

LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL 1996

EXPLANATORY NOTES*

GENERAL OUTLINE

Objectives of the Bill

The objectives of the Bill are to amend the *Local Government Act 1993* and the *City of Brisbane Act 1924* as follows—

- (a) to replace the review process conducted by a full-time Local Government Commissioner with a review process conducted by the Electoral Commissioner assisted by Review Commissioners appointed by the Governor in Council, as and when the need arises;
- (b) to replace the current process for the redistribution of ward boundaries of the City of Brisbane with the new review process for local government electoral arrangements under the *Local Government Act 1993*;
- (c) to commence the application of national competition policy reforms to local government;
- (d) to clarify and improve the workability of aspects of the procedures for conducting local government elections;
- (e) to enable the Minister to grant exemptions to certain local governments from the requirement to develop and administer equal employment opportunity management plans;
- (f) to fix the date of the next triennial elections at 15 March 1997 and

* These Explanatory Notes relate to the Bill as introduced into the Legislative Assembly. This Bill was amended in Committee—see Endnotes.

provide for a regulation making power to fix a different date for future triennial elections in Brisbane;

- (g) to provide for the Shire of Rosalie to become undivided for the purpose of conducting the 1997 elections;
- (h) to extend the time by which local governments must review their local laws;
- (i) to reinforce that local law policies bind the community;
- (j) to clarify certain superannuation arrangements for senior executives in local government;
- (k) to validate and provide for certain local government water billing arrangements;
- (l) to clarify or provide greater flexibility in relation to certain local government rating and charging powers;
- (m) to clarify a person's obligation to identify their endorsement by a registered political party when nominating as a candidate in an election; and
- (n) to extend certain sunset provisions.

Reasons for and Achievement of the Policy Objectives

Local Government Electoral and Boundaries Review

The Office of the Local Government Commissioner was established on 1 July 1992 by amendments to the (now repealed) *Local Government Act 1936* which have been carried forward into the *Local Government Act 1993*.

The Act provides for the Local Government Commissioner to be appointed on a full time basis and for the Office to be attached to the Electoral Commission of Queensland (ECQ) which is part of the Department of Justice. The ECQ is responsible for ensuring the Commissioner has the necessary resources to effectively and efficiently carry out this function.

Acting on referrals from the Local Government Minister, the Commissioner is responsible for conducting reviews on matters dealing with the external boundaries of local government areas and electoral arrangements.

The cost of running a full-time Office, the declining work load and the tight budgetary situation have prompted the need to develop a revised set of procedures for dealing with changes to local government external boundaries and electoral arrangements.

The Bill establishes a comprehensive process for local government electoral and boundaries review that strengthens the independence of the reviews and lifts the standard for community input to these decisions.

Under the new process the Electoral Commissioner of Queensland will be responsible for conducting reviews of local government external boundaries and electoral arrangements.

The Electoral Commissioner will be assisted in the review process by suitably qualified Review Commissioners appointed by the Governor in Council and who can be selected by the Electoral Commissioner to assist in any reviews.

When the Minister makes a reference for a review, a Local Government Electoral and Boundaries Review Commission will be constituted comprising the Electoral Commissioner and, if applicable, those other Review Commissioners assisting with the review process.

Another fundamental change from the current provisions of the *Local Government Act 1993* is that a Local Government Electoral and Boundaries Review Commission does not make recommendations to the Minister on whether or not a change should be made. The Commission makes the final determination which must then be implemented by regulation.

The Government cannot reject a commission's fundamental determination, for example to change an external boundary or the existing electoral arrangements of a council.

This is consistent with the decision making powers of the Queensland Electoral Commission in relation to a redistribution of State electoral districts. It provides the highest possible level of independence to ensure there is public confidence in the way these matters are handled.

To implement a Coalition policy commitment that amalgamations of local government areas can take place only when a majority in each local government vote for the amalgamation in a referendum, the Bill also requires a referendum to be held to decide if a Commission proposal involving amalgamation or the creation or abolition of a local government area should proceed.

In these cases, the outcome of the referendum determines whether a proposal for the creation, amalgamation or abolition of a local government area is implemented.

In other cases where a major adjustment of local government boundaries is proposed, the Commission will have discretion to direct that a referendum of affected electors be held in order to gauge opinion.

It is also necessary to provide for a mechanism for very minor change of local government boundaries and electoral arrangements and in particular where anomalies occur (eg. as a result of a property being split by a local government boundary).

To provide for consistency with other local governments and to rationalise complexities associated with having two systems of review of electoral divisions, the new system for review of electoral divisions will also apply to the ward boundaries within the City of Brisbane.

The Bill sets out the process and is very similar to that currently provided under the *City of Brisbane Act 1924*. It guarantees that the redistribution of Brisbane's wards for a triennial election will be conducted independently and that elections will be based on fair boundaries.

National Competition Policy—Applying Competitive Neutrality to Local Government

The Competition Principles Agreement is a component of National Competition Policy (NCP), adopted by the Commonwealth, States and Territories on 11 April 1995. The Agreement required the States to issue a policy statement on the application of national competition policy (including competitive neutrality principles) to local government by June 1996.

In July 1996, the State Government issued its policy statement which was developed in conjunction with a State/Local Government working group on NCP and after a public consultation phase. The policy statement outlines the application of the competitive neutrality reforms to local government in Queensland.

These reforms are limited to the business activities of local government, that is, activities involving trade in goods or services and not social and regulatory activities. They will only apply to "significant" business activities which have a current annual expenditure in excess of \$5 million in 1992/93 terms (classified as type 1 and type 2 business activities).

The policy statement identified seventeen local governments with significant business activities that are above these thresholds.

The Bill applies the first stage of the policy statement to local government in Queensland. Because of the extent of the reforms, the application of the competitive neutrality reforms will occur over a number of stages.

The seventeen local governments identified in the policy statement as having significant business activities are required to undertake public benefit assessments in accordance with prescribed standards to determine the appropriateness of applying the reforms.

In particular, the local governments will have to determine whether the costs outweigh the benefits of either corporatising, commercialising or applying full cost pricing to the nominated activities.

Miscellaneous Amendments

Revision of Election Procedures.

The Department of Local Government and Planning has undertaken an evaluation of the local government election procedures used for the first time to conduct the 1994 triennial local government elections. As a result, the Bill includes a number of legislative amendments to clarify and provide added flexibility in conducting elections. Several of the amendments also provide for greater consistency with provisions under the *Electoral Act 1992*.

EEO Management Plans.

The *Local Government Amendment Regulation (No.3) 1995* provided for the development and administration of Equal Employment Opportunity (EEO) Management Plans by local governments.

The Bill includes a provision to exempt a local government from complying with the regulation where there is sound justification. A regulation may prescribe criteria for deciding whether a local government should be exempt. For example, there might be a local government that has so few employees that the ongoing implementation of an EEO Management Plan is unlikely to achieve any lasting change/benefit. In particular, a joint local government such as a library board may employ only two or three people while another may not employ any permanent staff.

Date for Triennial Elections in Brisbane

The *City of Brisbane Act 1924* and the *Local Government Act 1993* provide that the day for triennial elections is the last Saturday in March. In 1997 this will fall during the Easter school holiday period.

The polling day for the 1997 triennial local government elections will be changed to 15 March and a regulation fixing this date will be made under the *Local Government Act 1993* for all Councils other than Brisbane.

An amendment to the *City of Brisbane Act 1924* is essential to allow a regulation to be made to bring the polling day for Brisbane into line with other local government elections.

Electoral Arrangements for Rosalie Shire

In accordance with the requirements of the Act, the matter of the electoral divisions in the Shire of Rosalie was referred to the Local Government Commissioner for examination, recommendation and report.

The Minister rejected the recommendation contained in the Report. However, in the time available before the next local government elections, it was not possible to issue a fresh reference to the Commissioner.

Therefore, to ensure that the Shire's electoral arrangements comply with the tolerance requirements under the Act in time for the 1997 elections, it is necessary to legislate for the Shire to become undivided.

Extension of Local Laws Review.

Under the *Local Government Act 1993*, all local governments are to review their local laws for redundant provisions by 25 March 1997.

The State Government's policy statement of application of national competition policy to local government requires all existing local laws with anti-competitive provisions to be reviewed by June 1999.

To enable local governments to complete only one major review of their local laws, the Bill provides local governments with the option to collapse both reviews into one process by extending the deadline for completion of the local law review to 30 June 1999.

Effect of Local Law Policies

There has been uncertainty as to whether a local law policy made by a local government binds the community. The provisions of the Bill are

designed to clarify that this is so.

Superannuation Arrangements.

The *Local Government Act 1993* contains provisions relating to the establishment and operation of the Queensland Local Government Superannuation Board and the Local Government Superannuation Scheme.

The Bill amends the Act to clarify that senior executive employees may utilise salary sacrifice arrangements for superannuation under agreement with their employers.

Water Billing Validation

The Livingstone Shire Council levied a base charge for water in 1993/94 (\$520 for domestic users) along with an excess charge (\$1 per kilolitre used above 520 kilolitre). This was intended to apply from 1 July 1993 to the date of a meter reading in April 1994, but neither the budget resolution nor the wording on the rate notice made this clear.

The Council then charged on a usage basis at the rate of \$1 per kilolitre for the period from April 1994 to July 1994 and for subsequent three monthly periods with a minimum charge of \$390 per financial year. This process resulted in an argument that charges were levied twice in respect of the period from the meter reading in April 1994 to 30 June 1994.

The State Ombudsman recommended that the Livingstone Shire Council make a refund to each user for the amount apparently charged twice. If the Council was to make this refund and still balance its budget, it would have to raise additional revenue equal to the amount refunded plus any administrative costs.

The effect on a person who was a ratepayer at the time of the charge and is still a ratepayer is likely to be a refund largely offset by an additional levy. Ratepayers who have since sold their properties would gain by receiving a refund (if they could be identified) while those who have brought properties would pay the additional levy and receive no refund.

Because of the complexity over the issue of refunds and as most ratepayers would have paid the same amount or a lower amount than if there had been no change in 1993/94 to the Council's charging scheme, the Bill validates the charges made in that year.

Levy and Recovery of Rates and Charges

The *Local Government Act 1993* authorises local governments to make and levy a utility charge for supplying water, gas, sewerage services or cleansing services.

Most local governments that use water meters charge for water usage on the basis of charging periods which do not coincide with the financial year. Legal advice received from the Ombudsman and the Local Government Association indicates such a charge is not in accordance with the Act which only allows a charge “for a financial year”.

It is not possible for local governments to read all meters at 30 June each year.

With the transition of more local governments to user pays systems it is increasingly important that they are given the flexibility to adopt varying charging procedures appropriate to their local circumstances.

Therefore, the Bill allows local governments specific options in setting volume based utility charges at their budget meetings. The changes proposed will allow local governments to set charges for periods which do not coincide with the financial year.

The Bill also amends certain provisions dealing with interest accrued on unpaid rates, the payment of overdue rates and incentives for the early payment of rates in order to clarify the original intent of the provisions.

