



Queensland

# **Local Government and Other Legislation Amendment Act 2007**

**Act No. 21 of 2007**





## Queensland

# Local Government and Other Legislation Amendment Act 2007

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Queensland

# **Local Government and Other Legislation Amendment Act 2007**

## **Act No. 21 of 2007**

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**An Act to amend the *Local Government Act 1993*, and for other purposes**

**[Assented to 26 April 2007]**

**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Local Government and Other Legislation Amendment Act 2007*.

## **Part 2 Amendment of Local Government Act 1993**

### **2 Act amended in pt 2**

This part amends the *Local Government Act 1993*.

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

Section 9(2), ‘chapter 5, part 8’—

*omit, insert—*

‘chapter 5, parts 8 and 9’.

### **4 Amendment of s 18 (Declaration of classes of local government areas)**

(1) Section 18(2), at the end—

*insert—*

‘• another class prescribed under a regulation.’.

(2) Section 18(3), after ‘town’—

*insert—*

‘, or another class prescribed under a regulation.’.

(3) Section 18—

*insert—*

‘(4) A provision of this Act that makes a reference generally to the 3 classes of city, town and shire is taken also to include a similar reference to any other class prescribed under a regulation under subsection (2).’.

#### **4A Insertion of new ch 3, pt 1A**

Chapter 3—

*insert—*

### **‘Part 1A Whole of Queensland local government boundaries reform**

#### **‘Division 1 Preliminary**

##### **‘159A Application of pt 1A**

- ‘(1) This part does not apply to the Brisbane City Council, or its local government area, and does not affect any special reference for a reviewable local government matter or the implementation of a reviewable local government matter as a result of a special reference.
- ‘(2) This part applies to Torres Strait Islander local governments.
- ‘(3) To remove any doubt, it is declared that this part also applies to—
- (a) community governments under the *Local Government (Community Government Areas) Act 2004*; and
  - (b) the local governments of the Shire of Aurukun and the Shire of Mornington under the *Local Government (Aboriginal Lands) Act 1978*.

### **‘159B Objective of pt 1A**

‘The objective of this part is the achievement of the organisation of local government in a way that—

- (a) facilitates optimum service delivery to Queensland communities; and
- (b) ensures that local governments effectively contribute to and participate in Queensland regional economies; and
- (c) manages economic, environmental and social planning consistently with regional communities of interest; and
- (d) effectively partners local government with other levels of government to ensure sustainable and viable communities.

### **‘159C Achieving objective of pt 1A**

‘For achieving the objective of this part, this part—

- (a) establishes a Local Government Reform Commission—
  - (i) to examine, and to make recommendations for the reform of, on a whole of Queensland basis, local government area boundaries, and local government classes and names; and
  - (ii) to make recommendations for the composition of local governments and for the internal divisional arrangements of local government areas; and
  - (iii) to make recommendations for the implementation of the recommendations mentioned in subparagraphs (i) and (ii); and
- (b) provides for the submission of the reform commission’s recommendations to the Minister; and
- (c) provides for the suspension of actions under part 1 while the whole of Queensland reform process proceeds.

### **‘159D Definitions for pt 1A**

‘In this part—

***chairperson*** means the chairperson of the reform commission.

***reform commission*** means the Local Government Reform Commission established under section 159F.

***reform commissioner*** see section 159G(1).

***SSS review process*** means the review process—

- (a) adopted for examining governance and service delivery arrangements in relation to 2 or more local governments; and
- (b) carried out under a review framework—
  - (i) put in place by the Local Government Association, local governments and the department; and
  - (ii) generally referred to using the expression ‘Size, Shape and Sustainability’.

**‘159E Suspension of particular actions while part 1A processes operate**

- ‘(1) Until the relevant day—
- (a) the Minister must not act under part 1 to refer a reviewable local government matter to the commissioner; and
  - (b) a local government must not apply to the commissioner under section 80(1) for determination of a reviewable local government matter; and
  - (c) neither the commissioner, nor any electoral and boundaries review commission, may take any further action in relation to a reviewable local government matter that has been referred to or is otherwise before the commissioner or the commission; and
  - (d) no reviewable local government matter may be implemented under part 1, division 10, other than as that division is applied under section 159Z; and
  - (e) no reviewable community government matter may be implemented under the *Local Government (Community Government Areas) Act 2004*, section 19.

‘(2) In this section—

*relevant day* means—

- (a) the conclusion of the last 2008 quadrennial election held for a local government area; or
- (b) an earlier day prescribed under a regulation.

## **‘Division 2            The Local Government Reform                                  Commission**

### **‘Subdivision 1       Establishment**

#### **‘159F Establishment of reform commission**

‘The Local Government Reform Commission is established.

### **‘Subdivision 2       Reform commissioners**

#### **‘159G Appointment**

- ‘(1) The reform commission consists of 7 persons (each a *reform commissioner*), made up of a chairperson and 6 other reform commissioners.
- ‘(2) The reform commissioners are to be appointed by the Governor in Council.
- ‘(3) The reform commissioners may be appointed as full-time or part-time reform commissioners.

#### **‘159H Eligibility for appointment**

‘A person is eligible for appointment as a reform commissioner only if the person—

- (a) has extensive knowledge of and experience in 1 or more of the following—
  - (i) local government;

- (ii) public administration;
  - (iii) law;
  - (iv) public finance;
  - (v) community affairs; or
- (b) has other knowledge and experience the Governor in Council considers appropriate.

#### **‘159I Duration of appointment**

- ‘(1) Subject to sections 159K and 159L, a reform commissioner holds office for the term stated in the reform commissioner’s instrument of appointment.
- ‘(2) A person appointed as a reform commissioner is eligible for reappointment.

#### **‘159J Terms and conditions of appointment**

- ‘(1) A reform commissioner is to be paid the remuneration and allowances decided by the Governor in Council.
- ‘(2) A reform commissioner holds office on the terms and conditions, not provided for by this Act, that are decided by the Governor in Council.

#### **‘159K Resignation**

‘A reform commissioner may resign by signed notice given to the Minister.

#### **‘159L Termination of appointment**

- ‘(1) The Governor in Council may end a reform commissioner’s appointment for misbehaviour or for physical or mental incapacity.
- ‘(2) Unless it is ended sooner under this part, a reform commissioner’s appointment ends when this part expires.

### **‘159M Effect of appointment to fill vacancy**

- ‘(1) This section applies if the Governor in Council appoints a person (the *new appointee*) to be a reform commissioner, or to act in the office of a reform commissioner, because of the removal or suspension of a reform commissioner from office or because the office of a reform commissioner has otherwise become permanently or temporarily vacant for any reason.
- ‘(2) The reform commission’s capacity to continue to perform its functions under this part is taken not to be affected by the change in the persons comprising the reform commission.

### **‘159N Disclosure of interests**

- ‘(1) This section applies if—
  - (a) a reform commissioner has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the reform commission; and
  - (b) the interest could conflict with the proper performance of the reform commissioner’s functions for a matter.
- ‘(2) The reform commissioner must, as soon as practicable, disclose the interest to—
  - (a) for the chairperson—the other reform commissioners; or
  - (b) for another reform commissioner—the chairperson.
- ‘(3) A reform commissioner who has disclosed an interest relating to a matter is not prevented from participating in the reform commission’s consideration of the matter.

## **‘Subdivision 3 Meetings and other business of reform commission**

### **‘159O Conduct of business**

‘Subject to this division, the reform commission may conduct its business, including its meetings, in the way it considers appropriate.



### **‘159P Decisions outside meetings**

- ‘(1) A decision of the reform commission, other than a decision at a reform commission meeting, may be made only with the written agreement of 2 reform commissioners.
- ‘(2) The reform commission must keep a record of any decisions under subsection (1).

## **‘Subdivision 4 Staff and other assistance to reform commission**

### **‘159Q Administrative support**

‘The chairperson and the chief executive may arrange for the services of officers or employees of the department to be made available to the reform commission.

### **‘159R Supply of information about current reviewable local government matters**

‘The commissioner and each Local Government Electoral and Boundaries Review Commission must give the reform commission all information the commissioner or commission has about any reviewable local government matter, other than any special reference, that has been referred to or is otherwise before the commissioner or the commission.

