



Queensland

Local Government Legislation Amendment Act 2005

Act No. 26 of 2005



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Queensland

Local Government Legislation Amendment Act 2005

Act No. 26 of 2005

An Act to amend local government legislation

[Assented to 31 May 2005]

The Parliament of Queensland enacts—**Part 1 Preliminary****1 Short title**

This Act may be cited as the *Local Government Legislation Amendment Act 2005*.

Part 2 Amendment of City of Brisbane Act 1924**2 Act amended in pt 2**

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

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

(1) Section 3A(2), third dot point, ‘part 4’—

omit, insert—

‘parts 3A and 4’.

(2) Section 3A(2), seventh dot point, ‘part 4’—

omit, insert—

‘parts 4 and 5’.

4 Amendment of s 39C (Council register)

Section 39C(2) and (2A)—

omit, insert—

‘(2) The council must—

(a) keep the register open to inspection; and

- (b) make copies of the register, or extracts from the register, available for purchase at its public office at a price not more than the cost to the council of producing the copy and, if a copy is supplied to a purchaser by post, the cost of postage.¹.

5 Amendment of s 116 (Preparation of annual financial statements)

Section 116(2)—

omit, insert—

- ‘(2) The annual financial statements must comply with financial management standards prescribed under section 127.¹’.

6 Amendment of s 119 (Annual report)

- (1) Section 119(3)—

insert—

‘(ec) each of the following details for a financial year starting on 1 July 2005 or later—

- (i) the total number of breaches of the council’s code of conduct committed by councillors as decided during the year by the council;
- (ii) the name of each councillor decided during the year by the council to have breached the code, a description of how the councillor breached the code, and details of any penalty imposed by the council on the councillor;

Examples of how breaches of the code might be described—

- misconduct at a council meeting
- misuse of confidential information

- (iii) the number of complaints about code of conduct breaches by councillors, other than frivolous or vexatious complaints, that were referred to the conduct review panel during the year by the

1 Section 127 (Financial management standards)

council or the chief executive officer under chapter 4, part 3A of the Local Government Act;

- (iv) the number of recommendations made to the council by the conduct review panel during the year that were adopted, or not adopted, by the council;
- (v) the number of complaints resolved under the council's general complaints process during the year and the number of those complaints that related to an alleged breach by a councillor of the council's code of conduct;
- (vi) the number of complaints made to the ombudsman, and notified to the council, during the year about decisions made by the council in relation to enforcing its code of conduct; and'.

(2) Section 119—

insert—

'(5) In this section—

frivolous or vexatious complaint means a complaint about a code of conduct breach by a councillor considered by the conduct review panel to—

- (a) concern frivolous matter; or
- (b) have been made vexatiously.'

7 **Amendment of s 127 (Financial management standards)**

Section 127(2)(e), 'and roads business activities'—

omit, insert—

', roads business activities and building certification business activities'.

8 **Amendment of sch 2 (Dictionary)**

Schedule 2—

insert—

‘code of conduct, for the council, means the code of conduct for councillors adopted, or taken to have been adopted, by the council under the Local Government Act, chapter 4, part 3A.²

conduct review panel means the conduct review panel convened by the council as required under the Local Government Act, chapter 4, part 3A.

general complaints process means the general complaints process established by the council as required under the Local Government Act, chapter 6, part 5.³.

Part 3 **Amendment of Local Government Act 1993**

9 Act amended in pt 3

This part amends the *Local Government Act 1993*.

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

- (1) Section 9(2), third dot point, ‘part 4’—

omit, insert—

‘parts 3A and 4’.

- (2) Section 9(2), seventh dot point, ‘part 4’—

omit, insert—

‘parts 4 and 5’.

2 Local Government Act, chapter 4 (Local government councillors), part 3A (Code of conduct for councillors)

3 Local Government Act, chapter 6 (General operation of local governments), part 5 (General complaints process)

11 Amendment of s 237 (Remuneration for service on local government and advisory committees)

Section 237—

insert—

- ‘(6) If a councillor has entered into an arrangement with the local government under section 238A, the amount of remuneration that would otherwise be payable to the councillor under a resolution under this section is reduced by the percentage or amount the councillor has elected to forgo.’.

12 Amendment of s 238 (Superannuation benefits for councillors)

Section 238—

insert—

- ‘(3A) Subsection (3)(a) and (b) do not apply in relation to contributions payable by the local government under an arrangement entered into with a councillor under section 238A.’.

