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Chapter Summary of the Local Government Act 1993

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Department of Local Government

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Contents

Chapter Summary of the Local Government Act 1993

Chapter 1. Preliminary	2
Chapter 2. What are the purposes of this Act?	2
Chapter 3. What is a council's charter?	2
Chapter 4. How can the community influence what a council does?	2
Chapter 5. What are a council's functions?	3
Chapter 6. What are the service functions of councils?	3
Chapter 7. What are the regulatory functions of councils?	4
Chapter 8. What ancillary functions does a council have?	4
Chapter 9. How are councils established?	5
Chapter 10. How are people elected to civic office?	5
Chapter 11. How are councils staffed?	6
Chapter 12. How do councils operate?	6
Chapter 13. How are councils made accountable for their actions?	6
Chapter 14. Honesty and disclosure of interests	7
Chapter 15. How are councils financed?	7
Chapter 16. Offences	8
Chapter 17. Enforcement	9
Chapter 18. Miscellaneous	10

Chapter 1. Preliminary

This chapter contains provisions which are helpful in understanding the Act as a whole, as well as some machinery provisions.

Chapter 2. What are the purposes of this Act?

This chapter states the Parliament's purposes in enacting this Act. Section 51 of the Constitution Act 1902 provides:

- (1) There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government.
- (2) The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature.
- (3) The reference in subsection (2) to laws of the Legislature shall be read as a reference to laws that have been enacted by the Legislature, whether before or after the commencement of this section, and that are for the time being in force.
- (4) For the purposes of this section, the Western Lands Commissioner, the Lord Howe Island Board, and an administrator with all or any of the functions of a local government body, shall be deemed to be local government bodies.

The chapter also aims to give an overview of the major elements in the system of local government in this State. It contains a diagram showing the way in which these elements relate to one another.

Chapter 3. What is a council's charter?

The charter contained in this chapter comprises a set of principles that are to guide a council in the carrying out of its functions. A council may add other principles not inconsistent with those in the chapter.

Chapter 4. How can the community influence what a council does?

Under this chapter, council meetings and council committee meetings are required, as a general rule, to be open to the public.

The chapter provides for public access to information held by councils. Members of the public are entitled to inspect a very wide range of council documents (see section 12). Members of the public are also entitled to request access under the Freedom of Information Act 1989. They are also entitled to require the correction of certain kinds of information in the event that the information is incomplete, incorrect, out of date or misleading. The Privacy and Personal Information Protection Act 1998 requires councils to use and release personal information in certain ways.

Apart from the provisions of this chapter, members of the public may influence council decisions concerning matters such as the levels of rates and charges, the terms of management plans, policies regarding the granting of approvals (which are dealt with in later chapters) by making submissions, including comments on, or objections to, proposals relating to those matters.

The chapter also enables the council to ascertain the views of the local community on various matters through 2 types of polls which may be conducted in the area. A summary of these polls is contained in Part 3 of this chapter.

Chapter 5. What are a council's functions?

This chapter specifies a council's functions. In doing so, it recognises that all functions of a council come from statute, either from this Act or another Act.

Chapter 6. What are the service functions of councils?

This chapter confers on councils their service or non-regulatory functions. Examples of these functions include the provision, management or operation of:

- community services and facilities;
- public health services and facilities;
- cultural, educational and information services and facilities;
- sporting, recreational and entertainment services and facilities;
- environment conservation, protection and improvement services and facilities;
- waste removal, treatment and disposal services and facilities;
- pest eradication and control services and facilities;
- public transport services and facilities;
- energy production, supply and conservation;
- water, sewerage and drainage works and facilities;
- storm water drainage and flood prevention, protection and mitigation services and facilities;
- fire prevention, protection and mitigation services and facilities;
- land and property development;
- housing;
- industry development and assistance;
- tourism development and assistance.

This list of examples is not exhaustive.

These functions are conferred in broad terms in Part 1. Particular provisions are made for the management of public land, including community land in Part 2. Part 3 imposes some restraints and qualifications on the exercise of service functions.

A council may have other service functions under other Acts. For example, a council has functions relating to the provision and management of roads under the Roads Act 1993.

Chapter 7. What are the regulatory functions of councils?

The major regulatory functions of councils are found in this Chapter. It lists the activities that are regulated and it sets out the means of their regulation.

A council, in relation to a range of activities within its area, exercises regulatory functions of two main kinds.

First – various activities can only be carried out if the council gives its approval (for example, the connection of a building to the council's sewerage system). Some of these approvals may also be granted as part of the development consent process under Part 4 of the Environmental Planning and Assessment Act 1979.

Second – a council can order a person to do, or to stop doing, something (for example, a council can order a person to keep land in a safe and healthy condition).

Failure to obtain or to comply with an approval and failure to comply with an order are made offences under sections 626, 627 and 628.

A council is not given power to regulate activities by other means. For example, the chapter does not confer power to require a person to hold a periodic licence.

In exercising its regulatory functions, the council must observe any relevant statutory criteria and any other criteria contained in a local policy it may have adopted after public consultation.

The chapter also enables appeals to be made to the Land and Environment Court against decisions made under the chapter.

