

South Australia

# Local Government (Transitional Provisions) Regulations 2021

under the *Local Government Act 1999*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Local Government (Transitional Provisions) Regulations 2021*.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Local Government Act 1999*;

*Amendment Act* means the *Statutes Amendment (Local Government Review) Act 2021*.

## Part 2—Initial transitional provisions relating to *Statutes Amendment (Local Government Review) Act 2021*

### 4—General

- (1) A reference to Chapter 5 Part 4 Division 1 Subdivision 2 in section 55A(6) of the Act (as inserted by section 20 of the Amendment Act) will be taken to be a reference to Chapter 5 Part 4 Division 2 of the Act until the commencement of section 28 of the Amendment Act.
- (2) Section 99A(10) of the Act (as inserted by section 60 of the Amendment Act) does not apply to a council until the day on which the first determination made by the Remuneration Tribunal for the purposes of that section takes effect.
- (3) The amendments to section 184 of the Act effected by section 99(1), (3) or (4) of the Amendment Act do not apply to or in relation to the sale of land under section 184 if the notice under section 184(2) for the purposes of that sale is given before the commencement of those amendments.
- (4) For the avoidance of doubt, the operation of section 184(1) of the Act (including the calculation of any period of 3 years or more for which an amount payable by way of rates in respect of land has been in arrears) is not affected by subregulation (3) (or the amendments effected by section 99 of the Amendment Act).

### 5—Mobile food vending businesses

- (1) A permit granted under section 222 of the Act for the purposes of a mobile food vending business and in force immediately before the commencement of section 108(1) of the Amendment Act continues in force for the term stated in the permit subject to the conditions applying to the permit and the provisions of sections 222, 224 and 225 of the Act as in force after the commencement of section 108(1) apply to such a permit.
- (2) If a review has been commenced but not finally determined by the Small Business Commissioner under section 225B of the Act before the repeal of that section by section 114 of the Amendment Act, the review may be continued and completed by the Commissioner under section 225B of the Act as if the repeal had not been effected.

### 6—Certain resolutions

The amendments to section 234A of the Act effected by section 119 of the Amendment Act do not apply to or in relation to a resolution passed under section 234A before the commencement of section 119.

## 7—Elections—method of counting

The amendments to section 48 of the *Local Government (Elections) Act 1999* effected by section 173 of the Amendment Act apply in relation to an election the close of voting for which occurs on or after the day on which section 173 commences.

## Part 3—Further transitional provisions relating to *Statutes Amendment (Local Government Review) Act 2021*

### 8—General

Until the commencement of section 16 of the Amendment Act, the requirement in sections 12(7) and 92(5) of the Act for a council to undertake public consultation will be taken to be satisfied if the council follows the relevant steps set out in its public consultation policy.

### 9—Chief executive officer provisions

- (1) The amendments to section 97 of the Act effected by section 57 of the Amendment Act do not apply to or in relation to the termination of a chief executive officer's appointment on a ground or circumstance that arose before the commencement of section 57.
- (2) The amendments to section 98 of the Act effected by section 58 of the Amendment Act do not apply to or in relation to a vacancy in the office of chief executive officer that occurs before the commencement of section 58.
- (3) The requirement under section 102A(1)(b) of the Act (as inserted by section 61 of the Amendment Act) that a council review the performance of its chief executive officer before their reappointment does not apply to or in relation to a reappointment taking effect before 1 February 2022.

### 10—By-laws

- (1) The amendment to section 249(1) of the Act effected by section 122(1) of the Amendment Act does not apply to or in relation to a proposal to make a by-law under section 249 if the copies of the proposed by-law have been made available under existing section 249(1)(a) and a notice relating to the proposed by-law has been published in accordance with existing section 249(1)(b) before the commencement of section 122(1).
- (2) In this regulation—  
*existing section 249(1)(a)* means section 249(1)(a) of the Act as in force immediately before the commencement of section 122(1) of the Amendment Act;  
*existing section 249(1)(b)* means section 249(1)(b) of the Act as in force immediately before the commencement of section 122(1) of the Amendment Act.

### 11—Review of decisions

- (1) The amendments to section 270 of the Act effected by section 135 of the Amendment Act do not apply to or in relation to a review in respect of an application received by a council before the commencement of section 135.

- (2) Without limiting subregulation (1), section 270(4a)(a)(i) of the Act (as inserted by section 135(4) of the Amendment Act) does not apply to or in relation to the policies, practices and procedures of a council established under section 270 until the commencement of section 5(1) of the Amendment Act.

## **11A—Principal member of council**

- (1) In connection with section 147(2) and (3) of the Amendment Act, a council constituted on the basis that the principal member is to be chosen by the members of the council from amongst their own number must conduct a review of its composition under Chapter 3 Part 1 of the Act so as to ensure that the appointment or election of a mayor required by section 51(1) of the Act (as amended by section 17 of the Amendment Act) takes effect from polling day for the second periodic election held after the commencement of section 17.
- (2) Despite subregulation (1), section 12 of the Act applies to a relevant council required to conduct a review of its composition under Chapter 3 Part 1 of the Act in accordance with that subregulation as follows:
- (a) section 12(3) to (11e) (inclusive) do not apply if the relevant council prepares a report on matters relating to the change in the basis on which the principal member of the council is to be determined, including any action that is required to be taken in order to give effect to the change;
  - (b) section 12(12) to (16) (inclusive) and (18) to (25) (inclusive) apply as if—
    - (i) a reference to a report were a reference to a report under paragraph (a); and
    - (ii) a reference to a proposal were a reference to a proposal set out in a report under paragraph (a); and
    - (iii) a reference to a failure to undertake a review in accordance with the requirements of section 12 were a reference to a failure to undertake such a review as modified by this regulation;
  - (c) section 12(17) does not apply.

