Local Government and Other Legislation Amendment Bill 2012

Explanatory Notes

Short title

The short title of the Bill is the *Local Government and Other Legislation Amendment Bill 2012*.

Policy objectives and the reasons for them

For the 2012 State election the Queensland Government made an express commitment to revitalise the *City of Brisbane Act 2010* and the *Local Government Act 2009* to empower Queensland local councils. The Government's commitments in the "Six month action plan July-December 2012" and the *Empowering Queensland Local Government* Election Policy include the following:

- Empowering Queensland Local Government Policy 2.3: Restoring body corporate status to Queensland local governments;
- Empowering Queensland Local Government Policy 4.3: Enabling local governments to work together to deliver better outcomes—reinstate joint local government arrangements;
- Empowering Queensland Local Government Policy 4.4: Ensuring that mayors and local councillors are clearly in charge of councils;
- Empowering Queensland Local Government Policy 7.1: Allowing elected councillors to maintain position on nomination for State election;

- Empowering Queensland Local Government Policy 7.4: Provide for local governments to hold voter polls to inform council decision-making;
- Empowering Queensland Local Government Policy 9.4.8, 9.4.9: Provide for advisory polls to be held in areas proposing de-amalgamation, and when establishing any new local government boundary, ensuring that there are appropriate transitional and financial arrangements in place to support the change;
- Empowering Queensland Local Government Policy 11.2.3: Streamlining reporting and auditing regulation where local governments have demonstrated adequate financial planning and administration to reflect diversity of local governments;
- Empowering Queensland Local Government Policy 18.2: Ensuring councils have the right to full consultation on the appointment of senior council staff;
- Empowering Queensland Local Government Policy 19.1, 19.2: Providing that local communities have the power to establish appropriate local laws through a responsible, accountable local government and ensuring that the jurisdiction of local laws are complementary to, and do not replicate, the controls and management that already exists under Queensland legislation.

The Bill's objectives are to implement the Government's local government election commitments by giving Queensland local governments the powers to deliver effective services to their respective communities, remove unnecessary regulation and interference from the State government, streamline processes and reporting requirements and reduce red tape and the volume of the statute book.

Achievement of policy objectives

To achieve the objectives the Bill amends the *City of Brisbane Act 2010* (CoBA), the *Local Government Act 2009* (LGA), the *Local Government Electoral Act 2011* (LGEA), the *Parliament of Queensland Act 2001*, the *Public Sector Ethics Act 1994*, the *Public Service Act 2008*, and the *Right to Information Act 2009*, with minor and/or consequential amendments to

the *Judicial Review Act 1991*, the *Libraries Act 1988*, the *Public Interest Disclosure Act 2010* and the *Transport Infrastructure Act 1994*.

Amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009*

Joint local governments

To implement the government's election commitment to enable local governments to work together to deliver better outcomes for regions with region-specific issues and solutions, the Bill reinstates joint local government arrangements.

Local laws

To empower local governments to establish appropriate local laws and to cut unnecessary bureaucratic requirements, the Bill makes the following amendments:

- removes the need for Ministerial approval of proposed local laws;
- removes the requirement for councils to regularly review their local laws;
- enables a local law to be made to regulate matters in connection with 'party houses';
- enables a local law to be made about a development matter in certain circumstances;
- simplifies provisions about the publication of local laws;
- requires the department to keep a database of all local governments' local laws and make it available to the public on its website;
- clarifies the process for making model local laws;
- clarifies that community engagement is not mandatory before making interim local laws.

Beneficial enterprises and corporatisation of business activities

To remove unnecessary regulatory duplication and red tape and to rely on the beneficial enterprise processes in the *Statutory Bodies Financial*

Arrangements Act 1982 and the corporatisation processes within the *Corporations Act 2001* (Cwlth), the Bill makes the following amendments:

- provides local governments with an express power to conduct beneficial enterprises;
- repeals beneficial enterprise provisions to streamline the way in which local governments may conduct beneficial enterprises;
- requires a local government's annual report for each financial year to contain a list of all beneficial enterprises conducted during the year;
- repeals provisions relating to planning for a beneficial enterprise with the private sector;
- repeals provisions relating to corporatisation of business activities thus removing the ability of local governments to corporatise an activity under the CoBA/LGA;
- repeals certain provisions relating to responsibilities and liabilities of employees of corporate entities and other matters relating to corporate entities.

