

City of Brisbane Bill 2010

Explanatory Notes

Title of the Bill

City of Brisbane Bill 2010

Introduction

On 21 July 2006, the reviews of the *Local Government Act 1993* (LGA 1993) and the *City of Brisbane Act 1924* (CoBA) were announced, with the reviews being undertaken sequentially, beginning with the LGA 1993. The new *Local Government Act 2009* (LGA 2009) was passed on 4 June 2009 and upon commencement by proclamation will replace the LGA 1993 as the principal legislation for 72 Local Governments.

The review of the CoBA is complete and, given the unique status of the Brisbane City Council (BCC) as a capital city Council, a stand alone Act is the result for the BCC. The new *City of Brisbane Bill 2010* (CoBB) retains provisions from the CoBA which are unique to BCC but the CoBA is 86 years old and most of it is not relevant in 2010.

The CoBB includes a ‘principles-based’ approach; the recognition of the Establishment and Coordination Committee which coordinates all council business and is pre-eminent among the BCC standing committees; formalisation of mayoral powers; establishment of a CEO position and defined responsibilities; requirements for long-term financial planning and reporting; and a range of essential powers for the Minister.

The BCC continues to decide councillor remuneration and discipline matters. It may have a councillor code of conduct and establish a BCC Councillor Conduct Review Panel (the panel).

Ministerial powers provide a graduated continuum of responses if performance issues arise and to improve transparency and accountability. As is currently the case, the Minister does not have power to dissolve the BCC.

The CoBB gives formal legislative acknowledgement to Brisbane as the capital city of the State of Queensland. Capital cities are traditionally the

seat of Government. It is an opportunity to raise the profile of Brisbane, an important symbolic initiative and of national significance.

General policy objectives of the Bill

During 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.

Alternatives to achieve policy objectives

An alternative option is to retain the CoBA, the *Brisbane City Council Business and Procedure Act 1939* (BCCBPA), the *Local Government (Queen Street Mall) Act 1981*, the *Local Government (Chinatown and The Valley Malls) Act 1984* and the *Australian Estates Company Limited, Hastings Street New Farm Viaduct Authorization Act 1962* in their current forms. However, this would not provide a contemporary or appropriate legislative framework for the BCC to undertake its governance and service delivery role in the 21st century.

Amendments to the LGA 2009 contained in the CoBB are generated by:

- the need to redraft certain provisions to make them better reflect the Act's original policy intent; and
- support identified during the drafting of the Local Government Regulations for the LGA 2009.

Other amendments 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 Local Government Remuneration and Discipline Tribunal (the tribunal) is funded by a local government user-pays system.

Amendments to the Local Government Act 2009

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

Consistency with Fundamental Legislative Principles

Potential fundamental legislative principle issues arising from the State monitoring and enforcement 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 panel and tribunal will comply with natural justice principles including ‘show cause’ process prior to any recommendation of a penalty.

Deliberations of the panel and tribunal are non-appealable. Similar arrangements exist for conduct review panels under the LGA 2009 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.

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 the BCC to consider Aboriginal tradition and Island custom when exercising powers under the Bill.

Consultation

Government

As part of the broader Local Government Reform Program, 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 outlines of the Issues Papers. Government agencies were also consulted during the development process for the LGA 2009.

Community

For the LGA 2009, on which the CoBB is based, eight Issues Papers were released and 119 submissions received. The Queensland Council of Social Services, Commerce Queensland and Griffith University were represented on the Review Reference Group. Forty-two information sessions were held on the LGA 2009 with over 700 stakeholders including Mayors, Councillors, CEOs and peak bodies. This involved 30 individual Council meetings and 12 conference presentations and briefing sessions. Over 50 written submissions were received.

For the CoBB, extensive consultation was undertaken during drafting and using a consultation draft with the BCC, Lord Mayor and councillors, other local governments, professional and industrial representatives and other interested stakeholders.

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 *City of Brisbane Act 2010*.

2 Commencement

Clause 2 provides that clause 329, which makes minor consequential amendments to the LGA 2009, commences on the date of assent. Consequential amendments of the *City of Brisbane Act 2010* set out in schedule 1 will commence on 2 July 2010. The rest of the Bill will commence on 1 July 2010.

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 the Brisbane City Council (BCC) is constituted, as well as the legal and organisational system of local government in Brisbane. The Bill establishes and provides the powers, responsibilities, obligations and requirements, for Brisbane's system of local government.

The Bill recognises the unique nature of the BCC as a capital city council and as the largest provider of local government services in Queensland.

4 Local government principles underpin this Bill

This Bill provides a principles-based framework for decision making and governance. It gives the BCC flexibility to decide processes based on administrative circumstances, as long as those 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 the detailed prescription of roles and responsibilities and highlight the absolute essentials of an excellently performing local government that citizens expect and deserve. The principles are at one and the same time, aspirational, inspirational, practical and demanding.

5 Relationship with Local Government Act

Clause 5 makes clear that, although the BCC is a local government, this Bill, rather than the LGA 2009, applies to the BCC and its constituent parts, including contractors and corporate entities in relation to the council.

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 Brisbane City Council

Chapter 2 provides more detail about the council and its responsibility for governing the City of Brisbane. It establishes who makes up the parts of the council and the powers and responsibilities of those parts. It sets out how a change may be made to Brisbane boundaries or wards or to the

representation of the council. The intent is to make clear how the overall framework of the council is established.

Part 1 City of Brisbane

7 City of Brisbane

Clause 7 gives formal recognition of Brisbane as the capital city of Queensland. The boundaries of Brisbane may be described under a regulation.

Part 2 Council constitution, responsibilities and powers

8 What this part is about

Clause 8 states that part 2 is about what the BCC is, who constitutes the council and the responsibilities and powers of the council and its constituent parts.

9 The Brisbane City Council's responsibility for Brisbane

Clause 9 defines *the council*.

10 Brisbane City Council is a body corporate

Clause 10 maintains the council as a body corporate.

11 Powers of council generally

Clause 11 empowers the council to do anything that is necessary or convenient to provide good governance and deliver high quality services to Brisbane. This broad power complements the local government principles. That is, the council may do anything within its power in line with the local government principles.

As the council's power is drawn from the State, the council can only do something the State can legally do.

Recognising cultural diversity as part of the good rule and governance of the council, clause 11 provides for the council to take account of Aboriginal tradition and Torres Strait Island custom, thus promoting greater consideration of cultural matters.

A general competence power is included in clause 11 which ensures that those with responsibilities under the Bill have the powers to carry them out.

In addition, when the council is able to exercise a power outside Brisbane, it is no different to its exercise within Brisbane.

12 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 12 defines *joint government activities* and includes this as a specific local government power for the BCC. The council 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 Brisbane as part of a joint government activity is by local law, with the agreement of the relevant local government or local governments.

13 Who the council is constituted by

Clause 13 outlines who constitutes the council, including councillors when elected or appointed in the normal manner, if, for any reason, there are no councillors. The intent is succession and transition certainty within the council.

14 Responsibilities of councillors

The effective functioning of the council depends on the Bill 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 council (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 council's executive arm, which makes local laws and decides policy and other matters at a strategic level. The council appoints a CEO to implement the decisions of the executive arm by overseeing the work of officers of the council in the administrative arm, at an operational level.

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

It is the responsibility of councillors and the mayor 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 14 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 council, taking a leading role in determining the way the council achieves the purpose and principles of local government and complying with the BCC councillors' code of conduct.

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

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

Only the mayor has the power to direct the CEO and senior contract employees. The mayor must also take a leadership role in establishing and

managing a professional working relationship with the CEO, thus reinforcing the line management authority of the CEO and senior contract employees.

