

Queensland



**LOCAL GOVERNMENT
LEGISLATION
AMENDMENT ACT 1996**

Act No. 81 of 1996

Queensland



**LOCAL GOVERNMENT LEGISLATION
AMENDMENT ACT 1996**

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SCHEDULE 133

**MINOR AND CONSEQUENTIAL AMENDMENTS OF LOCAL
GOVERNMENT ACT 1993**

Queensland



**Local Government Legislation Amendment
Act 1996**

Act No. 81 of 1996

**An Act to amend legislation about local government, and for other
purposes**

[Assented to 16 December 1996]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Local Government Legislation Amendment Act 1996*.

PART 2—AMENDMENT OF CITY OF BRISBANE ACT 1924

Act amended in pt 2

2. This part amends the *City of Brisbane Act 1924*.

Amendment of s 3A (Application of the Local Government Act)

3.(1) Section 3A(2), ‘• part 1 (Review of local government matters)’—
omit, insert—

• part 1 (Reviewable local government matters)’.

(2) Section 3A(2), from ‘• section 244’ to ‘contest election)’—
omit, insert—

- chapter 5 (Local government elections)
 - part 5 (Division of local government areas)
 - part 6 (Conduct of elections)
 - section 244 (Qualification for nomination)
 - section 245 (Prohibition of dual candidature)
 - section 246 (Leave to local government employee to

contest election)

- section 249 (Who may nominate)’.

(3) Section 3A(2), after ‘• part 4 (Enterprises)’—

insert—

- ‘• chapter 7A (National competition reform of significant business activities)’.

Amendment of pt 2, div 4 (Distribution and redistribution of wards)

4. Part 2, division 4, heading—

omit.

Omission of pt 2, div 4, subdiv 2

5. Part 2, division 4, subdivision 2—

omit.

Amendment of pt 2, div 4, subdiv 3 (General provisions)

6. Part 2, division 4, subdivision 3, heading—

omit.

Omission of ss 14L–14P

7. Sections 14L to 14P—

omit.

Amendment of s 14Q (Electoral rolls)

8.(1) Section 14Q(1), from ‘determined’ to ‘Governor’—

omit.

(2) Section 14Q(4)—

omit.

Amendment of s 16 (Triennial elections)

9. Section 16(1), (1A) and (2)—

omit, insert—

‘**(1)** A triennial election of the councillors is to be held on 15 March 1997.¹

‘**(2)** However, a regulation may fix a different date for the election.

‘**(2A)** Later triennial elections are to be held in every third year after 1997 on the last Saturday in March.

‘**(2B)** However, a regulation may fix a different date for a particular year.’.

Amendment of s 17 (Provisions concerning elections)

10. Section 17(3A)(a) and (b), ‘calendar year next preceding the calendar’—

omit.

Repeal of s 20 (Conclusion of elections)

11. Section 20—

omit.

Amendment of s 58 (Utility charges)

12. Section 58—

insert—

‘**(6)** The council may do 1 or more of the following—

- (a) make and levy a utility charge for services supplied or to be supplied during part of the financial year and part of another financial year;

¹ See *Local Government Act 1993*, section 812 (Electoral wards of City of Brisbane for 1997 triennial election).

- (b) make and levy differing charges for services supplied or to be supplied during various periods in 1 or more financial years;
- (c) in making and levying differing charges under paragraph (b), decide the way the charges are to be apportioned.

Examples of application of subsection (6)—

1. For water used between 30 April 1998 and 31 July 1998, the council may resolve to charge—

- (a) for water used (as measured) during the period 30 April 1998 to 31 July 1998 on the basis of the charge made at the budget meeting for the 1997-1998 financial year; or
- (b) for water used (as measured) during the period 30 April 1998 to 31 July 1998 on the basis of the charge made at the budget meeting for the 1998-1999 financial year; or
- (c) for—
 - (i) water used (as measured) during the period 30 April 1998 to 30 June 1998 on the basis of the charge made at the budget meeting for the 1997-1998 financial year; and
 - (ii) water used (as measured) during the period 1 July 1998 to 31 July 1998 on the basis of the charge made at the budget meeting for the 1998-1999 financial year; or
- (d) an apportioned charge for water used during the 2 periods (30 April 1998 to 30 June 1998 and 1 July 1998 to 31 July 1998) on the basis of—
 - (i) the total amount of water used (as measured) during the period 30 April 1998 to 31 July 1998—93 days—being apportioned to each period according to the respective lengths of the periods—62 days and 31 days respectively; or
 - (ii) another basis set out in the resolution.

2. The council may resolve to charge for water supplied between 1 July 1998 and 30 June 1999—

- (a) for the period 1 July 1998 to 28 February 1999—a flat charge of \$300 with an excess charge of \$1 per kL of water used greater than 350 kL; and
- (b) for the period 1 March 1999 to 30 June 1999—an amount based on the actual consumption of water during the period.

(7) Despite subsection (6), the council must not for a financial year make and levy a utility charge for services supplied or to be supplied other than in that, the previous or the next financial year.

‘(8) Charges made and levied in accordance with a decision under subsection (6) are lawfully made and levied under this Act.

‘(9) Subsections (6) to (8) apply despite the reference in sections 48 and 53² to the making and levying of rates and charges for a financial year.

‘(10) If—

- (a) a meter or other measuring device is to be read on a particular day for working out the amount of a charge to be levied by the council for a service; and
- (b) the council resolves to apply this subsection to the reading of meters or other measuring devices;

it is taken to have been read on that day if it is read within a period of 2 weeks before or after the day.

Example for subsection (10)—

If the council resolves to apply this subsection to the supply of water that is to be charged on the basis of usage for a period ended 30 April and a meter is read on 10 May, that reading is taken to be the reading at 30 April for the purposes of calculating the water usage during the period.

‘(11) Subsection (10) does not restrict the council’s power to make local laws relating to other aspects of the administration of metered consumption of water.

Example for subsection (11)—

A local law may be made to provide for water consumption to be estimated on the basis of the best information reasonably available if a water meter is found to be malfunctioning or inoperative during any period of consumption.’

Amendment of s 69 (Other benefits for prompt payment)

13. Section 69—

insert—

‘(2) In subsection (1)—

“**benefits**” include chances of winning a prize in a lottery conducted by the

² Sections 48 (Power to make and levy rates and charges) and 53 (Making of rates and charges)

council.

‘(3) For a lottery conducted by the council solely to provide a benefit for this section—

(a) the *Art Unions and Public Amusements Act 1992* does not apply; and

(b) the council must—

(i) by resolution make rules for the conduct of the lottery; and

(ii) conduct the lottery in accordance with the rules for it.

‘(4) Subsections (2), (3) and this subsection expire on 30 June 1998.’.

Insertion of new pt 6

14. After section 135—

insert—

‘PART 6—TRANSITIONAL AND SAVINGS PROVISION FOR AMENDMENTS UNDER LOCAL GOVERNMENT LEGISLATION AMENDMENT ACT 1996

‘Provisions about electoral roll for triennial elections

‘**136.** It is declared that section 17(3A)³ as amended by the *Local Government Legislation Amendment Act 1996* applies and always did apply from 18 December 1990.

‘Expiry of pt

‘**137.** This part expires on 1 May 1997.’.

³ Section 17 (Provisions concerning elections)

PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended in pt 3 and schedule

15. This part and the schedule amend the *Local Government Act 1993*.

Amendment of s 4 (Definitions)

16.(1) Section 4, definitions “**commissioner**”, “**declaration envelope**”, “**deputy commissioner**”, “**electoral officer**”, “**issuing officer**”, “**member**”, “**owner**” and “**referable local government matter**”—

omit.

(2) Section 4—

insert—

“**affected area**”, for a reviewable local government matter, means an area, or part of an area, prescribed under a regulation for the matter.

“**affected elector**” means—

- (a) for an affected area (that is not divided into voting areas) for a reviewable local government matter for which a referendum is to be held in relation to an electoral and boundaries review commission’s proposed determination of the matter—a person who, on the referendum roll cut-off day, is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the affected area; or
- (b) for a voting area of an affected area for a reviewable local government matter for which a referendum is to be held for an electoral and boundaries review commission’s proposed determination of the matter—a person who, on the referendum roll cut-off day, is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the voting area.

“**approve**”, a referendum question, see section 91A.

“**approved form**” see section 792A.

“chairperson”, of an expanded commission, means—

- (a) if the commission is a special commission—the member mentioned in section 66A(1)(a); or
- (b) if paragraph (a) does not apply—the commission member who is the commissioner or deputy commissioner.

“commissioner” means the electoral commissioner under the *Electoral Act 1992*.

“compulsory referendum” see section 72F.

“declaration envelope” means an envelope on which there is a declaration that has been, or a form of declaration that is to be, made by an elector.

“deputy commissioner” means the deputy electoral commissioner under the *Electoral Act 1992*.

“electoral and boundaries review commission” means a Local Government Electoral and Boundaries Review Commission established under section 66.

“electoral officer”, for an election, means the returning officer, an assistant returning officer or a presiding or issuing officer.

“expanded commission” means an electoral and boundaries review commission constituted by more than 1 commission member.

“explanatory statement” see section 92F.

“implementation issues”, for a reviewable local government matter mentioned in section 64(1)(a), (c), (e) or (f), means—

- (a) the apportionment of assets and liabilities between the local governments concerned; and
- (b) the application of existing local laws, planning schemes and interim development control provisions; and
- (c) the preservation of—
 - (i) valuations of, and rates levied on, rateable land that would be affected by the matter if it were implemented; and
 - (ii) any existing debentures issued by the local governments; and
- (d) the rationalisation of staff of the local governments; and

(e) anything else prescribed under a regulation.

“issuing officer” means a person appointed to issue ballot papers, declaration envelopes or declaration forms to electors, and includes a returning officer, assistant returning officer and presiding officer when carrying out any of those functions.

“limited reviewable local government matter” see section 65.

“majority”, of commission members of an expanded commission constituted by an even number of members, means at least one-half the members plus 1.

“major reference”, for a reviewable local government matter, means—

- (a) a reference of, or reference including, a reviewable local government matter mentioned in section 64(1)(g) or (h) that, if implemented, would affect the City of Brisbane; or
- (b) a reference of another reviewable local government matter that—
 - (i) the Minister states in the reference of the matter is a major reference; or
 - (ii) the commissioner or an electoral and boundaries review commission declares under section 71 or 71B is a major reference.⁴

“member” for—

- (a) a joint local government—includes the president and deputy president of the joint local government; or
- (b) a local government committee—includes the chairperson and deputy chairperson of the committee; or
- (c) the Local Government Grants Commission—includes the chairperson and deputy chairperson of the commission; or
- (d) an electoral and boundaries review commission—means a member of the commission.

“minor reference”, for a reviewable local government matter, means a reference the commissioner declares, under section 71, is a minor

⁴ A special reference is a major reference under paragraph (a)—see definition “special reference”.

reference, but does not include a reference an electoral and boundaries review commission declares, under section 71B, to be a major reference.

“non-compulsory referendum” see section 72F.

“oppose”, a referendum question, see section 91A.

“owner”, of land, see—

(a) for chapter 3, part 1—section 63; or

(b) for all provisions—section 5.

“prescribed offices” see section 8.

“question”, for a referendum, means the question asked at the referendum.

“referendum” means a referendum under chapter 3, part 1, division 4A, for an electoral and boundaries review commission’s proposed determination of a reviewable local government matter.

“referendum day” see section 92B.

“referendum notice”, for a referendum, see section 92C.

“referendum roll cut-off day”, for a referendum, means the day stated in the referendum notice for the referendum as the referendum roll cut-off day.

“returning officer”, for a referendum, means the person appointed under section 92A as the returning officer for the referendum.

“review commissioner” means a review commissioner appointed under chapter 3, part 1, division 5, subdivision 2.

“special commission” means an electoral and boundaries review commission established for a special reference of a reviewable local government matter.

“special reference”, for a reviewable local government matter, means a reference under section 235 of a reviewable local government matter mentioned in section 64(1)(g) or (h) that, if implemented, would affect the City of Brisbane.

“voting areas”, of an affected area, mean the parts into which an affected area is divided, under a regulation, for a referendum.

Amendment of s 6 (Meaning of “conclusion” of local government election)

17.(1) Section 6, after ‘of a councillor’—

insert—

‘, other than a councillor of the Brisbane City Council,’.

(2) Section 6(a), ‘published’—

omit, insert—

‘displayed in the local government’s public office’.

(3) Section 6(b)(i), ‘published’—

omit, insert—

‘displayed in the local government’s public office’.

(4) Section 6(c)(i), ‘published’—

omit, insert—

‘displayed in the local government’s public office’.

(5) Section 6—

insert—

(2) The “**conclusion**” of the election of a councillor of the Brisbane City Council is—

- (a) for a triennial election—when the names of all candidates elected are published in the gazette; or
- (b) for a by-election whether or not a poll is conducted—when the name of the candidate elected is published in the gazette.⁵.

Amendment of s 8 (Meaning of “open to inspection”)

18.(1) Section 8(1)(b)—

omit, insert—

⁵ *Electoral Act 1992*, section 123(2)(c) provides for publication in the gazette of the name of each candidate elected. That section is applied to the conduct of Brisbane City Council elections—see *City of Brisbane Act 1924*, section 17(5).

- ‘(b) if it is a document relating to an electoral and boundaries review commission’s examination or determination of a reviewable local government matter—
- (i) it must be held in the Electoral Commission’s office at Brisbane and the public office of each local government concerned (the “**prescribed offices**”); and
 - (ii) it may also be held at another office under arrangements made by the commission; and
- (c) if it is a document of another entity—it must be held in an office of the entity that is open to the public.’

Amendment of s 9 (Act applies only so far as expressly provided)

19.(1) Section 9(2), ‘• part 1 (Review of local government matters)’—

omit, insert—

‘• part 1 (Reviewable local government matters)’.

(2) Section 9(2), from ‘• section 244’ to ‘contest election’—

omit, insert—

- chapter 5 (Local government elections)
 - part 5 (Division of local government areas)
 - part 6 (Conduct of elections)
 - section 244 (Qualification for nomination)
 - section 245 (Prohibition of dual candidature)
 - section 246 (Leave to local government employee to contest election)
 - section 249 (Who may nominate)’.

(2) Section 9(2) after ‘• part 4 (Enterprises)’—

insert—

- chapter 7A (National competition reform of significant business activities)’.

Amendment of s 10 (How local government Acts apply to Brisbane City Council)

20. Section 10(a)—

insert—

(vii) local government's public office includes a reference to the premises kept by the Brisbane City Council as its public office and a place the council has, by resolution or under a local law, declared to be its public office for a stated matter; and

(viii) to a triennial election includes a triennial election under the *City of Brisbane Act 1924*; and

(ix) to an election includes a reference to an election under the *City of Brisbane Act 1924*; and

(x) to a councillor includes the mayor and councillors of the Brisbane City Council; and

(xi) to a by-election includes a reference to a separate election to fill a vacancy in the office of mayor or other councillor of the Brisbane City Council.'.

Replacement of s 62 (Local government does not include joint local government in part)

21. Section 62—

omit, insert—

'Definitions for pt 1

'62. In this part—

"commission" means a Local Government Electoral and Boundaries Review Commission established under section 66.

"local government" does not include a joint local government.'.

Replacement of s 63 (Types of local government matters)

22. Section 63—

omit, insert—

‘Meaning of “owner” of land for pt 1

‘63.(1) In this part, an **“owner”** of land⁶ includes—

- (a) the State—if the land—
 - (i) is State land; or
 - (ii) is to be held as freehold land and is being purchased from the State under an Act; or
 - (iii) is held under a lease from the State; or
 - (iv) is dedicated as a reserve, or granted in fee simple in trust, under the *Land Act 1994*, chapter 3, part 1; or
 - (v) is held under an occupation permit under an Act, a stock grazing permit under an Act or a permit prescribed under a regulation; or
 - (vi) is held under a permit to occupy under the *Land Act 1994*; or
 - (vii) is held under a permission to occupy from the Primary Industries Corporation; or
 - (viii) is held under a licence under the *Land Act 1994*; and
- (b) if the land is dedicated as a reserve, or granted in fee simple in trust, under the *Land Act 1994*, chapter 3, part 1—the trustees of the land.

‘(2) In addition to a person mentioned in subsection (1), a regulation may prescribe another person to be an owner of land for this part.’

Amendment of s 64 (Meaning of “reviewable local government matter”)

23.(1) Section 64—

insert—

‘(1A) However, for subsection (1)(d), (i), (j) or (k)—

- (a) Brisbane City Council is not a local government; and

⁶ This section extends the meaning of “owner”, of land, for this part—see section 4, definition “owner” and section 5 (Meaning of “owner” of land).

(b) the City of Brisbane is not a local government area.

‘(1B) Also, for subsection (1)(a), the City of Brisbane is not a local government area except to the extent the provision relates to creating a new local government area from a part excluded from the City of Brisbane.

‘(1C) In addition, for subsection (1)(f), the City of Brisbane is not a local government area except to the extent the provision relates to the merging of an abolished local government area with the City of Brisbane.’

(2) Section 64—

insert—

‘(2A) Without limiting subsection (2), naming the electoral wards of the City of Brisbane is an aspect of the matters mentioned in subsection (1)(g) and (h).’

Replacement of s 65 (Meaning of “referable local government matter”)

24. Section 65—

omit, insert—

‘Meaning of “limited reviewable local government matter”

‘65.(1) Changing the external boundaries of a local government area by excluding part of the local government area and including the part in another local government area is a “**limited reviewable local government matter**” if the local governments for the areas and all owners of land in the part have agreed to the change.

