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Email Letter

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Dear subscriber

Delegations and Authorisations Service Update First Update for 2022

We are pleased to provide you with our first update to the Delegations and Authorisations Service for 2022. This takes into account legislative changes which were assented to, or made, on or after 8 July 2021, and some other miscellaneous changes, which affect councils' powers, duties and functions.

The update is contained on the new Maddocks Digital platform, which can be accessed by clicking the following link: <https://indepth.maddocks.com.au/>.

As always, please carefully review this explanatory letter and refer to the updated instruments to ensure that you are aware of the recent legislative changes that affect your council's delegations and authorisations.

Changes Made In This Update

This update amends our S6, S7, S11, S12, S13, S16 and S17 Instruments, as well as our S1 and S9 Explanatory Notes. We have outlined some of the changes to each Instrument below.

1. Changes to the S6 Instrument of Delegation, Council to other Members of Council Staff (S6)

The following changes have been made to the S6:

- 1.1. A number of changes have been made to the *Cemeteries and Crematoria Act 2003* (**Cemeteries and Crematoria Act**). For example, s 74 has been inserted which, pursuant to the *Cemeteries and Crematoria Amendment Act 2003*, will commence on 1 March 2022 unless proclaimed earlier. Sections 84F(2)(d), 84H(4), 84I(5), 84I(6)(a) and (b), 110(1A) of the *Cemeteries and Crematoria Act* have also been inserted, and s 83(2) of the *Cemeteries and Crematoria Act* has been amended to remove reference to '(sole holder)'.
- 1.2. Sections 19EA(3), 19N(2), 38G(2), 39(2) and 43 of the *Food Act 1984* (**Food Act**) have been inserted pursuant to the *Food Amendment Act 2020*. Section 39A has also been amended to reflect the new power to register or renew the registration of a food premises. These provisions are in force.
- 1.3. Sections 19IA(1) and (2), 39A(6), 40(1) and 40E of the *Food Act* have also been inserted. While they contain duties, rather than powers, it was thought it may assist to have these noted in the instrument.

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- 1.4. Section 45AC of the Food Act has been inserted to enable a delegate to authorise a person for the purposes of bringing proceedings.
- 1.5. Section 38G(4) of the Food Act has been amended to reference the correct provision.
- 1.6. Section 12A of the *Planning and Environment Act 1987 (P&E Act)* has been removed as it has been repealed.
- 1.7. Section 113(2) of the P&E Act has been inserted pursuant to the *Planning and Environment Amendment Act 2021*. It relates to the power to request the Minister for a declaration for land to be proposed to be reserved for public purposes.
- 1.8. Sections 91ZU, 91ZZC, 91ZZE, 142D, 142G, 142I, 206AZA, 207ZE, 311A and 317ZDA of the *Residential Tenancies Act 1997 (RT Act)* have been removed from the S6 and inserted in the S7. This is because the specific power of delegation provided under the RT Act only applies to Part 14 and regulations under this part. Therefore, the delegation of other powers and functions under the RT Act comes from the *Local Government Act 2020*.
- 1.9. Section 96 of the *Road Management Act 2004* has been inserted to enable a delegate to authorise a person for the purpose of instituting legal proceedings.
- 1.10. The *Residential Tenancies Regulations 2021* have been removed from the S6. Upon review, it was determined that the power to approve any other toilet system is not a power under the *Residential Tenancies Regulations 2021* but rather a power under other legislation, such as the *Environment Protection Regulations 2021*.

2. Changes to the S7 Instrument of Delegation, CEO to Members of Council staff (S7)

The changes made to the S7 include or reflect the following:

- 2.1. Section 232A of the *Building Act 1993 (Building Act)* has been amended to reflect that councils have a duty to receive a complaint brought under Part 13 Division 2 of the Act.
- 2.2. Section 68A of the *Domestic Animals Act 1994* has been amended. The duty to prepare a domestic animal management plan is now in force.
- 2.3. Section 347(3) of the *Environment Protection Act 2017* has been inserted. This relates to the power to take proceedings for an offence against a provision relating to permits under the *Environment Protection Regulations 2021*.
- 2.4. Sections 49A, 49B and 49C of the *Great Ocean Road and Environs Protection Act 2020* have been inserted pursuant to *Great Ocean Road and Environs Protection Amendment Act 2021*. However, the provisions do not come in force until 1 September 2022, unless proclaimed earlier.
- 2.5. Section 33A of the *Impounding of Livestock Act 1994* has been inserted to enable the delegate to appoint an authorised officer for the specific purpose of filing charge sheets in respect of alleged offences committed in the municipal district.
- 2.6. Section 3 of the *Infringements Act 2006* has been inserted to enable the delegate to appoint an issuing officer (who must be a member of council staff).
- 2.7. Clause 5(1)(a) in Schedule 10 of the *Local Government Act 1989 (LGA 1989)* has been amended to correct a typographical error.
- 2.8. Sections 111C, 134(6), 167, 189(2) and (5) of the *Major Transport Projects Facilitation Act 2009* have been inserted. These provisions have been inserted under the *Suburban Rail Loop Act 2021*.
- 2.9. Section 28(a) of the *Public Health and Wellbeing Act 2008* has been amended to include reference to a 'pandemic declaration'.

