

LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL (No. 3) 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Bill

The objectives of the Bill are to—

1. Amend the *Local Government Act 1993* and the *City of Brisbane Act 1924* to provide a complaints mechanism and an accreditation process for local government business activities that are subject to competitive neutrality reforms.
2. Amend the *Local Government Act 1993* by—
 - removing a sunset clause that applies to the power of local governments to make local laws enabling authorised officers to enter private property to seize dangerous dogs; and
 - providing for certain minor and technical amendments.
3. Amend the *Local Government (Aboriginal Lands) Act 1978* to extend the sunset clause dealing with community control of alcohol in the Aurukun Shire.
4. Amend the *City of Brisbane Act 1924* to—
 - clarify that where Brisbane City Council exempts land used for public, religious, charitable or educational purposes from general rating, the exemption applies to all rates (ie both general rates and separate rates or charges); and
 - clarify the regulation making power enabling certain types of land to be made exempt from rating.

Reasons for and Achievement of the Policy Objectives

Amendment of the Local Government Act 1993 and the City of Brisbane Act 1924

Complaints mechanism regarding competitive neutrality of local government business activities

The Competition Principles Agreement adopted by the Council of Australian Governments in April 1995 requires the application of competitive neutrality reforms to significant government business activities of all local governments provided that benefits outweigh costs to the public. National competition policy also requires a complaints mechanism to ensure that local government business activities that have been subject to competitive neutrality reforms operate according to the principles of competitive neutrality outlined in the Agreement.

Competitive neutrality

The key elements of the Queensland Government's policy on the application of national competition policy to local government were given effect through the *Local Government Legislation Amendment Act 1996* and the *Local Government Legislation Amendment Act 1997* which sets the framework for applying competitive neutrality reforms to the significant business activities of local government.

Chapter 7B of the *Local Government Act 1993* also provides for a Code of Competitive Conduct to apply to certain other business activities of councils (referred to as Chapter 7B business activities). Chapter 7B business activities are defined as business activities that are in direct competition with the private sector. Councils must decide whether or not to apply the Code to Chapter 7B business activities.

In addition, the Code must be applied where local governments are bidding in a competitive tendering process for works on State-controlled and local government roads (referred to as roads business activities). By 1 January 1998, local governments tendering for work on State-controlled roads must apply the Code of Competitive Conduct, and a complaints mechanism must be in place by that date.

The complaints mechanism for local government business activities to which competitive neutrality applies will have elements that apply

differently to different business activities.

Competitive neutrality requires the removal of advantages or disadvantages derived by local government owned business activities that arise solely because of their local government ownership. As a minimum, competitive neutrality requires that the prices charged for services must take account of the full cost of service provision. For example, the price of services must include a component to cover the cost of taxes (or tax equivalents) that would be incurred if the business was not owned by a local government.

There are three options for Councils when applying competitive neutrality principles to their significant business activities. These are full cost pricing, commercialisation and corporatisation. Corporatisation involves establishing a separate legal entity (referred to as a corporatised corporation).

For Chapter 7B business activities and roads business activities, the Code of Competitive Conduct applies competitive neutrality through full cost pricing.

Complaints mechanisms and accreditation process

The Bill provides a framework for local government complaints mechanisms that is based on the processes for complaints regarding the competitive neutrality of State Government business activities, that are handled by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997*. This approach ensures that both State and local government business activities to which competitive neutrality applies, meet similar standards of accountability without requiring unduly burdensome processes.

Local governments can select a suitable mechanism to deal with complaints regarding the competitive neutrality of local government business activities, where those business activities have been subjected to competitive neutrality reforms. For significant business activities and roads business activities, the framework allows local governments to make choices about the mechanism that best suits their local circumstances. These choices are as follows:

Local governments can set up their own complaints mechanisms for

significant business activities and roads business activities. This is a less formal complaint process than that imposed on State Government business activities under the *Queensland Competition Authority Act*. It places the primary onus on the local government itself to resolve complaints regarding these activities (including where such activities are carried on by a corporatised corporation). The process involves a referee appointed by the local government investigating a complaint and making a report to the local government. The local government would then decide whether or not to accept any recommendations made by the referee.

Complainants will be able to refer a complaint to the Queensland Competition Authority if the complainant is not satisfied with the outcome of the local government process. Again, the outcome of the investigation would be a recommendation to the local government and it is the local government which decides what action should be taken.

A local government can decide not to set up its own complaints mechanism for significant business activities and roads business activities and instead to have the Queensland Competition Authority act as a referee to deal with complaints. The Queensland Competition Authority would investigate these complaints and make a report to the local government. The local government would decide whether or not to accept any recommendations made by the Authority.

Local governments may also seek accreditation from the Queensland Competition Authority for their significant business activities or roads business activities. Any business activity with a current accreditation does not require a complaints mechanism. This accreditation process would be the same as that available to State Government business activities under the *Queensland Competition Authority Act 1997*.

For Chapter 7B business activities to which the Code of Competitive Conduct applies, a local government will be required to establish an in-house complaints mechanism. There is no scope for complaints to be referred to the Queensland Competition Authority if the complainant is not satisfied with the outcome of this process. In addition, a local government will not be able to appoint the Queensland Competition Authority as its referee. However, accreditation will be available for these business activities, on the same basis as outlined above for the other business activities.

For any business activity that is subject to a complaint mechanism, there will be a preliminary and informal process where an aggrieved competitor must attempt to resolve concerns with the business activity alleged to be failing to comply with competitive neutrality principles.

