to date and ready for inspection at any time.

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127A. Minister may direct Councils etc. to submit financial statements

- (1) If the Minister considers it necessary or appropriate in the public interest, he or she may in writing direct a Council to prepare and submit within 4 weeks after the date of the direction financial statements in respect of any part of a financial year together with any other related information specified by him or her.
- (2) In this section, a reference to a Council includes a reference to—
 - (a) a corporation, all the shares in which are owned by or on behalf of one or more Councils, whether directly or indirectly; or
 - (b) a trustee of a trust of which a Council is the principal beneficiary or of which several Councils are the principal beneficiaries; or
 - (c) a regional library under section 196.

127B. Audited report on competitive tendering statement

The auditor must prepare a report on the competitive tendering statement in the form and containing the details required by the Minister and must submit a copy of that report to the Minister and the Council as soon as is reasonably practicable after the report has been prepared.”

6. Insertion of section 208H

After section 208G of the **Local Government Act 1989** insert—

"208H. Audit expenses deemed to have been incurred under a competitive arrangement

- (1) For the purposes of section 208A, any audit expenses incurred by a Council in respect of any financial year after the 1994–1995 financial year are deemed to have been incurred by the Council as a party to a competitive arrangement.
- (2) For the purposes of section 208BA, any audit expenses incurred by a regional group in respect of any financial year after the 1994–1995 financial year are deemed to have been incurred by the regional group as a party to a competitive arrangement."

7. Transitional arrangements concerning audit arrangements

- (1) Despite anything to the contrary in the **Local Government Act 1989** or in any agreement to which a Council is a party, any appointment of a person or a firm to act as the auditor of—
 - (a) a Council; or
 - (b) a corporation, all the shares in which are owned by or on behalf of one or more Councils, whether directly or indirectly; or
 - (c) a trustee of a trust of which a Council is the principal beneficiary or of which several Councils are the principal beneficiaries; or
 - (d) a regional library under section 196 of the **Local Government Act 1989**—

ceases to have effect with respect to the 1995–1996 financial year and any year after that year.

- (2) Despite anything to the contrary in the **Local Government Act 1989**, a person or body listed in sub-section (1) (a) to (d) may appoint a person or firm to act as his, her or its auditor for the 1994–1995 financial year only.

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- (3) Despite clause 4 of Schedule 8A of the **Local Government Act 1989**, any appointment made before the commencement of this Act by a person or body listed in sub-section (1) (a) to (d) of a person or firm to act as his, her or its auditor for the 1994–1995 financial year only is deemed to have been validly made.
- (4) The amendments made by sections 4 and 5 only apply with respect to the 1995–1996 financial year and beyond and do not apply with respect to the 1994–1995 financial year or to anything relating to the 1994–1995 financial year.
- (5) Anything relating to the 1994–1995 financial year is to be dealt with on the basis of the **Local Government Act 1989** as in force immediately before 1 July 1995.

8. Clarification of location of municipal boundaries

For section 3 (3) of the **Local Government Act 1989** substitute—

- “(3) If the boundary of a municipal district is described by reference to a road, proposed road, railway line, former railway line or waterway (other than a waterway that forms part of the sea coast), that boundary is to be taken to be constituted by a line along the centre for the time being of the road, proposed road, railway line, former railway line or waterway.
- (3A) If the boundary of a municipal district is described by reference to the sea coast (regardless of whether it is referred to as the sea shore or the waters of the sea or a bay or in any other way), that boundary is to be taken to be the line for the time being of the high water mark on that sea coast.
- (3B) Sub-section (3) or (3A) does not apply if an intention contrary to the effect of that sub-section appears in the description.”.

9. Removal of Lord Mayor from office

After section 72A (2) of the **Local Government Act 1989** insert—

- “(3) In addition to the matters listed in section 72 (1), the office of the Lord Mayor of the City of Melbourne also becomes vacant if 6 Councillors pass a motion that the office be declared vacant.
- (4) A person who is removed from office as the Lord Mayor by the passing of such a motion continues to be a Councillor.”

10. Changes in relation to the membership of the Local Government Board

In Schedule 11A of the **Local Government Act 1989**, in clause 1 (1)—

- (a) after “is to consist of” insert “up to”;
- (b) paragraph (a) is repealed;
- (c) for paragraph (d) substitute—
- “(d) up to 5 are to be people nominated by the Minister having regard to their experience, knowledge or expertise in local government and related matters.”