- 2.10. Sections 91ZU, 91ZZC, 91ZZE, 142D, 142G, 142I, 206AZA, 207ZE, 311A and 317ZDA of the *Residential Tenancies Act 1997* have been inserted. See comment above under S6 changes.
- 2.11. Section 77(4) of the *Road Safety Act 1986* has been inserted to enable the delegate to authorise an officer to take proceedings for any offence which relates to the parking or leaving standing of a vehicle.
- 2.12. Section 3 of the *Sex Work Act 1994* has been inserted, which enables the delegate to appoint an authorised officer.
- 2.13. Sections 8(1) and 10(5) of the *Subdivisions Act 1988* have been amended to reflect the new provisions under the *Subdivision (Procedures) Regulations 2021*.
- 2.14. The *Suburban Rail Loop Act 2021* has been inserted.
- 2.15. Regulation 3 of the *Road Safety (Traffic Management) Regulations 2019* has been inserted to enable the delegate to appoint a school crossing supervisor.
- 2.16. The *Road Safety (Vehicles) Regulations 2021* have been inserted and the *Road Safety (Vehicles) Interim Regulations 2019* have been removed.
- 2.17. The *Subdivision (Procedures) Regulations 2021* have been inserted and the *Subdivision (Procedures) Regulations 2011* have been removed.
- 2.18. Under the miscellaneous powers section, the power to enter into a licence for the occupation or use of property has been reinserted.

3. Changes to the S11 Instrument of Appointment and Authorisation (S11)

The following change has been made to the S11:

- 3.1. Section 347(3) of the *Environment Protection Act 2017* has been inserted under Part B, which relates to the power to take proceedings for an offence against a provision relating to permits under the *Environment Protection Regulations 2021*.

4. Changes to the S12 Instrument of Delegation and Authorisation by the Municipal Building Surveyor (S12)

The S12 Instrument of Delegation and Authorisation relates to the powers, duties and functions of a council's Municipal Building Surveyor (**MBS**). The following changes have been made to the S12:

- 4.1. As a preliminary, the provisions in the S12 have been amended to reflect where the MBS is acting as a relevant building surveyor.
- 4.2. The power to issue building permits as provided for in ss 24 and 24A of the Building Act have been slightly amended for the purposes of clarity.
- 4.3. Sections 25A and 238(1) of the Building Act are now in force.
- 4.4. Section 37K(1) of the Building Act has been slightly amended to include reference to a 'relevant owner'. Section 101 has also been slightly amended for the purposes of clarity.
- 4.5. Section 205I(4) of the Building Act has been inserted pursuant to the *Cladding Safety Act 2020*.

5. Changes to the S13 Instrument of Delegation by CEO of CEO Powers (S13)

The S13 Instrument of Delegation contains powers, duties and functions vested in Council's CEO (rather than in the council itself). The following changes have been made to the S13:

- 5.1. Section 105 of the *Local Government Act 2020* has been inserted. This provision refers to the Principal Accounting Officer of a council, and so we have included the power to designate a person as a Principal Accounting Officer.

5.2. Section 36 of the *Tobacco Act 1987* has been inserted to enable the delegate to nominate a person to be appointed an inspector.

5.3. The *Local Government (Land Information) Regulations 2021* has been inserted to enable the delegate to sign land information certificates.

6. S16 Instrument of Delegation by the CEO to Staff (Bushire Reconstruction) (S16)

The following changes have been made to the S16:

6.1. Section 60(1A)(a) of the P&E Act has been deleted as it has been repealed.

6.2. Section 61A of the P&E Act has been amended to reflect that s 80 of the *Local Government 1989* is now repealed.

7. S17 Instrument of Appointment and Authorisation (Oaths and Affirmations Act 2018) (S17)

The following change has been made to the S17:

7.1. Footnote 1 has been amended to reflect that s 97B of the LGA 1989 is now repealed. However, the definition of 'senior officer' in the LGA 1989 remains.

Local Laws

While this has been mentioned in our previous updates, we again remind councils of the importance of delegating not only the powers, duties and functions existing under legislation, but also any council powers, duties and functions existing in any local laws made by their council.

Our Delegations and Authorisations Service covers only the former and so it is up to each council to ensure that it reviews all of its local laws and, where appropriate, delegates relevant powers, duties and functions.

Updating Your Instruments

As always, we recommend that you re-make all of your council delegations regularly to ensure that they remain up to date and cover all relevant provisions. This includes the S5 Instrument.

If you have any questions about this Update, please direct your queries to Maryam Popal (maryam.popal@maddocks.com.au) or myself (melanie.olynyk@maddocks.com.au).

Yours sincerely
Maddocks



Transmission authorised by:
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