

Local Government and Other Legislation Amendment Bill 2006

Explanatory Notes

Title of the Bill

Local Government and Other Legislation Amendment Bill 2006

Policy objectives of the Bill

The Bill provides for:

- amendment of the *Local Government Act 1993* (LGA) to:
 - (i) enhance transparency and accountability in local government elections and decision making and
 - (ii) avoid duplication of process where *Size, Shape and Sustainability* local government reviews meet current requirements for major reviewable local government matters; and
- amendment of the *City of Brisbane Act 1924* (CoBA) to enhance transparency in local government decision making; and
- amendment of the *Electoral Act 1992* (Electoral Act) to enhance consistency between requirements for the conduct of State and local government elections; and
- consequential amendment of the *Local Government (Community Government Areas) Act 2004*.

The main objective of the Bill is to increase public trust and confidence in local government election processes. The Bill responds to local government issues identified in:

- the Crime and Misconduct Commission's (CMC) report: *Independence, Influence and Integrity in Local Government: a CMC inquiry into the 2004 Gold Coast City Council Election* (the CMC report); and
- a review of the 2004 local government elections by the Department of Local Government, Planning, Sport and Recreation (the Department); and

- the *Size, Shape and Sustainability* reviews.

The Bill seeks to improve accountability and transparency in local government elections and prevent a repeat of the circumstances that gave rise to the need for the CMC inquiry. In general, local government electoral provisions are aligned with provisions of the Electoral Act and the *Criminal Code* regulating State Government elections. The amendments proposed by the Bill will further align State and local government election provisions, particularly following the 2002 amendment of the Electoral Act.

The amendments are intended to be in place for the local government quadrennial elections in March 2008.

Achievement of policy objectives

The Bill will achieve the policy objectives by:

- greater standards of disclosure including third party expenditure returns, donor returns, loans, gifts and fundraising;
- defining a group of candidates and calls for registration at nomination;
- prohibiting local government candidates from undertaking electoral activities together unless part of a registered group;
- increasing penalties for electoral offences consistent with those in place for State elections;
- requiring independent and group candidates to have specific accounts for election purposes;
- defining conflicts of interest and requires councillors to identify and declare them prior to taking part in decision making;
- requiring councils to minute information about councillor conflicts of interest;
- establishing a statutory caretaker period and a candidates' code of conduct during local government elections;
- calling for registration of how-to-vote cards with the Returning Officer for a local government prior to an election and allow electoral offices to take steps to prevent unregistered how-to-vote cards from being distributed at polling booths;

- providing that a councillor is disqualified following conviction for breaching section 250 (Improper use of information by councillors) of the LGA;
- allowing for the appointment of a financial controller to a local government in certain circumstances;
- requiring councils to provide a statement of reasons for deciding not to accept officers/consultants' recommendations for significant decisions;
- making it an offence with a penalty for a councillor to direct a council officer;
- addressing minor and/or technical issues identified by the Department during the review of local government electoral provisions following the 2004 local government elections; and
- providing a special category of reference for major reviewable local government matters (significant boundary changes or amalgamation) arising from a *Size, Shape and Sustainability* review.

Alternatives to achieve policy objectives

There are no alternatives considered appropriate for achieving the policy objectives.

Estimated implementation costs

Costs to Government

Implementation costs to Government, including training and publication of documentation supporting local government elections, will be met from within existing budgetary allocations.

Costs to local government and industry

Additional costs and resources for local governments and industry will include administrative costs for dealing with councillor conflicts of interests, registration of how to vote cards, additional disclosure requirements, registration of candidates adopting the candidate's code of conduct, minuting of certain council decisions, investigations and inquiries for errors and omissions in electoral returns and registers' of interests.

Consistency with Fundamental Legislative Principles

The Bill does not infringe any Fundamental Legislative Principles.

Consultation

Community

The CMC Inquiry into the conduct of the 2004 Gold Coast City Council elections was held between September 2005 and February 2006. It was a public inquiry where witnesses were called and submissions received from individuals and professional groups. The CMC's report of this inquiry was tabled in Parliament on 11 May 2006. In August 2006, the State Government announced its response to the CMC's recommendations.

In December 2005, following the quadrennial review of the electoral provisions of the LGA, the Department released a discussion paper and community questionnaire proposing various amendments to the LGA for public comment and response. Seventy-four responses were received, including from the Local Government Association of Queensland (LGAQ), Local Government Managers Australia – Queensland (LGMA), the Brisbane City Council (BCC), 40 other councils, 3 organisations and 29 individuals.

During the development of the proposed amendments contained in the Bill, discussions have been held to refine the details with the LGAQ, the LGMA and the BCC.

Government

The following government agencies and statutory bodies have been consulted about and support the introduction of the Bill:

- Department of the Premier and Cabinet;
- Electoral Commission of Queensland; and
- Department of Justice and Attorney-General.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides the short title of the Act.

Part 2 Amendment of Local Government Act 1993

Act amended in pt 2

Clause 2 provides that part 2 amends the *Local Government Act 1993*.

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

Clause 3 amends section 9 to apply new part 9 of chapter 5 (miscellaneous election matters) to the BCC.

