Local Government Bill 2009

Explanatory Notes

Title of the Bill

Local Government Bill 2009

Introduction

Contemporary local government legislation reflects Queensland's growth, and strengthens and supports local governments in seizing the opportunity for expanding local initiatives and increasing flexibility to serve their communities.

Over the last 18 months the local government system in Queensland has undergone the most extensive reform process in more than a century. The Local Government Reform Program was initiated in April 2007 to build stronger local governments better able to deliver on their long term plans for sustainability and viability, and to meet community service obligations.

As part of this reform program, new local government legislation is intrinsic to the goal of building stronger local governments. The convoluted and highly prescriptive legislative framework that existed under the *Local Government Act 1993* (LGA), the *Local Government (Community Government Areas) Act 2004* (CGA) and associated regulations and standards is replaced by a local government Bill that is contemporary, principles-based and applicable to all local governments across Queensland.

The *Local Government Bill 2008* (2008 Bill) was introduced into Parliament in October 2008. Following consultation and the receipt of submissions suggesting changes to the Bill, amendments were made which are incorporated into this Bill, the *Local Government Bill 2009* (the Bill). The amendments clarified wording to make it easier for practitioners to use. The policy intent did not change. The 2008 Bill lapsed with the dissolution of the 52nd Parliament in February 2009.

The streamlined size of the Bill is primarily due to a number of provisions being incorporated into other, more relevant statutes or being omitted altogether due to redundancy or duplication. The Bill will be supplemented by regulations that govern essential but subordinate operational and administrative issues.

In reflecting the principle of "one size does not fit all", the legislation better enables Queensland's diverse range of local governments to make choices about processes to suit their size, location and administrative circumstances. The legislation balances increased discretion by articulating consistent integrity, accountability and transparency requirements for local government. These focus on councillor behaviour and local government performance in the delivery of sustainable development and proper management of assets and infrastructure. Increased flexibility is balanced by appropriate consequences and penalties for any failure to meet statutory responsibilities and standards.

The amendments in chapter 9, part 1 are proposed to amend the *Animal Management (Cats and Dogs) Act 2008* (the Animal Management Act).

Under clause 2 the amendments commence on 1 July 2009.

General policy objectives of the Bill

During extensive consultation, stakeholders asked that the Bill facilitate efficient, accountable and effective governance and service delivery.

Clear expectations and high standards about transparent decision-making, inclusive community consultation practices and local government performance are addressed. The groundwork is laid for a sensible but more adaptable approach to enterprises, partnerships of many secure kinds and sustainable financial arrangements and accountability.

The Bill fosters a culture of personal integrity and accountability for elected and administrative officials, and is unambiguous about the consequences of not meeting particular standards. It has a strong focus on the conduct of councillors and the performance of local governments.

Amendment of the Animal Management Act

The Act, which was passed by Parliament on 3 December 2008 and assented to on 11 December 2008, introduces new requirements for the registration and microchipping of cats and dogs and provides for the regulation of dangerous, menacing and restricted dogs. Staggered

commencement of the Act throughout the State commences from 1 July 2009.

Since assent, several amendments have been identified as necessary to ensure consistency with the stated purposes of the Act (section 3). The amendments are essentially technical in nature and do not change the original policy intent of the legislation.

Alternatives to achieve policy objectives

An alternative option is to retain the LGA and the CGA in their current forms. However, this would not provide a contemporary or appropriate legislative framework for the Queensland local government system to undertake its governance and service delivery role in the 21st century.

Several of the amendments to the Animal Management Act are generated by the need to redraft certain provisions to make them better reflect the Act's original policy intent. Others merely correct drafting anomalies or clarify provisions where the possibility of ambiguity in meaning has been identified.

Estimated implementation costs

Costs to Government

Implementation costs to Government, including training and publication of documentation, will be met from existing budgetary allocations.

Costs to local government and industry

There are no financial implications as a result of the legislative proposals.

The Regional Conduct Review Panels (the panels) and the Local Government Remuneration and Discipline Tribunal (the tribunal) are funded by a local government user-pays system and replace the local government funded conduct review panels.

Amendment of the Animal Management Act

The amendments do not introduce any additional costs to the implementation and maintenance of the Act.

Consistency with Fundamental Legislative Principles

Local Government Bill 2009

Potential fundamental legislative principle issues arising from the State monitoring, enforcement, dismissal and dissolution powers are justified to enable the State to meet its constitutional responsibility for local government under the *Constitution of Queensland 2001* (Queensland Constitution). More details of the way the Bill complies with fundamental legislative principles are addressed clause by clause.

Of course, processes of the independent panels and the tribunal will comply with natural justice principles including 'show cause' prior to any recommendation of dismissal. Further safeguards are provided by Parliament's involvement in the ratification of regulations for the dissolution of a council and the requirement for dismissal of an individual councillor by regulation made by the Governor in Council. The regulation will be tabled and therefore could be subject to a motion of disallowance and Parliamentary debate.

Similar to arrangements for conduct review panels under the LGA and the equivalent process for State Members of Parliament (MPs), where the decision of the Parliament on the review of an MP's conduct and any penalty is final, deliberations of the panels and tribunal are non-appealable. The system for dealing with behavioural breaches for councillors takes account of the fact that there is no equivalent system of party discipline in local government as at the State level.

An additional consideration is that the system of disciplinary hearings must be simple, swift and independent to maintain public confidence and minimise any disruption to council operations.

The Bill respects Aboriginal tradition and Island custom, particularly by allowing all local governments to consider Aboriginal tradition and Island custom when exercising their powers under the Bill.

The incorporated amendments, some of which have been made in response to the Scrutiny of Legislation Committee's report on the Bill (Alert Digest No. 12 of 2008), are consistent with the fundamental legislative principles.

Amendment of the Animal Management Act

Clause 325(2) and (3) (amendment to schedule 1, section 3) might be considered a potential issue in terms of the principle for legislation to have sufficient regard to the rights and liberties of individuals.

Clause 325(2) and (3) requires the owners of regulated dogs (declared dangerous, declared menacing and restricted breed dogs) to keep a regulated dog muzzled (for declared dangerous and restricted breed dogs) and under effective control (all regulated dogs) at all times they are on any property that is not the address for which they are registered. Under schedule 1, section 4(2) of the Act, a regulated dog must, unless there is a reasonable excuse, be usually kept in its enclosure at the address at which it is registered.

The fundamental legislative principle involved relates to the potential concern that the amendment could affect the right of people to do what they wish in their own homes. For example, a visitor to a private property who brings an American pit bull terrier with him or her must keep it muzzled and under effective control, even if the property owner has no concerns about letting it loose on his or her property.

Clause 325(2) and (3) is necessary to ensure consistency both with the Act's purpose (sections 3(b) and 4) and the original policy intent as articulated in the Ministerial second reading speech: "This Bill will ensure that these [regulated] dogs are not a risk to the general health and safety of the community and that they are kept and controlled in a way that is consistent with both community expectations and individual rights."

The original wording in schedule 1, section 3 of the Act did not allow for the restraint of a regulated dog when not in a public place but not at its registered address, potentially placing community safety at risk.

Clause 325(2) and (3) aims to ensure personal and community safety at any time a regulated dog is away from its registered address irrespective of whether it is at another private premises or in public. Clause 325(2) and (3) therefore is in keeping with the overall policy intent of the Act, which is directed towards maintaining and enhancing community safety through the effective control of dogs that have been identified as forming a risk to persons and other animals.

Consultation

Government

Two workshops with government agencies and nine high level meetings with key statutory bodies and stakeholders were held to identify key themes and issues which informed the topics and outline of the Issues Papers. All departments were consulted during the Cabinet process.

On the Bill discussion paper, a number of departments raised issues related to the details of processes and procedures. Further consultation will be held during the drafting of the regulations for the Bill, where these matters will be addressed.

Following introduction of the 2008 Bill, consultation was held with the Departments of Main Roads, Natural Resources and Water, the Environmental Protection Agency and the Office of the Queensland Parliamentary Counsel.

Local governments

During a three stage consultation program, local governments and their professional associations were widely consulted. They responded with great interest and positive contributions drawing on their comprehensive knowledge and experience of local government.

Sixteen workshops and meetings with stakeholders were held throughout Queensland to discuss issues with the current legislation and improvements and changes desirable in the legislation.

Membership of the Local Government Act Review Reference Group included representatives from the Brisbane City Council, Local Government Managers Australia–Queensland, and Local Government Association of Queensland (LGAQ), Aboriginal councils and rural and remote councils.

During the development of the Bill, the Minister held several roundtable discussions with peak bodies, including industrial unions. Ten external agencies and all government agencies were consulted.

At its September 2008 annual conference the LGAQ commented favourably on the proposals for the Bill, noting that they will meet most of the requirements of the LGAQ and its members.

Following the 2008 Bill's introduction in October, information sessions were presented to over 42 councils, professional organisations and peak bodies with a total of over 700 participants. 52 submissions were received, some suggesting amendments to the Bill.

Community

Eight Issues Papers were released for public consultation on 17 July 2007 and 119 submissions were received, including from business, professional, unions and other special interest and community groups. The Queensland Council of Social Services, Commerce Queensland and a representative

from Griffith University were represented on the Local Government Act Review Reference Group.

Amendment of the Animal Management Act

Extensive consultation with local governments, other stakeholders, the general community and other government entities took place during the development of the Act. The amendments do not change the original policy position that underpins the Act and are consistent with the policy objectives presented during consultation.

Queensland Office for Regulatory Efficiency

The Queensland Office for Regulatory Efficiency was consulted during the drafting of the legislation and will be consulted during the development of regulations.

Integrated Development Assessment System

There are no implications for the Integrated Development Assessment System.

Ministerial Policy Committee

The Minister briefed the Policy Committee.

National Competition Policy

Queensland Treasury has been consulted in the development of the Bill and supports the streamlining and updating of the legislation.

Office of the Queensland Parliamentary Counsel

The Office of the Queensland Parliamentary Counsel has been briefed on the reforms and supports the legislative proposal.

Clause by clause explanation

Chapter 1 Preliminary

1 Short title

Clause 1 provides that the short title of this Bill is the *Local Government Act 2009*.

2 Commencement

Clause 2 provides that the Bill will commence on a day to be fixed by proclamation and that the amendments to the Animal Management Act commence on 1 July 2009.

3 Purpose of this Bill

The Queensland Constitution establishes Queensland's system of local government. The local government system sustains the social fabric of communities and currently these communities are experiencing rapid changes. The system is expected to respond efficiently to public expectations and demands for equitable access and high quality services whilst maintaining a level of accountability, effectiveness, efficiency and sustainability.

The purpose of this Bill is to provide for how local governments are constituted, as well as the legal and organisational system of local government in Queensland. The Bill establishes and provides the powers, responsibilities, obligations and requirements, for the system of local government.

4 Local government principles underpin this Bill

This Bill provides a principles-based framework for decision making and governance. It gives local governments flexibility to decide processes that suit their size, location and administrative circumstances, as long as the processes are rational, justifiable and transparent. Anyone performing a responsibility under this Bill must consider the application of the local

government principles. The principles apply to the processes carried out under the Bill as well as the results of those processes.

Principles-based legislation allows practitioners to focus on outcomes and develop their own operational procedures and processes. It does not mean that the Bill will be less enforceable. Principles-based legislation achieves higher levels of compliance. By requiring entities to comply with the spirit rather than the letter of the law, they must come to terms with the reasons behind the law.

Principles replace detailed prescription of roles and responsibilities and make a mandated separate code of conduct for councillors redundant.

The principles highlight the absolute essentials of excellently performing local governments which citizens expect and deserve. The principles are at one and the same time, aspirational, inspirational, practical and demanding.

5 How this Bill applies to the Brisbane City Council

Clause 5 makes clear that this Bill applies to the Brisbane City Council (BCC) to the extent the *City of Brisbane Act 1924* (COBA) does not. In line with the policy of providing a single legislative framework for Queensland's local government, it recognises that BCC has certain unique requirements.

6 Definitions

As modern drafting practice, clause 6 refers the reader to a schedule, the dictionary, for the definitions applicable to particular words in the Bill.

Chapter 2 Local governments

Chapter 2 provides more detail about the system of local government. It explains what a local government is and what area it governs. It establishes who makes up the parts of a local government and the powers and responsibilities of those parts. It sets out how a change may be made to the name, area or representation of a local government. The intent is to make clear how the overall framework of local government is established.

Part 1 Local governments and their constitution, responsibilities and powers

7 What this part is about

Clause 7 states that part 1 is about what a local government and a local government area are, what constitutes a local government and the responsibilities and powers of a local government and its constituent parts.

8 Local government's responsibility for local government areas

Clause 8 defines a *local government,* a *local government area* and local government *divisions*. It outlines the Governor in Council's powers to identify, by regulation, a local government's boundaries, divisions, representation (number of councillors), name or classification.

A local government area includes any divisions of the local government area. The change commission may consider the number of councillors in a division and the necessity for multi-member divisions.

9 Powers of local governments generally

Clause 9 empowers a local government to do anything that is necessary or convenient to provide good governance and deliver high quality services to their communities. This broad power complements the local government principles. That is, a local government may do anything within its power in line with the local government principles.

As local government power is drawn from the State, a local government can only do something that the State can legally do.

Recognising cultural diversity as part of the good rule and governance of a local government area, clause 9 provides for all local governments to take account of Aboriginal tradition and Torres Strait Island custom, thus promoting greater consideration of cultural matters in all local government areas.

A general competence power is included in clause 9 which ensures that those with responsibilities under the Bill have the powers to carry them out.

In addition, when a local government is able to exercise a power outside of a local government area, it is no different to its exercise within a local government area.

10 Power includes power to conduct joint government activities

There are many effective kinds of collaborative arrangements operating between local governments and others, as well as the formation of regional local governments, and the Bill supports these even further by legislating for the possibility of partnerships for multi-purposes such as managing a resource, providing services and/or operating facilities.

Clause 10 defines *joint government activities* and includes this as a specific local government power. Local governments may enter into agreements, contracts or other forms of collaboration with government entities from all levels of governments. The entities previously known as joint local governments are accommodated, as well as other types of collaborative arrangements.

The exercise of power outside of the local government's area as part of a joint government activity is by local law, with the agreement of the relevant government or governments.

11 Who a local government is constituted by

Clause 11 outlines who constitutes a local government, including councillors when elected or appointed in the normal manner, when a local government has been dismissed or any other situation when there are no councillors or interim administrator. The intent is succession and transition certainty within the local government.

12 Responsibilities of councillors

The effective functioning of local governments depends on local government legislation striking an appropriate balance between the roles of elected members (councillors) and those of the council's employees (officers). Of particular importance is clearly defining the separate roles of the mayor and the chief executive officer of the local government (CEO), and their relationship.

Similar to the principle of separation of powers that operates at Commonwealth and State levels of government, the Bill makes clear the

separate and different responsibilities of councillors, mayors, CEOs and officers. Councillors make up a collection of elected members that constitute the local government executive arm, which makes local laws and decides policy and other matters at a strategic level. The local government appoints a CEO to implement the decisions of the executive arm by overseeing the work of officers of local government in the administrative arm, at an operational level.

The responsibilities of the mayor include being the agent between the executive and officers of local government by directing the CEO. The responsibility of a councillor is to represent the public interests of the local government's residents. Officers provide advice and options to the executive, through the CEO, about implementation of decisions of the executive as well as actually implementing policies and decisions.

It is the responsibility of councillors and mayors to achieve the purpose and principles of local government as defined in clauses 3 and 4. Of particular relevance is the principle, the *ethical and legal behaviour of councillors and officers*.