Roads

The Bill makes the following amendments to provide clarity for local governments around road provisions:

- a council is not liable for the construction, maintenance or improvement of a private road;
- a council may close a road to traffic or particular types of traffic;
- corrects references in provisions relating to acquiring land for the purpose of widening a road, appeals on a claim for compensation for the acquisition of land, and compensation if realignment of a road is not carried out.

Financial management

To cut unnecessary red tape and streamline provisions about the financial sustainability and accountability of local governments, the Bill makes the following amendments:

- repeals long-term community plan and financial plan requirements;

- splits the financial planning components from the financial accountability components (LGA only);
- clarifies that a contract for the supply of goods or services includes a contract about carrying out work;
- clarifies that equal consideration does not have to be given to each of the sound contracting principles.

Powers to enter a property

To empower local governments with autonomy, responsibility and accountability to effectively solve local problems, the Bill makes the following amendments:

- provides for remedial notices to be issued on owners or occupiers and for councils to be able to recover costs for non-compliance from the responsible person;
- enables a remedial notice and reasonable entry notice to be combined in certain circumstances;
- clarifies that not every council worker needs to be given an identity card, only those who enter private property.

Obstruction of officials

In relation to offence provisions about the obstruction of the enforcement of the Acts or local laws, the Bill makes the following amendments:

- includes 'mayor' in the list of officials that a person must not obstruct in the exercise of a power under the Act or a local law;
- clarifies that the offence for obstructing a council worker relates only to council workers (employees and agents of the council) who are authorised to enter property to exercise powers under chapter 5, part 2, division 2.

Nomination for State election

To implement the government's election commitment to allow elected local councillors to maintain their position if they choose to nominate as a candidate for election to State Parliament, the Bill provides that councillors need not resign upon becoming a candidate for election to the Queensland Legislative Assembly.

Councillors/senior councillors and other government jobs

To align with the government's policy to minimise State government interference in the management affairs of local governments, the Bill repeals provisions relating to a person being unable to simultaneously be a councillor/senior councillor and hold a full-time government job.

Councillor requests for information

To implement the government's election commitment to ensure that mayors and councillors are clearly in charge of councils and to streamline provisions about a councillor's request for help or advice, the Bill makes the following amendments:

- the 'acceptable requests guidelines' and 'advice guidelines' in CoBA and 'advice guidelines' in the LGA are now one and the same and referred to as 'acceptable requests guidelines';
- the 'acceptable requests guidelines' are to be made by the Establishment and Coordination Committee (CoBA) and by resolution of a council (LGA);
- a request for advice will be broadened to allow the councillor to ask for advice to help the councillor perform their function and role as a councillor;
- a request must comply with the guidelines, except for requests from the mayor or council/committee chairperson (CoBA), or the mayor or committee chairperson (LGA).

Use of information by councillors

The Bill makes the following amendments to implement the government's election commitment to ensure councils operate with increased accountability and transparency to their communities:

- provides that councillors must not make decisions to their financial benefit, similar to the insider trading provisions in the *Corporations Act 2001* (Cwlth);
- provides that a councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the council and that a contravention is deemed misconduct (CoBA only).

Councillors' material personal interests and conflict of interests

The Bill makes the following amendments to streamline the material personal interest (MPI) provisions and the conflict of interest (COI) provisions, consistent with the government's election commitment to provide fairer COI provisions for councillors:

- exempts councillors from disclosing a COI at a meeting if the matter to be discussed is an 'ordinary business matter';
- exempts councillors from disclosing a COI or MPI at a meeting with respect to an interest common to a significant number of electors or ratepayers;
- repeals the requirement for a councillor to report another councillor's MPI, COI, or misconduct;
- provides that a councillor only has a MPI in relation to their parent, child or sibling if the councillor knows, or should reasonably know, that their parent, child or sibling stands to gain a benefit or suffer a loss;
- provides that a councillor does not have a COI because of any engagement undertaken by the councillor with community groups, sporting clubs and similar organisations undertaken by the councillor in their capacity as a councillor; membership of a political party; membership of a community group, sporting club or similar organisation if the councillor is not an office holder; their religious beliefs; or they were a student of a particular school or their involvement with a school as parent of a student at the school.