Insertion of new ch 3, pt 1, div 8A (Reviewable local government matters from SSS reviews)

Size, Shape and Sustainability (SSS) is a new initiative aimed at enabling local governments to improve the capacity, efficiency and sustainability of council services in Queensland. Over the next five years (2006-2011), councils will be considering their needs and challenges through the SSS initiative – a cooperative exercise between the Department and the LGAQ. SSS reviews are currently being undertaken voluntarily by around 100 local governments around Queensland, to allow them to review governance and service delivery arrangements using a review framework prepared by the LGAQ in conjunction with the Department.

SSS will underpin reform of the Queensland local government system. The initiative recognises the challenges facing local government and funds councils to explore structural change as a means of improving efficiency and

effectiveness. It is anticipated SSS will lead to enhanced cooperation and shared services between councils across Queensland and to some potential structural/boundary changes.

Queensland councils will be funded to undertake projects to consider structural change as a means of improving their efficiency and effectiveness and responding innovatively to the social, environmental and economic pressures on local communities. Councils will also consider the use of shared services, regional cooperation and voluntary boundary change as a response to these pressures. It is anticipated that the results of these projects will inform policy and legislative development in relation to the LGA and related subordinate legislation.

Clause 4 inserts a new chapter 3, part 1, division 8A to eliminate the potential for duplication of community engagement in considering local government boundary changes under the SSS initiative and current requirements of the LGA. New division 8A provides the Minister for Local Government with power to make a special reference to the Electoral Commissioner for certain reviewable matters that are the outcome of a SSS review. The application of this new division is limited to recommendations arising from a SSS review, involving 2 or more local governments, and proposing one or more of the following:

- creating a new local government;
- changing external boundaries; and
- abolishing a local government area.

New division 8A allows the Electoral Commissioner to certify that the community engagement undertaken for the purposes of the relevant SSS review satisfies the community engagement requirements that would otherwise apply under the LGA.

New section 151A defines terms used in new division 8A.

New subdivision 2 sets out:

- the circumstances in which the Minister may refer an SSS review recommendation to the Electoral Commissioner;
- a process for the Electoral Commissioner to decide whether to certify that the community engagement activities supporting the SSS recommendation are at least equivalent to engagement requirements under sections 88 and 90; and

- a requirement for the Electoral Commissioner to advise the Minister as soon as practical of the decision.

New subdivision 3 requires the Governor-in-Council to implement minor recommendations as soon as practical after the Minister receives the SSS review recommendation. Minor recommendations relate to matters agreed to by all affected local governments and all affected land owners and do not require a referendum to be undertaken by the Electoral Commissioner.

New subdivision 4 requires a referendum in accordance with division 7 for a significant SSS review recommendation, where the Electoral Commissioner has certified the community engagement activities. A significant recommendation relates to recommendations other than minor recommendations that have been referred to the Electoral Commissioner. New subdivision 4 also requires the Electoral Commissioner to advise the Minister and affected local governments about the result of a referendum.

New subdivision 5 sets out a process for implementing a SSS recommendation, following a referendum approving the recommendation. The subdivision provides that the Minister must implement the matter if the referendum approves (as with other reviewable matters). If the referendum does not approve Parliament retains the ability to consider the matter.

Subdivision 6 provides the matter may be implemented by regulation.

Insertion of new ch 3, pt 2, div 5 (Financial controllers)

Clause 5 inserts new chapter 3, part 2, division 5 (Financial controllers) which provides for the appointment of a financial controller for a local government, similar to the provisions for Aboriginal councils under the *Local Government (Community Government Areas) Act 2004*. These provisions will make available a way to address financial concerns, whether identified by the Department or the local government, without the need to dissolve the local government.

While the new division 5 is based on the *Local Government (Community Government Areas) Act 2004*, part 4, there are differences between the Aboriginal councils to which that Act relates and local governments to which the LGA relates. For this reason, different criteria for the appointment of a financial controller will apply under the LGA. A financial controller under the LGA will not have a power to revoke or suspend a resolution or order of a local government as is possible under the *Local Government (Community Government Areas) Act 2004*. Instead, the financial controller must advise the Department about a resolution or order

if need be (see new section 542D). Under the existing provision, the Department could then recommend to the Minister that the relevant local government resolution be revoked or suspended.

New section 188A (Procedures before appointment of financial controller) sets out the procedures, including notice requirements, to be followed before the Governor-in-Council appoints a financial controller for a local government.

New section 188B (Appointment of financial controller) allows the Governor-in-Council to appoint a financial controller by regulation and sets out matters about which the Minister must be satisfied before making a recommendation to the Governor-in-Council.

New section 188C (Functions of financial controller) outlines the roles and responsibilities of the financial controller.

New section 188D (Power of financial controller to advise chief executive about resolution or order) provides for the circumstances where a financial controller must advise the chief executive officer (CEO) of the Department of resolutions or orders of local governments that he or she believes will result in unlawful expenditure or expenditure of grant moneys for a purpose other than the purpose for which the grant was given. The new section also requires the financial controller to include reasons to support their beliefs about the resolution or order.

New section 188E (Countersigning cheques and authorising electronic funds transfers) provides that payments by the local government must be countersigned or authorised by the financial controller. This section also sets out the circumstances where a financial controller may refuse to countersign a cheque or authorise electronic transfers for a local government.