‘(2) Also, including in a local government area a part of the State that is not part of a local government area is a “**limited reviewable local government matter**” if the local government for the area and all owners of land in the part have agreed to the inclusion.’

Replacement of ch 3, pt 1, divs 2 and 3

25. Chapter 3, part 1, divisions 2 and 3—

omit, insert—

‘Division 2—Local Government Electoral and Boundaries Review Commissions

‘Subdivision 1—Establishment, constitution and functions of commissions

‘Establishment

‘66. There is to be a Local Government Electoral and Boundaries Review Commission for—

- (a) each reference of a reviewable local government matter made to the commissioner; and
- (b) each application for determination of a limited reviewable local government matter made to the commissioner.⁷

‘Constitution

‘66A.(1) A commission for a special reference of a reviewable local government matter is constituted by—

- (a) a person who—
 - (i) is a judge or former judge of a court of the Commonwealth or a State or Territory; and
 - (ii) has been, or was, a judge for at least 3 years; and
- (b) the chief executive of a department; and
- (c) the commissioner or, if the commissioner directs, the deputy commissioner.

‘(2) A commission for a reference of another reviewable local government matter is constituted by the commissioner or, if the commissioner directs, the deputy commissioner.

‘(3) However, if the commissioner considers it appropriate for the commission under subsection (2) to be partly constituted by review commissioners, the commission is to be partly constituted by the number of review commissioners the commissioner considers appropriate for the reference.

⁷ See division 3 (References of, and applications for, reviewable local government matters), subdivision 1 (References to commissioner by Minister) and subdivision 2 (Applications to commissioner by local governments)

‘(4) Also, if the Minister has directed in the reference of the matter under subsection (2) that a minimum number of review commissioners partly constitute the commission for the reference, the commission is to be partly constituted by at least that number of review commissioners.

‘(5) A commission for an application for determination of a limited reviewable local government matter is constituted by the commissioner or, if the commissioner directs, the deputy commissioner.

‘Functions

‘66B. The functions of a commission are, under this part, to—

- (a) examine and determine reviewable local government matters; and
- (b) examine, report and make recommendations to the Minister on implementation issues for reviewable local government matters.

‘Subdivision 2—Business and meetings of commissions

‘Conduct of business

‘67. A commission must conduct its business in the way prescribed under a regulation or, in the absence of a regulation, may conduct its business as it considers appropriate.

‘Times and places of meetings

‘67A.(1) Meetings of an expanded commission are to be held at the times and places it decides.

‘(2) However, the chairperson of an expanded commission may at any time call a meeting by giving the other commission members reasonable notice of the meeting.

‘Quorum at meetings

‘67B. Business may be conducted at an expanded commission meeting only if a majority of commission members are present.

‘Presiding member

‘67C. At a meeting of an expanded commission—

- (a) the chairperson of the commission presides; or
- (b) in the absence of the chairperson, the commission member chosen by the members present as chairperson for the meeting presides.

‘Voting at meetings

‘67D. At a meeting of an expanded commission—

- (a) a question is to be decided by a majority of commission members present and voting; and
- (b) each member (including the member presiding) has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

‘Disclosure of interests by members of expanded commission

‘67E.(1) This section applies if a member of an expanded commission—

- (a) has a direct or indirect financial interest in an issue being considered, or about to be considered, at a meeting; or
- (b) could reasonably be otherwise regarded as having a conflict of interest in an issue being considered, or about to be considered, at a meeting.

‘(2) The member must disclose to the meeting the member’s interest in the issue.

‘(3) The disclosure must be recorded in the commission’s minutes.

‘(4) Unless the commission otherwise directs the member must not—

- (a) be present when the commission considers the issue; and
- (b) take part in the commission’s decision about the issue.

‘(5) The member must not be present when the commission is considering whether to give a direction under subsection (4).

‘(6) If there is another member who must, under subsection (2), also

disclose an interest in the issue, the other member must not—

- (a) be present when the commission is considering whether to give a direction under subsection (4); or
- (b) take part in making the decision about giving a direction.

‘(7) If, because of this section, a member is not present at a commission meeting for considering or deciding the issue, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the issue at the meeting.

‘Additional provisions for disclosure of interests by commissioner and deputy commissioner

‘67F.(1) This section applies if the commissioner or deputy commissioner constituting a commission established for a reference of a reviewable local government matter or an application for determination of a limited reviewable local government matter—

- (a) has a direct or indirect financial interest in an issue relating to the matter; or
- (b) could reasonably be otherwise regarded as having a conflict of interest in an issue relating to the matter.

‘(2) The member must not take part, or take further part, in any consideration of the reviewable local government matter.

‘(3) As soon as practicable after the member becomes aware of the application of this section to the issue, the member must—

- (a) if the member is the commissioner—direct the deputy commissioner to constitute the commission in the commissioner’s place; or
- (b) if the member is the deputy commissioner—inform the commissioner.

‘(4) If subsection (3)(b) applies, the commissioner is to constitute the commission in the deputy commissioner’s place.

‘Resignation and removal

‘68.(1) A review commissioner who partly constitutes a commission may resign from the commission by giving a signed notice of resignation to the commissioner.

‘(2) The *Acts Interpretation Act 1954*, section 25(1)(b) (other than subparagraph (iv)) and (2) to (4) does not apply to the appointment of a review commissioner to partly constitute a commission.⁸

‘Division 3—References of, and applications for, reviewable local government matters**‘Subdivision 1—References to commissioner by Minister****‘Minister may refer certain reviewable local government matters to commissioner**

‘69.(1) The Minister may refer a reviewable local government matter to the commissioner.

‘(2) The reference need not separately identify each reviewable local government matter dealt with in, or included in, the reference.

‘(3) The reference may be in general or specific terms or a combination of general and specific terms.

‘(4) The reference may specify the reviewable local government matter in any way, including, for example—

- (a) naming the local governments the reference directly affects; or
- (b) describing in a suitable way the geographical area to which the reference relates; or
- (c) specifying with reasonable certainty things that are, or are not, included in the reference.

Examples of suitable ways of describing a geographical area—

⁸ The *Acts Interpretation Act 1954*, section 25 deals with incidental powers to a power of appointment.

1. By reference to real property descriptions.
2. By reference to a map or plan held by an entity, or to a particular entry in a register kept by an entity, if the map, plan or register is available for inspection by the public.
3. By reference to a region of the State that is identifiable with reasonable certainty.
4. By reference to areas of named local governments.
5. By reference to a part of the area of a named local government that is identifiable with reasonable certainty.

‘(5) The reference may be made contingent on a determination another commission may make, or proposes to make, on a reference of another reviewable local government matter.

‘References of reviewable local government matters to be tabled etc.

‘69A. The Minister must—

- (a) table a copy of each reference of a reviewable local government matter in the Legislative Assembly within 7 sitting days after it is given to the commissioner; and
- (b) give a copy of the reference to each local government mentioned in the reference.

‘Request by commissioner for reference

‘69B.(1) The commissioner may ask the Minister to refer a reviewable local government matter to the commissioner.

‘(2) The request must include reasons for the request.

‘(3) As soon as practicable after receiving the request, the Minister must—

- (a) refer the matter to the commissioner; or
- (b) advise the commissioner that the matter will not be referred.

‘(4) The Minister must table a copy of the request, and the reference or advice, in the Legislative Assembly within 7 sitting days after giving the reference or advice.

*‘Subdivision 2—Applications to commissioner by local governments***‘Limited reviewable local government matters**

‘70.(1) A local government may apply to the commissioner for determination of a limited reviewable local government matter.

‘(2) However, the application may be made only if each local government that would be affected by the matter if it were implemented (an **“affected local government”**), has, by resolution, decided to make or support the application.

‘(3) The application must—

- (a) be in the approved form; and
- (b) be accompanied by—
 - (i) a report by each affected local government showing that the local government has examined the implementation issues for the matter; and
 - (ii) each affected local government’s suggestions about the implementation issues.

‘(4) The approved form must include—

- (a) the relevant agreements mentioned in section 65(1) or (2); and
- (b) a certificate by each affected local government that the issues prescribed under a regulation under section 76 have been taken into consideration.

*‘Division 3A—Procedures for major and minor references of reviewable local government matters**‘Subdivision 1—Preliminary***‘References of reviewable local government matters**

‘71.(1) As soon as practicable after a special reference of a reviewable local government matter is referred to the commissioner—

- (a) the Governor in Council is to appoint the commission members mentioned in section 66A(1)(a) and (b)⁹ to partly constitute a special commission for the reference; and
- (b) if the commissioner decides not to partly constitute the commission—the commissioner must direct the deputy commissioner to partly constitute the commission.

‘(2) As soon as practicable after another reference of a reviewable local government matter is referred to the commissioner, the commissioner must—

- (a) if the reference is not a major reference, under the definition “major reference”, paragraph (a) or (b)(i)—declare, by gazette notice, whether the reference is a major or minor reference; and
- (b) decide the constitution of a commission for the reference; and
- (c) if an expanded commission (other than a special commission) is, under section 66A, to be constituted for the reference—appoint a review commissioner or commissioners to partly constitute the commission.

‘Appointment of additional review commissioners

‘71A. The commissioner may, at any time after a commission (other than a special commission) is established, appoint a review commissioner, or an additional review commissioner, to partly constitute the commission.

‘Commissions may declare major references

‘71B.(1) This section applies if a commission is established for a reference of a reviewable local government matter the commissioner has declared is a minor reference.

‘(2) The commission may, at any time before it makes a final determination of the matter, declare, by gazette notice, the reference is a major reference.

⁹ The commission members under section 66A(1)(a) and (b) are a judge, or former judge, with standing of at least 3 years and the chief executive of a department.

‘(3) To remove any doubt, if a commission makes a declaration under subsection (2)—

- (a) subdivision 2 applies to the reference of the matter; and
- (b) the commission continues in existence to determine the matter.

‘Commissions must have regard to prescribed issues

‘71C.(1) When considering a reviewable local government matter, a commission must have regard to the issues that may be prescribed under a regulation.

‘(2) If the matter relates to the external boundaries of a local government area, the commission also must have regard to the need to ensure the provision of efficient and effective local government in the area.

‘Restrictions on determinations for City of Brisbane

‘71D.(1) A commission must not make a determination of a reviewable local government matter mentioned in section 64(1)(g) or (h) that would, if implemented, result in a change in the number of electoral wards for the City of Brisbane.¹⁰

‘(2) If the naming of electoral wards of the City of Brisbane is an aspect of a reviewable local government matter, a commission must not determine that a name of an electoral ward be a name that is the name of an electoral district under the *Electoral Act 1992*.

‘Subdivision 2—Major references of reviewable local government matters

‘Application of subdivision

‘72. This subdivision applies for a reviewable local government matter, the subject of a major reference, being considered by a commission.

¹⁰ Under the *City of Brisbane Act 1924*, section 14A, the City of Brisbane is divided into 26 electoral wards for the election of councillors (other than the mayor).

‘Commission may make inquiries

‘72A. In considering the reviewable local government matter, the commission may make the inquiries it considers appropriate.¹¹

‘Preliminary procedures for certain references

‘72B.(1) This section applies if—

- (a) the reference of the reviewable local government matter is a special reference; or
- (b) the reference of the reviewable local government matter is a major reference (other than a special reference) and the commission declares, by gazette notice, that this section applies to the reference.

‘(2) As soon as practicable after the commission’s establishment or the declaration, the commission must, by public notice, invite suggestions from persons and entities on the matter.

‘(3) The notice must state that suggestions are to be given to the commission at a stated address in writing within 30 days after the notice is first published (the **“first notice period”**).

‘(4) As soon as practicable after the first notice period, the commission must—

- (a) ensure copies of all suggestions properly given to it are open to inspection at the prescribed offices and other stated offices; and
- (b) by public notice—
 - (i) state that copies of the suggestions are open to inspection at the prescribed offices and other stated offices; and
 - (ii) state that any person or other entity may make written comment on the suggestions within 21 days after the notice is first published (the **“second notice period”**); and

¹¹ If the commission is an expanded commission established to determine a reviewable local government matter the subject of a major reference, the commission’s powers of inquiry include the powers under division 4 (Inquiries by expanded commissions).

(iii) state the address to which the comments may be sent.

‘(5) A public notice under subsection (2) or (4) must be published in—

- (a) the gazette; and
- (b) a newspaper circulating generally in the local government areas that would be affected by the matter if it were implemented.

‘(6) As soon as practicable after the second notice period, the commission must ensure copies of all comments given to it within the period are open to inspection at the prescribed offices and other stated offices.

‘(7) The suggestions and comments properly given to the commission must be open to inspection until—

- (a) if, under section 72C, the commission determines that the matter not be implemented—notification in the gazette of its determination is given; or
- (b) if the commission proposes to determine that the matter be implemented—the day after the stated day under section 72D.

‘(8) In determining whether the matter should be implemented, the commission must consider all suggestions and comments properly given to it.

‘Determination not to implement matter

‘72C.(1) If the commission determines that the reviewable local government matter not be implemented, the commission must prepare a report on the matter.

‘(2) The report must state the determination and reasons for it.

‘Public notice of proposed determination to implement matter

‘72D.(1) If the commission proposes to determine that the reviewable local government matter be implemented, the commission must give public notice, by advertisement published at least once in—

- (a) the gazette; and
- (b) a newspaper circulating generally in the local government areas

that would be affected by the matter if it were implemented.

‘(2) The notice must state—

- (a) the general effect of the proposed determination and, if applicable, recommendations on implementation issues for the matter; and
- (b) that particulars of the proposed determination and recommendations, including reasons and any relevant maps, are open to inspection at the prescribed offices and at other stated offices; and
- (c) that submissions about the proposed determination and recommendations—
 - (i) may be made, in writing, to the commission at a stated address; and
 - (ii) must state the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (d) a day (the “**stated day**”) on or before which the particulars may be inspected and submissions made.

‘(3) If the naming of electoral wards of the City of Brisbane is an aspect of the matter, the notice must also state the proposed names of the electoral wards.

‘(4) If the matter is a reviewable local government matter mentioned in section 64(1)(a) or (f), the notice may also state—

- (a) the area the commission considers should be the affected area for the matter if a compulsory referendum were to be held for the matter; and
- (b) if the commission considers the affected area should be divided into voting areas—the areas the commission considers should be the voting areas of the affected area.

‘(5) The stated day must be at least 30 days after the later of—

- (a) the publication of the advertisement in the gazette; or
- (b) the publication, or first publication, of the advertisement in the newspaper.

‘(6) The particulars are to be open to inspection until the day after the

stated day.

‘Commission to consider submissions

‘72E.(1) The commission must consider all submissions properly made about the proposed determination and recommendations on implementation issues for the matter.

‘(2) The commission may amend the proposed determination to take account of the submissions.

‘(3) However, the commission may substantially amend the proposed determination only if the commission gives public notice, under section 72D, of the amended proposed determination and recommendations on implementation issues for the matter.

‘(4) Section 72D and this section apply to the amended proposed determination as if it were the proposed determination.

‘Holding of referendum

‘72F.(1) A referendum (a **“compulsory referendum”**) must be held in relation to the commission’s proposed determination of the reviewable local government matter if—

- (a) the matter is a reviewable local government matter mentioned in section 64(1)(a) or (f); and
- (b) after considering the submissions, the commission proposes to make a final determination that the matter be implemented.

‘(2) Also, the commission may decide that a referendum (a **“non-compulsory referendum”**) be held in relation to the commission’s proposed determination of the reviewable local government matter if—

- (a) the matter is a reviewable local government matter mentioned in section 64(1)(c) or (e); and
- (b) after considering the submissions, the commission proposes to make a final determination that the matter be implemented; and
- (c) the commission considers a referendum should be held for the matter.

‘(3) However, the commission may decide to hold a non-compulsory referendum only after it has consulted with the local governments that would be affected by the matter if it were implemented.¹²

‘Making final determination and preparation of report

‘72G.(1) The commission must make a final determination of the reviewable local government matter and prepare a report for the Minister on the matter as soon as practicable after—

- (a) if a referendum is held for the commission’s proposed determination of the matter—the final result of the referendum for the matter is notified; or
- (b) if a referendum is not held for the commission’s proposed determination of the matter—the commission completes its consideration of submissions properly made about the matter.

‘(2) The report must—

- (a) state the determination and reasons for it and, if applicable, include recommendations on implementation issues for the matter; and
- (b) include a summary of—
 - (i) the submissions made to the commission on the matter; and
 - (ii) if section 72B¹³ applies to the matter—the suggestions and comments properly given to the commission on the matter; and
- (c) be accompanied by copies of the submissions and, if applicable, the suggestions and comments.

‘(3) Also, if a referendum is held for the commission’s proposed determination of the matter, the report must—

- (a) state the final result of the referendum; and

¹² Division 4A applies to the holding of compulsory and non-compulsory referendums.

¹³ Section 72B (Preliminary procedures for certain references)

- (b) if the referendum is a compulsory referendum and the referendum question is not approved—be accompanied by a copy of the commission’s proposed determination and, if applicable, its recommendations on implementation issues for the matter and the reasons for them.

‘(4) If a compulsory referendum has been held for the commission’s proposed determination of the matter, the commission—

- (a) must determine that the matter be implemented if the referendum question is approved by the affected area for the matter; but
- (b) must determine that the matter not be implemented if the referendum question is not approved by the affected area for the matter.

‘(5) If a non-compulsory referendum has been held for the commission’s proposed determination of the matter, the commission may determine that the matter be implemented regardless of whether the referendum question is approved by the affected area for the matter.