## **‘Division 3 Review and recommendations**

### **‘Subdivision 1 Reform commission**

#### **‘159S Functions of reform commission**

- ‘(1) The reform commission has the following functions—
  - (a) to carry out a structural review of all local government areas;
  - (b) to make recommendations to the Minister for—

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- (i) how many local government areas there should be; and
  - (ii) what the external boundaries of each of the local government areas should be, including the local government areas for which no external boundary change is recommended; and
  - (iii) any class of local government area that there should be in addition to the classes of city, town and shire, and the criteria that should apply for declaring a local government to be of that class;
- (c) to recommend to the Minister, for each local government area as recommended by the reform commission under paragraph (b)(i) and (ii)—
- (i) the name of the local government area; and
  - (ii) the class of the local government area; and
  - (iii) the composition of the local government for the area; and
  - (iv) whether the local government area should have divisions, and if so, what the boundaries of the divisions should be, and how many councillors should be assigned to each division;
- (d) to make recommendations to the Minister for implementation issues for any relevant reviewable local government matter mentioned in section 64(1)(a), (c), (e) or (f).
- ‘(2) The reform commission must act in the performance of its functions under subsection (1) in a way that is consistent with making its recommendations before 1 August 2007.
- ‘(3) However, the Minister may by gazette notice, whether published before or after 1 August 2007, declare a later date for the performance of—
- (a) the reform commission’s functions in relation to all or a part of the State; or
  - (b) an identified aspect of the reform commission’s functions in relation to all or a part of the State.

- ‘(4) Subsections (2) and (3) do not stop the Minister from receiving a recommendation from the reform commission after the time provided for under the subsections for receiving the recommendation.
- ‘(5) In this section—  
*relevant reviewable local government matter* means a reviewable local government matter that must be implemented if a recommendation of the reform commission under this section is to be given effect.

**‘159T Particular requirements for reform commission’s performance of its functions**

- ‘(1) In performing its functions, the reform commission must have regard to—
- (a) the objective of this part; and
  - (b) any terms of reference given to it by the Minister; and
  - (c) the terms of reference stated in this subdivision.
- ‘(2) Without limiting subsection (1)(b), terms of reference given by the Minister may provide for the reform commission to provide some or all of its recommendations in sequence for different parts of the State to the extent that this is reasonably consistent with providing its recommendations on a whole of Queensland basis.
- ‘(3) As soon as practicable after the reform commission’s establishment, the reform commission must, by public notice, invite suggestions from persons and entities.
- ‘(4) The public notice must state that suggestions are to be given to the reform commission at a stated address in writing within the time stated in the notice.
- ‘(5) The public notice must be published—
- (a) in the gazette; and
  - (b) on the department’s website; and
  - (c) in a newspaper circulating generally in the State.

- ‘(6) In making its recommendations to the Minister, the reform commission must consider all suggestions properly given to it.

**‘159U Terms of reference**

- ‘(1) This section states terms of reference for the reform commission in performing its functions.
- ‘(2) The reform commission must consider the grouping of like communities of interest to maintain the social fabric and character of communities and areas of the State, and in particular, must consider—
- (a) review areas established under SSS review processes; and
  - (b) boundaries of areas covered by the regions for which regional planning advisory committees have been established under the *Integrated Planning Act 1997*.
- ‘(3) The reform commission’s recommendations must be directed at—
- (a) consolidating, to the extent practicable, regional natural resource management areas, including for example water catchment areas, and environmental areas, including for example, coastal wetlands; and
  - (b) creating local governments with improved financial sustainability.
- ‘(4) In making a recommendation for creating a new local government area from 2 or more existing local government areas, the reform commission must give preference, to the extent practicable, to including all of the existing local government areas in the new area rather than parts of the existing areas.
- ‘(5) The reform commission must identify options for community representation that reflect the diversity of the State’s regions and that promote representation of discrete communities.
- ‘(6) In making its recommendations for new arrangements, the reform commission must identify any issues requiring further consideration for successfully establishing the new arrangements.

### **‘159V General powers**

‘The reform commission has the powers necessary or convenient to perform its functions and to help achieve the objective of this part.

## **‘Subdivision 2 The State**

### **‘159W Minister**

- ‘(1) The Minister may provide terms of reference to the reform commission for any aspect of the performance of its functions.
- ‘(2) The terms of reference must be consistent with the objective of this part.
- ‘(3) The Minister must consider all recommendations given to the Minister by the reform commission.
- ‘(4) The Minister must make the recommendations publicly available in the way the Minister considers appropriate.

*Example—*

publication on the department’s website

## **‘Division 4 Miscellaneous**

### **‘159X Review of particular decisions and actions**

- ‘(1) A designated decision—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside, or called into question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
  - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- ‘(2) Without limiting subsection (1), a person may not bring a proceeding for an injunction or any other order to stop or

otherwise restrain the performance of a designated act, or for a declaration about the validity of a designated act.

‘(3) In this section—

*decision* includes—

- (a) conduct engaged in to make a decision; and
- (b) conduct related to making a decision; and
- (c) failure to make a decision.

*designated act* means—

- (a) an act of the reform commission, including the act of making a recommendation to the Minister, the performance of which is authorised, or purportedly authorised, under this part; or
- (b) an act of the Minister the performance of which is authorised, or purportedly authorised, under this part.

*designated decision* means a decision to perform a designated act.

### ‘159Y Expiry of pt 1A

‘This part expires at the end of 31 December 2008, or at an earlier time fixed under a regulation.’.

## 5 Insertion of new ch 3, pt 2, div 5

Chapter 3, part 2—

*insert—*

### ‘Division 5 Financial controllers

#### ‘188A Procedures before appointment of financial controller

- ‘(1) Before the Governor in Council or Minister exercises a power under section 188B in relation to a local government, the Minister must give a written notice of the proposed exercise of the power to the local government.
- ‘(2) However, the notice need not be given if—

- (a) the local government has asked for the power to be exercised; or
  - (b) the Minister reasonably considers giving the notice—
    - (i) is likely to defeat the purpose of the proposed exercise of the power; or
    - (ii) would serve no useful purpose.
- ‘(3) The notice must state—
- (a) the reasons for the proposed exercise of the power; and
  - (b) a period within which the local government may make submissions to the Minister about the proposed exercise of the power.
- ‘(4) The reasons stated in the notice are the only reasons that can be relied on in support of the exercise of the power.
- ‘(5) The Minister must have regard to all submissions made by the local government within the stated period.
- ‘(6) The power may be exercised without further notice to the local government if—
- (a) the proposed exercise of the power is to proceed despite the local government’s submissions; or
  - (b) no submissions of the local government are received by the Minister within the stated period.

### **‘188B Appointment of financial controller**

- ‘(1) The Governor in Council may, by regulation, appoint a financial controller for a local government.
- ‘(2) The Minister must not recommend the Governor in Council act under subsection (1) unless the Minister is satisfied on reasonable grounds that the local government—
- (a) has not applied financial management policies and principles required by the Local Government Finance Standards for funds under its control; or
  - (b) has acted, or is about to act, in a way that—

- (i) caused, or may cause, a significant deterioration in its financial viability; or
- (ii) will, or may, cause it to become insolvent.

### **‘188C Functions of financial controller**

- ‘(1) A financial controller appointed for a local government is responsible for ensuring the local government adheres to its budget.
- ‘(2) Also, the financial controller—
  - (a) may give advice about financial management to the local government, including, for example, advice about the preparation of a plan to address any financial difficulties it may be experiencing; and
  - (b) may undertake other administrative duties requested by the local government; and
  - (c) must undertake other administrative duties directed by the Minister.

### **‘188D Power of financial controller to advise chief executive about resolution or order**

- ‘(1) This section applies if a financial controller for a local government reasonably believes a resolution of the local government, or an order of the local government giving effect to a resolution of the local government—
  - (a) will result in unlawful expenditure by the local government; or
  - (b) will result in expenditure from grant moneys for a purpose other than the purpose for which the grant was given; or
  - (c) will cause the local government to become insolvent.
- ‘(2) The financial controller must advise the chief executive of the department of the resolution or order.



- ‘(3) The financial controller’s advice to the chief executive under subsection (2) must include reasons for the financial controller’s belief under subsection (1).
- ‘(4) Neither the State nor the financial controller is legally liable for any loss or expense incurred by a person because of the advice given under subsection (2).

**‘188E Countersigning cheques and authorising electronic funds transfers**

- ‘(1) If a financial controller is appointed for a local government, a payment may be made from an account with a financial institution kept by the local government only by a cheque countersigned, or an electronic funds transfer authorised, by the financial controller.
- ‘(2) However, the financial controller may refuse to countersign the cheque, or authorise the electronic funds transfer, only if the financial controller reasonably believes—
  - (a) the payment will result in unlawful expenditure by the local government; or
  - (b) the payment will result in expenditure from grant moneys for a purpose other than the purpose for which the grant was given; or
  - (c) the payment will cause the local government to become insolvent.

**‘188F Local government to cooperate with financial controller**

‘If a financial controller is appointed for a local government, the local government must cooperate with the financial controller in relation to the performance of the financial controller’s functions under section 188C.