- (3) In this regulation—

**relevant council** means a council to which subregulation (1) applies that commenced a review of its composition under Chapter 3 Part 1 of the Act after the conclusion of the periodic election held in 2018 and completed the review before the commencement of this regulation.

## **12—Elections**

- (1) Without limiting regulation 7, an amendment effected by a provision of Part 3 of the Amendment Act does not apply to or in relation to an election if the vacancy giving rise to the election occurs before the commencement of the relevant provision of Part 3.
- (2) Until the commencement of section 196(12) of the Amendment Act—
- (a) the reference in Schedule 1 clause 18(1) of the *City of Adelaide Act 1998* to the twenty first day before polling day will be taken to be a reference to the twenty eighth day before polling day; and

- (b) the reference in Schedule 1 clause 18(1) of the *City of Adelaide Act 1998* to 14 days before polling day will be taken to be a reference to 21 days before polling day.

### **13—Financial accountability**

Until the commencement of section 79(1) of the Amendment Act, the requirement under section 122(1e)(b) of the Act (as inserted by section 79(2) of the Amendment Act) for a council to provide the designated authority with all relevant information on revenue sources outlined in the funding plan referred to in subsection (1a)(a) (of section 122 of the Act) will be taken to be satisfied if the council provides the designated authority with all relevant information on the intended sources of the council's projected total revenue for the period to which its long-term financial plan relates (such as revenue from rates, grants and other fees and charges).

### **14—Council audit and risk committees—membership**

On and after the commencement of section 84(5) of the Amendment Act and despite paragraphs (a) and (b) of section 126(2) of the Act (as in force after that commencement)—

- (a) a member of a council audit and risk committee holding office immediately before the commencement of section 84(5) of the Amendment Act will continue to hold office for the remainder of their term of office; and
- (b) paragraphs (a) and (b) of section 126(2) of the Act do not apply to the membership of the committee for any period during which the continuation in office of a member of the council audit and risk committee under paragraph (a) results in the membership of the committee not being in accordance with those paragraphs.

### **15—Auditor**

If, immediately before the commencement of section 87(3) of the Amendment Act, a firm comprising at least 1 registered company auditor holds office as auditor of a council under a contract entered into by the council, section 128(6) of the Act (as in force after the commencement of section 87(3)) does not apply to the council until the end of the term of the contract.

## **Part 4—Transitional provisions relating to conduct**

### **16—Council behavioural management policies**

- (1) The following provisions apply in relation to behavioural management policies of councils under section 262B of the Act (as inserted by section 126 of the Amendment Act):
  - (a) a reference in an Act, statutory instrument or other instrument or document to a council's behavioural management policy will be taken to be a reference to the LGA's model behavioural management policy until the council adopts its behavioural management policy under section 262B;
  - (b) a council need not adopt a behavioural management policy under section 262B(1) until the designated day.

- (2) For the purposes of subregulation (1)—
- (a) the LGA is declared to be a prescribed body under section 303(6)(a) of the Act; and
  - (b) the principal office of the LGA (at 148 Frome Street, Adelaide, 5000 or, if the LGA moves its principal office, at that new address) is specified for the purposes of section 303(7)(c) of the Act.

- (3) In this regulation—

***designated day*** means the day designated by the Minister by notice in the Gazette for the purposes of this regulation;

***LGA's model behavioural management policy*** means the document entitled "Model behavioural management policy" published by the LGA on its website, as in force from time to time.

## 17—Repeated misbehaviour

In determining whether a failure by a member of a council to comply with Chapter 5 Part 4 Division 2 of the Act is a second or subsequent such failure for the purposes of the definition of ***repeated misbehaviour*** in section 262E of the Act (as inserted by section 126 of the Amendment Act), a previous failure by the member to comply with Part 2 of the code of conduct to be observed by members of councils under section 63 of the Act (as in force immediately before its repeal by section 27 of the Amendment Act) may be taken into account (and may be treated as if it were a first failure to comply with Chapter 5 Part 4 Division 2).

### Note—

A complaint alleging repeated misbehaviour by a member of a council can only be referred to the Behavioural Standards Panel if at least 1 failure by the member to comply with Chapter 5 Part 4 Division 2 of the Act occurred on or after 17 November 2022, being the day on which Chapter 13 Part A1 Division 2 Subdivision 3 was inserted into the Act (see section 147(6) of the *Statutes Amendment (Local Government Review) Act 2021*).

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2021	142	<i>Gazette 16.9.2021 p3567</i>	20.9.2021 except Pt 3—10.11.2021: r 2
2021	197	<i>Gazette 23.12.2021 p4638</i>	6.1.2022 except r 5—30.6.2022: r 2
<b>2022</b>	<b>98</b>	<b><i>Gazette 17.11.2022 p6649</i></b>	<b>17.11.2022: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>6.1.2022</i>
Pt 3		
r 8	varied by 197/2021 r 4	6.1.2022
<b>r 11</b>		
<b>r 11(2)</b>	<b>amended by 98/2022 r 3</b>	<b>17.11.2022</b>
r 11A	inserted by 197/2021 r 5	30.6.2022
rr 13—15	inserted by 197/2021 r 6	6.1.2022
<b>Pt 4</b>	<b>inserted by 98/2022 r 4</b>	<b>17.11.2022</b>

### Historical versions

6.1.2022

30.6.2022