



Queensland

Local Government (De-amalgamation Implementation) Regulation 2013

Subordinate Legislation 2013 No. 48

made under the

Local Government Act 2009

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Part 1 Preliminary

Division 1 Introduction

1 Short title

This regulation may be cited as the *Local Government (De-amalgamation Implementation) Regulation 2013*.

2 Commencement

Part 7 commences on the changeover day.

Division 2 Purpose

3 Purpose of regulation—Act, s 260F

The purpose of this regulation is to implement the de-amalgamation of the following local government areas—

- (a) Cairns;
- (b) Rockhampton;
- (c) Sunshine Coast;
- (d) Tablelands.

4 Achievement of purpose

The purpose is achieved by—

- (a) continuing the following local government areas with different boundaries—
 - (i) Cairns;
 - (ii) Rockhampton;
 - (iii) Sunshine Coast;
 - (iv) Tablelands; and

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- (b) establishing the following new local government areas—
 - (i) Douglas;
 - (ii) Livingstone;
 - (iii) Noosa;
 - (iv) Mareeba; and
 - (c) providing for fresh elections for the new local governments; and
 - (d) providing for a transfer mechanism, including a transfer manager, transfer methodology and transfer committee, to transfer employees, assets, liabilities and documents from the continuing local governments to the related new local governments; and
 - (e) providing for financial matters relating to the de-amalgamation of the continuing local governments; and
 - (f) providing for matters relating to local laws and other instruments of the continuing local governments and new local governments; and
 - (g) providing for matters relating to the continuing local governments.

Division 3 Interpretation

5 Key definitions

- (1) In this regulation—

changeover day means 1 January 2014.

continuing local government means—

- (a) Cairns Regional Council; or
- (b) Rockhampton Regional Council; or
- (c) Sunshine Coast Regional Council; or

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(d) Tablelands Regional Council.

new local government means each of the following local governments that comes into existence on the changeover day—

- (a) Douglas Shire Council;
- (b) Livingstone Shire Council;
- (c) Noosa Shire Council;
- (d) Mareeba Shire Council.

new local government area, for a new local government, means the local government area for the new local government that comes into existence on the changeover day.

- (2) A continuing local government is ***related*** to a new local government, and vice versa, if the new local government area for the new local government is, before changeover day, part of the local government area of the continuing local government.

Notes—

- 1 Cairns Regional Council is related to Douglas Shire Council.
- 2 Rockhampton Regional Council is related to Livingstone Shire Council.
- 3 Sunshine Coast Regional Council is related to Noosa Shire Council.
- 4 Tablelands Regional Council is related to Mareeba Shire Council.

6 Definitions

The dictionary in the schedule defines particular words used in this regulation.

Part 2 Fresh elections for new local governments

7 Application of pt 2

This part applies to the conduct of fresh elections for—

- (a) the election of the mayor of each new local government; and
- (b) the election of the councillors of each new local government.

8 Conduct of elections

The elections must be conducted as if the new local governments come into existence on the commencement of this section.

9 Date of elections

The Minister may, by gazette notice, fix a day for the elections.

10 Term of office

The term of office of a person elected as the mayor or other councillor of a new local government—

- (a) starts on the changeover day; and
- (b) ends at the conclusion of the next quadrennial election for the new local government.

11 Remuneration of councillors

(1) The tribunal must—

- (a) for each new local government, decide the category of local government to which the new local government belongs; and

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- (b) for each category decided under paragraph (a), decide the remuneration payable to a councillor, mayor or deputy mayor of a new local government in the category.
- (2) The tribunal must decide the category, and the remuneration, before 1 September 2013.
- (3) To remove any doubt, it is declared that—
 - (a) the tribunal must include the new local governments in its review of the categories of local governments under the *Local Government Regulation 2012*, section 243(3) to (5); and
 - (b) for the *Local Government Regulation 2012*, section 243(4), definition *local government term*, a fresh election for a new local government is taken to be a quadrennial election.