New section 188F (Local government to cooperate with financial controller) requires a local government to cooperate with a financial controller.

New section 188G (Financial controller's employment conditions) provides that the financial controller is employed under the *Public Service Act 1996*.

New section 188H (Recovery of amounts from local government) allows the Governor-in-Council to direct a local government to pay the Minister any costs associated with a financial controller.

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

Clause 6 amends section 222(1) to include a reference to section 250 (Improper use of information by councillors). This means a councillor convicted of breaching section 250 will be disqualified and required to vacate their office unless a court rules there are special circumstances not to be disqualified and vacate office.

Clause 6 also amends section 222 (2) to provide that the disqualification provisions will apply unless the person convicted of a relevant offence satisfies the court that there are special circumstances why they should not be disqualified or their office vacated. This change in the application of section 222(2) responds to recommendation 17 of the CMC report. The CMC considered forfeiture of a seat on council as the most effective penalty for councillors convicted of certain offences.

Clause 6 also makes a consequential amendment as a result of amendments to sections 383 and 384.

Amendment of s 230 (Limitation on councillors' roles)

Clause 7 creates an offence and penalty if a councillor directs, purports to direct or attempts to direct a local government employee or other person engaged to provide services to the local government about the way to perform a relevant duty. The penalty for a councillor convicted of breaching this provision is set at 85 penalty units.

Clause 7 also defines *relevant duty*, for the purpose of determining whether a councillor commits an offence, as giving advice or recommendations to the local government about —

- granting a licence, permit or approval as required under an Act or a local law;
- granting a concession, rebate or waiver in relation to an amount owed to the local government;
- entering into a contract under chapter 6, part 3; or
- disposing of land or a non-current asset; or
- allocating any of the local government's resources including staff, funds, plant & equipment for carrying out local government programs or projects.

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

Clause 8 amends section 242 by removing subsection (3A), which will become redundant with amendment to make appointed agents responsible for electoral returns from groups of candidates. This amendment means a councillor who was a member of a group of candidates will not be required to ensure the group return is supplied to the local government's CEO before the councillor can take up office.

Insertion of new s 246A (Recording of conflict of interest)

Clause 9 inserts new section 246A. This new section provides councillors with a process to deal with matters that are conflicts of interest but not a material personal interest.

Chapter 15 of the CMC report recommends amendments to the LGA to help councillors better identify and resolve conflicts of interests and improve transparency and accountability by providing a record for public scrutiny.

Evidence from the CMC Inquiry and the Tweed Shire Council Public Inquiry showed that identifying and resolving conflicts of interest is problematic for many councillors. Section 229 (Councillors' role) of the LGA provides that:

"In performing the role, a councillor—

- (a) must serve the overall public interest of the area and, if the councillor is a councillor for a division, the public interest of the division; and
- (b) if conflict arises between the public interest and the private interest of the councillor or another person—must give preference to the public interest."

Councillors are to act in the public interest, even if that means participating in decisions where they have a conflict of interest and putting the public interest above their own interest. A councillor has a conflict of interest in an issue if there is a conflict between the councillor's private interest and the honest performance of the councillor's role of serving the public interest. Interests may be pecuniary or non-pecuniary.

The new section 246A provides a process that allows councillors to be accountable and transparent about conflicts of interest in carrying out their councillor duties and obligations. The section requires councillors to

declare their conflicts of interest, have recorded in the minutes the nature of the conflict, and if they voted, how they voted. New section 246A will become a statutory obligation under the local government's councillor code of conduct. Breaches of this provision will be dealt with as statutory breaches by reference to conduct review panels.

Amendment of s 248 (Access to registers)

Clause 10 amends section 248 (Access to registers) to require public access to certain matters kept in a councillor's register of interests. This amendment improves transparency, increases councillor accountability while maintaining privacy of personal information and aligns councillor register of interest requirements with requirements in place for State Members of Parliament under their *Code of Ethical Standards*.

New subsections (5A) to (5C) require information about gifts received, hospitality received, and memberships of organisations, to be made available. Any member of the public may obtain the information at the public office of the local government and on the local government's website (if applicable) as soon as possible after it becomes available. The current arrangements continue to apply for accessing other information in a councillor's register of interests.

Clause 10 also amends section 248 to provide all councillors with access to registers' of interests for related persons.

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

Clause 11 amends section 250 (Improper use of information by councillors) to omit provision (1) (b). The penalty for breaching this provision is increased to 100 penalty units in alignment with its inclusion as a disqualifiable offence under section 222 (Disqualification and vacation of office for certain offences).

Amendment of s 304 (Deposit to accompany nomination)

Clause 12 amends section 304 to add that a person can pay the deposit on behalf of the candidate. This allows a more flexible approach to payment of nomination deposits and reflects a similar provision in the Electoral Act.

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

Clause 13 amends section 308 to add that a person who paid a deposit on behalf of a candidate can receive the refund. This reflects a similar provision in the Electoral Act.

Amendment of s 309 (Death of a candidate)

Clause 14 amends section 309 to add that a person who paid a deposit on behalf of a candidate can receive the refund in the event of the candidate's death. This reflects a similar provision in the Electoral Act.