‘Notification of determination and report to Minister

‘72H.(1) The commission must—

- (a) give notification of its final determination, or its determination under section 72C—
 - (i) by gazette notice; and
 - (ii) by advertisement published in a newspaper circulating generally in the local government areas affected by the determination; and
- (b) give to the Minister a copy of the gazette notice and the commission’s report on the matter; and
- (c) give a copy of the report to the local governments affected by the determination.

‘(2) The notification must—

- (a) contain a summary of the determination; and
- (b) state that the commission’s report on the matter is—

- (i) open to inspection; and
 - (ii) available for purchase at the Electoral Commission's office at Brisbane; and
- (c)—
- (i) if the commission determines the matter be implemented—state that the matter is to be implemented by regulation; or
 - (ii) if section 72J applies to the matter—state in general terms the effect of the section.

‘Implementation of matter on commission’s report

‘72I.(1) If the commission determines that the reviewable local government matter be implemented, the Governor in Council must implement the matter as soon as practicable after the Minister receives a copy of the gazette notice and the commission’s report on the matter.

‘(2) If a regulation is made to implement the matter and the regulation is to commence on a later day fixed in it, for subsection (1), the matter must not be taken not to have been implemented as soon as practicable merely because of the later commencement.

Examples of subsection (2)—

1. Because of the holding of triennial elections under this Act, or fresh elections under the regulation, the regulation may commence after its notification.

2. Because of financial implications, the regulation may commence at the start of a financial year.

‘(3) Subsection (1) has effect subject to section 107.¹⁴

‘Implementation of matter at request of Legislative Assembly

‘72J.(1) This section applies if—

- (a) a compulsory referendum has been held for the commission’s proposed determination of the reviewable local government matter; and

¹⁴ Section 107 (Requirement before implementation)

- (b) the commission determines that the matter not be implemented because the referendum question was not approved by the affected area for the matter.

‘(2) Within 7 sitting days after the Minister tables the commission’s report on the matter, the Legislative Assembly may resolve that the Governor in Council be asked to make a regulation implementing the matter.

‘(3) If the Legislative Assembly resolves that the Governor in Council be asked to implement the matter, the Governor in Council must implement the matter as soon as practicable after the resolution is passed.

‘(4) If a regulation is made to implement the matter and the regulation is to commence on a later day fixed in it, for subsection (3), the matter must not be taken not to have been implemented as soon as practicable merely because of the later commencement.

Examples of subsection (4)—

1. Because of the holding of triennial elections under this Act, or fresh elections under the regulation, the regulation may commence after its notification.
2. Because of financial implications, the regulation may commence at the start of a financial year.

‘Subdivision 3—Minor references of reviewable local government matters

‘Application of subdivision

‘73. This subdivision applies for a reviewable local government matter, the subject of a minor reference, being considered by a commission.

‘Commission may make inquiries

‘73A. In considering the reviewable local government matter, the commission may make the inquiries it considers appropriate.

‘Determination not to implement matter

‘73B.(1) If after considering the reviewable local government matter, the

commission determines that the reviewable local government matter not be implemented, the commission must prepare a report on the matter.

‘(2) The report must state the determination and reasons for it.

‘Notice of proposed determination to implement matter and recommendations

‘73C.(1) If the commission proposes to determine that the reviewable local government matter be implemented, the commission—

- (a) must give written notice to—
 - (i) each local government that would be affected by the matter if it were implemented; and
 - (ii) if the matter is a reviewable local government matter mentioned in section 64(1)(c) or (e)—each owner of land in the part the subject of the matter; and
- (b) may give written notice to anyone else the commission considers would be directly affected by the matter if it were implemented.

‘(2) The notice must state—

- (a) the general effect of the proposed determination and, if applicable, recommendations on implementation issues for the matter; and
- (b) that particulars of the proposed determination and recommendations, including reasons and any relevant maps, are open to inspection; and
- (c) that submissions about the proposed determination and recommendations—
 - (i) may be made, in writing, to the commission at a stated address; and
 - (ii) must state the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (d) a day (the “**stated day**”) on or before which the particulars may be inspected and submissions made.

‘(3) The stated day must be at least 30 days after the particulars mentioned in subsection (2)(b) are first open to inspection at the Electoral

Commission's office at Brisbane.

'(4) The notice given to the local governments must be accompanied by a copy of the particulars mentioned in subsection (2)(b).

'(5) The particulars are to be open to inspection until the day after the stated day.

'Commission to consider submissions

'73D.(1) The commission must consider all submissions properly made about the proposed determination and recommendations on implementation issues for the reviewable local government matter.

'(2) The commission may amend the proposed determination to take account of the submissions.

'(3) However, the commission may substantially amend the proposed determination only if the commission gives notice, under section 73C, of the amended proposed determination and recommendations on implementation issues for the matter.

'(4) Section 73C and this section apply to the amended proposed determination as if it were the proposed determination.

'Making final determination and preparation of report

'73E.(1) As soon as practicable after completing its consideration of the submissions, the commission must make a final determination of the matter, and prepare a report for the Minister on the reviewable local government matter.

'(2) The report must—

- (a) state the determination and reasons for it and, if applicable, include recommendations on implementation issues for the matter; and
- (b) include a summary of the submissions made to the commission on the matter; and
- (c) be accompanied by copies of the submissions.

‘Notification of determination and report to Minister

‘73F.(1) The commission must—

- (a) give notification of its final determination, or its determination under section 73B—
 - (i) by gazette notice; and
 - (ii) by advertisement published in a newspaper circulating generally in the local government areas affected by the determination; and
- (b) give to the Minister a copy of the gazette notice and the commission’s report on the matter; and
- (c) give a copy of the report to the local governments affected by the determination.

‘(2) The notification must—

- (a) contain a summary of the determination; and
- (b) state that the commission’s report on the matter is—
 - (i) open to inspection; and
 - (ii) available for purchase at the Electoral Commission’s office at Brisbane; and
- (c) if the commission determines the matter be implemented—state that the matter is to be implemented by regulation.

‘Implementation of matter

‘73G.(1) If the commission determines that the reviewable local government matter be implemented, the Governor in Council must implement the matter as soon as practicable after the Minister receives a copy of the gazette notice and the commission’s report on the matter.

‘(2) If a regulation is made to implement the matter and the regulation is to commence on a later day fixed in it, for subsection (1), the matter must not be taken not to have been implemented as soon as practicable merely because of the later commencement.

Examples of subsection (2)—

1. Because of the holding of triennial elections under this Act, the regulation may

commence after its notification.

2. Because of financial implications, the regulation may commence at the start of a financial year.

‘(3) Subsection (1) has effect subject to section 107.¹⁵

‘Division 3B—Limited reviewable local government matters

‘Application of division

‘74.(1) This division applies for an application properly made for a determination of a limited reviewable local government matter.

‘(2) The application is to be dealt with by a commission determining whether the matter should be implemented.

‘(3) The commission must determine the application even if the matter is, at any time, the subject of a reference of a reviewable local government matter.

‘Commission may make inquiries

‘75. In considering the limited reviewable local government matter, the commission may make the inquiries it considers appropriate.

‘Commission must have regard to prescribed issues

‘76.(1) When considering the limited reviewable local government matter, the commission must have regard to the issues that may be prescribed under a regulation.

‘(2) If the matter relates to the external boundaries of a local government area, the commission also must have regard to the need to ensure the provision of efficient and effective local government in the area.

‘Restriction on determination to implement matter

‘77.(1) This section applies if a local government that would be affected

¹⁵ Section 107 (Requirement before implementation)

by the limited reviewable local government matter if it were implemented is divided.

‘(2) The commission must make a determination not to implement the matter if its implementation would result in the margin of allowance for a quota for a local government’s area not being departed from.¹⁶

‘Action after determination to implement matter

‘78.(1) This section applies if the commission determines that the limited reviewable local government matter be implemented.

‘(2) The commission must—

- (a) prepare a report for the Minister on the matter; and
- (b) give notification of its determination—
 - (i) by gazette notice; and
 - (ii) by advertisement published in a newspaper circulating generally in the local government areas that will be affected by the implementation of the matter; and
- (c) give to the Minister a copy of the gazette notice and the commission’s report on the matter; and
- (d) give a copy of the report to the local governments affected by the determination.

‘(3) The report must state the determination and reasons for it, and include recommendations on implementation issues for the matter.

‘(4) The notification must—

- (a) contain a summary of the determination; and
- (b) state that the commission’s report on the matter is—
 - (i) open to inspection; and
 - (ii) available for purchase at the Electoral Commission’s office at Brisbane; and

¹⁶ See chapter 5 (Local government elections), part 5 (Division of local government areas).

- (c) state that the determination is to be implemented by regulation.

‘Action after determination not to implement matter

‘78A.(1) This section applies if the commission determines that the limited reviewable local government matter not be implemented.

‘(2) The commission must—

- (a) prepare a report for the Minister on the matter; and
- (b) give written notice of its determination to the landowners whose agreements accompanied the application for the determination of the matter; and
- (c) give to the Minister a copy of the commission’s report on the matter; and
- (d) give a copy of the report to the local governments whose agreements accompanied the application for determination of the matter.

‘(3) The report must state the determination and reasons for it.

‘(4) The notice must state that the commission’s report on the matter is—

- (a) open to inspection; and
- (b) available for purchase at the Electoral Commission’s office at Brisbane.

‘Implementation of matter

‘79.(1) If the commission determines that the limited reviewable local government matter be implemented, the Governor in Council must implement the matter as soon as practicable after the Minister receives a copy of the commission’s report on the matter.

‘(2) If a regulation is made to implement the matter and the regulation is to commence on a later day fixed in it, for subsection (1), the matter must not be taken not to have been implemented as soon as practicable merely because of the later commencement.

Examples of subsection (2)—

1. Because of the holding of triennial elections under this Act, the regulation may commence after its notification.

2. Because of financial implications, the regulation may commence at the start of a financial year.

‘(3) Subsection (1) has effect subject to section 107.¹⁷’.

Replacement of s 80 (Commissioner may decide to hold inquiry)

26. Section 80—

omit, insert—

‘Expanded commission may decide to hold inquiry for certain matters

‘80. In considering a reviewable local government matter the subject of a major reference, an expanded commission may decide to hold an inquiry under this division.’.

Replacement of ch 3, pt 1, divs 5 and 6

27. Chapter 3, part 1, divisions 5 and 6—

omit, insert—

‘Division 4A—Referendums

‘Subdivision 1—Preliminary

‘Application of div 4A

‘91. This division applies to a compulsory or non-compulsory referendum to be held in relation to a commission’s proposed determination of a reviewable local government matter.

‘“Approving” or “opposing” referendum question

‘91A.(1) This section applies for deciding whether the referendum question for the proposed determination of the reviewable local government

¹⁷ Section 107 (Requirement before implementation)

matter is approved.

‘(2) A person “**approves**” the referendum question if the person answers the question in the affirmative.

‘(3) If the affected area for the reviewable local government matter is not divided into voting areas, the affected area “**approves**” the referendum question for the matter if the affected electors for the affected area who vote to approve the question are greater in number than the affected electors who vote to oppose the question.

‘(4) If the affected area is divided into voting areas—

- (a) a voting area “**approves**” the referendum question if the affected electors for the voting area who vote to approve the question are greater in number than the affected electors who vote to oppose the question; and
- (b) the affected area “**approves**” the referendum question if each voting area approves the question.

‘(5) A person “**opposes**” the referendum question if the person answers the question in the negative.

‘Subdivision 2—Holding referendums

‘Wording of referendum question

‘92. The precise wording for the referendum question must be set under a regulation.

‘Appointment and role of returning officers for referendum

‘92A.(1) The commissioner must appoint a returning officer and an assistant returning officer for the referendum.

‘(2) As soon as practicable after making an appointment, the commissioner must, by gazette notice, advise of the appointment.

‘(3) The returning officer and the assistant returning officer are each entitled to the fees and allowances decided by the commissioner.

‘(4) The returning officer must conduct the referendum.

‘(5) If, for any reason, the returning officer cannot perform the functions of office, the assistant returning officer must act as the returning officer.

‘(6) The returning officer for the referendum must have a public office for the referendum.

‘(7) The local governments for the affected area must give the returning officer all reasonable assistance the returning officer asks for in conducting the referendum.

‘Referendum day

‘**92B.(1)** The day for holding the referendum for the commission’s proposed determination of the reviewable local government matter (the “**referendum day**”) must be a Saturday.

‘(2) The returning officer must fix the referendum day.

‘(3) However, the Governor in Council may, by gazette notice, fix as the referendum day a day that is later than the day previously fixed by the returning officer as the referendum day.

‘(4) If a gazette notice is published under subsection (3), the returning officer must publish a notice giving necessary directions to affected electors about the procedures to be followed.

‘(5) The returning officer’s notice must be published in a newspaper circulating generally in the affected area.

‘Notice of referendum day and other information

‘**92C.(1)** The returning officer for the referendum must publish a notice (the “**referendum notice**”)—

- (a) stating the referendum day for the referendum; and
- (b) stating the referendum roll cut-off day fixed by the returning officer; and
- (c) advising whether, and if so to what extent, the referendum is to be conducted by postal ballot; and
- (d) giving a brief explanation about—
 - (i) the question for the referendum; and

- (ii) who is an affected elector; and
- (e) giving notice of the address and telephone number of the returning officer's public office.

'(2) The referendum notice must be published in a newspaper circulating generally in the affected area.

'(3) The returning officer may also publish the referendum notice in other ways the returning officer considers appropriate.

'(4) The referendum notice must also be displayed in a conspicuous position at the returning officer's public office from as soon as practicable after the referendum notice is first published in a newspaper until 6.00 p.m. on the referendum day.

'(5) The returning officer may also display a copy of the referendum notice at other places the returning officer considers appropriate.

'(6) The referendum notice may be published before the making or commencement of the regulation setting the precise wording for the question for the referendum.

'(7) To the extent the referendum is not conducted by postal ballot, the referendum notice must state—

- (a) the location of ordinary polling booths to be used for the referendum; and
- (b) that the ordinary voting hours are from 8.00 a.m. and 6.00 p.m.

'(8) The referendum roll cut-off day must be at least 5 days, but not more than 7 days, after the referendum notice is first published in a newspaper.

'Voters rolls

'92D.(1) As soon as practicable after the referendum roll cut-off day, the returning officer must compile a voters roll for—

- (a) the affected area for the reviewable local government matter; or
- (b) if the affected area for the reviewable local government matter is divided into voting areas—each voting area.

'(2) A voters roll must consist of persons who, on the referendum roll

cut-off day, are electors under the *Electoral Act 1992* and are enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the affected area or, if subsection (1)(b) applies, the voting area concerned.

‘(3) A voters roll—

- (a) must be in the form of the electoral roll used for elections of the Legislative Assembly; and
- (b) must not include an elector’s address that, under the *Electoral Act 1992*, is excluded from the publicly available part of an electoral roll.

‘Voters roll to be open to inspection and purchase

‘92E.(1) A voters roll is open to inspection until the final result of the referendum for the matter is notified.

‘(2) The returning officer must sell a copy of a voters roll to anyone who asks to buy it.

‘(3) The price of a voters roll must be no more than the cost of making a copy of the roll and, if the copy is posted to the purchaser, the postage cost.

‘Explanatory statement

‘92F. The commission for the reviewable local government matter must prepare a statement (the “**explanatory statement**”) about the advantages and disadvantages of the proposed determination that, in the commission’s opinion, should be taken into account by an affected elector voting in the referendum.

‘Commission may request information from local government

‘92G.(1) The commission for the reviewable local government matter may, by written notice, request a local government to give the commission, in writing, information the commission reasonably needs from the local government for the preparation of an explanatory statement.

‘(2) The request must specify a reasonable time within which the information must be given to the commission.

‘(3) The local government must comply with the request.

‘Giving statements to affected electors and display of statements and proposed determination

‘92H.(1) The returning officer must give the explanatory statement for the referendum to each affected elector on the voters roll for the affected area or, if the affected area is divided into voting areas, a voting area.

‘(2) The statement must be given to the affected elector at a reasonable time before the referendum day.

‘(3) If the referendum is to be conducted by postal ballot for all or part of the affected area, the explanatory statement may be given to an affected elector when the elector is given the ballot paper for the referendum.

‘(4) An affected elector, other than an affected elector to whom the returning officer has given an explanatory statement, must be given a copy of the statement if the elector asks for it.

‘(5) The returning officer must display a copy of the explanatory statement and the commission’s proposed determination of the matter—

- (a) in a prominent place in the returning officer’s public office; and
- (b) at other places the returning officer considers appropriate.

‘Local government views on referendum

‘92I. The provisions of this division do not prevent a local government that considers that it will be affected by the proposed determination of the commission about the reviewable local government matter to which the referendum relates from informing affected electors of its views about the referendum question.

‘Compulsory voting

‘92J. Voting at the referendum is compulsory, and each affected elector for the affected area for the reviewable local government matter, or a voting area in the affected area, is entitled to only 1 vote.

‘Conduct of referendum

‘92K.(1) Chapter 5 (Local government elections), part 6 (Conduct of elections) applies (with any necessary changes and any additional changes specified in subsection (8) or changes prescribed under a regulation) to the referendum as if the referendum were an election.

‘(2) Without limiting subsection (1), the necessary changes mentioned in subsection (1) include the non-application of provisions of chapter 5, part 6 to the extent that their application is inappropriate or unnecessary.

‘(3) The application of provisions of chapter 5, part 6 is unnecessary to the extent that the provisions have particular reference to candidates.

