

LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL 1997

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* to provide for:

- (a) decision-making by councils on public benefit assessments of Type 1 and Type 2 business activities currently being undertaken;
- (b) identification by councils of new Type 1 and Type 2 business activities in future financial years;
- (c) a framework for the application of corporatisation, commercialisation or full cost pricing to significant business activities;
- (d) identification by councils of other business activities and for decisions to be made by councils about whether the Code of Competitive Conduct should be applied;
- (e) application of the Code of Competitive Conduct to roads business activities of local governments;
- (f) identification and review by councils of anti-competitive provisions in local laws; and,
- (f) the application to certain local governments of elements of the Council of Australian Governments (COAG) water resource policy relating to urban water services.

Unless otherwise specified, “the Act” refers to the *Local Government Act 1993*.

Reasons for and Achievement of Objectives

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 each State to publish a statement on how a number of the reform elements (including the competitive neutrality element) would be applied to local government.

The Queensland Government released a Policy Statement in July 1996 on the application of NCP to local government.

To commence the implementation process, legislation was passed in November 1996 to require seventeen councils with the largest local government business activities to assess by 30 June 1997 the costs and benefits of applying competitive neutrality reforms (ie corporatisation, commercialisation and full cost pricing).

The Bill requires the seventeen councils to make decisions on public benefit assessments of their significant business activities currently being undertaken. These significant business activities are those with annual current expenditure in excess of \$5 million in 1992/93 terms. The Bill also requires councils to identify any future business activities that grow to a sufficient size to justify assessment for reform.

In addition, the Bill provides a framework for the application of corporatisation, commercialisation and full cost pricing to significant business activities of local government.

Corporatisation involves the restructuring of a business activity so that it operates on a commercial basis as a separate legal entity while remaining under local government ownership.

Commercialisation involves the operation of a business activity on a commercial basis as far as possible within the legal auspice of the local government.

Full cost pricing involves a significant business activity charging prices for goods and services which take account of the full cost of service delivery.

The legislative framework is largely based on the framework at the State level, adapted for the local government context.

The July 1996 Policy Statement foreshadowed the application of a largely voluntary Code of Competitive Conduct for Type 3 activities, that is, smaller business activities of councils which are in direct competition with the private sector. The Bill requires councils to identify Type 3 activities and gives them the discretion to make decisions on applying the Code. The Code involves the application of competitive neutrality principles, including adjustments to take account of the advantages and disadvantages of local government ownership.

However, the Bill provides for the mandatory application of the Code where a council bids in a competitive tendering process for work on State roads. The Code will also be mandatory when a council lodges a competitive tender with another council for work on its roads or a council calls for competitive tenders for roadworks and submits an in-house bid.

NCP also requires the review of legislation for anti-competitive provisions, with a view to reforming these provisions unless they can be justified on public benefit grounds. The Bill requires councils to identify anti-competitive provisions in local laws (by July 1997 for the seventeen councils referred to above), and requires all councils to review them by July 1999.

The Bill also provides for the application of elements of the 1994 Council of Australian Governments (COAG) water resource policy which will be focused on the water supply and sewerage services of the seventeen largest councils.

Queensland stands to gain an additional \$2.3 billion from the Commonwealth over 9 years if the NCP and related reforms (including the COAG water reforms) are implemented. The Government recently announced a financial incentive package of up to \$150 million to Queensland local governments implementing NCP and related reforms.

Alternatives to the Bill

The Bill is essential if Queensland is to meet its obligations under the NCP agreements and be eligible for the Commonwealth's special NCP funding.

Administrative Costs to Government of Implementation of Bill

The proposals will not have any financial impact on the State other than the cost of preparing the legislation. The cost of training local government officers in the implementation of national competition policy will be met by a proportion of the Commonwealth's competition payments.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles.

Consultation

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

- Local Government Association of Queensland Inc.
- All Queensland local governments in regard to parts of the Bill, and the following local governments and other agencies in particular in relation to the framework for applying competitive neutrality:
 - Brisbane City Council
 - Caboolture Shire Council
 - Cairns City Council
 - Caloundra City Council
 - Gold Coast 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
- Townsville City Council
- Auditor-General
- Local Government Superannuation Board

EXPLANATION OF CLAUSES

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for a number of provisions to commence on proclamation.

PART 2—AMENDMENT OF CITY OF BRISBANE ACT 1924

Clause 3 provides for part 2 to amend the *City of Brisbane Act 1924*.

Clause 4 amends section 3 (Interpretation) by providing for the meaning of certain terms that relate to applied provisions of the *Local Government Act 1993*.

Clause 5 amends section 3A (Application of the Local Government Act) by inserting a reference to additional parts of the *Local Government Act 1993* that will apply to the Brisbane City Council.

Clause 6 amends section 22 (Remuneration of mayor and councillors) by providing for the remuneration of councillors who are directors of local government owned corporations and councillors who are shareholder's delegates.

Clause 7 amends section 39B (Delegation) by providing that this section cannot be used by the council to delegate its powers as shareholder of an LGOC under chapter 7A, part 6 of the *Local Government Act 1993*.

Clause 8 amends section 39C (Council register) by providing that the council's register of delegations must include the appointment of shareholder's delegates for an LGOC and any delegations made by the shareholder's delegates.

Clause 9 amends section 108 (Content of budget documents) by inserting a provision requiring the identification in the council's budget of each of its commercial business units, its significant business activities carried out on the basis of full cost pricing and its water and sewerage services if not corporatised.

Clause 10 amends section 116 (Preparation of annual financial statements) by providing that the annual financial statements of the council must include information on its commercial business units and its significant business activities to which full cost pricing has been applied.

Clause 11 amends section 119 (Annual report) by providing that appointments under section 458GM of the *Local Government Act 1993* of shareholder's delegates for LGOCs must be included in the council's annual report.

Clause 12 amends section 127 (Financial management standards) by providing that a regulation may make standards about the application of full cost pricing, commercialisation, corporatisation, and the code of competitive conduct to the Brisbane City Council's significant business activities. A regulation may also make standards about requirements for water and sewerage services of the council or its corporatised corporation to which the *Local Government Act 1993*, chapter 7C applies.

PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Clause 13 provides for part 3 and the schedule to amend the *Local Government Act 1993*.

Clause 14 provides for the amendment of section 4 (Definitions).

Clause 15 amends section 7 (Meaning of “material personal interest”) by providing the circumstances where a councillor or council employee who is a director of a significant business entity has a material personal interest in relation to the entity.

Clause 16 amends section 8 (Meaning of “open to inspection”) by providing that a document which is required to be open to inspection under chapter 7A, 7B or 7C must be held in the local government’s office.

Clause 17 amends section 9 (Act applies only so far as expressly provided) by inserting a reference to additional parts of the *Local Government Act 1993* that will apply to the Brisbane City Council.

Clause 18 amends section 10 (How local government Acts apply to Brisbane City Council) by providing the meaning of certain terms in relation to the application of parts of the *Local Government Act 1993* to the Brisbane City Council.

Clause 19 provides that chapter 3 part 2A expires on 1 July 1997, but that the boundaries of the divisions of the amalgamated Gold Coast area made under a regulation under part 2A continue to have effect until the boundaries are otherwise changed under this Act.

Clause 20 inserts a new section 173A which requires that a councillor on becoming a director of the local government’s corporatised corporation contrary to section 458FE, ceases to be a councillor.

Clause 21 amends section 386 (Delegation by local government) by providing that this section cannot be used by a council to delegate its powers as shareholder of an LGOC under chapter 7A, part 6 and that a council’s register of delegations must include the appointment of shareholder’s delegates for an LGOC and any delegations made by the shareholder’s delegates.