Nomination by a Political Party to Fill a Vacancy

The Bill clarifies that a registered political party can only nominate a person to fill a vacancy if the vacating councillor at the time of candidature had been nominated by a registered officer of a political party on the nomination form for candidature as a Councillor.

The amendment is designed to address the consequence of a recent decision by the Court of Appeal in relation to the filling of a vacancy on the Townsville City Council but does not interfere with the Court’s decision in the case of the Townsville City Council.

Sunset Clauses

The *Local Government Act 1993* enables a local government to make a local law giving an authorised person authority to enter a place, including a structure used for residential purposes, to seize a dangerous dog. The provision was included to give local governments specific assistance with

the control of dangerous dogs.

The provisions include a sunset clause which provides for them to expire 2 years after commencement on 10 March 1997. This was done to enable the use of the provisions to be monitored and an evaluation of their operation undertaken. The Bill extends the expiry date by approximately 15 months pending the completion of an evaluation of the provisions.

The *Local Government Act 1993* retained provisions (from the repealed *Local Government Act 1936*) relating to the control of levee banks by local governments through the making of local laws. The Act also includes an appeal mechanism (to the Chief Executive of the Department of Natural Resources) against decisions made by local governments in relation to applications for the construction of levee banks.

The provisions were temporarily retained as natural resource management legislation was expected to incorporate new provisions dealing with levee banks. The provisions are being extended for a period of 2 years to accommodate the development of proposed natural resource management legislation. If it is proposed that local law controls are to be retained, the extension will also enable local governments to have sufficient time to introduce appropriate local laws.

Alternatives to the Bill

Local Government Electoral and Boundaries Review

An alternative option was considered which would allow the term of appointment of the Local Government Commissioner to run its course until 30 June 1997 and have amending legislation to replace the Office of Local Government Commissioner (OLGC) commence from that date.

However, given the declining workload of the OLGC, a more cost effective alternative was considered desirable. The Bill repeals the relevant provisions under the *Local Government Act 1993* which replaces the existing review process with a new framework for review.

National Competition Policy—Applying Competitive Neutrality to Local Government

Local Governments are required to undertake public benefit assessments this financial year on whether to corporatise, commercialise or apply full

cost pricing, require statutory guidance to initiate these reforms. Any delay in the proposed legislation could jeopardise the implementation of the national competition policy reforms in accordance with the timetable in the State Government's policy statement.

Miscellaneous Amendments

Revision of Election Procedures.

Extensive consultation was carried out with returning officers, elected members of local government and peak body organisations following the conduct of the 1994 triennial local government elections and subsequent fresh elections. The proposed amendments were developed as a result of the experience gained using the present procedures and identifying where adjustment was needed for conducting the next triennial elections in 1997.

Date for Triennial Elections in Brisbane

There is no alternative to fixing a new date for the 1997 triennial elections in Brisbane if its polling day is to be the same as for all other local governments. The regulation making power will provide added flexibility in future and bring its procedures into line with those under the *Local Government Act 1993*.

Sunset Clauses

Should the sunset dates not be extended, local governments will be unable to continue to administer local laws dealing with these issues after 15 March 1997. In particular, there would be public concern if local governments were unable to react immediately to potentially dangerous situations in relation to vicious dogs.

Should local governments not be able to continue controlling the construction and maintenance of levee banks, a regulatory vacuum would exist until the introduction of relevant provisions in other legislation.

Levy and Recovery of Rates

Should the proposed amendments in relation to volume based utility charges not be enacted, local governments will be utilising charging regimes that could be open to legal challenge.

The State Ombudsman recommended Livingstone Shire Council refund

the amounts perceived to be double charged for water usage in 1993/94. Making refunds would be an expensive process and have little impact on the majority of ratepayers as it would be necessary for the council to raise an additional amount to cover the costs of the refund, including the administrative costs. If the validating legislation is enacted such refunds would be unnecessary.

Electoral Arrangements for Rosalie Shire

If the Rosalie Shire's current electoral arrangements were retained, the 1997 council elections would be contested on divisions which do not meet the "one vote-one value" principle under the Act.

Administrative Costs to Government of Implementation of the Bil

The costs associated with the proposed electoral and boundaries review process will be borne by the State through the Electoral Commission of Queensland. The cost of conducting any referendums will be apportioned between the affected local governments.

The balance of the proposals will not have any financial impacts on the State other than the cost of preparing the legislation and providing for appropriate training, eg, for local government returning officers and other election participants to be aware of changes to election procedures.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles. Moreover, the Bill significantly advances fundamental legislative principles dealing with the rights and liberties of individuals by providing a legislative process for the consideration of the views of all electors affected by certain external boundary change to their local government areas.

Consultation

Varying degrees of consultation have occurred with interested parties (outlined below) during the preparation of the Bill.

- Local Government Association of Queensland Inc.
- Institute of Municipal Management (Qld) Division

- Electoral Commission of Queensland
- Brisbane City Council
- Local Government Commissioner
- Department of Justice
- Department of Natural Resources
- Queensland Treasury Department
- Department of Premier and Cabinet
- Local Government Superannuation Board (superannuation arrangements)
- State Superannuation Office (superannuation arrangements)
- State Ombudsman’s Office (validation of water charges)
- Livingstone Shire Council (validation of water charges)

EXPLANATION OF CLAUSES

Clause 1 sets out the short title of the Act.

PART 2—AMENDMENT OF CITY OF BRISBANE ACT 1924

Clause 2 provides for the amendment of the *City of Brisbane Act 1924*.

Clause 3 sets out the amendments to the *Local Government Act 1993* that apply to Brisbane City Council and the City of Brisbane.

The clause applies the provisions regarding reviewable local government matters and the application of competitive neutrality reforms to local government.

The clause also applies the provisions regarding qualification for

nomination as candidate, prohibition on dual candidature, leave to local government employee to contest an election, and a candidate's obligation to identify endorsement.

These provisions of the *Local Government Act 1993* apply to Brisbane City Council as if the council were a local government established under that Act.

This provision is necessary as the *Local Government Act 1993* provides that unless the legislative provisions under the Act or any other Act expressly state that they apply to Brisbane City Council or the City of Brisbane, the provisions exclude application to Brisbane.

Clause 4 provides for the omission of a division heading to reflect new provisions of the *Local Government Act 1993* dealing with local government elections which will now apply to the Brisbane City Council.

Clauses 4, 5, 6 and 7 provide for the omission of a division dealing with the redistribution of electoral wards so that amendments to the *Local Government Act 1993* dealing with changing ward boundaries in the City of Brisbane will apply.

Clause 8 amends the provisions concerning electoral rolls for each ward of Brisbane City Council as a result of the application of amendments to the *Local Government Act 1993* dealing with changing ward boundaries in the City of Brisbane.

Clause 9 amends section 16 of the Act by inserting a new provision fixing the date of the 1997 triennial election for Brisbane and making provision for a regulation making power to set a different date for such elections if required. The election will normally be held on the last Saturday in March every third year with a regulation making power to set a different date for such elections if required. The intention of the amendments is to enable the triennial elections for Brisbane to be held on the same day as the triennial elections for other local governments under the *Local Government Act 1993*.

Clause 10 amends the provisions of section 17 of the Act to provide that the cut-off day for compiling electoral rolls for the triennial elections is 31 January in the year of the triennial elections.

Clause 11 repeals section 20 of the Act setting out when triennial elections and separate elections conclude and when the term of office of the mayor and other Councillors commence. This section is redundant because

amendments to section 6 of the *Local Government Act 1993* provide for the conclusion of elections for the Brisbane City Council and when the term of office of the mayor and other Councillors commence.

Clause 12 amends section 58 to clarify the law relating to the making of utility charges and provide suitable future options for the making of utility charges. The provision is similar to that which will apply to all other local governments under amendments to section 569 of the *Local Government Act 1993*.

Clause 13 amends section 69 of the Act by clarifying that the Council must make a resolution setting out the rules for the conduct of a lottery if it decides to conduct a lottery where the chance of winning a prize is offered as a benefit for the prompt payment of rates. Eventually the rules for conducting these lotteries will be provided under the *Art Unions and Public Amusements Act 1992* or other future legislation governing such activities. Therefore, the amendments are due to expire on 30 June 1998.

Clause 14 inserts a new part in the Act providing transitional and savings provisions for application of the amendments in this Act. It provides that 31 January in the year of the 1991 and 1994 triennial elections was the cut-off day for the electoral rolls for those respective triennial elections. It provides that this part expires on 1 May 1997.

PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Clause 15 provides for the amendment of the *Local Government Act 1993*.

Clause 16 provides for the omission of certain redundant definitions, the insertion of new definitions into the Act, and the amending of certain definitions relating to reviewable local government matters and local government election procedures.

Clause 17 amends section 6 which sets out when a local government election is to conclude. Section 316 of the Act requires the returning officer, after the result of a poll for an election is known, to display a notice in the local government's public office declaring the result of the poll. The

returning officer must also publish a notice in a newspaper declaring the result of the poll.

For local governments other than the Brisbane City Council, the triennial or fresh elections where a poll is conducted concludes on the day that the last declaration of a poll is published in a newspaper, and for a by-election, the day on which the declaration of the poll is published in a newspaper.

The amendment provides that triennial or fresh elections or a by-election where a poll is conducted are now concluded on the date the declaration (or last declaration if there is more than one poll) is displayed in the local government's public office rather than the date of publication of the declaration in a newspaper. This prevents any delay to concluding the elections due to the infrequent or periodic publication of newspapers in certain areas.

Section 6 is also amended by providing for the conclusion of an election of a councillor for the City of Brisbane. This replaces section 20 of the *City of Brisbane Act 1924*, but does not change the intent of that section, that an election concludes when the names of the elected candidates, or candidate if a by-election, are published in the gazette. For newly elected councillors, their terms of office commence the day after notice is given in the gazette.

Clause 18 amends section 8 of the Act defining the term "open to inspection". This section sets out what must occur when the Act requires a document to be open to inspection. The amendment provides that when a document of a Local Government Electoral and Boundaries Commission is open to inspection, it must be open to inspection at the office of the Electoral Commission, the public office of a local government affected by the matter or at another place arranged by the Commission. The intent is to apply the provisions of section 8 to documents of a commission that are required to be open to inspection.

Clause 19 sets out the amendments to the *Local Government Act 1993* that apply to Brisbane City Council and the City of Brisbane as if the council were a local government established under the Act. In order for the provisions of the *Local Government Act 1993* to apply to the Brisbane City Council and its area, the Act must expressly state such application.

Clause 20 amends section 10 which identifies how terms used in the parts of the Act (and other Acts dealing with local government) apply to Brisbane City Council and its area. New terms are inserted to deal with the

application to Brisbane of various electoral provisions and references to the council's public office.

Clause 21 inserts a new section 62 into the Act, containing new definitions applicable to Chapter 3 Part 1 dealing with reviewable local government matters. In particular, it provides that any reference in Part 1 to a commission is a reference to a Local Government Electoral and Boundaries Review Commission.