**‘188G Financial controller’s employment conditions**

‘A financial controller appointed for a local government is to be employed under the *Public Service Act 1996*.

### **‘188H Recovery of amounts from local government**

- ‘(1) The Governor in Council may direct a local government for which a financial controller is appointed to pay the Minister a stated amount for the costs and expenses of the financial controller.
- ‘(2) The stated amount may include salary and allowances payable to the financial controller as a public service officer.
- ‘(3) The direction may state a time for payment.
- ‘(4) The stated amount is a debt payable to the State.’.

### **6 Amendment of s 222 (Disqualification and vacation of office for certain offences)**

- (1) Section 222(1)(b), ‘384’—  
*omit, insert—*  
‘383’.
- (2) Section 222(1)(c), after ‘247’—  
*insert—*  
‘, 250’.
- (3) Section 222(3), from ‘satisfied that’—  
*omit, insert—*  
‘satisfied that—
  - (a) for a person who is not a local government councillor—there are special circumstances why the person should not be disqualified under the subsection from becoming a local government councillor; or
  - (b) for a person who is a local government councillor—there are special circumstances why—
    - (i) the person should not be disqualified under the subsection from again becoming a local government councillor; and
    - (ii) the person’s office as a local government councillor should not be vacated.’.

## **7 Amendment of s 230 (Limitation on councillors' roles)**

Section 230—

*insert—*

‘(3) Subsection (4) applies if a councillor directs, purports to direct or attempts to direct, an employee of the local government, or another person otherwise engaged to provide services to the local government, about the way the employee or other person is to perform a relevant duty.

‘(4) The councillor commits an offence.

Maximum penalty—85 penalty units.

‘(5) In this section—

***relevant duty*** means the duty of giving the local government a recommendation or advice about—

- (a) the grant of a licence, permit or approval, however named, under an Act or under a local law of the local government; or
- (b) the grant of a concession, rebate or waiver in relation to an amount owed to the local government; or
- (c) the local government entering into a contract under chapter 6, part 3; or
- (d) disposing of land or a non-current asset; or
- (e) allocating any of the local government’s resources for carrying out local government programs or projects.

***resources***, of the local government, means staff, funds, plant and equipment of the local government.’.

## **8 Amendment of s 242 (Requirements of councillors before acting in office)**

Section 242(3A)—

*omit.*

## **9 Insertion of new s 246A**

After section 246—

*insert—*

**‘246A Recording of conflict of interest**

- ‘(1) This section applies if a councillor of a local government has a conflict of interest, or could reasonably be taken to have a conflict of interest, in an issue being considered or to be considered at a meeting of the local government or any of its committees.
- ‘(2) For subsection (1), a councillor has a conflict of interest in an issue if there is a conflict between the councillor’s private interest and the honest performance of the councillor’s role of serving the public interest.
- ‘(3) The councillor must declare the conflict of interest to the meeting.
- ‘(4) The local government must ensure the declaration is recorded in the minutes for the meeting.
- ‘(5) The record must include—
- (a) the nature of the conflict of interest as described by the councillor; and
  - (b) how the councillor dealt with the conflict of interest; and
  - (c) if the councillor voted on the issue—how the councillor voted.
- ‘(6) In this section—
- conflict of interest*, for a councillor in an issue, does not include a conflict of interest arising out of a material personal interest the councillor has in the issue.
- private interest* includes both pecuniary and non-pecuniary interests, and may include having received a donation to be used for electoral purposes.’.

**10 Amendment of s 248 (Access to registers)**

- (1) Section 248(2), from ‘other than’—
- omit, insert—*
- ‘other than by, for each local government, the following—

- (a) any councillor of the local government;
- (b) the chief executive officer of the local government;
- (c) a person permitted by law to have access to information in the register, or the person's agent.'

(2) Section 248—

*insert—*

'(5A) Subsections (3) to (5) do not apply to the accessing of information included in a register of councillor's interests if the information relates to any of the following—

- (a) gifts received;
- (b) hospitality benefits received;
- (c) memberships of organisations.

'(5B) The local government must ensure the information included in the register of councillor's interests about a matter mentioned in subsection (5A) is made available—

- (a) to any member of the public who asks to see it, at the public office of the local government; and
- (b) if the local government maintains a publicly accessible website—by being displayed, as soon as practicable after it is received, on the website.'

**11 Amendment of s 250 (Improper use of information by councillors)**

(1) Section 250(2), from 'that—' to 'confidential.'

*omit, insert—*

'that is confidential to the local government.'

(2) Section 250, penalty, '35 penalty units'—

*omit, insert—*

'100 penalty units'.

**12 Amendment of s 304 (Deposit to accompany nomination)**

Section 304(1), after 'a candidate'—

*insert—*

‘, or another person on behalf of the person nominating as a candidate.’.

**13 Amendment of s 308 (Termination of candidature before noon on nomination day)**

Section 308(2)(b), ‘to the person’—

*omit, insert—*

‘to the person who paid the deposit’.

**14 Amendment of s 309 (Death of candidate)**

Section 309(b)—

*omit, insert—*

‘(b) the person’s deposit must be refunded to—

- (i) if the deposit was paid by someone other than the person—the other person; or
- (ii) otherwise—the person’s personal representative.’.

**15 Amendment of s 313 (Procedure on death of candidate when poll to be conducted)**

(1) Section 313(2), from ‘must be refunded’—

*omit, insert—*

‘must be refunded to—

- (a) if the deposit was paid by someone other than the candidate—the other person; or
- (b) otherwise—the candidate’s personal representative.’.

(2) Section 313(3), ‘to the candidates’—

*omit, insert—*

‘to the persons who paid the deposits’.

(3) Section 313(4) and (5), ‘Governor in Council’—

*omit, insert—*

‘Minister’.

**16 Amendment of s 314 (Disposal of deposits generally)**

Section 314(1), ‘to the candidate’—

*omit, insert—*

‘to the person who paid the deposit’.

**17 Amendment of s 316 (Extension of times)**

Section 316(2), ‘Governor in Council’—

*omit, insert—*

‘Minister’.

**18 Insertion of new s 316A**

Chapter 5, part 6, division 4, after section 316—

*insert—*

**‘316A Special provision about refunding deposits**

‘If under this division a deposit is to be refunded to a person (the *person entitled*), it may be refunded to someone else with the written authority of the person entitled.’.

**19 Amendment of s 329 (Correction of errors etc.)**

Section 329, ‘Governor in Council’—

*omit, insert—*

‘Minister’.

**20 Replacement of ss 383 and 384**

Sections 383 and 384—

*omit, insert—*

### **‘383 False or misleading information**

- ‘(1) A person must not give information under this chapter to a returning officer or to the chief executive officer of a local government, including information in a document, that the person knows is false or misleading in a material particular.  
Maximum penalty—7 years imprisonment.
- ‘(2) Subsection (1) does not apply to a person giving a document if, when giving the document to someone, the person—
- (a) informs the other person, to the best of the person’s ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the other person the correct information.
- ‘(3) It is enough for a charge against a person for an offence against subsection (1) to state the information, without specifying which part of the information, was ‘false or misleading’.’.

### **21 Amendment of s 385 (Bribery)**

- (1) Section 385(2)—  
*insert—*  
‘Maximum penalty—7 years imprisonment.’.
- (2) Section 385(3), penalty—  
*omit, insert—*  
‘Maximum penalty for subsection (3)—7 years imprisonment.’.

### **22 Amendment of s 386 (Providing money for illegal payments)**

- Section 386, penalty—  
*omit, insert—*  
‘Maximum penalty—2 years imprisonment.’.



**23 Amendment of s 389 (Forging or uttering electoral papers)**

(1) Section 389(1), penalty—

*omit, insert—*

‘Maximum penalty—10 years imprisonment.’.

(2) Section 389(2), penalty—

*omit, insert—*

‘Maximum penalty for subsection (2)—10 years imprisonment.’.

**24 Amendment of s 392 (Responsibility for election matter)**

Section 392(1), penalty—

*omit, insert—*

‘Maximum penalty—

(a) for an individual—20 penalty units; or

(b) for a corporation—85 penalty units.’.