‘(4) Without limiting subsections (2) and (3)—

- (a) section 238A (Assistant returning officers) has no application; and
- (b) chapter 5, part 6, divisions 3 (Candidates for election or appointment) and 11 (Marking of ballot papers) have no application; and
- (c) chapter 5, part 6, division 4 (Nominations of candidates for election), has no application; and
- (d) section 271(2)(d) to (f), (3) and (4) (Requirements of ballot papers) does not apply to the ballot paper to be used for the referendum; and
- (e) section 272 (Separate ballot papers for separate polls) has no application; and
- (f) section 273 (Order of listing of candidates’ names) has no application; and
- (g) sections 302 (Effect of ballot papers—optional-preferential voting) and 303 (Effect of ballot papers—first-past-the-post voting) have no application; and
- (h) in section 311(1) (Official counting of votes) and 312 (Treatment of ballot paper to which objection is made), the reference to a candidate, but not the reference to a scrutineer, may be ignored; and
- (i) sections 313 (Counting of votes for optional-preferential system)

and 314 (Counting of votes for first-past-the-post system) have no application; and

- (j) section 316(1)(b) (Declaration of poll) has no application; and
- (k) section 327(1)(b) (Bribery) has no application; and
- (l) in section 349(2) (Injunctions to restrain contravention of chapter), the reference to a candidate or nominee as a candidate for election may be ignored, but not the reference to the returning officer.

‘(5) Necessary changes also include the following changes having general operation—

- (a) a reference to chapter 5, part 6 is a reference to that part as applied under this section, and is also taken to include a reference to the other provisions of this division;
- (b) a reference to the returning officer is a reference to the returning officer for the referendum;
- (c) a reference to an assistant returning officer is a reference to the assistant returning officer for the referendum;
- (d) a reference to an elector is a reference to an affected elector for the affected area or, if the affected area is divided into voting areas, each voting area in relation to the referendum;
- (e) a reference to a scrutineer for a candidate is a reference to a scrutineer for the referendum;
- (f) a reference to the voters roll is a reference to the voters roll compiled under this division for the affected area or, if the affected area is divided into voting areas, each voting area;
- (g) a reference to the local government area, or a division of the local government area, is, for the referendum, a reference to—
 - (i) the affected area; or
 - (ii) a voting area of the affected area;
- (h) a reference to the local government’s public office is a reference to the public office of the returning officer for the referendum;
- (i) a reference to the poll for the election is a reference to the poll for

the referendum;

- (j) a reference to polling day is a reference to the referendum day for the referendum;
- (k) a reference to the notice under section 257 (Procedure if number of candidates exceeds number required) is a reference to the referendum notice for the referendum;
- (l) a reference to the election period is a reference to the period—
 - (i) starting on the day the referendum notice for the referendum is first published; and
 - (ii) ending at 6.00 p.m. on the referendum day for the referendum;
- (m) a reference to an electoral officer for an election is a reference to an electoral officer for the referendum.

‘(6) Necessary changes also include the following changes having more specific operation—

- (a) for applying sections 267(6) (Declaration of mobile polling booths), 286(5) (Arrangements for electoral visitor voting) and 310(1) (Procedure for processing declaration envelopes), the returning officer for the referendum, instead of advising candidates, must advise the persons and groups who have appointed scrutineers for the referendum;
- (b) for applying sections 282(10)(b) (Procedure for voting at polling booth), 287(2)(c) (Help for electors in voting), 294(3)(c) (How declaration vote may be cast at a polling booth) and 297 (Casting a declaration vote by post), a reference to division 11 (Marking of ballot papers) is a reference to the provisions of this division about the marking of a ballot paper;
- (c) for applying section 287(2)(a) (Help for electors in voting), a reference to stating the names of candidates is a reference to reading out the referendum question;
- (d) for applying sections 308(1)(c)(ii) and (iii) (Preliminary counting by presiding officer) and 311(3)(b) and (4)(c) (Official counting of votes), the returning officer for the referendum must—
 - (i) count the number of votes approving the referendum

question marked on all formal ballot papers, and keep the ballot papers in a separate parcel; and

- (ii) count the number of votes opposing the referendum question marked on all formal ballot papers, and keep the ballot papers in a separate parcel;
- (e) for applying section 308(1)(d)(i) (Preliminary counting by presiding officer), the written statement must set out, in words and numerals, the number of votes approving the referendum question and the number of votes opposing the referendum question;
- (f) for applying section 311(2) (Official counting of votes), the returning officer for the referendum must ascertain the number of votes approving the referendum question and the number of votes opposing the referendum question;
- (g) for applying section 311(3) and (4) (Official counting of votes), the returning officer for the referendum must count the number of votes approving the referendum question and the number of votes opposing the referendum question;
- (h) for applying section 311(5) (Official counting of votes), the returning officer for the referendum must add together the number of votes counted as approving the referendum question and the number of votes counted as opposing the referendum question;
- (i) for applying section 312(2) (Treatment of ballot paper to which objection is made), the reference to a vote for a particular candidate is a reference to whether the vote is a vote approving or opposing the referendum question, and the reference to the name of the candidate for whom a vote is counted is a reference to whether the vote is counted as a vote approving or opposing the referendum question;
- (j) for applying section 317 (Notice of final result of poll), the reference to each candidate is a reference to the commission;
- (k) the result the returning officer must give under section 317 (Notice of final result of poll) as applied under this division is—
 - (i) if the affected area is divided into voting areas—

- (A) for each voting area of the affected area—how the voting area voted on the referendum question, including whether the voting area has approved the referendum question; and
 - (B) for the affected area—whether the affected area has approved the referendum question; or
- (ii) if the affected area is not divided into voting areas—whether the affected area has approved the referendum question;
- (l) for applying sections 317A (Resolution about electors who fail to vote), 318(1) and (3)(b) (List of electors failing to vote), 319 (Notice of failure to vote etc.), 319A (Payments for failure to vote) and 320 (Recording response to notice), the reference to the local government is a reference to the local government for the local government area, or part of a local government area, for which a person listed as having failed to vote is enrolled;
 - (m) for applying section 321 (Evidentiary value of list under s 318), the reference to the local government’s chief executive officer is a reference to the returning officer for the referendum;
 - (n) for applying sections 322 (Disposal of material resulting from election) and 323 (Ballot papers as evidence), a reference to the local government’s chief executive officer is a reference to the commissioner, but section 322(4) has no application at all;
 - (o) for applying section 323A (Notice to electors whose ballot papers are not accepted), the reference to the local government is a reference to the commissioner;
 - (p) for applying section 327(1)(c) (Bribery), the reference to support of, or opposition to, a candidate or a political party is a reference to approval of, or opposition to, the referendum question;
 - (q) sections 333 (No record to be made of vote cast) and 346 (Breach of confidentiality of vote) are about how a person votes at the referendum, rather than the candidate for whom a person votes;
 - (r) for applying section 349 (Injunctions to restrain contravention of chapter), the reference in section 349(1)(b) to chapter 5 is a reference to chapter 5, part 6 as applied under this division, and is also taken to include a reference to the other provisions of this

division.

‘(7) To avoid any doubt, sections 304 (Posted vote presumed valid until contrary proved) and 305 (Formal and informal ballot papers) have application.

‘(8) The following additional changes are specified—

- (a) for applying section 309(1) (Preliminary processing of declaration votes by returning officer), the returning officer need not wait until after 8.00 a.m. on the referendum day to start the preliminary processing of declaration votes under that section, but may start at any time before the referendum day;
- (b) for applying section 349 (Injunctions to restrain contravention of chapter), an application to the Supreme Court may additionally be made by—
 - (i) a local government; or
 - (ii) an individual or group of individuals reasonably identified in the community, in the court’s opinion, as supporting or opposing the referendum question.

‘(9) Subsections (2) to (8) do not limit by implication the changes that may be prescribed under a regulation.

‘Subdivision 3—Replacement provisions

‘Preliminary

‘93. A provision of chapter 5 (Local government elections), part 6 (Conduct of elections) has no application to the extent it is inconsistent with the replacement provisions in this subdivision.

‘Direction that poll be conducted by postal ballot

‘93A.(1) The Governor in Council may, by gazette notice, direct that the poll for the referendum for the commission’s proposed determination of the reviewable local government matter be conducted by postal ballot.

‘(2) The direction may be given for—

- (a) all of the affected area; or
- (b) a part of the affected area marked on a map.

‘(3) The map is open to inspection at the place stated in the gazette notice.

‘Ballot papers

‘93B. If the affected area for the reviewable local government matter is divided into voting areas, a different coloured ballot paper must be used for each voting area.

‘Mode of voting

‘93C.(1) If an affected elector wishes to vote to approve the referendum question, the elector must place a tick in the square opposite the word ‘YES’ on the ballot paper.

‘(2) If an affected elector wishes to vote to oppose the referendum question, the elector must place a tick in the square opposite the word ‘NO’ on the ballot paper.

‘(3) An affected elector is taken to have marked a ballot paper in the way mentioned in subsection (1) if the elector—

- (a) writes the word ‘YES’ in the square opposite the word ‘YES’ on the ballot paper; or
- (b) otherwise marks the ballot paper in a way clearly showing that the voter approves of the referendum question.

‘(4) An affected elector is taken to have marked a ballot paper in the way mentioned in subsection (2) if the elector—

- (a) writes the word ‘NO’ in the square opposite the word ‘NO’ on the ballot paper; or
- (b) otherwise marks the ballot paper in a way clearly showing that the voter opposes the referendum question.

‘(5) For the application of section 271(2)(a),¹⁸ the approved form of ballot paper must allow for the method of voting stated in this section.

¹⁸ Section 271 (Requirements of ballot papers)

‘Effect of ballot paper

‘93D. For a ballot paper to have effect as a vote of an affected elector in the referendum—

- (a) the ballot paper must be completed in the way stated in this subdivision; and
- (b) the ballot paper must not contain any writing or mark (other than a mark authorised under this division) by which the elector can, in the returning officer’s opinion, be identified; and
- (c) the ballot paper must have been put in a ballot box; and
- (d) for a ballot paper put in a declaration envelope as required under section 297¹⁹ as applied under this division—
 - (i) section 297(1) must have been complied with; and
 - (ii) if the elector is an elector mentioned in section 289 or 290²⁰ or an applicant who is given an approved declaration form under section 293(4) or an elector who is given an approved declaration form under section 295(2),²¹ and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 293, or the relevant elector under section 295; and
 - (iii) if the declaration envelope is posted to the returning officer for the referendum—it must be received by the returning officer within 10 days after the referendum day.

‘Scrutineers

‘93E.(1) For the appointment of scrutineers for the referendum, a

¹⁹ Section 297 (Casting a declaration vote by post)

²⁰ Section 289 (Who may cast a declaration vote) or 290 (Who must cast a declaration vote in ordinary elections)

²¹ Section 295 (Distribution of ballot papers to electors for postal ballot election)

reference in section 276, 277 or 279²² to a candidate for election is a reference to—

- (a) a local government for the affected area for the reviewable local government matter; or
- (b) an individual or group of individuals reasonably identified in the community, in the returning officer's opinion, as supporting or opposing the referendum question.

'(2) An individual mentioned may appoint himself or herself as a scrutineer, and a group of individuals may appoint 1 or more of the group as a scrutineer or as scrutineers.

'(3) For appointing a scrutineer for a group, the appointment may be made on the group's behalf by any of its members.

'(4) The returning officer may reject an appointment if the returning officer reasonably believes that if more scrutineers are appointed, the efficiency of the conduct of the referendum may be adversely affected.

'(5) The returning officer may direct 1 or more scrutineers to leave a place if the returning officer reasonably believes that the number of scrutineers at the place may adversely affect the efficiency of the conduct of the referendum.

'(6) A scrutineer must comply with a direction given under subsection (5).

Maximum penalty for subsection (6)—10 penalty units.

'Subdivision 4—Miscellaneous

'Referendum cost

'94.(1) The cost of conducting the referendum, including the fees and allowances to which the returning officer and assistant returning officer for the referendum are entitled, must be paid by the local governments prescribed under a regulation for the referendum in the way stated in the regulation.

²² Section 276 (Candidates' entitlement to scrutineers), 277 (Appointment of scrutineers) or 279 (Powers of scrutineers)

‘(2) An amount required for the cost may, without resolution of a local government, be spent by it whether or not the disbursement is provided for in its budget.

‘(3) An amount may be paid only if the returning officer for the referendum has presented an account to the local government’s chief executive officer.

‘Proof of voters roll

‘94A. In a proceeding, a document purporting to be a copy of a voters roll for an affected area, or a voting area of an affected area, and to be certified by the returning officer for the referendum, is evidence of the roll and the matters contained in the roll.

‘Division 5—Provisions about commission members

‘Subdivision 1—Commissioner and deputy commissioner

‘Commissioner may direct deputy commissioner to perform commissioner’s functions

‘95.(1) This section applies if the commissioner—

- (a) constitutes, or partly constitutes, a commission; and
- (b) is unable, for any reason, to perform the functions of the commission or a commission member.

‘(2) For the purpose of the commission performing a function or exercising a power, the commissioner may direct the deputy commissioner to act in the place of the commissioner.

‘(3) Anything done by the deputy commissioner in the place of the commissioner is taken to have been done by the commissioner as constituting the commission or as a commission member.

‘Subdivision 2—Appointment, and duration of appointment, of review commissioners

‘Appointment

‘96.(1) The Governor in Council is to appoint qualified individuals as review commissioners.

‘(2) The Governor in Council may appoint the number of review commissioners the Governor in Council considers necessary.

‘(3) An initial appointment as a review commissioner may be made only if the Minister has consulted with the Local Government Association about it.

‘(4) A person is qualified for appointment as a review commissioner only if the person—

- (a) has extensive knowledge and experience in local government, public administration, law, public finance or community affairs; or
- (b) has other qualifications and experience the Governor in Council considers appropriate.

‘(5) A person is not qualified for appointment as a review commissioner if the person—

- (a) is a member of an Australian Parliament; or
- (b) is a nominee for election as a member of an Australian Parliament; or
- (c) is a councillor; or
- (d) is a nominee for election as a councillor; or
- (e) accepts appointment as a councillor; or
- (f) is a member of a political party.

‘Duration of appointment

‘96A. A review commissioner may be appointed for a term not longer than 3 years.

‘Subdivision 3—Terms of appointment, resignation and termination of appointment of certain commission members

‘Definition for subdiv 3

‘97. In this subdivision—

“**commissioner**” means a review commissioner or the chairperson of a special commission.²³

‘Terms of appointment

‘98.(1) A commissioner is entitled to be paid the remuneration and allowances the Governor in Council may decide.

‘(2) A commissioner holds office on the terms, not provided in this Act, the Governor in Council decides.

‘Resignation

‘99. A commissioner may resign by giving a signed notice of resignation to the Minister.

‘Termination of appointment

‘100.(1) The Governor in Council may terminate the appointment of a commissioner for misbehaviour or physical or mental incapacity.

‘(2) The Governor in Council must terminate the appointment of a commissioner if the person—

- (a) nominates for election to an Australian Parliament; or
- (b) nominates for election to a local government or accepts appointment as a local government councillor; or
- (c) becomes a member of a political party; or
- (d) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

²³ The chairperson of a special commission is appointed by the Governor in Council under section 71(1)(a).

- (e) contravenes section 67E²⁴ without reasonable excuse.

‘Division 6—Miscellaneous

‘Staff and administrative support

‘101. The Electoral Commission must ensure that a commission has the staff and administrative support services required to carry out its functions effectively and efficiently.

‘Annual reports

‘102.(1) As soon as practicable, but not later than 4 months, after the end of each financial year, the commissioner must give to the Minister a report of Local Government Electoral and Boundaries Review Commissions’ operations for the year (the **“review commissions’ report”**).

‘(2) The Electoral Commission’s annual report prepared under the *Electoral Act 1992*, section 19, for the year must include the review commissions’ report.

‘Certain reports to be tabled etc.

‘103.(1) In this section—

“report” means a report on a major or minor reference of a reviewable local government matter.²⁵

‘(2) The Minister must table a copy of a commission’s report in the Legislative Assembly within 7 sitting days after receiving it.

²⁴ Section 67E (Disclosure of interests by members of expanded commission)

²⁵ See sections 72C (Determination not to implement matter) and 72H (Notification of determination and report to Minister) for major references of reviewable local government matters and sections 73B (Determination not to implement matter) and 73F (Notification of determination and report to Minister) for minor references of reviewable local government matters.

‘Reports open to inspection and available for purchase

‘104. The commissioner must ensure copies of each commission’s report on a reviewable local government matter or a limited reviewable local government matter—

- (a) are open to inspection at the Electoral Commission’s office at Brisbane; and
- (b) are available for purchase at the Electoral Commission’s office at Brisbane for 6 months after—
 - (i) for a report on a major or minor reference of a reviewable local government matter—it is tabled in the Legislative Assembly; or
 - (ii) for a report on a limited reviewable local government matter—notification of the commission’s determination under section 78 or 78A.

‘Additional procedures may be prescribed by regulation

‘105. A regulation may be made about additional procedures for the following—

- (a) major and minor references of reviewable local government matters;
- (b) applications relating to limited reviewable local government matters.’.

Amendment of s 169 (General qualifications for membership)

28.(1) Section 169(1)—

omit, insert—

‘(1) A person is qualified to become a councillor of a local government if the person—

- (a) lives in the local government’s area; and
- (b) is, under the *Electoral Act 1992*, an elector for an electoral district, or a part of an electoral district, included in the local government’s area—

- (i) for the person's election as a councillor, other than at a Brisbane City Council election—when the voters roll for the election is compiled under section 225 or 353;²⁶ or
- (ii) for the person's election as councillor of the Brisbane City Council at a triennial election—on 31 January of the year in which the election is to be held; or
- (iii) for the person's election as a councillor of the Brisbane City Council at an election other than a triennial election—on the cut-off day for the electoral rolls for the election;²⁷ or
- (iv) for the person's appointment as a councillor under section 202²⁸—for at least 30 days before the appointment.