Clause 22 inserts a new section 63 into the Act adding to the definition of "owner of land" in section 5 of the Act as the term applies to Chapter 3 Part 1 dealing with reviewable local government matters. This is necessary because Part 1 of the Act now provides for owners of land to have special rights in certain circumstances for dealing with reviewable local government matters. The State is to be also regarded as the owner of certain land for the purposes of Part 1, in addition to anyone else defined under the Act as the owner of that land, eg, a lessee of State land. The power exists for a regulation to be made prescribing additional persons who may be treated as an owner for the purposes of Part 1.

Clause 23 amends the definition of reviewable local government matters in section 64 of the Act. It provides that in applying the concept of reviewable local government matters to the City of Brisbane and Brisbane City Council, it does not include things that are fixed in the *City of Brisbane Act 1924*. The intent is that the City of Brisbane cannot be abolished under the *Local Government Act 1993*, nor can a change be made to the name of the City, its class as a City, the number of councillors making up the Council, or the number of councillors to represent each ward, because these matters are fixed in the *City of Brisbane Act 1924*. *Clause 25* below also inserts a new section 69D in the *Local Government Act 1993* to clarify that the number of wards cannot be changed under this Act, because this is fixed in the *City of Brisbane Act 1924*.

The amendment also provides that the naming of Brisbane's wards can be changed when there is a redistribution of wards under this Part.

Clause 24 provides for the repeal of section 65 dealing with referable local government matters and the insertion of a new section 65 to define the term "limited reviewable local government matter" that is used in this Part. This term is used to describe a special process for dealing with a reviewable local government that is transferring a part of a local government area to

another local government area or including in a local government area a part of the State that is not in a local government area.

Such a transfer or inclusion is a limited reviewable local government matter if the local governments and the affected owners of the land agree to the change. Once this agreement is reached, the reviewable local government matter can then be dealt with as a limited reviewable local government matter. Clause 25 below inserts a new Division 3B of Part 1 that sets out the procedure for dealing with a limited reviewable local government matter.

Clause 25 provides for the replacement of Divisions 2, 3, 5 and 6 of Part 1 with new Divisions for dealing with reviewable local government matters. Division 4 of Part 1 is retained, but amendments have been made.

Division 2—Local Government Electoral and Boundaries Review Commissions

Subdivision 1—Establishment, constitution and functions of commissions

Section 66 establishes a Local Government Electoral and Boundaries Review Commission for each reference of a reviewable local government matter referred to the Commissioner and for each application relating to a limited reviewable local government matter. In relation to references, the intent is that a separate Commission be constituted for each reference made by the Minister.

Section 66A provides for the constitution of each Commission.

If the reference is a special reference, a Special Commission is to be constituted. Its members are to be a judge or former judge of a court of the Commonwealth, or a State or Territory with at least 3 years' experience as a judge, a chief executive officer of a State Government Department and the Electoral Commissioner (or the Deputy Electoral Commissioner). The chairperson of a Special Commission is the member who is a judge or former judge.

A special reference is a reference that must be made under section 235 of the Act if any of the wards of the City of Brisbane do not comply with the quota and are outside the margin of allowance of 10% on or about 1 October two years before the triennial elections, eg, if on or about 1 October 1998 any of the wards do not comply with the quota and are outside the 10% margin of allowance, the Minister must make a special reference for a redistribution before the triennial elections in the year 2000.

For any other reference other than a special reference, the Commission will consist of the Electoral Commissioner or Deputy Electoral Commissioner and if necessary, one or more Review Commissioners. The Minister may request that a Commission include a minimum number of Review Commissioners. Subject to this request, it is up to the Electoral Commissioner to decide if Review Commissioners are needed and if so, how many. Review Commissioners are appointed to a Commission by the Electoral Commissioner, drawn from a panel of Review Commissioners appointed by the Governor in Council as set out in section 96 (explained below).

When an application for a limited reviewable local government matter is made, the Electoral Commissioner, or if directed, the Deputy Electoral Commissioner, will constitute the Commission.

Section 66B provides that the functions to be carried out by a Commission are to examine and determine reviewable local government matters referred by the Minister or the subject of an application as a limited reviewable local government matter. If a reference involves the external boundaries of a local government, a Commission's function includes examining and making recommendations on other matters defined as "implementation issues", eg, apportioning assets and liabilities if external boundaries are changed. The list of implementation issues is defined in section 4 of the Act, as amended by Clause 16.

Subdivision 2—Business and meetings of commissions

Section 67 provides for the way a commission is to conduct its business.

Section 67A provides for when and where an expanded Commission holds meetings. An expanded Commission is one which is constituted by

more than one member and includes a Special Commission. An expanded Commission decides on its meeting times. The chairperson of an expanded Commission may also call a meeting by giving reasonable notice to the other members.

Section 67B provides the requirements for determining if a quorum is present to allow meetings of an expanded Commission to proceed.

Section 67C provides for who presides at a meeting of an expanded Commission.

Section 67D provides for the method of deciding matters being considered by an expanded Commission.

Section 67E requires the disclosure of either direct or indirect financial interests of a Commission member and how it is to be dealt with.

The interest has to be disclosed and recorded in the Commission's minutes. Unless directed otherwise by the Commission, the member who has disclosed an interest is not to be present or take part in any decision making on the matter being considered. If a member has a conflict of interest, that member must not take part when the Commission is considering whether to give a direction, nor in the decision to give a direction allowing the member to participate in consideration of the issue.

If the absence of a member because of a conflict of interest takes the number of members below what is required for a quorum for the Commission meeting, the remaining members present are sufficient to form a quorum to decide the matter being considered.

Section 67F details the action to be taken if the Commissioner or Deputy Commissioner has a direct or indirect interest in an issue or could be regarded as having a conflict of interest.

Subdivision 3—Miscellaneous

Section 68 provides for the resignation of a Review Commissioner from a commission by notifying the Commissioner in a signed notice of resignation. In addition, the provisions of section 25 of the *Acts Interpretation Act 1954* do not apply to the appointment of a Review Commissioner to a Commission, except section 25(1)(b)(iv).

Division 3—References of, and applications for, reviewable local government matters***Subdivision 1—References to Commissioner by Minister***

Section 69 details how the Minister can refer reviewable local government matters to the Commissioner. It provides different methods of specifying the matter and gives examples of methods of describing areas for consideration.

Reviewable local government matters are specified in section 64 of the Act. They include the creation of a new local government area, the abolition of an existing area and its amalgamation with a neighbouring area or new area, changing the external boundaries of a local government area, dividing or redividing and abolishing divisions of a local government area and changing the composition of a local government.

Section 69A requires the Minister to table a copy of any reference in the Parliament within 7 sitting days and to give notice to each local government mentioned in the reference.

Section 69B provides that the Electoral Commissioner may request the Minister to refer a reviewable local government matter to the Electoral Commissioner. Reasons for the request are to be given in the request. It details what action must be followed if the request is either approved or refused.

Subdivision 2—References to commissioner by local governments

Section 70 provides for how a local government may apply to the Electoral Commissioner to determine a limited reviewable local government matter. It details what information must accompany the request. The request can only be made if all affected local governments have, by resolution, decided to make the application.

The application must be in the approved form and must include written agreement to the request from each affected local government and affected landowner.

The application must also include a certificate by the local governments that the issues prescribed under a regulation made under section 75 of the Act have been considered.

In addition, the local governments are to include a report on how the implementation issues have been examined and suggestions about the implementation issues, eg, apportionment of assets and liabilities between the local governments, application of rates.

Division 3A—Procedures for major and minor references of reviewable local government matters

Subdivision 1—Preliminary

Section 71 details the actions to be taken after the Minister has given a reference to the Electoral Commissioner.

If a reference includes consideration of the City of Brisbane’s wards, it must be treated as a major reference. This is set out in the definition of the term “major reference”.

If a major reference is a special reference, the Governor in Council must appoint a judge and a chief executive officer of a State Department (as required under section 66A) to partly constitute a special commission. The remaining member of a special commission is the Electoral Commissioner or, if directed, the Deputy Electoral Commissioner.

A reference must also be treated as a major reference if the Minister has so requested when making the reference. This is set out in the definition of the term “major reference”.

If none of the above provisions apply to the reference, the Electoral Commissioner must decide whether the reference is to be treated as a major or minor reference and give Gazette notice accordingly.

If the Electoral Commissioner decides an expanded commission is needed (or if the Minister has directed there be a minimum number of review commissioners) the Electoral Commissioner appoints the review commissioners to constitute the commission along with the Electoral Commissioner (or the Deputy Electoral Commissioner if so directed).

If it is not an expanded commission, the Electoral Commissioner constitutes the commission. However, the Electoral Commissioner may also decide not to participate in a commission and in this case must direct the Deputy Electoral Commissioner to constitute the commission.

Section 71A provides for the appointment of additional review commissioners after the establishment of a commission (except a special commission). For example, the Electoral Commissioner may decide after constituting a commission that the commission's consideration of an issue would benefit from having review commissioners to participate.

Section 71B provides that a Commission may declare that a minor review is a major review. If a Commission does make this declaration, that Commission continues in existence to determine the reference, but it must then follow the procedure for a major reference.

Section 71C requires that a Commission must have regard to prescribed issues when considering a reviewable local government matter.

Section 71D imposes certain restrictions on the activities of a Commission (including a Special Commission) that is considering changes to the wards of the City of Brisbane. The Commission cannot make a determination that would change the number of electoral wards in the City because this is fixed in the *City of Brisbane Act 1924* as 26. In addition, if the Commission is naming electoral wards in the City as a part of its review, it is not allowed to use a name which is the name of an electoral district under the *Electoral Act 1992*.

Subdivision 2—Major references of reviewable local government matters

Section 72 provides for the application of this subdivision to a reviewable local government matter which is the subject of a major reference being considered by a Commission. This includes a special reference.

Section 72A provides that a Commission may make inquiries it considers appropriate when examining a matter that has been referred.

Section 72B details the preliminary procedures to be undertaken by a Special Commission. These preliminary procedures may also be applied by a Commission to any other major reference, but it must give Gazette notice if it has done so.

The following activities must be undertaken prior to determining whether the reviewable local government matters in a reference should be implemented. The Commission must invite suggestions on the matter by public notice from persons and entities. The suggestions have to be received within 30 days of the notice. These suggestions are to be open for public inspection and the public must be invited, by a second notice, to make written comment on the suggestions. These comments will have to be received within 21 days of the second notice.

Copies of the suggestions and comments are to be available for inspection at the office of the Electoral Commission in Brisbane, the public office of each local government which would be affected if the matter were implemented and at any other place considered appropriate by the commission. The Commission must take all suggestions and comments into account when it is determining whether the reference is to be implemented.

Section 72C provides that if a Commission determines not to implement a major reference of a reviewable local government matter, a report, stating the determination and reasons, must be prepared by the Commission. The intent is that this could occur if a commission decides not to formulate a proposed determination to implement a reviewable local government matter.