Chapter 8. What ancillary functions does a council have?

This chapter confers on councils certain functions which it is necessary or desirable for them to have in order to carry out their other functions. These functions are "ancillary" in the sense that they are auxiliary to, they give support to, and they aid the carrying out of, the other functions of a council, particularly its service and regulatory functions.

Councils are given power to acquire land by compulsory process.

The chapter also confers on councils powers to enter land and buildings and to carry out inspections.

A council may also have similar powers for different purposes under other Acts. For example, under the Roads Act 1993, a council has power to compulsorily acquire land for road purposes and may enter land for the purposes of that Act.

Chapter 9. How are councils established?

This chapter contains provisions dealing separately with the constitution of land as a local government area and the constitution of a council to manage that area. It enables the making of changes to those areas and to councils. It provides for the dissolution of councils and the appointment of administrators.

Each council is a statutory corporation. The councillors are the governing body of the corporation and they have the responsibility of directing and controlling the affairs of the council in accordance with this Act.

The chapter includes a statement of the role of the mayor and of a councillor.

Provision is made for the payment of fees to the mayor and other councillors. Payment is to be made in accordance with determinations of the Local Government Remuneration Tribunal which is established by this chapter. Provision is also made for the payment of expenses and the provision of facilities to the mayor and other councillors in accordance with a stated policy.

The chapter also constitutes the Local Government Boundaries Commission and provides for its functions.

Chapter 10. How are people elected to civic office?

This chapter deals with the election of persons to civic office. Those qualified for civic office are elected for 4-year terms under a system which is preferential (wherever 1 or 2 positions must be filled) and proportional (wherever 3 or more positions must be filled) or, alternatively, a system decided by referendum in each area. Voting is compulsory for residents but optional for non-resident ratepayers, occupiers and ratepaying lessees. Elections are conducted under the supervision of the Electoral Commissioner.

When an area is not divided into wards, councillors are elected by the area. When it is divided, councillors may be elected by wards (or, if so decided at a referendum, by wards and area).

The mayor may be popularly elected or elected by the councillors from among their number. The choice of method depends on a constitutional referendum as referred to in sections 228 and 229. A popularly-elected mayor holds office for four years and is a councillor by virtue of being mayor. A mayor elected by the councillors holds office for one year.

Chapter 11. How are councils staffed?

The chapter provides for the employment of staff to assist councils to exercise their functions. A council should have sufficient and appropriately qualified staff for the efficient and effective management of its organisation.

The chapter includes provision for the appointment by each council of a general manager and other senior staff and of a "public officer". Some requirements concerning employment of staff are contained in other law (for example, industrial relations legislation and equal employment opportunity legislation).

Chapter 12. How do councils operate?

This chapter describes the ways in which a council carries out its functions and makes decisions.

The chapter enables each council to adopt a code of meeting practice after giving public notice of a draft code. The chapter provides for the basic matters concerning council meetings (frequency of meetings, notice of meetings, quorum, voting, rescission motions, committees etc).

The chapter enables a council to delegate its functions, other than those functions the delegation of which is expressly prohibited. Functions that may not be delegated include the making of a rate or charge, the borrowing of money, the compulsory acquisition of land, the adoption of financial statements and the classification of public land as operational land. Functions may be delegated to the general manager and to specified persons and bodies but may not be delegated directly by the council to council employees other than the general manager.

The chapter requires councils to have public liability and professional liability insurance. The chapter also makes provision for the constitution, functions, operation and dissolution of county councils.

Chapter 13. How are councils made accountable for their actions?

This chapter sets out the mechanisms by which a council is made accountable for its actions.

Each year, a council is required to adopt a management plan that sets out its proposed strategy for at least the following three years, together with its proposed revenue policy for the next year. The management plan is to include a statement of the council's objectives and performance targets for its principal activities.

A council is required to give public notice of its draft management plan and any submissions must be considered prior to adoption of the management plan.

A council is required to have two funds (a consolidated fund and a trust fund). It must keep proper accounts which are to be audited annually.

Each year, a council is required to prepare an annual report on its work and activities.

The Minister retains a supervisory role in relation to councils. The Minister and the Director-General are able to call for further information from councils, and the Director-General is able to authorise persons to investigate and report on matters connected with a council's work and activities and to direct a council to act on any recommendations contained in such a report, or in a report made by the Ombudsman regarding the council.

Chapter 14. Honesty and disclosure of interests

This Chapter places obligations on councillors, council delegates and staff of councils to act honestly and responsibly in carrying out their functions.

The chapter also requires councils to adopt a code of conduct for councillors, staff and other persons associated with the functions of councils. However, the chapter does not affect any other duties imposed by other laws or any offences created by other laws.

It also requires that pecuniary interests of councillors, council delegates and other persons involved in making decisions or giving advice on council matters be publicly recorded and requires councillors and staff to refrain from taking part in decisions on council matters in which they have a pecuniary interest.

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The chapter enables any person to make a complaint concerning a failure to disclose a pecuniary interest and provides for the investigation of complaints.

The chapter also establishes the Local Government Pecuniary Interest Tribunal.