Part 3 Transfer mechanism

Division 1 Transfer manager

12 Appointment

- (1) The Minister must appoint, for each new local government, a qualified person to be the manager (the *transfer manager*) for the new local government.
- (2) A person is qualified to be a transfer manager for a new local government if the person has the ability, experience, knowledge and skills that the Minister considers appropriate, having regard to the functions of a transfer manager.

13 Term

A transfer manager must be appointed for a term that ends immediately before the changeover day.

14 Remuneration

A transfer manager is entitled to be paid the fees and allowances decided by the Minister.

15 Functions

A transfer manager for a new local government has all the functions necessary or convenient to facilitate the establishment of the new local government.

16 Powers

- (1) A transfer manager for a new local government has power to do all things necessary or convenient to be done for or in connection with the performance of the transfer manager's functions under section 15.
- (2) To remove any doubt, it is declared that the transfer manager has power to enter into contracts that will bind the new local government.
- (3) However, before entering a contract mentioned in subsection (2), the transfer manager must obtain the approval of the department's chief executive.

17 Protection

- (1) A transfer manager is not civilly liable for an act done, or omission made, honestly and without negligence under this regulation.
- (2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.

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18 Acting chief executive officer of new local government

- (1) On the changeover day, the transfer manager for a new local government—
 - (a) becomes the acting chief executive officer of the new local government; and
 - (b) in addition to the person's functions as the acting chief executive officer of the new local government, retains all the functions and powers the person had as the transfer manager for the new local government; and
 - (c) becomes an employee of the new local government on the same terms and conditions, so far as practicable, as the person was employed as the transfer manager.
- (2) Unless the person's employment as acting chief executive officer is otherwise ended, the person holds the appointment as acting chief executive officer until the new local government appoints a chief executive officer.

Division 2 Transfer methodology

19 Definition for div 2

In this division—

responsible entity means an entity having responsibilities under a transfer methodology.

20 Purpose of transfer methodology

- (1) The department's chief executive must make a methodology (a *transfer methodology*) directed at ensuring the proper transfer of employees, assets, liabilities and documents from a continuing local government to the related new local government.
- (2) Without limiting subsection (1), the transfer methodology may—

-
- (a) provide for the development of an action plan for the proper transfer of employees, assets, liabilities and documents from the continuing local government to the new local government; and
 - (b) provide for the achievement of particular milestones in the proper transfer of employees, assets, liabilities and documents from the continuing local government to the new local government; and
 - (c) require the continuing local government to make available its employees, by secondment or otherwise, for the purpose of providing assistance to the transfer manager for the new local government; and
 - (d) identify the costs associated with the de-amalgamation of the continuing local government that are to be payable by the new local government; and
 - (e) provide for responsible entities to report to the Minister about their compliance with the methodology.
- (3) To remove any doubt, it is declared that the department's chief executive may amend or repeal a transfer methodology, whether before or after the changeover day.

21 When transfer methodology takes effect

- (1) The department's chief executive must notify the making of a transfer methodology by publishing the methodology on the department's website.
- (2) The transfer methodology takes effect—
 - (a) on the day the methodology is published on the department's website; or
 - (b) if a later day is stated in the transfer methodology—on the later day.

22 Notification of transfer methodology

The department's chief executive must, as soon as practicable after a transfer methodology or an amendment of a transfer

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methodology takes effect, advise all responsible entities of the taking effect of the transfer methodology or the amendment of the methodology.

23 Complying with transfer methodology

Each responsible entity must take all reasonable steps to comply with the transfer methodology.

24 Role of transfer committee

The transfer committee must make decisions as provided for under the transfer methodology.

Division 3 Transfer committee

25 Definition for div 3

In this division—

transfer manager, for a new local government, means—

- (a) for the period before the changeover day—the transfer manager for the new local government; or
- (b) for the period from the changeover day—the acting chief executive officer, or the chief executive officer, of the new local government.

26 Establishment

- (1) To facilitate the de-amalgamation of a continuing local government, a committee (a *transfer committee*) for the related new local government is established.
- (2) The transfer committee consists of—
 - (a) the chief executive officer of the continuing local government; and
 - (b) the transfer manager for the new local government.