Clause 22 amends section 416 (Issue of standards) by providing that standards may be made about full cost pricing, commercialisation, corporatisation, the code of competitive conduct, and the reform of water and sewerage services.

Clause 23 amends section 417 (Standards to be complied with) by providing that a significant business entity (including a corporatised corporation) must comply with the standards.

Clause 24 amends section 434 (Content of operating fund budgets) by providing that a council's budget must identify significant business activities that are subject to commercialisation or full cost pricing or that are water and sewerage services subject to chapter 7C (unless corporatised).

Clause 25 amends section 450 (Content of report about other issues of public interest) by requiring the annual report of a council to contain particulars of appointments during the year of shareholder's delegates for LGOCs under section 458GM.

Clause 26 provides for the renumbering of sections 458B to 458M of the Act.

Clause 27 sets out the additional definitions under chapter 7A.

Clause 28 inserts a new part 2A in chapter 7A of the Act which provides a process for the identification of new type 1 and 2 business activities.

PART 2A—IDENTIFICATION OF NEW TYPE 1 AND 2 BUSINESS ACTIVITIES

Section 458AC provides that, before the end of each financial year, the Minister must, after consultation with the Local Government Association of Queensland, decide the "threshold amounts" for identifying a business activity as a new type 1 or 2 business activity. This section provides the basis for calculating the threshold amounts for a new type 1 or 2 business activity, and requires the threshold amounts to be published in the gazette in the financial year in which they are decided.

Section 458AD requires a local government to identify any new type 1 and 2 business activities, based on the relevant threshold amounts, as soon as practicable after its budget meeting for a financial year.

Section 458AE requires a local government to advise the Minister in writing as soon as practicable after deciding that a business activity is a new type 1 or 2 business activity.

Clause 29 amends the heading for chapter 7A, part 3.

Clauses 30 and 31 provide for the matters to be addressed in a public benefit assessment of significant business activities. The assessments may consider different reforms for separate parts of the activity, and a series of reforms for the whole or part of the activity.

Clause 32 provides that part 6 applies to the corporatisation of a significant business activity.

Clause 33 provides that part 5 applies to the commercialisation of a significant business activity.

Clause 34 provides that part 4 applies to the application of full cost pricing to a significant business activity.

Clause 35 provides that a report of a public benefit assessment may recommend different reforms for separate parts of a business activity, and a series of reforms for the whole or part of the activity.

Clause 36 provides that a local government may resolve to undertake a public benefit assessment for an activity even if it is not a significant business activity. If a local government decides to take such action, this chapter (other than certain specified sections) applies to that activity as if it were a type 2 business activity.

Clause 37 provides that if reforms are recommended in a report and a local government resolves not to apply any of the reforms under chapter 7A, it must ensure that a fresh public benefit assessment is undertaken and a report prepared within three years after the end of the financial year in which the original report was presented to the local government.

Clause 38 provides timeframes for the completion of public benefit assessment reports of type 1 and type 2 business activities, and new type 1 and 2 business activities.

Clause 39 inserts a new chapter 7A, part 3, division 4, and parts 4 to 6, and chapters 7B and 7C.

Division 4—Action to be taken on public benefit assessment reports

Section 458BK sets out the objects of the division.

Section 458BL requires a local government to give public notice of a public benefit assessment report and outlines the requirements for doing so.

Section 458BM sets out the requirements for a local government to provide public access to the public benefit assessment report.

Section 458BN provides a timeframe for a local government to make a decision, by resolution, on whether or not to implement reforms under chapter 7A. If a local government decides not to implement any of the reforms recommended in the public benefit assessment report, it is required to provide a statement of reasons in its resolution.

Section 458BO requires a local government to include a timetable for implementation if it resolves to implement a reform under chapter 7A. Timeframes for the implementation of reforms are specified. These timeframes may be extended by the Minister on terms considered appropriate by the Minister. If a local government resolves to implement a series of reforms for an activity, the timeframes specified only apply to the first reform to be implemented.

Section 458BP requires a local government, as soon as possible after resolving whether or not to apply the recommended reforms, to provide the Minister with a copy of the public benefit assessment report and the resolution.

Section 458BQ provides a local government which resolves not to implement a reform recommended in a report may implement the reform at a later time.

PART 4—FULL COST PRICING FOR SIGNIFICANT BUSINESS ACTIVITIES

Section 458C provides that part 4 applies to a significant business activity of a local government if the local government has resolved to apply full cost pricing to the activity.

Section 458CA sets out the meaning of full cost pricing.

Section 458CB provides that if the State guarantees the repayment of the debt of a business activity of a local government which is carried out on the basis of full cost pricing, the local government in carrying on the activity is required to take account of the funds advantage it enjoys over its private sector counterparts because of the guarantee.

Section 458CC requires a local government to apply full cost pricing to its significant business activity in accordance with the timetable for implementation included in its resolution.

PART 5—COMMERCIALISATION OF SIGNIFICANT BUSINESS ACTIVITIES

Division 1—Preliminary

Section 458CD provides for part 5 to apply to significant business activities to which a local government has resolved to apply commercialisation.

Division 2—Background and objectives of part

Section 458CE sets out the objectives of commercialisation.

Section 458CF provides that the objectives of commercialisation are to be achieved through the application of the key principles of commercialisation and their elements.

Section 458CG sets out the key objectives of commercial business units under commercialisation.

Division 3—Interpretation

Section 458CH sets out the meaning of commercialisation.

Section 458CI sets out the four key principles of commercialisation and their elements.

Section 458CJ sets out definitions for part 5.

Division 4—Establishment of commercial business unit

Section 458CK provides that a commercial business unit must be established in accordance with the timetable for implementation set out in a local government's resolution.

Division 5—Operations of commercial business unit

Section 458CL requires a local government's corporate plan under chapter 7 part 2 to include an outline of the objectives of each commercial business unit, and the nature and scope of activities which will be carried out by each unit. This does not apply to the Brisbane City Council because chapter 7 part 2 does not apply to it.

Section 458CM provides for an annual performance plan for each commercial business unit. A local government's operational plan under chapter 7 part 2 must include the annual performance plan for each of its commercial business units. Provision is also made for a local government to amend the performance plan before the end of the financial year for which it is prepared.

Division 6—Annual statement of operations on commercial business unit

Section 458CN provides for an annual operating statement on the operations of each commercial business unit for the preceding financial year. The requirements of the statement are set out. The statement is required to be included in the local government's annual report.

Section 458CO provides a process for a commercial business unit to take account of tax equivalents. Tax equivalents must be determined under a tax equivalents manual issued by the Queensland Treasurer and tabled in Parliament. The manual may also provide for the lodgement and assessment of returns, rulings by an independent tax assessor appointed by the Treasurer, objections and appeals.

Section 458CP provides for a local government to take account of the funds advantage a commercial business unit enjoys over its private sector counterparts if the State guarantees the repayment of the commercial business unit's debt.

PART 6—LOCAL GOVERNMENT OWNED CORPORATIONS

Division 1—Preliminary

Subdivision 1—Application of part

Section 458D provides part 6 applies to a significant business activity which a local government has resolved to corporatise.

Subdivision 2—Outline of part and its background and objectives

Section 458DA provides that part 6 makes provision for a reform process (ie corporatisation) of significant business activities.

Section 458DB sets out the objectives of corporatisation.

Section 458DC provides that the objectives of corporatisation are to be achieved through the application of the key principles of corporatisation and their elements.

Section 458DD sets out the key objectives of a corporatised corporation.

Subdivision 3—Interpretation

Section 458DE sets out the meaning of corporatisation.