Section 72D provides that a Commission must give public notice of a proposed determination to implement a reviewable local government matter. If relevant, the Commission must also include its recommendations on implementation issues for the matter.

This section also sets out what must be included in the notice and how submissions in response should be made. If the proposed determination is one that requires a compulsory referendum to be held, the Commission may include in the notice its suggestions about what should be the affected area and the voting areas for the referendum .

The proposed determination must be available for inspection at the office of the Electoral Commission in Brisbane, the public office of each local government which would be affected if the matter were implemented and at any other place considered appropriate by the Commission.

Section 72E provides the Commission must consider all submissions received in response to its proposed determination. The Commission may amend its proposed determination to implement a reviewable local

government matter. If it intends to substantially change its proposed determination, it must give notice of the amended proposed determination.

An amended proposed determination is taken to be the proposed determination for the purposes of re-advertising the amended determination. The intent is that the procedure for substantially amending and re-advertising a proposed determination could be undertaken more than once.

Section 72F provides for the holding of a referendum on a proposed determination in certain circumstances.

A referendum must be held if a Commission proposes to make a final determination for the abolition or creation of a local government area, or the amalgamation of local government areas. This is defined as a compulsory referendum

A Commission may decide to hold a referendum if it proposes to make a final determination that could result in the changing of the external boundaries of a local government area by excluding part of the area and including it in another local government area. However, the decision to hold a referendum can only occur after consultation with the local governments that would be affected if the matter were to be implemented. This referendum is defined as a non-compulsory referendum.

Section 72G requires a Commission to make a final determination on the matter it is considering and prepare a report for the Minister as soon as is practicable after either the result of a referendum for the matter or after the Commission completes its consideration of submissions on the proposed determination.

The report must include the final determination whether or not to implement a reviewable local government matter and if relevant, any recommendations on implementation issues. The report must also include a summary of the submissions made in relation to the matter (including suggestions and any comments on suggestions received, if applicable), copies of all submissions, suggestions and comments received, and the results of any referendum, if one was held.

If a compulsory referendum is held and the referendum question is not approved, a copy of the Commission's proposed determination (and any recommendations on implementation issues) must be included in the report. This requirement is intended to provide the information necessary for

further consideration of the matter by the Legislative Assembly (as provided under section 72J).

If a compulsory referendum approved the proposed determination, the Commission must determine that it be implemented. If a compulsory referendum has opposed a proposed determination, the Commission must determine that the proposed determination not be implemented.

If a non-compulsory referendum has been held, the Commission may determine to implement the matter regardless of the referendum result.

Section 72H requires the Commission to give public notice in the gazette and local newspapers of its final determination or its determination under section 72C, and present its report. The notice must include a summary of the determination and state that its report is open to inspection at the Electoral Commission's office and the public office of each relevant local government. The notice must also state that the matter is to be implemented by regulation if the Commission determines the matter be implemented.

The Commission must give its report to the Minister along with a copy of the notice. A copy of the report must also be given to each relevant local government.

Section 72I requires that if the Commission determines the matter be implemented, the Governor in Council must implement the matter by regulation as soon as practicable after receipt of the report and gazette notice by the Minister. The regulation may provide that the changes commence at a later time, eg, on and from the conclusion of the next triennial elections.

Section 72J provides circumstances for the implementation of a reviewable local government matter at the request of the Legislative Assembly.

This section will apply if a compulsory referendum has been held and has not approved the proposed determination.

In these circumstances, within seven sitting days of the Minister tabling the Commission's report on the matter, the Legislative Assembly may resolve to ask the Governor in Council to implement the matter. The matter must be implemented by regulation as soon as practicable by the Governor in Council after the resolution is passed. The regulation may provide that the changes commence at a later date, eg, from the start of a financial year.

Subdivision 3—Minor references of reviewable local government matters

Section 73 provides for the application of this subdivision to reviewable local government matters which are the subject of minor references being considered by a Commission.

Section 73A provides for a Commission to make appropriate inquiries when considering a minor reference of a reviewable local government matter.

Section 73B provides for the Commission to prepare a report, if after considering the matter it determines that the matter not be implemented.

Section 73C provides that if a Commission proposes to determine that a reviewable local government matter be implemented, it must develop a proposed determination and give written notice to each local government that would be affected if the matter were to be implemented.

If the matter is one dealing with either the alteration of a local government external boundary or including in a local government area an unincorporated area, the notice must also be given to each owner of land in the part proposed to be changed. The notice may also be given to anyone else the Commission considers would be directly affected.

The notice must include information about the general effect of the proposed determination and if relevant any recommendations on implementation issues, and state that the details of the proposed determination are open to inspection and submissions may be made on the proposed determination within 30 days after the proposed determination is first open to inspection at the Electoral Commission's office. The commission may allow extra time to take into account the time taken in providing the notice and details of the proposed determination to the affected local governments.

The notice given to the local government should include a copy of the details of the proposed determination and any implementation issues on the matter. These particulars must be open to inspection at the Electoral Commission's office and the public office of each local government affected by the proposal. Because of the application of section 8, the public is entitled to inspect the proposals even though no public notice has been given.

Section 73D provides the Commission must consider all submissions received in response to its proposed determination. The Commission may amend its proposed determination to implement a reviewable local government matter. If it intends to substantially change its proposed determination, it must give notice of the amended proposed determination.

Section 73E requires a Commission to make a final determination on the matter it is considering and prepare a report for the Minister as soon as is practicable.

The report must state the determination and reasons and if relevant include recommendations on implementation issues, and include a summary of the submissions made on the matter (copies of submissions must be attached).

Section 73F requires the Commission to give public notice of its final determination or its determination under section 73B in the gazette and local newspapers and to present its report and a copy of the gazette notice to the Minister. The report must also be given to the relevant local governments. The notice must include a summary of the determination, indicate the Commission's report is open to inspection at the Electoral Commission's office and the public office of each relevant local government and state that the determination is to be implemented by regulation.

Section 73G requires that if the Commission determines the matter be implemented, the Governor in Council must implement the matter by regulation as soon as practicable after receipt of the report and gazette notice by the Minister. This section also clarifies that the regulation can commence on a later day fixed in the regulation, eg, the start of a financial year or from the next triennial election.

Division 3B—Limited reviewable local government matters

Section 74 provides for the application of this division for an application made for a determination of a limited reviewable local government matter. The Commission must make a determination on the matter even if the matter is at any time the subject of a reference of a reviewable local government matter. However, this would not prevent the Commission from deciding not to implement the matter as a result of the application, but then consider the matter further if it is part of a reference.

Section 75 provides a Commission may make appropriate inquiries when considering a limited reviewable local government matter.

Section 76 requires the Commission to have regard to issues prescribed by regulation when considering a matter. These issues must also have been considered by the relevant local governments when making an application as required under section 70.

Section 77 applies if an affected local government for the matter is divided. The Commission cannot make a determination to implement the matter if it means that the quota of electors is not complied with and it is outside the margin of allowance specified under section 233.

Section 78 details what action must be taken by the Commission if it decides to implement a limited reviewable local government matter. The Commission must give public notice of its final determination in the Gazette and local newspapers and present its report and a copy of the notice to the Minister. A copy of the report must also be given to each local government whose agreement accompanied the application. The notice must include a summary of the determination, indicate the Commission's report is open to inspection at the Electoral Commission's office and the public office of each relevant local government and state that the determination is to be implemented by regulation.

Section 78A details what action must be taken by the Commission if it determines that the limited reviewable local government matter not be implemented. The Commission must prepare a report stating the determination and reasons and give the Minister a copy of the report. A copy of this report must also be given to the local governments whose agreements accompanied the application. The Commission must also give written notice of its determination to the landowners who agreed to the change in the application for the determination of the matter. The notice must state the determination and that the Commission's report is open to inspection at the office of the Electoral Commission and at the public office of each relevant local government.

Section 79 requires that if the Commission determines the matter be implemented, the Governor in Council must implement the matter by regulation as soon as practicable after receipt of the report and gazette notice by the Minister. This section also clarifies that the regulation can commence on a later day fixed in the regulation, eg, the start of a financial year or from the next triennial election.

Clause 26 inserts a new section 80 which provides for an expanded Commission considering a reviewable local government matter which is the subject of a major reference to decide to hold an inquiry into the matter.

Clause 27 omits Divisions 5 and 6 of Chapter 3 Part 1 and inserts the following new Divisions in their place.

Division 4A—Referendums

Subdivision 1—Preliminary

Section 91 provides for the application of this division to the conduct of a compulsory or non-compulsory referendum held for a reviewable local government matter. *Section 72F* specifies when a referendum must or may be held.

Section 91A defines how a referendum question is approved.

Section 4 provides that an affected elector for an affected area for a matter for which a referendum is to be held, means a person who on the referendum roll cut-off day is an elector under the *Electoral Act 1992* for an electoral district or part of an electoral district included in the affected area. An affected elector for a voting area of an affected area, means a person who on the referendum roll cut-off day is an elector under the *Electoral Act 1992* for an electoral district or part of an electoral district included in the voting area.

A person who is an affected elector for an affected area approves a referendum question if the person answers the question in the affirmative. A referendum question for an affected area is approved if those persons approving the question are greater in number than those not approving.

If the affected area is divided into voting areas, each elector for the voting area approves a referendum question if the person answers the question in the affirmative. The voting area approves the question if the affected electors who vote to approve the question are greater in number than those who vote to oppose the question. The affected area approves the referendum question only if each voting area approves the question.

Subdivision 2—Holding referendums

Section 92 requires the wording of a referendum question to be prescribed under a regulation.

Section 92A requires the Commissioner to appoint a returning officer and assistant returning officer for the purpose of conducting a referendum. Notice of the appointment must be made in the Gazette as soon as practicable. The returning officer and assistant returning officer are entitled to be paid the fees and allowances decided by the Commissioner. The returning officer for a referendum must operate a public office for this purpose.

The affected local governments must provide the returning officer with all reasonable assistance in conducting a referendum.

Section 92B provides for a referendum to be held on a Saturday. A later day may be fixed by the Governor in Council by Gazette notice if the returning officer has already given public notice of the referendum day. The Gazette notice must give necessary directions to electors about the procedures to be followed if a new referendum day is fixed. The Gazette notice must also be published in a newspaper circulating in the local area.

Section 92C requires the returning officer to give public notice of the referendum day and to also notify electors of certain information dealing with the conduct of the referendum including the roll cut-off day and a brief explanation about the referendum question and who is an affected elector for the referendum.

Sections 92D requires the returning officer to compile a voters roll for the affected area or for each voting area if there are voting areas.

The roll must be comprised of electors under the *Electoral Act 1992* who are enrolled for an electoral district (or part of an electoral district) included in the affected area or voting area.

Section 92E provides for the voters roll to be open to inspection and may be purchased at a cost which is no more than the cost of making a copy.

Section 92F requires the Commission to prepare an explanatory statement about the advantages and disadvantages of the proposed determination to adequately advise affected electors of the necessary information to enable them to make an informed decision when voting at a referendum.