**25 Insertion of new s 392B**

After section 392A—

*insert—*

**‘392B Lodging of how-to-vote cards**

‘(1) The person who authorised a how-to-vote card for a political party, or for a candidate endorsed by a political party, for an election must, not later than 5p.m. on the Friday that is 7 days before the polling day for the election, lodge with the returning officer for the election—

(a) the required number of the how-to-vote cards; and

(b) a statutory declaration relating to any financial contribution received from another political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—

- (i) who the financial contribution was received from or on behalf of; and
  - (ii) the nature and amount of the financial contribution.
- ‘(2) The person who authorised a how-to-vote card for a candidate or a group of candidates for an election, other than a candidate or group of candidates endorsed by a political party for the election, must, by 5p.m. on the Friday that is 7 days before the polling day for the election, lodge with the returning officer for the election—
- (a) the required number of the how-to-vote cards; and
  - (b) a statutory declaration relating to any financial contribution received from a political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—
    - (i) who the financial contribution was received from or on behalf of; and
    - (ii) the nature and amount of the financial contribution.
- Example for subsections (1) and (2)—*
- If polling day is Saturday, 15 January, the how-to-vote cards and statutory declaration must be lodged by 5p.m. on Friday, 7 January.
- ‘(3) The returning officer must reject a how-to-vote card received under subsection (1) or (2) that does not comply with section 392A.
- ‘(4) Before polling day, the returning officer must make a how-to-vote card that the returning officer has not rejected available for public inspection for free at—
- (a) the place of nomination under section 301; and
  - (b) if the place of nomination is not also the public office of the local government to which the election relates—the local government’s public office.
- ‘(5) On polling day, the returning officer must, to the extent that it is reasonably practicable to do so, make the how-to-vote card mentioned in subsection (4) available for public inspection for free at each polling booth for which the how-to-vote card is relevant.

- ‘(6) An election is not invalid only because the returning officer does not comply with subsection (4) or (5).
- ‘(7) A person must not distribute, or permit or authorise someone else to distribute, a how-to-vote card to which subsection (1) or (2) applies on polling day unless subsection (1) or (2) has been complied with for the card.

Maximum penalty—20 penalty units.

- ‘(8) If, on polling day, an electoral officer reasonably suspects a person is distributing a how-to-vote card to which subsection (1) or (2) applies and that subsection (1) or (2) has not been complied with for the card, the electoral officer may—
- (a) require the person to produce the how-to-vote card for inspection; and
- (b) confiscate any how-to-vote cards that have not been lodged as required by subsection (1) or (2).
- ‘(9) A person must not obstruct an electoral officer in the exercise of the power under subsection (8)(b), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(10) In this section—

***financial contribution*** means a contribution in the form of money, property or other valuable consideration.

***obstruct*** includes hinder and attempt to obstruct.

***required number***, of how-to-vote cards, means 12 more than the number of polling booths within the local government’s area at which the cards are to be distributed.’.

## 26 **Amendment of s 393 (Headline to electoral advertisements)**

Section 393, penalty—

*omit, insert*—

‘Maximum penalty—

- (a) for an individual—10 penalty units; or
- (b) for a corporation—40 penalty units.’.

**27 Amendment of s 394 (Misleading voters)**

- (1) Section 394(1) and (2)—

*insert—*

‘Maximum penalty—40 penalty units.’.

- (2) Section 394—

*insert—*

- ‘(4) In this section—

*publish* includes publish on the Internet, even if the Internet site on which the publication is made is located outside Queensland.’.

**28 Amendment of s 396 (Leave to vote)**

Section 396, penalty—

*omit, insert—*

‘Maximum penalty—

- (a) for an individual—10 penalty units; or
- (b) for a corporation—40 penalty units.’.

**29 Amendment of s 397 (Canvassing in or near polling booths)**

- (1) Section 397(1)(b), after ‘6m’—

*insert—*

‘, or a shorter distance approved under subsection (3),’.

- (2) Section 397—

*insert—*

- ‘(3) The returning officer may approve a shorter distance for subsection (1)(b) only on the conditions mentioned in subsection (4).

- ‘(4) For subsection (3), the conditions are—
- (a) the shorter distance applies only in relation to canvassing for votes mentioned in subsection (2)(a); and
  - (b) the polling booth mentioned in subsection (1)(b)(i) must be a place declared as a polling booth under section 352(1);<sup>1</sup> and
  - (c) the shorter distance applies only in relation to the casting of declaration votes before polling day under section 352.’.

**30 Amendment of s 399 (Influencing voting)**

Section 399, penalty, ‘85 penalty units or’—  
*omit.*

**31 Amendment of s 401 (Voting if not entitled)**

Section 401, penalty—  
*omit, insert—*  
‘Maximum penalty—3 years imprisonment.’.

**32 Amendment of ch 5, pt 8, hdg**

Chapter 5, part 8, heading, after ‘gifts’—  
*insert—*  
‘and loans and requirements for accounts’.

**33 Amendment of s 414 (Definitions for pt 8)**

- (1) Section 414, definition *disclosure period*, paragraphs (b) and (c)—  
*omit, insert—*  
‘(b) for sections 427A, 428(1A), 428B and 428C—see section 423A; and

---

<sup>1</sup> Section 352 (Declaration voting before polling day)

- (c) for section 430—see section 424; and
  - (d) for section 430A—see section 425.’.
- (2) Section 414, definition *disposition of property*—  
*insert*—
- ‘(g) payment for attendance at or participation in a fundraising activity.
- Example for paragraph (g)*—
- a payment made for admission to a social function, as the highest bidder for an item at an auction or for buying a ticket in a raffle’.
- (3) Section 414, definition *prescribed amount*, paragraph (a)—  
*omit, insert*—
- ‘(a) in sections 427(2)(b)(iii), 427A(2)(e), 428(1), 428B(4), 428C(1), 430A(1)(b) and 431A(6)<sup>2</sup>—\$200; or’.
- (4) Section 414, definition *relevant details*, paragraph (b)(ii)—  
*omit, insert*—
- ‘(ii) the title or other description of the trust fund or the name of the foundation; and
  - (iii) if the gift is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the gift—the name and residential or business address of the person; or’.

## 34 Insertion of new ss 417A

Chapter 5, part 8, division 1—

*insert*—

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<sup>2</sup> Sections 427 (Gifts to candidates), 427A (Gifts to groups of candidates), 428 (Certain gifts not to be received), 428B (Loans to candidates or groups of candidates), 428C (Certain loans not to be received), 430A (Third party expenditure for political purposes) and 431A (Donations to candidates)

**‘417A Adjustment of prescribed amount in relation to disclosure period**

- ‘(1) This section applies if—
- (a) during a disclosure period under this part, a regulation prescribes an amount (the *new amount*) as the prescribed amount for section 414, definition *prescribed amount*, for a provision of this part; and
  - (b) the new amount is still in force as the prescribed amount for the provision at the end of the disclosure period; and
  - (c) a person is required, under the provision, to give the chief executive officer of a local government a return that relates to the disclosure period.
- ‘(2) For the completion of the return, the prescribed amount is taken always to have been, for the whole of the disclosure period, the new amount.’.

**35 Amendment of s 423A (Disclosure period for s 427A)**

- (1) Section 423A, heading, ‘for s 427A’—  
*omit, insert—*  
**‘for particular sections’.**
- (2) Section 423A, ‘For section 427A,’—  
*omit, insert—*  
‘For sections 427A, 428(1A), 428B and 428C,’.

**36 Insertion of new s 425**

Chapter 5, part 8, division 2, subdivision 2—  
*insert—*

**‘425 Disclosure period for s 430A**

- ‘(1) For section 430A, the disclosure period for an election for a local government other than the Brisbane City Council—
- (a) starts on the day after the day the returning officer publishes notice of the election in a newspaper under section 301; and

- (b) ends at 6p.m. on the polling day for the election.
- ‘(2) For section 430A, the disclosure period for an election for the Brisbane City Council—
  - (a) starts on the day after the day of the issue of the writ for the election; and
  - (b) ends at 6p.m. on the polling day for the election.’.

**37 Amendment of ch 5, pt 8, div 3, hdg (Disclosure of gifts)**

Chapter 5, part 8, division 3, heading, after ‘gifts’—

*insert—*

‘**and loans and requirements for accounts**’.

**38 Amendment of s 426 (Definitions for div 3)**

- (1) Section 426, definition *group of candidates*—

*omit.*

- (2) Section 426—

*insert—*

‘**agent**, for a group of candidates for an election, means the agent for the group recorded in a register of group agents under section 435E.

***group of candidates***, for an election—

- 1 A *group of candidates*, for an election, means a group of individuals, each of whom is a candidate for the election, if the group was formed—
  - (a) to promote the election of the candidates; or
  - (b) to share in the benefits of fundraising for the purposes of promoting the election of the candidates; or
  - (c) for both paragraphs (a) and (b).
- 2 However, a *group of candidates*, for an election, does not include a political party or an associated entity.’.



**39 Amendment of s 427 (Gifts to candidates)**

Section 427(2), ‘3 months’—

*omit, insert—*

‘15 weeks’.