Amendment of the *Local Government Act 1993*

Removing the sunset clause—power to enter private property to seize dangerous dogs

The Bill provides for the removal of a sunset clause in section 697 of the *Local Government Act 1993*. This sunset clause applies to provisions inserted in 1994 that gave local governments the power to make local laws enabling authorised officers to enter private property to seize dangerous dogs without giving notice, obtaining the consent of the owner or occupier, or obtaining a warrant.

This was intended to deal with a situation where a dog owner could evade local government officers. Before the 1994 amendments, if a dog mauled a person and then subsequently returned to the owner's property, the local government officers were unable to enter the property without the owner's consent. There were cases where a dog was moved to another property while the local government was obtaining a warrant to seize the animal.

Because of the scope given to local government to significantly extend powers of entry under these provisions, the sunset clause provided for the expiry of this amendment in March 1997. The intention was to evaluate the use of the provisions to determine whether it would be appropriate to retain them. To allow time for a meaningful evaluation of the provisions, the sunset date was subsequently extended to 30 June 1998 by the *Local Government Legislation Amendment Act 1996*.

An evaluation of the provisions commenced in March 1997 involving wide circulation of a discussion paper and questionnaires sent to particular groups (namely local government officers, peak bodies and interest groups and the general public). At the time of the evaluation, nineteen local governments had inserted provisions in their local laws enabling them to enter private property and seize dangerous dogs. Feedback indicates that

there is overall support for the provisions. The community clearly supports the retention of the provisions so that immediate action can be taken to eliminate a safety risk.

Miscellaneous amendments of a minor or technical nature

Minor errors are to be corrected or provisions clarified on a range of matters.

Amendment of the *Local Government (Aboriginal Lands) Act 1978*

Extending the period of the sunset clause relating to the control of alcohol in the Aurukun Shire

The Bill provides for the extension of the sunset clause in section 109 of the *Local Government (Aboriginal Lands) Act 1978*. Provisions of this Act currently provide for the declaration of places in the Shire of Aurukun where the possession or consumption of alcohol is prohibited or controlled.

The Act established the Aurukun Alcohol Law Council comprised of community elders representing recognised traditional land groupings within the Shire. The Law Council can declare certain land as dry or controlled. There are also mechanisms for community participation in decision-making, enforcement and appeal mechanisms.

As the provisions are due to expire on 1 December 1997, there was a review of their implementation. The evaluation identified issues which had contributed to delays in fully implementing the legislation. At the time the review commenced, no areas had been declared under the legislation to be dry or controlled. Since then, strategies have been put in place to address those issues.

The Alternative Governing Structures Program (AGSP), operated by the Department of Families, Youth and Community Care, has provided the Aurukun Shire Council with funds for 12 months' administrative support for the implementation of decisions made by the Law Council. Furthermore, community awareness raising work will be undertaken within the Shire through the AGSP.

A number of decisions of the Law Council have been finalised since the

review of the legislation concluded.

It is therefore proposed to extend the sunset period to 30 June 1999, and to carry out a further review within that time to assess the need for, and usefulness of, the provisions.

Amendment of the *City of Brisbane Act 1924*

Clarification of provisions dealing with rating exemptions

Section 47 of the *City of Brisbane Act 1924* specifies which land is exempt from rating and in particular, section 47(1)(d) provides that land used for public, religious, charitable or educational purposes can be exempted by the Brisbane City Council by resolution.

When these provisions were originally inserted in 1992, the intention at that time was that if land was exempt under this section, it was exempt from all rates (including general rates and separate rates or charges). Utility charges, however, could be applied to such land.

For the 1997-98 financial year, the Brisbane City Council has resolved in its budget that although certain public, religious, charitable and educational land will be exempt from general rating, the environmental management and compliance levy (a separate rate—based on the valuation of land) and the rural fire services levy (a separate charge—not based on a land valuation) will apply to such land.

The approach taken by the Council in relation to certain public, religious, charitable and educational land indicates that the legislation requires amendment to clarify the original intention of the provisions. In this respect, there have also been differences in legal opinion on how these provisions should be interpreted, ie, whether they reflect the original intention of the legislation or permit the strategy adopted by the Council in its current budget.

To redress the situation, it is therefore proposed to explicitly clarify the original intention of the legislation, ie, by reinforcing that where land used for public, religious, charitable or educational purposes is made exempt from general rating by a resolution of the Brisbane City Council, it is exempt from all types of rates (ie general rates and separate rates or

charges), except utility charges.

In effect, in future financial years separate rates or charges such as the environmental management and compliance levy and the rural fire services levy could not be applied to land exempt from general rates.

A further clarifying amendment is also included in the Bill.

Section 47(1)(c) of the *City of Brisbane Act 1924* provides a regulation making power to exempt land from rating. To date, that power has not been invoked by the Governor in Council.

When this provision of *City of Brisbane Act 1924* was inserted in 1992, the amendment was made on the basis that it would enable the Governor in Council to provide for rating exemption of land also used for public, religious, charitable or educational purposes.

Recent legal advice indicates there is some doubt as to whether a regulation can be made with respect to land used for public, religious, charitable or educational purposes.

To reinforce the original intention of the regulation making power, the Bill clarifies these provisions by providing that land used for public, religious, charitable or educational purposes can be made exempt by the Governor in Council from paying rates (including general rates and separate rates or charges) irrespective of whether or not the Brisbane City Council has made a resolution exempting certain allotments or categories of such types of land.