Section 92G enables the Commission to request and be given information necessary for the preparation of the explanatory statement from a local government.

Section 92H requires the returning officer to provide each affected elector with the relevant explanatory statement for the referendum at a reasonable time before the referendum date. The returning officer must also display a copy of the Commission's proposed determination and the explanatory statement in the returning officers public office and other places considered appropriate by the returning officer.

Section 92I clarifies that a local government which considers it will be affected by the outcome of a referendum, may inform affected electors of its views about the referendum question.

Section 92J provides that voting at a referendum is compulsory.

Section 92K applies (with any necessary changes or changes prescribed by regulation) the provisions of the *Local Government Act 1993*, ie. chapter 5 (Local government elections), part 6 (Conduct of elections) to the conduct of a referendum.

Subdivision 3—Replacement provisions

Section 93 provides that a provision of chapter 5, part 6 of the *Local Government Act 1993* does not apply to the extent that it is inconsistent with the replacement provisions in this subdivision.

Section 93A provides the Governor in Council may direct that a referendum for the whole, or a part, of an affected area be conducted by postal ballot.

Section 93B provides that a separate coloured ballot paper must be used for each voting area.

Section 93C specifies how an affected elector may vote to approve or oppose a referendum question.

Section 93D specifies the requirements for accepting a ballot paper from an elector, including the requirements for accepting a declaration vote.

Section 93E provides for the appointment of scrutineers for a referendum. A local government for the affected area or an individual or

group of individuals reasonably identified by the returning officer in the community as supporting or opposing the referendum question may appoint a scrutineer(s) to be present at a polling booth or a place for examination of declaration envelopes or votes. If the efficiency of the conduct of the referendum could be adversely affected, a returning officer may reject the appointment of further scrutineers and may direct one or more scrutineers to leave a place. A scrutineer must comply with a direction or otherwise be subject to a maximum penalty of 10 penalty units (\$750).

Subdivision 4—Miscellaneous

Section 94 provides that each local government for an affected area must bear the costs of a referendum, irrespective of whether or not the cost is provided for in its budget.

Section 94A provides for proof of a voters roll.

Division 5—Provisions about commission members

Subdivision 1—Commissioner and deputy commissioner

Section 95 provides for the Electoral Commissioner to direct the Deputy Commissioner to perform the function of the Commissioner in relation to a reviewable local government matter if the Electoral Commissioner is unable to perform the function or exercise a power.

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

Section 96 provides for the appointment by the Governor in Council of qualified individuals as Review Commissioners.

The Minister must consult with the Local Government Association of Queensland prior to the initial appointment. A person is qualified for appointment if the person has either extensive knowledge and experience in local government, public administration, law, public finance or community affairs, or, has other qualifications and experience the Governor in Council considers appropriate.

A person is not qualified for appointment if the person is a member of Parliament or a nominee for election as a member of Parliament, a Councillor or nominee for election as a Councillor or is a member of a political party.

Section 96A provides that a Review Commissioner may be appointed for a term not exceeding three years. A Review Commissioner may be re-appointed at the conclusion of the original term of appointment of that Commissioner. If a Commissioner is re-appointed for a further term, there is no necessity for consultation to occur prior to any such re-appointment.

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

Section 97 defines a Commissioner for this subdivision is a Review Commissioner or the chairperson of a Special Commission.

Section 98 provides that a Commissioner is entitled to receive the remuneration and allowances and holds office subject to the conditions determined by the Governor in Council.

Section 99 provides for a Commissioner to resign by giving notice in writing to the Minister.

Section 100 provides for the termination of the appointment of a Commissioner by the Governor in Council.

A Commissioner's appointment must be terminated if the person nominates for election to an Australian parliament; nominates for election to a local government or is appointed as a local government Councillor; joins a political party; or becomes a bankrupt. In addition, the person's appointment must be terminated if the person breaches the requirements of new section 67E which deals with the disclosure of interests by a Commissioner.

Division 6—Miscellaneous

Section 101 provides for the Electoral Commission to provide the necessary staff and administrative support to a Commission.

Section 102 requires the Electoral Commissioner to provide an annual report to the Minister on the Local Government Electoral and Boundaries Review Commission operations during the preceding financial year. The report may form part of the annual report prepared by the Electoral Commission.

Section 103 requires the Minister to table a copy of a report on a major or minor reference of a reviewable local government matter, in the Legislative Assembly within 7 sitting days of receiving it.

Section 104 requires the Electoral Commissioner to ensure copies of each commission's report are available for public inspection at the office of the Electoral Commission in Brisbane and are available for purchase for 6 months after the report is tabled or for a limited reviewable local government matter, 6 months after notification of the commission's determination

Section 105 provides for the making of a regulation about additional procedures for both major and minor references of reviewable local government matters and for applications in relation to limited reviewable local government matters.

Clause 28 amends section 169 by clarifying when a person is qualified to become a councillor of a local government. A person is qualified if the person lives in the local government area and is an elector under the *Electoral Act 1992* for an electoral district or part of an electoral district included in the whole of the local government area.

In order to be an elector, the section sets out two different circumstances.

First, for a person's election as a councillor, the person must be an elector for the whole of the local government area when the voters roll for the election is compiled under section 225 (for a triennial election or a by-election), section 353 (for a fresh election), or for election as a councillor of Brisbane City Council, section 17 of the *City of Brisbane Act 1924* (for a triennial election) or section 80 of the *Electoral Act 1992* as it applies to a by-election for the mayor or a councillor of the Brisbane City Council.

Second, for a person's appointment as a councillor, the person must be an elector for the whole of the local government area for at least 30 days before the appointment.

For example, for a by-election in Division 1 of an area, a person who is an elector for Division 2 of the area, at the time when the voters roll is compiled for Division 1, may nominate for election even though the person is not on the voters roll for Division 1.

Clause 29 amends section 170 of the Act dealing with general disqualifications by providing a person may not be or become a councillor if the disqualifications apply.

Clause 30 amends section 200(1)(a) of the Act dealing with when a councillor's office becomes vacant by providing that a person's office as councillor is vacated if (among other things) the person ceases to be qualified to be or become a councillor.

Clause 31 amends section 202 of the Act by clarifying that the registered officer of a registered political party can only nominate a qualified person to fill a vacancy if the vacating councillor at the time of candidature had been nominated on the nomination form by a registered officer of a political party under section 250(1)(a) or if the former councillor was a councillor of the Brisbane City Council, under section 84 of the *Electoral Act 1992* as it applies to the conduct of an election for Brisbane City Council.

Also, if the vacating councillor was appointed to office as a registered political party's nominee, the new councillor must be a nominee of the registered political party.

The same procedure applies to the filling of a vacancy if the former councillor held office as mayor.

Clause 32 inserts a new section 219A providing that a local government is responsible for expenditure incurred for the conduct of a election in its area. This clarifies that the local government and not the returning officer is responsible for remuneration paid to electoral officers employed during the election.

Clause 33 makes a technical amendment to section 220(2) to reflect the amendment contained in clause 34 below.

Clause 34 replaces the existing section 221 and section heading.

The new provisions allow the Chief Executive Officer (CEO) of a local

government to appoint someone else as the returning officer to conduct an election in the area and the appointment must be in the approved form.

Subsection (2) sets out the procedure to be followed if the CEO intends to appoint a person who is not a current employee of the Council. As far as possible, the CEO must invite expressions of interest from qualified persons by giving notice in a newspaper. The CEO may also invite submissions for appointment as returning officer from anyone the CEO considers may be suitably qualified, eg, a person who has experience in conducting state elections for the Electoral Commission. If an appointed returning officer is unable to complete or perform the duties of returning officer, the CEO may become the returning officer or appoint another person to act as the returning officer for the election.

The CEO may ask the Minister to appoint another person as returning officer if the officer believes he or she cannot properly perform the duties because of a conflict of interest. In this case the Minister must appoint another person to be the returning officer.

Clause 35 amends section 233 to make provision for the new process for the determination of references for reviewable local government matters and the determination of limited reviewable local government matters. A Local Government Electoral and Boundaries Review Commission must work out whether the quota of electors for a relevant area is within the specified margin of allowance when considering reviewable local government matters. Calculation of the quota must be carried out as near as practicable to the time the notice about the determination is given under sections 72D or 73C or 78.

Clause 36 inserts a new section 238A providing for the appointment of an assistant returning officer for the conduct of a local government election if required.

For example, assistant returning officers may be appointed in a large divided local government area to conduct the election for one or more divisions.

Clause 37 amends section 240 to clarify that anything done by an issuing officer acting on the authority of a presiding officer is taken to be done by the returning officer or presiding officer.

Clause 38 amends section 242 by clarifying that the returning officer may act through an assistant returning officer, presiding officer or issuing

officer when the returning officer may or must do anything in the conduct of the election.

Clause 39 inserts a new section 242A providing that the assistant returning officer may act through a presiding officer or an issuing officer if the assistant returning officer does anything in the conduct of the election.

Clause 40 makes a technical amendment to section 244(1) to reflect amendments to section 169 by clause 28 above.

Clause 41 deletes section 247 which provided for endorsed candidates to identify the fact of their endorsement on the nomination form. This matter is provided for under section 202.

Clause 42 applies section 249 (Who may nominate) to the Brisbane City Council.

Clause 43 inserts a new section 251A which sets out the special grounds for deciding a person is not properly nominated as a candidate for election.

The new section contains several definitions and provides details of cases where the nomination name may result in a candidate not being properly nominated because the name could cause confusion or is a party name or is obscene or offensive.

If the returning officer decides a person is not properly nominated, the returning officer is to give a notice to the person stating the decision and the reasons for that decision and advise the person of their right to seek an injunction.

Clause 44 inserts a new section 252(1A) which requires the certificate issued to a candidate by the returning officer to state the time, day and place proposed for the draw for the order of listing of candidates' names on the ballot paper.

Section 252(3)(c) is amended to clarify that the returning officer in deciding if a person is properly nominated is not obliged to look beyond the form of nomination and payment of the deposit, the voters roll, and documentary evidence produced by the nominator or nominee that at the time the voters roll is compiled for the election:—

- (a) the nominator is an elector for that election or is the registered officer of a registered political party; or
- (b) the person who is nominated is an elector for the whole of the local government area, ie, the intent is to reflect the provisions of

section 169, that the person does not have to be an elector for a particular division (if it is a divisional election), but must be an elector for the local government area.

Clause 45 amends section 264(3) by providing for a map, showing the part or parts of a local government area where a postal ballot will be held, to be open to inspection at the public office of the local government.

Clause 46 amends section 265 by clarifying that for a divided area each polling booth within a local government area may be declared to be a polling place for other divisions within the local government area.

Clause 47 amends section 273(5) to reflect the amendments to section 252 contained in clause 44 above dealing with the draw for the order of names on the ballot paper.

Clause 48 amends section 293 which deals with the distribution of ballot papers to electors who may or must cast a declaration vote.