13 Insertion of new s 238A

After section 238—

insert—

‘238A Councillors may make salary sacrifice arrangements

- ‘(1) A councillor of a local government may enter into an arrangement with the local government under which—
- (a) the councillor agrees to forgo a percentage or amount of the councillor’s remuneration entitlement; and
 - (b) the local government agrees to make corresponding contributions for the councillor to a voluntary superannuation scheme for councillors established or taken part in by the local government under section 238.
- ‘(2) The percentage or amount forgone by the councillor must not be more than the equivalent of 50% of the councillor’s remuneration entitlement.
- ‘(3) In this section—

remuneration entitlement, of a councillor, means the remuneration to which the councillor would be entitled under a resolution of the local government made under section 237 if the councillor had not entered into an arrangement under this section.’.

14 Amendment of s 242 (Requirements of councillors before acting in office)

Section 242—

insert—

- ‘(4B) If, when the councillor is elected or appointed, there is a code of conduct for the local government, the declaration of office for the councillor must also include the following statement—
- ‘I declare that I agree to comply with the Council’s code of conduct.’’.

15 Insertion of new s 243A

After section 243—

insert—

‘243A Compliance with code of conduct

- ‘(1) A councillor must comply with the obligations stated in the local government’s code of conduct.
- ‘(2) A contravention of subsection (1) is not an offence.
- ‘(3) However—
- (a) under part 3A, division 4, the code of conduct may be enforced in relation to the contravention; and
 - (b) if the act or omission is the contravention is an offence under another provision of this Act, subsection (2) does not prevent a proceeding being taken for the offence.’.

16 Insertion of new ch 4, pt 3A

Chapter 4—

insert—

‘Part 3A Code of conduct for councillors

‘Division 1 Preliminary

‘250A Application of part to Brisbane City Council

‘This part applies to the Brisbane City Council.

‘250B Definitions for pt 3A

‘For this part—

committee of a local government means—

- (a) for Brisbane City Council—a committee of the council;
or
- (b) for another local government—
 - (i) a standing committee or special committee of the local government; or
 - (ii) an advisory committee of the local government if all the members of the committee are councillors.

statutory obligation for a councillor—

- (a) means an obligation under this Act with which the councillor is required to comply only because of holding, or having held, office as a councillor; but
- (b) does not include the following obligations—
 - (i) the obligation under section 243A⁴ to comply with the code of conduct;
 - (ii) an obligation under a local law.

Example for definition of statutory obligation—

The obligations under section 250 about use of information by persons who are or have been councillors would be statutory obligations. However, the obligation under section 1072(1), which applies to any person, would not be a statutory obligation.

4 Section 243A (Compliance with code of conduct)

‘250C Requirement to adopt code of conduct for councillors

- ‘(1) A local government must adopt, by resolution, a code of conduct for councillors that complies with the requirements under division 2—
 - (a) not later than 1 March 2006; and
 - (b) within 6 months after each quadrennial election held on or after 1 March 2006.
- ‘(2) A code of conduct for councillors adopted by the local government must be prepared and notified as required under division 3.

‘250D Model code of conduct for councillors

- ‘(1) A *model code of conduct* is a document that—
 - (a) complies with the requirements under division 2; and
 - (b) is proposed by the Minister as suitable for adoption by local governments as a code of conduct for councillors.
- ‘(2) A model code of conduct must be gazetted.
- ‘(3) If a model code of conduct has been gazetted—
 - (a) a local government may adopt the model code of conduct as its code of conduct under section 250C; and
 - (b) if a local government does not adopt a code of conduct on or before the day mentioned in section 250C(1)(a) or within the period mentioned in section 250C(1)(b)—the model code of conduct is taken to have been adopted by the local government as its code of conduct.

‘250E Application and duration of code of conduct

- ‘(1) A local government’s code of conduct applies to all councillors of the local government in performing the duties of their office.
- ‘(2) The code of conduct has effect until—
 - (a) the next code of conduct is adopted by the local government as required under section 250C(1)(b); or

- (b) the day by which the local government is next required to adopt a code of conduct under the section.

‘Division 2 Content of codes of conduct for councillors

‘250F Statutory and additional obligations of councillors

- ‘(1) A code of conduct for a local government must—
 - (a) identify each statutory obligation for councillors of the local government for which the Act provides a penalty for contravening; and
 - (b) identify each statutory obligation for councillors of the local government for which the Act does not provide a penalty for contravening.
- ‘(2) The code may state additional ethical and behavioural obligations with which councillors must comply.
- ‘(3) An obligation mentioned in subsection (2) must—
 - (a) not be inconsistent with a statutory obligation identified in the code; and
 - (b) be based on 1 or more of the ethics principles for local government councillors mentioned in section 250G.