While the mayor prepares and presents the budget, it is, of course developed in accordance with best practice. The mayor is responsible for ensuring the council responds promptly to Ministerial requests for information.

15 Responsibilities of council employees

Clause 15 provides that council employees manage their duties to enable the council 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. Employee responsibilities are similar to those of public employees under the *Public Service Act 2008*.

The responsibilities of the CEO, as the head of the administrative arm of the council, are outlined in this clause. The line management role and separation of powers is emphasised by the responsibility for appointment of all council officers, other than senior contract employees.

It is incumbent on the CEO to develop with the mayor, a professional, effective working relationship.

This clause also has important implications for operational and administrative matters such as the safe custody of council records.

Part 3 Wards of Brisbane

Part 3 provides for equitable representation and for 'one vote one value' as far as possible.

16 What this part is about

Clause 16 outlines that chapter 2, part 3 is about wards and the review of wards.

17 Wards of Brisbane

Clause 17 requires the equitable distribution of electors across Brisbane wards. A quota of electors (a reasonable proportion of electors) is determined for each ward so that electors receive comparable representation on a council.

18 Review of wards of Brisbane

Clause 18 provides that the representation of Brisbane wards is reviewed no later than October in the year that is two years before the quadrennial election. It requires the council to advise the Minister that each ward complies with the voter to division ratio.

Part 4 Changing Brisbane area or representation

To maintain principles of democratic representation, a change to a ward of Brisbane, or to the number of councillors representing a community, must be undertaken in a transparent and accountable way. Part 4 ensures a process of independent assessment of proposed changes.

Division 1 Introduction

19 What this part is about

Clause 19 defines a *boundary 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

20 Who may start the change process

Clause 20 says that the council, the Minister or the Electoral Commission of Queensland (ECQ) may generate an application for a change.

21 Assessment

The independent Local Government Change Commission (the change commission), established under the LGA 2009, assesses and decides an application for a boundary change.

To justify the application for a change, the applicant must have sufficient regard to the principles for local government. For example, the council will provide evidence of meaningful community consultation and engagement. As part of their assessment, the change 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 change 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 change commission's website and in a newspaper circulating generally in the Brisbane wards affected by the determination.

22 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 Brisbane wards and representation. Clause 22 exempts the council from particular State taxes as a result of the implementation of a boundary change.

23 Decisions under this division are not subject to appeal

Clause 23 provides that any decision of the change commission in relation to a boundary change can not 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.

Chapter 3 The business of the council

Chapter 3 provides the framework for the day to day operations of the council – statutory committees and council meetings, local laws, beneficial enterprises, roads and infrastructure.

Part 1 Statutory committees and council meetings

Division 1 Statutory committees of the council

24 Establishment and Coordination Committee

Clause 24 continues the Establishment and Coordination Committee (ECC) as the pre-eminent committee of council.

Division 2 Meetings of the council or its committees

25 Chairperson of the council

Clause 25 provides for the appointment by resolution of a chairperson of the council to preside at all council meetings. The clause also defines the *rules of procedure* for conducting business at council meetings.

26 Mayor as member of standing committees of the council

This clause provides that the mayor is a member of all council standing committees and may attend and take part in any standing committee meeting.

Part 2 Local laws

Local laws are how the council regulates its local government area. The Bill gives the council the necessary powers to make local laws that are suitable to its particular needs and resources, and that achieve the purpose and principles of local government, without unnecessary administrative red tape.

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 State subordinate legislation.

Part 2 provides for a simplified local law making system that:

- gives the council the power to make and implement local laws via its own process;

- provides flexibility and certainty for the council about the power to make local laws for any matter relevant to Brisbane, 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 can not be made; and
- emphasises the importance of the State interest check in the process of making local laws.

Division 1 Introduction

27 What this part is about

Clause 27 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.

28 Interaction with State laws

Clause 28 clarifies that a law made by the State overrides a law made by the council if there is any inconsistency between the two to the extent of that inconsistency.

Division 2 Making, recording and reviewing local laws

29 Power to make a local law

Clause 29 provides the council with a head of power to make a local law that is necessary and convenient for the good rule and local government of Brisbane. The power is intended to be broad enough for the council to make local laws that are relevant to its context, necessary for the management of the City of Brisbane and enforceable by the council.

30 Local law making process

Clause 30 outlines the framework for making a local law. The council may develop its own detailed process for making a local law, as long as that process is consistent with the framework.

Before making a local law the council must consult with relevant government entities about the overall State interest and give a copy of the proposed local law to the Minister with a drafting certificate and any other information required by the Minister or under a regulation.

The Minister will then advise the council that it may proceed with a local law, subject to satisfying any conditions imposed by the Minister to ensure the overall State interest is dealt with satisfactorily.

The Governor in Council has power to make a regulation about drafting standards and other matters related to local laws. Should a local law not comply with any local government related law or the local government principles, the Minister has a power to revoke it and/or direct that it be changed.

31 Expiry of interim local law revives previous law

Clause 31 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.

32 Local law register

For transparency and accountability, clause 32 provides that the council must keep, and have publicly available, a register of all its local laws, subordinate local laws and interim local laws.

33 Consolidated versions of local laws

Clause 33 defines a consolidated version of a local law and shows how it can replace the original version of a local law.

34 Regular review of local laws

The council must ensure local laws are kept current, relevant and enforceable. A regular review by the council 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

35 What this division is about

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

36 Network connections

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

37 Election advertising

The council is prevented from making a local law about election advertising. The council 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.

38 Development processes

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

39 Anti-competitive provisions

The council must not attempt to negate National Competition Policy requirements through local laws.

Division 4 Action by Minister about particular local laws

40 Suspending or revoking particular local laws

The powers of the Minister include the ability to revoke or direct a change to a local law. 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 revoke or direct a change to a local law if he/she believes the law contravenes another local government related law or local government principles. The Minister must publish a notice in the gazette about the revocation or direction to change and how the local law contravened the legislation or principles.

Clause 40 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 law.

Part 3 Beneficial enterprises and business activities

Division 1 Beneficial enterprises

The council conducts beneficial enterprises as part of its day to day business. In general, the conduct of these enterprises is governed by the local government principles and the council's financial management system outlined in clause 99.

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

Enterprise powers allow the council to enter into an enterprise that grants a benefit to the whole or part of Brisbane with minimum red tape. Further requirements are triggered if the council 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.

41 What this division is about

Clause 41 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 Brisbane. A *business unit* of the council, as defined in the dictionary in schedule 2 of the Bill, is not a beneficial enterprise.

42 Conducting beneficial enterprises

Clause 42 explains the way in which the council must conduct the beneficial enterprise including that it must be decided by a resolution of the council. The council must consult with all council employees who may be directly affected by the beneficial enterprise. The employees may nominate an association that represents council employees in industrial matters to consult on their behalf.

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

43 Register of beneficial enterprises

To maintain transparency and accountability, the council 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.

44 Planning for a beneficial enterprise with the private sector

Additional requirements apply if the council plans to invest in a beneficial enterprise with the private sector. The council must identify the planned investment as a capital expense in its budget. If the council does not identify the investment in the budget, or if the planned investment is more than an amount prescribed by regulation, the council 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 council can manage the risks associated with the particular investment. Specific consequences for non-compliance are listed.

Division 2 Business reform, including competitive neutrality

45 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 the council to comply with the competitive neutrality principle.

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

46 Ways to apply the competitive neutrality principle

Clause 46 outlines in broad terms three options for business reform available to the council to ensure compliance with the competitive neutrality principle.

The three options are defined: *commercialisation*, *corporatisation*, and *full cost pricing*. Further provisions for the application of these reforms to a significant business activity can be provided for in a regulation.