**40 Amendment of s 427A (Gifts to groups of candidates)**

- (1) Section 427A(2), ‘Within 3 months after the conclusion of the election, the candidate’—

*omit, insert—*

‘Within 15 weeks after the conclusion of the election, the group’s agent’.

- (2) Section 427A(3), ‘A candidate’—

*omit, insert—*

‘The agent’.

- (3) Section 427A(3)(a), ‘the candidate gives’—

*omit, insert—*

‘each candidate who is a member of the group gives’.

- (4) Section 427A(3)(a), ‘states the candidate’—

*omit, insert—*

‘states’.

- (5) Section 427A(3)(a)(i), ‘does not’—

*omit, insert—*

‘the candidate does not’.

- (6) Section 427A(3)(a)(ii), ‘will give a return under the section’—

*omit, insert—*

‘the group’s agent will give a return under this section’.

**41 Amendment of s 428 (Certain gifts not to be received)**

- (1) Section 428—

*insert—*

- (1A) It is unlawful for a group of candidates for an election, or a person acting on behalf of a group of candidates for an election, to receive, during the disclosure period for the election, a gift made to or for the benefit of the group of candidates, the value of which is the prescribed amount or more unless—
- (a) the relevant details for the gift are known to the group or person receiving the gift; or
  - (b) when the gift is made—
    - (i) the person making the gift gives the group or person receiving the gift details of the gift; and
    - (ii) the group or person receiving the gift has no reasonable grounds to believe that the details given are not the relevant details for the gift.’.
- (2) Section 428(2), ‘person’—  
*omit, insert—*  
‘person or group’.
- (3) Section 428(2), ‘subsection (1)’—  
*omit, insert—*  
‘subsection (1) or (1A)’.
- (4) Section 428(3), ‘subsection (1)’—  
*omit, insert—*  
‘subsections (1) and (1A)’.
- (5) Section 428(4), after ‘one candidate’—  
*omit, insert—*  
‘or group of candidates’.
- (6) Section 428(5)—  
*insert—*  
***‘person acting on behalf of a group of candidates for an election*** includes the group’s campaign committee for the election.’.

## **42 Insertion of new ss 428A to 428C**

After section 428—

*insert—*

### **‘428A Valuation of fundraising activity gifts**

‘For the application of section 427, 427A or 428 to a gift in the form of a payment for attendance at or participation in a fundraising activity, the value of the gift is taken to be the gross amount of the payment, regardless of the value of anything received in consideration for the payment.

### **‘428B Loans to candidates or groups of candidates**

- ‘(1) Each candidate for an election must, within 15 weeks after the conclusion of the election, give the chief executive officer of the local government to which the election relates a return, in the approved form, covering all loans received by the candidate from a person other than a financial institution during the disclosure period for the election.
- ‘(2) The agent for a group of candidates for an election must, within 15 weeks after the conclusion of the election, give the chief executive officer of the local government to which the election relates a return, in the approved form, covering all loans received by the group from a person other than a financial institution during the disclosure period for the election.
- ‘(3) A return under subsection (1) or (2) must state—
  - (a) the total value of the loans; and
  - (b) the number of persons who made loans.
- ‘(4) The return must also state the following for each loan with a value of the prescribed amount or more—
  - (a) the date on which the loan was made;
  - (b) for a loan from the members of an unincorporated association—
    - (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;
- (c) for a loan 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; and
  - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the lender—the name and residential or business address of the person;
- (d) if neither of paragraphs (b) and (c) apply to the loan—the name and residential or business address of the person who made the loan;
- (e) the terms and conditions of the loan.

#### **‘428C Certain loans not to be received**

- ‘(1) It is unlawful for a candidate for an election, a group of candidates for an election, or a person acting on behalf of a candidate or group of candidates for an election, to receive a loan of the prescribed amount or more from a person other than a financial institution during the disclosure period for the election unless the candidate, group or person keeps a record of the following—
  - (a) the terms and conditions of the loan;
  - (b) if the loan was received from a registered industrial organisation other than a financial institution—
    - (i) the name of the organisation; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the organisation;

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- (c) if the loan was received from an unincorporated association—
    - (i) the name of the association; 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;
  - (d) if the loan was paid 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; and
    - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the lender—the name and residential or business address of the lender;
  - (e) if none of paragraphs (b), (c) and (d) applies—the name and residential or business address of the person.
- ‘(2) If a candidate, group or person receives a loan that, because of subsection (1), it is unlawful for the candidate, group or person to receive, an amount equal to the amount or value of the loan—
- (a) is payable by the candidate, group or person to the local government to which the election relates; and
  - (b) may be recovered by the local government from the candidate, group or person as a debt.
- ‘(3) In this section—
- person acting on behalf of a candidate or group of candidates for an election* includes the candidate’s or group’s campaign committee for the election.’

**43 Amendment of s 429 (Chief executive officer to give reminder notice to candidates)**

- (1) Section 429(1A), after ‘apply’—

*insert—*

‘because of subsection (1)’.

- (2) Section 429—

*insert—*

‘(1B) This section also applies if the agent for a group of candidates for an election has not given the return the agent is required, under section 427A(2), to give for the election.

‘(1C) To remove any doubt, it is declared that this section does not apply because of subsection (1B) if, under section 427A(3), the agent is not required to give the return.’

- (3) Section 429(2), ‘2 months’—

*omit, insert—*

‘10 weeks’.

- (4) Section 429(2), ‘candidate’—

*omit, insert—*

‘candidate or agent’.

- (5) Section 429(3)(a), ‘3 months’—

*omit, insert—*

‘15 weeks’.

- (6) Section 429(3)(b)—

*insert—*

‘• section 428B’.

**44 Amendment of s 430 (Gifts for third party expenditure for political purposes)**

Section 430(2), ‘before the end of 3 months’—

*omit, insert—*

‘within 15 weeks’.

## **45 Insertion of new s 430A**

After section 430—

*insert—*

### **‘430A Third party expenditure for political purposes**

- ‘(1) This section applies if, during the disclosure period for this section for an election (the *relevant election*) relating to a local government (the *relevant local government*)—
- (a) a person (other than a political party, an associated entity or a candidate for the relevant election) incurs or has incurred expenditure for a political purpose in relation to the relevant election; and
  - (b) the total amount of all the expenditure mentioned in paragraph (a) is the prescribed amount or more.

*Note—*

The disclosure period for this section is defined in section 425.

- ‘(2) The person must, within 15 weeks after the conclusion of the relevant election, give the chief executive officer of the relevant local government a return in the approved form stating the following details about the expenditure—
- (a) the total value of the expenditure;
  - (b) when the expenditure was incurred;
  - (c) the particular purpose of the expenditure.
- ‘(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) Also, for subsection (1), a person does not include a person who is a member of a candidate’s campaign committee or a group’s campaign committee for an election of the candidate or members of a group of candidates for the election.
- ‘(5) 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.

‘(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).’.

## **46 Insertion of new ch 5, pt 8, div 3, sdiv 2A**

Chapter 5, part 8, division 3—

*insert—*

### **‘Subdivision 2A Disclosure by donors**

#### **‘431A Donations to candidates**

- ‘(1) This section applies if, during the disclosure period for a candidate for an election for a local government, a person (the *donor*), other than a political party, an associated entity, another candidate for the election or a group of candidates for the election, makes a gift in relation to the election to—
  - (a) the candidate; or
  - (b) a group of candidates for the election of which the candidate is a member.
- ‘(2) When the candidate or group of candidates receives the gift, the relevant person must inform the donor of the donor’s requirement to lodge a return under this section.
- ‘(3) The donor must, within 15 weeks after the polling day for the election, give the chief executive officer of the local



government a return, in the approved form, stating the required details of the gift.

Maximum penalty—20 penalty units.

- ‘(4) Subsection (3) applies to the donor even if at the time the donor made the gift the donor was outside Queensland.
- ‘(5) If a person makes a gift to any person with the intention of benefiting a particular candidate, the person is taken for subsection (1) to have made the gift directly to the candidate.
- ‘(6) The donor need not give a return under subsection (3) if the total amount or value of all gifts to which subsection (1) applies was less than the prescribed amount.
- ‘(7) For subsection (3), the required details of a gift are its amount or value, the date on which it was made and—
  - (a) if the gift was made to an unincorporated association—
    - (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) if the gift was made to a trust fund or paid into 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) in any other case—the name and residential or business address of the person to whom the gift was given.
- ‘(8) In this section—
 

***relevant person*** means—

  - (a) if it is the group of candidates that receives the gift—the group’s agent; or
  - (b) otherwise—the candidate.’.