Alternatives to the Bill

The requirements of national competition policy mean that legislation is necessary to establish a complaint mechanism, and that a mechanism be in place by 1 January 1998, when the Code of Competitive Conduct will apply to local governments' competitive bids for works on State-controlled roads. July 1998 is the commencement date for applying competitive neutrality to other business activities. This will provide time for councils to make the necessary arrangements for complaints procedures.

The removal or extension of sunset clauses are essential to preserve the legislative provisions.

The clarification of rating provisions in the *City of Brisbane Act 1924* is necessary to ensure that the original objectives of the provisions are achieved. The clarification of the provisions will also ensure that there is no misinterpretation of the original intention of the provisions.

Administrative Costs to the Government of Implementation of the Bill

The extension of the role of the Queensland Competition Authority may involve extra costs for that organisation, but there are no other additional administrative costs for Government. All costs will be met from the normal operating budget.

Consistency with Fundamental Legislative Principles

The provisions of the Bill dealing with the complaints mechanism are consistent with fundamental legislative principles, and operate to ensure that private sector competitors of a local government business activity to which competitive neutrality principles are applied, are not unfairly disadvantaged.

The deletion of the sunset provision in section 697(5) of the *Local Government Act 1993* preserves in force the power of local governments to make local laws authorising authorised officers to enter onto private property to deal with dangerous dogs without requiring notice or a warrant. This is necessary to allow authorised officers to deal expeditiously with a hazard to public health and safety, and is a measure that enjoys public support. The Act provides that if this local law making power is used and an authorised person does any damage in seizing a dangerous dog, an affected person is entitled to compensation.

The extension of the sunset provision in section 109 of the *Local Government (Aboriginal Lands) Act 1978* allows for the operation for a further 19 months of provisions to allow for control of alcohol in Aurukun Shire. There are mechanisms for control including powers for police officers to search, seize and forfeit alcohol and there are reduced rights for inhabitants of Aurukun Shire to enjoy alcohol in certain places (although appeal rights apply). However, this is a temporary extension to allow for a full evaluation of the operations of this mechanism. This is a culturally specific response provided in accordance with community wishes, and there

is community participation in the operation of the mechanism.

Consultation

Complaints mechanism regarding competitive neutrality of local government business activities

All local governments, all State government departments and agencies and other interested parties were provided with copies of the State Government's policy statement "National Competition Policy and Queensland Local Government" and a Department of Local Government and Planning Issues Paper "National Competition Policy—Local Government in Queensland—Code of Competitive Conduct". A discussion paper with draft legislative proposals was also distributed to all local governments, all State Government agencies and a wide range of interested parties during September 1997. Public submissions have been considered in the preparation of the Bill.

Removing the sunset clause—power to enter private property to seize dangerous dogs

All local governments, 110 peak bodies and community groups and 19 dog clubs were consulted through a discussion paper and questionnaires as part of the evaluation process of the provisions dealing with local government powers in controlling and seizing dangerous dogs.

Extending the period of the sunset clause relating to the control of alcohol in the Aurukun Shire

The following organisations were consulted on the proposal to extend the sunset provisions for a further 19 months until 30 June 1999—

- Aurukun Alcohol Law Council;
- Aurukun Shire Council;
- Attorney General, Minister for Police, Minister for Families, Youth and Community Care.

Clarification of provisions dealing with rating exemptions for Brisbane

The following organisations were consulted during the development of the proposed legislation—

- Brisbane City Council;
- Local Government Association Of Queensland Inc; and
- Roman Catholic Archdiocese of Brisbane.

EXPLANATION OF CLAUSES

PART 1—PRELIMINARY

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 amends section 3(3) by replacing the reference “to 7C” with “to 7D” to refer to the new chapter 7D inserted by this Bill.

Clause 4 amends section 3A by inserting a reference to the new Chapter 7D inserted by this Bill.

Clause 5 reinforces the regulation making power in section 47 to clarify that the Governor in Council can exempt land used for public, religious, charitable or educational purposes in Brisbane irrespective of whether or not the Brisbane City Council has resolved that land which falls within these classes is rate exempt.

Clause 6 inserts a new section 47A to clarify the provisions in section 47 relating to rate exempt land, by providing that where the Brisbane City Council resolves to exempt land used for public, religious, charitable or educational purposes from general rating, the exemption applies to all rates (ie general rates and separate rates or charges). However, utility charges could be levied on such lands if the Council supplied water, sewerage or cleansing services.

Clause 7 amends section 119(3) by requiring particulars of complaints mechanisms to be included in the Brisbane City Council's annual report.

PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Clause 8 provides for the amendment of the *Local Government Act 1993*.

Clause 9 amends section 9(2) by inserting a reference to the new Chapter 7D inserted by this Bill.

Clause 10 amends section 8(1)(aa) by requiring documents open to inspection under Chapter 7D to be open to inspection at the local government's public office.

Clause 11 inserts a new Chapter 7D—Complaints About Competitive Neutrality Matters which contains the following Parts and Divisions.