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

Clause 15(1) and (2) amends section 313 to add that a person who paid a deposit on behalf of a candidate can receive the refund in the event of the candidate's death. This reflects a similar provision in the Electoral Act.

Clause 15(3) amends section 313 to allow the Minister to approve electoral changes through notification in the gazette in the event of the death of a candidate. This amendment removes the requirement for Governor-in-Council approval which can take up to four weeks and may delay the election.

Amendment of s 314 (Disposal of deposits generally)

Clause 16 amends section 314 to add that a person who paid a deposit on behalf of a candidate can receive the refund after the conclusion of the election. This reflects a similar provision in the Electoral Act.

Amendment of s 316 (Extension of times)

Clause 17 amends section 316 to allow the Minister to approve a later election day through notification in the gazette. This amendment removes the requirement for Governor-in-Council approval which can take up to four weeks and may delay the election.

Insertion of a new s 316A (Special provision about refunding deposits)

Clause 18 inserts a new section 316A to allow a person to collect a nomination deposit refund with the written authority from the person who is entitled to the refund.

Amendment of s 329 (Correction of errors etc.)

Clause 19 amends section 329 to allow the Minister to approve electoral changes through notification in the gazette, including correction of an error, omission or delay in respect of any voters' roll, ballot paper or other document to be used in an election. This amendment removes the requirement for Governor-in-Council approval which can take up to four weeks and may delay the election.

Amendment of ss 383 and 384 (False or misleading information)

Clause 20 replaces sections 383 and 384 with a new section 383. This amendment aligns the offence and penalty for giving false or misleading information with section 98B of the Criminal Code, which applies to State and BCC elections.

This provision in the Criminal Code was enacted in 2002. The amendments to legislation formed part of the State Government's response to the Shepherdson Inquiry to increase penalties for electoral offences to be commensurate with those in other Australian jurisdictions.

Amendment of s 385 (Bribery)

Clause 21(1) amends section 385(2) to create a penalty for asking for or receiving anything that could influence or affect a person's election conduct.

Clause 21(2) amends section 385(3) to increase the penalty for giving, promising or offering anything in order to influence someone's election conduct.

This amendment aligns the offence and penalty for bribery with section 98C of the Criminal Code, which applies to State and BCC elections. This provision in the Criminal Code was enacted in 2002. The amendments to legislation formed part of the State Government's response to the

Shepherdson Inquiry to increase penalties for electoral offences to be commensurate with those in other Australian jurisdictions.

Amendment of s 386 (Providing money for illegal payments)

Clause 22 amends section 386 to increase the penalty for providing money for any purpose contrary to laws relating to elections. This amendment aligns the offence and penalty for providing money for illegal payments with section 98F of the Criminal Code, which applies to State and BCC elections.

This provision in the Criminal Code was enacted in 2002. The amendments to legislation formed part of the State Government's response to the Shepherdson Inquiry to increase penalties for electoral offences to be commensurate with those in other Australian jurisdictions.

Amendment of s 389 (Forging or uttering electoral papers)

Clause 23(1) amends section 389(1) to increase the penalty for forging or publishing a forged electoral paper.

Clause 23(2) amends section 389(2) to increase the penalty for forging someone's signature on an electoral paper.

This amendment aligns the offence and penalty for forging or uttering electoral papers with section 98D of the Criminal Code, which applies to State and BCC elections. This provision in the Criminal Code was enacted in 2002. The amendments to legislation formed part of the State Government's response to the Shepherdson Inquiry to increase penalties for electoral offences to be commensurate with those in other Australian jurisdictions.

Amendment of s 392 (Responsibility for election matter)

Clause 24 amends section 392(1) to introduce a penalty for corporations to align this electoral offence with section 161 of the Electoral Act.

Insertion of new s 392B (Lodging of how-to-vote cards)

Clause 25 inserts a new section 392B requiring registration of how-to-vote cards. The new provision responds to a recommendation of the CMC report and is consistent with provisions under the Electoral Act.

New section 392B requires the lodgement of how-to-vote cards, and the declaration of contributions received to produce how-to-vote cards. To avoid how-to-vote cards being distributed to voters in a way that could be perceived as misleading, the new section 392B section sets out the procedures for lodging of how-to-vote cards. It also set out penalties for non-compliance with these procedures.

Amendment of s 393 (Headline to electoral advertisements)

Clause 26 amends section 393 to introduce a penalty for corporations to align this electoral offence with section 162 of the Electoral Act.

Amendment of s 394 (Misleading voters)

Clause 27 amends section 394 to clarify the definition of *publish* to include publishing on an interstate website. Because of this amendment, it is also necessary to make clear that the penalty provision applies to each subsection.

Amendment of s 396 (Leave to vote)

Clause 28 amends section 396 to introduce a penalty for corporations to align this electoral offence with section 166 of the Electoral Act.

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

Clause 29 amends section 397 to allow the ‘6 metre rule’ for the canvassing of candidate promotional information to be relaxed under certain conditions at the discretion of the returning officer.

The LGA prohibits canvassing of candidate promotional information within 6 metres of the entrance to any building being used as a polling booth. This requirement can be problematic at some pre-polling voting places, especially where workers are exposed to the elements as a consequence. This prohibition is not consistent with State election requirements, where the ‘6 metre rule’ can be relaxed under certain circumstances.