**47 Insertion of new ch 5, pt 8, div 3, sdiv 4**

Chapter 5, part 8, division 3—

*insert—*

**‘Subdivision 4 Operation of accounts**

**‘432A Requirement for candidate to operate dedicated account**

- ‘(1) This section applies to a candidate for an election.
- ‘(2) The candidate must operate an account with a financial institution if the candidate receives an amount mentioned in subsection (3) or pays an amount mentioned in subsection (4).
- ‘(3) All amounts received by the candidate, or by the candidate’s campaign committee, during the disclosure period for the candidate for the election for the conduct of the candidate’s campaign, including all gifts received by the candidate for the election, and all amounts received as loans to the candidate, must be placed in the account.
- ‘(4) All amounts paid by the candidate, or by the candidate’s campaign committee, during the disclosure period for the candidate for the election for the conduct of the candidate’s campaign must be paid out of the account.
- ‘(5) The account must not be used other than for receiving and paying amounts under subsections (3) and (4).
- ‘(6) The candidate must take all reasonable steps to ensure the requirements of subsections (2) to (5) are complied with.  
Maximum penalty—100 penalty units.
- ‘(7) Amounts mentioned in subsections (3) and (4) do not include amounts received or paid out by a group of candidates for the election of which the candidate is a member.

**‘432B Requirement for group of candidates to operate dedicated account**

- ‘(1) This section applies if a candidate for an election is a member of a group of candidates for the election.

- ‘(2) The group must operate an account with a financial institution if the group receives an amount mentioned in subsection (3) or pays an amount mentioned in subsection (4).
- ‘(3) All amounts received by the group, or by the group’s campaign committee, during the disclosure period for the candidates for the election for the conduct of the group’s campaign, including all gifts received by the group for the election, and all amounts received as loans to the group, must be placed in the account.
- ‘(4) All amounts paid by the group, or the group’s campaign committee, during the disclosure period for the candidates for the election for the conduct of the group’s campaign for the election must be paid out of the account.
- ‘(5) The account must not be used other than for receiving and paying amounts under subsections (3) and (4).
- ‘(6) Each candidate who is a member of the group must take all reasonable steps to ensure the requirements of subsections (2) to (5) are complied with.

Maximum penalty for subsection (6)—100 penalty units.’.

#### **48 Insertion of new ch 5, pt 8, div 4A**

Chapter 5, part 8—

*insert—*

#### **‘Division 4A Recording of group’s membership and group’s agent**

##### **‘435A Definitions for div 4A**

‘In this division—

*group of candidates* means a group of candidates mentioned in division 3.

*nomination entity*, for a candidate’s nomination, means—

- (a) for a candidate for an election for a local government other than the Brisbane City Council—the returning officer for the election; or

- (b) for a candidate for an election for the Brisbane City Council—the town clerk of the Brisbane City Council.

***nomination requirements*** means—

- (a) the record of group membership requirement stated in this division; and
- (b) the group agent nomination requirement stated in this division.

***relevant period***, for a candidate for an election, means the period—

- (a) starting at noon on the last day for the receipt of the candidate's nomination for the election; and
- (b) ending at 6p.m. on the day that is, under the *Electoral Act 1992* or this Act, the polling day for the election.

**'435B Offence to advertise or fundraise for group if nomination requirements not complied with**

- '(1) A candidate for an election who is a member of a group of candidates for the election must not, during the relevant period for the candidate for the election, advertise or fundraise for the election unless the nomination requirements have been complied with.

Maximum penalty—100 penalty units.

- '(2) For subsection (1), the candidate advertises for the election if—
  - (a) a person, whether or not a member of the group, but acting for the purposes of the group, prints, publishes, distributes or broadcasts, or permits or authorises someone else to print, publish, distribute or broadcast, any advertisement, handbill, pamphlet or notice containing election matter; and
  - (b) the election matter promotes the election of 1 or more of the members of the group.
- '(3) For subsection (1), the candidate fundraises for the election if a person, whether or not a member of the group, but acting for the purposes of the group, conducts an activity directed at

collecting money to be used for promoting the election of 1 or more members of the group.

*Examples of fundraising activities—*

conducting a social function at which persons are charged for admission, or conducting an auction or a raffle

- ‘(4) It is a defence in a prosecution under subsection (1) for the candidate to prove the candidate exercised reasonable diligence to ensure no person acted in a way that would cause the candidate to contravene the subsection.

### **‘435C Record of group membership requirement**

- ‘(1) This section states the record of group membership requirement.
- ‘(2) The record of group membership requirement is a requirement that, after the candidate was nominated for the election, but before the commencement of the relevant period for the candidate for the election, there was given to the nomination entity for the candidate’s nomination a record of the membership of the group complying with subsection (3).
- ‘(3) The record of the membership of the group must—
- (a) be in the approved form; and
  - (b) state the names of the candidates who are the members of the group; and
  - (c) be signed by each of the candidates who are the members of the group.
- ‘(4) As soon as practicable after the nomination entity receives the record of the membership of the group, the nomination entity must ensure a copy of the record is displayed—
- (a) at the place of nomination; and
  - (b) if the place of nomination is not also the public office of the local government to which the election relates—at the local government’s public office.

#### **‘435D Group agent nomination requirement**

- ‘(1) This section states the group agent nomination requirement.
- ‘(2) The group agent nomination requirement is a requirement that, when the record of group membership requirement was complied with, there was also given to the nomination entity for the candidate’s nomination an instrument, complying with subsection (3), appointing an adult as an agent for the group.
- ‘(3) The instrument appointing the agent must—
  - (a) be in the approved form; and
  - (b) state the name and address of the person appointed as agent; and
  - (c) be signed by each of the candidates who are the members of the group; and
  - (d) be signed by the person appointed as agent, and include or be accompanied by—
    - (i) the person’s signed agreement to being appointed as the group’s agent; and
    - (ii) the person’s signed declaration that the person is eligible to be appointed as the group’s agent.
- ‘(4) The instrument appointing the agent may be included in the record of the membership of the group.

#### **‘435E Register of group agents**

- ‘(1) The nomination entity for a candidate’s nomination must keep a register to be known as the register of group agents.
- ‘(2) The nomination entity must record in its register of group agents the name and address of each person who is appointed as the agent for a group of candidates that includes the candidate as a member.
- ‘(3) The appointment of an agent for a group of candidates—
  - (a) is not effective under this Act until the appointment has been recorded in the relevant register of group agents; and

- (b) ceases to be effective only if the person's name is taken from the register.
- ‘(4) The name of a person may be taken from the register under subsection (3)(b) only if—
  - (a) the person gives the nomination entity a written notice, signed by the person, stating that he or she has resigned the appointment as agent; and
  - (b) the group of candidates gives the nomination entity a written notice, signed by all members of the group, stating that the person has ceased to be the group's agent.
- ‘(5) If the name of a person is taken from the register under subsection (4), the group of candidates may act in accordance with the group agent nomination requirement to appoint another agent.
- ‘(6) If no agent is currently recorded for a group of candidates in a relevant register of group agents, all obligations under this Act applying to an agent, including liability for any offence, apply to each member of the group of candidates as if each candidate was the appointed agent of the group.’.

#### **49 Amendment of s 436 (Offences about returns)**

Section 436—

*insert—*

- ‘(2A) If a candidate is a member of a group of candidates mentioned in division 3, and the group's agent is required under section 427A(2) or 428B(2) to give a return, the candidate must not allow the agent to give the return if it contains particulars that are, to the knowledge of the candidate, false or misleading in a material particular.

Maximum penalty—100 penalty units.’.

#### **50 Insertion of new ch 5, pt 9**

Chapter 5—

*insert—*

## **‘Part 9                      Miscellaneous election matters**

### **‘Division 1                Preliminary**

#### **‘441A Application of pt 9 to Brisbane City Council**

‘This part applies to the Brisbane City Council.

### **‘Division 2                Code of conduct for candidates**

#### **‘441B Code of conduct**

- ‘(1) The chief executive of the department may develop, and make publicly available to local governments and otherwise as the chief executive considers appropriate, a code of conduct for candidates for elections for local governments.
- ‘(2) A candidate for an election for a local government may, by written notice given to the chief executive officer of the local government, agree in writing to comply with the code of conduct.
- ‘(3) The chief executive officer of the local government must keep a register of candidates for elections for the local government who have agreed to comply with the code of conduct.
- ‘(4) The chief executive officer must—
  - (a) make the register publicly available for inspection; and
  - (b) if asked by any person, advise the person whether or not a stated candidate is included in the register.