‘250G Ethics principles for local government councillors

- ‘(1) For section 250F(3)(b), the ethics principles for local government councillors are the principles stated in schedule 1.
- ‘(2) The ethics principles must be stated in a local government’s code of conduct.

‘250H Code must state what a *repeat breach* is

‘A local government’s code of conduct must state the circumstances in which a meeting breach or minor breach of the code is a repeat breach of the code.

‘250I Information about making a complaint

‘A local government’s code of conduct must include information about how a person can find out how to make a complaint about an alleged breach by a councillor of the code of conduct.

‘Division 3 Procedure for making code of conduct for councillors**‘250J Notice of draft code of conduct for councillors**

‘(1) A local government may adopt a code of conduct for councillors only if notice of the proposed code has been given.

‘(2) Notice must be given by—

(a) publishing a prescribed notice—

(i) at least 6 weeks, and not more than 8 weeks, before the meeting at which it is proposed to adopt the code; and

(ii) in a newspaper circulated generally in the local government’s area; and

(b) putting a copy of the prescribed notice on display in a conspicuous place in the local government’s public office on the day on which the notice is published under paragraph (a); and

(c) keeping the copy of the prescribed notice on display until after the meeting.

‘(3) In this section—

prescribed notice means a notice stating—

(a) that the draft code of conduct has been prepared; and

(b) where copies of the draft code may be obtained; and

(c) an invitation for comments on the draft code; and

(d) the day by which comments must be received.

- ‘(4) The last day for making comments must be at least 21 days after publication of the notice under subsection (2)(a).
- ‘(5) This section does not apply to a code of conduct taken to have been adopted under section 250D(3)(b).

‘250K Requirement to consider comments

‘In preparing a final draft of a code of conduct for councillors, the local government must consider all comments made on or before the day stated in the notice given under section 250J.

‘250L Code of conduct to be available for inspection and purchase

‘A local government must—

- (a) ensure its code of conduct is open to inspection; and
- (b) make copies available for purchase at its public office at a price not more than the cost to the local government of producing the copy and, if a copy is supplied to a purchaser by post, the cost of postage.

‘Division 4 Enforcement of code of conduct for councillors

‘Subdivision 1 Preliminary

‘250M Categories of code of conduct breaches

- ‘(1) A councillor commits a *meeting breach* of the local government’s code of conduct if the councillor breaches an obligation under the code, or under a local law, about councillors’ behaviour at meetings of—
 - (a) the local government; or
 - (b) a committee of the local government.
- ‘(2) A councillor commits a *minor breach* of the local government’s code of conduct if the councillor breaches an

obligation stated in the code under section 250F(2), other than an obligation mentioned in subsection (1).

- ‘(3) A councillor commits a *repeat breach* of the code if the councillor commits a meeting breach or minor breach that, under the code, is a repeat breach.
- ‘(4) A councillor commits a *statutory breach* of the local government’s code of conduct if the councillor breaches a statutory obligation identified in the code.

‘250N References in div 4 to code of conduct breaches

‘In this division, a reference to a breach of a local government’s code of conduct includes, in the context of a complaint about an alleged breach of the code of conduct, a reference to the alleged breach.

‘Subdivision 2 Meeting breaches

‘250O Making a complaint about a meeting breach

- ‘(1) A complaint about a meeting breach of a local government’s code of conduct by a councillor must be made—
 - (a) at the meeting of the local government, or the committee of the local government, at which the breach is alleged to have been committed; and
 - (b) by another councillor present at the meeting.
- ‘(2) The complaint may be made by stating it to the person chairing the meeting.
- ‘(3) If a complaint about a meeting breach is made at a meeting of a committee of the local government, the person chairing the meeting must, as soon as practicable, notify the chief executive officer of the local government of the complaint.
- ‘(4) The chief executive officer must, as soon as practicable after receiving a complaint under subsection (3), refer the complaint to the local government.

- ‘(5) This section does not limit a person’s ability to make a complaint under a local law in relation to a breach of an obligation under the law mentioned in section 250M(1).

‘250P When local government must deal with the complaint

- ‘(1) The local government must deal with a complaint about a meeting breach of its code of conduct—
- (a) for a complaint made at a meeting of the local government as required under section 250O(1)(a)—
 - (i) at the meeting; or
 - (ii) if the local government can not deal with the complaint at the meeting because a quorum is not present⁵—at the next meeting of the local government; or
 - (b) for a complaint made at a meeting of a committee of the local government as required under section 250O(1)(a)—at the next meeting of the local government held after the complaint is referred to it.