Section 458DF sets out the four key principles of corporatisation and their elements.

Section 458DG sets out the meaning of “statement of corporate intent” and establishes the intention that it should represent an agreement between the board of the corporatised corporation and its shareholder.

Section 458DH sets out the definitions for part 6.

Section 458DI sets out a definition of a reference to the doing of an act by a corporatised corporation.

Section 458DJ sets out a definition of a reference to local governments in part 6.

Subdivision 4—Corporatised corporation not a local government

Section 458DK provides that a corporatised corporation does not form part of a local government.

Subdivision 5—Operation of part and application of laws

Section 458DL provides for the extraterritorial operation of this part.

Section 458DM provides for the application of other laws to corporatised corporations.

Section 458DN provides that a local government may delegate powers to its corporatised corporation to enable the corporation to carry out its business. This section also sets out the limitations for such delegations. The section expires on 1 July 1999.

Section 458DO sets out how the Corporations Law is to apply to corporatised corporations.

Division 2—Mechanisms for creating LGOCs and subsidiaries

Subdivision 1—Proposal for corporatisation

Section 458E provides that a local government may propose, by resolution, that a part of the local government carrying on a significant

business activity may be corporatised. If it is proposed to create a single corporatised corporation from the significant business activities of 2 or more local governments, each of the local governments must make a resolution. A local government may also propose a holding company structure, with subsidiaries of the holding company (the LGOC) actually carrying on the business.

Section 458EA provides that a local government may, by resolution, nominate a part of the local government carrying on a significant business activity to be a candidate LGOC or candidate subsidiary. The nomination of a candidate subsidiary must also nominate the LGOC or candidate LGOC of which it is to be a subsidiary. If parts of 2 or more local governments are nominated, each local government must make a nomination for it to be effective.

Subdivision 2—Preparation of corporatisation charter—Preliminary

Section 458EB sets out the meaning of “corporatisation charter.”

Section 458EC provides that a candidate LGOC becomes the business of an LGOC following the preparation, approval and implementation (in whole or in part) of a corporatisation charter.

Subdivision 3—Preparation of corporatisation charter—Establishment committee

Section 458ED requires a local government to appoint an establishment committee. The role of the establishment committee is to prepare a draft corporatisation charter, and report to the local government on the implementation of the charter. For councils other than the Brisbane City Council, an establishment committee is an advisory committee for the purposes of the Act.

Section 458EE provides that while councillors and local government employees may be appointed to an establishment committee, they must not make up more than two-thirds of a committee before 1 July 1999 and from 1 July 1999 must not form a majority on a committee.

Section 458EF sets out the procedure for appointing an establishment committee which must have the appropriate range of skills to ensure successful corporatisation of the candidate.

Section 458EG requires the establishment committee to give a copy of the draft corporatisation charter to the local government. The local government may request the establishment committee to further consider the draft charter and the committee may amend it if necessary.

Subdivision 4—Preparation of corporatisation charter—Requirements for charter

Section 458EH sets out the requirements of a draft corporatisation charter.

Section 458EI provides that a local government may determine the steps to be taken by the establishment committee in preparing the draft charter, including what must be in the transitional part of the charter.

Subdivision 5—Corporatisation charter—Approvals

Section 458EJ provides for a local government to approve, by resolution, the draft corporatisation charter, or that draft as amended by the local government, as the candidate's corporatisation charter.

Section 458EK allows a local government to amend, by resolution, the corporatisation charter, whether before or after corporatisation.

Section 458EL requires a local government to make a copy of the corporatisation charter available for public inspection and purchase at cost price.

Section 458EM allows a local government, by resolution, to omit matter of a commercially sensitive nature from the copies of the corporatisation charter to be made public provided that a full statement of the matters omitted is provided to each councillor. Councillors must treat the information as confidential to the local government.

Subdivision 6—Corporatisation charter—Expiry of charter transitional part

Section 458EN provides that the transitional part of a candidate LGOC's corporatisation charter expires when a local government approves the LGOC's first statement of corporate intent.

Subdivision 7—Corporatisation facilitative mechanisms—significant business entities

Section 458F outlines the purpose of the subdivision.

Section 458FA provides for the establishment of a significant business entity by a resolution of a local government which is given effect through publication in the gazette. The significant business entity becomes a body corporate with the functions and powers specified in the resolution. The resolution must also identify the part of the local government the business of which is to be acquired by the entity after it is corporatised.

Section 458FB provides for the transfer of assets, liabilities etc to the significant business entity. This section is the means by which a significant business entity acquires the business of a candidate. This can only occur at the time of corporatisation or at a later time.

Subdivision 8—Significant business entities—Directors and employees

Section 458FC sets out the conditions under which councillors and local government employees may be directors of certain significant business entities. It also requires the Minister to complete a review by July 2001 of the appropriateness of councillors and council employees being directors of LGOCs, including whether there should be a prohibition after July 2001 on councillors and council employees of a local government being directors of the local government's LGOC that is a holding company with all its business carried on by its subsidiaries.

Section 458FD provides for action that may be taken in relation to remuneration and allowances for councillors and council employees who are directors of certain significant business entities.

Section 458FE sets out certain requirements in relation to councillors and council employees becoming directors of certain significant business entities.

Section 458FF prohibits a person from being both a councillor and an employee of a local government's significant business entity.

Subdivision 9—Interim board

Section 458FG provides that a local government may, by resolution, appoint an interim board of directors for a significant business entity. The resolution may also decide the role of the board.

Section 458FH provides for the application of certain provisions of part 6 to directors and executives of a significant business entity before it becomes corporatised.

Subdivision 10—Corporatisation facilitative mechanisms—General

Section 458FI provides for assistance to a significant business entity before it becomes corporatised.

Section 458FJ provides for a local government to decide that a significant business entity prior to corporatisation has share capital of a specified amount by making a resolution which is given effect through publication in the gazette

Before becoming a corporatised corporation, the entity must, as directed by the local government, apply part of its share capital to pay up shares in itself. The entity may then issue the paid up shares. These actions may be performed by a local government if an entity does not have an interim board of directors.

A local government may give written directions to the entity about the issue, holding and transfer of paid up shares.

Section 458FK allows a local government to vary the share capital of a significant business entity which is not a corporatised corporation by making a resolution which is given effect through publication in the gazette.

Section 458FL provides that this subdivision does not affect existing legal relationships.

Section 458FM allows a local government to provide for any other matter which facilitates the transition of a significant business entity to a corporatised corporation by making a resolution which is given effect through publication in the gazette.

Subdivision 11—Acting chief executive officer of significant business entity on corporatisation

Section 458FN provides that if there is no interim board, before a significant business entity becomes a corporatised corporation, a local government may, on the recommendation of the establishment committee, appoint an acting chief executive officer for the entity on its corporatisation.

Division 3—Local government owned corporations and subsidiaries

Subdivision 1—Declaration of LGOCs and subsidiaries

Section 458G sets out the conditions for a significant business entity that is not a corporatised corporation to become an LGOC. It provides that if a local government is satisfied a candidate LGOC's corporatisation charter has been sufficiently implemented or that the candidate is otherwise ready to become the business of an LGOC, it may resolve that the significant business entity becomes an LGOC. The resolution is given effect through publication in the gazette.

Section 458GA requires an LGOC to be a body corporate not registered as a corporation under the Corporations Law, to have a board of directors, and to have a share capital and issued shares.

Section 458GB sets out the conditions for a significant business entity that is not a corporatised corporation to become a subsidiary of an LGOC.

It provides that if a local government is satisfied a candidate subsidiary is ready to become the business of a subsidiary of an LGOC, it may resolve that the significant business entity becomes a subsidiary of the LGOC. The resolution is given effect through publication in the gazette.