Amendment of s 399 (Influencing voting)

Clause 30 amends section 399 to remove the penalty for voting if not allowed to vote. This amendment aligns the offence and penalty for

influencing voting with section 98E of the Criminal Code, which applies to State and BCC elections.

This provision in the Criminal Code was enacted in 2002. The amendments to legislation formed part of the State Government's response to the Shepherdson Inquiry to increase penalties for electoral offences to be commensurate with those in other Australian jurisdictions.

Amendment of s 401 (Voting if not entitled)

Clause 31 amends section 401 to increase the penalty for voting if not allowed to vote. This amendment aligns the offence and penalty for voting if not entitled with section 98A of the Criminal Code, which applies to State and BCC elections.

This provision in the Criminal Code was enacted in 2002. The amendments to legislation formed part of the State Government's response to the Shepherdson Inquiry to increase penalties for electoral offences to be commensurate with those in other Australian jurisdictions.

Amendment of ch 5, pt 8 hdg (Gifts and loans and requirements for accounts)

Clause 32 amends chapter 5, part 8 heading as a consequence of the amendments to this part.

Amendment of s 414 (Definitions for pt 8)

Clause 33 amends the definitions for *disclosure period*, *disposition of property*, *prescribed amount* and *relevant details*. The definition amendments support other amendments in this part.

Insertion of new s 417A (Adjustment of prescribed amount in relation to disclosure period)

Clause 34 inserts a new section 417A to clarify that any new amount set by regulation under a section 414 definition of *prescribed amount*, applies for the whole disclosure period for an election.

For example, if a sitting councillor successfully contests the 2008 election and is re-elected, the disclosure period for that councillor commences 30 days after the 2004 election and ends 30 days after the conclusion of the 2008 election. If, on 1 February 2007, the prescribed amount of \$200 is

adjusted for inflation and becomes \$215, the new amount applies to the whole disclosure period i.e. the councillor would only be required to disclose relevant details for gifts of \$215 or more irrespective of when the gift was received during the disclosure period.

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

Clause 35 amends references in section 423A to add references to provisions about additional disclosures for gifts and loans to candidates.

Insertion of new s 425 (Disclosure period for s 430A)

Clause 36 inserts a new section 425 (Disclosure period for s 430A) declaring the disclosure period for which a person gives the CEO a return for details about expenditure under section 430A to be from the day after the notice of the election is published to 6pm on polling day. For BCC the disclosure period for the same scenario is the day after the issue of the writ to 6pm on polling day.

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

Clause 37 amends chapter 5, part 8, division 3 heading as a consequence of amendments to this division.

Amendment of s 426 (Definitions for div 3)

Clause 38 clarifies the definition of *group of candidates* and introduces a definition of *agent* for division 3.

Amendment of s 427 (Gifts to candidates)

Clause 39 amends section 427 to change the timeframe in which candidates must disclose gifts after an election from 3 months to 15 weeks to align with the Electoral Act.

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

Clause 40 amends section 427A to require a nominated agent for a group to give a return for gifts to the group. This is instead of each candidate including in their individual returns information about gifts to the group of candidates. This amendment also changes the timeframe for a group's

agent to give a return about gifts following an election from 3 months to 15 weeks to align with the Electoral Act.

This amendment will make clear what gifts were given to the group and reduce inconsistency between disclosures made by members of a group of candidates. It is intended that gifts to a group of candidates are recorded in one disclosure only made by the group's agent, instead of separate returns made by each member of the group for gifts to the group of candidates.

Amendment of s 428 (Certain gifts not be received)

Clause 41 provides consistency with other provisions regarding gifts under the Act by applying the provisions of section 428 to groups of candidates as well as to individual candidates.

Insertion of new ss 428A to 428C (Valuation of fundraising activity gifts and Loans to candidates or groups of candidates)

Clause 42 inserts a new section 428A (Valuation of fundraising activity gifts) to define for section 427, 427A or 428, the value of fundraising activities. The provision prescribes how to value fundraising gifts. Amounts paid to a candidate from fundraising activities must be valued as a gross amount for disclosure in a return. For example, if \$200 dollars is paid by 30 ticket-buyers for their attendance at a fundraising dinner, the value of the gift for the candidate to disclose is \$6000.

Clause 42 inserts a new section 428B (Loans to candidates) requiring candidates to give the CEO a return covering all loans received from a person, other than a financial institution, during the disclosure period for the election. The new section sets out what must be included in the return, including returns for any loans made that are the prescribed amount or higher. This amendment will provide consistency with section 304A of the Electoral Act.

Clause 42 also inserts a new section 428C (Certain loans not to be received) modelled on, and aligned with, section 306A of the Electoral Act. Candidates, groups of candidates or a person acting on their behalf will be prevented from receiving loans during the disclosure period unless they are recorded as set out. The Electoral Act includes comparable provisions for candidates and political parties for State elections.

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

Clause 43 amends section 429 to provide consistency with other amendments to the LGA regarding timing for due dates of returns. It also updates the reference to include additional disclosure requirements for loans to candidates.