47 Identifying significant business activities

Clause 47 requires the council to annually list all business activities, identify those that are significant business activities, whether or not the

competitive neutrality principle was applied and any new significant business activities. The list must be included in the council's annual report.

48 Assessing public benefit

The council is required to undertake a public benefit test for each significant business activity 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.

49 Code of competitive conduct

The council is 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, the council does 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 council ownership.

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

50 Competitive neutrality complaints

Clause 50 requires the council to establish a process to resolve competitive neutrality complaints.

Division 3 Responsibilities and liabilities of employees of corporate entities

51 Director's duty to disclose interest in a matter

Clause 51 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 169). However, the board may pass a resolution about the interest and allow the director to consider or vote on the matter.

52 Obligations of a corporate entity's employees

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

53 Corporate entity must not insure against certain liabilities of employees

Clause 53 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.

54 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 not acted in good faith.

55 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.

56 Duty to prevent insolvent trading

Clause 56 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.

57 Order for examination of persons concerned with corporate entities

This clause enables the council or the 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.

58 Examination of persons concerned with corporate entities

This clause gives the Attorney-General or the council 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.

59 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.

60 False or misleading information

Clause 60 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 council 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.

61 Application of other Acts to a corporate entity

This clause is about the application of other statutes to a corporate entity created under this Bill.

Part 4 Roads and other infrastructure

Division 1 Roads

The intent of this division is to give the council the power to manage, control and maintain roads in Brisbane.

62 What this division is about

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

63 Control of roads

This clause provides the council 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 the council can ensure that addressing data for private estates is collected for emergency service purposes. The council 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.

64 Notice of intention to acquire land to widen a road

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

65 Compensation for a notice of intention to acquire land

A person is entitled to claim compensation if the value of their land adjoining the land to be acquired would be affected by council's acquiring the land.

66 Appeal on a claim for compensation

Clause 66 provides an appeal process for decisions the council makes about the compensation through the Planning and Environment Court.

67 Acquisition of land instead of compensation

After the notice of intention to acquire land is served, but before the land is sold, the council 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.

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

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

69 Compensation if realignment not carried out

If the council 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 council must compensate the owners for the subsequent loss in value.

70 Acquiring land for use as a footpath

Clause 70 provides a head of power for the council to acquire land for use as a footpath and certain rights for the owner of the land to be acquired.

71 Notice to the council of opening or closing of roads

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

72 Closing roads

This clause gives the council 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, the council may close a road even if there is no alternative route.

73 Temporary roads

Clause 73 gives the council power to make a temporary road only if it would not be practicable to close temporarily the actual road. The council 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.

74 The Brisbane River

Clause 74 extends the scope of *river crossings* to include tunnels under the Brisbane River as well as the bridges over it.

75 Road levels

Clause 75 requires the council to advise an owner or occupier of the permanent fixed level of a road if asked.

76 Assessment of impacts on roads from certain activities

This clause means that the council can adequately manage any impacts on roads by particular entities.

77 Categorisation of roads

The council must assess and decide, based on the surface, the category of each road in Brisbane. This is a minimum requirement and does not stop the council categorising roads in Brisbane based on other criteria.

78 Roads map and register

As the council is the manager of roads, one of its responsibilities is to keep an account of all the roads in Brisbane. The council 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.

79 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

80 What this division is about

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

81 Connecting stormwater installation to stormwater drain

The council 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 council's requirements or approval for the connections.

82 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.

83 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 council has a power to recover costs for repairing any damage resulting from a person putting a prohibited substance in a stormwater drain.

84 Interference with path of stormwater

The intention of clause 84 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.

Division 3 Other infrastructure

85 Malls

Clause 85 provides for the establishment of malls in Brisbane. Procedures for the establishment, management and promotion of malls will be set out in a regulation.

86 City Botanic Gardens

This clause defines the *City Botanic Gardens* and provides that the council is trustee. Clause 86 gives the council certain powers in relation to the City Botanic Gardens.

87 Resumption of prescribed land by council

Clause 87 defines *prescribed land* and provides council with the power to acquire it.

88 Materials in infrastructure are council property

Clause 88 provides for the circumstances when the council owns things in its control. Examples of inclusions and exclusions are given.

Chapter 4 Finances and accountability

Part 1 Rates and charges

Rates and charges are a key mechanism by which the council raises own-source revenue. The powers under this Bill allow the council flexibility in setting appropriate and legitimate rates and charges for Brisbane and to fully access rates revenue.

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

Provisions for differential and special rating instruments which acknowledge that “one size does not fit all” give local governments choices.

The council 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 the council must ensure financial sustainability and intergenerational equity.

89 What this part is about

Clause 89 clarifies that rates and charges are levies that the council may impose on land and for services.

90 Types of rates and charges

Clause 90 sets out the types of rates and charges the council can levy and defines the four broad types of rates and charges.

91 Land on which rates are levied

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

92 Power to levy rates and charges

The council must levy general rates on all rateable land within Brisbane. The council 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 council’s budget meeting. Given the level of community interest in this issue and the broad powers of the council, openness and accountability are essential.

93 Overdue rates and charges are a charge over rateable land

This clause provides a mechanism for the council to register certain documents with the registrar of titles to make unpaid rates and charges a

charge on the land. This does not limit any other way the council can recover unpaid rates and charges.

94 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, the council can also charge fees in specific circumstances and with adherence to the financial sustainability criteria. These powers are in addition to the council's general competence power under clause 237.

95 Cost-recovery fees

The council 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.

96 Register of cost-recovery fees

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

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

Land below the high-water mark is State land under the *Land Act 1994*. The council is not permitted to charge a rate on this land. However, with increasing development on it, occupiers are accessing council services and using council infrastructure.

This clause permits the council 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 land under VOLA. To provide transparency, the council must make the fee by resolution.

Part 3 **Financial sustainability and accountability**

The community expects the council to manage their public infrastructure and assets for the long-term benefit and viability of the community; and in the short term, deliver essential services and account for all public monies.

The council 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; and
- significant infrastructure provision.

Key components of this part for council financial and infrastructure sustainability, management and accountability are a focus on longer-term planning and transparency and accountability.

98 Statutory Bodies Financial Arrangements Act applies to council

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

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

99 Systems of financial management

The council must establish a system of financial management to ensure it is financially sustainable. Clause 99 states elements the system must contain including a corporate plan, long-term community plan and long-term financial plan.

The clause defines conditions for the council to be considered *financially sustainable*.

100 Approval of budget

Clause 100 states that the council must by resolution adopt a budget presented by the mayor.

Part 4 Councillors' 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 council to improperly disburse money.

101 What this part is about

Clause 101 states that part 4 is about councillors' financial accountability.

102 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.

103 Councillors liable for improper disbursements

Clause 103 deals with the liability for improperly made disbursements. A disbursement may not be made from a council 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 council.

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.

104 Councillors liable for loans to individuals

Acting in the public interest, the council must not use funds to make a loan or guarantee to an individual and clause 104 stipulates that any councillor who agrees to an improper loan (a loan or a guarantee or security for a loan to an individual) from council funds will be held accountable to repay the loaned money, plus any interest, fees or charges to the council.

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.

105 Councillors liable for improper borrowings

Clause 105 places a liability on a councillor if they agreed that the council borrow money that is not in line with the council'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 to the council.

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 related laws

Part 1 The council

Given the State's constitutional responsibility for local government, the Bill provides for a range of graduated State responses to council difficulties.

The following continuum of graduated State responses illustrates a total package of responses, both administrative and statutory. There are more serious powers for the Minister to monitor, enforce and suspend 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. Performance evaluation and reporting;
3. Remedial (e.g. offering solutions to problems arising from complaints, providing advice to correct a problem);
4. 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 and to enforce compliance with the Act);
5. Suspension (e.g. Ministerial powers to recommend to Governor in Council to suspend an individual councillor).