Conduct and performance of councillors

To cut unnecessary red tape and streamline provisions about the conduct and performance of councillors, the Bill makes the following amendments:

- enables the departmental chief executive to undertake a preliminary assessment of complaints made by a council's CEO about a councillor;
- provides the Regional Conduct Review Panels (RCRPs) and the BCC councillor conduct review panel (BCC panel) with specific penalty options;

- provides for the BCC panel or a RCRP/tribunal to require a complainant, where a complainant is also a councillor, to appear before the body to confirm the complaint;
- excludes former councillors from the mandatory conduct review process but provides discretion for disciplinary action to be taken within two years after the person ceases being a councillor;
- streamlines provisions relating to the assessment of complaints about councillors, including complaints about frivolous or vexatious matters, inappropriate conduct or misconduct.

Disciplinary action – local government employees

To align requirements in CoBA and the LGA with arrangements at the State level, the Bill enables a council CEO to delegate their power to take disciplinary action against a local government employee to an appropriately qualified employee of the local government. To reduce unnecessary red tape and duplication, the Bill removes the head of power to establish an appeal entity for local government employee disciplinary action under a regulation. It is intended that the Queensland Industrial Relations Commission (QIRC) is the entity to hear local government employee disciplinary appeals in line with State arrangements. Commencement of this amendment is proposed to coincide with a complementary amendment to the *City of Brisbane (Operations) Regulation 2010* and the *Local Government (Operations) Regulation 2010*.

Proceedings by, or against, a local government

The Bill enables a local government to start a proceeding under the *Justices Act 1886* in the name of a local government employee who is a public officer under that Act.

Advisory polls

To implement the government's election commitment to allow local governments to hold voter polls to inform council decision-making, the Bill provides for local governments to hold non-compulsory and non-biding advisory polls on issues concerning their local government areas.

The Bill also makes the following administrative amendments:

- amends the definition of 'ordinary business matter' in the dictionary schedules;
- clarifies that materials in a structure or works, constructed or performed on someone else's land by a local government, are local government property;
- amends the definition of 'discretionary funds' to clarify they are funds in the local government's operating fund that are budgeted for community purposes;
- removes the requirement to review the CoBA/LGA within four years of commencement;
- clarifies that details of each individual remuneration package of senior contract employees need not be disclosed in the annual report.

Amendments to the *City of Brisbane Act 2010*

Conduct and performance of councillors

To cut unnecessary red tape and streamline provisions about the conduct and performance of councillors, the Bill makes the following amendments:

- discontinues the referral of matters to the Local Government Remuneration and Discipline Tribunal (tribunal) and for several of the tribunal's powers to be transferred to the BCC panel;
- repeals requirements relating to the BCC councillors code of conduct.

Conduct of participants at meetings

The Bill provides for the rules of procedure to deal with conduct of participants at meetings of the council/a committee.

Establishment and Coordination Committee

The Bill makes the following amendments:

- provides for the Establishment and Coordination Committee to appoint the acting CEO;
- provides that BCC powers may be delegated to the Establishment and Coordination Committee, by resolution of the council.

Amendments to the *Local Government Act 2009*

Re-corporatisation of local governments

To implement the government's election commitment to ensure that Queensland local governments are recognised as bodies corporate in the LGA, the Bill makes amendments to restore body corporate status to Queensland local governments.

Mayor's responsibility for the budget

To better align the mayoral responsibility provisions under the LGA with those under CoBA, the Bill provides the mayor with the responsibility of preparing the budget for presentation to the local government.

Indigenous councils

The Bill makes the following amendments:

- ensures that trust land meeting requirements apply to all indigenous councils that have trust land responsibilities;
- removes the prescribed residency and heritage qualifications for a person to be eligible to be the mayor or a councillor of the Torres Strait Island Regional Council.

Power to direct, and the appointment of, local government employees

To implement the government's election commitment to ensure that mayors and councillors are clearly in charge of councils, the Bill makes the following amendments:

- provides that senior executive employees are to be appointed by a panel constituted by the mayor, the CEO, and either the chairperson of a committee or the deputy mayor;
- replaces the definition of 'senior contract employee' with 'senior executive employee' to clarify that senior executive employees are the next line of management to the CEO (contracted or tenured);
- gives mayors the capacity to direct both CEOs and senior executive employees;

- provides that a delegation to the CEO must be reviewed annually by the local government.

Conduct and performance of councillors

The Bill provides that no member of a RCRP is required to be from the region in which the councillor in question resides, rather that members be selected from the general pool.

Superannuation

The Bill makes the following amendments to reduce the level of regulation of LG Super Board's operations and growth plans:

- allows the composition of the LG Super Board of directors to be specified in LG Super's trust deed;
- allows the appointment of auditors to be determined in LG Super's trust deed;
- allows the board to delegate decision-making power to committees;
- allows any member's contributions to be reduced in cases of financial hardship by agreement between employee and employer;
- clarifies that the LG Super trust deed prescribes yearly contributions for defined benefit members.