Clause 12 details responsibilities of councillors, including the mayor, who must have a strategic approach, similar to a board of directors. It clarifies that all councillors, including the mayor, are responsible for the overall direction of the local government, taking a leading role in determining the way the local government achieves the purpose and principles of local government.

This clause recognises that the primary accountability of the local government is to its community, and that the decisions of the local government must be made with regard to the benefit of the entire local government area and the current and future interests of the residents.

It is the responsibility of the mayor to provide a visionary and strategic role in the economic, social and environmental management of the local area. The mayor has additional responsibilities to lead as the first among equals.

It is clear from subsection (4) only the mayor has the power to direct and to manage the CEO. The mayor must also take a leadership role in establishing and managing a professional working relationship with the CEO, and to provide the CEO with feedback on performance, thus, reinforcing the line management authority of the CEO. The responsibility for conducting the CEO's performance appraisal lies with the mayor, however council may decide the appropriate means of conducting the

appraisal. Neither the mayor (nor any other councillor) may direct any other officer.

While the Mayor proposes the adoption of the budget, it is, of course developed in accordance with best practice. The mayor is responsible for ensuring the local government responds promptly to Ministerial requests for information.

13 Responsibilities of local government employees

Clause 13 provides that local government employees manage their duties to enable the local government to meet its responsibilities. Employees are guided by work performance and conduct principles. These principles are a combination of ethical obligations (e.g. carrying out duties with impartiality and integrity) and work performance standards (e.g. ensuring effective, efficient and economical management of public resources). The clause is complementary to the *Public Sector Ethics Act 1994* which prescribes that employees, including the CEO, must comply with the local government's code of conduct. Local government principles (clause 4) also apply to employees.

The responsibilities of the CEO, as the head of the administrative arm of local government, are outlined in this clause. The line management role and separation of powers is emphasised by the responsibility for appointment of all local government officers, including senior officers. The local government may decide recruitment and merit selection policy, the budget and employment policy, which guide the CEO's recruitment and selection process.

It is incumbent on the CEO to develop with the mayor, a professional, effective working relationship. Directions given by the mayor to the CEO must be recorded and made accessible to council.

Part 2 Divisions of local government areas

Part 2 explains that a local government may be divided or undivided for representation purposes. When a local government is divided, there are

certain conditions which apply to ensure that the representation is equitable and to maintain 'one vote one value'.

14 What this part is about

Clause 14 outlines what chapter 2, part 2 is about.

15 Division of local government areas

Clause 15 requires the equitable distribution of electors across divisions of local government areas. A quota of electors (a reasonable proportion of electors) is determined for each division so that electors receive comparable representation on a council. Where an area is divided, the voter to division ratio must not vary by more than 20% from the quota when the number of voters is less than 10,000 or 10% when the number of voters exceeds 10,000.

16 Review of divisions of local government areas

Clause 16 provides that the representation of local government divisions is reviewed periodically by requiring local governments to advise the Minister that each division complies with the voter to division ratio. The timing must be no later than two years before the next quadrennial election and be based on the latest available electoral roll.

Part 3 Changing a local government area, name or representation

To maintain principles of democratic representation, a change to the name or area of a local government, or to the number of councillors representing a community, must be undertaken in a transparent and accountable way. Part 3 ensures a process of independent assessment of proposed changes.

Division 1 Introduction

17 What this part is about

Clause 17 defines a *local government change* and briefly explains the process to make such changes in the public interest, with further details in division 2. There is a head of power for the making of a regulation to provide for an implementation process.

Division 2 The process for change

18 Who may start the change process

Clause 18 says that the Minister, a local government or the Electoral Commission of Queensland (ECQ) may generate an application for a change.

Only the Minister will be able to make an application for a change to those decisions affected as part of the 2007 structural reform process. The potential for contradiction of Parliament's reform intentions and the associated waste of public money in assessing these kinds of proposals is minimised.

19 Assessment

The independent Local Government Change Commission (the change commission) assesses and decides an application for a local government change. Division 3 describes the establishment of the change commission.

To justify the application for a change, the applicant must have sufficient regard to the principles for local government. For example, a local government will provide evidence of meaningful community consultation and engagement. As part of their assessment, the commission must conduct public consultation about the proposed changes, to ensure there is genuine community support for the change. Referenda are not required.

In addition to these requirements, the change commission may conduct its assessment in any way it considers appropriate but must call for submissions and have a public hearing.

The commission must notify the Minister of its final assessment. If the assessment is that the application for change should proceed, the change commission must recommend the making of a regulation to the Governor in Council.

The final determination is published in the gazette, on the commission's website and in a newspaper circulating generally in local government areas affected by the determination.

20 Implementation

The Governor in Council implements the change under a regulation. The involvement of the Governor in Council reflects the importance of the constitution of local government areas and representation. Clause 20 exempts a local government from particular State taxes as a result of the implementation of a local government change.

21 Decisions under this division are not subject to appeal

Clause 21 provides that any decision of the change commission in relation to a local government change cannot be appealed. The change commission is an independent body with an appropriate safeguard provided by the implementation of its decisions by the Governor in Council. Also, decisions by the change commission do not abrogate individual rights, liberties or obligations.

Division 3 The change commission

22 Change commission is established

Clause 22 establishes the change commission and outlines who constitutes the change commission. The intent is for the electoral commissioner to have the discretion to choose the composition of the commission based on which would be most appropriate to assess a particular application. Minor changes may be managed by the electoral commissioner or the electoral commissioner's delegate alone, for example. For more complex changes, a number of casual commissioners may be appointed.

23 Casual commissioners

Clause 23 lists the qualifications and terms of appointment for a casual commissioner to the change commission. The Governor in Council may appoint a qualified person for no longer than 3 years on the terms and conditions that the Governor in Council decides.

24 Conflict of interests

To maintain transparent, ethical and just decision-making processes for all local government changes, clause 24 declares that a member of the change commission must not take part in the consideration of a matter in which they have a direct or indirect financial interest. If the member with the conflict of interest is the electoral commissioner, the deputy commissioner must consider and assess the application in question. If the member is the electoral commissioner's delegate, they must inform the electoral commissioner.

Clause 24 imposes a penalty if a member of the change commission takes part in a matter where they have a conflict of interest or if they fail to declare the conflict.

25 Annual report of change commission

As an accountability and transparency measure, clause 25 requires that the annual report of the change commission be given to the Minister for tabling in Parliament and be included in the ECQ's annual report. The public must be able to inspect copies of the annual report.

Chapter 3 The business of local governments

Chapter 3 provides the framework for the day to day operations of a local government – local laws, business enterprises, roads, infrastructure, and for those matters which are unique to the operation of indigenous regional councils.

Part 1 Local laws

Local laws are how a local government regulates its local government area. The Bill gives a local government the necessary powers to make local laws that are suitable to their particular needs and resources, and that achieve the purpose and principles of local government, without unnecessary administrative red tape. As a transitional measure, the department will use its regional structure to build capacity in local governments to manage local law making, including the State interest check.

Local laws are an essential part of the regulatory landscape and fit into the Queensland legislative scheme in a similar fashion to State laws fitting into the Commonwealth's legislative scheme.

Local laws are defined in the *Statutory Instruments Act 1992*, showing that the power to make a local law is functionally a delegated power from the State Parliament.

Under the *Legislative Standards Act 1992,* the Office of the Queensland Parliamentary Counsel is empowered to issue guidelines for the drafting of local laws to ensure they are consistent with the drafting principles applied to the drafting of subordinate legislation.

Part 1 provides for a simplified local law making system that:

- gives local governments the power to make and implement local laws via their own process;
- provides flexibility and certainty for local governments about the power to make local laws for any matter relevant to the local government area, subject to the prohibition on making of local laws for certain matters;
- sets out State powers to make model local laws and to stipulate those matters about which local laws cannot be made; and
- emphasises the importance of the State interest check in the process of making local laws.

Division 1 Introduction

26 What this part is about

Clause 26 states what this part is about and defines the different types of local laws.

The Minister has a power to make model local laws. A model local law is developed by the department to be sufficiently generic and encompassing to cover the majority of local governments. The department conducts State interest checks in making model local laws so they may be adopted by a local government. This assistance is offered to all local governments who wish to save resources, particularly smaller local governments.

27 Interaction with State laws

Clause 27 clarifies that a law made by the State overrides a law made by a local government if there is any conflict between the two.

Division 2 Making, recording and reviewing local laws

28 Power to make a local law

Clause 28 provides a local government with a head of power to make a local law that is necessary and convenient for the good rule and local government of its area. The power is intended to be broad enough for a local government to make local laws that are relevant to its context, necessary for the management of the local government area and enforceable by the local government.

29 Local law making process

Clause 29 outlines the framework for making a local law. A local government can develop its own detailed process for making a local law, as long as that process is consistent with the framework.

A key part of the process is the requirement for a local government to consult with the relevant government entities about overall State interest before it makes a local law. To reflect contemporary interaction between

the two spheres of government, this consultation is to be undertaken directly between the local government and the relevant agency.

However, the adoption of model, interim and subordinate local laws does not require consultation; the reasons being that in making model local laws the checks have been made by the department. In the case of interim local laws, agency consultation is not necessary because of the temporary and emergent nature of these local laws. Local governments do not need to do checks on subordinate local laws as these have already occurred during the making of the local law, which provides the head of power for the subordinate local law.

Safeguards for the consistency of local laws across the State include that:

- local governments provide their local laws to the Minister within seven days of gazettal;
- local governments provide a drafting certificate for all local laws; and
- the department will continue to maintain a register of local laws.

The safeguards are complemented by the power for the Governor in Council to make a regulation about drafting standards and other matters related to local laws.

Should a local law not comply with the legislation, the Minister has a power to revoke it and/or direct that it be changed.

30 Expiry of interim local law revives previous law

Clause 30 deals with the situation of the expiry of an interim local law which amended a local law, but was not itself made a local law in the specified time. When the interim local law expires, the previous local law applies to maintain a level of regulation of the matter.

31 Local law register

For transparency and accountability, clause 31 provides that a local government must keep, and have publicly available, a register of all its local laws, subordinate local laws and interim local laws.

32 Consolidated versions of local laws

Clause 32 defines a consolidated version of a local law and shows how it can replace the original version of a local law.

33 Regular review of local laws

Local governments must ensure local laws are kept current, relevant and enforceable. A regular review by a local government is necessary to assess relevance to the public interest, for example, assessment of anti-competitive provisions, redundancy and obsolescence.

The intent is to encourage continuous review and improvement of local laws, as opposed to a time-limited and lengthy review process potentially leading to compliance for the sake of compliance.

Division 3 Local laws that can not be made

34 What this division is about

There are certain matters about which a local law cannot be made. If a local government makes a local law about a specified matter, the local law is invalid to the extent specified.

35 Network connections

A local law regulating network connections is not valid based on a regulation previously provided by Commonwealth telecommunications legislation.

36 Election advertising

A local government is prevented from making a local law about election advertising. A local government must not make a local law which purports to prevent a candidate distributing how-to-vote material and election signage, which may create unfair conditions for some candidates in local government elections.

37 Development processes

All development comes under State planning legislation. Accordingly, a local government is prohibited from making a local law about a development process.

38 Anti-competitive provisions

A local government must not attempt to negate National Competition Policy requirements through local laws.

Part 2 Business enterprises and activities

Division 1 Beneficial enterprises

Local governments conduct beneficial enterprises as part of their day to day business. In general, the conduct of these enterprises is governed by the local government principles and the financial sustainability criteria outlined in clause 102.

The intent of this division is to extend opportunities for local government viability and sustainability by widening investment in own source revenue initiatives.

Enterprise powers allow local governments to enter into an enterprise that grants a benefit to the area with minimum red tape. Further requirements are triggered if a local government enters into an enterprise in partnership with the private sector, to reflect the increased level of risk. More detail about the operation of the business enterprise requirements will be in a regulation, such as the approval process for enterprises in partnership with the private sector.

39 What this division is about

Clause 39 gives information about what is contained in division 1 and defines a *beneficial enterprise* and the term *conducting*.

A beneficial enterprise can include an enterprise that may contribute, for example, to the economic development of the local government area. A *business unit* of a local government, as defined in the dictionary in Schedule 3 of the Bill, is not a beneficial enterprise.

40 Conducting beneficial enterprises

Clause 40 explains the way in which a local government must conduct the beneficial enterprise including that it must be decided by a resolution of the local government.

The clause stipulates that the conduct of a beneficial enterprise must be financially sound, comply with Local Government Acts and it sets out the powers a local government may exercise in conducting a beneficial enterprise.

41 Register of beneficial enterprises

To maintain transparency and accountability, a local government must keep a register of beneficial enterprises showing specific information and the register must be open to public inspection. A copy of the register must be provided to the department's chief executive and the auditor-general.

42 Planning for a beneficial enterprise with the private sector

Additional requirements apply if a local government plans to invest in a beneficial enterprise with the private sector. The local government must identify the planned investment as a capital expense in its budget. If a local government does not identify the investment in the budget, or if the planned investment is more than an amount prescribed by regulation, the local government must seek approval from the department's chief executive before the investment is made. The regulation will include necessary approval processes.

The intent is to ensure the local government can manage the risks associated with the particular investment. Specific consequences for non-compliance are listed.

Division 2 Business reform, including competitive neutrality

43 What this division is about

National Competition Policy (NCP) was adopted by the Commonwealth, States and Territories in 1995 and remains in force. The Competition Principles Agreements underpin NCP and include obligations for local governments. A key obligation is the application of the *competitive neutrality principle*, which means that publicly and privately owned businesses should compete on an equal footing. In other words, a government owned business should not have an advantage over a private sector competitor by reason of it being owned by government.

This division provides a framework to facilitate compliance with the agreements. For business activities which are above a specified threshold, or *significant business activities*, there are options for local governments to comply with the competitive neutrality principle.

For smaller business activities, the division provides for a less onerous code of competitive conduct to apply.

44 Ways to apply the competitive neutrality principle

Clause 44 outlines in broad terms three options for business reform available to local governments to ensure compliance with the competitive neutrality principle. Three options are defined: *full cost pricing*, *commercialisation* and *corporatisation*. Further provisions for the application of these reforms to a significant business activity can be provided for in a regulation.

45 Identifying significant business activities

Clause 45 requires a local government to annually identify its business activities, including new business activities, and include a list of those activities with the type of competitive neutrality reform implemented within that business. The list must be included in the local government's annual report.

46 Assessing public benefit

Local governments are required to undertake a public benefit test for each significant business activities to establish whether it is in the public benefit to implement any business reform. The tests must be undertaken every three years for unreformed businesses.

47 Code of competitive conduct

Local governments are required to identify smaller business activities which are in direct competition with the private sector, and may make decisions on applying the Code of Competitive Conduct (the Code). However, local governments do not have discretion in the application of the Code to building certification and roads activities.

The Code involves the application of competitive neutrality principles, including adjustments to take account of the advantages and disadvantages of local government ownership.

The Code is intended to be a less onerous way for smaller business activities to comply with competitive neutrality principles.

48 Competitive neutrality complaints

Clause 48 requires each local government to establish a process to resolve competitive neutrality complaints.

Division 3 Responsibilities and liabilities of employees of corporate entities

49 Director's duty to disclose interest in a matter

Clause 49 requires a director of a corporate entity to disclose direct and indirect interests in matters to be considered by the board of directors. The penalty for non-disclosure is consistent with the *Government Owned Corporations Act 1993* (GOCA). It is higher than for a similar non-disclosure by other officials under this Bill.