Example—

For a by-election in division 1 of a local government area, a person who lives in division 2 of the area and is an elector for division 2 of the area, when the voters roll is compiled for division 1, may nominate for election even though the person is not on the voters roll for division 1.'

(2) Section 169(1A)—

omit, insert—

'**(1A)** A councillor, whether elected or appointed, is qualified to be a councillor of a local government only while the councillor lives in the local government's area and is, under the *Electoral Act 1992*, an elector for an electoral district, or a part of an electoral district, included in the local government's area.'

Amendment of s 170 (General disqualifications)

29. Section 170, after 'qualified to'—

insert—

'be or'.

²⁶ Section 225 (Cut-off day for voters roll) or 353 (Voters roll for fresh election)

²⁷ The cut-off day for electoral rolls for an election, other than a triennial election, for Brisbane City Council is decided under the *Electoral Act 1992*, section 80(1)(b) as applied by the *City of Brisbane Act 1924*, section 17(5).

²⁸ Section 202 (Filling of later vacancies by appointment)

Amendment of s 171 (Disqualification and vacation of office for certain offences)

29A. Section 171(1)—

insert—

- section 190(8) (Requirements of councillors before acting in office)
- section 355W(1) or (2) (Offences about returns).’.

Replacement of s 190 (Councillor’s declaration of office)

29B. Section 190—

omit, insert—

‘Requirements of councillors before acting in office

‘190.(1) A person elected as a councillor must not act in the office until the person—

- (a) if elected as a councillor of the Brisbane City Council—makes a declaration of office; or
- (b) if elected as a councillor of another local government—
 - (i) firstly gives the chief executive officer of the local government a return in the approved form;²⁹ and
 - (ii) subsequently makes a declaration of office.

‘(2) A person appointed as a councillor must not act in the office until the person makes a declaration of office.

‘(3) The return under subsection (1)(b)(i) must state the information the person is required to give under section 355N³⁰ relating to the disclosure period for the election of the person to the extent that the person states the information is readily available when giving the return.

‘(4) The declaration of office must be in the following form—

²⁹ A return given under section 190(1)(b)(i) is part of the register kept under section 355T (Registers of electoral gifts).

³⁰ Section 355N (Gifts to candidates)

‘I,, having been elected/appointed as a councillor of the Council of the City/Town/Shire of, declare that I will faithfully and impartially fulfil the duties of the office to the best of my judgment and ability.’.

‘(5) The chief executive officer of the local government is authorised to take the declaration.

‘(6) The chief executive officer must keep a record of the taking of the declaration.

‘(7) The person ceases to hold office as a councillor if the person does not comply with subsection (1) or (2) within 1 month after being elected or appointed or a longer period allowed by the Minister.

‘(8) The person must not give a return, under subsection (1)(b)(i), containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty for subsection (8)—100 penalty units.’.

Amendment of s 200 (When councillor’s office becomes vacant)

30.(1) Section 200(1), ‘becomes vacant’—

omit, insert—

‘is vacated’.

(2) Section 200(1)(a), after ‘qualified to’—

insert—

‘be or’.

Amendment of s 202 (Filling of later vacancies by appointment)

31.(1) Section 202(2), after ‘appointing a’—

insert—

‘qualified’.

(2) Section 202(3)—

omit, insert—

‘(3) Subsection (3A) applies if—

- (a) the last filling of the office of the former councillor was by an election; and
- (b) the former councillor was a candidate for the election; and
- (c) the former councillor was nominated for the election by a registered officer of a political party under—
 - (i) section 250(1)(a);³¹ or
 - (ii) if the former councillor was a councillor of the Brisbane City Council—the *Electoral Act 1992*, section 84(1)(a).³²

‘(3A) The new councillor must be the political party’s nominee.

‘(3B) If the last filling of the office of the former councillor was by an appointment of a political party’s nominee made in accordance with subsection (3A) or this subsection, the new councillor must be a nominee of the political party.’.

(3) Section 202(5)—

omit, insert—

‘(5) Subsection (5A) applies if—

- (a) the former councillor held office as mayor; and
- (b) the last filling of the office of mayor was at an election; and
- (c) the former councillor was a candidate for the election; and
- (d) the former councillor was nominated for the election by a registered officer of a political party under—
 - (i) section 250(1)(a);³³ or
 - (ii) if the former councillor was a councillor of the Brisbane City

³¹ Section 250 (How and when nomination is given)

³² The *Electoral Act 1992*, section 84 is applied to nominations for election as a councillor of the Brisbane City Council under the *City of Brisbane Act 1924*, section 17(5).

³³ Section 250 (How and when nomination is given)

Council—the *Electoral Act 1992*, section 84(1)(a).³⁴

‘(5A) The person appointed under subsection (4) must be the political party’s nominee.’

‘(5B) If the last filling of the office of mayor was by an appointment of a political party’s nominee made in accordance with subsection (5A) or this subsection, the person appointed under subsection (4) must be a nominee of the political party.’.

(4) Section 202(6), ‘(3)’—

omit, insert—

‘(2)’.

(5) Section 202(8), definition—

omit, insert—

‘ **“qualified person”** means a person who is qualified to become a councillor of the local government.’.

Insertion of new s 219A

32. Chapter 5, part 1, after section 219—

insert—

‘Local governments responsible for expenditure for conducting elections

‘219A. A local government is responsible for expenditure incurred for the conduct of an election in its local government area.’.

Amendment of s 220 (Chief executive officer is returning officer)

33. Section 220(2), ‘if chief executive officer cannot act’—

omit, insert—

‘in place of the chief executive officer’.

³⁴ The *Electoral Act 1992*, section 84 is applied to nominations for election as a councillor of the Brisbane City Council under the *City of Brisbane Act 1984*, section 17(5).

Replacement of s 221 (Appointment of returning officer if chief executive officer cannot act)

34. Section 221—

omit, insert—

‘Appointment of returning officer in place of the chief executive officer

‘221.(1) If the chief executive officer considers on reasonable grounds that it is appropriate to appoint another individual as returning officer for an election, the chief executive officer may make the appointment in the approved form.

‘(2) An individual who is not a current employee of the local government cannot be appointed as returning officer for an election unless the chief executive officer—

- (a) has to the extent practicable, by public notice in a newspaper circulating generally in the local government area and in any other newspaper the chief executive officer considers appropriate, invited expressions of interest from individuals who are suitably qualified to conduct elections; and
- (b) if the chief executive officer considers it appropriate—has invited submissions for appointment as returning officer from any individual the chief executive officer considers may be suitably qualified to conduct elections; and
- (c) has taken into account—
 - (i) the individual’s qualifications to be a returning officer; and
 - (ii) information supplied by the individual and any referees; and
 - (iii) the cost of the individual providing the services required.

‘(3) Subsections (4) to (6) apply if a returning officer appointed by the chief executive officer is, for any reason, unable to perform the duties of the returning officer.

‘(4) If possible, the returning officer must immediately inform the chief executive officer.

‘(5) The chief executive officer may become the returning officer or appoint another individual to be the returning officer for the election.

‘(6) To the extent practicable, subsection (2) applies to the appointment of a returning officer under subsection (5) who is not a current employee of the local government.

‘(7) If the chief executive officer believes he or she cannot properly perform the duties of returning officer for an election because of a possible conflict of interest, the chief executive officer must ask the Minister to appoint another individual as returning officer for the election.

‘(8) The Minister may appoint another individual as returning officer for the election.’.

Amendment of s 233 (Quota to be complied with in division of local government area and assignment of councillors)

35.(1) Section 233(1), from ‘complied with’—

omit, insert—

‘complied with in the determination of—

- (a) a reviewable local government matter (other than a limited reviewable local government matter); or
- (b) a limited reviewable local government matter.’.

(2) Section 233(3)—

omit, insert—

‘(3) For subsection (1)(a), the quota must be worked out as near as practicable to the time notice of the proposed determination of the matter is given under section 72D or 73C.³⁵

‘(4) For subsection (1)(b), the quota must be worked out as near as practicable to the time notification in the gazette of the determination of the matter is given under section 78.³⁶’.

³⁵ Section 72D (Public notice of proposed determination to implement matter) and section 73C (Notice of proposed determination to implement matter and recommendations)

³⁶ Section 78 (Action after determination to implement matter)

Insertion of new s 238A

36. After section 238—

insert—

‘Assistant returning officers

‘238A.(1) The returning officer for an election may appoint 1 or more assistant returning officers for the election.

‘(2) An appointment under subsection (1) must be in the approved form.’.

Amendment of s 240 (Issuing officers)

37.(1) Section 240(1), after ‘adults’—

insert—

‘(“issuing officers”)’.

(2) Section 240—

insert—

‘(3) Anything done by an issuing officer under subsection (1)(b) is taken to be done by the returning officer or the presiding officer.’.

Replacement of s 242 (Returning officer may act through authorised issuing officer)

38. Section 242—

omit, insert—

‘Returning officer may act through other officers

‘242. If—

- (a) the returning officer may, under this part, do anything; and
- (b) the returning officer authorises an assistant returning officer, presiding officer or issuing officer (the **“authorised officer”**) to do the thing; and
- (c) the authorised officer does the thing;

the thing is taken to have been done by the returning officer.

Examples—

1. For an election, if the returning officer authorises an assistant returning officer to conduct the election in a division, and the assistant returning officer does so, the returning officer is taken to have conducted the election in the division.

2. For an election, if the returning officer authorises an assistant returning officer to carry out the functions of the returning officer under section 311,³⁷ the returning officer is taken to have carried out those functions.

3. Under section 297, declaration envelopes are to be posted or given to the returning officer. For an election, the returning officer could authorise an issuing officer to receive declaration envelopes, to remove the declaration envelopes containing the ballot papers from the return address envelopes and place the declaration envelopes in a ballot box.’.

Insertion of new s 242A

39. After section 242—

insert—

‘Assistant returning officer may act through certain authorised officers

‘242A. If—

- (a) an assistant returning officer may, under this part, do anything; and
- (b) the assistant returning officer authorises a presiding officer or issuing officer to do the thing; and
- (c) the presiding officer or issuing officer does the thing;

the thing is taken to have been done by the assistant returning officer.’.

Amendment of s 244 (Qualification for nomination)

40. Section 244(1), ‘appointment to a’—

omit, insert—

³⁷ Section 311 (Official counting of votes)

‘appointment to the’.

Repeal of s 247 (Endorsed candidates must identify endorsement)

41. Section 247—

omit.

Amendment of s 249 (Who may nominate)

42. Section 249—

insert—

‘(2) This section applies to the Brisbane City Council.’.

Insertion of new s 251A

43. After section 251—

insert—

‘Special grounds for deciding a person is not properly nominated

‘251A.(1) In this section—

“nomination name” means the name proposed by a candidate to be used on the ballot paper as the candidate’s name under section 271(3).³⁸

“parliamentary party” means an organisation—

- (a) whose object or activity, or 1 of whose objects or activities, is the promotion of the election to an Australian parliament of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part; and
- (b) of which at least 1 member is a member of an Australian parliament.

“party name” means the name, or an abbreviation or acronym of the name of—

- (a) a parliamentary party; or

³⁸ Section 271 (Requirements of ballot papers)

- (b) a political party; or
- (c) an organisation or group whose object or activity, or 1 of whose objects or activities, is the promotion of the election of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part to—
 - (i) an Australian parliament; or
 - (ii) an office of councillor of a local government.

“public body name” means the name, or an abbreviation or acronym of the name, of a prominent public body.

‘(2) The returning officer may decide that a person whose name has been changed is not properly nominated because the nomination name—

- (a) is a party name; or
- (b) so nearly resembles a party name that it is likely to be confused with or mistaken for the party name; or
- (c) includes the word ‘independent’; or
- (d) is a public body name; or
- (e) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name; or
- (f) is obscene or offensive.

‘(3) The returning officer may also decide that a person whose name has been changed is not properly nominated if the returning officer considers the name could cause confusion.

Example of subsection (3)—

If a person’s name is Informal, the returning officer may consider that the name could cause confusion to electors.

‘(4) If the returning officer decides a person is not properly nominated under this section for an election, the returning officer must give the person a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and

- (c) the person's right to apply for an injunction.³⁹.

Amendment of s 252 (Certificate of returning officer)

44.(1) Section 252—

insert—

'(1A) The certificate must specify the time, day and place proposed for a draw, if necessary, for the order of listing of candidates' names on the ballot paper.'

(2) Section 252(3)(c)—

omit, insert—

'(c) documentary evidence produced by the nominee or nominator that at the time the voters roll is compiled for the election—

- (i) the nominator is an elector for the election or the registered officer under the *Electoral Act 1992* of a political party; or
- (ii) the nominee is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the local government's area.'

Amendment of s 260 (Disposal of deposits generally)

44A. Section 260—

insert—

'(1A) Despite subsection (1), a candidate's deposit must not be refunded until the candidate has given the chief executive officer of the local government the return the candidate is required to give under section 355N⁴⁰ in relation to the candidate's disclosure period for the election.'

³⁹ For a person's right to seek an injunction, see section 349 (Injunctions to restrain contravention of chapter).

⁴⁰ Section 355N (Gifts to candidates)

Amendment of s 264 (Direction that poll be conducted by postal ballot)

45. Section 264(3), after ‘inspection’—

insert—

‘at the public office of the local government’.

Amendment of s 265 (Polling booths—general)

46. Section 265—

insert—

‘(4) The returning officer may arrange for all polling booths or specified polling booths for an election in a division of the local government area to also be used for any other election conducted at the same time for, or for a division of, the local government area.’.

Amendment of s 273 (Order of listing of candidates’ names)

47. Section 273(5)—

omit, insert—

‘(5) The returning officer must allow each candidate, or the candidate’s representative, to be present when the order of candidates’ names is decided.’.

Amendment of s 293 (Distribution of ballot papers to electors who may or must cast declaration vote)

48.(1) Section 293(3), ‘and the approved declaration envelope’—

omit, insert—

‘, the approved declaration envelope and written instructions in the approved form on how the vote may be cast’.

(2) Section 293(5), ‘and the approved declaration envelope’—

omit, insert—

‘, the approved declaration envelope and written instructions in the

approved form on how the vote may be cast’.

(3) Section 293(6), ‘prepaid’—

omit, insert—

‘reply paid’.

(4) Section 293—

insert—

‘(7) The returning officer may give things to be given to an applicant under subsection (3) or (5) by posting the things to the applicant’s address stated in the voters roll, an electoral roll mentioned in the *Electoral Act 1992*, section 58(5),⁴¹ the application or the declaration form.

Example of addresses—

An applicant’s address could be stated as a residential address, post office box number, mail service number or in another appropriate way.

‘(8) If things mentioned in subsection (6) are posted to an address outside Australia, the envelope mentioned in subsection (6) need not be reply paid.’.

Amendment of s 295 (Distribution of ballot papers to electors for postal ballot election)

49.(1) Section 295(1), ‘and approved declaration envelope’—

omit, insert—

‘, the approved declaration envelope and written instructions in the approved form on how the vote may be cast’.

(2) Section 295(3), ‘and the approved declaration envelope’—

omit, insert—

‘, the approved declaration envelope and written instructions in the approved form on how the vote may be cast’.

(3) Section 295(4), ‘prepaid’—

⁴¹ An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

omit, insert—

‘reply paid’.

(4) Section 295—

insert—

‘(5) The returning officer may post the things to an elector under subsection (1), by posting them to the elector’s address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(5).⁴²

‘(6) The returning officer may give the things to a person to whom subsection (2) applies by posting them to the elector’s address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(5), or to another address given by the person.

‘(7) The returning officer may give the things to an elector under subsection (3), by posting them to the elector’s address stated in the voters roll, an electoral roll mentioned in the *Electoral Act 1992*, section 58(5)⁴³ or the declaration form.

Example of addresses for subsections (6) and (7)—

An address could be stated as a residential address, post office box number, mail service or in another appropriate way.

‘(8) If things for an elector mentioned in subsection (4) are posted to an address outside Australia, the envelope mentioned in subsection (4) need not be reply paid.’.

Amendment of s 298 (Declaration voting before polling day)

50.(1) Section 298(1), after ‘declare’—

insert—

‘at least’.

(2) Section 298(1)(c)—

⁴² An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

⁴³ An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

omit, insert—

‘(c) another convenient place in the local government area.’.

Insertion of new s 298A

51. After section 298—

insert—

‘Distribution of declaration envelopes when separate ballot papers or polls on same day

‘298A.(1) This section applies if a local government—

- (a) under section 272,⁴⁴ instructs the use of separate ballot papers in polls for elections of the mayor and another councillor conducted on the same day; or
- (b) under this part, conducts a poll under chapter 6, part 2⁴⁵ on the day of the poll for an election.

‘(2) In the conduct of the polls—

- (a) only 1 declaration envelope may be distributed to a declaration voter with the ballot papers for use in the polls; and
- (b) this part, other than this section, applies (with any necessary changes) as if the references to the distribution, marking and other dealing with a ballot paper were a reference to all or each of the ballot papers in the polls, as the case requires.’.

Amendment of s 302 (Effect of ballot papers—optional-preferential voting)

52. Section 302(2)(d)(ii)—

omit, insert—

⁴⁴ Section 272 (Separate ballot papers for separate polls)

⁴⁵ Chapter 6, part 2 (Polls)

- ‘(ii) if the elector is an elector mentioned in section 289 or 290,⁴⁶ or an applicant who is given an approved declaration form under section 293(4)⁴⁷ or an elector who is given an approved declaration form under section 295(2),⁴⁸ and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 293, or the relevant elector under section 295; and’.