The Tribunal is empowered to conduct hearings into complaints and to take disciplinary action against a person if a complaint against the person is found to be proved.

Chapter 15. How are councils financed?

The main sources of council finance are:

- rates, of which there are 2 kinds:
 - ordinary rates;
 - special rates.
- charges;
- fees;
- grants;
- borrowings;
- income from business activities;
- income from land;
- income from other investments;
- sales of assets.

This chapter deals mainly with the making and collection of the different kinds of rates and the imposition of charges.

Part 1 gives a general overview of the principles of rating and explains the relationship between ordinary rates, special rates and charges.

A council must make an ordinary rate each year. The amount of the ordinary rate may differ according to the category of the land to which it applies and it may differ according to subcategories within those categories.

A council has a discretion whether it will make a special rate. Special rates may be levied for services provided by the council (such as water supply) or for special purposes.

A council has two choices in determining the structure of a rate (whether an ordinary rate for a category or sub-category of land or a special rate). It may decide that the rate is to be wholly an ad valorem rate (that is, an amount in the dollar that is to be applied uniformly to the rateable value of all rateable land in its area subject to the rate). It may decide, instead, that a rate is to have a 2-part structure. The first part is to be a base amount that will be the same for each parcel of rateable land subject to the rate. This base amount will be the amount that the council determines to be the basic contribution required to cover the general operating costs of the council or to cover the cost of providing the specific service or facilities to which it relates. The second part is to be an ad valorem amount. The two parts are added together to produce the amount of the rate to be paid in respect of the rateable parcel.

If a council makes a rate with a two part structure, the application of the base amount for the rate (or the category or sub-category of the rate) must not produce more than 50% of the total revenue derived from the rate (or the category or sub-category of the rate).

Special provisions are made for the rating of vacant land.

The chapter also enables the making and collection of charges. A charge may be made in relation to specified services provided by a council (such as the provision of water, sewerage or drainage services or the collection of garbage).

Chapter 16. Offences

This chapter creates offences which are grouped under the following headings:

- General offences – relating to failure to obtain an approval and failure to comply with an approval or order;
- Public land;
- Water, sewerage and stormwater drainage offences;
- Street drinking – relating to the creation and enforcement of alcohol-free zones;
- Parking – relating to parking in free parking areas;
- Immobilisation and detention of vehicles
- Offence relating to civic office;
- Miscellaneous.

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The chapter does not contain all offences created under this Act. Other offences are found in section 312 in chapter 10 (How are people elected to civic office?), sections 475, 476 and 480 in chapter 14 (Honesty and disclosure of interests) and section 680 in chapter 17 (Enforcement).

The regulations may also create offences, for example, offences relating to elections.

Further, councils may conduct prosecutions for offences under other Acts, for example, the Protection of the Environment Operations Act 1997 and the Environmental Planning and Assessment Act 1979.

Other Acts will be relevant to the provisions of this chapter, including the Crimes Act 1900, the Justices Act 1902 and the Children (Criminal Proceedings) Act 1987. For example, under section 5 of the Children (Criminal Proceedings) Act 1987, it is to be conclusively presumed, in all criminal proceedings, that no child who is under the age of 10 years can be guilty of an offence.

Penalties for offences are expressed in penalty units. Under the Crimes (Sentencing Procedure) Act 1999, the amount of a penalty unit is currently \$110.

Chapter 17. Enforcement

Part 1 of this chapter provides means for enforcing the Act in addition to the prosecution of offences under chapter 16. Examples of these remedies include:

- proceedings in the Land and Environment Court to restrain a breach of the Act;
- the carrying out of work by a council following a failure by a person to carry out the work in accordance with an order of the council;
- prosecution in certain circumstances of the owner of an illegally parked vehicle instead of the actual offender;
- the issue of penalty notices.

Division 1 of Part 2 relates to functions of a council with regard to legal proceedings. Examples of these functions include:

- the right to appear before a local land board;
- the making of allegations and their effect;
- payment of employees for expenses incurred in taking legal action on behalf of a council.

Division 2 of Part 2 deals with matters relating to evidence in legal proceedings involving a council. These include:

- matters of which proof by a council is not required unless evidence to the contrary is given;
- matters of which judicial notice is to be taken.

Division 3 of Part 2 deals with certain notices involving a council, including the content, giving and service of the notices.

Division 4 of Part 2 deals with legal proceedings to recover unpaid rates and charges.

Division 5 of Part 2 enables the sale of land and interests in land (other than an estate or interest of the Crown in land) to recover amounts unpaid for rates and charges.

Part 3 deals with matters such as compensation and exemption from liability that may arise as a result of proceedings involving a council.

Chapter 18. Miscellaneous

This Chapter makes provision for a number of matters relating to the operation of the Act. These include:

- a requirement that notices under the Act be in writing;
- a description of the ways in which the Governor may exercise the Governor's powers under the Act;
- a description of the effect of proclamations;
- a description of how public inquiries are to be held;
- specification of tax exemptions applicable to council property and dealings;
- a description of the manner of settling disputes between councils;
- specification of the Minister's and Director-General's powers to delegate.

This chapter also authorises the making of regulations.