The director is not entitled to take part in any aspect about the matter if their interest is a material personal interest (as defined in clause 172). However, the board may pass a resolution about the interest and allow the director to consider or vote on the matter.

50 Obligations of a corporate entity's employees

This clause sets out the responsibilities of employees of corporate entities in relation to exercising their powers.

51 Corporate entity must not insure against certain liabilities of employees

Clause 51 prevents a corporate entity from paying an insurance premium for insurance of an employee of the entity if the insurance indemnifies the employee for a wilful breach of duty. Any instrument that purports to do so is void under this clause.

52 When a corporate entity is not to indemnify employees

The circumstances under which a corporate entity should not indemnify an employee for a liability are outlined. They are generally where the employee has acted in bad faith.

53 Prohibition on loans to directors

Corporate entities can not make loans or guarantees to directors, their spouses or their relatives. This is consistent with general corporate governance principles. There is a penalty for anyone who knowingly agrees to the loan or guarantee.

54 Duty to prevent insolvent trading

Clause 54 imposes a duty on directors of corporate entities not to incur a debt on behalf of the entity where the entity is or the director has reasonable grounds to suspect that it will become insolvent. The GOCA and the Commonwealth *Corporations Act 2001* (Cwlth Corporations Act) impose the same duty on directors of entities under their jurisdiction.

55 Order for examination of persons concerned with corporate entities

This clause enables the local government or Attorney-General to apply to the Supreme Court or District Court for an order for the court to examine persons concerned with the corporate entity's management, administration or affairs. There must be reasonable grounds that a person may be capable

of giving information or they have been or may have been guilty of fraud or malpractice in relation to the corporate entity.

56 Examination of persons concerned with corporate entities

This clause gives the Attorney-General or a local government the power to apply to a court for an order to require the person to be examined under oath. There must be reasonable grounds to believe the person has engaged in fraud, negligence or other breaches of their duties as a director or if they may be capable of giving information in relation to the management or administration of the entity. The provisions further set out the conditions for the examination. This clause mirrors the powers under the GOCA applying to State government owned corporations. The person is not excused from answering if it might tend to incriminate him/her.

57 Relief from liability for malpractice

An employee of a corporate entity may be relieved from liability that would otherwise be incurred for negligence, default or breach where the person has acted honestly and ought fairly to be excused in the circumstances. This supports the natural justice principle that liability should not generally be strictly applied.

58 False or misleading information

Clause 58 deals with employees of corporate entities who make false or misleading statements or omissions. The penalties for this clause are higher than those for councillors or local government employees. However, given the status of corporate entities it is correct to have penalties that are consistent with the GOCA and the Cwlth Corporations Act.

Part 3 Roads and other infrastructure

Division 1 Roads

The intent of this division to give a local government the power to manage, control and maintain roads in its area.

59 What this division is about

The definition of *roads* is included here to make clear that certain roads do not come under local government control.

60 Control of roads

This clause provides a local government with a head of power to control roads, and lists those activities included in control.

This clause contains a power to approve the naming and numbering of private roads, so local government can ensure that addressing data for private estates is collected for emergency service purposes. A local government may ensure that naming of roads is consistent with relevant standards and guidelines, so as to prevent multiple roads in one locality with the same name, for example.

61 Notice of intention to acquire land to widen a road

This clause provides a head of power for local government to acquire land to widen a road. It sets out the process by which a local government can acquire land and requires a local government to give the owner of affected land a notice of its intention to acquire the land.

62 Compensation for a notice of intention to acquire land

A person is entitled to claim compensation if the value of the land adjoining the land to be acquired is affected by the local government's intention to acquire the land.

63 Appeal on a claim for compensation

Clause 63 provides an appeal process for decisions the local government makes about the compensation through the Planning and Environment Court.

64 Acquisition of land instead of compensation

After the notice of intention to acquire land is served, but before the land is sold, the local government can acquire the land instead of paying compensation for injurious affection. The land must be used for a public road within three months of its acquisition. Compensation for the

acquisition of the land, if not agreed between the parties, must be assessed as at the date of the acquisition.

Injurious affection is the depreciation in the value of land caused by the adverse affects of public works through such things as noise, vibration, overshadowing, loss of support and restriction or loss of access.

65 What is to happen if a realignment is not carried out

This clause describes the process a local government must follow if it decides not to proceed with realignment.

66 Compensation if realignment not carried out

If a local government declares an intention to realign a road, but then does not, and owners of affected land have made improvements to structures on the affected land, the local government must compensate the owners for the subsequent loss in value.

67 Acquiring land for use as a footpath

Clause 67 provides a head of power for a local government to acquire land for use as a footpath and certain rights for the owner of the land to be acquired.

68 Notice to local government of opening or closing of roads

In recognition of the local government control of roads, a local government must be notified if an application is made for a road in its area to be opened or closed.

69 Closing roads

This clause gives a local government power to close a road, either permanently or temporarily, if there is another road or temporary road available for use by traffic. In certain circumstances, a local government may close a road even if there is no alternative route.

70 Temporary roads

Clause 70 gives a local government a power to make a temporary road only if it would not be practicable to temporarily close the actual road. The local

government is required to give an owner of land where the temporary road is to be, notice prior to entry and provide compensation for any damage caused because of the making or use of a temporary road.

71 Road levels

Clause 71 requires a local government to advise an owner or occupier of the permanent fixed level of a road if asked.

72 Assessment of impacts on roads from certain activities

This clause means that local governments can adequately manage any impacts on roads by particular entities.

73 Categorisation of roads

Local governments must assess and decide, based on the surface, the category of each road in its area. This is a minimum requirement and does not stop a local government categorising roads in its area based on other criteria.

74 Roads map and register

As the local government is the manager of roads, one of its responsibilities is to keep an account of all the roads in their area. A local government must include the level of a fixed road in the roads register if the road has a fixed level. The public must also be able to access this information.

75 Unauthorised works on roads

This mirrors the powers of the State on State-controlled roads to take action against unauthorised works on roads.

Division 2 Stormwater drains

76 What this division is about

This division gives powers and requirements for stormwater drains and stormwater installations.

77 Connecting stormwater installation to stormwater drain

A local government has a power to regulate the connection of stormwater installations to stormwater drains, and there are penalties for a person who does not comply with the local government's requirements or approval for the connections.

78 No connecting sewerage to stormwater drain

Sewerage and stormwater flows must remain separate, by preventing cross connection of sewerage installations to stormwater installations or stormwater drains.

79 No trade waste or prohibited substances in stormwater drain

Particular substances must not be put into a stormwater drain - to prevent contamination of the stormwater flows and to avoid damage to the stormwater infrastructure. The local government has a power to recover costs for repairing any damage resulting from a person putting a prohibited substance in a stormwater drain.

80 Interference with path of stormwater

The intention of clause 80 is to prevent stormwater collecting and becoming stagnant when it flows over land. However, if the stormwater is collected in such a way that no offensive material accumulates, this clause does not apply.

Part 4 The business of indigenous regional councils

Division 1 Introduction

81 What this part is about

The Northern Peninsula Area Regional Council, the Torres Strait Island Regional Council or another local government prescribed under a

regulation are indigenous regional councils. They have specific additional functions to other local governments because of the need to manage land trusts and particular changes when they were established as indigenous regional councils.

Division 2 Managing trust land

82 What this division is about

Indigenous regional councils are trustees of land held as a deed of grant in trust (DOGIT), and some contiguous land in their local government area. They manage these lands and any assets on the land. This division sets out the requirements for these councils in their capacity as trustee councils.

Clause 82 states what this division is about and defines *trustee council* and *trust land*. It also clarifies that anything in this division will not affect the status of land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* and that the provisions are additional to provisions that already apply to the land under the *Land Act 1994* (Land Act) or any other legislation.

83 Trustee business must be conducted separately

An indigenous regional council must separate its functions as the trustee council from any other function. In particular, it must separate the performance of its responsibilities in the two roles, in the way it obtains information, its meetings, accounts and records.

84 Meetings about trust land generally open to the public

Meetings must be open to the public, unless the trustee council resolves to close it for the particular reasons in the legislation. The resolution to close the meeting to the public must include the general nature of the matters to be discussed. The trustee council must not make any resolution, other than a simple process resolution, during a meeting that is closed to the public.

The trustee council is accountable to the community and must be open in their decisions about trust land, while recognising there are certain circumstances that warrant a closed meeting. The overall effect of this clause is that a decision about trust land will not be able to be made by the trustee council ‘behind closed doors’.

85 Community forum input on trust change proposals

A trustee council must seek, via written notice, the community forum's (Division 3 provides information about community forums) advice and input on any trust change proposal. The indigenous regional council must allow the community forum sufficient time to formulate its advice.

When a trustee council needs to make a decision regarding land that is the subject of a DOGIT, it must consider the advice of its community forum. If, after considering that advice, the trustee council's decision is not consistent with that advice, the reason(s) for the decision must be provided back to the forum. Then, if the forum does not support the trustee council's decision, the council can still make the decision only if the majority of voting councillors vote in favour of the decision. The vote cannot favour the decision if the councillor for the division for which the land, the subject of the proposal is situated, voted against it.

86 Grouping of trust land not available

Clause 86 stipulates that the chief executive of the department administering the Land Act must not approve the grouping of DOGIT land. This clause provides certainty for the affected communities that the formation of the indigenous regional council does not mean the amalgamation of the individual DOGITs.

Division 3 Community forums

To recognise and protect Torres Strait Island custom and Aboriginal tradition, each indigenous regional council (including each division of an indigenous regional council) may have a community forum.

Community forums give advice to indigenous regional councils. The community forums meet with the community to gain the community view on issues about trust land (as discussed in the previous division), planning, service delivery and culture and convey these views back to the indigenous regional councils.

As community forums are established under this legislation, this clause stipulates that no other body can be created to carry out a community forum's functions.

87 Community forums

Clause 87 enables the Minister to establish a community forum for each indigenous regional council or for each division of an indigenous regional council.

A community forum comprises the councillor representing the particular division (who will automatically be the chairperson) and three to seven elected community members.

After consultation with the indigenous regional council, the Minister must decide on how many elected members the forum is to have and the name of the forum. The Minister must then ensure the names of each community forum along with the names of all the members, are published in a local newspaper so that local communities are aware of who their forum members are.

The community forum's operational procedures remain at the discretion of the indigenous regional councils.

88 Members of a community forum

To provide a mechanism for accountability and transparency, elections of, and filling of vacancies for, members of a community forum must be carried out under a regulation. The regulation must state the process to be followed for the election and the qualifications required to be a member of a community forum. Clause 88 mandates that a mayor or a candidate for mayor of an indigenous regional council cannot be a member of a community forum.

To minimise the time where a community may not be represented by a community forum, the election for the members of a community forum are held at the same time as (or as close as possible to) the quadrennial elections for the indigenous regional council and the members of the community forum hold that position until the next election of community forum members.

89 Payments to elected members of a community forum

Members are not entitled to be remunerated. The indigenous regional council may authorise the payment of expenses incurred by elected members while they are performing their duties or the council may provide facilities for elected members to enable them to perform their duties.

90 Convenors for a community forum

Apart from the councillor, as chairperson, and the three to seven elected members, each community forum has a convenor who is responsible for the overall administration and operation of the community forum. The convenor liaises between the forum and the indigenous regional council and is responsible for giving public notice of the forum's meetings but he/she cannot be a councillor or mayor of an indigenous regional council or an elected member of a community forum.

The convenor is not elected, but is appointed by the indigenous regional council. The convenor can be a convenor of two or more community forums (if they can effectively manage the duties of the positions) and can perform extra duties for the indigenous regional council. A convenor can not vote at any meeting of the community forum. The convenor must be skilled and experienced in the administration of land to enable him/her to provide accurate advice to the indigenous regional council.

Chapter 4 Finances and accountability

Part 1 Rates and charges

Rates and charges are a key mechanism by which local governments in Queensland raise own-source revenue. The powers under this Bill allow local governments flexibility in setting appropriate and legitimate rates and charges for their areas and to fully access rates revenue.

The levying of rates continues to be based on unimproved value under the *Valuation of Land Act 1944* (VOLA), and the Bill allows for differential and special rating instruments.

Many stakeholders advocated change to another form of rating. However, after extensive consultation and research, for example, by the Australian Productivity Commission in its 2007 report on assessing local government revenue raising capacity, it is evident that local governments effectively use provisions, such as those provided in this Bill, to satisfy revenue raising

needs. Implementing a new rating system would be prohibitively expensive and unduly complex.

Any type of rating system is not perfect and all have strengths and weaknesses. Provisions for differential and special rating instruments which acknowledge that "one size does not fit all" give local governments choices.

Local governments must make rating decisions in accordance with the financial sustainability criteria, in particular: *manage financial risks prudently and formulate spending and rating policies that ensure a reasonable degree of equity, stability and predictability.* The level or amount of rates and fees decided by a local government must ensure financial sustainability and intergenerational equity.

91 What this part is about

Clause 91 clarifies that rates and charges are levies that a local government may impose on land and for services.

92 Types of rates and charges

Clause 92 sets out the types of rates and charges a local government can levy and defines the four broad types of rates and charges.

93 Land on which rates are levied

This clause defines *rateable land* and the types of land exempted from rates.

94 Power to levy rates and charges

If a local government area contains rateable land, a local government must levy general rates. A local government may levy special rates and charges, utility charges and separate rates and charges. All decisions about what rates and charges are to be levied for a particular financial year must be made at the local government's budget meeting. Given the level of community interest in this issue and the broad powers of the council, openness and accountability are essential.

95 Overdue rates are a charge over land

This clause provides a mechanism for local governments to register certain documents with the registrar of titles to make unpaid rates a charge. This does not limit any other way local governments can recover unpaid rates.

96 Regulations for rates and charges

As rates and charges are technical and can be contentious, regulations may provide further details such as rate concessions and categorisation of land in order to charge differential rates.

Part 2 Fees

In addition to rating, local governments can also charge fees in specific circumstances and with adherence to the financial sustainability criteria. These powers are in addition to the local government's general competence power under clause 262.

97 Cost-recovery fees

A local government may charge a fee in a number of circumstances and within certain limits. Fixing the fee by local law or by resolution makes it public.

98 Register of cost-recovery fees

To further ensure transparency, a local government must keep a register of its cost-recovery fees which must be accessible to the public.

99 Fees on occupiers of land below the high-water mark

Land below the high-water mark is State land under the Land Act. A local government is not permitted to charge a rate on this land. However, with increasing development on it, occupiers are accessing local government services and using local government infrastructure.

This clause permits a local government to charge a general fee to occupiers of land below the high-water mark. The fee may be levied in relation to the

use of roads and infrastructure and is not to be based on a valuation of the land below the high-water mark under VOLA. To provide transparency, a local government must make the fee by resolution.

100 Fees on residents of indigenous local government areas

Many indigenous local government areas include land with a DOGIT. As DOGITs are not rateable, no general rate charge for premises on this land is permitted. This clause gives indigenous local governments a power to make and levy a fee on residents living on this land. It is a revenue-raising decision- making power similar to other local governments' rates and charges. To provide transparency, a local government must make the fee by resolution.

Clause 100 also gives an indigenous local government the power to exempt a resident from paying the fee if another amount is payable on the same land.

Part 3 Financial sustainability and accountability

Financial sustainability and accountability are not negotiable so the relevant processes are mandated in this Bill. The community expects local governments to manage their public infrastructure and assets for the long-term benefit and viability of the communities they represent; and in the short term, deliver essential services and account for all public monies.