- ‘(2) In this section—

deal with a complaint means—

- (a) decide, under section 250Q(1), to—
 - (i) take no further action in relation to the complaint; or
 - (ii) refer the complaint to the conduct review panel; or
- (b) if paragraph (a) does not apply—make the decision about the complaint required under section 250Q(2).

‘250Q How local government must deal with complaint

- ‘(1) The local government may decide, by resolution, to do any of the following in relation to a complaint about a meeting breach of its code of conduct by a councillor—

⁵ See, also, section 446 (Quorum at meetings).

- (a) if the local government is satisfied the complaint concerns frivolous matter or is made vexatiously—take no further action; or
 - (b) if the local government is satisfied the complaint is actually a complaint about a statutory breach by the councillor—refer the complaint to the conduct review panel for review.
- ‘(2) If the local government does not deal with the complaint under subsection (1), the local government must decide, by resolution, whether the councillor has committed the alleged meeting breach.
- ‘(3) If the local government decides that the councillor committed the meeting breach, it may do any of the following—
- (a) take no further action in respect of the breach;
 - (b) by resolution, impose a penalty on the councillor under subdivision 5;
 - (c) if it considers the breach may be a repeat breach of the code of the conduct—refer a complaint about the repeat breach to the conduct review panel for review.
- ‘(4) In deciding whether the councillor has breached the code of conduct and whether to impose a penalty on the councillor, the local government must comply with the principles of natural justice.
- ‘(5) This section does not limit the local government’s ability to deal with breaches of obligations under a local law mentioned in section 250M(1).

‘Subdivision 3 Minor breaches

‘250R Making a complaint about a minor breach

‘A complaint about a minor breach of a local government’s code of conduct by a councillor must be made under the local government’s general complaints process.⁶

6 See chapter 6 (General operation of local governments), part 5 (General complaints process).

‘250S How local government must deal with complaints officer’s report

- ‘(1) This section applies if—
- (a) a report about a complaint about a minor breach of a local government’s code of conduct is given to the local government by the complaints officer who investigated it under the general complaints process; and
 - (b) the report states the complaint has not been resolved through the process.
- ‘(2) The local government may decide, by resolution, to take no further action in relation to the complaint if the local government is satisfied it concerns frivolous matter or was made vexatiously.
- ‘(3) If the local government does not deal with the complaint under subsection (2), the local government must decide, by resolution, whether the councillor has committed the alleged minor breach.
- ‘(4) If the local government decides the councillor committed the minor breach, it may do any of the following—
- (a) take no further action in respect of the breach;
 - (b) by resolution, impose a penalty on the councillor under subdivision 5;
 - (c) if it considers the breach may be a repeat breach of the code of conduct—refer a complaint about the repeat breach to its conduct review panel for review.
- ‘(5) In deciding whether the councillor has breached the code of conduct and whether to impose a penalty on the councillor, the local government must comply with the principles of natural justice.

‘Subdivision 4 Repeat breaches and statutory breaches

‘250T Making a complaint about a statutory breach

- ‘(1) A person may make a complaint about a statutory breach by a councillor by giving written notice of the complaint to the local government’s chief executive officer.
- ‘(2) Subsection (1) does not limit a person’s ability to make a complaint about a statutory breach under the *Crime and Misconduct Act 2001* or the *Ombudsman Act 2001*.

‘250U Referring complaints about statutory breaches to conduct review panel

- ‘(1) The chief executive officer must refer a complaint about a statutory breach of the local government’s code of conduct by a councillor to the conduct review panel for review if—
 - (a) the complaint is made to the chief executive officer under section 250T(1) and the chief executive officer is not required, under the *Crime and Misconduct Act 2001*, to notify the CMC about the complaint; or
 - (b) a complaint about the breach has been made to the CMC or the ombudsman (the ***external review body***) and the external review body has notified the chief executive officer that the external review body—
 - (i) has decided not to take action, or to discontinue action, in relation to the complaint; and
 - (ii) recommends the complaint be referred to the local government’s conduct review panel for review.
- ‘(2) If a complaint is referred to the conduct review panel under subsection (1), the chief executive officer must, as soon as practicable, give the councillor written notice that a complaint about a statutory breach by the councillor has been referred to the panel.

