

TASMANIA

**LOCAL GOVERNMENT AMENDMENT
(TARGETED REVIEW) BILL 2017**

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**LOCAL GOVERNMENT AMENDMENT
(TARGETED REVIEW) BILL 2017**

*(Brought in by the Minister for Planning and Local
Government, the Honourable Peter Carl Gutwein)*

A BILL FOR

An Act to amend the *Local Government Act 1993*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Local Government Amendment (Targeted Review) Act 2017*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Local Government Act 1993** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

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- (a) by omitting the definition of *absolute majority* and substituting the following definition:

absolute majority means –

- (a) if no councillors are suspended, more than half of the number of councillors to be elected to a council; or
- (b) if one or more councillors are suspended, more than half of the number of councillors to be elected to a council, after subtracting the number of councillors who are suspended;

- (b) by inserting the following definition after the definition of *assets*:

audit panel means the audit panel established under section 85;

- (c) by inserting the following paragraph after paragraph (e) in the definition of *electoral advertising*:

(f) on the internet;

- (d) by inserting the following definition after the definition of *model code of conduct*:

model financial statements means the model financial statements published, and provided to councils, under section 83A, as replaced from time to time;

- (e) by omitting “7th” from the definition of *nomination period* and substituting “8th”;
- (f) by omitting “5th” from the definition of *nomination period* and substituting “6th”;
- (g) by inserting the following definition after the definition of *partner*:

performance improvement direction means a direction issued to a council or councillor under section 214M;

5. Section 16 amended (Municipal areas)

Section 16 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

- (4) The Minister, on receiving a report on a review made under section 214D that recommends an adjustment of the boundary of a municipal area or an electoral boundary within a municipal area, regardless of whether the adjustment is minor or significant in nature, may recommend to the Governor

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that an order be made so adjusting that boundary.

(4A) The Minister –

(a) on receiving –

(i) from the Board, made otherwise than in a report on a review made under section 214D; or

(ii) from the Director –

a recommendation that an adjustment, that is minor in nature, be made to the boundary of a municipal area, or an electoral boundary within a municipal area; and

(b) if satisfied that all owners of land who would be affected by the adjustment have been consulted by the relevant councils and have consented, in writing, to the adjustment –

may recommend to the Governor that an order be made so adjusting that boundary.

(5) The Governor, by order and on the recommendation of the Minister under subsection (4) or (4A), may do one or both of the following:

- (a) adjust a boundary of a municipal area;
- (b) if the municipal area is divided into electoral districts, adjust any boundary of any electoral district as may be necessary.

6. Section 27 amended (Functions of mayors and deputy mayors)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (aa), (a), (b), (ba) and (c) from subsection (1) and substituting the following paragraphs:
 - (a) to act as a leader of the community of the municipal area; and
 - (b) to carry out the civic and ceremonial functions of the mayoral office; and
 - (c) to promote good governance by, and within, the council; and
 - (d) to act as chairperson of the council and to chair meetings of the council in a manner that supports decision-making processes; and
 - (e) to act as the spokesperson of the council; and

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- (f) to represent the council on regional organisations and at intergovernmental forums at regional, state and federal levels; and
- (g) to lead and participate in the appointment, and the monitoring of the performance, of the general manager; and
- (h) to liaise with the general manager on –
 - (i) the activities of the council and the performance and exercise of its functions and powers; and
 - (ii) the activities of the general manager and the performance and exercise of his or her functions and powers in supporting the council; and
- (i) to oversee the councillors in the performance of their functions and in the exercise of their powers; and
- (j) any function imposed by an order under section 27A; and
- (k) any other function imposed by this or any other Act.

- (b) by omitting from subsection (2)(a) “absent; and” and substituting “absent from duty as Mayor or from the State, otherwise unavailable for duty as mayor or unable to perform the functions of mayor; and”.

7. Section 27A inserted

After section 27 of the Principal Act, the following section is inserted in Division 3:

27A. Order relating to Mayor’s functions

- (1) The Minister, by order, may do any one or more of the following:
 - (a) clarify the functions of mayor;
 - (b) impose on mayors such functions as the Minister considers appropriate.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.
- (4) An order under this section may be combined with an order under one or more of the following sections:

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- (a) section 28AA;
- (b) section 62A;
- (c) section 62B.