Local government in Queensland faces significant challenges with financial governance and service delivery. It must successfully manage competing priorities associated with:

- managing population changes;
- ongoing sustainability of the council and its community;
- significant infrastructure provision; and
- regional initiatives.

Key components of this part for local government financial and infrastructure sustainability, management and accountability are:

- a focus on longer-term planning;
- transparency and accountability to the community and the Minister; and
- penalties for non-compliance.

These provisions align with national frameworks and deliver a system with balance between flexibility for local governments to decide process and take responsibility, and penalties for non-compliance with the mandated requirements.

101 Statutory Bodies Financial Arrangements Act applies to local governments

A local government is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*. The local government can use a power under that Act if it is necessary for performing its functions under a Local Government Act.

Important powers which are used by local governments under the *Statutory Bodies Financial Arrangements Act 1982* are borrowing, banking and investment powers, for example, to fund infrastructure development.

102 Financial sustainability criteria

The mandatory financial sustainability criteria must be met by local governments setting up systems to meet them. Financial risks must be managed prudently. The criteria require the local government to:

- formulate spending and rating policies that ensure a reasonable degree of equity, stability and predictability and fund current services with regard to their future effects; and
- disclose full, accurate and timely financial information to the community and the State by publication of reports and on its website.

The achievement of the criteria is essential as evidence to the community of the local government's current and future financial viability, effective governance, State monitoring and enforcement of responsibilities under the Bill and to prevent financial dysfunction. The achievement of the criteria also ensures compliance with national frameworks.

103 Financial management systems

A local government must establish a system of financial management that complies with a regulation and the local government must review its system of financial management regularly.

104 Financial management, planning and accountability documents

A local government's documents must comply with a regulation and the different types of documents a local government must maintain are listed in clause 104.

Guidance is enshrined in the legislation under the purpose, principles for local government and the financial sustainability criteria and specific financial requirements.

In particular, local governments will effectively plan for future sustainability through longer-term planning by developing 10 year plans, publishing these and reviewing progress annually. The community and the State then have the best information available to judge progress against the plan, and local governments can make necessary adjustments.

Long-term community plans

These plans outline the local government's vision for the community. In line with the commitment to principles rather than prescription in the legislation, the content of the plan and the method of community engagement will be decided by individual local governments.

Long-term financial plans

A valuable tool for local governments when managing their finances will be to implement a longer-term financial plan to include an investment policy, a debts policy, procurement policy and a revenue policy.

Long-term asset and infrastructure management plans

There will be longer term plans of at least 10 years for assets and infrastructure. During research and consultation on the Bill, it became evident that there is extensive variation in stakeholder understanding of, commitment to, and action on asset and infrastructure management. Yet assets and infrastructure represent a very large portion of local community physical capital.

105 Auditing, including internal auditing

Audit is the local government's opportunity to report to itself, rectify systemic problems and improve on feedback from external sources such as the Auditor-General and Queensland Treasury Corporation.

To ensure local governments maintain a high level of expertise in financial budgeting and management, all local governments are required to have an internal audit function and process. Internal audit is an effective method of helping local government fulfil its corporate governance responsibilities and it is local governments' responsibility to fund it. Information provided by audit should be fed back into the planning and reporting cycle to allow continuous improvement of operations.

As recommended by the Auditor-General, larger local governments (which will be prescribed by a regulation) will be required to have an audit committee to monitor and review financial integrity and effectiveness and make recommendations to the local government.

106 Sound contracting principles

Sound contracting principles are defined and a local government must have regard to these principles when entering into any contract relating to work, supply of goods or services and disposal of assets. These principles are in addition to the local government principles and the financial sustainability criteria.

107 Insurance

A local government will maintain public liability insurance and professional indemnity insurance for an amount prescribed in a regulation. The clause describes a councillor's role for the purposes of insurance cover.

Part 4 Councillor's financial accountability

Councillors, as elected representatives, have a duty to ensure that allocated discretionary funds are not misused. A councillor is liable should he/she knowingly allow a local government to improperly disburse money.

108 Misappropriation offence applies

Clause 108 clarifies that nothing in this division prevents a councillor being guilty of a misdemeanour and being liable to imprisonment for up to two years for the misuse of local government funds under section 440 of the Criminal Code.

109 Councillor's discretionary funds

Discretionary funds are clearly defined and must be used only as prescribed in a regulation. In response to the Auditor-General's Report No.7 to the Queensland Parliament concerns regarding the lack of transparency in use of these funds, the regulation will include processes for reporting and publication of council resolutions on discretionary funds, who received the funds and how they were spent.

110 Councillor's liable for improper disbursements

Clause 110 deals with the liability for improperly made disbursements. A disbursement may not be made from a local government fund if it has not been budgeted for, or if it has not been agreed to by resolution, except in a genuine emergency in which case notice of the disbursement must be given to the public within 14 days in a local newspaper.

If a councillor knowingly agrees to an improper disbursement (i.e. one that does not meet requirements in the clause), the councillor will be held accountable to repay the disbursed amount plus any interest, fees or charges to the local government.

While this provision imposes strict civil liability, it is justified on the basis that the councillor must knowingly agree to the improperly made disbursement. A councillor is in a position to influence the conduct of the council in relation to these matters so the intention is that the councillor

who does not act to influence the council to make ethical and legal decisions should be penalised.

111 Councillor's liable for loans to individuals

Acting in the public interest, a local government must not use funds to make a loan or guarantee to an individual and clause 111 stipulates that any councillor who agrees to an improper loan (a loan or a guarantee or security for a loan to an individual) from local government funds will be held accountable to repay the loaned money, plus any interest, fees or charges to the local government.

While this provision imposes strict civil liability, it is justified on the basis that the councillor must knowingly agree to the improper loan. A councillor is in a position to influence the conduct of the council in relation to these matters so the intention is that the councillor who does not act to influence the council to make ethical and legal decisions should be penalised.

112 Councillor's liable for improper borrowings

Clause 112 places a liability on a councillor if they agreed that the local government borrow money that is not in line with the local government's responsibilities or obligations under this Bill or the *Statutory Bodies Financial Arrangements Act 1982*. The liability is to repay the improperly borrowed money plus any interest, fees or charges back to the local government.

While this provision imposes strict civil liability, it is justified on the basis that the councillor must knowingly agree to the improper borrowing. A councillor is in a position to influence the conduct of the council in relation to these matters so the intention is that the councillor who does not act to influence the council to make ethical and legal decisions should be penalised.

Chapter 5 Monitoring and enforcing the Local Government Acts

Part 1 Local governments

Given the State's constitutional responsibility for local government, the Bill provides for a range of graduated State responses to council difficulties. A continuum of educative, preventative, monitoring and enforcement strategies in addition to dismissal and dissolution facilitates an appropriate response, including dismissal of individual councillors and dissolution of local governments as a 'last resort' when behaviour or performance standards cannot be improved through corrective measures.

The following continuum of graduated State responses illustrates a total package of graduated responses, both administrative and statutory. There are more serious powers for the Minister to monitor, enforce, dismiss and dissolve as an end measure when all other supportive measures have not rectified a problem:

1. Facilitation (e.g. aids to good practice such as model local laws);
2. Capacity building (e.g. training and education);
3. Performance evaluation and reporting;
4. Remedial (e.g. offering solutions to problems arising from complaints, providing advice to correct a problem);
5. Monitoring and enforcement (e.g. chief executive powers to monitor compliance with the Act, to ensure the proper and efficient delivery of local government service, to appoint an adviser or financial controller and Ministerial powers to direct a mayor to take action and to enforce compliance with the Act);
6. Dismissal and dissolution (e.g. Ministerial powers to suspend a mayor and/or an individual councillor and to recommend to Governor in Council to dismiss a mayor and/or an individual councillor and to suspend or dissolve a council and appoint an administrator).

Division 1 Introduction

113 What this part is about

The purpose of this part is broadly based on two stages:

- gathering information from local governments for monitoring and evaluation purposes; and
- taking necessary action.

This clause defines *remedial action* and states that the Minister can direct the local government to take particular remedial action, including for example replacing a resolution or amending a local law or providing information.

114 Decisions under this part are not subject to appeal

Any decision made by the Minister for monitoring or enforcement, dismissal and dissolution purposes cannot be appealed against.

The current process for dissolution of a council will continue and is supplemented with a power to dismiss an individual councillor. A proposal to dismiss a councillor will be preceded by a show cause process ensuring natural justice. A decision by the Governor in Council to dismiss a councillor or mayor or to dissolve a local government will be implemented by a regulation. The requirement for Parliament to ratify a regulation for the dissolution of a local government will continue. Any regulation made to enforce the dismissal of a councillor or mayor will be gazetted and tabled and thereby be subject to a motion of disallowance and Parliamentary debate.

Division 2 Monitoring and evaluation

This division outlines the monitoring process in the continuum of graduated responses available to the State. Gathering information and acting on it give the department (and indirectly, the local government) evidence to evaluate the performance and compliance of the local government so that an appropriate response may be made.

This division includes the monitoring and enforcement process and outlines the powers of the chief executive of the department.

115 Gathering information

The department's chief executive may request, in writing, information from a local government for the purposes of determining their performance and level of compliance with local government legislation. The local government must cooperate with this request.

116 Acting on the information gathered

The department's chief executive may examine, in any way the chief executive considers appropriate, records and operations to evaluate performance and compliance with local government legislation. The local government must cooperate with the examination.

The Minister may direct a local government to publish information about the local government's performance, including positive actions and outcomes.

Remedial action, across the continuum of graduated State responses, may be taken if there are shortcomings.

117 Advisors

If, after gathering information and examining records and operations, it is found a local government is not performing its responsibilities properly or is not complying with local government legislation, the chief executive of the department can appoint, by gazette notice, an advisor to that local government.

The advisor's responsibilities are outlined and a local government must fully cooperate with them. The appointment of an advisor is a capacity building mechanism aimed at helping the local government build and improve on its own processes with the aim of more fully complying with local government legislation.

118 Financial controllers

If, after gathering information and examining records and operations, it is found a local government is not complying with local government

legislation in relation to financial matters, the chief executive of the department can appoint, by gazette notice, a financial controller.

Clause 118 outlines the financial controller's responsibilities, most importantly implementing financial controls, and states that a local government must fully cooperate with the controller.

The appointment of a financial controller is a mechanism aimed at ensuring a local government's funds are used in the correct way and that financial decisions are appropriate and lawful. The role of the financial controller is to ensure that financial matters are handled according to the lawful decisions of the local government and that finances are not spent or dispersed in other ways.

119 Costs and expenses of advisors and financial controllers

Advisors and financial controllers will be appointed on a local government user-pays system. The appointments will be of advantage to underperforming local governments and therefore, worthy of payment by the local government. They will enhance local government prevention and education strategies and reinforce and speed up capacity building. They provide a service to local governments who are not able to provide it themselves.

Division 3 Action by the Minister

This division outlines the actions the Minister can take to ensure compliance with local government legislation.

120 Precondition to remedial action

The Minister must take certain steps for fairness and transparency before using a power to take actions which enforce compliance with the legislation.

The Minister must give notice to the local government or relevant councillor, unless the giving of the notice would frustrate the reason for taking the proposed action. The notice must state the power to be used, the reasons for using it and suggest any way the local government could rectify the situation to comply with the legislation. It must give a reasonable time

in which the local government or councillor can make a submission to the Minister.

Exceptions where this process is not necessary are listed.

The Minister must consider any submissions made and decide if grounds still exist for exercising the power. If grounds still do exist, the Minister may exercise the power without giving further notice.

121 Removing unsound decisions

The powers for the Minister include the ability to suspend or revoke an unsound decision of a local government, including local laws and resolutions. The process allows potential issues to be rectified quickly and reduces administrative red tape. A show cause process precedes the exercise of this power and specific requirements for the gazette notice, such as for the Minister to state the reasons for the revocation, ensure transparency.

The Minister has the power to suspend or revoke a decision of a local government if he/she believes the decision is contravening local government legislation. The Minister must publish a notice in the gazette about the suspension (including the period of suspension) or revocation and how the decision of the local government contravened the legislation.

Clause 121 also clarifies that the State is not liable for any loss or expense to a person as a result of the suspension or revocation of a local government decision.

For the purposes of the Minister's powers under this clause, a local government decision is defined to be, or be a part of:

- a local law;
- a resolution;
- an order to carry out a resolution;
- a planning scheme; or
- interim development control provisions.

122 Removing a councillor

The suspension or removal of an individual councillor from office under a recommendation from the tribunal, or under the Minister's notice is a

power supported by stakeholders and preferable to removing the whole council which was previously the only way for the State to hold individual councillors to account for failed performance.

While local government is recognised in the Queensland Constitution, the constitution of local governments and their powers and responsibilities are derived from this Bill. The removal of a councillor is appropriately carried out by the Minister who is responsible for the system of local government.

So that the Minister's decision to remove a councillor is transparent, the responsibilities which the Minister must judge a councillor's conduct and performance against are clearly defined in the Bill.

Removing a councillor from office will occur if:

- it has been recommended by the tribunal; or
- the Minister reasonably believes the councillor has seriously or continuously breached the local government principles or;
- is incapable of performing their responsibilities.

This clear guidance for the Minister and the tribunal in taking remedial action will ensure that the principles of natural justice are upheld by a show cause process first being followed.

In cases where the independent tribunal is involved, natural justice principles will be upheld by the hearing required under the Bill and the tribunal will make recommendations to the Minister.

The Minister must make a recommendation to the Governor in Council to make a regulation for the dismissal of a councillor. For the suspension of a councillor under the Minister's notice, the Governor in Council must give effect to the suspension by a regulation for no longer than the period stated in the notice.

The making of a regulation for dismissal of a councillor aligns with current provisions for the dissolution of a local government. However, in recognition that this is the dismissal of an individual and not a local government, the regulation to dismiss will not require ratification by Parliament.

Nevertheless, in accordance with statutory requirements, it will be gazetted and tabled in Parliament and thereby can be subject to a motion of disallowance and subsequent Parliamentary debate. Political scrutiny is an adequate replacement for a right to merit or judicial review.

123 Dissolving a local government

Clause 123 is about the dissolution of a local government.

While local government is recognised in the Queensland Constitution, the constitution of local governments and their powers and responsibilities are derived from this Bill. The dissolution of a council is appropriately carried out by the Minister who is responsible for the system of local government.

Dissolution of a council will occur if:

- it has been recommended by the tribunal; or
- the Minister reasonably believes the local government has seriously or continuously breached the local government principles or;
- is incapable of performing its responsibilities.

As provided under the Queensland Constitution, Parliament will ratify the regulation for dissolution of the local government. The Governor in Council will make the regulation for the dissolution of an entire council and the appointment of an interim administrator.

124 Interim administrator acts for the councillors temporarily

The interim administrator has all the powers and responsibilities of the local government and the mayor (only if these powers and responsibilities have not been limited by a regulation). The interim administrator acts under local government legislation as if they were the local government.

The Governor in Council may direct that the costs associated with an interim administrator be borne by the local government who receives the services.

This clause allows the Minister to create an advisory committee to advise the interim administrator about the performance of the local government's responsibilities.

Part 2 The public

The community living in a local government area have an obligation to comply with local government legislation. This part provides for the

necessary powers for relevant persons to monitor and enforce the public's compliance with local government legislation.

Division 1 Powers of authorised persons

Subdivision 1 Introduction

125 What this division is about

Clause 125 outlines the division and defines the terms *authorised person*, *private property, public place* and *occupier*. It clarifies that the use of force to enter a property can not be used except when authorised by a warrant, for example, to use reasonable force to enter a locked shed.