‘250V Review of complaints by conduct review panel

- ‘(1) The conduct review panel must review a complaint about a repeat breach or statutory breach of the local government’s code of conduct by a councillor if the complaint is referred to the panel by—
- (a) for a repeat breach—the local government under section 250Q or 250S; or
 - (b) for a statutory breach—the chief executive officer under section 250U.
- ‘(2) The conduct review panel must give a report to the local government about its review of the complaint.
- ‘(3) In the report, the panel may—
- (a) state whether—
 - (i) the panel considers the complaint to concern frivolous matter or to have been made vexatiously; or
 - (ii) the panel considers more information would be required to make a recommendation mentioned in paragraph (b); and
 - (b) make recommendations to the local government about—
 - (i) whether the panel considers the councillor committed the alleged repeat breach or statutory breach; and
 - (ii) what the panel considers would be an appropriate penalty, as provided for under subdivision 5, for the councillor.
- ‘(4) Subsection (3)(a)(i) does not apply in relation to a complaint about a statutory breach mentioned in section 250U(1)(b).
- ‘(5) A councillor is not entitled to inspect, make a copy of, or take an extract from, a panel document relating to the complaint until the panel has given a report about the complaint to the local government as required under subsection (2).
- ‘(6) In this section—
- panel document*** means any of the following—

- (a) a document held by the conduct review panel;
- (b) a record about a proceeding of the conduct review panel.

‘250W Decision by local government about repeat breach or statutory breach

- ‘(1) This section applies if the conduct review panel gives the local government a report on a complaint about a repeat breach or statutory breach it has reviewed as required under section 250V.
- ‘(2) Unless the report states the panel considers the complaint to concern frivolous matter or to have been made vexatiously, the local government must decide, by resolution, whether the councillor has committed the alleged repeat breach or statutory breach.
- ‘(3) If the local government decides the councillor has committed the breach, it may—
 - (a) take no further action in respect of the breach; or
 - (b) by resolution, impose a penalty on the councillor under subdivision 5.
- ‘(4) In deciding whether the councillor breached the code of conduct and whether to impose a penalty on the councillor, the local government must comply with the principles of natural justice.
- ‘(5) A resolution made by the local government under this section that does not adopt a recommendation made by the conduct review panel must include a statement of the reasons for not adopting the recommendation.

‘Subdivision 5 Penalties

‘250X Penalties local government may impose

- ‘(1) This section applies if a local government decides, under section 250Q, 250S or 250W, that a councillor has breached the local government’s code of conduct.

- ‘(2) The local government may impose 1 or more of the following penalties on the councillor—
- (a) a written reprimand;
 - (b) for a meeting breach—suspension from the remainder of the local government meeting at which the local government decides the councillor has breached the code;
 - (c) suspension for a stated period from future meetings of—
 - (i) the local government; and
 - (ii) a committee of the local government of which the councillor is a member.
- ‘(3) The maximum period of a suspension under subsection (2)(c) must not include more than—
- (a) for a meeting breach or minor breach—1 ordinary meeting of the local government; or
 - (b) for a repeat breach or statutory breach—2 consecutive ordinary meetings of the local government.

‘250Y Effect of suspension of councillor for s 252

- ‘(1) This section applies if a local government imposes a penalty on a councillor under section 250X(2)(c).
- ‘(2) For section 252,⁷ the councillor is taken to have leave from the local government to be absent from the meetings of the local government from which the councillor is suspended.

‘Subdivision 6 Conduct review panel

‘250Z Pool of members for conduct review panel

- ‘(1) Each local government must appoint a pool of members for its conduct review panel.

⁷ Section 252 (When councillor’s office becomes vacant)

- ‘(2) An individual must not be appointed to the pool of members unless, under section 250ZA, the individual is qualified for appointment as a member of the panel.
- ‘(3) An individual may be appointed to the pool of members for not more than 4 years.
- ‘(4) When the panel is convened, it must consist of not less than 3 individuals from the pool of members.
- ‘(5) The panel may be convened by the local government as required to review complaints referred to the panel under subdivision 4.

‘250ZA Qualifications for appointment as member of conduct review panel

- ‘(1) An individual is qualified for appointment as a member of a conduct review panel only if the individual—
 - (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 local government considers appropriate.
- ‘(2) However, an individual who would otherwise be qualified for appointment under subsection (1) is not qualified if the individual—
 - (a) is a member of, or is a nominee for election as a member of, an Australian parliament; or
 - (b) is a councillor of, or is a nominee for election as a councillor of, a local government; or
 - (c) accepts appointment as a councillor of a local government; or
 - (d) is a member of a political party; or
 - (e) is a local government employee.