Possible de-amalgamations

To implement the government's election commitment with respect to giving local people a choice about de-amalgamation and the process to be followed to determine the feasibility of de-amalgamation, the Bill provides for polls to be held in areas proposing de-amalgamation, for the cost of polls to be paid by the affected local government area, for the cost of any de-amalgamation to be met by the relevant local government area, and for any de-amalgamation to be implemented by regulation.

The Bill also makes the following administrative amendments:

- formalises the actions already undertaken by the Esk-Gatton-Laidley Water Board to wind-up and distribute all monies to its constituent local governments;

- removes the duplicate definition of 'conviction' in schedule 4 Dictionary;
- aligns the definition of 'conclusion' of the election of a councillor with that of the LGEA by requiring that declarations of a poll are to be displayed only in the office of the returning officer;
- removes from the list of extra responsibilities for the CEO, the requirement for a CEO to keep a register of directions that the mayor gives to the CEO;
- removes the equality of employment opportunity provisions from the LGA.

Amendments to the *Local Government Electoral Act 2011*

To reduce unnecessary red tape and to streamline provisions, the Bill makes the following amendments:

- enables a regulation to fix a different cut-off day for compiling a voters roll should a regulation fix a different day for a quadrennial election;
- provides the Minister with the discretion to direct, following the death of a councillor or mayor candidate, that both elections be postponed to enable them to be held at the same time;
- requires that a by-election must be held where insufficient candidates have nominated for an election and for the Governor in Council to appoint appropriately qualified persons as councillors where insufficient candidates have nominated for the by-election;
- clarifies that a copy of the nomination of a person for an election is to be displayed as soon as practicable after being certified.

Amendments to the *Parliament of Queensland Act 2001*

A minor consequential amendment to the *Parliament of Queensland Act 2001* is necessary given the amendments to CoBA and the LGA which provide that councillors need not resign upon becoming a candidate for election to the Queensland Legislative Assembly. The change to section 68 reflects that a councillor ceases to be a councillor if, under the *Electoral Act 1992*, the councillor becomes a member of the Legislative Assembly rather than the councillor becoming a candidate for an election as a member of the Legislative Assembly.

Amendments to the *Public Sector Ethics Act 1994*

The definition of 'public sector entity' in the dictionary schedule is to be amended to remove reference to a corporate entity under CoBA or the LGA as a consequence of removing the ability for local governments to corporatise under those Acts.

Amendments to the *Public Service Act 2008*

The Bill amends section 24 to remove reference to a local government owned corporation, or a subsidiary of a local government owned corporation under the LGA as a consequence of the repeal of the provisions relating to corporatisation of business activities under the LGA.

Amendments to the *Right to Information Act 2009*

As a result of the amendment to section 238 of CoBA to provide that the council may, by resolution, delegate a power under CoBA or another Act to the Establishment and Coordination Committee, the Bill makes an amendment to the *Right to Information Act 2009* (schedule 3, section 4A(2)) to provide that the information relating to the delegation or the power to be exercised under the delegation is not included within the scope of the Right to Information exemption. This amendment will ensure the Establishment and Coordination Committee is subject to transparency and scrutiny when delegated such a council power. This aim is consistent with the government's election commitment to ensure that councils operate with increased accountability and transparency to their communities.

Minor and consequential amendments

The Bill makes minor and/or consequential amendments to the *Judicial Review Act 1991*, the *Libraries Act 1988*, the *Public Interest Disclosure Act 2010* and the *Transport Infrastructure Act 1994* to update or remove incorrect references in those Acts as a result of the proposed amendments.

Alternative ways of achieving policy objectives

The Bill amends local government portfolio legislation to empower local governments, remove unnecessary regulation and interference from the

State government, and streamlines processes and reporting requirements which could not be achieved without legislative amendment.

Estimated cost for government implementation

As the Bill's objectives are to empower local governments and streamline processes, any costs to the Government are expected to be minimal.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA) and is generally consistent with these provisions. However, the Bill includes a number of provisions that may be regarded as departures from FLPs. Clauses of the Bill in which FLP issues arise, together with the justification for any departure, are outlined below.