### **‘Division 3                Caretaker period arrangements**

#### **‘441C Definitions for div 3**

‘In this division—



***caretaker period***, for an election for a local government, means—

- (a) for an election for the Brisbane City Council, the period that, under the *Electoral Act 1992*, is the election period for the election; or
- (b) for an election for a local government other than the Brisbane City Council, the election period for the election under this Act.

***major policy decision***, for a local government, means a decision—

- (a) about the appointment of a chief executive officer of the local government; or
- (b) about the remuneration of the chief executive officer of the local government; or
- (c) to terminate the employment of the chief executive officer of the local government; or
- (d) to enter into a contract the total value of which is more than the greater of the following—
  - (i) \$150000;
  - (ii) 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements included in the local government's most recently adopted annual report.

#### **'441D Prohibition on major policy decision in caretaker period**

- '(1) A local government must not make a major policy decision in the caretaker period for an election for the local government.
- '(2) However, if the local government considers that, having regard to exceptional circumstances that apply, it is necessary to make the major policy decision in the public interest, the local government may apply to the Minister for approval to make the decision.
- '(3) The Minister may give the approval if the Minister is satisfied that, having regard to exceptional circumstances that apply, it

is necessary for the local government to make the major policy decision in the public interest.

- ‘(4) The Minister’s approval may be given on conditions the local government must comply with.
- ‘(5) This section applies despite chapter 6, part 3.

**‘441E Invalidity of major policy decision in caretaker period without approval**

- ‘(1) A major policy decision made by a local government in the caretaker period for an election for the local government is invalid to the extent the local government does not have the Minister’s approval under this division to make the decision.
- ‘(2) A contract is void if it is the subject of a major policy decision that is invalid.
- ‘(3) A person who acts in good faith in relation to a major policy decision of a local government, or in relation to a contract that is the subject of a major policy decision, but who suffers loss or damage because of any invalidity of the decision under subsection (1) or because the contract is void under subsection (2), has a right to be compensated by the local government for the loss or damage.
- ‘(4) The person may bring a proceeding to recover the compensation in a court of competent jurisdiction.

**‘441F Prohibition on election material in caretaker period**

‘A local government must not, in the caretaker period for an election for the local government, publish or distribute election matter for the election.’.

**51 Insertion of new s 461A**

After section 461—

*insert—*

**‘461A Recording of reasons for particular decisions**

- ‘(1) This section applies if a decision made at a meeting—

- (a) is inconsistent with a recommendation or advice given to the local government by a person—
- (i) who is an employee of the local government or is otherwise engaged to provide services to the local government; and
  - (ii) whose duties include giving the recommendation or advice; and
- (b) either or both of the following apply to the decision—
- (i) the decision is about entering into a contract the total value of which is more than the greater of the following—
    - (A) \$150000;
    - (B) 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements included in the local government's most recently adopted annual report;
  - (ii) the decision is inconsistent with—
    - (A) the policy or approach ordinarily followed by the local government for the type of decision; or
    - (B) a policy previously adopted by the local government by resolution, whether or not as required by this Act, and still in force.

*Examples of decisions to which subsection (1) might apply—*

- the grant of a licence, permit or approval, however named, under an Act or local law
  - the grant of a concession, rebate or waiver in relation to an amount owed to the local government
  - disposing of land or a non-current asset
- (2) The chief executive officer of the local government must ensure the minutes of the meeting include a statement of the reasons for not adopting the recommendation or advice.'

## 51A Insertion of new s 473A

Chapter 6, part 1, division 6—

*insert—*

### ‘473A Community boards

- ‘(1) A local government may establish 1 or more community boards for local communities within its local government area to advise the local government about matters relating particularly to the local communities.
- ‘(2) In establishing a community board, a local government must—
- (a) to the extent practicable, identify the local communities; and
  - (b) appoint the members of the community board.
- Example of possible suitable members—*
- recognised community leaders
- ‘(3) A regulation may provide for—
- (a) other matters about the establishment of community boards; and
  - (b) requirements about the operation of community boards.
- ‘(4) Subject to a regulation providing for a requirement about the operation of community boards, a community board may conduct its business, including its meetings, in the way it considers appropriate.’.

## 51B Amendment of s 899A (Definitions for pt 5)

- (1) Section 899A, definition *expiry date*, paragraph (a), ‘2010’—  
*omit, insert—*  
‘2012’.
- (2) Section 899A, definitions *first review date* and *subsequent review date*, ‘2008’—  
*omit, insert—*  
‘2010’.

**52 Amendment of s 1077 (Indictable offences and summary offences)**

Section 1077(2), after ‘against this Act’—

*insert—*

‘, other than a designated election offence.’.

**53 Insertion of new s 1077A**

After section 1077—

*insert—*

**‘1077A Designated election offences and application of Criminal Code**

- ‘(1) An offence (a *designated election offence*) against any of the following provisions is a crime—
- section 383
  - section 385
  - section 386
  - section 389
  - section 399
  - section 401.
- ‘(2) Sections 1078 and 1079 do not apply to a designated election offence.
- ‘(3) The Criminal Code, chapter 58A<sup>3</sup> applies to a designated election offence.
- ‘(4) Without limiting subsection (3), the chapter applies to a designated election offence as if the offence were an offence mentioned in section 552B(1)(ka) of the code.

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3 Criminal Code, chapter 58A (Indictable offences dealt with summarily)

*Editor's note—*

The Criminal Code, section 552B(1)(ka) refers to an offence against chapter 14, chapter division 2<sup>4</sup> of the code.<sup>4</sup>

## 54 Insertion of new ch 15, pt 5, div 11

Chapter 15, part 5—

*insert—*

### **‘Division 11                    Consideration of errors or omissions in registers of interests and election disclosure returns**

#### **‘Subdivision 1            Preliminary**

##### **‘1105A Definitions for div 11**

*‘In this division—*

***appointing officer***, for an investigating officer, means—

- (a) if the investigating officer is an investigating officer for the department—the department chief executive; or
- (b) if the investigating officer is an investigating officer for a local government—the chief executive officer of the local government.

***department chief executive*** means the chief executive of the department.

***incorrect***, for a register or return, includes incomplete.

***investigating officer—***

- 1     An *investigating officer*, for the department, means a person who is appointed under this division as an investigating officer for the department.

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4     Criminal Code, chapter 14 (Corrupt and improper practices at elections), chapter division 2 (Legislative Assembly and Brisbane City Council elections and referendums)

2 An *investigating officer*, for a local government, means a person who is appointed under this division as an investigating officer for the local government.

*register* means a register of interests under section 247.

*return* means—

- (a) a return under section 242; or
- (b) a return under chapter 5, part 8.

## **‘Subdivision 2 Investigating officers**

### **‘1105B Appointment**

- ‘(1) The department chief executive may appoint a person as an investigating officer for the department.
- ‘(2) The chief executive officer of a local government may act for the local government to appoint a person as an investigating officer for the local government.
- ‘(3) The appointing officer may appoint a person as an investigating officer only if the appointing officer is satisfied—
  - (a) the appointment is reasonably necessary for the proper administration of this division; and
  - (b) the person has the necessary expertise or experience for the appointment.

### **‘1105C Investigating officer’s powers**

- ‘(1) An investigating officer holds office on the conditions stated in—
  - (a) the investigating officer’s instrument of appointment; or
  - (b) a signed notice given to the investigating officer; or
  - (c) a regulation.

- ‘(2) Subject to any limitation under subsection (3), for any matter arising under this division in relation to a register or a return, the investigating officer—
- (a) has all the powers of an investigating officer under this division; and
  - (b) without further appointment, is an authorised person under divisions 4, 5, 8 and 9.
- ‘(3) The instrument of appointment, a signed notice given to the investigating officer or a regulation may limit the investigating officer’s powers under this Act, including the powers the investigating officer may exercise as an authorised person.
- ‘(4) In this section—
- signed notice* means a notice signed by the investigating officer’s appointing officer.

#### **‘1105D Investigating officer’s identity card**

- ‘(1) An investigating officer’s appointing officer must give the investigating officer an identity card.
- ‘(2) The identity card must—
- (a) contain a recent photograph of the investigating officer; and
  - (b) contain a copy of the investigating officer’s signature; and
  - (c) identify the investigating officer as an investigating officer under this Act; and
  - (d) state an expiry date for the card.
- ‘(3) This section does not prevent the issue of a single identity card to a person for this division and other provisions, Acts or purposes, including for example for the purposes of the investigating officer’s holding office as an authorised person under this part.



### **‘1105E Production or display of identity card**

- ‘(1) In exercising a power under this division in relation to another person, an investigating officer must—
- (a) produce the investigating officer’s identity card for the other person’s inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- ‘(2) However, if it is not practicable to comply with subsection (1), the investigating officer must produce the identity card for the other person’s inspection at the first reasonable opportunity.