27 Functions

The transfer committee's functions are—

- (a) to decide the assets and liabilities that are to be transferred to the new local government; and
- (b) to settle joint agreements between the continuing local government and the new local government for matters to be decided because of the transfer, including, for example, the following—
 - (i) capital works costs;
 - (ii) maintenance of boundary roads;
 - (iii) use of library and community facilities;
 - (iv) catchment management;
 - (v) services, including, for example, road and park maintenance, waste and water services and sewerage; and
- (c) subject to section 35(1)(a), (b), (c), (d), (f) and (g), to decide the costs associated with the de-amalgamation that are to be payable by the new local government; and
- (d) to make decisions about other matters the transfer committee considers appropriate.

28 Conduct of meetings

- (1) The transfer committee may conduct its meetings in the way it considers appropriate.
- (2) Committee meetings are to be held at the times and places the committee decides.

29 Term of committee

The transfer committee ceases to exist on—

- (a) the day that is 6 months after the changeover day; or
- (b) if another day is notified in writing by the Minister to each member of the transfer committee—the other day.

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30 Adjudication by Minister

- (1) This section applies if the transfer committee is unable to make a decision about a matter mentioned in section 27.
- (2) Either member of the committee may refer the matter to the Minister.
- (3) The Minister must, after considering the submissions of each member of the committee, make a decision about the matter.

Division 4 Local advisory committee

31 Establishment

- (1) To provide advice to the transfer manager for a new local government, a committee (a *local advisory committee*) for the new local government is established.
- (2) The committee consists of the persons appointed to the committee by the Minister.
- (3) The Minister may appoint any person the Minister considers appropriate.

32 Function

- (1) The function of a local advisory committee for a new local government is to give advice to the transfer manager for the new local government about any matter in relation to which the transfer manager requests the committee's advice.
- (2) The local advisory committee may give the advice orally or in writing.

33 Meetings with transfer manager

The local advisory committee for the new local government must meet with the transfer manager for the new local government at least once in each calendar month from the date of commencement of this section until the changeover day.

34 Protection

- (1) A member of a local advisory committee is not civilly liable for an act done, or omission made, honestly and without negligence under this regulation.
- (2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the State.

Division 5 De-amalgamation costs

35 What are *de-amalgamation costs*

- (1) The *de-amalgamation costs* of a new local government are—
 - (a) the fees and allowances of the transfer manager under section 14; and
 - (b) any civil liability that attaches to the State under section 17(2); and
 - (c) the remuneration and other costs associated with the employees made available by the continuing local government to the transfer manager for the new local government under section 20(2)(c); and
 - (d) the costs identified in the transfer methodology under section 20(2)(d) to be payable by the new local government; and
 - (e) the costs decided by the transfer committee under section 27(c) to be payable by the new local government; and
 - (f) the costs, if any, decided by the Minister under section 30 to be payable by the new local government; and
 - (g) any civil liability that attaches to the State under section 34(2).
- (2) To remove any doubt, it is declared that de-amalgamation costs may be incurred on any date, whether before or after the changeover day.

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36 Recovery of de-amalgamation costs

- (1) The de-amalgamation costs of a new local government are a debt payable by the new local government.
- (2) The debt may be satisfied by the related continuing local government deducting the amount of the debt from the cash assets to be transferred from the related continuing local government to the new local government on the changeover day.
- (3) The de-amalgamation costs may be recovered from the new local government by action in a court of competent jurisdiction.

37 Transfer of QTC working capital facility

- (1) This section applies if a QTC working capital facility has been established for the sole purpose of facilitating the de-amalgamation of a continuing local government.
- (2) The facility must be transferred from the continuing local government to the related new local government on changeover day.
- (3) The new local government must discharge the facility by 31 December 2014.
- (4) In this section—

QTC working capital facility means a working capital facility held with Queensland Treasury Corporation.

Part 4 Financial matters

38 Assets transfer

- (1) The transfer committee for a new local government must decide the assets that are to transfer from the related continuing local government to the new local government.

- (2) On the changeover day, each asset to be transferred to the new local government is transferred to, and becomes the asset of, the new local government.