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

Clause 44 amends section 430(2) to change the timeframe whereby each third party for the election must give the return for prescribed gifts received during the disclosure period from 3 months to 15 weeks after the election, to align with the Electoral Act.

Insertion of new s 430A (Third party expenditure for political purposes)

Clause 45 inserts a new section 430A (Third party expenditure for political purposes) to require third parties, that incur expenditure of more than the prescribed amount for a political purpose, during the disclosure period for an election, to provide a return to the CEO within a specified period.

The new section details requirements for the return which will help to make funding for election campaigns. Third parties who incur expenditure for political purposes, for example production of pens with “Vote for Mary”, will be required to provide a return if the expenditure is more than \$200. The disclosure period is set out in new section 425.

Insertion of new ch 5, pt 8, div 3, sdiv 2A (Disclosure by donors)

Clause 46 inserts a new chapter 5, part 8, division 3, subdivision 2A to establish requirements for donor disclosures. These amendments require a person who makes a gift in relation to the election to a candidate or group of candidates during the disclosure period for an election to provide a return to the CEO within a specified time.

The new section details requirements for the return which will help in the transparency of funding for political campaigns. Election disclosure laws are aimed at ensuring a candidate’s funding sources are open to examination and this new provision supports that aim. The new section also provides the relevant person’s responsibilities in relation to informing

the donor of their disclosure requirements and defines *relevant person* for this purpose.

Insertion of new ch 5, pt 8, div 3, sdiv 4 (Operation of accounts)

Clause 47 inserts a new chapter 5, part 8, division 3, subdivision 4 to establish requirements for a candidate or group of candidates to operate an account for any monies received or spent during the disclosure period for the conduct of the candidate's campaign during an election (an election account).

New section 432A(6) creates an offence for a candidate not taking all reasonable steps to ensure the account is set up and used for the campaign.

In order for the CEO and the Department to effectively perform the auditing role with respect to electoral returns, it is necessary that they have access to detailed information about a candidate, or group of candidates' income and expenditure in relation to an election campaign.

Insertion of new ch 5, pt 8, div 4A (Recording of group's membership and group's agent)

Clause 48 inserts a new chapter 5, part 8, division 4A to establish requirements for the registration of groups of candidates and their agents and to prohibit electoral advertising and fundraising by groups if they are not registered.

New section 435A (Definitions for division 4A) defines certain terms used throughout the new division 4A.

New section 435B (Offence to advertise or fundraise for group if nomination requirements not complied with) makes it an offence to advertise or fundraise for the election if the nomination requirements have not been complied with. The *nomination requirements* are defined under new section 435A.

New section 435C (Record of group membership requirement) states that a record of membership of a group of candidates must be given in the approved form stating the names of the members and must be signed by each member. It also provides that the record is to be publicly displayed.

New section 435D (Group agent nomination requirement) states that an instrument appointing an agent for the group is given at the same time as the record of membership as required by section 435C or can be included in the record of membership. It provides that the instrument be in the

approved form stating the name and address of the agent, be signed by each member of the group and include or be accompanied by the agent's consent and declaration that they are eligible to be appointed as the agent.

New section 435E (Register of group agents) sets up the requirement for the nomination entity for a candidate to keep a register of group agents. The register must include details of each agent for a group that includes the candidate. The appointment of an agent needs to be recorded on this register for the appointment to be effective, and the appointment is no longer effective if the record is removed. The record can only be removed by written notices, by both the agent and all members of the group. The notice must state that the agent has resigned and is no longer the group's agent. If an agent resigns the group may appoint another agent, but until another agent is appointed, all obligations and liabilities under the Act that apply to an agent apply to each member of the group.

A candidate can run in a local election as an individual, an endorsed candidate of a political party or as a member of a group of candidates. A *group of candidates* is defined in section 426 of the LGA as *a group of candidates formed to promote the election of the candidates for a particular local government, but does not include a political party or an associated entity*. There are special disclosure provisions applying to groups of candidates in section 427A. Being part of a group of candidates is also relevant for the purposes of how-to-vote cards. Section 392A of the LGA sets out that a how-to-vote card may be authorised for a group of candidates by one of its members and that the card must state the group's name.

In order for information about the composition of groups of candidates standing for election to be made public and to assist in monitoring gift disclosure for groups of candidates, the group will be required to identify the membership of their group before 12 noon on nomination day. Under this new division, financial relationships between candidates will be easily identifiable and this will strengthen accountability and transparency in regard to election funds.

Amendment of s 436 (Offences about returns)

Clause 49 amends section 436 to give responsibility to a candidate who is part of a group to ensure all returns lodged on the group's behalf are true. By making it an offence for the candidate to allow the agent to give the return if it contains, to the candidate's knowledge, information that is false or misleading, the amendment creates increased incentive for honesty.

Insertion of new ch 5, pt 9 (Miscellaneous election matters)

Clause 50 inserts a new chapter 5, part 9 to establish a process for registering a candidate's adherence to a code of conduct and to establish a caretaker period. Public confidence will be strengthened and enhanced by ensuring candidates know their responsibilities for ethical and lawful conduct in the lead up to a local election. Accountability of candidates will be maintained by making the code of conduct publicly available.

New division 1 (Preliminary) applies the code of conduct and caretaker provisions to BCC.