### **‘1105F When investigating officer ceases to hold office**

- ‘(1) An investigating officer ceases to hold office if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the investigating officer ceases to hold office;
  - (c) the investigating officer’s resignation under section 1105G takes effect.
- ‘(2) Subsection (1) does not limit the ways an investigating officer for a local government may cease to hold office.
- ‘(3) In this section—
- condition of office* means a condition on which the investigating officer holds office.

### **‘1105G Resignation**

‘An investigating officer may resign by signed notice given to the investigating officer’s appointing officer.

### **‘1105H Return of identity card**

‘A person who ceases to be an investigating officer must return the person’s identity card to the investigating officer’s appointing officer within 21 days after the person ceases to be an investigating officer, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **‘1105I Impersonation of an investigating officer**

‘A person must not pretend to be an investigating officer.

Maximum penalty—50 penalty units.

## **‘Subdivision 3 Investigations**

### **‘1105J Making of inquiries for local government**

- ‘(1) This section applies if the chief executive officer of a local government suspects or believes, on reasonable grounds, that information included in a register or return held by the local government is incorrect because of an error or omission.
- ‘(2) The chief executive officer, or, if directed by the chief executive officer, an investigating officer for the local government, may make all inquiries the chief executive officer considers to be reasonable to find out whether and to what extent the register or return is incorrect.

### **‘1105K Making of inquiries for department**

- ‘(1) This section applies if the department chief executive suspects or believes, on reasonable grounds, that information included in a register or return held by a local government is incorrect because of an error or omission.
- ‘(2) Without limiting subsection (1), receiving a report under this division from the chief executive officer of the local government may provide reasonable grounds under subsection (1).

- ‘(3) An investigating officer for the department, if directed by the department chief executive, may make all inquiries the chief executive considers to be reasonable to find out whether and to what extent the register or return is incorrect.

**‘1105L Power to require information or document for local government investigation**

- ‘(1) This section applies if the chief executive officer of a local government suspects or believes, on reasonable grounds, that—
- (a) either or both of the following applies—
    - (i) information included in a register or return held by the local government is incorrect because of an error or omission;
    - (ii) an offence against this Act has been committed in relation to a register or return; and
  - (b) a person—
    - (i) is able to give information about the error, omission or offence; or
    - (ii) holds a document relating to the error, omission or offence.
- ‘(2) The chief executive officer, or, if directed by the chief executive officer, an investigating officer for the local government, may require the person to give the information or produce the document.
- ‘(3) When making the requirement, the chief executive officer or investigating officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- ‘(4) The person must comply with the requirement unless the person has a reasonable excuse.
- Maximum penalty—40 penalty units.
- ‘(5) If the person is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the

information or producing the document might tend to incriminate the person.

- ‘(6) It is a defence in a prosecution under subsection (4) that the information or document sought by the chief executive officer or investigating officer is not relevant to the error, omission or offence.
- ‘(7) If the person produces a document to the chief executive officer or investigating officer, the chief executive officer or investigating officer—
  - (a) may keep the document to take an extract from it or make a copy of it; and
  - (b) must return the document to the person as soon as practicable after taking the extract or making the copy.

#### **‘1105MPower to require information or document for department investigation**

- ‘(1) This section applies if the department chief executive suspects or believes, on reasonable grounds, that—
  - (a) either or both of the following applies—
    - (i) information included in a register or return held by a local government is incorrect because of an error or omission;
    - (ii) an offence against this Act has been committed in relation to a register or return; and
  - (b) a person—
    - (i) is able to give information about the error, omission or offence; or
    - (ii) holds a document relating to the error, omission or offence.
- ‘(2) Without limiting subsection (1), receiving a report under this division from the chief executive officer of the local government may provide reasonable grounds under subsection (1).

- ‘(3) The chief executive, or, if directed by the chief executive, an investigating officer for the department, may require the person to give the information or produce the document.
- ‘(4) When making the requirement, the chief executive or investigating officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- ‘(5) The person must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- ‘(6) If the person is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information or producing the document might tend to incriminate the person.
- ‘(7) It is a defence in a prosecution under subsection (5) that the information or document sought by the chief executive or investigating officer is not relevant to the error, omission or offence.
- ‘(8) If the person produces a document to the chief executive or investigating officer, the chief executive or investigating officer—
  - (a) may keep the document to take an extract from it or make a copy of it; and
  - (b) must return the document to the person as soon as practicable after taking the extract or making the copy.

### **‘1105N Referral to department**

- ‘(1) This section applies if, because of inquiries or requirements made under this subdivision by the chief executive officer of a local government or an investigating officer for a local government, the chief executive officer of the local government concludes on reasonable grounds that an offence has been committed under this Act in relation to a return or register.

- ‘(2) The chief executive officer must report the chief executive officer’s conclusion, including the reasons for the conclusion, to the department chief executive.
- ‘(3) Subsection (2) does not limit any duty the chief executive officer may have under the *Crime and Misconduct Act 2001* to notify the CMC of any complaint, information or matter that the chief executive officer suspects involves, or may involve, official misconduct under that Act.

### **‘1105O Access to information in register**

- ‘(1) To remove any doubt, it is declared that a relevant person acting under this division in relation to a register held by a local government is, for section 248(2)(c)(ii), a person permitted by law to have access to information in the register.
- ‘(2) In this section—
  - relevant person* means—
    - (a) the department chief executive; or
    - (b) an investigating officer for the department; or
    - (c) an investigating officer for the local government.

### **‘Subdivision 4 Chief executive officer’s authority under div 11**

#### **‘1105P Chief executive officer not subject to local government**

‘The chief executive officer of a local government is not subject to direction by or the approval of the local government in acting under this division.’

### **55 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

*‘designated election offence* see section 1077A.



*Local Government and Other Legislation Amendment No. 21, 2007  
Act 2007*

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- (i) the decision is about entering into a contract the total value of which is more than the greater of the following—
- (A) \$150000;
  - (B) 1% of the council's net rate and utility charges as stated in the council's audited financial statements included in the council's most recently adopted annual report;
- (ii) the decision is inconsistent with—
- (A) the policy or approach ordinarily followed by the council for the type of decision; or
  - (B) a policy previously adopted by the council by resolution, whether or not as required by this Act or the Local Government Act, and still in force.

*Examples of decisions to which subsection (1) might apply—*

- the grant of a licence, permit or approval, however named, under an Act or local law
  - the grant of a concession, rebate or waiver in relation to an amount owed to the council
  - disposing of land or a non-current asset
- ‘(2) The town clerk must ensure the minutes of the meeting include a statement of the reasons for not adopting the recommendation or advice.
- ‘(3) In this section—
- meeting** means a meeting of—
- (a) the council; or
  - (b) a committee of the council appointed from among its councillors.’.





**64 Amendment of schedule (Election Funding and financial disclosure based on part XX of the Commonwealth Electoral Act)**

Schedule, section 304(4)—

*insert—*

*‘(ba) for a gift made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the gift—the name and residential or business address of the person; and’.*

**Part 5 Amendment of Local Government (Community Government Areas) Act 2004**

**65 Act amended in pt 5**

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

**66 Amendment of s 11 (Provisions of Local Government Act 1993 that apply)**

Section 11(2), after second dot point—

*insert—*

- chapter 3, part 2, division 5<sup>5</sup>.

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<sup>5</sup> *Local Government Act 1993*, chapter 3 (Interaction with the State), part 2 (Intervention by the State), division 5 (Financial controllers)

## **Part 6**                      **Amendment of Integrated Planning Act 1997**

### **67**      **Act amended in pt 6**

‘This part amends the *Integrated Planning Act 1997*.

### **68**      **Amendment of s 6.1.20 (Planning scheme policies for infrastructure)**

‘(1) Section 6.1.20(4), ‘expires’—

*omit, insert—*

‘ceases to have effect, in relation to the planning scheme.’.

‘(2) Section 6.1.20(4)(a), ‘30 June 2007’—

*omit, insert—*

‘30 June 2008’.

### **69**      **Amendment of s 6.1.31 (Conditions about infrastructure for applications)**

Section 6.1.31(3)(b)(i), ‘30 June 2007’—

*omit, insert—*

‘30 June 2008’.

## **Part 7**                      **Amendment of Judicial Review Act 1991**

### **70**      **Act amended in pt 7**

This part amends the *Judicial Review Act 1991*.

### **71**      **Amendment of sch 1 (Operation of other laws)**

Schedule 1, part 1—

*insert—*

*‘Local Government Act 1993, section 159X’.*

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