‘250ZB Removal from pool of conduct review panel members

‘Individuals may remove themselves from the pool of members for a conduct review panel by giving written notice to the local government.

‘250ZC Quorum for meetings of conduct review panel

‘A quorum for a meeting of a conduct review panel is the greater of the following—

- (a) 3 panel members;
- (b) a majority of the panel members.

‘250ZD Chairperson of conduct review panel

- ‘(1) If the local government does not appoint a chairperson for a conduct review panel, the panel may appoint 1 of its members as chairperson.
- ‘(2) If the chairperson is not present at a meeting, the members present may appoint a chairperson for the meeting.

‘250ZE Meetings of conduct review panel

- ‘(1) Meetings of a conduct review panel are to be held at the times and places it decides.
- ‘(2) At a meeting—
 - (a) a question is decided by a majority of the votes of the members present; and
 - (b) each member present has a vote on each question to be decided and, if the votes are equal, the chairperson for the meeting has a casting vote; and
 - (c) if a member present fails to vote, the member is taken to have voted in the negative.

‘250ZF Payment of fee to members of conduct review panel by local government

‘A member of a conduct review panel is entitled to be paid a fee for attending meetings of the panel as agreed with the local government.

‘250ZG Costs of conduct review panel to be met by local government

‘The costs of convening a conduct review panel must be paid by the local government.

Examples of costs—

- reimbursement of travel and accommodation expenses incurred by members in attending meetings of the panel
- meeting fees payable to members of the panel as agreed by the local government

‘250ZH Indemnity for panel members

- ‘(1) A member of a conduct review panel does not incur civil liability for an act or omission done honestly and without negligence under this Act.
- ‘(2) A liability that would, apart from this section, attach to a member of a conduct review panel attaches instead to the local government.

‘250ZI Indemnity for persons giving information to a conduct review panel

- ‘(1) A person giving information to a conduct review panel does not incur civil liability for giving information to the panel honestly and without negligence.
- ‘(2) This section does not limit the operation of the *Whistleblowers Protection Act 1994*.

‘Subdivision 7 Miscellaneous**‘250ZJ Frivolous or vexatious complaint**

‘(1) A local government may give notice to a person that a complaint made by the person about a breach of the local government’s code of conduct by a councillor will not be dealt with because it appears—

- (a) to concern frivolous matter; or
- (b) to have been made vexatiously.

‘(2) The notice must advise the person that if the person again makes the same or substantially the same complaint to the local government the person commits an offence under subsection (3).

‘(3) A person who, after receiving the notice mentioned in subsection (2), again makes the same or substantially the same complaint to the local government commits an offence.

Maximum penalty—20 penalty units.

‘(4) It is a defence to prove that the complaint did not concern frivolous matter and was not made vexatiously.

‘(5) This section does not apply in relation to a complaint about a statutory breach originally made to the CMC or the ombudsman and referred to the conduct review panel under section 250U.’.

17 Amendment of s 469 (Inspection of records by members)

Section 469(4), ‘section 1135’—

omit, insert—

‘sections 250V(5) and 1135’.

18 Insertion of new ch 6, pt 5

Chapter 6—

insert—

‘Part 5 General complaints process

‘501A Application to Brisbane City Council

‘This part applies to the Brisbane City Council.

‘501B Definitions for pt 5

‘In this part—

affected person means a person who is apparently directly affected by—

- (a) an administrative action of a local government; or
- (b) an alleged minor breach by a councillor of the local government’s code of conduct.

complaint—

- (a) means a complaint under a local government’s general complaints process; but
- (b) does not include a complaint that could be made under the complaints process provided for under chapter 11.⁸

‘501C Meaning of *administrative action*

‘An *administrative action* of a local government is an action about a matter of administration, and includes each of the following—

- (a) a decision and an act;
- (b) a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision;
- (c) the formulation of a proposal or intention;
- (d) the making of a recommendation.

‘501D Local government to establish general complaints process

- ‘(1) Each local government must, not later than the day mentioned in subsection (2), establish a process (a *general complaints process*) for resolving complaints by affected persons about—
- (a) administrative action of the local government; or
 - (b) an alleged minor breach of the local government’s code of conduct by a councillor.
- ‘(2) For subsection (1), the day is the earlier of the following—
- (a) the day the local government adopts its first code of conduct as required under section 250C;
 - (b) 1 March 2006.
- ‘(3) The process must be adopted by resolution of the local government.
- ‘(4) The local government must give notice of the adoption of the process by publishing, not later than 1 week after the resolution adopting the process is passed, a prescribed notice in a newspaper circulated generally in the local government’s area.
- ‘(5) In this section—
- prescribed notice* means a notice stating the day on which the general complaints process was adopted by the local government.