106 What this part is about

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

- gathering information from the council or a councillor for monitoring and evaluation purposes; and
- taking necessary action.

This clause defines *remedial action* and states that the Minister can direct the council or councillor to take particular remedial action, including for example directing the council or councillor take necessary action.

107 Decisions under this part are not subject to appeal

Any decision made by the Minister for monitoring or enforcement or suspension purposes can not be appealed against.

A proposal to suspend a councillor will be preceded by a show cause process ensuring natural justice. A decision by the Governor in Council to suspend a councillor will be implemented by a regulation. Any regulation made to enforce the suspension of a councillor will be gazetted and tabled and thereby be subject to a motion of disallowance and Parliamentary debate.

108 Gathering information

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

109 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 council or the councillor must cooperate with the examination.

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

Remedial action may be taken if there are shortcomings.

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

110 What this division is about

Clause 110 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.

111 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

112 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.

113 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.

114 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.

115 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 115 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.

116 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.

117 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).

118 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, the council 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).

119 Approving an inspection program

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

council 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.

120 General powers after entering a property

Clause 120 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 can not 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.

121 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.

122 Compensation for damage or loss caused after entry

Clause 122 puts the onus on the council 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

123 What this division is about

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

The council 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 *council 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.

124 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.

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

Clause 125 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 council, and the owner of land is not the occupier.

126 Occupier may discharge owner's obligations

Clause 126 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 council. 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 can not terminate the tenancy because of the deduction of the costs from the rent.

127 Entry by a council 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 council worker may enter that land and perform that work, provided the council has given at least seven days notice in writing (seven days notice is a component of the *reasonable written notice* as defined in clause 123).

The council 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 council worker to enter a property even without permission in this circumstance as long as reasonable written notice is given to the owner.

128 Entry by a council worker, with reasonable written notice, to take materials

This clause defines *relevant land* and provides that a council worker may enter relevant land for the purpose of searching for materials the council 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 123).

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.

129 Entry by a council worker, at reasonable times, to repair etc. facilities

A council 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 council.

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

130 Entry by a council 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.

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

Clause 131 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 to an authorised person of the council to exercise a function or power of the council.

132 Compensation for damage or loss caused

A council 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 128, the person may claim compensation (whether as agreed with the council or ordered by a court) for the value of the thing removed.

133 Limitation of time in absence of notice of work done

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

Part 3 Investigation of council records

Division 1 Introduction

134 What this part is about

This part provides powers for authorised officers of the department or authorised persons of the council to check compliance with the Bill. It is another aspect of monitoring and enforcement and a support for those clauses.

Division 2 Investigations by department

135 Producing authorised officer's identity card

The authorised officer must produce or display their identity card to carry out their functions.

136 Making of inquiries for department

The department's chief executive may direct authorised officers to investigate records and registers, to ascertain whether they are correct or incorrect because of error or omission and to what extent.

137 Power to require information or document for department investigation

If information or a document is required of a person, it must be produced unless the person has a reasonable excuse or it may incriminate them or the document or the document of information is not relevant. A warning must be given if they fail to comply without these justifications. A penalty applies.

The document may be copied and must be returned.

Division 3 Investigations by council

138 Producing authorised person's identity card

The authorised person must produce or display their identity card to carry out their functions.

139 Making of inquiries for council

The chief executive officer may direct authorised officers to investigate records and registers, to ascertain whether they are correct or incorrect because of error or omission and to what extent.

140 Power to require information or document for council investigation

If information or a document is required of a person, it must be produced unless the person has a reasonable excuse or it may incriminate them or the document or the document of information is not relevant. A warning must be given if they fail to comply without these justifications. A penalty applies.

The document may be copied and must be returned.

141 Referral to department

Findings of an offence and reasons for this conclusion by the CEO must be referred to the department's chief executive without limiting the CEO's obligations under the *Crime and Misconduct Act 2001* (e.g. in relation to official misconduct).

142 Chief executive officer not subject to direction

Under this division, the mayor must not direct the CEO.

Part 4 Offences

143 Obstructing enforcement of this Act or local laws etc.

This clause sets out offences for obstructing enforcement of local government legislation.

144 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.

145 Duty to make documents available

Persons in charge of documents must make them available without obstruction so that they may be viewed or copied. A penalty applies.

In relation to this provision, see also clauses 166 and 167.

Chapter 6 Administration

Part 1 Introduction

146 What this chapter is about

Any person in the council 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

147 Qualifications of councillors

Clause 147 declares that to be eligible to become a councillor in the council a person must be a resident of, and registered elector in, Brisbane, and not disqualified based on any other clause in this division.

148 Disqualification for certain offences

Clause 148 lists the reasons that a person can not become a councillor, defines terms used in the clause, details reasons a person automatically stops being a 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 148(5), which disqualify a person from being a councillor, are:

- release of information that is confidential to the council (clause 168);
- voting on a material personal interest matter (clause 169);
- 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 170);
- threatening, intimidating or harassing a person because that person reported a material personal interest or conflict of interest (clause 171(3));
- giving false or misleading information to a person stated (clause 210);
- giving false or misleading information to the Electoral Commission (Criminal Code, section 98B);
- influencing the vote of a person by intimidation or violence at an election or referendum (Criminal Code, section 98E); and

- voting in the name of another person or voting more than once (Criminal Code, section 98G(a) and (b)).

149 Disqualification of prisoners

If a person is serving a period of imprisonment, or is liable to serve a period of imprisonment, under clause 149 the person is defined as a prisoner and is not qualified to be a councillor. Community expectations set high ethical standards for councillors.

150 Disqualification because of other high office

Councillors are elected to carry out the good rule and governance of Brisbane. Concurrent holding of certain other high offices is not consistent with this role. Accordingly, a person can not 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.

151 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.

152 Judicial review of qualifications

If a person is eligible to vote in a council election, clause 152 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 council electoral matters.

153 Acting as councillor without authority

A person must not act as a 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

154 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.

155 When a councillor's term ends

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

Division 3 Vacancies in councillor's office

156 What this division is about

The purpose of the division includes defining the portions of time in the council'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 the council may exercise in this division should be based on the resources of the council and the importance of the principle of democratic representation.

157 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 or can not perform their duties for another reason, their office is vacated.

158 When a vacancy in an office must be filled

Clause 158 explains the periods of time when the council does or does not have discretion about whether to fill the vacancy in a councillor's office.

The council must fill a vacancy that occurs more than 12 months before an election, to maintain constituents' right of representation.

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

A vacancy in the office of mayor must be filled, no matter when it occurs.

159 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 during the first three years of a term must be filled by a by-election. In the last year of the term, the vacancy must be filled by appointing another councillor to be mayor.

160 Acting mayor

Clause 160 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.

161 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 council's term, the vacancy occurs.

In the beginning 12 months and middle 24 months after a quadrennial election, a by-election must be held.

In the end part of the term (the 12 months leading up to a quadrennial election), the vacancy is filled by a relevant State registered political party appointment or, if the former councillor was not party affiliated, a BCC appointment. 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

162 Councillors and council jobs

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

163 Councillors and full-time government jobs

A person can not have a full-time government job at the same time as they are a councillor. The meaning of *full-time government job* is defined. The clause lists certain exceptions.

If a councillor does not fall into one of the exemption categories and they become a 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 before becoming a councillor.

This clause does not stop a 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

164 Obligations of councillors before acting in office

A councillor must not act in 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.

165 Giving directions to council staff

In order to create a separation between the elected council members and the appointed administration, only the mayor of the council can give directions to the CEO or senior contract employees. Also see clause 14(4)(h).

No councillor may give a direction to any other local government employee. This supports line management authority and is best practice public administration.