CHAPTER 7D—COMPLAINTS ABOUT COMPETITIVE NEUTRALITY

PART 1—PRELIMINARY

458O Object of ch 7D. The object of the new chapter is to provide for local governments to establish mechanisms for referees to hear complaints about local government business activities failing to comply with competitive neutrality principles, and for certain complaints to be referred to the Queensland Competition Authority. The object is to also provide for local governments to make decisions on recommendations either from the referee or the Queensland Competition Authority. The object is to also provide for an accreditation process by the Queensland Competition Authority for local government business activities that are complying with competitive neutrality.

458O Application of ch 7D. This section provides that chapter 7D applies to the activities of a local government business entity (which can be either a local government carrying out business activities or a corporatised corporation of a local government). It applies when that entity:

- is a corporatised corporation (ie, a Local Government Owned Corporation under Chapter 7A, Part 6); or
- implements:
 - full cost pricing under Chapter 7A, Part 4;
 - commercialisation under Chapter 7A, Part 5; or
 - the code of competitive conduct under Chapter 7B.

This is subject to:

- section 458OD which provides that business activities accredited by the Queensland Competition Authority as complying with competitive neutrality principles are not required to have a complaints process;
- section 458P which provides that only complaints regarding significant business activities (under chapter 7A) to which competitive neutrality reforms under that chapter apply or roads business activities (under chapter 7B) may be referred to the Queensland Competition Authority;
- section 458Q which provides that a local government's significant business activities (under chapter 7A) and business activities and roads business activities (under chapter 7B) may be

accredited; and

- part 2, division 6 which provides that the local government can chose to use the Queensland Competition Authority as a referee only for a local government’s significant business activities (under chapter 7A) and roads business activities (under chapter 7B).

If reforms under Chapter 7A are not applied to a significant business activity, or if the code of competitive conduct is not applied to a business activity under Chapter 7B, a complaints process is not required.

458OB Application to Brisbane City Council This provides that Chapter 7D applies to Brisbane City Council.

458OC Definitions for ch 7D This defines the terms “affected person”, “applicant”, “competitive advantage”, “competitive neutrality principles”, “complaint”, “complaint process”, “corporatised corporation”, “investigation notice”, “local government business entity”, “Queensland Competition Authority”, “referee” and “reference”.

“Affected person” is defined under section 458OE.

“Applicant” in relation to complaints about alleged failures of competitive neutrality under Parts 2 and 3 of this chapter, means a person who makes a complaint under a local government’s complaint process. In relation to accreditation of local government business activities under Part 4 of this chapter, it means a local government business entity which applies for accreditation of a business activity.

“Competitive advantage” is a business advantage of a local government business activity that is solely due to local government ownership. It can be:

- a financial advantage, in that the entity is exempt from a local government charge;
- a regulatory advantage, in that the entity is not required to obtain a local government approval;
- a procedural advantage, in that the entity is not obliged to supply the same level of information; or
- any other advantage.

It does not include an advantage such as the size of the business entity, its location, or skilled work force that does not arise purely because local government ownership.

“Competitive neutrality principles” are separately defined for each of the four different categories of business activity set out in chapters 7A and 7B in the *Local Government Act 1993*:

- significant business activities operating under full cost pricing;
- activities of a commercial business unit;
- activities of a corporatised corporation; and
- activities to which the code of competitive conduct applies.

These principles are already defined in chapters 7A and 7B in the *Local Government Act 1993* and are further amplified by the amendments to the Local Government Finance Standard (LGFS) defining the code of competitive conduct.

“Complaint” is a complaint under a local government complaint process.

“Complaint process” is the process established by a local government for an activity carried on by a local government business entity where competitive neutrality principles apply.

“Corporatised corporation” is defined in Part 6, chapter 7A.

“Investigation notice”, in relation to notices issued by a referee investigating a complaint about alleged failures of competitive neutrality, is defined in section 458OM. A notice issued by the Queensland Competition Authority in relation to a reference, is defined in section 458OM as applied by section 458PF. A notice in relation to investigating an accreditation application is defined in section 458QC.

“Local government business entity” means either a corporatised corporation, or a local government, to the extent that it carries on activities to which Chapter 7D applies—such as a commercial business unit of a local government.

“Queensland Competition Authority” is the Authority established under the *Queensland Competition Authority Act 1997*.

“Referee” is the person appointed by the local government to investigate complaints. Under section 458OZB, the Queensland Competition Authority can be a referee.

“Reference” is a reference to the Queensland Competition Authority under Part 3.

PART 2—COMPLAINT PROCESS FOR LOCAL GOVERNMENT BUSINESS ENTITIES

Division 1—Preliminary

458OD Application of pt 2 The requirement for a local government complaints mechanism under Part 2 does not apply to a local government business activity to which competitive neutrality principles apply so long as there is a current accreditation granted by the Queensland Competition Authority. An accreditation states that the activity is complying with competitive neutrality principles.

Any other business activities of the local government that are not accredited and to which competitive neutrality principles apply, must have a complaints process available. If an accredited activity loses its accreditation, the requirement for a complaints process will apply as soon as the accreditation is lost.

458OE Affected persons Complaints can only be made by affected persons. An affected person is a person who currently is, or who may in the future be, adversely affected by a financial, regulatory, procedural or other advantage alleged to be enjoyed by the local government business entity over its competitors solely because of the local government ownership of that business activity. The person must be actually competing with the entity alleged to have a competitive advantage, or be hindered from competing by the alleged competitive advantage of the local government business entity.

Division 2—Complaints about competitive neutrality

458OF Local government to establish complaint process A local government must set up a process to resolve complaints about compliance with the relevant competitive neutrality principles applying to a significant business activity under Chapter 7A, or a business activity or roads business activity under Chapter 7B. This process must be adopted by a resolution of the council.