Section 458GC requires an LGOC subsidiary to be a body corporate not registered under the Corporations Law, to have a board of directors, and to have a share capital and issued shares.

Section 458GD provides that the declaration of a significant business entity as a corporatised corporation does not of itself affect the legal personality of the entity or its functions and powers.

Subdivision 2—Application of Corporations Law

Section 458GE sets out the conditions under which the Corporations Law applies to a corporatised corporation.

Section 458GF provides that a corporatised corporation is an exempt public authority for the purposes of the Corporations Law.

Subdivision 3—Shares of corporatised corporations

Section 458GG requires a local government to be the shareholder of an LGOC. If the LGOC is owned by more than 1 local government, each of the local governments must be the shareholder of the LGOC.

Section 458GH requires the LGOC to be the shareholder of an LGOC subsidiary.

Section 458GI provides that where 2 or more local governments are shareholders, each local government is to hold the number or portion of shares in the LGOC, and to hold rights as a shareholder, as agreed to by resolution of the local governments, but subject to section 458GL.

Section 458GJ allows a shareholder of a corporatised corporation to vary the share capital of a corporatised corporation by making a resolution which is given effect through publication in the gazette.

Section 458GK provides for the issue and transfer of shares.

Section 458GL requires that if an LGOC has more than 1 shareholder, the shareholders must act jointly.

Subdivision 4—Shareholders and councillors

Section 458GM provides that a local government may appoint 2 of its councillors as its delegates (“shareholder’s delegates”) in its capacity as shareholder of the LGOC. The shareholder’s delegates are required to act jointly. This section also sets out the powers and responsibilities of the shareholder’s delegates, and the limits on their civil liability.

Subdivision 5—Board of directors

Section 458GN requires each corporatised corporation to have a board of directors.

Section 458GO sets out the role of a board.

Section 458GP permits a board, by resolution, to delegate its powers.

Section 458GQ provides that additional provisions relating to the board are set out in division 5.

Section 458GR provides for a local government of a candidate LGOC to appoint the first board of an LGOC before the LGOC is established. The appointment takes effect when the LGOC is established.

Section 458GS provides that a local government of a candidate LGOC subsidiary must appoint the first board of the subsidiary while it is still a candidate. The appointment takes effect when the LGOC subsidiary is established. However, if the candidate subsidiary’s LGOC is already established, the LGOC must take this action.

Subdivision 6—Chief executive officer

Section 458GT requires each corporatised corporation to have a chief executive officer.

Section 458GU provides that the duties of a chief executive officer are, under its board, to manage the corporation.

Section 458GV provides that the things done by the corporatised corporation's chief executive officer in the name of the corporation are taken to have been done by the corporation.

Section 458GW allows a corporatised corporation's chief executive officer to delegate the powers of the office to an employee of the corporation. This includes power delegated to the chief executive officer, subject to any directions of the board.

Section 458GX provides that additional provisions relating to a corporatised corporation's chief executive officer are set out in division 6.

Subdivision 7—Corporate plan—General

Section 458H requires each LGOC to have a corporate plan.

Section 458HA requires the LGOC's corporate plan to apply to its subsidiaries, if any.

Subdivision 8—Preparation, agreement on and modification of corporate plan

Section 458HB requires an LGOC's board to prepare and submit a draft corporate plan to the shareholder within defined timeframes. This section also specifies a timeframe for agreement on the plan between the board and the shareholder.

Section 458HC provides that the corporate plan is in force until a new plan takes effect.

Section 458HD makes provision for the board to consider modifying the draft corporate plan if asked by the shareholder. If agreement on the plan has not been reached within a specified period, the shareholder may direct the board in writing to make required modifications. A copy of such a direction must be open to public inspection.

Section 458HE provides that when agreement on the draft corporate plan is reached between the board and the shareholder, it becomes the LGOC's corporate plan for the relevant financial year.

Section 458HF provides that if agreement has not been reached within specified timeframes, the last draft corporate plan submitted by the board is taken to be the LGOC's corporate plan until a plan is adopted.

Section 458HG provides for the LGOC's corporate plan to be modified by the board with the agreement of the shareholder. It also provides for the shareholder to direct the board in writing to modify the plan, after consultation with the board, and subject to the direction being made open to public inspection.

Section 458HH requires a copy of an LGOC's corporate plan to be open to public inspection and purchase at cost price.

Section 458HI allows for the deletion of commercially sensitive matters from the copies of the corporate plan to be made public provided that a full statement of the matter is given to the shareholder's delegates or if there are no shareholder's delegates, to each councillor of the local government, who must treat the full statement as confidential to the local government.

Subdivision 9—Statement of corporate intent—General

Section 458HJ requires each corporatised corporation to have a statement of corporate intent for each financial year.

Section 458HK requires an LGOC's statement of corporate intent to be consistent with its corporate plan.

Section 458HL requires a subsidiary's statement of corporate intent to be consistent with the LGOC's corporate plan and statement of corporate intent

Subdivision 10—Matters to be included in statement of corporate intent

Section 458HM sets out the requirements for a corporatised corporation's statement of corporate intent. Matters additional to these requirements may be included in the statement of corporate intent. Further, the shareholder may exempt a corporatised corporation from including any

matter set out in the requirements if the shareholder considers it is not materially relevant. The statement of corporate intent must include matters concerning its community service obligations as required under section 458IA.

Section 458HN provides for the deletion of commercially sensitive matters from the copies of a statement of corporate intent which are to be made public provided that a full statement of the matter is given to the shareholder's delegates or if there are no shareholder's delegates, to each councillor of the local government, who must treat the full statement as confidential to the local government.

Subdivision 11—Preparation, agreement on and modification of statement of corporate intent

Section 458HO requires a corporatised corporation's board to prepare a draft statement of corporate intent and submit it to its shareholder within a specified timeframe. This section also provides a timeframe for agreement on the draft statement of corporate intent between the board and the shareholder.

Section 458HP provides that a corporatised corporation's board may consult with interested industrial organisations and employees in preparing the statement of corporate intent.

Section 458HQ makes provision for the board to consider modifying the draft statement of corporate intent if asked by the shareholder. If agreement on the statement has not been reached within a specified period, the shareholder may direct the board in writing to make the required modifications. A copy of such a direction must be open to public inspection.

Section 458HR provides that when agreement on the draft statement of corporate intent is reached between the board and the shareholder, it becomes the corporation's statement of corporate intent for the relevant financial year.

Section 458HS provides that if agreement has not been reached within specified timeframes, the last draft statement of corporate intent submitted by the board is taken to be the corporatised corporation's statement of corporate intent until a statement of corporate intent is adopted.

Section 458HT provides for the LGOC's statement of corporate intent to be modified by the board with the agreement of the shareholder. It also provides for the shareholder to direct the board in writing to modify the statement, after consultation with the board. A copy of the direction must be open to public inspection.

Section 458HU provides for a copy of the corporatised corporation's statement of corporate intent to be open to public inspection and purchase at cost price. This section also requires an LGOC to give the local government's chief executive officer a copy of the current statement of corporate intent of each of its subsidiaries.

Subdivision 12—Community service obligations

Section 458I sets out the meaning of community service obligations.

Section 458IA requires that a corporatised corporation's community service obligations be specified in its statement of corporate intent, together with costings and funding. This section also provides that a corporatised corporation's statement of corporate intent is conclusive between the corporation and its shareholder in regard to the nature and extent of community service obligations which are to be performed, and compensation for their performance by the shareholder.