This clause aligns the relationship between the elected representatives and the administration with the relationship between State Ministers and their departmental staff.

166 Requests for help or advice

Councillors need to have access to current and relevant information about their ward to enable informed community engagement and make transparent decisions as stipulated by the local government principles: *democratic representation, social inclusion and meaningful community engagement and transparent and effective processes and decision-making in the public interest.*

If a councillor needs information about the ward they represent and they ask the CEO for it, the CEO must provide it within a reasonable time. A penalty applies.

In relation to this requirement, see also clauses 145 and 167.

By resolution, the council must adopt acceptable request guidelines and advice guidelines.

Acceptable request guidelines set reasonable limits on requests a councillor may make. *Advice guidelines* are guidelines about the ways in which a councillor can ask a council employee for advice to help the councillor to make a decision.

167 Inspection of particular records by councillors

Clause 167 facilitates councillors having access to and copying a record. This supports councillors in their representation of electors. The clause defines *council records* and specifies records that are exempt.

In relation to this requirement, see also clauses 145 and 166.

168 Use of information by councillors

This clause provides that a person must not use for gain, financial advantage or to cause detriment to the council, information acquired by them as a councillor.

The clause does not apply to information that is lawfully available to the public.

169 Councillor's material personal interest at a meeting

This clause begins by clearly stating that if the matter is an ordinary business matter material personal interest (MPI) does not apply. MPI is defined and the procedures for dealing with it made 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.

To resolve the impasse created when a quorum can not be achieved because of the number of councillors with an MPI, this clause allows the Minister discretion in deciding whether a councillor may participate in a meeting where there is a matter being discussed for which they have an MPI.

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

170 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.

171 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 171 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.

172 Post-election meetings

A council must hold a meeting within 14 days after an election. At that meeting the council 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

173 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 that are dealt with locally (inappropriate conduct), and serious breaches (misconduct).

Standards for councillor conduct and performance are set in the Bill. BCC may have a councillor code of conduct. 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.

It is assumed that in usual circumstances, the conduct and performance of councillors and the council will meet the principles, responsibilities, criteria and any other obligations under local government legislation. When this is not so, the intention is that the council 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 complaints are also defined: the *BCC councillor conduct review panel* (the 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.

Misconduct matters will be referred to the panel which will be a body convened solely to hear complaints about councillors.

Serious misconduct complaints may be referred by the panel to the tribunal. The tribunal is an independent investigator for matters where a recommendation of suspension is possible. Furthermore, the tribunal will provide State wide consistency for determining these serious matters. The tribunal may make recommendations about suspension of an individual councillor to the Minister.

174 BCC councillors code of conduct

This clause defines the *BCC councillors' code of conduct* and sets out the requirements for the council in adopting the code. The code of conduct must be approved by the Minister before it is adopted.

175 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 and misconduct will be referred to the panel for investigation.

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 scrutiny at the council office or on the website. The number and nature of unsubstantiated written complaints will be published annually on the website.

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

176 Notifying councillor of the hearing of a complaint

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 council to publish it on the council's website.

177 Hearing and deciding complaints

This clause sets out the way in which the 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.

178 Taking disciplinary action

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

The 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:

- failure of the duty to report;
- improper use of council resources;
- directing council employees;
- disclosures and returns inaccurate or not on time; and
- repeated inappropriate conduct.

The panel can refer more serious matters to the tribunal. Although this involves the councillor in two 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. The tribunal can also recommend to the Minister that the councillor be suspended.

Examples of 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; and
- bringing the council into disrepute.

Examples of what suspension may involve:

- with pay or without pay;
- from access to particular buildings, resources, facilities, benefits;
- from meetings and meetings places;
- from representing council at public events or meetings.

179 Costs of tribunal to be paid by council

This clause provides that the council is responsible for paying the tribunal's costs in reviewing a complaint of councillor misconduct.

180 Inappropriate conduct in meeting of council

Clause 173(4) defines *inappropriate conduct* – there are two types: failure to comply with council procedures and meeting misbehaviour. Clause 180 outlines the orders which can be made against a councillor who has engaged in inappropriate conduct in a meeting. A local solution to a local problem provides immediacy with the intention of preventing escalation of the problem.

The chairperson 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.

181 Application of Crime and Misconduct 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 or the CEO of the council where the allegation of official misconduct is by a councillor.

Part 3 BCC councillor conduct review panel

The members of the panel are to be appointed, and operate in particular ways.

182 Appointing members of the BCC councillor conduct review panel

The council must establish the panel and appoint from a pool of members. The qualification and disqualification criteria are the same as those for tribunal members.

183 Remuneration and appointment conditions of members

The council determines the remuneration and conditions of panel members.

184 Conflict of interests

Panel members must not take part in the consideration of any matter where they have a COI. The council must be informed of any conflicts of interest. This provision ensures the fairness and independence of the panel.

Part 4 Council employees

Division 1 Chief executive officer

185 Appointing a chief executive officer

The CEO is a key role. Accordingly, the council must appoint a *qualified person* to be the council's CEO. The contract of employment between the CEO and the council must contain certain details.

186 Appointing an acting chief executive officer

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

Division 2 Other council employees

187 Appointing senior contract employees

The council must appoint *qualified persons* to be the council's senior contract employees. The contract of employment between a senior contract employee and the council must contain certain details.

188 Appointing other council employees

Councillors are given powers to adopt an appropriate organisational structure by resolution and to employ officers. All council employees, other than senior officers, are appointed by the CEO. Employment conditions of an officer include those in an industrial instrument and those decided by the council.

The intent of this clause is to provide a clear separation between councillors and the employees. Councillors decide the strategic direction of the administrative arm of the council, 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 council employees, other than senior contract employees.

189 Disciplinary action against council employees

The power to take disciplinary action against a council 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

190 Concurrent employment of council employees

In order to provide a level of flexibility, this clause provides that council 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.

191 Improper conduct by council employees

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

192 Use of information by council employees

Council employees are prevented from using information acquired in the performance of their duties for personal gain or to cause detriment to the council.

193 Annual report must detail remuneration

The remuneration packages of the CEO and all senior contract employees must be published in the council's annual report. 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 contract employee packages. An example is given to show how the information might be presented in the annual report.

Part 5 Authorised persons

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

194 Appointing authorised persons

Clause 194 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.

195 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 195.

196 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.

197 Authorised persons must disclose change in criminal history

An authorised person must give the CEO details of any change in their criminal history.

198 Chief executive officer may obtain report from police commissioner

The CEO can ask the police commissioner to provide details about an authorised person's criminal history. The police commissioner must provide any information to which he/she has access.

199 Use of criminal history information

This clause defines *criminal history information* and how the CEO may use it. The department's chief executive may make guidelines for dealing with criminal history information and the CEO must comply with these guidelines.

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.

200 What this part is about

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

201 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.

202 Witnesses at hearings

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

203 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

204 What this part is about

This clause outlines that the part is about superannuation for certain persons connected to the council.

205 Super scheme for councillors

The existing councillor super scheme under CoBA continues under this Bill. The council may pay into the scheme as a contribution for the councillors.

An important inclusion in this section is that the council must not make contributions to the superannuation scheme for former councillors or of amounts more than the proportion of a salary that is payable by the council for its standard permanent employees under a superannuation scheme for council employees established by the council.

Certain arrangements may be made with the councillor. A superannuation scheme is defined.

206 Superannuation scheme for council employees and associated persons

This clause continues the current scheme for employees and others and the council may pay into the scheme as a contribution for them. Associated persons and a superannuation scheme are defined.

207 Super schemes to be audited by auditor-general

Clause 207 sets out that the council super schemes must be audited by the auditor-general.