8. Section 28AA inserted

After section 28 of the Principal Act, the following section is inserted in Division 3:

28AA. Order relating to functions of councillors

- (1) The Minister, by order, may clarify the functions of councillors.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.
- (4) An order under this section may be combined with an order under one or more of the following sections:
 - (a) section 27A;
 - (b) section 62A;
 - (c) section 62B.

9. Section 53 amended (Notification of interest)

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “councillor or member” and substituting “councillor, member or member of an audit panel”;
- (b) by omitting from subsection (1) “committee or controlling authority” and substituting “committee, controlling authority or audit panel”;
- (c) by omitting from subsection (2)(b) “councillor or member” and substituting “councillor, member or member of an audit panel”.

10. Section 54A amended (Register of interests of members)

Section 54A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “authority.” and substituting “authority or of members of an audit panel.”;
- (b) by omitting from subsection (2) “committee or controlling authority” and substituting “committee, controlling authority or audit panel”.

11. Section 55B inserted

After section 55A of the Principal Act, the following section is inserted in Part 5:

55B. Interests of members of audit panels

- (1) A member of an audit panel must notify the general manager, in writing, of having an interest, as referred to in section 49, in any matter –
- (a) in respect of which the audit panel is conducting, is or to conduct, a review; or
 - (b) which may affect the outcome of a review being, or to be, conducted by the audit panel; or
 - (c) in respect of which the audit panel is providing or making, or is to provide or make, advice or a recommendation; or
 - (d) which may affect any advice or recommendation the audit panel is providing or making, or is to provide or make.

Penalty: Fine not exceeding 50 penalty units.

- (2) Section 51 applies as if a reference to a member were a reference to a member of the audit panel.
- (3) The general manager is to –

- (a) advise the council of the existence of any interest notified under subsection (1); and
 - (b) keep a register of any such interest.
- (4) Any register kept under subsection (3)(b) is exempt from the provisions of the *Right to Information Act 2009*.

12. Part 5A inserted

After section 56 of the Principal Act, the following Part is inserted:

PART 5A – GIFTS AND DONATIONS

56A. Councillor to notify of gifts and donations

- (1) A councillor who receives –
- (a) a gift or donation prescribed by the regulations for the purposes of this section; or
 - (b) a gift or donation of a class prescribed by the regulations, for the purposes of this section –

must notify the general manager of that gift or donation.

Penalty: Fine not exceeding 10 penalty units.

- (2) A notice is to –

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- (a) be in writing; and
- (b) contain the details prescribed by the regulations; and
- (c) be provided to the general manager within the period prescribed by the regulations.

57. Gifts and donations register

- (1) The general manager is to keep a register of the gifts and donations referred to in section 56A(1) that have been received by councillors.
- (2) The register is to include the following information:
 - (a) the name of the councillor;
 - (b) a description of the gift or donation;
 - (c) any other information required by the regulations to be included.

13. Section 61 amended (Appointment of general manager)

Section 61 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

(1A) In appointing a person as general manager of the council, a council is to do so in accordance with any relevant order made under section 61A.

(b) by omitting subsection (6).

14. Sections 61A and 61B inserted

After section 61 of the Principal Act, the following sections are inserted in Division 1:

61A. Order relating to appointment and performance of general managers

(1) The Minister, by order, may do any one or more of the following:

(a) specify the principles governing the selection of a general manager;

(b) specify the matters, and classes of matters, that are to be taken into account when a council is selecting, or reappointing, a general manager;

(c) specify the procedures to be followed by a council in relation to appointing, or reappointing, a general manager;

(d) provide, or provide for the development of, the processes and procedures to be followed by

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a council in monitoring the performance of a general manager.

- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.

61B. Acting general managers

- (1) For the purposes of this section, a general manager is absent if –
 - (a) he or she is absent from duty for any reason; or
 - (b) he or she is otherwise unavailable or unable to perform the functions of the office of general manager; or
 - (c) the position of general manager is vacant.
- (2) The mayor may appoint a person to act in the office of general manager if –
 - (a) the general manager is absent and no person holds an appointment under subsection (4); or

- (b) the general manager is absent and the person appointed under subsection (4) is absent from duty or otherwise unavailable or unable to act in the office of general manager.
- (3) An appointment under subsection (2) ends when the first of the following occurs:
 - (a) the general manager returns to duty;
 - (b) the term of the appointment expires;
 - (c) the mayor or the council revokes the appointment;
 - (d) a person is appointed as general manager under section 61.
- (4) The council may appoint a person to act in the office of general manager during every absence of the general manager.
- (5) An appointment under subsection (4) is for the term, not exceeding 5 years, specified in the appointment and ends when the first of the following occurs:
 - (a) the term of the appointment expires;
 - (b) the council revokes the appointment;

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(c) if the appointment is to the holder of an office, the person ceases to hold that office.