Subdivision 13—General reserve powers of shareholder

Section 458IB provides that an LGOC's shareholder may give directions to an LGOC board if the shareholder is satisfied they are necessary in the public interest because of exceptional circumstances. An LGOC's board is responsible for ensuring that its subsidiary is notified of and complies with any such relevant directions. The shareholder is required to consult the LGOC board before giving such a direction, and to request the board to advise whether compliance with a direction would not be in the commercial interests of the LGOC or its subsidiary. A copy of the direction must be open to public inspection.

Subdivision 14—Suspected insolvency from directions

Section 458IC requires a corporatised corporation's board to give written notice to the shareholder and the Auditor-General if, as result of a direction given by the shareholder, the board suspects the corporation (including in the case of an LGOC its subsidiary) may become insolvent and considers compliance with the direction would be a substantial cause of the insolvency. If it is a subsidiary, a corporation's local government must also be notified.

When a notice is given under this section, the shareholder must, if satisfied as required, take the action as set out in the section. The board of a corporatised corporation must ensure that a direction by the shareholder under this section is complied with. A copy of the direction must be open to inspection.

Subdivision 15—Limitation on local government directions

Section 458ID provides that a corporatised corporation's board is only subject to direction by the local government as shareholder as provided by this Act or another Act.

Subdivision 16—Reports and other accountability matters

Section 458IE sets out the extent to which the Financial Administration and Audit Act 1977 applies to a corporatised corporation.

Section 458IF sets out the requirements for quarterly reports to be given by the corporatised corporation's board to its shareholder.

Section 458IG sets out the requirements for the annual report to be given by the corporatised corporation's board to its shareholder.

Section 458IH sets out the requirements for the annual report of an LGOC to be open to inspection and available for purchase at the local government's public office.

Section 458II enables an LGOC to delete commercially sensitive matters from copies of its annual report (and accompanying documents) that are to be made public provided that a full statement of the matter is given to each local government councillor, or to the shareholder's delegates if there are delegates. Councillors must treat such information as confidential to the local government.

If a matter must be included in an annual report, a summary of the matter may be included in the annual report provided it is identified as a summary, and the full statement is given to the local government.

Section 458IJ requires an LGOC to provide the information, reports and other matters which it is required to provide to the local government or the shareholder's delegates.

Subdivision 17—Duties and liabilities of directors and other officers

Section 458IK sets out the requirements for the disclosure of interests by a corporatised corporation's directors.

Section 458IL sets out the requirements where a corporatised corporation's director has a material personal interest in a matter that is being considered by the board.

Section 458IM sets out the duties and liabilities of officers of a corporatised corporation in relation to honesty, care and diligence, and improper use of information and position.

Section 458IN sets out the circumstances where there is a prohibition on loans, or guarantees or security in connection with loans, to directors of a corporatised corporation and others.

Section 458IO prohibits indemnities or exemptions from liability incurred as an officer of a corporatised corporation. However, a corporatised corporation is not prevented from indemnifying a person against a civil liability (other than a liability to the corporation or its subsidiary) unless the liability arises out of conduct involving lack of good faith.

Section 458IP prohibits a corporatised corporation from paying a premium for insuring an officer against a liability arising out of a wilful breach of duty in relation to the corporation or in breach of the improper use of information or position.

Section 458IQ establishes that a director of a corporatised corporation or a person who takes part in its management during insolvent trading commits an offence. This section also sets out defences.

Section 458IR provides that a person who is found guilty of an offence under section 458IQ is personally responsible for payment to the corporatised corporation of the amount required to satisfy the part of the corporation's debts as the Supreme or District Court considers proper.

Section 458IS provides that the Attorney-General or a local government may apply to the Supreme or District Court for the examination of a person whom the Attorney-General or the local government considers may have been guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to a corporatised corporation, or a person who may be capable of giving information about the corporation's management, administration or affairs. A local government may only make an application in relation to one of its own corporatised corporations.

Section 458IT provides for the Supreme or District Court to grant relief to a corporatised corporation's director, chief executive officer or employee from liability for negligence, default or breach if the court considers the person ought fairly to be excused.

Section 458IU provides that an officer of a corporatised corporation who provides false or misleading information or documents commits an offence.

Section 458IV requires a corporatised corporation's board to give written notice to the shareholder and the Auditor-General if the board suspects that the corporation (or in the case of an LGOC its subsidiary) may become insolvent, and considers that compliance with a direction given by the shareholder is not a substantial cause of the suspected insolvency. When a notice is given under this section, and the shareholder is satisfied as required, the shareholder and the board must take the action as set out in the section.

Subdivision 18—Legal capacity and powers

Section 458J sets out the objects of this subdivision.

Section 458JA sets out the general powers of a corporatised corporation.

Section 458JB sets out the restrictions on the powers of a corporatised corporation.

Section 458JC sets out the assumptions that a person having dealings with a corporatised corporation, or a person having dealings with a person who has acquired or purports to have acquired title to property from the corporation, is entitled to make.

Section 458JD sets out the matters on which an LGOC may give directions to its subsidiary, including any additional matters as resolved by the LGOC's local government.

Section 458JE requires an LGOC subsidiary to comply with a direction given under section 458LD.

Section 458JF provides that sections 458JD and 458JE do not, by implication, limit the powers that an LGOC otherwise has to direct a subsidiary.

Subdivision 19—Finance—Taxation

Section 458JG exempts a corporatised corporation from paying those State taxes for which the corporation would not be liable if it were a local government. A State tax is not payable in relation to anything done in connection with division 2 (Mechanisms for creating LGOCs) and subdivision 3 of this division (Shares of corporatised corporation).

Section 458JH requires a corporatised corporation to pay to its local government amounts equivalent to the Commonwealth and State taxes (ie tax equivalents) which would be payable if it were not a corporatised corporation nor a local government. Tax equivalents must be paid in accordance with a tax equivalents manual issued by the Treasurer. The manual may also provide for the lodgment of returns, assessment and rulings by a tax assessor appointed by the Treasurer, and objections and appeals against assessments and rulings. A copy of the manual, and any amendments, must be tabled in the Legislative Assembly within a specified time.

Subdivision 20—Finance—Borrowings and guarantees

Section 458JI limits the circumstances in which a local government is liable for the debts and other liabilities of its corporatised corporations.

Section 458JJ provides that if the State or a local government guarantees repayment of a debt by a corporatised corporation, the corporation must pay to its local government amounts equivalent to the funds advantage it enjoys over its private sector counterparts because of the guarantee.

Subdivision 21—Finance—Dividends

Section 458JK sets out the procedure and requirements for determining the dividend payable by a corporatised corporation to its shareholder for a financial year.

Section 458JL sets out the procedure and requirements for the payment of interim dividends.

Section 458JM sets out the requirement for the payment of dividends for the financial year (or for that part of the financial year) in which the corporatised corporation becomes a corporatised corporation.

Subdivision 22—Acquisition and disposal of assets and subsidiaries

Section 458JN contains a reserve power of the shareholder, after consultation with an LGOC's board, to direct the board to require the LGOC or its subsidiary not to dispose of a specified asset. A copy of the direction must be open to public inspection.

Section 458JO provides that an LGOC or its subsidiary may only dispose of any of its main undertakings with the prior approval, by resolution, of the LGOC's shareholder. Subject to this requirement, an LGOC or its subsidiary must, as soon as practicable after disposing of a main undertaking, give written advice to the local government.

Section 458JP prohibits a corporatised corporation from acquiring a company under the Corporations Law as a subsidiary.

Subdivision 23—Employees

Section 458JQ provides for the chief executive officer of a corporatised corporation to engage employees.