458OG Requirements for complaint process This section provides that there are a number of elements a local government must include in its complaint process. There are two components—formal and informal:

- the informal process is set up by the local government to provide an avenue for an affected person to attempt to resolve concerns about competitive neutrality with the relevant business activity before proceeding to a formal complaint; and
- the process for making a formal complaint to be investigated by a referee under this legislation. The following elements must be part of the formal process:
 - a process to select and appoint referees (eg, referees may be appointed on a full time basis according to a set process, or a local government may have a process to appoint a referee once a complaint is received). A person appointed as a referee must not be involved in the business activity that is the subject of the complaints process;
 - how complaints are to be made;
 - a process for hearing complaints;
 - advising relevant parties about procedures;
 - obtaining further information;
 - keeping records about complaints (the requirement that the local government record details of all complaints, referees' decisions and recommendations applies);
 - the times for producing reports on complaints; and

- any other matter the local government considers relevant; and
- the charging of a fee (up to a maximum set by regulation).

458OH Grounds for complaint A complaint can only be made on the grounds that a local government business entity in carrying on an activity is not complying with the relevant competitive neutrality principles that apply to the activity.

458OI Effect of complaint on activities Once a complaint has been made about a business activity, the local government business entity can continue to carry on the activity pending a decision by the local government on the referee's report.

458OJ Referee to act fairly A referee must act fairly and impartially.

458OK Matters to be considered by referee on complaint A referee must have regard to the following when investigating complaints:

- the relevant competitive neutrality principles that apply to the business activity (as defined in section 458OC under “competitive neutrality principles”);
- efficient resource allocation;
- a general requirement to promote competition (which would be met by a local government business activity operating under the relevant competitive neutrality principles, that is, operating on a fair basis without relying on advantages solely due to local government ownership);
- any policies that the local government chooses to make that affect the application of competitive neutrality principles (including directions or arrangements with a local government business activity; and policies about social welfare or equity, about regional development or about supporting local economic development or protecting local employment);
- any law (including a local law) or local government policies about ecologically sustainable development, occupational health and safety or industrial relations; or
- any other matters;

and may have regard to consumer interests.

When considering any complaint the referee must consider whether the local government business activity has dealt separately and individually with any competitive advantages and disadvantages of that activity that are due to local government ownership. The referee must look to whether the business activity has dealt with the advantages and disadvantages. Examples are:

- removing or countering by way of proxy (eg tax equivalents);
- if not able to be removed, quantified (and set out in a formal arrangement) and adjustments made to the cost base; or
- if not able to be quantified, borne without adjustment.

If a complaint is substantiated, a referee cannot justify retention of a competitive advantage by trading it off against a competitive disadvantage applying to the activity solely because of local government ownership.

Division 3—Investigation of complaints

458OL Requirement of referee to investigate A referee's investigation is not required if the local government business activity has a current accreditation from the Queensland Competition Authority.

Otherwise, a referee is required to investigate a complaint unless the referee (on the basis of applicable competition legislation, the complainant's business or any other relevant matter) believes that the complainant:

- is not a present or potential competitor;
- is not currently or potentially adversely affected by the alleged failure of the activity to comply with competitive neutrality principles that apply to the activity;
- has not genuinely attempted to resolve the matter through preliminary procedures referred to in section 458OG;
- has not supplied information requested by the referee;

- has made a frivolous or vexatious complaint.

If a referee decides not to investigate a complaint, there is no requirement to prepare a report on the complaint, but the referee must notify the applicant and the local government in writing, stating the reasons for the decision not to investigate the complaint.

458OM Investigation notice If a referee decides to investigate a complaint, the referee must first notify the following of the intention to investigate:

- the applicant;
- the local government;
- if the business activity is being carried on by a corporatised corporation, the corporation; and
- any other appropriate person.

The investigation notice must indicate where the referee can be contacted, the substance of the complaint, and invite submissions to be made within a reasonable time (which under section 458OO may be by oral submission).

458ON Effect of giving an investigation notice Once a notice is given under section 458OM, a referee must proceed to investigate and report on the matter.

458OO General procedures A referee is required to act with natural justice but can use informal procedures without regard to legal technicalities or rules of evidence. A referee may seek information in any way or from any persons the referee considers appropriate, and may ask for either written or oral submissions.

458OP Consideration of submissions Any submissions responding to an investigation notice and received within the specified period must be considered by a referee. Submissions must be written unless otherwise stated in the investigation notice under section 458OM.

458OQ Handling of documents A referee may inspect, make copies or retain copies of submitted documents while it is necessary for the investigation (subject to allowing the owner of the document reasonable access to inspect or copy a document as necessary).

458OR Confidential information A person may request a referee to keep confidential any information provided to a referee that the person believes is confidential or believes that disclosure will damage their commercial activities. The referee must take reasonable steps to ensure the information remains confidential. Access may be given to those persons assisting the referee in investigating the complaint. The referee must return the document to its owner as soon as practicable after the referee's report is given.

Division 4—Reports on complaints

458OS Giving of reports A referee must report to the local government (and if relevant, the local government's corporatised corporation) on the outcome of the investigations. A referee must also notify every person who received an investigation notice under section 458OM, that a report has been produced, and provide those persons with a copy of the recommendations and information on where the full report can be inspected.

A referee's report can be a single report or multiple reports.