126 Producing authorised person's identity card

An authorised person must show or display their identity card whenever they are acting under this part before they act or at the first possible chance after they act if it is not practicable to show or display their identity card first.

Subdivision 2 Power to require a person's name and address

127 Power to require a person's name and address

An authorised person is allowed to ask a person to state the person's name and address if the authorised person sees the person committing, or suspects the person has committed, an infringement notice offence. When making the request, the authorised person may require proof of the identity of the person.

The authorised person must warn the person that it is an offence to fail to give their name and address when requested by an authorised person unless the person has a reasonable excuse. However, a person does not commit an offence by not giving their name and address if they are proven not to have committed the infringement notice offence.

Subdivision 3 Powers to enter property etc.

128 Entering a public place that is open without the need for permission

An authorised person may enter a place that is open to, and used by, the public during the times the place is open, in order to monitor the compliance of the place with local government legislation, without permission of the occupier of the place.

129 Entering private property with, and in accordance with, the occupier's permission

An authorised person may enter private property that is accessible by the general public (for example, to walk up front stairs of a house) to ask for permission to stay on the property to exercise a power under this Bill.

An authorised person must inform the occupier of the purpose for which entry is sought and outline the occupier's rights in relation to the entry request.

The occupier is not obliged to give permission and the right of the authorised person to stay is subject to conditions the occupier imposes. The right to stay can be cancelled by the occupier.

If an occupier consents to the entry, an authorised person may request the occupier to provide evidence of the consent by completing an appropriate form of acknowledgment. The authorised person must give the occupier a copy of the document.

A court, in any proceedings, may assume the occupier did not consent to the entry by an authorised person unless it is proven otherwise.

130 Entering private property with, and in accordance with, a warrant

An authorised person must apply to a magistrate for a warrant to authorise entry to a place. Clause 130 sets out the requirements of the application, conditions for issue of a warrant by a magistrate and the details to be included in a warrant, including the reasons for the warrant being issued. The warrant must be in a form approved by the department's chief executive and must be sworn.

The magistrate may refuse to consider the application until it includes all the information he or she requires, so additional information may be requested and must be given. The magistrate may only issue the warrant if satisfied that there are reasonable grounds for suspecting that there may be evidence of an offence and the evidence is at that place or likely to be within the next seven days.

The warrant states the suspected evidence, the right of the authorised person to enter with reasonable help and force if necessary, the hours that entry is allowed and the day the warrant ends.

The intent of this clause is to balance the rights of the individual with those of the State.

131 Warrants—applications made electronically

An authorised person may apply to a magistrate for a warrant by electronic means such as by email, phone, facsimile, radio or in another form of communication in urgent or special circumstances e.g. the remote location of a place.

An authorised person must prepare an application for a warrant but may apply to the magistrate before the application is sworn. The magistrate may issue the warrant if he/she is satisfied about the conditions relating to the use of the electronic application.

The clause sets out the administrative procedure to be followed by a magistrate and authorised person in relation to the issue of a warrant in these circumstances.

On entering the property, the authorised person must tell (or attempt to tell) the occupier the reason for entering, that the authorised person may enter under a warrant, and allow the occupier to cooperate but if this doesn't work, the authorised person must ensure the effective execution of the warrant.

The copy of the warrant, or the warrant form properly completed by the authorised person, authorises that person to enter the property and exercise the powers mentioned in the warrant signed by the magistrate. The sworn application and completed warrant form must be sent to the magistrate as soon as possible.

A court in proceedings against an occupier may assume the warrant was not issued unless the warrant is produced as evidence.

132 Entering under an application, permit or notice

An authorised person may enter a place at any reasonable time during the day for the purposes of inspecting the place to process an application made under an Act conferring jurisdiction on local government or to monitor compliance with, or inspect work being carried out under an authorisation or notice.

Entry for these purposes can occur at night if the place is a public place and is open to the public at the time of the entry, at the occupier's request or in accordance with a lawfully imposed condition.

When entering the property, the authorised person must inform the occupier of the reasons for entering and that the authorised person is authorised under this Bill to enter the property without permission from the occupier. The authorised person may enter a home on the property only if the occupier accompanies the authorised person.

The powers the authorised person can exercise after entry under this clause are limited to inspection as set out in subsection (1).

133 Entering property under an approved inspection program

An authorised person may enter premises under an approved inspection program, other than a structure or part of a structure used for residential purposes, at any reasonable time of the day or night.

The Scrutiny of Legislation Committee considered the breach of fundamental legislative principles in subsection (3) when the original amendment was proposed under the *Building and Other Legislation Amendment Bill 2001*, and found that it was justified on public safety grounds (Alert Digest No 1 of 2002, paragraphs 14-20, pp. 2-3).

However, a local government must attempt to give the occupier written notice of the intention to enter the property.

The powers the authorised person can exercise after entering under this clause are limited to inspection as set out in subsection (2).

134 Approving an inspection program

Authorised persons may enter places under programs approved by resolution of a local government for the purpose of monitoring compliance with legislation conferring jurisdiction on a local government. An example

is where a local government monitors compliance with requirements of private swimming pools under the *Building Act 1975*.

An approved inspection program may be either a selective or systematic program. Conditions for inspection programs are detailed, including the requirement to notify the public of the inspection program.

135 General powers after entering a property

Clause 135 provides for general powers of authorised persons after entering a place for a reason under this Bill. When entry is made, an authorised person may exercise the powers as set out in the clause. An authorised person may require the occupier to give reasonable assistance in the exercise of the powers and a person must comply with the requirement unless the person has a reasonable excuse.

It would be a reasonable excuse to fail to comply if supplying information or producing a document (other than a document required to be kept under this Bill) might incriminate a person.

These powers cannot be exercised by an authorised person if entry is made to obtain the agreement of an occupier for entry, under an application, permit or notice, or under an approved inspection program.

136 Authorised person to give notice of damage

An authorised person must give notice to a person if any damage to property occurs as a result of the exercise of the powers.

137 Compensation for damage or loss caused after entry

Clause 137 puts the onus on the local government to pay a person compensation if the person incurs a loss or expense as a result of the exercise of the powers.

The person does not need to claim compensation except in any proceeding for compensation or any proceeding brought against the person for an offence.

A court may order compensation according to the circumstances of the particular case and regulations may prescribe matters to be taken into account by the court in making a decision to order compensation.

Division 2 Powers of other persons

138 What this division is about

This division is about the powers available to local governments and their workers so that they can discharge their responsibilities effectively and ensure a person complies with a remedial notice given by the local government.

A local government can give a person a remedial notice that requires the person to take a stated action to comply with local government legislation.

To facilitate interpretation of the division, the terms *remedial notice*, *reasonable written notice* and *local government worker* are defined.

Force must not be used to enter a property under this division unless the property is entered under a court order that specifically authorises the use of that force.

139 Entry with, and in accordance with, permission of occupier

A person can enter property if they have the permission of the occupier of the property and subject to the occupier's conditions. If an occupier decides an authorised person can no longer be on the property, the authorised person must leave the property.

140 Entry by an owner, with reasonable written notice, under a remedial notice

Clause 140 describes the procedure which must be followed, the duties, responsibilities, and powers of entry of an owner of land where the owner's land is subject to a remedial notice of the local government, and the owner of land is not the occupier.

141 Occupier may discharge owner's obligations

Clause 141 outlines the provisions for the discharge of an obligation of an owner of land by the occupier of land where the owner of land has failed to perform work required by the local government. It protects the rights of the occupier of land. If the occupier is a tenant, the tenant may deduct the cost of performing the work from any rent owing and the owner cannot terminate the tenancy because of the deduction of the costs from the rent.

142 Entry by a local government worker, with reasonable written notice, under a remedial notice

Where an owner or occupier of land has failed to perform work under a remedial notice, a local government worker may enter that land and perform that work, provided the local government has given at least seven days notice in writing (seven days notice is a component of the *reasonable written notice* as defined in clause 138).

The local government can recover any costs it incurred in acting under this clause.

Generally, a remedial notice will pertain to a matter of public safety. As such there are justifiable grounds for a local government worker to enter a property even without permission in this circumstance as long as reasonable written notice is given to the owner.

143 Entry by a local government worker, with reasonable written notice, to take materials

A local government worker may enter rateable land for the purpose of searching for materials that the local government may need to fulfil its responsibilities under local government legislation. This power can only be exercised if at least seven days written notice has been given to the owner and also the occupier, if the occupier is not the owner. (Seven days notice is a component of the *reasonable written notice* as defined in clause 138).

This clause does not authorise the exercise of this power where damage to any structure could occur - within 50 metres of a structure or works, for example, a house, a bridge, a dam, a jetty or a wharf.

144 Entry by a local government worker, at reasonable times, to repair etc. facilities

A local government worker can enter property (except for a home) without giving notice or asking for permission if the reason for entry is to plan for, install or maintain facilities on the property that are to be, or were, installed by the local government.

This provision does not allow entry into a home on a property and is justified on grounds that there is a necessity for local government facilities to be maintained.

145 Entry by a local government worker, at any time, for urgent action

For public health and safety reasons, should emergent conditions warrant it, the power of entry (other than to a home) on the property to carry out work may be exercised without giving notice if justified on public safety grounds.

146 Entry with, and in accordance with, a court order

Clause 146 provides for the procedure for entry where it is necessary to obtain a court order. This could be when, for example, entry to premises is denied by an occupier of land for an authorised person of the local government to exercise a function or power of the local government.

147 Compensation for damage or loss caused

A local government worker entering property must not cause damage to any structure or works and must take all reasonable steps to cause the least amount of inconvenience and damage as is practicable while fulfilling a duty under this division.

If inconvenience or damage does occur as a result of entry to land and the exercise of a power, a person can claim compensation where they have suffered loss or damage. For example, if something had to be removed from the property under clause 143, the person may claim compensation (whether as agreed with the local government or ordered by a court) for the value of the thing removed.

148 Limitation of time in absence of notice of work done

Where any work has been carried out without required approval of the local government, any limitation on time imposed on a local government in initiating proceedings commences from the day the local government becomes aware of the unauthorised work.

Division 3 Offences

149 Obstructing enforcement of Local Government Acts

This clause sets out offences for obstructing enforcement of a Local Government Act.

150 Impersonating an authorised person

In recognition of the importance of the powers of an authorised person, it is an offence for a person to pretend to be an authorised person.

Chapter 6 Administration

Part 1 Introduction

151 What this chapter is about

Any person in local government who is elected or appointed to perform responsibilities, or any entities that are created, are provided for in this chapter.

Part 2 Councillors

Division 1 Qualifications of councillors

152 Qualifications of councillors

Clause 152 declares that if a person is an Australian citizen, and not disqualified based on any other clause in this division, the person is eligible to become a councillor in local government and aligns with the

requirements at State and Federal level for representatives to be Australian citizens.

A councillor of the Torres Strait Island Regional Council must be a Torres Strait Islander or an Aborigine and must have lived in the local government division for the two years prior to the election. The requirements apply to the mayor on the basis of the local government area, rather than the division, as the mayor does not represent a single division. These additional qualifications reflect the cultural and other circumstances of this council and the representation by councillors who understand this.

153 Disqualification for certain offences

Clause 153 lists the reasons that a person can not become a local government councillor, defines terms used in the clause, details reasons a person automatically stops being a local government councillor, and when a person is taken to have been convicted of an offence. Competent representation accords with community expectations and public interest. The criteria contained in this clause are based on those applying to members of the Queensland Parliament under the *Parliament of Queensland Act 2001*.

The integrity offences, referred to in clause 153(5), which disqualify a person from being a councillor, are:

- release of information that is confidential to the local government (clause 171);
- voting on a material personal interest matter (clause 172);
- non-disclosure of a conflict of interest or non-compliance with a direction to leave the meeting when a conflict of interest matter is being discussed or voted on (clause 173);
- threatening, intimidating or harassing a person because that person reported a material personal interest or conflict of interest (clause 174(3));
- giving false or misleading information to the Electoral Commission (Criminal Code, s98B);
- influencing the vote of a person by intimidation or violence at an election or referendum (Criminal Code, s98E); and
- voting in the name of another person or voting more than once (Criminal Code, s98G(a) and (b)).

154 Disqualification of prisoners

If a person is serving a period of imprisonment, or is liable to serve a period of imprisonment, under clause 154 the person is defined as a prisoner and is not qualified to be a local government councillor. Community expectations set high ethical standards for councillors.

155 Disqualification because of other high office

Councillors are elected to carry out the good rule and governance of the local government area. Concurrent holding of certain other high offices is not consistent with this role. Accordingly, a person cannot be a councillor at the same time as being a member of another government, and the office of councillor is automatically vacated in certain circumstances.

156 Disqualification during bankruptcy

A person can not be a councillor if the person is bankrupt. This is in line with community expectations for their elected representatives to be competent financial managers.

157 Judicial review of qualifications

If a person is eligible to vote in a local government election, clause 157 allows that person to apply for judicial review of the eligibility of a person to be a councillor. This has no limit on the *Judicial Review Act 1991* and ensures that electors have standing to challenge the validity of local government electoral matters.

158 Acting as councillor without authority

A person must not act as a local government councillor without authority. People are prevented from gaining benefits for themselves or others or causing detriment to others by acting as a councillor when they are not qualified to do so or their authority has expired.

Division 2 Councillor's term of office

159 When a councillor's term starts

A councillor's term starts the day after the conclusion of the councillor's election, or the day that the councillor is appointed.

160 When a councillor's term ends

A local government councillor's term finishes, in a number of ways described in this clause.

Division 3 Vacancies in councillor's office

161 What this division is about

The purpose of the division includes defining the portions of time in a local government's term to create a fair system for filling councillor vacancies. The portions of time take into account the time since the last quadrennial election, and the time until the next quadrennial election. The discretion local governments may exercise in this division should be based on the resources of the local government and the importance of the principle of democratic representation. The procedures comply with stakeholder requests.

162 When a councillor's office becomes vacant

This clause sets out the conditions in which a councillor's office becomes vacant and ensures that when the councillor has ceased to be qualified, is dismissed or cannot perform their duties for another reason, their office is vacated.

163 When a vacancy in an office must be filled

Clause 163 explains the periods of time when a local government does or does not have discretion about whether to fill the vacancy in the councillor's office.

A local government must fill a vacancy that occurs more than 6 months before an election, to maintain constituents' right of representation.

Within 6 months before an election the local government can choose whether to fill the office. Given the short time frame, a local government may consider the need for representation balanced with the cost of a by-election.

This clause also applies to a vacancy in the office of mayor, including that the vacancy may not be filled if it occurs in the last 6 months of the term.

164 Filling a vacancy in the office of mayor

The democratic process in filling the mayoral office is important, and therefore any vacancy in the office of mayor must always be filled by a by-election. However, because clause 163 also applies to a mayoral vacancy, a vacancy may not be filled if it occurs in the last 6 months of the term.

165 Acting mayor

Clause 165 provides for the way in which the deputy mayor, or another councillor, may act in the office of mayor. It also provides for vacation of the deputy mayor's office and recognises that executive power must be exercisable at all times, even when the mayor is absent or incapacitated.

166 Filling a vacancy in the office of another councillor

The system for filling a vacancy in a councillor's office that is not the mayor varies according to when, in the local government's term, the vacancy occurs.

In the beginning (first year after a quadrennial election), the local government can choose whether to appoint the *runner-up* (as defined in the clause) in the general election or to hold a by-election. In deciding, the council can balance the cost of holding a by-election with the availability of the runner-up.

In the middle 18 months of the local government's term, the office must be filled by a by-election, a representative outcome, as there is potential for change in voter opinions.