39 Liabilities transfer

- (1) The transfer committee for a new local government must decide the liabilities that are to transfer from the related continuing local government to the new local government.
- (2) On the changeover day, each liability to be transferred to the new local government is transferred to, and becomes the liability of, the new local government.

40 Levying rates and charges

- (1) This section applies if, immediately before the changeover day, a continuing local government—
 - (a) had made or imposed a rate or charge in relation to land in the new local government area of the related new local government; and
 - (b) had not given a notice levying the rate or charge on a person.
- (2) The new local government—
 - (a) must give the person a notice levying the rate or charge; and
 - (b) is taken to have made and levied the rate or charge.

41 Recovery of unpaid rates and charges

- (1) This section applies if—
 - (a) before the changeover day, a continuing local government had given a person a notice levying a rate or charge in relation to land in the new local government area of the related new local government; and
 - (b) immediately before the changeover day, the rate or charge had not been paid.

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- (2) The new local government is taken to have made and levied the rate or charge.
- (3) If the time for payment of the rate or charge has not ended before the changeover day, the time continues to run until the due date for payment of the rate or charge.
- (4) If the person fails to pay the rate or charge by the due date for payment of the rate or charge, the new local government may take action against the person to recover the rate or charge.

42 Fees

From the changeover day, a fee fixed or levied by a continuing local government in relation to the new local government area of the related new local government—

- (a) is taken to have been fixed or levied by the new local government; and
- (b) applies until the new local government varies the fee.

43 Recovery of unpaid fees

- (1) This section applies if—
 - (a) before the changeover day, a continuing local government had levied a fee in relation to the new local government area of the related new local government; and
 - (b) immediately before the changeover day, the fee had not been paid.
- (2) The new local government is taken to have levied the fee.
- (3) If the time for payment of the fee has not ended before the changeover day, the time continues to run until the due date for payment of the fee.
- (4) If the person fails to pay the fee by the due date for payment of the fee, the new local government may take action against the person to recover the fee.

44 Register for dealings in assets

The registrar of titles or other person responsible for keeping a register for dealings in assets must, if asked by a local government, record the transfer or the vesting of any asset under this part in the local government.

Part 5 Local laws and other instruments

45 Local laws for new local government

- (1) A current local law of a continuing local government, from the changeover day, is taken to be a local law of the related new local government.
- (2) The local law is taken to have been made by the new local government on the changeover day.
- (3) A current local law taken to be a local law of a new local government under subsection (1) must be read with the changes necessary to make it consistent with, and adapt its operation to, this regulation.
- (4) In this section—

current local law, of a continuing local government, means a local law of the continuing local government in force immediately before the changeover day.

46 Planning instruments for new local government

- (1) A current planning instrument applying to a continuing local government, from the changeover day, is taken to be a planning instrument applying to the related new local government.
- (2) A current planning instrument taken to be a planning instrument applying to a new local government under

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subsection (1) must be read with the changes necessary to make it consistent with, and adapt its operation to, this regulation.

- (3) A planning scheme taken to be a planning instrument applying to a new local government under subsection (1) is taken to have been originally made by the new local government on the day that it was originally made by the continuing local government.

Note—

See the Planning Act, section 91 (Local government must review planning scheme every 10 years).

- (4) If a continuing local government started to prepare a new planning scheme for its local government area, but did not finish preparing the planning scheme, before the changeover day—
- (a) the related new local government may, from the changeover day, continue preparing the new planning scheme; and
- (b) the new planning scheme, when approved under the Planning Act, will apply only to the new local government area of the new local government.
- (5) In this section—

current planning instrument, applying to a continuing local government, means a planning instrument applying to the continuing local government immediately before the changeover day.