Section 293(5) is amended by providing for written instructions (in the approved form) setting out the procedure for declaration voting to be given to each elector who is to cast a declaration vote.

Section 293(6) is amended to allow the use of reply paid envelopes instead of prepaid postage envelopes. This will avoid unnecessary postage costs being incurred if declaration votes are not returned.

Sections 293(7) and (8) are inserted which allow the returning officer to post the items required to an elector who applies for a declaration vote under subsection (3) and (5). The election matter may be sent to either the address listed in the electoral roll for the local government election, the State electoral roll, or to the address on the application made by the elector, eg, a mail service number could be supplied. This will allow a voter who is absent to have their ballot papers forwarded directly to their temporary address.

Clause 49 amends section 295 which deals with the distribution of ballot papers to electors for a postal ballot election.

Section 295(1) is amended by providing for written instructions (in the approved form) setting out the procedure for declaration and postal voting to be given to each elector who is to cast a postal ballot.

Section 295(4) is amended to allow the use of reply paid envelopes instead of prepaid postage envelopes. This will avoid unnecessary postage costs incurred when postal ballots are not returned.

Sections 295(5), (6) and (7) are inserted which allow the returning officer to post the items required to an elector for the postal ballot election to either the address listed in the electoral roll for the local government election, or a State electoral roll.

However, for an elector who must cast a declaration vote under section 290 or where the issuing officer suspects that the person is not entitled to vote, the returning officer may give the things by posting them to either the address listed in the voters roll, or a State electoral roll or to another address given by the person on the declaration form.

Clause 50 amends section 298 which deals with the casting of declaration votes before polling day.

Section 298(1) is amended to clarify that the returning officer may declare one or more of the following as a place for casting of declaration votes before polling day—the local government’s public office or other place used as a public office, or another convenient place.

Clause 51 inserts a new section 298A clarifying that a declaration voter cannot be issued with more than one declaration envelope with separate ballot papers where separate polls are conducted on the same day.

Clause 52 amends section 302 dealing with the effect of ballot papers in first-past-the-post voting.

Section 302(2)(d)(ii) is inserted clarifying which elector is the person casting the declaration or postal vote and requires the signature on the declaration envelope to match the signature on the relevant application form.

Clause 53 amends section 303 dealing with the effect of ballot papers in first-past-the-post voting.

Section 303(2)(d)(ii) is inserted clarifying that for an elector casting the declaration or postal vote, the signature on the declaration envelope must match the signature on the relevant application form. Superfluous wording in section 303(3) is deleted.

Clause 54 amends section 308 of which deals with the preliminary counting of votes by the presiding officer.

Section 308(2) provides for, among other things, an approved form for a reconciliation statement for all ballot papers given out at a polling booth and all votes put in ballot boxes at the booth.

A new subsection 308(3) is inserted to clarify who should issue a receipt for all the items detailed in section 308(2).

Clause 55 amends section 310 which deals with the procedures for processing declaration envelopes.

The design of the declaration envelope has been substantially altered to ensure that declaration voters are satisfied that their votes will remain confidential. Section 310 is amended to address the new procedures necessary for processing the new declaration envelopes.

The returning officer must detach the elector's declaration from the envelope, mark the elector's name on the voter's roll, place the envelope into a locked or sealed ballot box and keep all accepted envelopes in the ballot box until dealt with at the official count. However, the accepted envelopes may be taken from the ballot box, the ballot papers removed from the envelopes and placed into another locked or sealed ballot box until dealt with at the official count.

In addition, provision has been made for local governments to mark a computerised roll by the use of electronic receipting, such as the scanning of a barcode on the envelope, as an alternative to manual marking of a voter's roll, if the local government so wishes. It is considered such a procedure could significantly shorten the receipting process.

Section 310(4)(a) is amended to ensure the accepted envelopes are kept secure once the declaration has been removed and the envelopes placed in a locked or sealed ballot box. This reflects the new procedures detailed above. Similarly, section 310(6) is amended to reflect the new procedures for processing declaration envelopes.

Clause 56 amends section 311 to take account of the amended procedures for processing declaration envelopes as detailed in the amended section 310 under clause 55 above.

Clause 57 amends section 315 providing for the returning officer to bundle the rejected declaration envelopes, accepted envelopes and declarations which have been removed from declaration envelopes.

Clause 58 inserts a new section 317A which requires the local government to make a resolution deciding whether to take action about electors who failed to vote in the election.

Clause 59 amends section 318 so that action against non-voters can only be taken after the local government resolves it will take action about electors

who failed to vote. If the local government fails to make such a resolution, no action can be taken.

The former requirement that a copy of the list be given to any person who was a candidate in the election or who requests a copy has been deleted.

Clause 60 replaces the existing provisions contained in section 319 of the Act with new sections 319 and 319A.

The new section 319 deals with the preparation of a notice of failure to vote in a local government election. This action can only be taken if the local government has resolved to take action under section 318(4) explained in clause 59 above.

The notice must state the elector's name and address; state that the elector failed to vote; warn that this is an offence; and advise the elector that they could pay a penalty of one-half of a penalty unit and no further action will be taken by the local government.

The notice must require the elector, if he or she intends to pay the penalty to sign a form enclosed with the notice and make payment. If the elector does not intend to pay the penalty, the elector must advise whether they voted in the election, and if not, the reason for not voting.

If the elector is unable to comply with the notice, or is absent, and another elector, who has knowledge of why the first elector did not vote, complies with the notice, the first elector is taken to have complied.

Section 319A requires a local government that receives payment from an elector who receives a notice on failing to vote to accept the payment and take no further action against the elector.

Clause 61 makes a technical amendment to section 320 to reflect amendments to section 319.

Clause 62 inserts a new section 323A which requires a local government to advise a person who applied for a declaration vote under section 290 (a) and who made a declaration vote if it was not accepted for counting because it was decided by the returning officer that the person was not an elector.

Clause 63 amends section 349 by clarifying that an application may be made to the Supreme Court of Queensland for an injunction if a returning officer decides a person is not properly nominated for the election.

Clause 64 provides for the insertion into the *Local Government Act 1993* of a new chapter 7A regarding National Competition Policy reform of significant business activities.

CHAPTER 7A—NATIONAL COMPETITION REFORM OF SIGNIFICANT BUSINESS ACTIVITIES

PART 1—OBJECT AND APPLICATION

Section 458A states that the object of the new chapter is to provide ways to facilitate the application of National Competition Policy to significant local government business activities.

Section 458B provides for the application of the chapter to the Brisbane City Council.

PART 2—DEFINITIONS

Section 458C sets out the meanings of various terms used in the new chapter inserted into the *Local Government Act 1993*.

The term “National Competition Policy Inter-Governmental Agreements” is defined to mean the 3 agreements made in 1995 between the Commonwealth and the States:

- the Conduct Code Agreement
- the Competition Principles Agreement
- the Agreement to Implement National Competition Policy and Related Reforms.

The term “public benefit assessment” is defined for the purposes of chapter 7A to mean an assessment of a significant business activity of a local government.

The term “public benefit assessment report” is defined for the purposes of chapter 7A to mean the report, including recommendations, on a public benefit assessment.

The term “significant business activity” of a local government is defined for the purposes of chapter 7A to mean a Type 1 or Type 2 business activity.

The term “Type 1 business activity” is defined for the purposes of chapter 7A to mean the provision of specified services by the following local governments: Brisbane City Council; Gold Coast City Council; Ipswich City Council; Logan City Council; and Townsville City Council.

The term “Type 2 business activity” is defined for the purposes of chapter 7A to mean the provision of specified services by the following local governments: Caboolture Shire Council; Cairns City Council; Caloundra City Council; Hervey Bay City Council; Ipswich City Council; Logan City Council; Mackay City Council; Maroochy Shire Council; Noosa Shire Council; Pine Rivers Shire Council; Redland City Council; Rockhampton City Council; Thuringowa City Council; Toowoomba City Council; and Townsville City Council.

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

Division 1—Subject matter of public benefit assessments

Section 458D provides for the matters to be addressed by a public benefit assessment of a Type 1 business activity. The assessment is required to review the appropriateness of applying corporatisation, commercialisation or full cost pricing to the activity and to conclude whether and to what extent the benefits of applying these reforms would outweigh the costs.

Section 458E provides for the matters to be addressed by a public benefit assessment of a Type 2 business activity. The assessment is required to review the appropriateness of applying commercialisation or cost pricing or corporatisation to the activity. A local government may also resolve that

corporatisation be considered. The assessment must conclude whether and to what extent the benefits of applying these reforms would outweigh the costs.

Section 458F sets out the meaning of corporatisation of a significant local government business activity for the purposes of conducting a public benefit assessment. Corporatisation involves the establishment of a separate legal entity which provides goods and services on a commercial basis, and community service obligations if goods and services are not provided on a commercial basis.

In addition, for the purposes of a public benefit assessment, corporatisation includes the question of amounts equivalent to State taxes and local government rates to be paid by the entity and retained by the local government. It must also include the payment of Commonwealth taxes.

Section 458G sets out the meaning of commercialisation of a significant local government business activity for the purposes of chapter 7A. Commercialisation involves the activity being carried on by a business unit of the local government which provides goods and services on a commercial basis, and community service obligations if goods and services are not provided on a commercial basis.

In addition, for the purposes of a public benefit assessment, Commercialisation includes the retention by the local government of amounts equivalent to Commonwealth and State taxes and local government rates.

Section 458H sets out the meaning of full cost pricing for the purposes of chapter 7A. Full cost pricing is defined to mean that the prices charged by a significant local government business activity for goods and services take account of the full cost of providing the goods or services.

Division 2—Content of public benefit assessment report

Section 458I sets out the matters to be addressed in a public benefit assessment report. The report is required to include a conclusion on whether or not, and if so to what extent, the benefits of applying the reforms considered under section 458D or 458E would outweigh the costs. It must also include recommendations on how the business activity should be

carried on and a proposed timetable for implementing any recommended changes, if changes are recommended.

Division 3—Local government to undertake assessments

Section 458J provides for the undertaking of a public benefit assessment and the preparation of a public benefit assessment report for each significant business activity.

Section 458K provides for a local government to decide by resolution, for each of its significant business activities, the process for the public benefit assessment and the requirements for the report of the assessment. The resolution is required to state the consultation process to be used in the assessment.

Section 458L prescribes the timing for the public benefit assessments and reports. The assessment report on a significant business activity must be completed before 30 June 1997 or a day approved by the Minister which is not later than 30 September 1997. It also provides for the public benefit assessment report to be presented to a meeting of the local government as soon as practicable after the report is completed.

Section 458M provides that a regulation may prescribe the requirements for public benefit assessments and the reports of the assessments.