(6) While a person appointed to act in the office of general manager is acting as general manager, that person is taken to be the general manager.

15. Sections 62A and 62B inserted

After section 62 of the Principal Act, the following sections are inserted in Division 1:

62A. Order relating to general manager's functions generally

- (1) The Minister, by order, may clarify the functions of general managers by specifying matters, or classes of matters, that are operational or administrative in nature and so are to be performed by general managers.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.

(4) An order under this section may be combined with an order under any one or more of the following sections:

- (a) section 27A;
- (b) section 28AA;
- (c) section 62B.

62B. Order relating to general manager's function to liaise with mayor

- (1) The Minister, by order, may specify the manner in which general managers are to liaise with their mayors.
- (2) The Minister may amend, revoke, or revoke and substitute an order.
- (3) Before making, amending or revoking and substituting an order, the Minister must consult with the councils as to the matters the Minister is considering including in the order, the amended order or the substitute order.
- (4) An order under this section may be combined with an order under any one or more of the following sections:
 - (a) section 27A;
 - (b) section 28AA;
 - (c) section 62A.

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16. Section 65 amended (Qualified persons)

Section 65 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) A council or council committee is not to decide on any matter which requires the advice of a qualified person without considering such advice unless –
- (a) the general manager certifies, in writing –
 - (i) that such advice was obtained; and
 - (ii) that the general manager took the advice into account in providing general advice to the council or council committee; and
 - (b) a copy of that advice or, if the advice was given orally, a written transcript or summary of that advice is provided to the council or council committee with the general manager's certificate.

17. Section 72 amended (Annual report)

Section 72(1) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (caa) a statement of the operating, capital and competitive neutrality costs in respect of each significant business activity undertaken by the council during the preceding financial year together with a statement of the revenue associated with that activity;

18. Section 83A inserted

After section 83 of the Principal Act, the following section is inserted in Division 3:

83A. Model financial statements

- (1) The Auditor-General is to provide to the Director model financial statements to be used by the councils.
- (2) From time to time the Auditor-General may provide to the Director replacement model financial statements to be used by the councils that are to be substituted for the existing drafts for model financial statements.
- (3) On receipt of the model financial statements or replacement model financial statements, the Director –
- (a) is to publish on the relevant website of the Department the model financial statements or replacement model financial statements for use by councils; and

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- (b) is to provide a copy of the model financial statements or replacement model financial statements to each council no later than the next occurring 30 June in preparation for use by the council in relation to its financial statements for the financial year ending on that 30 June.

19. Section 84 amended (Financial statements)

Section 84(2) of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) and substituting the following paragraphs:

- (a) be in the form set out in the model financial statements provided under section 83A; and
- (b) contain the information required by those model financial statements; and

- (b) by omitting paragraph (da).

20. Section 214A amended (Scope of review)

Section 214A of the Principal Act is amended as follows:

- (a) by omitting “matters:” and substituting “matters, in whole or in part:”;

(b) by omitting paragraph (a) and substituting the following paragraph:

(a) the operation of a council, including the performance and exercise of the council's functions and powers, the administrative operation of the council, the governance of the council and the decision making of the council;

21. Part 12B inserted

After section 214K of the Principal Act, the following Part is inserted:

PART 12B – PERFORMANCE IMPROVEMENT DIRECTIONS

214L. Recommendation for issuing performance improvement direction

- (1) The Director may recommend to the Minister that he or she issue a performance improvement direction to a council or councillor.
- (2) Without limiting the situations in which the Director may make a recommendation under subsection (1), the Director may make a recommendation under that subsection if, in the Director's opinion, the council or councillor –

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- (a) has failed to comply with a statutory requirement under this or any other Act or under subordinate legislation made under this or any other Act and the Director considers that the failure is not of a minor nature; or
- (b) has failed on a number of occasions to comply with a statutory requirement, or a number of different statutory requirements, under this or any other Act or under subordinate legislation made under this or any other Act, regardless of whether any such failure is of a minor nature.