458OT Contents of reports A referee's report must state whether the complaint has been substantiated and provide reasons for any recommendations. If the referee finds non-compliance with competitive neutrality, the report should state why this is so and recommend how the business activity should comply with the competitive neutrality principles that apply to it. If the referee finds that the local government business activity is suffering a competitive disadvantage, the report should state why this is so and recommend how it may be addressed.

458OU Reports open to inspection A local government, as soon as practicable after it receives a referee's report, must make it open to inspection.

Under section 8 of the *Local Government Act 1993*, any person can inspect, make copies of, or take extracts from the copy of the report which will be held in the local government's public office. The local government

may, if it chooses, provide a copy or allow a person to take a copy (eg, by a photocopier) at a reasonable fee.

458OV Local government decisions on recommendations The local government must resolve whether or not to implement the recommendations in the report. The resolution must include the reasons for the decision. The resolution must be made within a month of the local government receiving the report, or at the first meeting after receiving it if there is no meeting within the month.

Under Chapter 6 of the *Local Government Act 1993* the local government would make its resolution by open voting, in a meeting open to the public, with minutes of the meeting to be open to public inspection within 10 days of the meeting and available to purchase once they have been confirmed at a subsequent council meeting.

Section 458OV also provides that within 7 days of the resolution, the local government must notify the applicant and if applicable, the corporatised corporation of the local government. In the case of a corporatised corporation, the parent local government could give a direction to implement competitive neutrality principles by altering the statement of corporate intent or by giving a direction in the public interest under section 458IB. A direction to the corporatised corporation can include a direction to a subsidiary.

For significant business activities under Chapter 7A and roads business activities under Chapter 7B, the notice to the complainant should include information about the process for making a further reference to the Queensland Competition Authority should the applicant be dissatisfied with the outcome of the complaint.

Division 5—General provisions about complaints process

458OW Disposal of documents held by referee Once the referee has made a report, the referee must return any documents to the chief executive officer of the local government. The documents are then treated as documents of the local government. The exception to this is any documents

identified by the supplier as confidential information, which under section 458OR the referee must return to the supplier.

458OX Protection from liability of referee or person assisting referee Where a referee or a person assisting a referee is a local government employee, any civil liability that would otherwise attach to them for any act or omission made honestly and without negligence, will attach instead to the local government.

458OY Protection from liability of person giving information to referee A person who provides information to a referee in good faith is not liable for any loss or damage to another person because of the provision of that information.

458OZ Secrecy A person who is now, or was in the past, a referee or a referee's assistant must not make records of, or disclose protected information about, a person or a local government business entity acquired in the course of duties. This rule is not applied where the making of a record or disclosure of information is:

- required in the course of duties by an referee's investigation; or
- consented to by the relevant parties.

It also does not apply if the information is already publicly available.

458OZA Draft reports A referee may give draft reports to whoever the referee considers appropriate.

Division 6—Provisions for Queensland Competition Authority as referee

459OZB Local government may resolve Queensland Competition Authority to be referee A local government can resolve to use the Queensland Competition Authority as its referee for a significant local government business activity (under Chapter 7A) or a roads business activity (under Chapter 7B). The local government must notify the Queensland Competition Authority in writing of its decision. If a local government becomes aware a person intends to make a complaint in these

circumstances, the local government must advise the person that the complaint must be made to the Authority. The local government must also provide persons wishing to make a complaint to the Queensland Competition Authority sufficient information to make the complaint, eg, advising of the procedures under section 458OZD.

458OZC Application of complaints process Certain provisions of section 458OG (which stipulate minimum requirements for a local government complaints mechanism) do not apply when the Queensland Competition Authority is to be the referee.

458OZD Making a complaint A complaint to the Queensland Competition Authority must be in writing and provide sufficient detail about the alleged failure to comply with competitive neutrality. It must show how an applicant was adversely affected and whether the applicant was, or could be, in competition with the local government business entity. It must also indicate how the applicant has attempted to resolve his/her concerns with the local government business entity using the preliminary procedures set up by the local government under section 458OG.

458OZE Further information to support complaint Where the Queensland Competition Authority acts as the referee for complaints about a local government business activity, the Authority can issue a written notice requiring an applicant to provide further information about the complaint within a reasonable time, so that the Authority can decide whether or not to investigate the complaint.

458OZF Application of part and Queensland Competition Authority Act 1997 Where the Queensland Competition Authority acts as referee, it operates under Part 6, Part 9 and sections 236-241 and 243 of the *Queensland Competition Authority Act 1997* (with some necessary changes in terminology). Certain provisions of Chapter 7D (that parallel the provisions in the *Queensland Competition Authority Act 1997*) do not then apply to the Queensland Competition Authority.

458OZG Local government decisions on recommendations When a local government resolves to use the Queensland Competition Authority as the referee for an activity, the local government must notify the Authority within 7 days.

PART 3—REFERENCES TO QUEENSLAND COMPETITION AUTHORITY

Division 1—Application of part

458P Application of pt 3 Only complaints in relation to the competitive neutrality of significant business activities (under chapter 7A) or roads business activities (under chapter 7B) may be referred to the Queensland Competition Authority. Complaints in relation to business activities under chapter 7B or business activities with a current accreditation may not be referred to the Queensland Competition Authority. Where the Queensland Competition Authority acted as a referee there is no further review by the Queensland Competition Authority under this part.