In the end part of the term (the 18 months leading up to a quadrennial election), the relevant political party or the local government can appoint a qualified person. This prevents the duplication of costs that would arise from holding a by-election when the quadrennial election is imminent.

Division 4 Councillors with other jobs

167 Councillors and local government jobs

A person can not be a councillor at the same time as they are a local government employee. If a person becomes a councillor while they are a local government employee they are taken to have resigned from their position as a local government employee the day prior to them becoming a councillor. This is consistent with the separation between the executive and the legislature.

Local government employee is defined and includes an exception for particular Aborigines and Torres Strait Islanders.

168 Senior councillors and full-time government jobs

A person can not have a full-time government job at the same time as they are a senior councillor for local government. The meanings of a *senior councillor* and *full-time government job* are defined. This clause lists certain exceptions.

If a senior councillor does not fall into one of the exemption categories and they become a senior councillor while they hold their full-time government job, it is taken that the person resigned from the full-time government job on the day prior to them becoming a senior councillor for local government.

This clause does not stop a senior councillor from having a part-time government job or from converting an existing full-time government job to part-time.

Division 5 Obligations of councillors

169 Obligations of councillors before acting in office

A councillor must not act in the office until the councillor has been elected to the office and made their declaration of office. *Declaration of office* is defined and states that a CEO can hear the declaration of office and keep a signed written record of it. It is important that councillors-elect make their declaration of office before acting in office to ensure that the exclusions from liability apply.

170 Giving directions to local government staff

In order to create a separation between the elected council members and the appointed administration, only the mayor of a local government can give directions to the CEO. Neither the mayor nor a councillor of the local government can give a direction to a local government employee. Also see clause 12(e) and (f).

The CEO may make guidelines for the ways in which a councillor can ask a local government employee for advice. This is similar to the relationship between State Ministers and their departmental staff.

171 Use of information by councillors

Information acquired by a councillor, or someone who was previously a councillor, must not be used for gain, financial advantage or to harm the local government. Information that the councillor knows is confidential to the local government must not be released. The use of information in such a way is a breach of the public trust in the councillor as an elected representative. The penalty mirrors that for disclosure of an official secret under the *Criminal Code Act 1899*.

172 Councillor's material personal interest at a meeting

Material personal interest (MPI) is defined and the procedures for dealing with it clear so that individual councillors must identify and act on an MPI. The rationale for openness about MPIs is the achievement of the local government principles, especially *transparency and effective decision making processes in the public interest,* and fairness towards all constituents. Decisions by councillors must be made in the public interest over and above any personal and private advantage or disadvantage to an individual councillor.

A councillor with an MPI in a matter in a meeting (including a committee meeting) must declare their interest, leave the meeting and not participate in any discussion or vote on the matter.

Details of MPI matters must be recorded in the minutes of the meeting and accessible to the public.

173 Councillor's conflict of interest at a meeting

Conflict of interest (COI) is defined and procedures for dealing with it clear so that councillors must identify and act. The rationale for openness about COIs is the achievement of the local government principles, especially *transparency and effective decision making processes in the public interest* and fairness towards all constituents. Decisions by councillors must be made in the public interest over and above any personal and private interest of the councillor. A conflict of interest is a conflict between a councillor's personal interests and the public interest that might lead to a decision that is contrary to the public interest.

A councillor with a possible COI must declare it to the meeting, including to a committee meeting. There is a penalty for not doing so. Someone other than the councillor may inform the meeting. The other voters will decide if it is a conflict of interest or could reasonably be taken to be a conflict of interest.

If the decision is in the affirmative, the councillor must be directed to leave while the matter is being discussed and voted on. This provides a quick, independent means of dealing with any conflict.

In a case where the majority of councillors have a conflict of interest in the matter being discussed and decided, the councillors may remain in the meeting, discuss and vote on the matter.

For transparency and accountability, details of any declaration of, and decision on, a COI must be minuted and accessible to the public.

174 Duty to report another councillor's material personal interest, conflict of interest or misconduct

A councillor has a duty to report another councillor's MPI, COI or misconduct. The duty to report is consistent with the high ethical standards of behaviour expected of councillors. Clause 174 affords protection from intimidation and harassment from any person who reports the MPI, COI or misconduct of another councillor.

The duty to report acknowledges the collective responsibilities of the councillors to achieve the local government principles.

175 Post-election meetings

A local government must hold a meeting within 14 days after an election. At that meeting the local government must, by resolution, appoint a deputy mayor. This ensures the council begins performing its responsibilities soon after elections are held.

Division 6 Conduct and performance of councillors

176 What this division is about

This division details how complaints about the conduct and performance of councillors are to be dealt with. The system is based on different levels of seriousness of complaints, i.e. those which are dealt with locally (inappropriate conduct), and serious and dismissible breaches (misconduct).

Instead of a separate councillor code of conduct, standards for councillor conduct and performance are set in the Bill. Councillors, by virtue of being elected and holding the office of councillor are, individually and collectively, bound by:

- the purpose and principles for local government;
- the responsibilities and powers of councillors;
- the financial sustainability criteria; and
- any other obligations under local government legislation.

Open and honest outcomes in the public interest are achieved by the publication of reports, recommendations, decisions and penalties, thereby requiring transparency and accountability to the community.

A local government user-pays system meets the costs for a complaint to be reviewed. It is assumed that in usual circumstances, the conduct and performance of councillors and local governments will meet the principles, responsibilities, criteria and any other obligations under local government legislation. When this is not so, the intention is that local governments educate and prevent poor conduct and performance and deal with any complaints of inappropriate behaviour.

Inappropriate conduct and *misconduct* are defined, and two independent entities essential to the system of dealing with serious and dismissible complaints are also defined: *regional conduct review panels* (a panel) and the *Local Government Remuneration and Discipline Tribunal* (the tribunal). These two entities have important functions including conducting hearings, investigations, deciding liability and penalty and making recommendations. The tribunal may make recommendations about suspension and dismissal of an individual councillor to the Minister.

The tribunal is an independent investigator for matters where a recommendation of suspension or dismissal is possible. Furthermore, the tribunal will provide State wide consistency for determining these serious matters.

Other misconduct matters will be referred to a regional conduct review panel which will be an independent body convened solely to hear complaints about councillors.

177 Assessing complaints

The CEO must assess complaints about councillor conduct and performance as either frivolous or vexatious, inappropriate conduct, misconduct or another category (e.g. a general complaint). Allegations of official misconduct continue to be referred to the Crime and Misconduct Commission (CMC).

Allegations amounting to inappropriate conduct are referred to the mayor. If the complaint is against the mayor, the matter is referred to the deputy mayor. Local governments will deal with inappropriate conduct internally which is quicker and more cost effective than referral to the department.

If assessment shows that the complaint is about misconduct, it will be referred to the department's chief executive. The seriousness of the complaint will be determined and it will be referred to the appropriate entity to be investigated.

If the complaint is assessed as another category, it will be dealt with in an appropriate way. The CEO has the discretion to decide no further action be taken about a frivolous or vexatious complaint but the complainant must be notified and informed that such complaints are an offence. The requirements for publishing complaints do not apply to complaints that are deemed to be frivolous and vexatious.

Recording results of the outcome of a complaint is a requirement for publication, to improve transparency and accountability. The CEO is responsible for ensuring records of complaints are available for public inspection at the council office.

The *Whistleblower Protection Act 1994* applies to this clause.

178 Notifying councillor of the hearing of a complaint of misconduct

A councillor must be correctly notified about the hearing of a misconduct complaint concerning him/her. There is a common law principle that no person be condemned without a fair hearing, and that the person be given enough time to prepare a response to allegations and a forum in which to give the response. To uphold this principle, the councillor is given the appropriate information and the necessary time to prepare the response.

If all reasonable attempts to contact the councillor have failed, the department's chief executive has the power to publish the notice of a misconduct complaint hearing against a councillor in a local newspaper, or on the department's website, or may direct the local government to publish it on the local government's website.

179 Hearing and deciding complaints

This clause sets out the way in which a panel or the tribunal must hear a matter to ensure the accused councillor's right to natural justice is upheld. The standard of proof for proceedings is established as the balance of probabilities, as this is the standard of proof for other civil matters.

The *balance of probabilities* is the weighing up and comparison of the likelihood of competing facts or conclusions. A fact is proved to be true on the balance of probabilities if its existence is more probable than not, or if it is established by a preponderance of probability.

Chapter 7, part 1 describes details of the hearing and investigation processes.

180 Taking disciplinary action

If a councillor is found to have engaged in misconduct, a number of disciplinary actions are available.

A panel is able to make orders for penalties such as for counselling, an apology or admission of error from the councillor or that the department monitor the councillor.

Examples of serious breaches leading to these penalties are:

- disbursement outside the budget;
- failure to declare a conflict of interest;
- failure of the duty to report;
- improper use of council resources;
- directing local government employees;
- disclosures and returns inaccurate or not on time; and
- repeated inappropriate conduct.

A panel can refer more serious matters to the tribunal. Although this involves the councillor in multiple tribunal processes, it is justified on the grounds that the panel does not have power to recommend more severe punishments that may be appropriate in the circumstances.

The tribunal is a central independent entity essential for State wide consistency in deciding liability and penalties. The tribunal may make any order that a panel has the power to make. In addition, the tribunal can order that a councillor reimburses money or forfeits payments or privileges. The tribunal can also recommend to the Minister that the councillor be suspended or dismissed. The tribunal does not have the power to dismiss a councillor, as only the Minister is able to do this.

Examples of dismissible breaches leading to these penalties are:

- failure to perform responsibilities;
- failure to meet financial sustainability criteria;
- failure to decide financial management requirements on time, with completion and accuracy;
- bringing the council into disrepute;
- failure to declare a material personal interest;
- improper use of confidential information; and
- harassment and/or intimidation of a councillor, employee or constituent.

181 Inappropriate conduct

Clause 176(4) defines *inappropriate conduct* – there are two types: failure to comply with local government procedures and meeting misbehaviour. Clause 181 outlines the orders which can be made against a councillor who has engaged in inappropriate conduct of either type. A local solution to a local problem provides immediacy with the intention of preventing escalation of the problem. Examples of inappropriate conduct include failure to follow meeting or committee procedures, failure to follow council policy and procedures and other procedural breaches.

The mayor has been given powers and procedures to follow, similar to those of the speaker in State Parliament, to ensure the orderly conduct of council meetings.

182 Department's chief executive is a public official for CMC Act

Under section 46 of the *Crime and Misconduct Commission Act 2001* the CMC may refer a complaint to a public official for investigation. This clause makes all references to a public official in that section references to the department's chief executive where the allegation of official misconduct is by a councillor.

The reason for this variation to CMC practice is to avoid the role conflict of the CEO in having to investigate and make judgements about possible official misconduct of his/her employer.

Part 3 The tribunal

This part establishes the tribunal.

183 Establishing the Tribunal

The Local Government Remuneration and Disciplinary Tribunal (the tribunal) will be established with discipline functions and responsibility for categorising local governments and determining councillor remuneration. The tribunal's functions allow for it to have membership appropriate to remuneration and discipline.

184 Members of tribunal

The qualifications of tribunal members are listed. Special note should be made of the most appropriate qualifications for the purpose, such as knowledge and experience in matters related to local government, ethics and investigations. Disqualifications for members of the tribunal are also listed and demonstrate the importance of the independence of the tribunal from local governments. The disqualifications from tribunal membership are consistent with the disqualifications from regional conduct review panel membership.

185 Remuneration and appointment conditions of members

The Governor in Council decides the remuneration and conditions for tribunal members.

186 Costs of tribunal to be met by local government

The tribunal operates on a local government user-pays system when dealing with misconduct matters.

187 Conflict of interests

Tribunal members must not take part in the consideration of any matter where they have a COI. The department's chief executive must be informed of any conflicts. This provision ensures the fairness and independence of the tribunal.

188 Assistance from departmental staff

This clause ensures the tribunal is adequately staffed to perform its responsibilities.

Part 4 Regional conduct review panels

The members of the regional conduct review panels are to be appointed, and operate in particular ways.

189 Appointing members of regional conduct review panels

In each region across the State, the department's chief executive must establish a panel and appoint a pool of members for each panel. The qualification and disqualification criteria are the same as those for tribunal members.

190 Remuneration and appointment conditions of members

The department's chief executive determines the remuneration and conditions of panel members.

191 Costs of regional conduct review panels to be met by local government

The panels operate on a local government user-pays basis.

192 Conflict of interests

Panel members with a COI are subject to the same conditions as tribunal members under clause 187.

193 Assistance from departmental staff

This clause ensures the panels are adequately staffed to perform their responsibilities.

Part 5 Local government employees

Division 1 Chief executive officer

194 Appointing a chief executive officer

The CEO is a key role. Accordingly, the local government must appoint a *qualified person* to be its CEO. The contract of employment between him/her and the local government must contain certain details.

195 Appointing an acting chief executive officer

This clause provides a power for a local government to appoint a *qualified person* to act in the CEO position in certain circumstances.

Division 2 Other local government employees

196 Appointing other local government employees

Local government councillors are given powers to adopt an appropriate organisational structure by resolution and to employ officers. All local government employees, including senior officers, are appointed by the CEO. Employment conditions of an officer include those in an industrial instrument and those decided by the local government.

The intent of this clause is to provide a clear separation between councillors and the employees. The councillors of a local government decide the strategic direction of the administrative arm of the local government, for example through the organisational structure and a recruitment and selection policy.

However, the CEO is responsible for the recruitment and selection, as well as the management and discipline, of all local government employees. The CEO must consult with the councillors on the recruitment and selection process for senior contract employees who are defined in the clause.

197 Disciplinary action against local government employees

The power to take disciplinary action against a local government employee is only able to be exercised by the CEO. Staff may appeal a decision to take disciplinary action to an external body provided by regulation.

Division 3 Common provisions

198 Concurrent employment of local government employees

In order to provide a level of flexibility, this clause provides that local government staff, including the CEO, may be employed by more than one local government. An arrangement of concurrent employment must have the agreement of each of the local governments involved. Codes of conduct

and contracts should deal with conflicts of interest, conflicts of roles and use of information by officers and CEOs employed in more than one local government.

199 Improper conduct by local government employees

A penalty is imposed for local government employees who ask for or receive fees for duties performed as an employee of a local government and for employees who unlawfully destroy or damage local government property. Benefits of nominal value may be received by employees. The intent is for "nominal value" to be set by individual council policy.

200 Improper use of information by local government employees

Local government employees are prevented from using information acquired in the performance of their duties for personal gain or to cause harm to the local government. Clause 171 establishes a similar provision for councillors with an equivalent penalty.

201 Annual report must detail remuneration

The remuneration packages of all senior contracted employees must be published in the local government's annual report. Senior contract employees are defined and include the CEO. The publication must be by numbers of employees on a remuneration package and aligns with the State requirement for senior executive packages to be published in annual reports.

In this way, ratepayers will be informed about how money is being spent by council on CEO and senior staff packages. Several examples are given to show how the information might be presented in the annual report.

Part 6 Authorised persons

This part gives information about authorised persons and aspects of their appointment.

202 Appointing authorised persons

Clause 202 describes the qualifications and conditions for an authorised person and provides a power for a regulation to prescribe further qualifications and conditions. The power to appoint authorised persons vests specifically with the CEO as the appointment of authorised persons is an operational issue.

203 End of appointment of authorised persons

A non-exclusive list of ways the appointment of an authorised person can end is the subject of clause 203.