Part 3 Allocating Commonwealth funding to council

208 Allocating Commonwealth funding

This clause states that 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.

209 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 209 provides that these decisions are not subject to appeal.

Part 4 Legal provisions

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

210 False or misleading information

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

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

Clause 211 protects constituters of the council and State and council administrators, acting honestly in the performance of their duties, from civil liability.

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

212 Who is authorised to sign council documents

Clause 212 identifies who may legally sign a document on behalf of the council. A head of the council, delegate of the council or a councillor or council employee authorised by the head of the council, may sign a document on behalf of the council.

The head of the council is defined in the schedule, and would usually be the mayor, unless the constitution of the council has varied, for example as provided for under clause 13 or clause 160.

213 Name in proceedings by or against council

Clause 213 sets out that proceedings by and against the council must be started in the name of the council.

214 Service of documents on council

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

215 Substituted service

Clause 215 allows the council to serve a document on an owner of rateable land by serving it on the owner's agent in the State, in particular circumstances.

216 Local government related laws requiring a statement of law

Clause 216 provides that a requirement for a document to contain a statement of law is met if the document states where details of the relevant provision may be obtained or viewed.

217 Acting for council in legal proceedings

Clause 217 states that the CEO, or another employee authorised in writing, may act for the council in legal proceedings.

218 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.

219 Types of offences under this Bill

Clause 219 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 two 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.

220 Time to start proceedings in a summary way

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

221 Decisions not subject to appeal

Clause 221 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 the council or councillors. The exemption of these decisions from appeal reflects the relationship between the State and local governments in section 70(2) of the Queensland Constitution.

222 Judges and other office holders not disqualified from adjudicating

Clause 222 states that a particular office holder is not disqualified from adjudicating proceedings because that person could pay rates to the council.

223 Where fines are to be paid to

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

224 Evidence of local laws

Evidentiary matters for local laws for any proceedings are outlined.

225 Evidence of proceedings of council

Clause 225 describes evidentiary matters for documents which purport to be about council proceedings.

226 Evidentiary value of copies

Evidentiary matters for copies of council documents are stated.

227 Evidentiary value of certificates

Evidentiary matters for certificates are stated.

228 Evidence of directions given to council

This clause sets out evidentiary matters for directions given to the council.

229 Evidence of complainant's knowledge of matter

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

230 Constitution and limits of council need not be proved

Clause 230 clarifies that the constitution and limits of the council do not need to be proved in a proceeding.

Part 5 Delegation of powers

231 Delegation of Minister's powers

Clause 231 allows the Minister to delegate the Minister's powers under this Bill 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 the power to suspend or revoke a local law.

232 Delegation of department's chief executive's powers

Clause 232 enables the chief executive of the department to delegate any of the chief executive's powers under any local government legislation to an appropriately qualified person. This would usually be an officer of the department.

233 Delegation of council powers

Clause 233 permits the council to delegate, by resolution, particular legislative powers. However, the council may not delegate a power that must be exercised by resolution. This reflects the importance of the council's decision-making.

234 Delegation of chief executive officer powers

Clause 234 allows the CEO to delegate his/her powers to another employee, or a contractor, of the council. However, the CEO may not delegate certain powers as defined in the clause.

235 Council delegations register

This clause requires the CEO to establish a register of delegations, which must be available for public viewing.

Part 6 Other provisions

236 Public office of the council

Clause 236 states that the council must keep premises in Brisbane for use as a public office.

237 Powers in support of responsibilities

This clause clarifies that an entity that is required or empowered to perform a responsibility under this Bill, or other local government legislation, may do anything necessary or convenient to enable the performance of those responsibilities. In addition, if the entity is not an individual, clause 237 sets out that those powers include all the powers of an individual.

238 Validity of council proceedings

This clause provides that council or council committee proceedings are not invalidated for the reasons stated.

239 Particular guidelines and policies must not allow for discretion

Clause 239 states that no discretion can be exercised when applying the acceptable requests guidelines or the advice guidelines.

240 Insurance to cover councillors

This clause allows the council to enter into an insurance contract to cover its councillors when performing their role.

241 Special entertainment precincts

Clause 241 provides for the establishment of special entertainment precincts and displaces the *Liquor Act 1992*. This clause defines *special entertainment precinct* and outlines what the council must do if it wishes to establish a special entertainment precinct in Brisbane.

242 Approved forms

Clause 242 allows for the department's chief executive to approve forms for use under this Bill.

243 Review of this Bill

In order for the council to continue to have effective and contemporary legislation, this clause sets out that the Minister must review the *City of Brisbane Act 2010* within 4 years of its commencement.

244 Process for administrative action complaints

Clause 244 requires the council 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.

245 Information for the Minister

The Minister may request information from the council on any matter to do with the council itself or Brisbane. Under clause 14, the mayor must ensure this information is provided promptly.

246 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.

Of particular note is the regulation to be made governing remuneration for councillors, where it is intended to continue the practice of council deciding remuneration based on State MPs salaries. The publication of councillors' remuneration, allowances and benefits in the annual report and on the council website will be considered.

Chapter 8 Repeal, transitional and savings provisions

Part 1 Repeals

247 Repeal

Clause 247 repeals several local government related Acts dealing with the City of Brisbane. The Government's priority is to minimise the regulatory burden and prevent over-reliance on the regulatory approach to resolve policy issues provides the impetus for the strategy of streamlining local government legislation in Queensland. This Bill is comprehensive and contemporary, making these Acts unnecessary.

Part 2 Transitional and savings provisions

248 What this part is about

This clause sets out that the purpose of this part is to provide for the transition of certain rights, liabilities and interests under CoBA (the repealed Act).

249 Brisbane City Council continued

This clause provides for the continuation of the council as in existence immediately before the repealed Act was repealed.

250 Local laws

Clause 250 provides that all local laws that were in force under the repealed Act or a repealed mall Act immediately before the commencement of this clause continue in force under this Bill.

251 Decisions under the repealed Act

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.

252 Established malls

Because of the repeal of two malls Acts: *Local Government (Queen Street Mall) Act 1981* and *Local Government (Chinatown and the Valley Malls) Act 1984*, this clause ensures the continuance of Malls and certain procedures.

253 Proceedings and evidence

All appeal, complaint and offence proceedings that were started, or could have been started, under an Act repealed by this Bill, may continue or be started under this Bill.

254 Super trust deed

Clause 254 continues the super trust deed.

255 Registers

Clause 255 continues any register under the repealed Act.

256 References to repealed Acts

Clause 256 provides that a reference in an Act or a document to the repealed *City of Brisbane Act 1924*, the repealed *Brisbane City Council Business and Procedure Act 1939* or one of the repealed mall Acts is taken to be a reference to this Bill, if appropriate.

257 Transitional provisions for elections

This clause continues the electoral provisions in the repealed *City of Brisbane Act 1924* and the electoral provisions in the repealed *Local Government Act 1993*, as they applied to the City of Brisbane, for the quadrennial elections of council.

258 Transitional regulation-making power

Clause 258 establishes a power to make a regulation to deal with any matters to facilitate the transition from the repealed Act to this Bill, if this Bill does not make sufficient provision.

Chapter 9 Amendment of other Acts

Part 1 Amendment of Electrical Safety Act 2002

259 Act amended

This clause provides that part 1 amends the *Electrical Safety Act 2002* (the Act).

260 Amendment of 192A (Definitions for div 2A)

Clause 260 amends the Act to provide that a local government may be prosecuted for an offence against the Act.

Part 2 Amendment of Information Privacy Act 2009

261 Act amended

This clause provides that part 2 amends the *Information Privacy Act 2009* (the Act).