Division 2—Institution of reference

458PA Reference of outcome of complaint to Queensland Competition Authority A complainant may make a reference to the Queensland Competition Authority, after a referee's decision not to investigate a complaint or after a local government has made its decision about a referee's report on a complaint. Grounds for a reference are that:

- the local government's complaint process is inappropriate;
- the referee's decision not to investigate a complaint did not accord with the facts;
- the referee's recommendation did not accord with the facts or the relevant competitive neutrality principles;
- the referee's recommendation was deficient because the local government business entity withheld relevant information requested by the referee; or
- the decision of the local government on the referee's recommendation did not accord with the competitive neutrality principles applying to the activity.

458PB Making a reference A reference must be in writing and contain details of the complaint. For complaints about an inappropriate complaint mechanism, the reference must include the reasons why the mechanism is inappropriate and how this adversely affected the complainant. The reference must detail how the applicant is adversely affected by the alleged failure to apply competitive neutrality principles and how the applicant and the local government business entity are in, or could be in, competition.

458PC Request for referee's documents The Queensland Competition Authority may make a written request for documents held by the local government's chief executive officer under section 458OW, and the chief executive officer must supply the documents as soon as practicable.

458PD Further information to support reference The Queensland Competition Authority may make a written request to the applicant to supply further information that is needed for the Authority to decide whether or not to deal with a reference. Any such request must relate to the information that is necessary and reasonable to enable the Authority to decide whether to conduct an investigation.

458PE Matters to be considered by Queensland Competition Authority in considering reference For references on all grounds other than the local government complaint process is not appropriate, the Queensland Competition Authority must have regard to the same matters the referee would have regard to in considering the complaint (section 458OK).

458PF Procedures for dealing with references The following provisions of Part 2 apply to the Queensland Competition Authority when considering a reference:

- section 458OI (Effect of complaint on activities);
- section 458OJ (Referee to act fairly);
- section 458OL (Requirement of referee to investigate)
- section 458OM (Investigation notice);
- section 458ON (Effect of giving investigation notice).

The provisions of Part 6, Part 9 and sections 236-241 and 243 of the *Queensland Competition Authority Act 1997* also apply to the Authority (with some necessary alterations to the terminology). These provide for the general conduct of investigations including holding public seminars, handling submissions, holding hearings, handling documents and confidential information, offences, secrecy, draft reports, and delegation of Queensland Competition Authority powers.

Division 3—Reports of Queensland Competition Authority about references

458PG Giving of reports The Queensland Competition Authority must report to the local government (and if relevant, the local government’s corporatised corporation) on the outcome of its investigations. It must also notify every person to whom an investigation notice was given, that it has produced a report, and provide those persons with a copy of its recommendations and information on where the full report can be viewed and copied.

The Authority can produce a single report or multiple reports.

458PH Contents of reports The report of the Queensland Competition Authority must state whether the complaint has been substantiated and provide reasons for any recommendations. If the reference alleges inadequacies in the local government complaint process, the report should comment on the appropriateness of the process used. If the Authority finds non-compliance with competitive neutrality, the report should recommend how the business activity should comply with competitive neutrality principles, and if the Authority finds that the local government business activity is suffering a competitive disadvantage, the report should note this and recommend how this may be addressed.

458PI Reports open to inspection A local government, as soon as practicable after it receives the Queensland Competition Authority’s report, must make it open to inspection.

Under section 8 of the *Local Government Act 1993*, any person can

inspect, make copies of, or take extracts from the copy of the report which will be held in the local government's public office. The local government may, if it chooses, provide a copy or allow a person to take a copy (eg by a photocopier) at a reasonable fee.

458PJ Local government decisions about reports The local government must resolve whether or not to implement the recommendations in the report. The resolution must include the reasons for the decision. The resolution must be made within a month of the local government receiving the report, or at the first meeting after receiving it if there is no meeting within the month.

Under Chapter 6 of the *Local Government Act 1993* the local government would make its resolution by open voting, in a meeting open to the public, with detailed minutes of the meeting to be open to public inspection within 10 days of the meeting and available to purchase once they have been confirmed at a subsequent council meeting.

Within 7 days of making the decision, the local government must give written notice of its resolution to the applicant, the Queensland Competition Authority, and if applicable, to the corporatised corporation.

In the case of a corporatised corporation, the parent local government could give a direction to implement competitive neutrality principles by altering the statement of corporate intent or a direction in the public interest under section 458IB. A direction to the corporatised corporation can include a direction to a subsidiary. A corporation must implement any such direction from the local government as soon as practicable.

PART 4—ACCREDITATION

458Q Application of pt 4 A local government's significant business activities under chapter 7A and business activities and roads business activities under chapter 7B may be accredited.

458QA Purpose of accreditation Accreditation of a local government's business activity by the Queensland Competition Authority is

a certification that the business activity operates in accordance with the relevant principles of competitive neutrality for that activity.

458QB Application for accreditation A local government business entity may apply to the Queensland Competition Authority for accreditation of a specific business activity using the form prescribed by the Authority. The Authority may (but is not bound to) investigate an application to decide whether to accredit the activity.

458QC Investigation notice Before the Authority commences an investigation of an application for accreditation it must give reasonable notice of its investigation to the applicant, the local government (if the applicant is a corporatised corporation) or other appropriate persons. It must request written or oral submissions within specified times and supply details of its address.