11. Changes concerning fees related to parking

In Schedule 11 of the **Local Government Act 1989**—

- (a) in clause 1 (1) (b), omit “(in the case of any parking area in a road not higher than the prescribed fee for a day or for any fixed period less than a day)”;
- (b) in clause 1 (1) (c), omit “(not higher than the prescribed yearly fee)”;
- (c) in clause 3 (1) (c), omit “not higher than the prescribed fee”;

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(d) after clause 3 (2) insert—

“(3) The fee set for the purposes of sub-clause (1) (c) must not exceed an amount that reasonably represents the cost to the Council of impounding, moving, keeping and releasing the vehicle (including any relevant overhead and other indirect costs).”;

(e) in clause 4, for “prescribed under” substitute “set for the purposes of”.

PART 3—AMENDMENTS RELATING TO MUNICIPAL ELECTIONS

12. Changes concerning voting by corporations

(1) In section 13 (1) of the **Local Government Act 1989**—

(a) for “must” substitute “may”;

(b) omit all words and expressions after “represent the corporation or corporations”.

(2) After section 13 (1) of the **Local Government Act 1989** insert—

“(1A) Notice of an appointment must—

(a) be made in the prescribed form; and

(b) contain the prescribed particulars; and

(c) be delivered to the Council office by 4 p.m. on the entitlement date.”.

13. Changes concerning voting by corporations—City of Melbourne

(1) In section 13A (2) (a) of the **Local Government Act 1989**—

(a) for “must” substitute “may”;

(b) omit all words and expressions after “represent it or them”.

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(2) After section 13A (2) (a) of the **Local Government Act 1989** insert—

‘(aa) after section 13 (2) there were inserted—

“(2A) If on the entitlement date a corporation is the sole owner or sole occupier of rateable land in more than one ward of the City of Melbourne—

(a) its 2 representatives are to represent it in each ward in which it owns or occupies rateable land; and

(b) in an election for the municipal district as a whole, each of those representatives is only entitled to vote once.”

(3) After section 13A (2) (c) of the **Local Government Act 1989** insert—

‘(ca) for sections 17 (1) (c) and (d) there were substituted—

“(c) is for any other reason already enrolled, or entitled to be enrolled, on the voters’ roll in respect of any ward of the City of Melbourne.”

(4) For section 13A (2) (d) of the **Local Government Act 1989** substitute—

‘(d) for section 18 (1) there were substituted—

“(1) On receiving notice of an appointment, the Chief Executive Officer must enroll the person appointed unless he or she believes the person is not entitled to be enrolled.

(1A) If the Chief Executive Officer receives a notice of appointment in respect of any rateable land in respect of which 2 people have already been enrolled—

(a) if the notice only appoints one person and does not revoke the appointment of either of the 2 people enrolled, the

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Chief Executive Officer must refuse to enroll the person;

- (b) if the notice appoints 2 people, the Chief Executive Officer must enroll those 2 people and must remove the names of the 2 people previously enrolled from the voters' list, regardless of whether or not the notice revokes the earlier appointment.”

14. *Minor consequential amendments*

- (1) In section 16 of the **Local Government Act 1989**, omit “, 13 (1)”.
- (2) In section 17 (1) of the **Local Government Act 1989**—
- (a) after “An” insert “appointment under section 13 (1) and an”;
- (b) omit “13 (1) or” (where first occurring).

15. *Substitution of section 18*

For section 18 of the **Local Government Act 1989** substitute—

“18. *Procedure on receipt of notice of appointment under section 13*

- (1) On receiving notice of an appointment, the Chief Executive Officer must enroll the person appointed unless he or she—
- (a) believes the person is not entitled to be enrolled; or
- (b) has already received a valid notice of appointment in respect of the rateable land to which the appointment relates and the notice of appointment does not state that it is revoking that previous appointment.

- (2) If the Chief Executive Officer refuses to enroll an appointed person, he or she must advise the person who submitted the notice of appointment of the refusal in writing and give the person the reason for the refusal.

18A. Procedure if no representatives appointed under section 13 (1)—City of Melbourne

- (1) This section applies if a corporation is the sole owner or occupier of any rateable land in a ward in the City of Melbourne and the Chief Executive Officer has not received by 4 p.m. on the entitlement date notice under section 13 (1) that the corporation has appointed 2 representatives who are entitled to be enrolled.
- (2) If the corporation has validly appointed one representative, it is deemed to have appointed as its other representative the first of the following people who is eligible to be enrolled as a representative and who is not already a representative—
 - (a) its principal company secretary;
 - (b) a director of the corporation (to be taken in alphabetical order);
 - (c) any other company secretary (to be taken in alphabetical order).
- (3) If the corporation has not validly appointed any representatives, it is deemed to have appointed as its representatives the first 2 of the people listed in sub-section (2) who are eligible to be enrolled as a representative.
- (4) In determining the eligibility of a person to be a representative, the Chief Executive Officer must assume that any information

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supplied to him or her by the Australian Securities Commission on or after the entitlement date concerning the name, address and age of a company secretary or director is current and accurate.