204 Identity card for authorised persons

An authorised person must be given an identity card. The power to issue identity cards vests specifically with the CEO as issuing identity cards is an operational issue. The authorised person must return their identity card within 21 days of ceasing to be an authorised person.

Part 7 Interim management

205 Interim management committee

Clause 205 provides a power for the Minister to establish an interim management committee to assist an interim administrator to perform his/her responsibilities.

206 Conditions of appointment as interim administrator or member of committee

Clause 206 provides the conditions of appointment as an interim administrator of a local government and the process for the end of the appointment. The interim management committee gives the interim administrator advice relevant to the management of the local government.

207 End of appointment of interim management

Clause 207 sets out the ways a person stops being an interim administrator or a member of an interim management committee. A person may resign, the appointment may be cancelled by the Governor in Council or a fresh election may be held to end the appointment of interim management.

Part 8 The superannuation board

Part 8 (clauses 208 to 211) establishes the superannuation board, and sets out its responsibilities and constitution.

Chapter 7 Other provisions

Part 1 Way to hold a hearing

The way a hearing is held is important to several entities, including tribunals, panels, commissions and committees under the Bill. Procedures, powers of investigators and requirements of witnesses are described and must be of the highest standard.

212 What this part is about

This clause sets out what this part is about and provides a definition of *investigator.*

213 Procedures at hearing

The procedural rules for hearings are outlined. Investigators must observe natural justice and must act as quickly and informally as possible. To achieve this, examples are given of how an investigator may vary procedures.

An investigator may act in the absence of someone who has been given reasonable notice of a hearing, on the basis of a need for expediency and the requirements for notice to be given before the hearing is held.

The investigator may refuse a person to have legal representation. However, rights to natural justice must be maintained. Due to the practical rather than technical nature of the tribunals, panels, commissions and committees, the desire to reduce costs for all involved and the need for decisions to be made quickly, the usual practice is to hold the hearing without legal representation.

An investigator may disregard the rules of evidence at a hearing, again consistent with informality while maintaining natural justice.

214 Witnesses at hearings

This clause is necessary to compel witnesses to appear and answer questions at hearings.

215 Contempt at hearing

This clause prescribes the good conduct of hearings and prevents disturbances, interferences and other forms of contempt. The tribunal may impose a penalty for any action that would constitute a contempt of court.

Part 2 Superannuation

216 What this part is about

This clause outlines that the part is about superannuation for certain persons connected to a local government. It also defines a *local government entity* so that an entity prescribed by regulation which exclusively exercises a local government power may be able to contribute to the Local Government Superannuation Scheme (LG super scheme).

217 LG super scheme

The existing LG super scheme under the LGA continues with no changes under this Bill. Accordingly, this clause provides for the continuation of the

LG super scheme, and requires the super board to make a trust deed in accordance with the relevant rules and legislation.

218 Members of LG super scheme

This clause sets out who is an automatic member and who is an eligible member of the LG super scheme.

219 Compulsory super contributions

Compulsory contributions by a local government are required under the Commonwealth superannuation legislation to be paid into the LG super scheme.

220 Amount of compulsory contributions

The amount of yearly contributions that must be paid into the LG super scheme for special and standard permanent employees is nominated.

221 Extra super contributions

A member, or a local government on behalf of the member, may make additional contributions to the LG super scheme.

222 Adjusting super contributions when salary changed

Clause 222 establishes the process by which super contributions may be adjusted when a permanent employee's salary changes. It also provides that a permanent employee may keep paying contributions at the higher rate if his/her salary has decreased.

223 Super contributions for non-contributory members

This clause sets out how contributions for non-contributory members are to be managed.

224 Interest is payable on unpaid super contributions

A local government must pay interest on a contribution that is not paid in the specified time.

225 Local governments must not establish employee superannuation schemes

A local government is prohibited from establishing a separate superannuation scheme for its employees. This is to ensure that employee superannuation is managed by the LG super scheme.

226 Super scheme for councillors

Clause 226 gives a local government a power to establish and amend a superannuation scheme for its councillors, or to take part in an existing scheme. The contributions the local government makes for councillors must have parity with the contributions it makes for its standard permanent employees.

227 Super schemes to be audited by auditor-general

Clause 227 sets out that superannuation schemes managed by the super board as trustee must be audited by the auditor-general.

Part 3 Allocating Commonwealth funding to local governments

Division 1 Allocating Commonwealth funding

228 Allocating Commonwealth funding

This clause describes how the Local Government Grants Commission (the grants commission) allocates Commonwealth funding. The role of the grants commission is to make recommendations to the Minister about the allocation of the financial assistance the State receives from the Commonwealth under the *Local Government (Financial Assistance) Act 1986* (Cwlth) for local government purposes.

If a local government fails to provide the required information to the grants commission by the specified time, the grants commission need not make a recommendation about allocation of Commonwealth funds to that particular local government. The intent is to improve the return rate of

information to the grants commission and, in turn, help facilitate decisions regarding the allocation of Commonwealth funds to Queensland local governments based on fair and equitable terms and better allocation for specific and relative need.

229 Decisions under this division are not subject to appeal

The decisions of the grants commission are made based on principles and requirements set out in Commonwealth legislation, including the need to hold public hearings and have consideration for equity. Clause 229 provides that these decisions are not subject to appeal.

Division 2 The grants commission

230 Grants commission is established

This clause establishes the grants commission.

231 Members of grants commission

The members of the grants commission must be appointed by the Governor in Council. The qualifications of members and conditions of membership are established.

232 Conflict of interests

Requirements to manage conflicts of interest for grants commission members are set out.

233 Staff assistance to the grants commission

The department's chief executive is required to provide necessary staffing resources to the grants commission.

Part 4 Legal provisions

This part contains legal provisions for the administration of the Bill.

234 False or misleading information

This clause makes it an offence to give false or misleading information to certain people.

235 Administrators who act honestly and without negligence are protected from liability

Clause 235 protects constituters of local government and State and local government administrators, acting honestly in the performance of their duties, from civil liability.

The indemnity for a constituter of local government is limited to acts done honestly and without negligence, to be consistent with the indemnity provided to State administrators.

236 Who is authorised to sign local government documents

Clause 236 identifies who may legally sign a document on behalf of a local government. A head of the local government, delegate of the local government or an authorised officer, defined to include a councillor or local government employee, may sign a document on behalf of a local government.

The head of the local government is defined in the schedule, and would usually be the mayor, unless the constitution of the local government has varied, for example as provided for under clause 11 or clause 165.

237 Name in proceedings by or against a local government

Clause 237 sets out that proceedings by and against a local government must be started in the name of the local government.

238 Service of documents on local governments

Service of a document on a local government is achieved by giving the document to the CEO in a certain way.

239 Substituted service

Clause 239 allows a local government to serve a document on an owner of rateable land by serving it on the owner's agent in the State, in particular circumstances.

240 Acting for a local government in legal proceedings

Clause 240 states that the CEO, or another employee authorised in writing, may act for the local government in legal proceedings.

241 Attempt to commit offence

This clause clarifies that an attempt to commit an offence against this Bill is legally the same and carries the same penalties as actually committing an offence against this Bill.

242 Types of offences under this Bill

Clause 242 sets out that there are both summary and indictable offences against this Bill. An indictable offence is an offence that has a penalty of more than 2 years imprisonment. A summary offence is an offence not punishable on indictment or for which no procedure is specified.

This clause also provides for proceedings for indictable offences.

243 Time to start proceedings in a summary way

The timing for starting a proceeding for a summary offence against this Bill is set out.

244 Decisions not subject to appeal

Clause 244 exempts particular decisions under this Bill from appeal in any way.

The decisions taken under this Bill that are not subject to appeal are decisions made by the State against local governments or councillors of local governments. The exemption of these decisions from appeal reflects the relationship between the State and local governments in section 70(2) of the Queensland Constitution.

245 Judges and other office holders not disqualified from adjudicating

Clause 245 states that a particular office holder is not disqualified from adjudicating proceedings because that person could pay rates to a local government which is involved in those proceedings.

246 Where fines are to be paid to

This clause requires fines to be paid to the local government's operating fund, unless a court orders differently.

247 Local government references in this Bill

Clause 247 clarifies the expanded application of references in this Bill to particular entities or persons.

248 Evidence of local laws

Evidentiary matters for local laws for any proceedings are outlined.

249 Evidence of proceedings of local government

Clause 249 describes evidentiary matters for documents which purport to be about local government proceedings.

250 Evidentiary value of copies

Evidentiary matters for copies of local government documents are stated.

251 Evidentiary value of certificates

Evidentiary matters for certificates are covered.

252 Evidence of directions given to local government

This clause sets out evidentiary matters for directions given to a local government.

253 Evidence of complainant's knowledge of matter

This clause states evidentiary matters for a complainant's knowledge of a matter.

254 Constitution and limits of local government need not be proved

Clause 254 clarifies that the constitution and limits of a local government do not need to be proved in a proceeding.

Part 5 Delegation of powers

255 Delegation of Minister's powers

Clause 255 allows the Minister to delegate the Minister's powers under any Local Government Act to an officer of the department, including the chief executive of the department. The power must be delegated to an appropriately qualified person.

However, to reflect the gravity of these powers, the Minister must not delegate powers to remove unsound decisions of a local government, remove a councillor or dissolve a local government.

256 Delegation of department's chief executive's powers

Clause 256 enables the chief executive of the department to delegate any of the chief executive's powers under any Local Government Act to an appropriately qualified person. This would usually be an officer of the department.

257 Delegation of local government powers

Clause 257 permits a local government to delegate, by resolution, particular legislative powers. However, the local government may not delegate a power that must be exercised by resolution. This reflects the importance of a local government's decision-making.

258 Delegation of mayor's powers

A mayor is allowed to delegate his/her powers to another councillor of the local government. However, the power to give directions to the CEO may not be delegated. The intent of exempting this power from delegation is maintenance of the separation between the elected councillors and the appointed officers.

259 Delegation of chief executive officer powers

Clause 259 allows the CEO to delegate his/her powers to another employee, or a contractor, of the local government. However, the CEO may not delegate certain powers.

260 Local government delegations register

This clause requires the CEO to establish a register of delegations, which must be open to public inspection.

Part 6 Other provisions

261 Public office of a local government

Clause 261 states that a local government must keep premises for use as a public office, which must be either in or near the local government area.

262 Powers in support of responsibilities

This clause clarifies that an entity that is required or empowered to perform a responsibility under this Bill, or a Local Government Act, may do anything necessary or convenient to enable the performance of those responsibilities. In addition, if the entity is not an individual, clause 262 sets out that those powers include all the powers of an individual.

263 Validity of local government proceedings

This clause provides that local government or local government committee proceedings are not invalidated by vacancies in membership, issues with the qualifications of a member or the appointment or election process.

264 Special entertainment precincts

Clause 264 provides for the establishment of special entertainment precincts and displaces the *Liquor Act 1992*. This clause defines *special entertainment precinct* and outlines what a local government must do if it wishes to establish a special entertainment precinct in its local government area.

265 Materials in infrastructure are local government property

Clause 265 provides for the circumstances when a local government owns things in its control. Examples of inclusions and exclusions are given.

266 Approved forms

Clause 266 allows for the department's chief executive to approve forms for use under this Bill.

267 Review of this Bill

In order for local governments to continue to have effective and contemporary legislation, this clause sets out that the Minister must review the *Local Government Act 2009* within 4 years of its commencement.

268 Process for administrative action complaints

Clause 268 requires a local government to establish a process to resolve administrative action complaints. It gives a definition of *administrative action complaint* to clarify that this process for resolution of a complaint is about the way in which an administrative action was carried out, and not about the decision itself.

269 Information for the Minister

The Minister may request information from the local government on any matter to do with the local government itself or the local government area. Under clause 12, the mayor must ensure this information is provided promptly.

270 Regulation-making power

This clause provides a general regulation making power for the Governor in Council. A number of examples about which a regulation may be made are listed.

Chapter 8 Transitionals, savings and repeals

271 What this chapter is about

This clause sets out that the purpose of this chapter is to provide for the transition of certain rights and liabilities under the LGA and CGA (the repealed LG Acts).

272 Local governments, including joint local governments

This clause provides for the continuation of the local governments which were in existence immediately before the repealed LG Acts were repealed. Clause 272 also provides for the continuation of the two joint local governments.

273 Community governments

This clause ensures the continuation of a community government that was in existence immediately before the repeal of the CGA. Community governments continue in existence as a local government under the Bill, and a reference to a community government is taken to be a reference to a local government, if the context is appropriate.

274 Local service committees

Yarrabah Aboriginal Shire Council has a local service committee (LSC) which manages: the local government's Community Development Employment Program scheme under the *CDEP Management Committee Local Law 2007;* and community housing under the *Housing Management Committee Local Law 2007*.

Clause 274 maintains this LSC. No new LSCs may be established because second tier decision-making entities are not part of local government governance.

275 Local government owned corporation

This clause continues the Wide Bay Water Corporation as a corporate entity.

276 Local laws

Clause 276 provides that all local laws that were in force immediately before the commencement of the Bill continue in force under this Bill.

277 Decisions

All decisions that were in force immediately before the commencement of this clause continue in force under this Bill. The clause provides a non-exclusive list of examples of what could constitute a decision to which this clause applies.

278 Proceedings and evidence

All appeal, complaint and offence proceedings that were started, or could have been started, under the repealed LG Acts, may continue or be started under this Bill.

279 Super trust deed

Clause 279 continues the super trust deed.

280 Registers

Clause 280 continues any register under a repealed LG Act. The list of registers in this clause is not exclusive.

281 Remuneration schedule

Clause 281 continues the remuneration schedule for councillors in force under the LGA.

282 References to repealed LG Act

Clause 282 provides that a reference in an Act or a document to a repealed LG Act is taken to be a reference to this Bill, if appropriate.

283 Continuation of instruments to implement reform

Clause 283 details the instruments which are to continue in force as if chapter 3, part 1B of the 1993 Act had not been repealed. These

instruments are set to expire at the end of 31 December 2011 or at an earlier time fixed under a regulation.

284 Transitional regulation-making power

Clause 284 establishes a power to make a regulation to deal with any matters to facilitate the transition from a repealed LG Act to this Bill, if this Bill does not make sufficient provision.

285 Administration of sinking fund for liquidation of current borrowings

Clause 285 continues the corporation which was continued by the LGA: 'Trustees of the Local Governments Debt Redemption Fund'.

286 Local Government Association

Clause 286 ensures the legal continuation of interests, employment, legal proceedings and other existing arrangements for the Local Government Association of Queensland (LGAQ) because provisions for the LGAQ are not continued in the Bill.

A changeover date of 1 July 2010 has been set for the transition of the LGAQ from incorporation under the LGA to a company limited by guarantee. The new date aligns with the financial reporting year of the LGAQ to reduce administrative and cost burdens. The current statutory obligations of the LGAQ will also cease on 1 July 2010, and any obligations arising before that date will be discharged by the new entity.

287 Repeal

Clause 287 repeals the LGA and the CGA. The Government's priority of minimising the regulatory burden and preventing over-reliance on the regulatory approach to resolve policy issues provides the impetus for the strategy of bringing local governments in Queensland under one local government Bill.

This local government legislation is comprehensive and contemporary so that it can apply to all Queensland local governments. The Bill has the scope to provide for unique situations where essential.

Chapter 9 Amendments of Acts

Part 1 Amendment of Animal Management (Cats and Dogs) Act 2008

288 Act amended in pt 1

The part amends the *Animal Management (Cats and Dogs) Act 2008* (the Act).