Section 458JR provides that the terms of employment of a corporatised corporation's employees will be as determined by the corporation, subject to any relevant award or industrial agreement. The employees of a corporatised corporation are not the employees of its local government.

Section 458JS provides for a corporatised corporation to make arrangements with other government authorities (Commonwealth, State and local) to obtain the services of their employees and similarly, to make the services of its employees available to these authorities.

Section 458JT provides for a corporatised corporation to establish, join or take part in superannuation schemes for its employees.

Section 458JU contains provisions relating to superannuation for the employees of a corporatised corporation who were employees of a local government immediately prior to becoming a corporation employee and who were members of a local government superannuation scheme.

Section 458JV preserves the leave and other entitlements of employees of a corporatised corporation who were employees of a local government immediately prior to becoming a corporation employee.

Subdivision 24—Other matters

Section 458K contains provisions relating to a corporatised corporation's seal.

Section 458KA provides for a local government to change the name of its corporatised corporation by a resolution which is given effect through publication in the gazette.

Section 458KB provides for the authentication of documents made by a the signature of specified or authorised persons.

Section 458KC provides for judicial notice of certain signatures.

Section 458KD provides for the application of the *Criminal Justice Act 1989* to corporatised corporations.

Section 458KE provides for the application of the *Parliamentary Commissioner Act 1974* to certain activities corporatised corporations.

Division 4—Miscellaneous

Section 458KF contains provisions to enable the monitoring and assessment of corporatised corporations to be carried out. In particular, the shareholder has the power to request the local government's chief executive officer to investigate and report on any matter relating to a corporatised corporation. The chief executive officer may give written directions to the corporatised corporation for the purposes of such an investigation.

This section also provides for the shareholder to delegate its powers under section 458IJ (LGOC board to keep shareholder informed) to any person. The local government's chief executive officer may delegate the powers under this section to an employee of the local government (including delegated powers under section 458IJ).

Section 458KG provides that a document which is required or authorised to be given to a corporatised corporation's board may be given to the chairperson of the board.

Section 458KH provides for judicial notice to be taken of a resolution which is required to be published in the gazette.

Section 458KI requires that if a resolution of a local government amending a previous resolution is given effect through publication in the gazette, the amending resolution is also given effect through publication in the gazette.

Section 458KJ sets out the circumstances where certain persons are not to be treated as officers of a corporatised corporation.

Division 5—Additional provisions relating to board of corporatised corporations***Subdivision 1—Composition of board***

Section 458L provides that an LGOC's board is to consist of at least 5 directors appointed by its local government. An LGOC's subsidiary's board is to consist of at least 5 directors appointed by its LGOC.

Section 458LA sets out the provisions relating to the appointment of a chairperson and deputy chairperson of an LGOC by its local government, and of an LGOC subsidiary by the LGOC. Provision is also made for the deputy chairperson to act as chairperson in defined circumstances.

Subdivision 2—Meetings and other business of board

Section 458LB contains a definition of “required minimum number” of directors on a corporatised corporation’s board.

Section 458LC provides that a corporatised corporation’s board may, subject to this part, conduct its business (including meetings) in the way it considers appropriate.

Section 458LD provides for the times and places of meetings of a corporatised corporation’s board.

Section 459LE provides for who is to preside at meetings of a corporatised corporation’s board.

Section 458LF provides for a quorum and voting at meetings of a corporatised corporation’s board.

Section 458LG provides for participation in meetings of the board other than by the physical presence of directors (eg by telephone).

Section 458LH provides that a resolution of the board may be passed without a meeting.

Section 458LI requires a board to keep minutes of its proceedings.

Subdivision 3—Provisions relating to directors

Section 458LJ provides for the appointment of directors of a corporatised corporation.

Section 458LK prohibits a person from being both a director of an LGOC and the chief executive officer or another employee of an LGOC subsidiary.

Section 458LL sets out the procedure for the appointment of directors of a corporatised corporation.

Section 458LM provides for the terms of appointment of a director not provided for under divisions 1 to 4 of part 6 to be determined by the shareholder.

Section 458LN provides for the appointment of an acting director.

Section 458LO provides for the resignation of a director, a chairperson or a deputy chairperson of a board.

Section 458LP provides for the termination of a director's appointment. A person ceases to be a director of an LGOC if the person was a councillor or employee of the LGOC's local government at the time of appointment as a director, and ceases to be a councillor or employee.

Division 6—Additional provisions relating to chief executive officers

Section 458LQ provides for the appointment of a chief executive officer by the corporatised corporation's board.

Section 458LR prohibits a person from being both a local government employee and the chief executive officer of a corporatised corporation.

Section 458LS provides that a person who is not a councillor may be both a director and the chief executive officer of a corporatised corporation. However, a director of a corporatised corporation who is its chief executive officer must abstain from voting at meetings of the corporation's board as a director on matters concerning the role or performance of the chief executive officer.

Section 458LT provides for the appointment of an acting chief executive officer.

Section 458LU provides for terms of appointment of a chief executive officer not provided for under divisions 1 to 4 of the Act to be determined by the board of a corporatised corporation.

Section 458LV provides for the resignation of a corporatised corporation's chief executive officer.

Section 458LW provides for the termination of the appointment of a corporatised corporation's chief executive officer by its board.

CHAPTER 7B—CONDUCT OF COMPETITIVE BUSINESS ACTIVITIES

PART 1—OBJECT AND APPLICATION

Section 458M defines the objects of Chapter 7B in relation to the application of the competitive neutrality principles to certain local government business activities.

Section 458MA sets out the principles of competitive neutrality in this chapter.

Section 458MB provides that the chapter applies to the Brisbane City Council.

PART 2—DEFINITIONS

Section 458MC provides for the definitions of particular terms used in the chapter.

Section 458MD sets out the meaning of the term “business activity”.

PART 3—CODE OF COMPETITIVE CONDUCT

Section 458ME requires that a local government must apply the code of competitive conduct to its roads business activities and provides for the timing of this requirement.

Section 458MF provides for the code of competitive conduct to be applied by a local government where it resolves under Part 4 that the code of competitive conduct will apply.

PART 4—ANNUAL REVIEW OF BUSINESS ACTIVITIES

Section 458MG requires that a local government, during each financial year starting with the 1997-98 financial year, must identify any of its activities that are business activities.

Section 458MH requires that a local government, during each financial year starting with the 1997-98 financial year, must resolve whether the code of competitive conduct is to be applied to each of its business activities for the following financial year or an earlier time. A local government may resolve that the code should no longer apply to a business activity. Where a local government resolves not to apply or to no longer apply the code to a business activity, it must include a statement of reasons.

Section 458MI provides that a local government may apply the code of competitive conduct to another activity carried on by the local government.

Section 458MJ provides that a local government must include in its 1998-99 annual report and each subsequent annual report, a list of its business activities for the financial year and a statement whether the code of competitive conduct applied to each of the activities in that year and, if not, the reason it did not apply. For the 1997-98 annual report, a local government must list the business activities identified in that financial year and if the code will apply in the 1998-99 financial year. Reasons must be provided if the code is not to be applied to a business activity.

CHAPTER 7C—REFORM OF CERTAIN WATER AND SEWERAGE SERVICES

PART 1—OBJECT AND APPLICATION

Section 458N defines the objects of Chapter 7C in relation to particular requirements of significant business activities of a local government or a local government's corporatised corporation that provides water or sewerage services.

Section 458NA provides that the chapter applies to the Brisbane City Council.

Section 458NB sets out the meaning of the term “relevant business activity” in this chapter.

PART 2—DEFINITIONS

Section 458NC provides for the definitions of particular terms used in the chapter.