47 Existing instruments continue in force

- (1) This section applies to an instrument made under a local law or an Act—
- (a) made by a continuing local government before the changeover day about—
- (i) a resident in the new local government area of the related new local government; or

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- (ii) an owner of land in the new local government area of the related new local government; or
 - (iii) land in the new local government area of the related new local government; or
 - (iv) a person's entitlement to carry out an activity in the new local government area of the related new local government; and
- (b) in force immediately before the changeover day.
- (2) For the new local government dealing, from the changeover day, with an instrument made under a local law—
 - (a) the local law under which the instrument was made is taken to be a local law of the new local government; and
 - (b) the local law is taken to be in force for the new local government area of the new local government; and
 - (c) the instrument is taken to have been made by the new local government under the local law; and
 - (d) the new local government is responsible for administering the local law to deal with the instrument; and
 - (e) the instrument continues in force until it is amended or repealed by the new local government.
 - (3) For the new local government dealing, from the changeover day, with an instrument made under an Act, the instrument is taken to have been properly made under the Act by the new local government and continues in force until it would, if the de-amalgamation under this regulation had not occurred, have ceased to have effect under the Act.
 - (4) In this section—
instrument does not include a planning instrument.

48 Pending legal proceedings

- (1) Despite anything else in this regulation, a pending legal proceeding by or against a continuing local government for a

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matter relating to the new local government area of the related new local government must, from the changeover day, be started or continued by or against the new local government.

(2) In this section—

pending legal proceeding, by or against a continuing local government, means a legal proceeding that—

- (a) could have been started or continued by or against the continuing local government before the changeover day; and
- (b) is not finished before the changeover day.

49 Administrative processes

An administrative process that could have been started or continued by or against a continuing local government before the changeover day for a matter relating to the new local government area of the related new local government may, from the changeover day, be started or continued by or against the new local government.

50 References in documents

- (1) In a document relating to the new local government area of a new local government, including, for example, a contract to which a continuing local government is a party, a reference to the continuing local government may, if the context permits, be taken to be—
 - (a) a reference to the related new local government; or
 - (b) a reference to both the continuing local government and the related new local government.
- (2) If, under subsection (1)(b), a reference in a contract to a continuing local government is taken to be a reference to both the continuing local government and the related new local government, the contract continues in force according to its terms and both the continuing local government and the

related new local government are taken to be a party to the contract.

51 Effect of local laws and other instruments of continuing local government

To remove any doubt, it is declared that, from the changeover day, a local law, planning instrument or other instrument of a continuing local government has effect only in the local government area of the continuing local government that comes into existence on the changeover day.

Part 6 Continuing local governments

Division 1 Councillors

52 Ending of term of councillors

- (1) This section applies to a councillor for the following divisions of the following local government areas—
 - (a) Cairns, division 10;
 - (b) Rockhampton, divisions 1, 2 and 3;
 - (c) Sunshine Coast, divisions 11 and 12;
 - (d) Tablelands, divisions 1, 7 and 8.
- (2) The councillor's term ends on the changeover day.

53 Continuation of term of councillors

- (1) This section applies to the following persons—
 - (a) the mayor of the following local governments—
 - (i) Cairns Regional Council;
 - (ii) Rockhampton Regional Council;

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- (iii) Sunshine Coast Regional Council;
- (iv) Tablelands Regional Council;
- (b) a councillor for the following divisions of the following local government areas—
 - (i) Cairns, divisions 1, 2, 3, 4, 5, 6, 7, 8 and 9;
 - (ii) Rockhampton, divisions 4, 5, 6, 7, 8, 9 and 10;
 - (iii) Sunshine Coast, divisions 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10;
 - (iv) Tablelands, divisions 2, 3, 4, 5 and 6.
- (2) To remove any doubt, it is declared that the person's term as mayor or councillor ends at the conclusion of the next quadrennial election of the local government of which the person is mayor or councillor.

Division 2 Employees

54 New organisational structure

- (1) A continuing local government must, under section 196 of the Act, adopt an organisational structure that is appropriate to the performance of the local government's responsibilities after changeover day.
- (2) The new organisational structure must be implemented on the changeover day.

55 Allocation of positions

- (1) The chief executive officer of the continuing local government must decide the positions that are to be transferred from the continuing local government to the related new local government on the changeover day.
- (2) The number of positions transferred must be within the approved range, unless otherwise approved by the Minister.
- (3) In this section—

approved range means—

- (a) for Cairns Regional Council—no less than 135 and no more than 165; or
- (b) for Rockhampton Regional Council—no less than 325 and no more than 400; or
- (c) for Sunshine Coast Regional Council—no less than 365 and no more than 450; or
- (d) for Tablelands Regional Council—no less than 245 and no more than 300.