289 Amendment of s 9 (Who is an *owner* of a cat or dog)

Section 9(2) is amended by inserting (c) to clarify that a person appointed as an inspector under the *Animal Care and Protection Act 2001* (AC&P Act) does not 'keep' any cat or dog taken into care under that Act.

290 Amendment of s 13 (Supplier must ensure cat or dog is implanted)

Subsection (3) of section 13 is omitted to clarify that a cat or dog held under the AC&P Act (for example, by the RSPCA) must be microchipped before being supplied (sold or given away). The intent of the Act is for all owned cats and dogs to be registered and microchipped. As it is currently worded, section 13(3) inadvertently excludes organisations holding cats and dogs under the AC&P Act from the obligation to microchip those animals that change ownership.

Cats and dogs that will be destroyed or are returned to their owners under the AC&P Act are not required under this Act to be microchipped by the organisation that temporarily held them. In addition, a dog or cat that is transferred from one pound or shelter to another need not be microchipped. Cats and dogs that are to be destroyed, returned to their owners or transferred from one pound or shelter to another need not be microchipped because they are not 'supplied'.

291 Omission of s 15 (Notice of changed identifying information)

Section 15 is removed because its contents are covered in section 54.

292 Amendment of s 44 (Registration obligation)

Section 44 is amended to clarify that animals held in a shelter or pound are not required to be registered by the organisation holding them. It has never been the intention that animals held on a temporary basis should be registered by an organisation while under its temporary care. The note in subsection 44(1) is omitted and the meaning of the note in subsection (2) is clarified.

293 Amendment of s 45 (Cat or dog must bear identification in particular circumstances)

Section 45 is amended to remove any doubt that may arise about its operation. The amendment clarifies that the section covers all situations in which a cat or dog might not be at the address at which it is registered including, for example, when a cat strays away from home.

294 Amendment of s 47 (What registration form must state)

Clause 294 inserts 'be' in section 47(2)(b) to complete the phrase 'to be kept'.

295 Amendment of s 49 (Relevant local government must give registration notice)

For completeness of the information held on the registration notice, section 49(3)(b)(i) now includes any information given by an owner under section 48(2).

296 Amendment of s 54 (Amendment of registration)

The amendment to section 54(2) extends exclusions from its requirements to include regulated dogs of any type. Changed addresses for all regulated dogs are now dealt with in schedule 1, section 8. The amendment ensures all regulated dogs are dealt with in the same manner.

297 Amendment of s 55 (Relevant local government must give notice of change)

Section 55(4) is amended to ensure consistency with subsections (1) to (3). The term 'chief executive officer' is used to refer to the chief executive of a local government while the term 'chief executive' is used to refer to the chief executive of the State department that administers the Act.

298 Amendment of s 56 (Relevant local government must give renewal notice)

Amended section 56(2)(b)(iii) reduces from 10 to seven days the time allowed for notification of changes of registration information for a cat or dog to ensure consistency with section 54(3). Animals are known to be most likely to wander at times of change, such as when its owner moves house. The policy intent of the Act is to enhance animal safety by requiring changed information to be advised as soon as possible.

299 Amendment of s 57 (What owner must do)

A technical amendment to section 57 clarifies that the re-registration of a cat or dog must take place before the previous registration period expires.

300 Amendment of s 58 (Relevant local government must give registration notice)

The amendment to section 58 removes the requirement for local governments to issue a new registration notice after registration information is updated. Issuing a new registration notice was not the original intention and is regarded as an onerous cost impost for the local governments concerned. The provision heading is also amended. The amendment also inserts in (4) the word ‘officer’ after ‘chief executive’ to ensure consistency with subsections (2) and (3).

301 Amendment of s 61 (What is a *declared dangerous dog*)

Clause 301 substitutes section 61(b) to clarify that a declaration in another State that is the same as or similar to a declaration for a dangerous dog under this Act need not be named a 'dangerous dog declaration' to fit within the definition of a corresponding law.

302 Amendment of s 62 (What is a *declared menacing dog*)

Clause 302 substitutes section 62(b) to clarify that a declaration in another State that is the same as or similar to a declaration for a menacing dog under this Act need not be named a 'menacing dog declaration' to fit within the definition of a corresponding law.

303 Amendment of s 93 (Owner's obligation if proposed declaration notice in force)

Section 93 is amended to clarify that, if a dog is the subject of a proposed declaration notice, the owner must observe the permit conditions under schedule 1, section 3, that is, a dangerous and restricted dog must be muzzled and all regulated dogs kept under effective control when in a place other than its registered address.

304 Amendment of s 95 (Notice and taking effect of declaration)

Clause 304 corrects an error in section 95(5)(e)(i) by omitting 'relevant' and replacing it with 'menacing'.

305 Amendment of s 98 (Declared menacing dogs)

Clause 307 inserts in (1) a reference to schedule 1, section 3(1)(b) and (2) that arises because of amendments to schedule 1, section 3 . The schedule 1, section 3 amendments clarify that schedule 1 section 3(1)(a) applies only to declared dangerous and restricted dogs and schedule 1 section 3(1)(b) applies to all regulated dogs, including menacing dogs. In section 98, the relevant person for a declared menacing dog must comply with the conditions in schedule 1, section 3.

306 Amendment of s 104 (Appointment and qualifications)

Clause 306 amends section 104 to also allow the chief executive of the Department to appoint authorised persons.

As the chief executive is responsible for certain authorised implanter matters, he or she needs the authority to appoint authorised persons, which will then allow the Department to act on lower level offence matters and assist in implementing the Act. The amendment streamlines the regulatory

process with regard to authorised implanters by moving these functions to one entity.

307 Amendment of s 112 (Additional entry powers for particular dogs)

Clause 307 deletes 'this chapter' in section 112(1)(a)(ii)(B) and inserts 'chapter 4'. The current reference is incorrect. Section 112 is in chapter 5 but chapter 5 does not prescribe any requirements with regard to regulated dogs. These requirements are contained in chapter 4.

308 Amendment of s 131 (Return of regulated dog to registered owner)

Clause 308 amends section 131(3)(c) by making all of (2)(d) apply to the provision. This extends the application of subsection (3)(c) to ensure any seized regulated dog is returned to its owner if the owner complies with all the permit conditions.

309 Amendment of s 173 (Who may inspect registers)

The amendment to section 173(6) states that the chief executive sets the fee for obtaining a copy of information held in the regulated dog register. This ensures consistency with subsection (7).

310 Amendment of s 174 (Chief executive officer must give information)

In section 174(2)(b), 'the' is deleted and in section 174(2)(b)(i) ‘section 47’ is omitted and ‘the registration notice’ inserted to ensure clarity of meaning.

311 Amendment of s 181 (Who may apply for review)

Amendments to section 181(2) to clarify that all decisions made by or on behalf of a local government, including those made by an authorised officer, may be subject to a review. This amendment is intended to ensure consistency with the original policy intent and to remove any doubt as to where and to whom a person seeking a review must apply.

An 'original decision' is a decision for which an information notice is issued. The amendment clarifies who issues an information notice. For

local governments, information notices are issued by either a local government or an authorised person. This is reflected in the definition of 'original decider' and in section 181(2).

The amendment should be read in conjunction with section 135, under which, in a local government, a reference to an authorised person is a reference to an authorised person appointed by that local government. It is important to read all of the amendment in clause 311. The wording is intended to tie the authorised person (the decision-maker) to the chief executive officer of the local government that appointed him/her (the chief executive officer to whom the application for a review must be made).

312 Amendment of s 182 (Requirements for making PID review application)

Clause 312 amends section 182(1)(a) by omitting 'approved' where second mentioned.

313 Amendment of s 183 (Requirements for making general review application)

Clause 313 amends section 183(1)(a) by omitting redundant words.

314 Amendment of s 184 (Stay of operation of original decision)

Clause 314 amends section 184(5) consequential to the amendment of schedule 1, section 3 in clause 325(2), which changes the name of the heading.

315 Amendment of s 189 (Starting appeal)

Clause 315 deletes 'the clerk of' from the phrase 'the clerk of the Magistrates Court' in section 189(1)(a). As currently worded, use of the phrase 'the clerk of' in section 189(1)(a) would mean an appeal would be heard under the *Justices Act 1886* in the Magistrates Court's criminal jurisdiction. The amendment would result in an appeal being heard under the *Uniform Civil Procedure Rules* in the Magistrates Court's civil jurisdiction. This amendment is consistent with the original policy intent for such matters to be considered in the civil arena.

316 Amendment of s 190 (Stay of operation of review notice)

Clause 316 amends section 190(3) consequential to the amendment of schedule 1, section 3 in clause 325(2), which changes the name of the heading.

317 Amendment of s 194 (Particular persons must ensure dog does not attack or cause fear)

Sections 194, 195, and 196 are recast to better present the policy objectives of ensuring regulated dogs are under control, making it an offence for either the owner or responsible person or other persons to encourage a dog to attack and cause fear, but also providing appropriate defences. Four levels of offences provide appropriate penalties for different levels of severity of attacks.

Section 194(1)(b) is also amended to include ‘grievous bodily harm’ to an animal as an offence. Under section 1 of the *Criminal Code Act 1899*, 'grievous bodily harm' is defined but nothing in the definition restricts its application to persons only. The amendment is in keeping with the original policy intent such as expressed in sections 3(c) and 4(i), (j) of the Act.

In addition, clause 317 inserts a definition of 'animal' to make it clear that the term does not include vermin, that is, the offence does not, for example, apply to a dog that catches a rat. The definition excludes 'owned' vermin, including protected species that are 'owned' by the State by virtue of their protected status (*Nature Conservation Act 1992*, section 82(1)). These amendments are intended to remove any doubt that may arise about the provision's operation and ensure consistency with its original policy intent.

318 Replacement of ss 195 and 196

Current section 195 is omitted and new section 195 inserted that combines the different levels of offences in section 194 with the content of the previous section 196. Current section 196 is omitted and new section 196 inserted that provides for defences against both sections 194 and 195. The defences, previously contained in section 195, were originally intended to apply to previous sections 194 and 196, but this application was inadvertently omitted from the provision.

319 Amendment of s 206 (Delegation by chief executive officer)

Clause 319 inserts the words 'appropriately qualified' in section 206(1) to describe an officer to whom a chief executive officer may delegate his or her powers. The amendment is necessary in consideration of subsection (2) where the words are specifically defined.

320 Amendment of s 209 (Approval of forms)

Clause 320 amends section 209(1) by omitting 'section 183' and inserting 'section 182'. The amendment is necessary since, as it stands, it is incorrect and contradicts sections 182 and 183.

321 Amendment of s 211 (Deferral for particular local governments)

Clause 321 amends section 211 in two ways.

First, commencement of the microchipping and registration provisions of the Act is deferred for local governments other than a group of local governments defined as South-East Queensland local governments. Since the Act was assented to on 11 December 2008, Gladstone and Central Highlands Regional Councils have requested that they also be included in the local governments for which those provisions of the Act will commence on 1 July 2009. Clause 321 amends section 211 by referring to 'designated local governments' rather than 'SEQ local governments'. The definition of designated local governments to be inserted in schedule 2 includes Gladstone and Central Highlands Regional Councils, thus including them in the group of local governments with 1 July 2009 as their date of commencement.

Second, clause 321 amends the reference to 'local government' in section 211 to 'area of a local government' to clarify that the application of the Act is deferred for all people and entities to whom the Act applies in a designated local government area, not just for the local government itself.

322 Amendment of s 212 (Restricted dog registers)

Section 212 is amended as a consequence of the amendment to section 211 by changing a reference from 'SEQ local governments' to 'designated local governments'.

323 Amendment of s 213 (Cats and dogs implanted before commencement)

Clause 323 amends section 213 to clarify the application of section 213. Section 213 is a transitional provision which provides that section 37 (Authorised implanter may give identifying information to particular persons) applies regardless of whether an implantation of a permanent identification device was done before or after the commencement of section 213, that is, before or after the commencement of the Act.

324 Replacement of s 216 (Cat or dog not registered at commencement)

Section 216 is replaced with a new section 216. The wording of the previous section 216 could have given rise to doubt as to whether cats and dogs owned at the date the Act came into force were required to be registered. New section 216 confirms that all owned cats and dogs must be registered within three months after the section commences. This amendment is consistent with the original policy intent of the Act.

325 Insertion of new ss 217A and 217B

New sections 217A and 217B are inserted to ensure that a dog already declared to be a dangerous or menacing dog under a Queensland local law or a law in another State before the Act comes into force, remains a declared dangerous or menacing dog under the Act. The amendment also provides for the continuing recognition of 'corresponding convictions'.

326 Amendment of sch 1 (Permit conditions and conditions applying to declared dangerous and menacing dogs)

Clause 326 amends schedule 1 in several respects.

- The schedule definition of 'relevant person' is deleted from schedule 1, section 1 and inserted as a section definition in schedule 1, section 8, because it is now only relevant to section 8.
- Schedule 1, section 3(1) is amended to ensure that only restricted and declared dangerous dogs must be muzzled when away from their registered address but all regulated dogs (restricted, declared dangerous and declared menacing dogs) must also be kept under effective control when away from their registered

address. Dogs that are proposed to be regulated are also required to comply. The section heading is also amended.

- Schedule1, section 3(1) and (2) are amended to extend the places in which a regulated dog must be kept under effective control and muzzled. The original wording inadvertently did not allow for the restraint of regulated dogs when not in a public place but not at their registered address.
- Schedule 1, section 8 is amended to ensure it applies to all regulated dog owners. This provision was always intended to refer to all regulated dog owners, not just permit holders for restricted dogs.

327 Amendment of sch 2 (Dictionary)

Clause 327 amends schedule 2 to correct or apply consequential amendments to several definitions, as follows—

- Definitions for 'changed information', 'relevant person' and 'SEQ local government' are omitted because ‘changed information’ is specifically defined in particular sections, ‘relevant person’ has been relocated to schedule 1 section 8 as its application is restricted to that section, and ‘SEQ local government’ has been replaced by ‘designated local government’.
- A definition for 'designated local government' is inserted that includes SEQ local governments, Central Highlands Regional Council and Gladstone Regional Council.
- Definitions for 'dog patrol category', 'security officer' and 'security patrol dog' have been relocated from section 195 to schedule 2.
- The definition for 'approved form' is amended in paragraph (a) by changing 'section 183' to read 'section 182'. The reference is incorrect and, as it stands, contradicts sections 182 and 183.
- The definition for 'relevant dog' and 'relevant place' are restricted to particular occurrences in schedule 1 and their inclusion in the schedule is therefore redundant.
- The definition for 'registration notice' is corrected by amending 'section 49(2)' to read 'section 49(3)'.

- The definition for 'original decider' is amended to clarify that the person who makes an original decision by or on behalf of a local government includes an authorised officer. The amendment is linked to the amendment to section 181 in clause 313 to clarify that all decisions made by or on behalf of a local government, including those made by an authorised officer, may be subject to review. This amendment is intended to remove any doubt that may arise about the definition's meaning and ensure consistency with the original policy intent.
- The definition for 'original decision' is amended to omit the term 'may be given' and insert the term 'must be given', thus making it clear that an information notice must always be given to persons affected by the decision after an original decision is made.

Part 2 Amendments of Acts

328 Acts amended in sch 1

Schedule 1 Acts amended

Schedule 1 amends 83 other Acts necessary as a result of this Bill. The majority are to change references from the repealed legislation to this Bill.

Schedule 2 Comparative terms for the Brisbane City Council

This Bill applies to BCC for matters which COBA does not. For that purpose, schedule 2 sets out terms used in this Bill and corresponding terms used in COBA.

Schedule 3 Dictionary

Schedule 3 defines the terms used within this Bill.