262 Replacement of s 211 (Acts and practices authorised before commencement)

Clause 262 replaces section 211 of the *Information Privacy Act 2009* which provides that the privacy principles do not apply to the acts or practices of an entity that are necessary for the performance of a contract entered into before 1 July 2009.

Section 211 of the Information Privacy Act currently applies to contracts entered into by local government before 1 July 2009, even though section 202 of the Act states that the Act does not apply to local government until one year later, 1 July 2010. The replacement provision therefore clarifies the original policy intent that the privacy principles not apply to the acts or practices of a local government that are necessary for the performance of a contract entered into before 1 July 2010.

The replacement provision continues the effect of section 211 of the *Information Privacy Act 2009* in relation to an entity other than a local government.

Part 3 Amendment of Local Government Act 2009

263 Act amended

This clause provides that part 3 amends the *Local Government Act 2009* (the Act).

264 Amendment of s 2 (Commencement)

Clause 264 updates a reference.

265 Replacement of s 5 (Relationship with *City of Brisbane Act 2010*)

Current section 5 is omitted and new section 5 inserted to make it clear that, although the BCC is a local government, this Bill, rather than the LGA 2009, applies to the BCC and its constituent parts, including contractors and corporate entities in relation to the council.

266 Amendment of s 12 (Responsibilities of councillors)

Section 12 is amended to remove paragraph (3)(e), which deals with complying with the Queensland Contact with Lobbyists Code, which is now dealt with under the *Integrity Act 2009*.

267 Amendment of s 13 (Responsibilities of local government employees)

Section 13 is amended to remove a reference to the Queensland Contact with Lobbyists Code, which is now dealt with under the *Integrity Act 2009* and to provide for important operational and administrative matters, including the safe custody of records.

268 Amendment of s 14 (What this part is about)

Clause 268 amends section 14 to clarify that the part does not apply to an indigenous regional council.

269 Replacement of s 16 (Review of divisions of local government areas)

Current section 16 is omitted and new section 16 inserted to clarify the process for reviewing divisions before a quadrennial election.

270 Amendment of s 23 (Casual commissioners)

Section 23(6) is amended to provide that a casual commissioner may resign by signed notice to the Minister.

271 Amendment of s 25 (Annual report of change commission)

Clause 271 omits section 25(3) to remove the requirement for the Minister to table a copy of the change commission's annual report.

272 Amendment of s 29 (Local law making process)

This clause amends section 29 to provide that when making a local law a local government must give a copy of the proposed local law to the Minister with a drafting certificate and any other information required by the Minister or under a regulation.

The Minister will advise a local government that it may proceed with a local law, subject to satisfying any conditions imposed by the Minister to ensure the overall State interest is dealt with satisfactorily.

273 Amendment of s 38 (Anti-competitive provisions)

Section 38 is amended to provide that the section does not apply to interim local laws.

274 Replacement of ch 3, pt 2, hdg (Business enterprises and activities)

The heading has been replaced to better reflect the content of the part.

275 Amendment of s 40 (Conducting beneficial enterprises)

Section 40 is amended to provide that a local government must consult with all local government employees who may be directly affected by the beneficial enterprise. The employees may nominate an industrial

association that represents employees in industrial matters to consult on their behalf.

The section will now stipulate that the conduct of a beneficial enterprise must be financially sound, comply with local government related laws and sets out the powers the local government may exercise in conducting a beneficial enterprise.

276 Amendment of s 45 (Identifying significant business activities)

The amendment of section 45 clarifies requirements about the application of the competitive neutrality principle.

277 Amendment of s 47 (Code of competitive conduct)

The amendments are intended to provide a less onerous way for smaller business activities to comply with competitive neutrality principles.

278 Amendment of s 48 (Competitive neutrality complaints)

The amendment of section 48 clarifies the process to resolve competitive neutrality complaints.

279 Amendment of s 52 (When a corporate entity is not to indemnify employees)

Subsection 52(1) is amended to clarify to whom the section applies.

280 Insertion of new s 58A

Clause 280 inserts a section about the application of other statutes to a corporate entity created under the Act.

281 Insertion of new ch 3, pt 3, div 3

The insertion of new chapter 3, part 3, division 3, provides for the establishment of malls in local government areas. Procedures for establishing malls will be set by regulation.

282 Amendment of s 95 (Overdue rates and charges are a charge over land)

This amendment replaces references to ‘land’ with ‘rateable land’ to clarify the process for making unpaid rates and charges a charge on rateable land.

283 Amendment of s 97 (Cost-recovery fees)

Clause 283 corrects an error in section 97(4) by removing the reference to ‘an application fee’.

284 Amendment of s 99 (Fees on occupiers of land below the high-water mark)

Section 99(1) is amended to make it clear that the land referred to must be in, or adjoining, a local government area.

285 Amendment of s 105 (Auditing, including internal auditing)

Clause 285 amends subsection 105(4) to remove the audit committee’s responsibility to monitor and review external auditors.

286 Replacement of s 108 (Misappropriation offence applies)

Clause 286 replaces section 108 with a section explaining the function of the part.

287 Amendment of s 113 (What this part is about)

Section 113 is amended to remove any doubt of the original policy intent that the part applies to individual councillors as well as local governments.

288 Amendment of s 115 (Gathering information)

This amendment removes any doubt that section 115 gives the department’s chief executive the power to monitor the performance and level of compliance of individual councillors, as well as local governments, with local government legislation. The amendment clarifies the original policy intent that the part applies to individual councillors as well as local governments.

289 Amendment of s 116 (Acting on the information gathered)

Clause 289 amends section 116 so it applies to individual councillors as well as local governments. The amendment clarifies the original policy intent that the part applies to individual councillors as well as local governments.

290 Amendment of s 118 (Financial controllers)

Clause 290 corrects a minor error by removing the word ‘However’ from subsection 118(6).

291 Amendment of s 121 (Removing unsound decisions)

Clause 291 amends section 121(1) to clarify the Minister’s power to suspend or revoke a decision of the council if he/she believes the decision is contravening local government legislation or inconsistent with the local government principles.

292 Amendment of s 135 (General powers after entering a property)

Clause 292 amends section 135 to provide that an authorised person may only exercise a power under section 135(2) if it is necessary for the purpose for which the property was entered.

293 Amendment of s 138 (What this division is about)

The amendment to section 138 redefines *local government worker* as an employee or agent of the local government authorised to act under division 2 but provides that appropriate qualifications or training are required.

294 Amendment of s 143 (Entry by a local government worker, with reasonable written notice, to take materials)

This amendment inserts a definition of *relevant land* a local government worker may enter for the purpose of searching for materials the local government may need to fulfil its responsibilities under local government legislation.

295 Replacement of ch 5, pt 2, div 3 (Offences)

Clause 295 replaces the previous part 2, division 3 with a new part 3 that provides powers for authorised officers of the department or authorised persons of a local government to check compliance with the Act. It is another aspect of monitoring and enforcement and a support for those sections.

296 Amendment of s 168 (Senior councillors and full-time government jobs)

Section 168 is amended to make clear a councillor's rights on conversion of their full-time government job to a part-time government job.

297 Amendment of s 170 (Giving directions to local government staff)

Clause 297 removes subsection 170(4) which is now dealt with in new section 170A.

298 Insertion of new ss 170A and 170B

Clause 298 inserts two new sections dealing with councillor access to current and relevant information about their ward to enable informed community engagement and make transparent decisions as stipulated by the local government principles: *democratic representation, social inclusion and meaningful community engagement and transparent and effective processes and decision-making in the public interest.*

New section 170A provides that a councillor may request advice from a local government employee to help the councillor make a decision. The clause also provides that the CEO may make *advice guidelines* about the ways in which a councillor can ask a local government employee for that advice.