New division 2 (Code of conduct for candidates) provides for the departmental CEO to prepare and make available a code of conduct for candidates for local government elections. It is envisaged this code will be modelled on the State code of conduct for elections. New division 2 also provides for a local government CEO to keep a register of candidates who provide written advice that they wish to comply with the code. This register is to be made available for public inspection. The CEO must also tell anyone who asks if a candidate is included in the register.

New division 3 (Caretaker period arrangements) provides for a new arrangement for caretaker periods for local governments in the period leading up to an election. This new arrangement will enhance public confidence in the council electoral process and diminish the potential for the perception of councillors' abuse of decision making powers.

New section 441C (Definitions for div 3) defines *caretaker period* and *major policy decision* for that division.

New section 441D (Prohibition on major policy decision in caretaker period) provides that a local government must not make a major policy decision during the caretaker period except in the case where exceptional circumstances apply and the Minister has approved the decision.

New section 441E (Invalidity of major decision in caretaker period without approval) states that a major decision made during a caretaker period is not valid if the Minister has not approved it under section 441D. The section also provides for compensation for a person if a decision is deemed invalid.

New section 441F (Prohibition on election material in caretaker period) legislates that a local government must not publish or distribute election material during a caretaker period.

Insertion of new s 461A (Recording of reasons for particular decisions)

The CMC inquiry into the Gold Coast City Council found there was no recorded information about instances where the council had rejected recommendations made by a council officer or professional and recommended a legislative amendment for councils to minute such decisions (Recommendation 18).

The Queensland Ombudsman has also recommended that councils prepare a statement of reasons, even if it is now requested or required by law, in order to promote trust and acceptance of adverse decisions.

Recently enacted amendments to the *Integrated Planning Act 1997* require reasons to be given if a local government abandons a planning scheme, and for these to be published on the council's website. These amendments do not apply to council decisions that are unrelated to development applications, for example, a decision to give rate discounts against the recommendation of council officers.

New section 461A requires a local government to provide a statement of reasons when it makes a decision on particular matters that is different to that recommended by an officer or consultant.

The requirement to minute reasons for decisions strengthens council decision making processes and is good business practice. It protects councils from any misunderstanding about why the decision was made. It provides clarity to those who agree and those who disagree, especially to the community and in any event of complaint.

The amendment is not intended to erode the decision making power of council but to provide information that identifies the intended benefit of the decision. The amendment also provides some balance across the types of locally made decisions. Recommendations by officers that are adopted by council are supported by reasons. Decisions made by officers, for matters which have been delegated to them, require a statement of reasons if considered under a judicial review process.

Question time in the Parliamentary process provides an opportunity for requiring reasons for decisions made by the State Government. The current local government framework does not provide a mechanism that enables review of council decisions. This amendment requires local governments to provide reasons for specified significant decisions that are not consistent with council policy. It does not prevent councils from putting in place a process to provide reasons for all its major decisions.

Amendment of s 1077 (Indictable offences and summary offences)

Clause 52 amends section 1077 to ensure that *designated electoral offences* as defined in new section 1077A are not summary offences.

Insertion of new s 1077A (Designated election offences and application of Criminal Code)

Clause 53 specifies the offences under the LGA that are *designated electoral offences* and classifies them as crimes (and therefore indictable offences). The designated electoral offences under the LGA correspond with electoral offences in the Criminal Code that apply to State and BCC elections. Clause 53 also provides for designated electoral offences nominated by the LGA be dealt with under the Criminal Codes in the same way as the corresponding electoral offences in the Code.

Insertion of new ch 15, pt 5, div 11 (Consideration of errors or omissions in registers of interests and election disclosure returns)

Clause 54 inserts a new chapter 15, part 5, division 11 (Consideration of errors or omissions in registers of interests and election disclosure returns) to assist local government chief executive officers' (CEOs) in discharging their duties and responsibilities for receiving and maintaining electoral returns and registers of interests. It will also allow the Department's chief executive (CE) to similarly investigate and make inquiries in relation to local government electoral returns and local government councillors' registers of interest.

New subdivision 1 consists of a new section 1105A (Definitions for div 11) which defines certain terms used in the new division 1.

New subdivision 2 (Investigating officers) sets out the provisions relating to investigating officers and associated matters.

New section 1105B (Appointment) provides that the Department's CE or a local government's CEO may appoint a person with the necessary skills and experience if it is necessary to carry out investigations for the Department or local government under this new division.

New section 1105C (Investigating officer's powers) provides that the investigating officer holds that position under the conditions of an

instrument of appointment, a signed notice or a regulation. Subject to any stated conditions, the officer has all the powers under:

- the new division in relation to returns or registers;
- division 4 in relation to investigating offences;
- division 5 in relation to obtaining a warrant;
- division 8 in relation to powers after entry into a place; and
- division 9 in relation to giving notice of damage and compensation.

The instrument of appointment or a notice signed by the officer that appointed the investigating officer may limit those powers if necessary.

New section 1105D (Investigating officer's identity card) sets out the requirements for the investigating officer's identity card.

New section 1105E (Production or display of identity card) sets out the requirements for the production and display of the identity card.