It is intended that before a regulation is made the Department of Local Government and Planning and Treasury will publish a guideline for the carrying out of assessments and the preparation and form of reports. It is proposed that the regulation will adopt the guidelines and that the guideline will include amongst other things the following matters that the Competition Principles Agreement requires for a public benefit assessment—

- (a) legislation relating to ecologically sustainable development;
- (b) social welfare and equity considerations including community service obligations;
- (c) legislation of policy about matters such as occupational health and safety, industrial relations and access and equity issues;

- (d) economic and regional development, including employment and investment growth;
- (e) the interests of consumers;
- (f) the competitiveness of Australian business;
- (g) the efficient allocation of resources.

Clause 65 amends section 493 by reinforcing that a local law policy binds the local government and the community.

An example of the intended operation of local laws and local law policies is as follows—

- Model Local Law No.6 “Keeping and Control of Animals” grants the power for a local law policy to prescribe minimum standards for the keeping of certain animals, with the local law policy setting the maximum penalty for an offence under a local law policy, eg, a local law policy may set the maximum number of dogs kept by a person in a residential area be limited to two (2).
- When a person is found to be keeping more than two dogs, where the limit is set by the local law policy, then that person could be prosecuted under the provisions of the local law policy.

In effect the amendment clarifies that if a person was in breach of the requirement that no more than two (2) dogs could be kept on the premises, then the person may be subject to proceedings taken by the local government and the payment of a penalty.

Clause 66 amends section 552 by extending the expiry date of Chapter 9, part 5 “Local Government Control Over Levee Banks” to 31 March 1999.

Clause 67 inserts new subsections in section 569 in order to clarify the law relating to the making of utility charges and provide suitable future options for the making of utility charges.

Subsection (7) provides a local government has been and will be able to from commencement of section 569 of the *Local Government Act 1993*, make and levy a utility charge for services supplied in a period spanning two consecutive financial years. For example, a local government may legally make and levy utility charges for water where it is supplied, measured by meter or other device, during a period from say, 30 April 1998 to 30 April 1999.

It further provides a local government may make and levy different utility charges for different periods in 1 or more financial years and can decide how these charges are to be apportioned.

Non-exhaustive examples of different situations and application of these provisions are given in the legislation.

Subsection (8) limits to two, the number of consecutive financial years a charge may span.

Subsection (9) provides that utility charges made and levied by a decision of the local government under subsection (7) are lawfully made and levied in accordance with the Act.

Subsection (10) provides subsections (7) to (9) will apply despite the references in sections 559 and 560 to the levying and making of rates and charges “for a financial year” which if read in isolation, infer a charge can not be for a period spanning different financial years.

Subsection (11) provides that where a local government nominates a particular day to which consumption of a utility service is to be measured and charged on the basis of that measure, a metre or other measuring device is deemed to have been read on that day if the actual date of reading is within 2 weeks before or after the day. An example is given in the legislation.

Subsection (12) provides a local government’s ability to make local laws to regulate and administer a utility service is not restricted by subsection (11).

Clause 68 clarifies the actions a local government may take when the terms under which a rate is being paid by instalments under section 611 are not met by the ratepayer. In particular, that on default of instalment terms, interest may be charged only from the time of default.

Under the Act, rates are payable to a local government within either 30 or 60 days from the issue of a rate notice. The rate notice must specify whether the period is 30 days or 60 days.

If a rate is not paid in the specified period, the rate becomes “overdue” and a local government may commence legal action for recovery and/or charge interest on the unpaid amount. Interest accrues until the rate is paid.

The Act also enables a local government to allow a rate to be paid by

instalments (section 611) or other arrangements rather than requiring full payment within 30 or 60 days.

A local government can, at its discretion, if the terms of the instalment or other arrangement are not met treat the unpaid instalment(s) as an overdue rate. The local government can then commence action for recovery and/or charge interest on the rate.

A local government may charge a premium for allowing payment of a rate by instalment to, for example, cover administrative costs or the cost of the receipt of revenue being deferred.

There has been debate about whether, on default by a ratepayer of an instalment or payment arrangement, a local government should charge interest on, for example, only the amount of payment which has been defaulted from the time of default or, on the whole of the original rate from the date it would have been payable if there were no instalment arrangement, that is, 30 or 60 days after the rate notice for the whole amount was issued.

It is considered a ratepayer who defaults on an instalment arrangement should only be charged overdue interest from the time of default as:

1. until default, the ratepayer has honoured the terms of the arrangement;
2. these provisions are primarily intended to assist ratepayers facing financial difficulty in the payment of rates; and
3. a premium may be charged as part of the instalment arrangement.

A local government is given the discretion to apply the section to only the amount of defaulted instalment or to that and remaining future instalments.

Clause 69 facilitates those amended provisions which provide that rates being paid by instalment or other arrangements under sections 611, 627 and 628 are not overdue rates except in accordance with arrangements made under those sections.

Clause 70 amends section 619 to clarify the intent of the Act that a local government may offer prizes through a lottery as an incentive to encourage prompt payment of rates.

The need for the clarification has arisen from legal advice subsequent to the introduction of the Act which indicates the original provision was subject to the *Art Unions and Public Amusements Act 1992*.

These clarification provisions will expire on 30 June 1998 during which time it is intended longer term arrangements, if any, will be considered and incorporated in the *Art Unions and Public Amusements Act 1992* or other future legislation governing such activities.

Clause 71 amends section 627 to provide that if the terms of an arrangement for payment of a rate are not met, a local government may take action to recover the outstanding payment(s) and charge interest until the payment is made. The local government may take this action in respect of only the overdue payments(s) or the overdue and remaining payments under the arrangement.

Further explanation of the intent of the provision is provided in the explanatory note for clause 68 above.

Clause 72 amends section 628 to provide where the terms of an arrangement for the deferral of the payment of a rate are not met, a local government may take action to recover the outstanding payment and charge interest until the payment is made. The local government may take this action in respect of only the overdue payments(s) or the overdue and remaining payments under the arrangement.

Further explanation of the intent of the provision is provided in the explanatory note for clause 68 above.

Clause 73 and 74 deal with the provisions of the Act enabling a local government to sell land on which a rate(s) has remained unpaid for 3 years or more (3 months in the case of a mining claim).

Clause 73 clarifies section 638 so that all overdue rates on the land must be paid to end the sale procedure not just the rate(s) which has been unpaid for longer than 3 years.

Clause 74 clarifies section 640 so that the reserve price for sale of the land must be the higher of the unimproved capital value or the amount of all overdue rates on the land not just the rate(s) unpaid for more than 3 years.

Clause 75 extends the expiry date of s 697 of the Act to 30 June 1998. The section enables a local government to make a local law giving an authorised person authority to enter a place, including a structure used for residential purposes, to seize a dangerous dog.

Clause 76 amends section 721 to provide that the Minister may exempt a local government from developing and administering an EEO Management Plan. A regulation may provide criteria which the Minister must consider

before deciding to grant an exemption to a local government. For example, the number of staff employed by a local government or joint local government.

Clause 77 amends section 774 to provide that a senior executive employee for a local government does not have to make the compulsory employee superannuation contributions required by the Act if employees on agreement with their local governments choose to have the local government make an equivalent contribution or an employee may negotiate that the local government make additional superannuation payments.

Clause 78 inserts a new section 792A giving the chief executive officer of the Department of Local Government and Planning power to approve forms used under this Act.

Clause 79 inserts a new section 793A which provides for the making of a regulation declaring the existing names and boundaries of electoral wards in the City of Brisbane. The regulation must be made on or before 1 March 1997.

Clause 80 replaces the provisions of section 802 with a new section 802. If a local government has not published a notice by 1 July 1999 advising that a local law has been reviewed and does not contain redundant provisions, that particular local law will automatically be repealed on 1 July 1999. The extension of time in which a local government is required to review its local laws has been granted to allow local governments to take account of the provisions of the national competition policy.

Clause 81 amends section 803 to provide for the provisions contained in Division 3 of Chapter 15 Part 1 dealing with local laws and local law policies to expire on 2 July 1999.

Clause 82 amends the heading to chapter 15.

Clause 83 amends the heading to chapter 15 part 1.

Clause 84 provides for the insertion of a new Division 5 into Chapter 15 Part 1 of the Act.

Division 5—Transitional and savings provisions for amendments under the Local Government Legislation Amendment Act 1996

Section 810 is inserted to provide that the Shire of Rosalie is undivided for the purpose of and from the 1997 triennial elections.

Section 811 provides confirmation that the water undertaking fund charge of \$130 per unit for consumers in the Capricorn Coast water area made by the Livingstone Shire Council in its budget for the 1993/94 financial year applied to the period from 1 July 1993 to the first week in April 1994, and not to the period 1 July 1993 to 30 June 1994.

The effect of the section is that the Livingstone Shire council did not charge for water services in the Capricorn Coast during the period from the first week in April 1994 to 30 June 1994 in both its 1993-94 and 1994-95 budgets in the council's transition to a user pay system of charging despite the manner in which the charge was represented on rate notices.

Section 812 provides that the electoral wards of the City of Brisbane in force immediately before the commencement of the section remain the electoral wards for the city for the 1997 triennial election.

Section 813 provides that Chapter 3 part 1 division 7 of the *Local Government Act 1993* as it stands before the commencement of the amended section in this Bill is the applicable law for the implementation of a report on a reference of a reviewable local government matter tabled in the Legislative Assembly before the commencement of the new section.

Section 814 provides that where immediately before the commencement of this section, the chief executive, under a regulation, approves a form for a matter, the form is taken to have been approved, and therefore, validly made under the new section 792A of the Act.

PART 3—AMENDMENT OF PUBLIC SERVICE ACT 1996

Clause 85 provides for the amendment of the *Public Service Act 1996*.

Clause 86 provides for the replacement of section 109(3)(d) so that the meaning of "term appointee" under the Act does not include a Review Commissioner under the *Local Government Act 1993*.

Schedule

MINOR AND CONSEQUENTIAL AMENDMENTS OF *Local Government Act 1993*

These minor and consequential amendments to the Act are mechanical in nature and relate to changes in terminology as a result of other amendments contained in this legislation.

The original intent of the sections listed as amended in this Schedule has not been altered by these amendments.

Amendments agreed to in Committee

1. After clause 29—

At page 71, after line 19—

insert—

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

29A. Section 171(1)—

insert—

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

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

29B. Section 190—

omit, insert—

‘Requirements of councillors before acting in office

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

- (a) if elected as a councillor of the Brisbane City Council—makes a declaration of office; or
- (b) if elected as a councillor of another local government—
 - (i) firstly gives the chief executive officer of the local government a return in the approved form;¹ and
 - (ii) subsequently makes a declaration of office.

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

‘(3) The return under subsection (1)(b)(i) must state the information the person is required to give under section 355N² relating to the disclosure period for the election of the person to the extent that the person states the information is readily available when giving the return.

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

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

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

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

² Section 355N (Gifts to candidates)

take the declaration.

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

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

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

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

2. After clause 44—

At page 80, after line 28—

insert—

‘Amendment of s 260 (Disposal of deposits generally)

44A. Section 260—

insert—

‘(1A) Despite subsection (1), a candidate’s deposit must not be refunded until the candidate has given the chief executive officer of the local government the return the candidate is required to give under section 355N³ in relation to the candidate’s disclosure period for the election.’.’.