(3) The recommendation is to include the grounds on which the recommendation is based.

214M. Minister may issue performance improvement direction

- (1) On receipt of the recommendation of the Director provided under section 214L, the Minister may –
 - (a) issue to a council or a councillor a direction requiring the council or councillor to take, refrain from taking or cease taking an action for the purpose of complying with the statutory obligations of

the council or councillor under this or any other Act; or

(b) refuse to issue such a direction.

(2) The Minister may issue a direction to a council or councillor only if satisfied that it is appropriate to do so after considering any submissions made under section 214N(2)(d) and the recommendation of the Director provided under section 214L.

(3) A direction may require the council or councillor –

(a) to take, refrain from taking or cease taking an action within the period specified in the direction; and

(b) to notify the Minister, in writing and within the period specified in the direction, of the steps the council or councillor has taken, or proposes to take, to comply with the direction.

(4) A direction may set out the consequences of failing to comply with the direction.

214N. Right of council or councillor to make submissions

(1) If the Minister is proposing to issue a performance improvement direction to a

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council or councillor, the Minister is to notify the council or councillor of that fact.

- (2) The notice provided under subsection (1) is to –
- (a) be in writing; and
 - (b) include a draft of the proposed performance improvement direction; and
 - (c) include the grounds for the making of the performance improvement direction; and
 - (d) notify the council or councillor that it, he or she may make written submissions to the Minister on the matter within the period, of not less than 14 days, specified in the notice.
- (3) The council or councillor may make written submissions to the Minister in relation to the proposed performance improvement notice within the period specified in the notice under subsection (1).

214O. Consequences of failing to comply with performance improvement direction

- (1) If a council or councillor fails to comply with a performance improvement

direction, the Minister may do one or more of the following:

- (a) suspend all of the councillors or the councillor from office for a period not exceeding 6 months;
 - (b) under section 214, require the Board to carry out a general review, or a specific review, of the council;
 - (c) under section 215, establish a Board of Inquiry to investigate the council.
- (2) If the Minister suspends all of the councillors of a council, the Governor, under Division 2 of Part 13, may appoint a person as commissioner for that council during that suspension and that Division applies in relation to the appointment of the commissioner.

22. Section 215 amended (Board of Inquiry)

Section 215 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

- (5) If the Minister establishes a Board of Inquiry to investigate a council, the Minister, at any time during the inquiry, may suspend all the councillors, or any of the councillors, from office for the period ending on the day on which –

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- (a) the Minister gives a direction under section 225(2); or
- (b) an order under section 226 dismissing all the councillors or any councillor takes effect.

23. Section 217 amended (Powers of Board of Inquiry)

Section 217 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph before paragraph (a) in subsection (1):
 - (aa) require any person to provide, in writing and within the time specified in the requirement, answers to the questions asked, or the information specified, in the requirement; and
- (b) by inserting the following paragraph before paragraph (a) in subsection (2):
 - (aa) fail to comply with a requirement referred to in subsection (1)(aa); or

24. Section 225 amended (Result of inquiry)

Section 225 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “councillor,” after “a council,”;

- (b) by inserting in subsection (2)(a) “councillor,” after “council,”;
- (c) by omitting from subsection (2)(a) “its” and substituting “its, his or her”;
- (d) by inserting in subsection (2)(b) “councillor,” after “council,”;
- (e) by omitting from subsection (2)(b) “its” and substituting “its, his or her”;
- (f) by inserting in subsection (2)(c) “councillor,” after “council,”;
- (g) by omitting from subsection (2)(c) “its” and substituting “its, his or her”;
- (h) by inserting in subsection (2)(d) “councillor,” after “council,”;
- (i) by inserting in subsection (3) “councillor,” after “a council,”;
- (j) by inserting in subsection (3) “councillor,” after “require the council,”;
- (k) by inserting in subsection (3)(a) “councillor,” after “council,”;
- (l) by inserting in subsection (3)(b) “councillor,” after “council,”.

25. Section 226 amended (Dismissal of councillors)

Section 226 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1) “or councillor” after “a council”;
- (b) by omitting from subsection (1) “the councillors” and substituting “any councillor or all councillors”;
- (c) by inserting in subsection (1)(a) “councillor or” after “failure of the”;
- (d) by inserting in subsection (1)(b) “councillor or” after “conduct of the”;
- (e) by inserting the following subsection after subsection (1):

(1A) In subsection (1) –

operation of the council

includes the performance and exercise of the council’s functions and powers, the administrative operation of the council, the governance of the council and the decision making of the council.