‘501E Requirements for general complaints process

- ‘(1) The general complaints process must include at least the following elements—
- (a) the process for selecting and appointing a complaints officer to investigate complaints;
 - (b) preliminary procedures before an affected person can make a complaint;
 - (c) the way an affected person may make a complaint;
 - (d) sending complaints to, and their investigation by, the complaints officer;

- (e) giving an affected person who makes a complaint an opportunity to give the complaints officer further information about the complaint;
 - (f) a requirement that the complaints officer give the local government and affected person notice of a decision made by the officer under section 501F and the reasons for the decision;
 - (g) a requirement that, if the complaint is not resolved to the affected person's satisfaction through the general complaints process, the complaints officer give the local government and affected person—
 - (i) a written report on the results of the officer's investigation of the complaint; and
 - (ii) any recommendation in relation to the complaint the officer considers appropriate;
 - (h) the time within which the complaints officer must give the report and any recommendation mentioned in paragraph (g) to the local government;
 - (i) if a report and any recommendation mentioned in paragraph (g) is given to the local government—a requirement that the local government give the affected person notice of the outcome of the local government's consideration of the report and recommendation;
 - (j) recording the number of complaints made and resolved through the general complaints process.
- ‘(2) Also, the process mentioned in subsection (1)(a) must require that the person appointed to be a complaints officer to investigate a complaint must not be involved with the administrative action or alleged minor breach of the code of conduct that is the subject of the complaint.

‘501F Refusal to investigate complaint

- ‘(1) The complaints officer may refuse to investigate a complaint or, having started to investigate a complaint, refuse to continue the investigation if the officer reasonably considers that—
- (a) the complaint is trivial; or

- (b) the complaint concerns frivolous matter or was made vexatiously; or
 - (c) the person who made the complaint (the *complainant*) does not have a sufficient direct interest in the administrative action or alleged minor breach of the code of conduct complained of; or
 - (d) both of the following apply—
 - (i) the complainant has a right of appeal, reference or review, or another remedy, that the person has not exhausted;
 - (ii) it would be reasonable in the circumstances to require the complainant to exhaust the right or remedy before the officer investigates, or continues to investigate, the complaint; or
 - (e) in the circumstances, investigating the administrative action or alleged minor breach of the code of conduct complained of is unnecessary or unjustifiable.
- ‘(2) A right or remedy mentioned in subsection (1)(d) does not include a right to make an application to the Supreme Court under the *Judicial Review Act 1991*.’.

19 **Amendment of s 534 (Content of report about other issues of public interest)**

- (1) Section 534—

insert—

- ‘(n) each of the following details for a financial year starting on 1 July 2005 or later—
- (i) the total number of breaches of the local government’s code of conduct committed by councillors as decided during the year by the local government;
 - (ii) the name of each councillor decided during the year by the local government to have breached the code, a description of how the councillor breached the code, and details of any penalty imposed by the local government on the councillor;

Examples of how breaches of the code of conduct might be described—

- misconduct at a local government meeting
- misuse of confidential information
- directing an employee in contravention of section 230(2) of the Act

(iii) the number of complaints about alleged code of conduct breaches by councillors, other than frivolous or vexatious complaints, that were referred to the conduct review panel during the year by the local government or the chief executive officer under chapter 4, part 3A;

(iv) the number of recommendations made to the local government by the conduct review panel during the year that were adopted, or not adopted, by the local government;

(v) the number of complaints resolved under the local government's general complaints process during the year and the number of those complaints that related to an alleged breach by a councillor of the local government's code of conduct;

(vi) the number of complaints made to the ombudsman, and notified to the local government, during the year about decisions made by the local government in relation to enforcement of its code of conduct.'

(2) Section 534—

insert—

'(2) In this section—

frivolous or vexatious complaint means a complaint about a code of conduct breach by a councillor considered by the conduct review panel to—

- (a) concern frivolous matter; or
- (b) have been made vexatiously.'

20 Amendment of s 1182 (Local governments' liability for permanent employees)

Section 1182—

insert—

- ‘(4) However, the local government is not required to pay a contribution for the employee if, before the local government is required under subsection (1) to make the contribution, the employee has given the local government a notice under section 1183A.’.