New section 1105F (When investigating officer ceases to hold office) provides for the ways in which an investigating officer ceases to be an investigating officer.

New section 1105G (Resignation) provides for how an investigating officer may resign.

New section 1105H (Return of identity card) creates an offence if an identity card is not returned to the Department's CE of a local government CEO within 21 days after an investigating officer ceases to be an investigating officer.

New section 1105I (Impersonation of an investigating officer) creates an offence for pretending to be an investigating officer.

New subdivision 3 (Investigations) sets out provisions for conducting investigations by the Department's chief executive CE or a local government's CEO or their appointed investigators.

New section 1105J (Making of inquiries for local government) allows a local government CEO or investigating officer appointed by the CEO to make all reasonable inquiries to determine if, and the extent the register or return is incorrect. The provision applies if the CEO suspects or believes that information contained in a register or return is incorrect,

New section 1105K (Making of inquiries for department) allows the Department's chief executive (CE) or investigating officer to make all

reasonable inquiries to determine if, and to what extent the register or return is incorrect. The provision applies if the CE suspects or believes that information contained in a register or return is incorrect. The Department may begin inquiries upon receipt of a complaint. There is also provision to begin inquiries following receipt of a report from a CEO of a local government about an investigation of a suspected error or omission in a register or return.

New section 1105L (Power to require information or document for local government investigation) enables a local government CEO, or an investigating officer appointed by the CEO to require a person to give information or provide documentation. This power applies to situations where a CEO of a local government suspects or believes that information contained in a councillor's register of interests or information contained in an electoral return is incorrect or an offence has been committed in relation to a register or return. New section 1105L also creates an offence for a person not complying with the requirement to provide information or documentation and sets out details about this offence. New section 1105L also provides that once the CEO or investigating officer has the required document, they can keep it to take an extract or to copy it, but must return it as soon as practicable.

New section 1105M (Power to require information or document for department investigation) enables a department CE or an investigating officer appointed by the CE to require a person to give information or provide documentation. This power applies to situations where the Department's CE suspects or believes that information contained in a councillor's register of interests or information contained in an electoral return is incorrect or an offence has been committed in relation to a register or return. New section 1105M also creates an offence for a person not complying with the requirement to provide information or documentation and sets out details about this offence. New section 1105M also provides that once the CE or investigating officer has the required document, they can keep it to take an extract or to copy it, but must return it as soon as practicable.

The Department's CE may begin inquiries upon receipt of a complaint. There is also provision to begin inquiries following receipt of a report from a CEO of a local government about an investigation of a suspected error or omission in a register or return.

New section 1105N (Referral to Department) requires that where a local government CEO concludes from an investigation that there has been a

breach of the Act, the CEO is to report this matter to the Department's CE. Current provisions under the *Crime and Misconduct Act 2001*, requiring a local government CEO to notify the CMC of potential official misconduct matters, will also continue to apply.

New section 1105O (Access to information in register) makes it clear that the Department's chief executive and investigating officers appointed by the Department's CE or a local government's CEO are permitted to access registers of interests kept by the CEO about persons related to councillors as required under section 247. Access by these parties to these registers of interest is limited to inquiries and investigations under new division 11.

New subdivision 4 (Chief executive officer's authority under div 11) consists of a new section 1105P (Chief executive officer not subject to local government) which provides statutory power for a local government CEO in making decisions under this division.

Amendment of sch 2 (Dictionary)

Clause 55 adds definitions of *financial controller* and *designated electoral offence* to the dictionary.

Part 3 Amendment of City of Brisbane Act 1924

Act amended in pt 3

Clause 56 provides part 3 amends the CoBA.

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

Clause 57 applies new chapter 5, part 9 to BCC.

Insertion of new s 39BA (Recording of reasons for particular decisions)

Clause 58 inserts a new section 39BA, in line with new section 461A in the LGA, to make it clear that a decision about particular issues made against the recommendation of an employee or officer of the local government must be recorded in a statement of reasons.

Part 4 Amendment of Electoral Act 1992

Act amended in pt 4

Clause 59 provides part 4 amends the Electoral Act.

Amendment of s 162 (Headline electoral advertisements)

Clause 60 increases the penalty for an individual from 9 to 10 penalty units to correspond with section 393 of the LGA.

Amendment of s 165 (Leave to vote)

Clause 61 increases the penalty for an individual from 9 to 10 penalty units to correspond with section 396 of the LGA. Clause 61 also changes the penalty for corporations from 42 to 40 penalty units consistent with other corporate penalties in the Electoral Act and the LGA.

Amendment of s 166 (Canvassing etc. in or near polling places)

Clause 62 increases the penalty for an individual from 9 to 10 penalty units to correspond with section 397 of the LGA.

Amendment of s 167 (Interrupting voting etc.)

Clause 63 increases the penalty for an individual from 9 to 10 penalty units to correspond with section 398 of the LGA.

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

Clause 64 amends section 304 of the schedule to provide that donations given from a person's lawyer's or accountant's trust account are not to be treated as though they came from the solicitor or accountant, and that the true source of the donation or gift must be revealed.

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

Act amended in pt 5

Clause 65 provides that part 5 amends the *Local Government (Community Government Areas) Act 2004*.

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

Clause 66 is consequential following amendments to the LGA.