Amendment of s 303 (Effect of ballot papers—first-past-the-post voting)

53.(1) Section 303(2)(d)(ii)—

omit, insert—

- ‘(ii) if the elector is an elector mentioned in section 289 or 290⁴⁹ or an applicant who is given an approved declaration form under section 293(4)⁵⁰ or an elector who is given an approved declaration form under section 295(2),⁵¹ and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 293, or the relevant elector under section 295; and’.

(2) Section 303(3), ‘If 2 or more candidates are to be elected, a’—

⁴⁶ Section 289 (Who may cast a declaration vote) or 290 (Who must cast a declaration vote in ordinary elections)

⁴⁷ Section 293 (Distribution of ballot papers to electors who may or must cast declaration vote)

⁴⁸ Section 295 (Distribution of ballot papers to electors for postal ballot election)

⁴⁹ Section 289 (Who may cast a declaration vote) or 290 (Who must cast a declaration vote in ordinary elections)

⁵⁰ Section 293 (Distribution of ballot papers to electors who may or must cast declaration vote)

⁵¹ Section 295 (Distribution of ballot papers to electors for postal ballot election)

omit, insert—

‘A’.

Amendment of s 308 (Preliminary counting by presiding officer)

54.(1) Section 308(2)(c), after ‘statement’—

insert—

‘in the approved form’.

(2) Section 308(3)—

omit, insert—

‘**(3)** The returning officer or other person who receives things from the presiding officer under subsection (2) must give to the presiding officer a receipt for the things.

‘**(4)** The presiding officer may do anything required under subsection (1) or (2) through an issuing officer authorised by the presiding officer for that purpose.

Example for subsection (4)—

An issuing officer could be authorised to sort and bundle ballot papers and prepare a reconciliation statement for the presiding officer.’.

Amendment of s 310 (Procedure for processing declaration envelopes)

55.(1) Section 310(2) and (3)—

omit, insert—

‘**(2)** On examining the declaration envelopes, if the returning officer is satisfied the declaration has been properly completed, the envelope is sealed and the declarant on the envelope is entitled to cast a declaration vote, the returning officer must—

- (a) detach the elector’s declaration from the envelope; and
- (b) either—
 - (i) place a mark in ink against the declarant’s name on the voters roll; or
 - (ii) if the voters roll is kept in an electronic form—record in a

way approved by the returning officer that the declarant has voted; and

- (c) place the envelope containing the ballot paper (the “**accepted envelope**”) in a locked or sealed ballot box; and
- (d) keep the accepted envelope in the ballot box until dealt with under subsection (3) or section 311.⁵²

‘(3) The returning officer may take the accepted envelopes from the locked or sealed ballot box and remove the ballot papers from the envelopes, without unfolding them, or allowing anyone else to unfold them, and keep them in a locked or sealed ballot box until dealt with under section 311.⁵³’.

(2) Section 310(4)(a), after ‘into a’—

insert—

‘locked or’.

(3) Section 310(6), ‘opened and unopened declaration envelopes’—

omit, insert—

‘rejected declaration envelopes, accepted envelopes from which ballot papers have been removed and electors’ declarations that have been removed from declaration envelopes’.

Amendment of s 311 (Official counting of votes)

56. After section 311(4)(a)—

insert—

‘(aa) open all accepted envelopes mentioned in section 310(2)(d)⁵⁴ that have not yet been opened and remove the ballot papers; and’.

⁵² Section 311 (Official counting of votes)

⁵³ Section 311 (Official counting of votes)

⁵⁴ Section 310 (Procedure for processing declaration envelopes)

Amendment of s 315 (Returning officer's duty after counting votes)

57. Section 315(1)(a), 'declaration envelopes'—

omit, insert—

' , rejected declaration envelopes, accepted envelopes from which ballot papers have been removed, electors' declarations that have been removed from declaration envelopes'.

Insertion of new s 317A

58. After section 317—

insert—

'Resolution about electors who fail to vote

'317A. As soon as practicable after the conclusion of the election, the local government must make a resolution deciding whether to take action under section 319⁵⁵ about electors who failed to vote in the election.'

Amendment of s 318 (List of electors failing to vote)

59.(1) Section 318(1), (2) and (3)—

renumber as section 318(2), (3) and (4) respectively.

(2) Section 318—

insert—

'(1) This section applies only if the local government makes a resolution under section 317A⁵⁶ deciding to take action under section 319 about electors who failed to vote in the election.'

(3) Section 318(3)(c) as renumbered—

omit.

⁵⁵ Section 319 (Notice of failure to vote etc.)

⁵⁶ Section 317A (Resolution about electors who fail to vote)

Replacement of s 319 (Notice to elector failing to vote)

60. Section 319—

omit, insert—

‘Notice of failure to vote etc.

‘319.(1) Subject to subsection (2), the local government—

- (a) must, as soon as practicable after a resolution by the local government to take action under this section, send a notice in the approved form to each elector shown on the list deposited under section 318⁵⁷ at the elector’s address shown on the list; and
- (b) must record on the list, against the elector’s name, the fact that the notice has been given.

‘(2) The notice must—

- (a) show the elector’s full name and address and number on the voters roll; and
- (b) state that—
 - (i) the elector appears to have failed to vote at the election; and
 - (ii) it is an offence to fail, without a valid and sufficient reason, to vote at an election; and
 - (iii) the elector may, if the elector considers the elector has committed the offence, pay one-half of a penalty unit (the **“penalty”**) to the local government by a specified day, not earlier than 21 days after the elector receives the notice (the **“appropriate day”**), and, if the local government receives the payment by the appropriate day, no further steps will be taken against the elector about the offence; and
- (c) require the elector—
 - (i) if the elector intends paying the penalty by the appropriate day—to sign the approved form about payment of the penalty included in or with the notice and post or give the form, together with the amount of the penalty, to the local government so it is received by the appropriate day; or

⁵⁷ Section 318 (List of electors failing to vote)

- (ii) if the elector does not intend paying the penalty by the appropriate day—to state, in the approved form included in or with the notice, whether the elector voted and, if not, the reason for failing to vote and to sign the form and post or give it to the local government so it is received by the appropriate day.

‘(3) The elector must comply with the requirements of the notice.

‘(4) If—

- (a) the elector is absent, or unable, because of physical incapacity, to comply with the requirements of the notice; and
- (b) another elector who has personal knowledge of the facts complies with the requirements and in doing so also has his or her signature on the form witnessed;

the first elector is taken to have complied with the notice’s requirements.

‘Payments for failure to vote

‘319A.(1) If the local government sends an elector a notice under section 319(1) for an election and payment is made to the local government under section 319(2) to (4), the local government must—

- (a) accept the payment; and
- (b) give the person a receipt for the payment; and
- (c) not take any proceeding against the elector for failing to vote at the election.

‘(2) In this section—

“**proceeding**” includes serving an infringement notice.’.

Amendment of s 320 (Recording response to notice)

61. Section 320(a), after ‘notice’—

insert—

‘under section 319(2)(c)’.

Insertion of new s 323A

62.(1) After section 323—

insert—

‘Notice to electors whose ballot papers are not accepted

‘323A.(1) Subsection (2) applies if—

- (a) in an election, a person makes a declaration vote under section 290(a);⁵⁸ and
- (b) the person’s ballot paper is not accepted for counting under section 310⁵⁹ because the returning officer is not satisfied that the declarant on the declaration envelope is entitled to cast a declaration vote in the election.

‘(2) As soon as practicable after an election, the local government must send a notice in the approved form to the person advising the person why the ballot paper was not accepted for counting.’.

Amendment of s 349 (Injunctions to restrain contravention of chapter)

63.(1) After section 349(1)—

insert—

‘(1A) Without limiting the operation of subsection (1), an application may also be made to the Supreme Court for an injunction if a returning officer for an election decides a person is not properly nominated for the election.’.

(2) Section 349(2), ‘or a candidate’—

omit, insert—

‘or a candidate, or nominee as a candidate.’.

(3) Section 349(5)—

insert—

⁵⁸ Section 290 (Who must cast a declaration vote in ordinary elections)

⁵⁹ Section 310 (Procedure for processing declaration envelopes)

‘(c) if subsection (1A) applies—grant an injunction requiring the returning officer to accept the person’s nomination for the election.’.

Insertion of new ch 5, pt 8

63A. Chapter 5—

insert—

‘PART 8—DISCLOSURE OF ELECTION GIFTS

‘Division 1—Preliminary

‘Definitions for pt 8

‘355A. In this part—

“associated entity” means an incorporated or unincorporated body, or the trustee of a trust, that—

- (a) is controlled by 1 or more political parties; or
- (b) operates wholly or mainly for the benefit of 1 or more political parties.

“disclosure period”—

- (a) for a candidate for an election—see division 2, subdivision 1; and
- (b) for section 355Q,⁶⁰ for an election—see division 2, subdivision 2.

“disposition of property” means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

- (a) the allotment of shares in a corporation; and
- (b) the creation of a trust in property; and
- (c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and

⁶⁰ Section 355Q (Gifts for third party expenditure for political purposes)

- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in property; and
- (e) the exercise by a person of a general power of appointment of property in favour of someone else; and
- (f) a transaction by a person with intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of someone else's property.

“gift” means the disposition of property or the provision of a service, without consideration or for a consideration less than the full consideration, but does not include—

- (a) transmission of property under a will; or
- (b) provision of a service by volunteer labour.

“prescribed amount” means an amount prescribed under a regulation but, until a regulation is made, means—

- (a) in sections 355N(2)(b)(iii) and 355O(1)⁶¹—\$200; or
- (b) in section 355Q(1)(b) and (6),⁶² definition “prescribed gift”, paragraph (c)—\$1 000.

“prescribed period” means a period prescribed under a regulation but, until a regulation is made, means 30 days.

“register”, for a local government, see section 355T(1).⁶³

“registered industrial organisation” means an organisation registered under a law of the State, another State or the Commonwealth about the registration of industrial organisations.

“relevant details”, for a gift, means the value of the gift and when the gift was made and—

- (a) for a gift purportedly made on behalf of the members of an unincorporated association—

⁶¹ Section 355N (Gifts to candidates) and section 355O (Certain gifts not to be received)

⁶² Section 355Q (Gifts for third party expenditure for political purposes)

⁶³ Section 355T (Registers of electoral gifts)

- (i) the association's name; and
 - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association; or
- (b) for a gift purportedly made out of a trust fund or out of the funds of a foundation—
- (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of the foundation; or
- (c) for a gift not mentioned in paragraph (a) or (b)—the name and residential or business address of the person who made the gift.

“value”, for a gift, means—

- (a) if the gift is money—the amount of the money; or
- (b) if the gift is property other than money—
 - (i) the market value of the property; or
 - (ii) if a regulation prescribes principles under which the value of the property is to be determined—the value determined under the principles; or
- (c) if the gift is the provision of a service—
 - (i) the amount that would reasonably be charged for providing the service if the service were provided on a commercial basis; or
 - (ii) if a regulation prescribes principles under which the amount that would reasonably be charged for providing the service is

to be determined—the amount determined under the principles.

‘Candidates

‘355B. For this part, a reference to a candidate for an election is a reference to a person who, at noon on the nomination day for the election, is properly nominated for the election.

‘Things taken to be done by political party

‘355C. For this part, for a political party that is not a body corporate, things done by or with the authority of members or officers of the party on behalf of the party are done by or for a political party.

‘Related corporations

‘355D. For this part—

- (a) a body corporate and any other body corporate related to it are taken to be the one person; and
- (b) whether a body corporate is related to another body corporate must be decided in the same way a corporation is decided to be related to another corporation under the Corporations Law.

‘Division 2—Disclosure periods

‘Subdivision 1—Disclosure periods for candidates for elections

‘Purpose of subdivision

‘355E. This subdivision defines the disclosure periods for candidates for elections.

‘Disclosure period for candidates at previous elections

‘355F.(1) This section applies if a candidate for an election (the “**current**

election”) was a candidate for another election relating to any local government the conclusion of which was within the relevant period before the polling day for the current election.

‘(2) The disclosure period for the candidate for the current election starts at the end of the prescribed period after the conclusion of the most recent election happening before the current election in which the candidate was a candidate.

‘(3) The disclosure period ends at the end of the prescribed period after the conclusion of the current election.

‘(4) In this section—

“**relevant period**” means the period prescribed under a regulation but, until a regulation is made, means 4 years.

‘**Disclosure period for candidates at previous fresh elections**

‘**355G.(1)** This section applies if a person—

- (a) was a candidate at a fresh election (the “**previous election**”) relating to a local government (the “**first local government**”); and
- (b) is a candidate for a subsequent election relating to any local government (the “**relevant election**”) up to and including the next triennial election relating to the first local government.

‘(2) Despite section 355F,⁶⁴ the disclosure period for the candidate for the relevant election starts at the end of the prescribed period after the conclusion of whichever is the later of—

- (a) the previous election; or
- (b) a later election in which the candidate was a candidate before the relevant election.

‘(3) The disclosure period ends at the end of the prescribed period after the conclusion of the relevant election.

⁶⁴ Section 355F (Disclosure period for candidates at previous elections)

‘Disclosure period for new candidates

‘**355H.(1)** This section applies if sections 355F, 355G and 355I⁶⁵ do not apply to a person who is a candidate for an election.

‘**(2)** The disclosure period for the candidate for the election starts when the first of the following happens or, if they happen at the same time, when they happen—

- (a) the person announces the person is to be a candidate in the election;
- (b) the person nominates as a candidate in the election.

‘**(3)** The disclosure period ends at the end of the prescribed period after the conclusion of the election.

‘Disclosure period for certain candidates who are appointed councillors

‘**355I.(1)** This section applies if a candidate for an election, when nominating as a candidate, is an appointed councillor of a local government to whom neither section 355F nor section 355G⁶⁶ applies.

‘**(2)** Despite section 355H,⁶⁷ the disclosure period for the candidate for the election starts when the candidate was appointed a councillor.

‘**(3)** The disclosure period ends at the end of the prescribed period after the conclusion of the election.

⁶⁵ Section 355F (Disclosure period for candidates at previous elections), section 355G (Disclosure period for candidates at previous fresh elections) and section 355I (Disclosure period for certain candidates who are appointed councillors)

⁶⁶ Section 355F (Disclosure periods for candidates at previous elections) and section 355G (Disclosure period for candidates at previous fresh elections)

⁶⁷ Section 355H (Disclosure period for new candidates)

‘Subdivision 2—Disclosure period for third parties for elections

‘Purpose of subdivision

‘355J. This subdivision defines the disclosure period for section 355Q⁶⁸ for an election.

‘Disclosure period for s 355Q

‘355K. For section 355Q, the disclosure period for an election—

- (a) starts at the end of the prescribed period after the date of the immediately preceding triennial elections for local governments under section 217;⁶⁹ and
- (b) ends at the end of the prescribed period after the polling day for the election.

‘Subdivision 3—Transitional provisions for start of disclosure periods

‘Transitional provisions

‘355L.(1) Despite subdivisions 1 and 2—

- (a) if a disclosure period would otherwise start before 1 January 1997, it starts on 1 January 1997; and
- (b) for a candidate to whom section 355H⁷⁰ would otherwise apply, the disclosure period for a 1997 triennial election starts on 1 January 1997, regardless of the day of the candidate’s announcement of candidature or nomination as a candidate; and
- (c) for a candidate to whom section 355I⁷¹ would otherwise apply, the disclosure period for a 1997 triennial election starts on

⁶⁸ Section 355Q (Gifts for third party expenditure for political purposes)

⁶⁹ Section 217 (Date of triennial elections)

⁷⁰ Section 355H (Disclosure period for new candidates)

⁷¹ Section 355I (Disclosure period for certain candidates who are appointed councillors)

1 January 1997, regardless of when the candidate was appointed a councillor.

‘(2) This subdivision expires on 1 January 2001.

‘Division 3—Disclosure of gifts

‘Subdivision 1—Disclosure by candidates for elections

‘Definitions

‘**355M.** In this subdivision—

“**candidate’s campaign committee**”, for a candidate for an election, means a committee formed to help the candidate’s campaign in the election but does not include a committee that is recognised by a political party as being part of the political party.

“**gifts received by a candidate for an election**” includes gifts received by the candidate’s campaign committee for or on behalf of the candidate.

‘Gifts to candidates

‘**355N.(1)** This section applies to gifts received by a candidate for an election during the candidate’s disclosure period for the election but not to a gift made in a private capacity to the candidate, for the candidate’s personal use, that the candidate has not used, and does not intend to use, solely or substantially for a purpose related to any election.

‘(2) Each candidate for the election must, within 3 months after the conclusion of the election, give to the chief executive officer of the local government to which the election relates a return, in the approved form, stating—

- (a) whether the candidate received any gifts to which this section applies; and
- (b) if so—
 - (i) the total value of all of the gifts; and
 - (ii) how many persons made the gifts; and

- (iii) the relevant details for each gift made by a person to the candidate, if the total value of all gifts made by the person to the candidate during the disclosure period is the prescribed amount or more.

‘Certain gifts not to be received

‘3550.(1) It is unlawful for a candidate for an election, or a person acting on behalf of a candidate for an election, to receive, during the disclosure period for the candidate for the election, a gift made to or for the benefit of the candidate the value of which is the prescribed amount or more unless—

- (a) the relevant details for the gift are known to the person receiving the gift; or
- (b) when the gift is made—
 - (i) the person making the gift gives to the person receiving the gift details of the gift; and
 - (ii) the person receiving the gift has no reasonable grounds to believe that the details given are not the relevant details for the gift.