3. After clause 63—

At page 92, after line 3—

insert—

‘Insertion of new ch 5, pt 8

63A. Chapter 5—

insert—

‘PART 8—DISCLOSURE OF ELECTION GIFTS

³ Section 355N (Gifts to candidates)

‘Division 1—Preliminary**‘Definitions for pt 8**

‘355A. In this part—

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

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

“disclosure period”—

- (a) for a candidate for an election—see division 2, subdivision 1; and
- (b) for section 355Q,⁴ for an election—see division 2, subdivision 2.

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

- (a) the allotment of shares in a corporation; and
- (b) the creation of a trust in property; and
- (c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in property; and
- (e) the exercise by a person of a general power of appointment of property in favour of someone else; and
- (f) a transaction by a person with intent to diminish, directly or indirectly, the value of the person’s own property and to increase the value of someone else’s property.

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

⁴ Section 355Q (Gifts for third party expenditure for political purposes)

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

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

- (a) in sections 355N(2)(b)(iii) and 355O(1)⁵—\$200; or
- (b) in section 355Q(1)(b) and (6),⁶ definition “prescribed gift”, paragraph (c)—\$1 000.

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

“register”, for a local government, see section 355T(1).⁷

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

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

- (a) for a gift purportedly made on behalf of the members of an unincorporated association—
 - (i) the association’s name; and
 - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association; or
- (b) for a gift purportedly made out of a trust fund or out of the funds of a foundation—
 - (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
 - (ii) the title or other description of the trust fund or the name of

⁵ Section 355N (Gifts to candidates) and section 355O (Certain gifts not to be received)

⁶ Section 355Q (Gifts for third party expenditure for political purposes)

⁷ Section 355T (Registers of electoral gifts)

the foundation; or

- (c) for a gift not mentioned in paragraph (a) or (b)—the name and residential or business address of the person who made the gift.

“value”, for a gift, means—

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

‘Candidates

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

‘Things taken to be done by political party

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

‘Related corporations

‘355D. For this part—

- (a) a body corporate and any other body corporate related to it are

taken to be the one person; and

- (b) whether a body corporate is related to another body corporate must be decided in the same way a corporation is decided to be related to another corporation under the Corporations Law.

‘Division 2—Disclosure periods

‘Subdivision 1—Disclosure periods for candidates for elections

‘Purpose of subdivision

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

‘Disclosure period for candidates at previous elections

‘355F.(1) This section applies if a candidate for an election (the **“current election”**) was a candidate for another election relating to any local government the conclusion of which was within the relevant period before the polling day for the current election.

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

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

‘(4) In this section—

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

‘Disclosure period for candidates at previous fresh elections

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

- (a) was a candidate at a fresh election (the **“previous election”**) relating to a local government (the **“first local government”**);

and

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

‘(2) Despite section 355F,⁸ the disclosure period for the candidate for the relevant election starts at the end of the prescribed period after the conclusion of whichever is the later of—

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

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

‘Disclosure period for new candidates

‘**355H.(1)** This section applies if sections 355F, 355G and 355I⁹ do not apply to a person who is a candidate for an election.

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

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

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

‘Disclosure period for certain candidates who are appointed councillors

⁸ Section 355F (Disclosure period for candidates at previous elections)

⁹ Section 355F (Disclosure period for candidates at previous elections), section 355G (Disclosure period for candidates at previous fresh elections) and section 355I (Disclosure period for certain candidates who are appointed councillors)

‘355I.(1) This section applies if a candidate for an election, when nominating as a candidate, is an appointed councillor of a local government to whom neither section 355F nor section 355G¹⁰ applies.

‘(2) Despite section 355H,¹¹ the disclosure period for the candidate for the election starts when the candidate was appointed a councillor.

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

‘Subdivision 2—Disclosure period for third parties for elections

‘Purpose of subdivision

‘355J. This subdivision defines the disclosure period for section 355Q¹² for an election.

‘Disclosure period for s 355Q

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

- (a) starts at the end of the prescribed period after the date of the immediately preceding triennial elections for local governments under section 217;¹³ and
- (b) ends at the end of the prescribed period after the polling day for the election.

‘Subdivision 3—Transitional provisions for start of disclosure periods

‘Transitional provisions

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

¹⁰ Section 355F (Disclosure periods for candidates at previous elections) and section 355G (Disclosure period for candidates at previous fresh elections)

¹¹ Section 355H (Disclosure period for new candidates)

¹² Section 355Q (Gifts for third party expenditure for political purposes)

¹³ Section 217 (Date of triennial elections)

- (a) if a disclosure period would otherwise start before 1 January 1997, it starts on 1 January 1997; and
- (b) for a candidate to whom section 355H¹⁴ would otherwise apply, the disclosure period for a 1997 triennial election starts on 1 January 1997, regardless of the day of the candidate's announcement of candidature or nomination as a candidate; and
- (c) for a candidate to whom section 355I¹⁵ would otherwise apply, the disclosure period for a 1997 triennial election starts on 1 January 1997, regardless of when the candidate was appointed a councillor.

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

‘Division 3—Disclosure of gifts

‘Subdivision 1—Disclosure by candidates for elections

‘Definitions

‘355M. In this subdivision—

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

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

‘Gifts to candidates

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

¹⁴ Section 355H (Disclosure period for new candidates)

¹⁵ Section 355I (Disclosure period for certain candidates who are appointed councillors)

substantially for a purpose related to any election.

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

- (a) whether the candidate received any gifts to which this section applies; and
- (b) if so—
 - (i) the total value of all of the gifts; and
 - (ii) how many persons made the gifts; and
 - (iii) the relevant details for each gift made by a person to the candidate, if the total value of all gifts made by the person to the candidate during the disclosure period is the prescribed amount or more.

‘Certain gifts not to be received

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

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

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

- (a) is payable by the person to the local government to which the election relates; and
- (b) may be recovered by the local government as a debt owing to the

local government by action in a court of competent jurisdiction against the person.

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

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

‘(5) In this section—

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

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

‘Chief executive officer to give reminder notice to candidates

‘**355P.(1)** This section applies if a candidate for election has not given the return the candidate is required to give for the election under section 355N.¹⁶

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

‘(3) The information is—

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

¹⁶ Section 355N (Gifts to candidates)

returns).

‘Subdivision 2—Disclosure by third parties for elections

‘Gifts for third party expenditure for political purposes

‘355Q.(1) This section applies if, during the disclosure period for this section¹⁷ 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 election) incurs or has incurred expenditure for a political purpose about an election or elections relating to the relevant local government; and
- (b) the total amount of all the expenditure mentioned in paragraph (a) is the prescribed amount or more; and
- (c) the person receives a gift that is a prescribed gift in relation to the relevant local government.

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

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

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

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

‘(5) In this section, 2 or more gifts made, during the disclosure period for

¹⁷ The disclosure period for this section is defined in section 355K.

this section for an election, by the one person to another person are to be treated as 1 gift.

‘(6) In this section—

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

- (a) publication by any means (including radio or television) of election matter;
- (b) public expression of views on an issue in an election;
- (c) a gift to a political party;
- (d) a gift to a candidate in an election;
- (e) a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in paragraph (a), (b), (c) or (d).

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

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

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

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

- (a) the person gives a return relating to an election disclosing gifts under section 355Q¹⁸ to a chief executive officer of a local government; and
- (b) apart from this section, because of a later election, the person would be required to give another return under section 355Q to the chief executive officer of the same local government; and

¹⁸ Section 355Q (Gifts for third party expenditure for political purposes)

(c) the other return, if given, would disclose no other gifts.

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

‘Subdivision 3—Amendment of returns

‘Amendment of returns

‘**355S.(1)** A person who has given a return under this part to the chief executive officer of a local government may at any time apply to amend the return to correct an error or omission.

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

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

‘(3) The chief executive officer must—

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

‘(4) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence under section 355W(2)¹⁹ committed before the amendment.

‘Division 4—Registers

‘Registers of electoral gifts

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

‘(2) The register must include the following—

- (a) all returns given to the chief executive officer under this part or

¹⁹ Section 355W (Offences about returns)

section 190;²⁰

- (b) applications made to the chief executive officer under section 355S;²¹
- (c) copies of information given by the chief executive officer under section 355V(2);²²
- (d) statutory declarations given to the chief executive officer under section 355V(5);
- (e) copies of notices given by the chief executive officer under section 355Y(3);²³
- (f) particulars given to the chief executive officer after a request made under section 355Y(3);
- (g) notices given to the chief executive officer under section 355Y(5).

‘Access to registers

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

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

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

‘Queries on contents of register

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

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

‘(3) The person who gave the return must, within 30 days of being

²⁰ Section 190 (Requirements of councillors before acting in office)

²¹ Section 355S (Amendment of returns)

²² Section 355V (Queries on contents of register)

²³ Section 355Y (Obtaining of information and completion of returns)

informed, establish whether the return should be amended to make it a true record of fact.

‘(4) If the person establishes that the return should be amended, the person must apply to the chief executive officer to amend the return to correct the error or omission.²⁴

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

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

‘Division 5—Miscellaneous

‘Offences about returns

‘**355W.(1)** A person must give a return the person is required to give under division 3²⁵ within the time required by the division.

Maximum penalty—20 penalty units.

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

Maximum penalty—

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

‘(3) A person (the “**first person**”) must not give to another person who is required to give a return under division 3 or section 190²⁶ information to which the return relates that is, to the knowledge of the first person, false or misleading in a material particular.

²⁴ Section 355S (Amendment of returns) provides for applications to amend returns.

²⁵ Division 3 (Disclosure of gifts)

²⁶ Section 190 (Requirements of councillors before acting in office)

Maximum penalty—20 penalty units.

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

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

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

‘Records to be kept

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

Maximum penalty—20 penalty units.

‘(2) In this section—

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

- (a) are, or could be, required to be stated in a return under division 3²⁷ about the election; or
- (b) evidence that the giver of a gift had an intention mentioned in section 355Q(6),²⁸ definition “prescribed gift”, paragraph (a).

‘Obtaining of information and completion of returns

‘**355Y.(1)** A person who is required to give a return under division 3²⁹ must—

²⁷ Division 3 (Disclosure of gifts)

²⁸ Section 355Q (Gifts for third party expenditure for political purposes)

²⁹ Division 3 (Disclosure of gifts)

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

Maximum penalty—20 penalty units.

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

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

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

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

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

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

‘Attempts to commit offences

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

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

‘(2) The Criminal Code, section 4³⁰ applies to subsection (1).

‘Non-compliance with part does not affect election

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

‘(2) Without limiting subsection (1) but subject to section 171,³¹ if a candidate who is elected at an election fails to comply with a provision of this part for the election, the failure does not invalidate the election of the candidate.

‘Division 6—Evidence

‘Evidentiary provisions

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

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

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

³⁰ The Criminal Code, section 4 (Attempts to commit offences)

³¹ Section 171 (Disqualification and vacation of office for certain offences)