- (5) If a person is deemed to be a representative of a corporation, the Chief Executive Officer must—
- (a) enroll the person on the voters' list as soon as possible after the entitlement date; and
 - (b) advise the corporation of that fact in writing .”.

16. Further minor consequential amendments

- (1) In section 19 (1) of the **Local Government Act 1989**, for “to make an enrolment” substitute “an application for enrolment under section 12.”.
- (2) In section 20 (1) of the **Local Government Act 1989**—
 - (a) omit “in an application”;
 - (b) for “the applicant or applicants” substitute—
 - “(a) the person enrolled, in the case of an enrolment under section 12; or
 - (b) the corporation on whose behalf a person is enrolled, in the case of an enrolment under section 13—”.

17. Availability of voters' list for inspection to be advertised

After section 22 (5) of the **Local Government Act 1989** insert—

- “(5A) The Chief Executive Officer must publish a public notice on or before the date specified under sub-section (2) stating when and where the voters' lists are available for inspection by members of the public.”.

18. Insertion of section 22A

After section 22 of the **Local Government Act 1989**
insert—

“22A. Notice to people on voters’ list—City of Melbourne

- (1) The Chief Executive Officer of the Melbourne City Council must give to each person who is on the voters’ list prepared by him or her a notice stating—
 - (a) that the person is on the list; and
 - (b) that the person has a right to object, and the grounds on which an objection may be made; and
 - (c) any other details required by the regulations.
- (2) The Chief Executive Officer must ensure that the notice is posted or delivered to each person at the address shown on the voters’ list and that it is posted or delivered at least 3 days before the date specified under section 22 (2).”

19. Special provisions concerning non-ward representation

(1) In section 39 of the **Local Government Act 1989**—

- (a) before “A person” insert “(1)”; and
- (b) at the end of the section insert—

“(2) A person who is enrolled on the voters’ roll for the Melbourne City Council is also entitled to 1 vote at any election in respect of the municipal district as a whole.

- (3) If a person is entitled to vote in more than one ward of the City of Melbourne, the person is still only entitled to 1 vote at any election in respect of the municipal district as a whole.”

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- (2) In section 58 (3) (a) of the **Local Government Act 1989**, after "an election" insert "(unless allowed or required to do so by section 39 or 40A)".
- (3) After section 220Q (n) of the **Local Government Act 1989** insert—
“(na) in the case of the City of Melbourne, provide for all, or a specified number of, Councillors to represent the municipal district as a whole;”.
- (4) In Schedule 2 of the **Local Government Act 1989**, after clause 6 (6) insert—
“(6A) In the case of the City of Melbourne, if a person has submitted a notice of candidature for election for both a ward and the municipal district as a whole, the returning officer must reject any notice of candidature other than the first notice of candidature received by the returning officer.”.

20. Reduction of penalty for failure to vote

After section 40 (1A) of the **Local Government Act 1989** insert—

“Penalty: 1 penalty unit.”.

21. Insertion of section 40A

After section 40 of the **Local Government Act 1989** insert—

“40A. Compulsory voting—City of Melbourne

- (1) Section 40 (1) does not apply to the City of Melbourne.
- (2) Except as is provided in the regulations, it is compulsory for a person who is enrolled on the voters’ roll in respect of any ward of the City of Melbourne to vote—

- (a) at any election in respect of that ward; and
 - (b) at any election in respect of the municipal district as a whole.
- (3) A person must vote as required by sub-section (2).
- Penalty: 1 penalty unit.
- (4) If an election in respect of a ward and in respect of the municipal district as a whole is held on the same day, a person who fails to vote in both elections is only guilty of one offence under sub-section (3).
- (5) If one or both of the representatives appointed by a corporation fail to vote at an election—
- (a) the corporation is guilty of an offence against sub-section (3);
 - (b) the representative is, or the representatives are, not guilty of an offence against sub-section (3).
- (6) A corporation is not guilty of an offence under sub-section (3) in respect of the failure to vote of a deemed representative if it did not receive a notice under section 18A (5) in respect of the enrolment of the representative before the date of the election.
- (7) Sections 40 (2)–(13) apply as if an offence under sub-section (3) was an offence under section 40 (1A).”