New section 170B facilitates councillors having access and copying a record. This supports councillors in their representation of electors. Subclause (2) sets out exceptions.

299 Amendment of s 171 (Use of information by councillors)

This amendment makes it clear that a person must not use information acquired by them as a councillor for gain, financial advantage or to cause

detriment to the local government. Amended section 171 will not apply to information that is lawfully available to the public.

300 Amendment of s 172 (Councillor's material personal interest at a meeting)

The amendment to section 172 clarifies the procedures for dealing with MPIs. 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.

301 Amendment of s 175 (Post-election meetings)

This amendment clarifies that a local government must appoint a deputy mayor from its councillors, other than the mayor.

302 Amendment of s 176 (What this division is about)

Clause 302 omits 'Commission' to correct a reference to the Crime and Misconduct Act.

303 Amendment of s 177 (Assessing complaints)

Section 177 is amended to provide for complaints about the conduct of a deputy mayor as well as the mayor and for referral of such complaints to the department's CEO.

304 Amendment of s 180 (Taking disciplinary action)

Clause 304 amends section 180 to provide that a recommendation to the Minister about a councillor's suspension may include a recommendation about details of the suspension.

305 Amendment of s 181 (Inappropriate conduct)

The amendment to section 181 removes referral of a complaint by the chief executive officer to the deputy mayor.

306 Amendment of s 184 (Members of tribunal)

Subsection 184(7) is amended to provide that a tribunal member may resign by signed notice to the Minister.

307 Amendment of s 197 (Disciplinary action against local government employees)

Clause 307 amends section 197 to insert a head of power for the making of a regulation about the taking of disciplinary action by the CEO.

308 Amendment of s 200 (Improper use of information by local government employees)

This amendment clarifies how information acquired by a local government employee may and may not be used.

309 Insertion of new ss 204A to 204C

Clause 309 inserts new provisions about an authorised person's criminal history.

Inserted section 204A provides that an authorised person must give the CEO details of any change in their criminal history.

Inserted section 204B gives the CEO power to ask the police commissioner to provide details about an authorised person's criminal history. The police commissioner must provide any information to which he/she has access.

New section 204C defines *criminal history information* and how the CEO may use it. The department's chief executive may make guidelines for dealing with criminal history information and the CEO must comply with these guidelines.

310 Insertion of new ch 6, part 6A

New part 6A gives information about authorised officers and aspects of their appointment.

311 Amendment of s 209 (Board's responsibilities)

Subsection 209(3) is amended to correct a minor error.

312 Amendment of s 210 (Board of directors)

Clause 312 updates a reference from 'the Local Government Association of Queensland Inc.' to 'LGAQ Ltd.' (see clause 326).

313 Amendment of s 218 (Members of LG super scheme)

Clause 313 makes a consequential renumbering amendment.

314 Amendment of s 226 (Super scheme for councillors)

The amendment to section 226 makes it clear that the super scheme relates to councillors.

315 Amendment of s 231 (Members of grants commission)

Clause 315 amends subsection 231(7) to provide that a member of the grants commission may resign by signed notice to the Minister.

316 Amendment of s 235 (Administrators who act honestly and without negligence are protected from liability)

Clause 316 updates paragraph (c) to make an 'authorised officer' rather than an 'authorised person' a State administrator and adds an 'authorised person' as a local government administrator.

317 Amendment of s 236 (Who is authorised to sign local government documents)

This amendment simplifies the wording in section 236.

318 Amendment of s 239 (Substituted service)

This amendment omits subsection 239(4) which dealt with provisions of local government laws requiring a statement of law (now covered in new section 239A).

319 Insertion of new s 239A

This amendment inserts a new section 239A which provides that a requirement for a document to contain a statement of law is met if the document states where details of the relevant provision may be obtained or viewed.

320 Amendment of s 257 (Delegation of local government powers)

Clause 320 amends section 257 to permit the council to delegate, by resolution, particular legislative powers to a councillor for particular purposes. The amendment also inserts a definition of *joint standing committee*.

321 Amendment of s 260 (Local government delegations register)

This clause amends section 260 to require that all delegations by the mayor be included in the register of delegations.

322 Amendment of s 262 (Powers in support of responsibilities)

Clause 322 limits the powers in support of responsibilities to a local government.

323 Amendment of s 270 (Regulation-making power)

Subsection 270(2) is amended to update what a regulation may be made about.

324 Amendment of s 281 (Remuneration schedule)

Clause 324 amends section 281 to make it clear that the continuation of the remuneration schedule under the Act is transitional.

325 Amendment of s 284 (Continuation of electoral and related provisions)

Section 284 is amended to ensure current local government electoral provisions continue until new local government electoral legislation is passed.

326 Amendment of s 287 (Local Government Association)

Section 287 is amended to stop the Local Government Association of Queensland (Incorporated) (LGAQ Inc.) being a public authority under an Act and establishes the LGAQ Ltd. as a corporation prescribed under a regulation for section 287.

327 Renumbering of s 288 (Repeal)

This amendment renumbers section 288 to allow for the insertion of new section 288.

328 Insertion of new s 288

Clause 328 inserts new section 288 to provide for review commissioners under the LGA 1993 to be continued as casual commissioners under section 23 of the Act.

329 Amendment of sch 1 (Acts amended)

Schedule 1 removes amendments to Acts that have been repealed and makes some minor consequential amendments to other Acts.

330 Omission of sch 3 (Comparative terms for the Brisbane City Council)

Clause 330 omits schedule 3 which becomes redundant on the commencement of the Bill.

331 Amendment of sch 4 (Dictionary)

Clause 331 amends the dictionary to remove, update and replace definitions.

Part 4 **Amendment of Right to Information Act 2009**

332 Act amended

This clause provides that part 4 amends the *Right to Information Act 2009* (the Act).

333 Amendment of section 21 (Requirement for publication scheme)

Clause 333 amends section 21 to provide that the Minister can make guidelines about a BCC publication scheme to ensure the scheme includes information of or about the Establishment and Coordination Committee.

334 Amendment of sch 3 (Exempt information)

Clause 334 provides for amendments to Schedule 3 of the *Right to Information Act 2009* which is a list of information that is exempt information. Access to a document may be refused to the extent it comprises exempt information under sections 46(3)(a) and 47 of the *Right to Information Act 2009*.

New section 4A refers to BCC Establishment and Coordination Committee information that has been brought into existence for the consideration of the committee or if disclosed would reveal any consideration of the committee or would otherwise prejudice the confidentiality of committee considerations or operations. This information will be exempt for 10 years after its relevant date. The exemption does not apply to information officially published by decision of the BCC. Without limiting the types of exempt information, the clause lists documents which are taken to be documents comprised exclusively of exempt information, such as committee submissions and briefing notes. A report of factual or statistical information attached to a listed document will be exempt information only if its disclosure would reveal any consideration of the committee or would otherwise prejudice the confidentiality of committee considerations or operations or if it has been brought into existence for the consideration of the committee.

New section 4B refers to information brought into existence in the course of a local government's budgetary processes. This information will be

exempt for 10 years after the date it was brought into existence. The exemption does not apply to information officially published by decision of the local government.

Part 5 Amendment of Workplace Health and Safety Act 1995

335 Act amended

This clause provides that part 5 amends the *Workplace Health and Safety Act 1995* (the Act).

336 Amendment of s 170 (Definitions for div 3)

Clause 336 amends the Act to provide that a local government may be prosecuted for an offence against the Act.

Part 6 Amendment of other Acts

337 Minor and consequential amendments

Clause 337 is the authorising clause for the amendment schedule.

Schedule 1 Acts amended

Schedule 1 amends other Acts necessary as a result of this Bill.

Schedule 2 Dictionary

Schedule 2 defines the terms used within this Bill.