- (f) by inserting in subsection (2) “councillor or” after “If a”;
- (g) by inserting in subsection (2) “councillor or all” after “dismiss the”;
- (h) by inserting in subsection (3) “a councillor or all” after “dismissal of”.

26. Section 230 amended (Appointment of commissioner on suspension)

Section 230 of the Principal Act is amended by inserting “all of” after “suspends”.

27. Section 231 amended (Appointment of commissioner on dismissal)

Section 231(1) of the Principal Act is amended by inserting “all of” after “dismissal of”.

28. Section 260 amended (Closure of electoral roll)

Section 260 of the Principal Act is amended by omitting “6th” and substituting “7th”.

29. Section 269 amended (Notice of election)

Section 269(1) of the Principal Act is amended by omitting “7th” and substituting “8th”.

30. Section 274 amended (Election without poll)

Section 274(3)(b) of the Principal Act is amended by omitting “4th” and substituting “5th”.

31. Section 278 amended (Electoral advertising)

Section 278(3) of the Principal Act is amended by omitting “publish, broadcast” and substituting “publish”.

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32. Section 338A amended (Disclosure of information)

Section 338A(3) of the Principal Act is amended by inserting “or a member of an audit panel” after “law, a member”.

33. Section 339 amended (Improper use of information)

Section 339 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “councillor or a member” and substituting “councillor, a member or a member of an audit panel”;
- (b) by omitting from subsection (1) “councillor or member.” and substituting “councillor, member or member of an audit panel.”;
- (c) by omitting from subsection (4)(b) “councillor or member” and substituting “councillor, member or member of an audit panel”.

34. Section 339A amended (Misuse of office)

Section 339A of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) In this section –

member includes a member of an audit panel.

35. Section 341 amended (Immunity from liability)

Section 341 of the Principal Act is amended as follows:

(a) by omitting subsection (1) and substituting the following subsection:

(1) A person who is –

- (a) a councillor; or
- (b) a member of the Board; or
- (c) the Executive Officer; or
- (d) a member of the Code of Conduct Panel or an audit panel; or
- (e) a member of a Board of Inquiry; or
- (f) a member of a special committee or a controlling authority; or
- (g) a commissioner, or an employee, of a council –

does not incur any personal liability in respect of any act done or omitted to be done by the person in good faith in the performance or exercise, or the purported performance or purported exercise, of any function or power under this or

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any other Act or in the administration or execution, or purported administration or purported execution, of this Act.

- (b) by inserting in subsection (2) “a councillor, an employee of the council, or” after “lie against”;
- (c) by inserting the following subsection after subsection (2):

- (3) A liability that would, but for subsection (1), lie against a member of the Board, the Executive Officer, a member of the Code of Conduct Panel, a member of a Board of Inquiry or a commissioner lies against the Crown.

36. Section 348A inserted

After section 348 of the Principal Act, the following section is inserted in Division 3:

348A. References to Act

A reference to this Act includes a reference to any regulations, rules, by-laws and orders made under this Act.

37. Schedule 5 amended (Office of Councillors)

Clause 3 of Schedule 5 to the Principal Act is amended by inserting after subclause (1) the following subclauses:

(1A) Despite subclause (1)(f), if –

- (a) a councillor is no longer eligible to nominate as a candidate under section 270 because the councillor ceases to be entitled under section 254(1) to be enrolled on the electoral roll kept under section 258(7) for an electoral district of the electoral area in respect of which he or she is a councillor; and
- (b) the councillor is entitled, by reason of section 254(2), to be enrolled on the electoral roll kept under section 258(1) in respect of that electoral area –

the councillor does not vacate the office of councillor on so ceasing to be eligible to nominate as a candidate under section 270 but, subject to subclause (1B), vacates the office at the end of the thirtieth day after ceasing to be eligible to so nominate unless the councillor lodges an electoral enrolment form under section 257 within that 30-day period.

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(1B) Despite subclause (1)(f), if a councillor referred to in subclause (1A) lodges an electoral enrolment form under section 257 before the end of the thirtieth day specified in that subclause, the councillor does not vacate the office of councillor.

38. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.