22. Amendment of Schedule 3

After Part 4 of Schedule 3 of the **Local Government Act 1989** insert—

**'PART 4A—RESULT WHERE 2 OR MORE
COUNCILLORS ARE TO BE ELECTED TO THE
MELBOURNE CITY COUNCIL**

11A. *Application of Part*

This Part applies to the City of Melbourne at any election in respect of the municipal district as a whole at which 2 or more Councillors are to be elected.

11B. *2 or more Councillors to be elected*

(1) The result is to be determined as set out in this clause.

(2) In this clause—

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

“**quota**” means the number determined by dividing the number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1;

“**surplus votes**” means the number, if any, of votes in excess of the quota of each elected candidate.

(3) A reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer.

(4) The returning officer upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any 1

scrutineer, if present, appointed by each candidate but of no other person must—

- (a) open all the sealed parcels containing used ballot-papers; and
- (b) arrange the ballot-papers together with the allowed postal ballot-papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot-papers which are rejected; and
- (c) ascertain—
 - (i) the number of first preference votes given for each candidate; and
 - (ii) the total number of first preference votes.

(5) A quota is to be determined.

(6) Any candidate who has received a number of first preference votes equal to or greater than the quota is to be declared duly elected by the returning officer.

(7) Unless all the vacancies have been filled, the surplus votes of each elected candidate are to be transferred to the continuing candidates as follows—

- (a) the number of surplus votes of the elected candidate is to be divided by the number of first preference votes received by the elected candidate and the resulting fraction is the transfer value;
- (b) the total number of ballot-papers of the elected candidate that express the first preference vote for the elected candidate and the next available

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preference for a particular continuing candidate is to be multiplied by the transfer value;

- (c) the number obtained under paragraph (b) (disregarding any fraction) is to be added to the number of first preference votes of the continuing candidate and all those ballot-papers are to be transferred to the continuing candidate.
- (8) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under sub-clause (7) is to be declared duly elected by the returning officer.
- (9) Unless all the vacancies have been filled, the surplus votes, if any, of any candidate elected under sub-clause (8) or elected subsequently under this sub-clause are to be transferred to the continuing candidates in accordance with sub-clause (7) and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of the transfer is to be declared duly elected by the returning officer.
- (10) If a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus votes of a particular elected candidate under sub-clause (7) or (9), no votes of any other candidate are to be transferred to the continuing candidate.
- (11) For the purposes of the application of sub-clause (7) in relation to a transfer of the surplus votes of an elected candidate under sub-clause (9) or (14), each ballot-paper of the elected candidate

obtained by the elected candidate on a transfer is to be dealt with as if—

- (a) any vote it expressed for the elected candidate were a first preference vote; and
 - (b) the name of any other candidate previously elected or excluded had not been on the ballot-paper; and
 - (c) the numbers indicating subsequent preferences had been altered accordingly.
- (12) If, after the counting of first preference votes or the transfer of any surplus votes of elected candidates, 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 is to be excluded and all that candidate's votes are to be transferred to the continuing candidates as follows—
- (a) the total number of ballot-papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be transferred at a transfer value of 1 for each ballot-paper and added to the number of votes of the continuing candidate and all those ballot-papers are to be transferred to the continuing candidate;
 - (b) the total number, if any, of other votes obtained by the excluded candidate on transfers are to be transferred from the excluded candidate beginning with the highest transfer value and ending with the

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ballot papers received at the lowest transfer value, as follows—

- (i) the total number of ballot papers received by the excluded candidate at a particular transfer value and expressing the next available preference for a particular continuing candidate is to be multiplied by that transfer value; and
 - (ii) the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate; and
 - (iii) all those ballot papers are to be transferred to the continuing candidate.
- (13) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer of votes of an excluded candidate under sub-clause (12) or (16) is to be declared duly elected by the returning officer.
- (14) Subject to sub-clause (15), unless all the vacancies have been filled, the surplus votes, if any, of a candidate elected under sub-clause (13) are to be transferred in accordance with sub-clause (7).
- (15) If a candidate elected under sub-clause (13) is elected before all the votes of the excluded candidate have been transferred, the surplus votes, if any, of the elected candidate are not to be transferred until the remaining votes of the excluded candidate have been transferred in accordance with sub-clause (12) to continuing candidates.