‘(2) If a person receives a gift that, under subsection (1), it is unlawful for the person to receive, an amount equal to the value of the gift—

- (a) is payable by the person to the local government to which the election relates; and
- (b) may be recovered by the local government as a debt owing to the local government by action in a court of competent jurisdiction against the person.

‘(3) For subsection (1), a person who is a candidate in an election remains a candidate for the prescribed period after the conclusion of the election.

‘(4) For this section, 2 or more gifts made by the one person to or for the benefit of the one candidate, are to be treated as 1 gift.

‘(5) In this section—

“person acting on behalf of a candidate for an election” includes the candidate’s campaign committee for the election.

“person making a gift” includes an unincorporated association on whose behalf a gift is made.

‘Chief executive officer to give reminder notice to candidates

‘355P.(1) This section applies if a candidate for election has not given the return the candidate is required to give for the election under section 355N.⁷²

‘(2) Within 2 months after the conclusion of the election, the chief executive officer to whom the return must be given must give in writing the information mentioned in subsection (3) to the candidate.

‘(3) The information is—

- (a) a reminder that the candidate is required to give the return within 3 months after the conclusion of the election; and
- (b) the following provisions, or a general outline of them, to the extent they may be relevant to the candidate—
 - section 171 (Disqualification and vacation of office for certain offences)
 - section 260(1A) (Disposal of deposits generally)
 - section 355N (Gifts to candidates)
 - section 355W (Offences about returns)
 - section 355Y (Obtaining of information and completion of returns).

‘Subdivision 2—Disclosure by third parties for elections

‘Gifts for third party expenditure for political purposes

‘355Q.(1) This section applies if, during the disclosure period for this section⁷³ for an election (the **“relevant election”**) relating to a local

⁷² Section 355N (Gifts to candidates)

⁷³ The disclosure period for this section is defined in section 355K.

government (the “**relevant local government**”)—

- (a) a person (other than a political party, an associated entity or a candidate for the election) incurs or has incurred expenditure for a political purpose about an election or elections relating to the relevant local government; and
- (b) the total amount of all the expenditure mentioned in paragraph (a) is the prescribed amount or more; and
- (c) the person receives a gift that is a prescribed gift in relation to the relevant local government.

‘(2) The person must, before the end of 3 months after the conclusion of the relevant election, give to the chief executive officer of the relevant local government a return, in the approved form, stating the relevant details for all gifts that—

- (a) are prescribed gifts in relation to the relevant local government; and
- (b) are received by the person during the disclosure period.

‘(3) For subsection (1), a person does not include persons appointed to form a committee to help the campaign in an election of a candidate who has been nominated for election by the registered officer of a political party if the campaign committee is recognised by the political party as being part of the political party.

‘(4) Expenditure for a political purpose relating to 2 or more local governments is taken to have been incurred for a political purpose about an election relating to each local government.

‘(5) In this section, 2 or more gifts made, during the disclosure period for this section for an election, by the one person to another person are to be treated as 1 gift.

‘(6) In this section—

“**expenditure**”, for a political purpose, means expenditure for 1 or more of the following—

- (a) publication by any means (including radio or television) of election matter;
- (b) public expression of views on an issue in an election;

- (c) a gift to a political party;
- (d) a gift to a candidate in an election;
- (e) a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in paragraph (a), (b), (c) or (d).

“prescribed gift”, in relation to a relevant local government, means a gift—

- (a) intended by the giver to be used by the receiver, either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose; and
- (b) used, either wholly or partly, for a political purpose about 1 or more elections relating to the relevant local government; and
- (c) the value of which is the prescribed amount or more.

‘No requirement to give return if no further gifts to disclose

‘355R.(1) This section applies to a person if—

- (a) the person gives a return relating to an election disclosing gifts under section 355Q⁷⁴ to a chief executive officer of a local government; and
- (b) apart from this section, because of a later election, the person would be required to give another return under section 355Q to the chief executive officer of the same local government; and
- (c) the other return, if given, would disclose no other gifts.

‘(2) The person is not required to give the other return.

‘Subdivision 3—Amendment of returns

‘Amendment of returns

‘355S.(1) A person who has given a return under this part to the chief

⁷⁴ Section 355Q (Gifts for third party expenditure for political purposes)

executive officer of a local government may at any time apply to amend the return to correct an error or omission.

‘(2) An application under subsection (1) must—

- (a) be signed by the applicant; and
- (b) state particulars of the amendment; and
- (c) be given to the chief executive officer of the local government.

‘(3) The chief executive officer must—

- (a) permit the applicant to amend the return in accordance with the application; and
- (b) record in the register particulars of the date and time of the amendment.

‘(4) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence under section 355W(2)⁷⁵ committed before the amendment.

‘Division 4—Registers

‘Registers of electoral gifts

‘**355T.(1)** The chief executive officer of a local government must keep, for the local government, a register of electoral gifts (the “**register**”).

‘(2) The register must include the following—

- (a) all returns given to the chief executive officer under this part or section 190;⁷⁶
- (b) applications made to the chief executive officer under section 355S;⁷⁷
- (c) copies of information given by the chief executive officer under

⁷⁵ Section 355W (Offences about returns)

⁷⁶ Section 190 (Requirements of councillors before acting in office)

⁷⁷ Section 355S (Amendment of returns)

section 355V(2);⁷⁸

- (d) statutory declarations given to the chief executive officer under section 355V(5);
- (e) copies of notices given by the chief executive officer under section 355Y(3);⁷⁹
- (f) particulars given to the chief executive officer after a request made under section 355Y(3);
- (g) notices given to the chief executive officer under section 355Y(5).

‘Access to registers

‘355U.(1) A local government’s register is open to inspection.

‘(2) A person must not knowingly disclose information obtained from the register if it is not a true copy, or a fair summary, of particulars in the register.

Maximum penalty for subsection (2)—20 penalty units.

‘Queries on contents of register

‘355V.(1) A person who suspects, or believes, on reasonable grounds that a return given to the chief executive officer of a local government under this part has an error or omission, may inform the chief executive officer.

‘(2) The chief executive officer must immediately take reasonable steps to inform the person who gave the return about the suspicion or belief.

‘(3) The person who gave the return must, within 30 days of being informed, establish whether the return should be amended to make it a true record of fact.

‘(4) If the person establishes that the return should be amended, the person must apply to the chief executive officer to amend the return to correct the error or omission.⁸⁰

⁷⁸ Section 355V (Queries on contents of register)

⁷⁹ Section 355Y (Obtaining of information and completion of returns)

⁸⁰ Section 355S (Amendment of returns) provides for applications to amend returns.

‘(5) If the person establishes the return does not need to be amended, the person must—

- (a) complete a statutory declaration to the effect that the particulars in the return are a true record of fact; and
- (b) give the statutory declaration to the chief executive officer.

‘Division 5—Miscellaneous

‘Offences about returns

‘**355W.(1)** A person must give a return the person is required to give under division 3⁸¹ within the time required by the division.

Maximum penalty—20 penalty units.

‘(2) A person must not give a return the person is required to give under division 3 containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty—

- (a) if the person is required to give the return as a candidate—100 penalty units;
- (b) if paragraph (a) does not apply—50 penalty units.

‘(3) A person (the “**first person**”) must not give to another person who is required to give a return under division 3 or section 190⁸² information to which the return relates that is, to the knowledge of the first person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

‘(4) A prosecution for an offence against a provision of this section may be started at any time within 4 years after the offence was committed.

‘(5) If a person is found guilty of an offence under subsection (1), a court may, as well as imposing a penalty under the subsection, order the person to give the relevant return within a time stated in the order.

⁸¹ Division 3 (Disclosure of gifts)

⁸² Section 190 (Requirements of councillors before acting in office)

‘(6) If a person is found guilty of an offence under subsection (2), a court may, as well as imposing a penalty under the subsection, order the person to pay, within a time stated in the order, to a local government an amount equal to the amount of the value of any gifts made to, or for the benefit of, the person and not disclosed in a return.

‘Records to be kept

‘355X.(1) A person who makes or receives a relevant record for an election must keep the record for at least 4 years after the conclusion of the election unless the record, in the normal course of business or administration, is transferred to someone else.

Maximum penalty—20 penalty units.

‘(2) In this section—

“**relevant record**”, for an election, is a document or other thing that is or includes a record about a matter particulars of which—

- (a) are, or could be, required to be stated in a return under division 383 about the election; or
- (b) evidence that the giver of a gift had an intention mentioned in section 355Q(6),⁸⁴ definition “prescribed gift”, paragraph (a).

‘Obtaining of information and completion of returns

‘355Y.(1) A person who is required to give a return under division 385 must—

- (a) take all reasonable steps to obtain the particulars required to complete the return; and
- (b) complete the return to the extent that it is possible with the particulars obtained.

Maximum penalty—20 penalty units.

⁸³ Division 3 (Disclosure of gifts)

⁸⁴ Section 355Q (Gifts for third party expenditure for political purposes)

⁸⁵ Division 3 (Disclosure of gifts)

‘(2) The return must state whether the return is complete as required by division 3 and, if not complete, state—

- (a) the nature and type of particulars the person has not been able to obtain; and
- (b) the reasons why the person has not been able to obtain the particulars; and
- (c) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give the particulars—that belief and the reasons for it and the name and address of the other person.

‘(3) If a return contains a statement mentioned in subsection (2)(c), the chief executive officer of the local government who receives the return must give a written notice to the person named in the statement asking the person to give the chief executive officer the particulars the person knows.

‘(4) Subsection (5) applies if, at any time, within 4 years after the conclusion of an election, a person, who has made a statement under subsection (2) in a return about the election that the return is not complete, obtains information or particulars relevant to the return that the person was not able to obtain before completing the return.

‘(5) The person must give to the chief executive officer of the local government to whom the return was given a written notice of the information or particulars obtained.

Maximum penalty for subsection (5)—20 penalty units.

‘Attempts to commit offences

‘355Z.(1) A person who attempts to commit an offence against this part commits an offence.

Maximum penalty—half the maximum penalty for committing the offence.

‘(2) The Criminal Code, section 4⁸⁶ applies to subsection (1).

⁸⁶ The Criminal Code, section 4 (Attempts to commit offences)

‘Non-compliance with part does not affect election

‘355ZA.(1) A failure of a person to comply with a provision of this part for an election does not invalidate the election.

‘(2) Without limiting subsection (1) but subject to section 171,⁸⁷ if a candidate who is elected at an election fails to comply with a provision of this part for the election, the failure does not invalidate the election of the candidate.

‘Division 6—Evidence**‘Evidentiary provisions**

‘355ZB.(1) This section applies to a proceeding under this part.

‘(2) A certificate purporting to be signed by the chief executive officer of a local government and stating any of the following matters is evidence of the matter—

- (a) a stated document is an application, declaration, notice or return given or kept under this part, or a copy of it;
- (b) on a stated day, a stated person was given a stated notice, under this part.’.

Insertion of new ch 7A

64. After section 458—

insert—

**‘CHAPTER 7A—NATIONAL COMPETITION
REFORM OF SIGNIFICANT BUSINESS
ACTIVITIES**

‘PART 1—OBJECT AND APPLICATION

⁸⁷ Section 171 (Disqualification and vacation of office for certain offences)

‘Object

‘458A. The object of this chapter is to provide ways to facilitate the implementation of the National Competition Policy Inter-Governmental Agreements to the extent that the agreements are intended to be applied to significant business activities of local governments.

‘Application to Brisbane City Council

‘458B. This chapter applies to the Brisbane City Council.

‘PART 2—DEFINITIONS**‘Definitions for ch 7A**

‘458C. In this chapter—

“Competition Policies Agreement” means the Competition Policies Agreement made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

“Conduct Code Agreement” means the Conduct Code Agreement made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

“Implementation Agreement” means the Agreement to Implement National Competition Policy and Related Reforms made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

“National Competition Policy Inter-Governmental Agreements” means the Conduct Code Agreement, the Competition Principles Agreement and the Implementation Agreement.

“public benefit assessment” means an assessment of a significant business activity of a local government under this chapter.

“public benefit assessment report” means the report, including recommendations, on a public benefit assessment.

“significant business activity”, of a local government, means a type 1 business activity or a type 2 business activity.

“type 1 business activity” means the provision of the following—

- (a) for Brisbane City Council—
 - public transport services
 - cleansing services
 - water and sewerage services;
- (b) for Gold Coast City Council—
 - cleansing services
 - water and sewerage services;
- (c) for Ipswich City Council—
 - water and sewerage services;
- (d) for Logan City Council—
 - water and sewerage services;
- (e) for Townsville City Council—
 - water and sewerage services.

“type 2 business activity” means the provision of the following—

- (a) for Caboolture Shire Council—
 - water and sewerage services;
- (b) for Cairns City Council—
 - cleansing services
 - water and sewerage services;

- (c) for Caloundra City Council—
 - water and sewerage services;
- (d) for Hervey Bay City Council—
 - water and sewerage services;
- (e) for Ipswich City Council—
 - cleansing services;
- (f) for Logan City Council—
 - cleansing services;
- (g) for Mackay City Council—
 - water and sewerage services;
- (h) for Maroochy Shire Council—
 - cleansing services;
 - water and sewerage services;
- (i) for Noosa Shire Council—
 - water and sewerage services;
- (j) for Pine Rivers Shire Council—
 - water and sewerage services;
- (k) for Redland City Council—
 - water and sewerage services;
- (l) for Rockhampton City Council—
 - water and sewerage services;
- (m) for Thuringowa City Council—
 - water and sewerage services;
- (n) for Toowoomba City Council—
 - water and sewerage services;
- (o) for Townsville City Council—
 - cleansing services.

‘PART 3—PUBLIC BENEFIT ASSESSMENT OF TYPES 1 AND 2 BUSINESS ACTIVITIES

‘Division 1—Subject matter of public benefit assessments

‘Matters to be addressed by public benefit assessment for type 1 business activity

‘458D. A public benefit assessment for a type 1 business activity must consider how the activity should be carried on by—

- (a) reviewing the appropriateness of each of the following reforms for the activity—
 - (i) corporatisation of the activity;
 - (ii) commercialisation of the activity;
 - (iii) full cost pricing for the activity; and
- (b) concluding whether or not and, if so, to what extent, the benefits that would be realised from implementation of the reforms mentioned in paragraph (a) would outweigh the costs.

‘Matters to be addressed by public benefit assessment for type 2 business activity

‘458E. A public benefit assessment for a type 2 business activity must consider how the activity should be carried on by—

- (a) reviewing the appropriateness of each of the following reforms for the activity—
 - (i) commercialisation of the activity;
 - (ii) full cost pricing for the activity;
 - (iii) if the local government decides, by resolution, it is appropriate for consideration—corporatisation of the activity; and
- (b) concluding whether or not and, if so, to what extent, the benefits that would be realised from implementation of the reforms

mentioned in paragraph (a) would outweigh the costs.

‘What is corporatisation

‘458F.(1) For a public benefit assessment, corporatisation of a significant business activity of a local government involves—

- (a) the establishment of a legal entity for the activity separate from, but owned by, the local government and supported by a full corporate governance structure, including a board of directors; and
- (b) the entity providing goods and services on a commercial basis; and
- (c) the entity receiving subsidies to provide goods and services, as community service obligations, that it would not otherwise be in the commercial interests of the entity to provide.

‘(2) Implications of corporatisation include—

- (a) the question of—
 - (i) payment of Commonwealth, State and local government taxes or rates or retention by the local government of amounts equivalent to taxes or rates; and
 - (ii) retention by the local government of amounts equivalent to debt guarantee fees for State guarantees; and
- (b) compliance with Commonwealth, State and local government requirements that apply only if the activity is carried on by a private sector business, such as those relating to the protection of the environment and planning and approval processes.

‘(3) If, before corporatisation of a significant business activity by a local government, the local government is not liable to pay a State tax that would be payable if the activity were corporatised, an amount equivalent to the tax is to be payable by the entity to the local government in place of payment of the tax to the State.

‘What is commercialisation

‘458G.(1) For a public benefit assessment, commercialisation of a

significant business activity of a local government involves—

- (a) the activity being carried on by a business unit of the local government that is not a legal entity separate from the local government; and
- (b) the unit providing goods and services on a commercial basis; and
- (c) the unit receiving subsidies to provide goods and services, as community service obligations, that it would not otherwise be in the commercial interests of the unit to provide.

‘(2) Implications of commercialisation include—

- (a) the question of retention by the local government of—
 - (i) amounts equivalent to Commonwealth, State and local government taxes or rates that are not otherwise payable to the Commonwealth, State or local government; and
 - (ii) amounts equivalent to debt guarantee fees for State guarantees; and
- (b) compliance with Commonwealth, State and local government requirements that apply only if the activity is carried on by a private sector business, such as those relating to the protection of the environment and planning and approval processes.

‘What is full cost pricing

‘458H. For a public benefit assessment, full cost pricing for a significant business activity means prices are charged for goods and services taking into account the full cost of providing the goods or services including estimates of the amounts mentioned in 458G(2)(a).⁸⁸

‘Division 2—Content of public benefit assessment report

‘Matters to be addressed in public benefit assessment reports

‘458I. A public benefit assessment report must include—

⁸⁸ Section 458G (What is commercialisation)

- (a) a statement on whether or not and, if so, to what extent, the benefits that would be realised from implementation of any of the reforms considered under section 458D or 458E would outweigh the costs; and
- (b) details of those costs and benefits; and
- (c) a recommendation on whether any of the reforms should be implemented for the significant business activity; and
- (d) if reform is recommended—
 - (i) a statement of which reform should be implemented; and
 - (ii) a timetable for its implementation.

‘Division 3—Local government to undertake assessments

‘Public benefit assessments to be undertaken

‘458J. A local government must ensure that a public benefit assessment is undertaken and a public benefit assessment report prepared for each of its significant business activities.