458QD Matters to be considered by authority for investigation When investigating an application for accreditation, the Queensland Competition Authority considers the same matters applicable to the complaints process. These are:

- the relevant competitive neutrality principles that apply to the business activity (as defined in section 458OC under “competitive neutrality principles”);
- efficient resource allocation;
- a general requirement to promote competition (which would be met by a local government business activity operating under the relevant competitive neutrality principles, that is, operating on a fair basis without relying on advantages solely due to local government ownership that are not available to private sector competitors);
- any policies that the local government chooses to make that affect the application of competitive neutrality principles (including directions or arrangements with a local government business activity; policies about social welfare or equity, about regional development or about supporting economic development in the local area);
- laws (including local laws) or local government policies about

ecologically sustainable development, occupational health and safety or industrial relations; or

- any other matters;

and may have regard to consumer interests. In addition, the Queensland Competition Authority cannot accept advantages by trading them off against disadvantages suffered by the activity.

458QE Procedures for investigations When investigating an application for accreditation, the Queensland Competition Authority operates under Part 6, Part 9 and sections 236-241 and 243 of the *Queensland Competition Authority Act* which deal with the general conduct of investigations including holding public seminars, handling submissions, holding hearings, handling documents and confidential information, offences, secrecy, draft reports, and delegation of Queensland Competition Authority powers.

458QF Decision on application After considering the relevant competitive neutrality principles, the Queensland Competition Authority must grant accreditation for the business activity if the Authority finds the activity is in accord with those principles. The Authority must refuse accreditation if the business activity is not in accord with the principles, and may refuse accreditation if the applicant has failed to provide information requested by the Authority.

458QG Conditions on grant of accreditation Any accreditation must be subject to continued compliance with the relevant competitive neutrality principles and the requirement that the applicant advise the Queensland Competition Authority of any change in structure or operations that affect compliance with the principles. The Queensland Competition Authority may also impose any other conditions considered necessary. These conditions may include a requirement to provide information to the Authority, either from time to time or at set intervals, that will enable the Authority to decide whether it is appropriate to continue the accreditation. For example, the business entity carrying out the accredited activity may be required to collect data on informal complaints lodged or problems experienced and provide them to the Authority when re-accreditation is being sought.

458QH Notice of decision Where the Queensland Competition

Authority grants accreditation it must notify the applicant and if the applicant is a corporatised corporation, its local government, of the period of accreditation, any conditions and the reasons for the imposition of conditions. Accreditation is for a maximum of 2 years but is renewable.

Where accreditation is denied the notification must include reasons for the decision.

458QI Publication of decision The Queensland Competition Authority must publish a notice of any grants of accreditation in the Government Gazette.

458QJ Period of effect of accreditation An accreditation is in force for the period stated in the notice to the applicant, unless it is cancelled by the Queensland Competition Authority or surrendered by the applicant at an earlier time.

458QK Surrender of accreditation An accreditation may be surrendered by a written notice to the Queensland Competition Authority and takes effect on the date of receipt of the notice or at a later time stated in the notice.

458QL Cancellation of accreditation The Queensland Competition Authority may cancel an accreditation if a condition has been broken. The process for cancellation includes a show cause notice to the relevant business entity and consideration of submissions by the Authority. If the Authority decides to cancel the accreditation, it must give written notice to the local government and if relevant, the local government's corporatised corporation. The cancellation takes effect on the date of receipt of the notice or at a later time stated in the notice.

458QM Lists of accreditations The Queensland Competition Authority must keep a list available for public inspection, of all current accreditations of local government business activities.

PART 5—MISCELLANEOUS

458R Register of accreditation, complaints etc A local government must keep a register of its local government business activities including any activities currently accredited to which the complaint process does not apply. The register must also contain information regarding any complaints where the referee has proceeded to investigate or where they have been referred to the Queensland Competition Authority, the local government decision on any recommendation, and any activities for which the Queensland Competition Authority is the referee. It must show the activities to which competitive neutrality principles apply. The register is open to inspection.

Under section 8 of the *Local Government Act 1993*, any person can inspect, make copies of, or take extracts from the copy of the report which will be held in the local government's public office. The local government may, if it chooses, provide a copy or allow a person to take a copy (eg by a photocopier) at a reasonable fee.

458RA Annual report to include summary of complaints and decisions by local government A local government's annual report must include a summary of all complaints received where the referee has proceeded to investigate, and the local government's decisions on the recommendations of the referee or of the Queensland Competition Authority. It must also include a list of all currently accredited business activities to which the complaints process does not apply.

Clause 12 amends section 697 by deleting subsection (5) which contain a sunset clause that, if left in place, would expire the provisions on 30 June 1998 which allow local governments to make local laws enabling authorised officers to enter private property to seize dangerous dogs without notice, warrant or the consent of the owner or occupier.

PART 4—AMENDMENT OF LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978

Clause 13 provides that Part 4 amends the *Local Government (Aboriginal Lands) Act 1978*.

Clause 14 amends section 109 by extending a sunset clause for 19 months (ie from 1 December 1997 until 30 June 1999). The sunset clause would otherwise expire provisions for a community based framework managing the prohibition or restriction of alcohol possession or consumption in certain places in Aurukun Shire.

SCHEDULE**MINOR AMENDMENTS OF LOCAL GOVERNMENT
ACT 1993**

These minor amendments are to sections 450, 458CA(1)(b), 458CH(2)(a)(ii), 458FL and 459LE and are administrative in nature and to ensure that the intentions of provisions are clear.