- (16) Subject to sub-clause (18), if after the transfer of all the votes of an excluded candidate no continuing candidate has received a number of votes greater than the quota—
- (a) the continuing candidate who has the fewest votes must be excluded; and
 - (b) that candidate's votes must be transferred in accordance with sub-clause (12).
- (17) If a candidate is elected as a result of a transfer of ballot papers under clauses 12 and 16, no other ballot papers of an excluded candidate are to be transferred to the candidate so elected.
- (18) In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is to be elected notwithstanding that that number is below the quota and if those candidates have an equal number of votes the result is to be determined by lot.
- (19) Despite any other provision of this clause, if the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates are to be declared duly elected by the returning officer.
- (20) Subject to sub-clauses (21), (22) and (23), if after any count or transfer, 2 or more candidates have surplus votes the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative size of the surpluses, the largest surplus being transferred first.
- (21) Subject to sub-clause (23), if after any count or transfer, 2 or more candidates

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have equal surpluses, the order of any transfers of the surplus votes of those candidates is to 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.

(22) For the purposes of sub-clause (21), if there has been no count or transfer the returning officer must determine the order in which the surpluses are to be dealt with.

(23) If after any count or transfer, a candidate obtains surplus votes, those surplus votes are not to be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.

(24) If the candidate who has the fewest votes is required to be excluded and 2 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 is to be excluded.

(25) For the purposes of sub-clause (24), if there has been no count or transfer, the returning officer must determine which candidate is to be excluded.

(26) If a candidate is elected by reason that—

(a) the number of first preference votes received by the candidate; or

(b) the aggregate of first preference votes received by the candidate and

all other votes obtained by the candidate on transfers—

is equal to the quota, all the ballot-papers expressing those votes are to be set aside as finally dealt with.

(27) For the purposes of this clause each of the following constitutes a separate transfer—

(a) a transfer under sub-clause (7), (9) or (14) of all the surplus votes of an elected candidate;

(b) a transfer in accordance with sub-clause (12) (a) of all first preference votes of an excluded candidate;

(c) a transfer in accordance with sub-clause (12) (b) of all the votes of an excluded candidate that were transferred to that candidate from a particular candidate.

23. Changes relating to the election of Councillors—City of Melbourne

In section 14 (1) of the City of Melbourne Act 1993—

(a) in paragraph (b), for “3 Councillors are” substitute “1 Councillor is”;

(b) after paragraph (b) insert—

“(ba) 5 Councillors are to represent the municipal district as a whole and are to be elected in accordance with Part 4A of Schedule 3 of the Local Government Act 1989;”;

(c) in paragraph (c), for “12” substitute “9”.

**PART 4—AMENDMENT TO THE LOCAL GOVERNMENT
 (AMENDMENT) ACT 1994**

**24. *Extension of transitional provisions concerning the
 change of the financial year***

For section 4 (6) of the **Local Government (Amendment) Act 1994** substitute—

“(6) Despite anything to the contrary in the **Local Government Act 1989**, in respect of the 1995–1996 financial year—

(a) a Council must comply with section 158 (1) of that Act by 30 November 1995;

(b) rates and charges (other than special rates and special charges) levied in respect of that year by a Council must be paid—

(i) in a lump sum on or before 10 April 1996; or

(ii) by 4 approximately equal instalments paid on or before 31 December 1995, 28 February 1996, 31 May 1996 and 31 August 1996; or

(iii) in any other manner specified by the Council in the rates or charges notice.

(7) Despite anything to the contrary in the **Local Government Act 1989**, in respect of the 1996–1997 financial year—

(a) a Council must comply with section 158 (1) of that Act by 30 November 1996;

(b) rates and charges (other than special rates and special charges) levied in respect of that year by a Council must be paid—

(i) in a lump sum on or before 10 April 1997; or

(ii) by 3 approximately equal instalments paid on or before 31

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December 1996, 28 February
1997 and 31 May 1997; or

(iii) in any other manner specified by
the Council in the rates or
charges notice.”.

NOTES

1. *Minister's second reading speech—*

Legislative Assembly: 27 April 1995

Legislative Council: 23 May 1995

2. The long title for the Bill for this Act was “A Bill to amend the **Local Government Act 1989**, the **Audit Act 1994** and the **Local Government (Amendment) Act 1994** and for other purposes.”.

3. **Constitution Act 1975:**

Absolute majorities:

Legislative Assembly: 11 May 1995

Legislative Council: 25 May 1995

4. Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)