56 Entitlements of transferred employees

- (1) This section applies to an employee of a continuing local government who is transferred to the related new local government because of a decision under section 55.
- (2) The employee becomes an employee of the new local government on the changeover day.
- (3) The employee is entitled to all existing and accruing rights of employment applying to the employee immediately before the changeover day.
- (4) Subject to any industrial instrument applying to the employee, the new local government is not obliged to employ the employee on the same conditions on which the employee was employed by the continuing local government.
- (5) If the employee is retrenched or made redundant because of a decision made by the new local government from the changeover day—
 - (a) the employee is entitled to be paid an amount for the retrenchment or redundancy in accordance with the retrenchment or redundancy arrangements applying to the employee immediately before the changeover day; and
 - (b) the new local government must pay the amount.

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Division 3 Duties and responsibilities

57 Major contracts

- (1) This section applies if a continuing local government proposes to enter into a major contract that would bind the related new local government after the changeover day.
- (2) The continuing local government must not enter into the contract unless the transfer manager for the new local government agrees in writing to the continuing local government entering into the contract.
- (3) If the continuing local government and the transfer manager for the new local government are unable to agree on whether the continuing local government should enter into the contract, the Minister must make the decision.

- (4) In this section—

major contract means a contract the total value of which is more than the greater of the following—

- (a) \$200000;
- (b) 1% of the continuing local government's net rate and utility charges as stated in the continuing local government's audited financial statements included in the continuing local government's most recently adopted annual report.

58 Duty to facilitate de-amalgamation

- (1) A continuing local government must do all acts and things necessary or desirable to facilitate a de-amalgamation under this regulation.
- (2) Without limiting subsection (1), a continuing local government must give the related new local government the documents that are necessary to enable compliance with this regulation.

59 Responsibility for local government area

Nothing in this regulation affects a continuing local government's responsibility for the good rule and local government of its local government area, whether before or after changeover day.

Part 7 Amendment of Local Government Regulation 2012

60 Regulation amended in pt 7

This part amends the *Local Government Regulation 2012*.

61 Amendment of sch 1 (Prescribed information about local governments)

Schedule 1, entry for Cairns, Rockhampton, Sunshine Coast and Tablelands—

omit, insert—

Cairns	region	LGB 14 edition 3	division 1—1 division 2—1 division 3—1 division 4—1 division 5—1 division 6—1 division 7—1 division 8—1 division 9—1	10
Douglas	shire	LGB 75	area not divided	5
Livingstone	shire	LGB 76	area not divided	7
Mareeba	shire	LGB 77	area not divided	7
Noosa	shire	LGB 78	area not divided	7

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Rockhampton	region	LGB 58 edition 2	division 4—1 division 5—1 division 6—1 division 7—1 division 8—1 division 9—1 division 10—1	8
Sunshine Coast	region	LGB 63 edition 3	division 1—1 division 2—1 division 3—1 division 4—1 division 5—1 division 6—1 division 7—1 division 8—1 division 9—1 division 10—1	11
Tablelands	region	LGB 64 edition 1	division 2—1 division 3—1 division 4—1 division 5—1 division 6—1	6

Schedule Dictionary

section 6

changeover day see section 5(1).

continuing local government see section 5(1).

de-amalgamation costs, of a new local government, see section 35.

document includes record.

local advisory committee see section 31(1).

new local government see section 5(1).

new local government area see section 5(1).

planning instrument see the Planning Act, schedule 3.

planning scheme see the Planning Act, schedule 3.

related, continuing local government and new local government, see section 5(2).

responsible entity, for part 3, division 2, see section 19.

transfer committee see section 26(1).

transfer manager—

- (a) generally— see section 12(1); or
- (b) for part 3, division 3, see section 25.

transfer methodology see section 20(1).

ENDNOTES

- 1 Made by the Governor in Council on 11 April 2013.
- 2 Notified in the gazette on 12 April 2013.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Local Government, Community Recovery and Resilience.

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