PART 3—ASSESSMENT OF COST EFFECTIVENESS OF TWO-PART TARIFFS FOR WATER SUPPLY

Section 458ND requires a local government to ensure that an assessment is undertaken of the cost effectiveness of the application of a two-part tariff for a significant business activity that carries on a water service, and that a report be prepared on the assessment. The provision also sets out the matters to be included in the report, including whether it may be cost effective to apply a two-part tariff for a part or parts of the local government area or to do so for a particular class or classes of consumers.

Section 458NE provides the local government must decide certain matters, including a public consultation process, to be addressed in the conduct of the assessment and the preparation and presentation of the report.

Section 458NF requires the report to be completed in such time to allow the local government sufficient time to comply with sections 458NK, 458NL and 458NO, and presented to a meeting of the local government as soon as practicable after completion.

Section 458NG provides that if a report recommends that a two-part tariff be implemented for the significant business activity of a local government to any extent, ie, for the area or part or parts of the area and to

all consumers or a class or classes of consumers, and the local government resolves not to implement the recommendation, the local government must ensure that a fresh assessment is undertaken and a fresh report prepared on the recommendation not adopted within 3 years after the end of the financial year in which the initial report was presented.

Section 458NH provides that a regulation may set requirements for assessments and reports under Part 3, including different classes of assessments and reports depending on a local government's circumstances, eg, whether it already has a two-part tariff.

PART 4—DECISION ON TWO-PART TARIFF REPORTS

Section 458NI provides for the object of Part 4 of chapter 7C.

Section 458NJ provides a local government must make the two-part tariff report open to inspection from the presentation of the report to a meeting of the local government until the local government decides whether to apply a two-part tariff for the activity.

Section 458NK requires a local government, within three months of the presentation of a two-part tariff report to a meeting of the local government, to make a resolution on whether a two-part tariff is to be implemented. The resolution must state the extent to which the two-part tariff is to apply, and must approve strategies and a timetable for its implementation.

While the local government has the discretion to accept, reject or modify a recommendation of the report, the section further provides that a resolution not to implement a recommendation must include a statement of the reasons.

Section 458NL provides timeframes for a local government to make a resolution under section 458NK.

Section 458NM provides that as soon as practicable after making a resolution to implement or not to implement a two-part tariff, a local government must give to the Minister a copy of the report and resolution.

PART 5—IMPLEMENTATION OF CERTAIN CHARGING ARRANGEMENTS AND REPORTING PROCEDURES

Section 458NN sets out the charging and operational arrangements for relevant business activities that must be applied.

Section 458NO provides timeframes for a local government to commence implementation of a resolution made under section 458NK.

Section 458NP requires a local government to make a resolution detailing a timetable for implementation of actions required under section 458NN. The section specifies timeframes for implementation, which may be extended by the Minister.

Section 458NQ provides timeframes for a local government to approve strategies for the application to its relevant business activities of the matters stated in section 458RQ(b) to (e).

Clause 40 inserts Section 464A which provides that division 1 of part 2 of chapter 8 applies subject to division 5.

Clause 41 amends section 466 (Step 1—make a law) by providing that the adoption of a model local law with changes about an anti-competitive provision consistent with a resolution of the local government is to be regarded as the adoption of a model local law. This section also prohibits the adoption of a model local law containing an anti-competitive provision unless the local government has complied with division 5 in relation to the proposed local law.

Clause 42 amends section 467 (Step 2—give public notice of law) by inserting a requirement that public notice be given of any anti-competitive provision in a model local law identified in a public interest test and, if the anti-competitive provision is changed, the extent of the change. The amendment also requires that the Minister be advised of any anti-competitive provisions included in the local law and reasons for their inclusion.

Clause 43 inserts section 472A which provides that division 3 of part 2 of chapter 8 applies subject to division 5.

Clause 44 amends section 475 (Step 2—ensure proposed law satisfactorily deals with any State interest) to provide that a local government must give to the Minister information about any possible anti-competitive provision of a proposed law, actions proposed to be taken by the local government under division 5 about the provision, and other information about the proposed local law required by the Minister or by regulation.

Clause 45 amends section 480 (Step 7—again ensure proposed law satisfactorily deals with any State interest) to provide that a local government must not act under Section 480(2) unless the local government has complied with division 5 of part 2 of chapter 8 in relation to a proposed local law.

Clause 46 amends section 482 (Step 9—give public notice of law) by inserting a requirement that the Minister be advised of any anti-competitive provisions included in the local law and reasons for their inclusion.

Clause 47 inserts section 482A which provides that division 4 of part 2 of chapter 8 applies subject to division 5.

Clause 48 amends section 488 (Step 5—make proposed policy) by inserting a new subsection (4) which provides that for the purposes of section 488(2), an amendment of a proposed local law policy that removes an anti-competitive provision in accordance with a recommendation of a public benefit assessment report under section 489I is not a substantial amendment of the local law policy.

In this case, the local government need not again consult with the public in making the local law policy as required under section 485.

This clause also inserts a new subsection (5) which provides that a local government must not act under section 488(1) or 488(2) in making a proposed local law policy unless the local government has complied with division 5 in relation to the proposed local law policy.

Clause 49 amends section 489 (Step 6—give public notice of policy) to provide that on the day of notification of the making of a local law policy, the local government must give to the Minister advice of any anti-competitive provisions included in the policy and the reasons for their inclusion.

Clause 50 inserts a new division 5, part 2, chapter 8 with new sections 489B to 489K as follows.

Division 5—Anti-competitive provisions of proposed local laws and proposed local law policies

Section 489B provides for definition of the “cut-off day” by which a local law or local law policy may be treated as an existing local law or local law policy for the purposes of review of anti-competitive provisions.

Section 489C provides the definitions of terms used in division 5.

Section 489D provides that a local government must not make a local law or a local law policy containing a possible anti-competitive provision unless the local government complies with division 5.

Section 489E provides that a local government must carry out a preliminary review of a proposed local law or proposed local law policy and identify any provision of the law or policy that it considers may be an anti-competitive provision (a “possible anti-competitive provision”), and advise the Minister of the possible anti-competitive provisions.

Section 489F provides for a public interest test and preparation of a public interest test report for each possible anti-competitive provision before making a local law or local law policy that contains a possible anti-competitive provision. The section further specifies the options which may be recommended by a public interest test report, and the public interest grounds upon which an anti-competitive provision may be retained.

Section 489G provides for certain matters the local government must decide in relation to the conduct of the public interest test and the public interest test report. The section further provides the decision is subject to a regulation under section 489K and must provide for a consultation process and the manner in which the consultation process is used in the assessment.

Section 489H provides that a public interest test report must be presented to a meeting of the local government as soon as practicable after completion.

Section 489I provides a local government must resolve whether to implement recommendations of a public interest test report. The section further provides the grounds upon which a local government may decide to make a resolution contrary to the recommendations of a public interest test report, and that such a resolution must be accompanied by a statement of the reasons why the resolution is consistent with such grounds. The section further provides the local government must advise the Minister of its resolution, as soon as practicable after the making of the resolution.

Section 489J provides a public interest test report is to be open to public inspection from the day the report is presented to a meeting of a local government.

Section 489K provides for the making of a regulation on certain matters to be observed in review of anti-competitive provisions of proposed local laws or local law policies.

Clause 51 replaces section 672 (Proceedings for offences) with sections 672 to 672C. It provides that an offence against chapter 7A part 6 for which the maximum penalty of imprisonment is two years is an indictable offence and all other offences against the Act are summary offences. It also provides the proceedings for indictable offences, and the limitations on who may summarily hear indictable offence proceedings and on the time for starting summary proceedings.