‘Local government to resolve on assessment and report process

‘458K.(1) The local government must, by resolution, decide—

- (a) how the public benefit assessment is to be conducted; and
- (b) the matters the public benefit assessment report must deal with; and
- (c) when the report is to be presented to the local government.

Example for paragraph (a)—

The local government may decide the public benefit assessment is to be undertaken by the local government or by external consultants or in cooperation with other local governments undertaking public benefit assessments of similar significant business activities.

‘(2) The resolution must provide for a consultation process and state how the process is to be used in the assessment.

Example for subsection (2)—

A local government may resolve that the consultation process must include—

- (a) giving notice of the assessment and inviting submissions about the assessment; and
- (b) a period for submissions to be received; and
- (c) direct consultation with interested parties; and
- (d) consideration of the submissions received about the assessment; and
- (e) publication of a draft public benefit assessment report for public comment before the report is finalised.

‘(3) The resolution is subject to section 458I and a regulation under section 458M.

‘Timing for assessments and reports

‘458L.(1) The public benefit assessment report must be completed before 30 June 1997 or a day, not later than 30 September 1997, approved by the Minister.

‘(2) The report must be presented to a meeting of the local government as soon as practicable after the report is completed.

‘Regulation about public benefit assessment and public benefit assessment reports

‘458M. A regulation may prescribe requirements for public benefit assessments and public benefit assessment reports.’.

Amendment of s 493 (Local law policy binding on local government)

65.(1) Section 493, heading—

omit, insert—

‘Extent to which local law policy is binding’.

(2) Section 493—

insert—

‘(2) A local government’s local law policy on a matter is, and it is declared always was, binding on anyone else to the extent stated in the local

law stating the matter about which the local law policy may be made.’.

Amendment of s 552 (Expiry of part)

66. Section 552, ‘1997’—

omit, insert—

‘1999’.

Amendment of s 569 (Utility charges)

67. Section 569—

insert—

‘(7) A local government may, and it is declared always could from the commencement of this section, do 1 or more of the following—

- (a) make and levy a utility charge for services supplied or to be supplied during part of the financial year and part of another financial year;
- (b) make and levy differing charges for services supplied or to be supplied during various periods in 1 or more financial years;
- (c) in making and levying differing charges under paragraph (b), decide the way the charges are to be apportioned.

Examples of application of subsection (7)—

1. For water used between 30 April 1998 and 31 July 1998, the local government may resolve to charge—

- (a) for water used (as measured) during the period 30 April 1998 to 31 July 1998 on the basis of the charge made at the budget meeting for the 1997-1998 financial year; or
- (b) for water used (as measured) during the period 30 April 1998 to 31 July 1998 on the basis of the charge made at the budget meeting for the 1998-1999 financial year; or
- (c) for—
 - (i) water used (as measured) during the period 30 April 1998 to 30 June 1998 on the basis of the charge made at the budget meeting for the 1997-1998 financial year; and
 - (ii) water used (as measured) during the period 1 July 1998 to 31 July

1998 on the basis of the charge made at the budget meeting for the 1998-1999 financial year; or

- (d) an apportioned charge for water used during the 2 periods (30 April 1998 to 30 June 1998 and 1 July 1998 to 31 July 1998) on the basis of—
 - (i) the total amount of water used (as measured) during the period 30 April 1998 to 31 July 1998—93 days—being apportioned to each period according to the respective lengths of the periods—62 days and 31 days respectively; or
 - (ii) another basis set out in the resolution.

2. The local government may resolve to charge for water supplied between 1 July 1998 and 30 June 1999—

- (a) for the period 1 July 1998 to 28 February 1999—a flat charge of \$300 with an excess charge of \$1 per kL of water used greater than 350 kL; and
- (b) for the period 1 March 1999 to 30 June 1999—an amount based on the actual consumption of water during the period.

‘(8) Despite subsection (7) a local government must not for a financial year make and levy a utility charge for services supplied or to be supplied other than in that, the previous or the next financial year.

‘(9) Charges made and levied in accordance with a decision under subsection (7) are lawfully made and levied under this Act.

‘(10) Subsections (7) to (9) apply despite the reference in sections 559 and 560⁸⁹ to the making and levying of rates and charges for a financial year.

‘(11) If—

- (a) a meter or other measuring device is to be read on a particular day for working out the amount of a charge to be levied by a local government for a service; and
- (b) the local government resolves to apply this subsection to the reading of meters or other measuring devices;

it is taken to have been read on that day if it is read within a period of 2 weeks before or after that day.

Example for subsection (11)—

⁸⁹ Section 559 (Power to make and levy rates and charges) and 560 (Making of rates and charges)

If a local government resolves to apply this subsection to the supply of water that is to be charged on the basis of usage for a period ended 30 April and a meter is read on 10 May, that reading is taken to be the reading at 30 April for the purposes of calculating the water usage during the period.

‘(12) Subsection (11) does not restrict a local government’s power to make local laws relating to other aspects of the administration of metered consumption for a utility service.

Example for subsection (12)—

A local law may be made to provide for water consumption to be estimated on the basis of the best information reasonably available if a water meter is found to be malfunctioning or inoperative during any period of consumption.’.

Amendment of s 611 (Payment by instalments)

68. Section 611(3)—

omit, insert—

‘(3) The terms may provide, if an instalment is not paid by the last day of the period identified in the resolution as the period within which the amount of the instalment is payable, for 1 or more of the following—

- (a) on the default day, for division 3⁹⁰—
 - (i) the unpaid instalment becomes an overdue rate; or
 - (ii) the unpaid instalment and all remaining instalments become an overdue rate;
- (b) the unpaid instalment, or the unpaid instalment and all remaining instalments, may bear interest as an overdue rate from the default day or a later day decided by the local government under section 614.⁹¹

‘(3A) For subsection (3)—

“**default day**” means the day after the last day of the period identified in the resolution as the period within which the amount of the instalment is payable.’.

⁹⁰ Division 3 (Overdue rates)

⁹¹ Section 614 (Overdue rates may bear interest)

Amendment of s 612 (Meaning of “overdue rate”)

69. Section 612, after ‘include the amount of a rate’—

insert—

‘(other than amounts that, by terms under section 611, 627 or 628, become an overdue rate)’.

Amendment of s 619 (Other benefits for prompt payment)

70. Section 619—

insert—

‘(2) In subsection (1)—

“**benefits**” include chances of winning a prize in a lottery conducted by the local government.

‘(3) For a lottery conducted by a local government solely to provide a benefit for this section—

(a) the *Art Unions and Public Amusements Act 1992* does not apply; and

(b) the local government must—

(i) by resolution make rules for the conduct of the lottery; and

(ii) conduct the lottery in accordance with the rules.

‘(4) Subsections (2), (3) and this subsection expire on 30 June 1998.’.

Amendment of s 627 (Remission, composition and settlement of rates)

71. Section 627(3)—

omit, insert—

‘(3) The terms of an arrangement may provide for 1 or more of the following, if an amount identified in the arrangement is not paid by the last day of the period specified in the arrangement as the period within which the amount is payable—

- (a) on the default day, for division 3⁹²—
 - (i) the unpaid amount becomes an overdue rate; or
 - (ii) the unpaid amount and all other amounts (the “**remaining amounts**”) payment of which is provided for under the arrangement and which have not been paid become an overdue rate;
- (b) the unpaid amount, or the unpaid amount and all remaining amounts, may bear interest as an overdue rate from the default day, or a later day decided by the local government, under section 614.⁹³

‘(3A) For subsection (3)—

“**default day**” means the day after the last day of the period specified in the arrangement as the period within which the amount is payable.’.

Amendment of s 628 (Deferral of liability to pay rates)

72. Section 628(4)—

omit, insert—

‘(4) The terms of an arrangement may provide for 1 or more of the following, if an amount identified in the arrangement is not paid by the last day of the period specified in the arrangement as the period within which the amount is payable—

- (a) on the default day, for division 3⁹⁴—
 - (i) the unpaid amount becomes an overdue rate; or
 - (ii) the unpaid amount and all other amounts (the “**remaining amounts**”) payment of which is provided for under the arrangement and which have not been paid become an overdue rate;
- (b) the unpaid amount, or the unpaid amount and all remaining

⁹² Division 3 (Overdue rates)

⁹³ Section 614 (Overdue rates may bear interest)

⁹⁴ Division 3 (Overdue rates)

amounts, may bear interest as an overdue rate from the default day, or a later day decided by the local government, under section 614.⁹⁵

(4A) For subsection (4)—

“default day” means the day after the last day of the period specified in the arrangement as the period within which the amount is payable.’.

Amendment of s 638 (Starting and ending of sale procedures)

73. Section 638(1) and (3), ‘the overdue rate’—

omit, insert—

‘all overdue rates levied on the land’.

Amendment of s 640 (Reserve price at auction)

74. Section 640(2)(a), ‘the overdue rate for’—

omit, insert—

‘all overdue rates levied on’.

Amendment of s 697 (Local laws about dogs)

75. Section 697(5), ‘2 years after it commences’—

omit, insert—

‘on 30 June 1998’.

Amendment of s 721 (Personnel practices)

76. Section 721(2)—

omit, insert—

(2) A regulation may—

- (a) require each local government to adopt and implement a plan for equal opportunity in employment; and

⁹⁵ Section 614 (Overdue rates may bear interest)

- (b) state criteria the Minister must consider before granting an exemption to a local government from complying with a requirement under paragraph (a).

‘(3) A regulation under subsection (2)(a) does not apply to a local government if—

- (a) the Minister, after considering the criteria set out in the regulation, exempts the local government from complying with the regulation; and
- (b) the local government complies with any conditions of the exemption.’.

Amendment of s 774 (Permanent employees’ liability for contributions)

77. Section 774—

insert—

‘(2) Subsection (1) does not apply if, under the employee’s remuneration agreement with the local government, a contribution equivalent to the contribution mentioned in subsection (1) is made by the local government in addition to any contribution the local government is required to make under this Act.’.

Insertion of new s 792A

78. Chapter 14, part 2, after section 792—

insert—

‘Approval of forms

‘792A. The chief executive may approve forms for use under this Act.’.

Insertion of new s 793A

79. Chapter 14, part 2, after section 793—

insert—

‘Declaration of existing electoral wards of City of Brisbane

‘793A.(1) On or before 1 March 1997, a regulation must be made declaring the existing names and boundaries of the electoral wards of the City of Brisbane.

‘(2) In this section—

“existing names and boundaries” means the names and boundaries in force immediately before the commencement of this section.’.

Replacement of s 802 (Repeal if no review of pre-existing law)

80. Section 802—

omit, insert—

‘Repeal if no review of pre-existing law

‘802. A pre-existing law for which a notice is not published under section 801 before 1 July 1999 expires on 1 July 1999.’.

Amendment of s 803 (Expiry of division)

81. Section 803, ‘3 years after it commences’—

omit, insert—

‘on 2 July 1999’.

Amendment of ch 15 (Transitional and savings provisions, repeals and amendments)

82. Chapter 15, heading, after ‘transitional’—

insert—

‘, validation’.

Amendment of ch 15, pt 1 (Transitional and savings provisions)

83. Chapter 15, part 1, heading, after ‘transitional’—

insert—

‘, validation’.

Replacement of ch 15, pt 1, div 5 (Local government staff)

84. Chapter 15, part 1, division 5—

omit, insert—

‘Division 5—Transitional and savings provisions for amendments under Local Government Legislation Amendment Act 1996

‘Rosalie Shire undivided for 1997 triennial election

‘810.(1) Despite any other provision of this Act—

- (a) for the purposes of section 215⁹⁶—the Shire of Rosalie does not have divisions for the 1997 triennial election of its councillors; and
- (b) subsequently, the Shire of Rosalie does not have divisions until divided in accordance with this Act.

‘(2) A regulation may amend a regulation that is inconsistent with subsection (1) to make the regulation consistent with subsection (1).

‘(3) This section expires on 1 May 1997.

‘Water charges by Livingstone Shire Council for 1993–1994 financial year

‘811.(1) Subsection (2) applies to the purported utility charges (the **“relevant charges”**) imposed by Livingstone Shire Council (the **“council”**) for water services provided to a structure or land under the council’s Capricorn Coast Water Supply Scheme (the **“scheme”**) for the relevant period.

‘(2) It is declared that the charges amounting to \$130 per unit of water supplied for the fixed component part of the relevant charge—

- (a) applied only to the relevant period; and

⁹⁶ Section 215 (Types of elections)

(b) were lawfully charged.

‘(3) In this section—

“anniversary date” means the anniversary date for the Capricorn Coast Water Undertaking Fund that occurred in the first week in April 1994 under the council’s resolutions titled ‘Anniversary Date—Meter Readings’ made at a special pre-budget meeting on 27 July 1993 and ‘Adoption of Fees and Charges 1993/94’ made at a budget meeting on 28 July 1993.

“relevant period”, for water services provided to a structure or land under the scheme, means the period from 1 July 1993 to the anniversary date for the relevant charges for the water services.

‘(4) This section expires on the day it commences.

‘Electoral wards of City of Brisbane for 1997 triennial election

‘**812.(1)** The electoral wards of the City of Brisbane in force immediately before the commencement of this section are the electoral wards for the city for the 1997 triennial election.

‘(2) Subsection (1) has effect despite—

- (a) any other provision of this Act; and
- (b) the amendment of the *City of Brisbane Act 1924* by the *Local Government Legislation Amendment Act 1996*.

‘(3) This section expires on 1 May 1997.

‘Local government commissioner reports

‘**813.(1)** This section applies for the implementation of a reviewable local government matter referred to the local government commissioner for a report if the commissioner’s report on the matter was tabled in the Legislative Assembly before the commencement.

‘(2) The matter may be implemented and for that purpose chapter 3, part 1, division 7,⁹⁷ as in force immediately before the commencement,

⁹⁷ Chapter 3 (Interaction with the State), part 1 (Reviewable local government matters), division 7 (Implementing reviewable local government matters)

applies.

‘(3) Terms used in this section have the meaning they had under this Act as in force immediately before the commencement.

‘Approved forms

‘814.(1) This section applies if, immediately before its commencement, there was a form approved by the chief executive for a matter under section 237 or a regulation.

‘(2) The form is taken to be the approved form for the matter under section 792A until another form is approved for the matter.

‘(3) This section expires on the day it commences.’.

PART 4—AMENDMENT OF PUBLIC SERVICE ACT 1996

Act amended in pt 4

85. This part amends the *Public Service Act 1996*.

Amendment of s 109 (Who is a “term appointee”)

86. Section 109(3)(d)—

omit, insert—

‘(d) a review commissioner appointed under the *Local Government Act 1993*’.

SCHEDULE**MINOR AND CONSEQUENTIAL AMENDMENTS OF
LOCAL GOVERNMENT ACT 1993**

section 15

1. Section 5(1)(d)(ii), ‘schedule 2’—*omit, insert—*

‘schedule’.

2. Section 5(1)(h)—*omit, insert—*‘(h) a licensee under the *Land Act 1994*; or’.**3. Section 11(3), ‘(Local’ to ‘part)’—***omit, insert—*

‘(Definitions for pt 1), definition “local government” ’.

4. Chapter 3, part 1, heading—*omit, insert—***‘PART 1—REVIEWABLE LOCAL GOVERNMENT
MATTERS’.****5. Chapter 3, part 1, division 4, heading—***omit, insert—**‘Division 4—Inquiries by expanded commissions’.*

SCHEDULE (continued)

**6. Sections 81, 83 to 85, 86(1), 87, 88 and 89(c) and (d),
‘commissioner’—***omit, insert—*

‘commission’.

7. Section 82—*omit, insert—***‘Presiding member**‘**82.** The chairperson presides at the inquiry.’.**8. Sections 83 and 86, headings, ‘Commissioner’s’—***omit, insert—*

‘Commission’s’.

9. Section 84, heading, ‘Commissioner’—*omit, insert—*

‘Commission’.

10. Section 84(1)(b), ‘himself or herself’—*omit, insert—*

‘itself’.

11. Section 86(2), ‘The commissioner’—*omit, insert—*

‘A commission member’.

SCHEDULE (continued)

12. Section 89, heading—*omit, insert—***‘Contempt’.****13. Section 89(a), ‘the commissioner’—***omit, insert—***‘the commission or a commission member’.****14. Section 90—***omit, insert—***‘Change of commission members**

‘90. The inquiry is not affected by a change in the commission members.’.

15. Section 106(2)(g)—*omit, insert—***‘(g) implementation issues for the matter; or’.****16. Section 107(1), ‘commissioner has’—***omit, insert—***‘commissioner, and the commission that determined the matter, have’.****17. Section 107(3) and (4)—***omit.*

SCHEDULE (continued)

18. Section 108, after ‘implement a’—

insert—

‘reviewable’.

19. Chapter 5, part 5—

insert—

‘Application of pt to Brisbane City Council

‘**231A.** This part applies to the Brisbane City Council.’.

20. Section 234(1), ‘1 March’ to ‘governments’—

omit, insert—

‘the information date’.

21. Section 234—

insert—

‘(3) In this section—

“information date” means—

- (a) for Brisbane City Council—1 October in the year that is 2 years before the year of the triennial elections for local governments; or
- (b) for another local government—1 March in the year before the year of the triennial elections for local governments.’.

22. Section 237—

omit.

SCHEDULE (continued)

23. Section 350(2), ‘part 1 (Review of local government matters)’—*omit, insert—*

‘part 1 (Reviewable local government matters)’.

24. Section 553(2), ‘(1)(e)’—*omit, insert—*

‘(1)(f)’.