21 Insertion of new s 1183A

After section 1183—

insert—

‘1183A Election by permanent employee to cease contributions

- ‘(1) A permanent employee of a local government may elect that the local government stop paying contributions under section 1182 for the employee.
- ‘(2) The election may be made only if the total of the amounts to which the employee is entitled as evidenced by the statements mentioned in subsection (3)(b) is more than the employee’s pension RBL.
- ‘(3) To make the election, the employee must give the local government a written notice—
- (a) stating the employee elects that the local government stop paying contributions under section 1182 for the employee; and
 - (b) accompanied by the statements mentioned in the *Superannuation Guarantee (Administration) Act 1992* (Cwlth), section 19(4)(b).⁹
- ‘(4) The election is irrevocable.
- ‘(5) In this section—

⁹ *Superannuation Guarantee (Administration) Act 1992* (Cwlth), section 19 (Individual superannuation guarantee shortfalls)

pension RBL see the *Income Tax Assessment Act 1936* (Cwlth), section 140ZD.¹⁰.

22 Insertion of new sch 1

After chapter 19—

insert—

‘Schedule 1 Ethics principles for local government councillors

section 250G(1)

‘1 Integrity of local government

- ‘(1) It is vital that the public has confidence in a local government’s ability to ensure the good rule and government of its area.
- ‘(2) Councillors must conduct themselves in a way that promotes and maintains the public’s trust and confidence in the local government and the good rule and government of its area.

‘2 Primacy of the public interest

- ‘(1) Councillors are elected to act in the public interest and to make decisions solely in terms of the public interest.
- ‘(2) Councillors must take steps to avoid, resolve or disclose conflicts of interest.

‘3 Independence of action by councillors

‘Councillors must not place themselves under any financial obligation that may influence them in discharging their duties and responsibilities as councillors.

¹⁰ *Income Tax Assessment Act 1936* (Cwlth), section 140ZD (Lump sum RBLs and pension RBLs)

‘4 Appropriate use of information by councillors

‘Councillors who, in the course of carrying out their duties, receive information that is not available to the general public must not misuse this information, particularly for personal gain.

‘5 Transparency and scrutiny

- ‘(1) It is vital that the public has confidence in the integrity of a local government’s decision-making processes.
- ‘(2) To ensure transparency and public scrutiny of, and public confidence in, those processes, councillors must disclose their financial interests.

‘6 Appropriate use of entitlements

‘Councillors must comply with the requirements about using entitlements provided for under the local government’s remuneration policies.’.

23 Amendment of schedule (Dictionary)

Schedule—

insert—

‘administrative action, for chapter 6, part 5, see section 501C.

affected person, for chapter 6, part 5, see section 501B.

CMC means the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*.

code of conduct, for a local government, means the code of conduct for councillors adopted, or taken to have been adopted, by the local government under chapter 4, part 3A.

committee, for chapter 4, part 3A, see section 250B.

complaint, for chapter 6, part 5, see section 501B.

conduct review panel, for a local government, means the conduct review panel convened by the local government as required under chapter 4, part 3A.

general complaints process see section 501D(1).

meeting breach, for chapter 4, part 3A, see section 250M(1).

minor breach, for chapter 4, part 3A and chapter 6, part 5, see section 250M(2).

repeat breach, for chapter 4, part 3A, see section 250M(3).

statutory breach, for chapter 4, part 3A, see section 250M(4).

statutory obligation, for chapter 4, part 3A, see section 250B.’.

Part 4 **Amendment of Local Government (Community Government Areas) Act 2004**

24 **Act amended in pt 4**

This part amends the *Local Government (Community Government Areas) Act 2004*.

25 **Insertion of new s 11A**

Part 2, division 3—

insert—

‘11A **Application of enterprise provisions in Local Government Act 1993**

‘All enterprises of a community government are taken to be exempt enterprises for the *Local Government Act 1993*, section 495.¹¹’.

26 **Amendment of s 14 (Meaning of *reviewable community government matter*)**

(1) Section 14(1)—

¹¹ *Local Government Act 1993*, section 495 (Application of part)

insert—

‘(ea) assigning and reassigning councillors of a community government to indigenous social groupings;’.

(2) Section 14(1)(ea) to (g)—

renumber as section 14(1)(f) to (h).

27 Amendment of s 18 (Commissions must have regard to prescribed issues)

Section 18, ‘the issues’—

omit, insert—

‘any issues’.