Clause 52 inserts section 712A which provides that in a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

Clause 53 inserts subsections 793B and 793C. Section 793B applies to Brisbane City Council and provides that the *Freedom of Information Act 1992* does not apply to documents received or brought into existence by a corporatised corporation in carrying out its excluded businesses and that the *Judicial Review Act 1991* does not apply to a decision of a corporatised corporation made in carrying out its excluded activities. This subsection defines "excluded activities" which includes "commercial activities". This subsection also provides that a regulation may declare the activities of a corporatised corporation that are taken to be, or are taken not to be, activities conducted on a commercial basis.

Subsection 793C provides for the renumbering of the provisions of this Act, at the Minister's direction, in the next reprint of this Act produced under the *Reprints Act 1992* and that notice of the direction must be published in the gazette.

Clause 54 inserts a new division 3A, part 1, chapter 15 as outlined below.

Division 3A—Anti-competitive provisions of local laws and local law policies

Subdivision 1—Preliminary

Section 803A provides Division 3A applies to the Brisbane City Council.

Section 803B(1) details the circumstances in which a local law or local law policy is regarded as an existing local law or local law policy for the purposes of Division 3A.

Section 803C defines particular terms for the purposes of Division 3A.

Subdivision 2—Anti-competitive provisions of existing local laws and existing local law policies

Section 803D(1) provides for the preliminary review and identification of provisions of existing local laws that the local government considers may be anti-competitive (a “likely anti-competitive provision”). It further provides that the Minister must be advised of the likely anti-competitive provisions.

Section 803E provides for the dates by which a local government must conduct the preliminary review and advise the Minister of likely anti-competitive provisions.

Section 803F provides that prior to 1 January 1998 a local government may decide a likely anti-competitive provision is not an anti-competitive provision. Where this is the case, the Minister must be advised prior to that date and provided with the reasons for the decision.

Section 803G provides for a public interest test of possible anti-competitive provisions. A local government must ensure that a public interest test is undertaken and a public interest test report prepared for each possible anti-competitive provision.

The section further provides for the options to be addressed in the recommendations of the public interest test report for each possible anti-competitive provision, and the public interest grounds upon which an anti-competitive provision may be retained.

Section 803H provides the local government must decide the manner of conducting the public interest test and the matters to be dealt with by the report. The decision must also provide for a consultation process and how the process is to be applied. The section further provides the decision is subject to a regulation under section 803O ('Regulation about reviews of existing local laws').

Section 803I provides that a public interest test report must be presented to a meeting of the local government as soon as practicable after completion.

Section 803J provides a local government must resolve whether to implement recommendations of a public interest test report. The section further provides the grounds upon which a local government may decide to make a resolution contrary to the recommendations of a public interest test report, and that such a resolution must be accompanied by a statement of the reasons why the resolution is consistent with such grounds. The section further provides the local government must advise the Minister of its resolution, as soon as practicable after the making of the resolution.

Section 803K provides the report must be open to inspection from the day it is presented to a meeting of the local government,

Section 803L provides for the process to be observed if a local government decides to repeal or amend an anti-competitive provision of its local law or local law policy. It must, by resolution, make a local law, or in the case of an anti-competitive provision of a local law policy, a local law policy, repealing or amending the provision.

The section further provides for the publication in the gazette of a notice of the making of the local law or a local law policy, the details to be included in the notice, and for the certification by the chief executive officer of the required number of copies. In addition, the section provides for the giving by the local government to the Minister of a copy of the notice and the required number of certified copies of the local law or local law policy.

The repeal or amendment of a local law or local law policy under this section is not subject to the local law or local law policy provisions of chapter 8, part 2.

Section 803M provides a local government must act under section 803J and if applicable implement the resolution under section 803L before 1 July 1999.

Section 803N provides that a review or assessment under this division may be incorporated with the general review process and other action under chapter 15, part 1, division 3 or the review of proposed local laws or proposed local law policies under chapter 8, part 2, division 5.

Section 803O provides for the matters a regulation may prescribe in relation to identification of anti-competitive provisions of local laws or local law policies, public interest tests and public interest test reports, and information to be given to the Minister.

Section 803P provides where a local government has resolved, under chapter 15, part 1, division 3A or chapter 8, part 2, division 5, to retain an anti-competitive provision, the local government must, within 10 years of making the resolution, act under chapter 15, part 1, division 3A review to the local law or local law policy.

PART 4—AMENDMENT OF WHISTLEBLOWERS PROTECTION ACT 1994

Clause 55 provides for part 4 to amend the Whistleblowers Protection Act 1994.

Clause 56 amends section 7 (What is the general nature of the Act's scheme?) to include corporatised corporations.

Clause 57 amends section 10 (How must a public interest disclosure be made) by providing for the application of the Act to corporatised corporations in a way intended to prevent the Act's administration adversely affecting corporatised corporation's commercial operations.

Clause 58 amends section 26 (Every public sector entity is an appropriate entity for certain things) by providing for the application of new division 6.

Clause 59 amends section 27 (How to disclose to appropriate entity) by providing for the application of new division 6.

Clause 60 amends section 30 (Units must report to Legislative Assembly on disclosures) by widening the definition of “public sector entity” to include corporatised corporation.

Clause 61 amends section 31 (Minister must report to Legislative Assembly on Act’s administration) by widening the definition of “public sector entity” to include corporatised corporation.

Clause 62 provides for the insertion of new part 4, division 6.

Division 6—Limitation on disclosure process for corporatised corporations

Section 37A sets out the objective and purpose of this division.

Section 37B provides for an officer of a corporatised corporation to make a public interest disclosure to either a corporatised corporation or the Criminal Justice Commission about the conduct of the corporatised corporation or the conduct of another officer of the corporatised corporation. An officer of a corporatised corporation may also make a public interest disclosure to the corporatised corporation about the conduct of a public sector contractor contracting with the corporatised corporation. This section also sets out to whom an officer of a corporatised corporation may make a public interest disclosure about a reprisal taken against the officer for making a public interest disclosure.

Clause 63 amends schedule 5 (Sectional definitions) to include corporatised corporations.

Clause 64 amends schedule 6 (Dictionary) to include corporatised corporation.

PART 5—AMENDMENT OF PUBLIC SECTOR ETHICS ACT 1994

Clause 65 provides for part 5 to amend the *Public Sector Ethics Act 1994*.

Clause 66 amends section 2 (Definitions) to include corporatised corporation.

PART 6—AMENDMENT OF PUBLIC SERVICE ACT 1996

Clause 67 provides for part 6 to amend the *Public Services Act 1996*.

Clause 68 amends section 21 (What is a “government entity”).

Clause 69 amends schedule 3 (Dictionary) by including “corporatised corporation”.

PART 7—AMENDMENT OF FREEDOM OF INFORMATION ACT 1992

Clause 70 provides for part 7 to amend the *Freedom of Information Act 1992*.

Clause 71 amends section 7 (Definitions) by inserting “corporatised corporation”.

Clause 72 inserts a new section 11B which provides the Act does not apply to documents received, or brought into existence in carrying out a corporatised corporation’s activities to the extent provided under the *Local Government Act 1993*, section 793B.

PART 8—AMENDMENT OF JUDICIAL REVIEW ACT 1991

Clause 73 provides for part 8 to amend the *Judicial Review Act 1991*.

Clause 74 amends section 3 (Definitions) by inserting “corporatised corporation”.

Clause 75 inserts a new section 18B which provides the Act does not apply to decisions of a corporatised corporation to the extent provided under the *Local Government Act 1993*, section 793B.

SCHEDULE

The schedule provides for minor and consequential amendments of the *Local Government Act 1993*.