The institution of Parliament

Implementation of de-amalgamation of local governments by regulation

Clause 168 of the Bill will amend the LGA by inserting a new section 260F that will enable the Governor in Council to implement the de-amalgamation of a local government area under a regulation.

Under the LSA, section 4(5)(c), subordinate legislation should contain only matter appropriate to that level of legislation. The proposed amendment could therefore raise a potential FLP issue about the appropriateness of the subject matter to the level of legislation.

However, the intention of the new provision is to enable the de-amalgamation process to happen in an orderly and expedient manner. De-amalgamation will involve the fragmentation of various legal, administrative and financial arrangements, some potentially complex, and it is considered adequate powers are required to effectively deal with

de-amalgamation matters as they arise. It is considered appropriate for the power to be framed broadly even though some of the matters that may be dealt with under a regulation could be included in the Act. No local government area has been de-amalgamated since the 2007 reform process. Also, it is uncertain at this stage which (if any) local governments could be de-amalgamated.

Implementation by regulation will provide the necessary flexibility to deal with the variety of legal, administrative and financial arrangements and potentially allow legislative responses to be tailored to the particular circumstances of a local government area. Furthermore, the involvement of the Governor in Council to implement de-amalgamation change demonstrates the importance of the constitution of local government areas and representation.

Enabling a different date for a voters roll to be compiled to be fixed by regulation

Clause 178 amends the LGEA, section 18 to enable a regulation to fix a different cut-off day for a particular year.

The proposed amendment of the LGEA may be considered to be a 'Henry VIII clause'. A Henry VIII clause is a clause of an Act of Parliament which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action (Scrutiny of Legislation Committee 1997, *The use of "Henry VIII clauses" in Queensland Legislation*, para 5.7). Under the LSA, section 4(4)(c), a Bill should only authorise the amendment of an Act by another Act.

The proposed amendment is justified by the need to ensure that if a local government quadrennial election date is moved by regulation under the LGEA, section 23 for particular circumstances, for example, because a Federal or State election is called at the same time as a scheduled local government election (as occurred in 2012), or a local government election coincides with Easter, then the cut-off day for compilation of the voter rolls should also be moved to meet those contingencies. The proposed amendment will enhance the democratic rights of individuals to participate in local government elections by allowing potential electors to enrol or amend their enrolment up until the cut-off day fixed by regulation.

Individuals' rights and liberties

Prohibited conduct by councillor in possession of inside information

Clauses 45 and 126 insert new sections 173A and 171A into CoBA and the LGA respectively. These sections contain new provisions related to prohibited conduct by councillors in possession of inside information. The new sections apply to a person who is, or has been, a councillor (the *insider*) if the insider—

(a) acquired inside information as a councillor; and

(b) knows, or ought reasonably to know, that the inside information is not generally available to the public.

The new sections prohibit the insider from causing the purchase or sale of an asset if knowledge of the inside information would be likely to influence a reasonable person in deciding whether or not to buy or sell the asset.

The new sections also prohibit the insider from causing the inside information to be provided to another person if the insider knows, or ought reasonably to know, the person will use the information in deciding whether or not to buy or sell an asset.

The proposed amendments may adversely affect the rights of individuals who are councillors to make certain decisions (e.g. to enter into contracts to acquire or dispose of land). The proposed amendments could also be argued as reversing the onus of proof in relation to a decision that a councillor has made. However, it is considered that a departure from the FLPs is reasonably justified because the amendments align with the local government principles set out in section 4(2) of CoBA and the LGA by reinforcing expectations that councillors observe very high standards of ethical and legal behaviour. The amendments will promote the public interest ahead of the private interests of councillors or former councillors and are designed to ensure the officers who constitute a local government operate with the highest degree of accountability and transparency.

The new sections 173A CoBA, and 171A LGA contain offences that will carry maximum penalties of 1000 penalty units. This penalty amount already appears in some other offences within the Acts in relation to the disposal of trade waste. The new offences which are targeted at deterring involvement in financial transactions that might be undertaken as a result of a councillor having knowledge of inside information need to provide for the imposition of a substantial penalty. Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. It is

considered the proposed penalties are reasonably proportionate to the greater seriousness of the new offences.

The amendments are consistent with the government's election commitment to ensure that councils operate with increased accountability and transparency to their communities.

Power for local governments to make local laws to make owners of certain residential properties liable to penalty because of excessive noise emitted from the property

Clause 17 of the Bill will insert a new section 42B into CoBA and clause 89 inserts new section 38B into the LGA to provide that a local government may make a local law that makes the owner of a residential property liable to a penalty because of excessive noise regularly emitted from the property.

Legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control

The proposal to enable local governments to make laws about this type of matter raises an FLP issue because legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control. To make the owner of a property liable to a penalty for the actions of tenants of their property is an interference with the rights and liberties of the owner and enables local laws to be made that would contravene the principle concerning the inappropriate imposition of responsibility.

However, the proposed amendments are designed to address a particular problem occurring within certain local government areas. In recent years there has been a growing concern about the proliferation and impact of the short-term rental of houses or units as holiday accommodation and the use of that accommodation as so called 'party houses'. For instance, large luxury mansions and waterfront houses on the Gold Coast are sometimes rented out for short periods (e.g. weekends) at higher than usual rates and ultimately become the venue for large and prolonged parties. Some party houses can be rented for thousands of dollars per night as people pool money to pay for the venue.

The practice of letting party houses in residential areas is a growing issue in many prominent coastal holiday destinations including the Sunshine Coast and the Gold Coast and can impact on the amenity of neighbourhoods causing distress for the community and permanent residents of the area. Permanent residents whose amenity has been affected have complained

about excessive noise, anti-social behaviour, parking issues, excess waste and the loss of neighbourhood amenity and sense of community. The local governments in these areas receive considerable public pressure to regulate party houses and to curb the nuisance created by the rental of party houses in residential areas. The government is committed to empowering local governments to make local laws about party houses including penalising the owners of such premises for the behaviour of tenants.

It is considered that councils are best placed to make decisions about the nature and types of accommodation appropriate for their area. The proposed amendments to CoBA and the LGA will put beyond doubt that a local government may make local laws to regulate matters in connection with party houses and be able to penalise the owners of party houses in relation to the behaviour of occupants. The amendments insert a specific head of power to this effect. To clarify the meaning of "owner", the amendments further provide that the term includes a tenant if the tenant has a right of exclusive occupation of the property under a lease.

While local governments can establish local laws to create offences for unacceptable behaviour and to allow for the issue of compliance or abatement notices, it is noted that in the making of a local law local governments need to observe the guidelines issued by the Parliamentary Counsel under the LSA, section 9.

However, it is also noted that FLPs are not absolute and in their application a balance needs to be struck between the rights of individuals and the community (*Fundamental Legislative Principles: The OQPC Notebook*, pp. 1, 138). Due to the potential and often real deleterious impact of party houses on the community it is necessary to strike a balance between the rights of the owner of a recognised party house and the rights of others who live adjacent to the party house. There is a significant public interest in allowing local laws to be made about these matters.

Legislation may reasonably facilitate the process of proving a fact by providing for a certificate or something else to be evidence (not conclusive) of a fact

In order to manage the impact of the proposed 'party house' amendments on police resources, the Queensland Police Service requested that evidence of prohibited conduct be by way of a rebuttable certificate (in the absence of evidence to the contrary with notice of a challenge) issued by the Commissioner or his delegate to prove the offence, in lieu of police officers

being required to attend court to give evidence to prove that a noise abatement direction was given.

While the use of 'certificate evidence' may raise concerns about a possible departure from FLPs, the *Fundamental Legislative Principles: The OQPC Notebook* (section 2.9.9, p. 39) states:

Legislation may reasonably facilitate the process of proving a fact by providing for a certificate or something else to be evidence (not conclusive) of a fact. For example, legislation frequently provides that a certificate signed by a person administering a law is evidence of a fact so that a range of basic matters relating to records kept by an administering authority, and to its activities, may be put in evidence before a court through the certificate, rather than be put in evidence through the calling of witnesses. The party affected should always be given the opportunity to challenge a fact sought to be proved by an evidentiary certificate or other facilitation.

In line with this comment, the Bill provides for relevant evidence to be subject to testing in court.

Polls about de-amalgamation

Clause 168 inserts a new section 260B into the LGA. The new section relates to polls about de-amalgamation. New section 260B will apply if the Boundaries Commissioner recommends the implementation of a de-amalgamation of a local government area within 1 year of the commencement of the section. The Electoral Commission of Queensland (ECQ) will be required to conduct a poll of the electors in the affected part of a local government area (which is that part of the area that, under the Boundaries Commissioner's recommendation, is proposed to be separated from the rest of the local government area and governed by its own local government).

A de-amalgamation will break up an existing local government and potentially result in a change of the size and composition of the democratically elected council of the existing local government. However, a poll about de-amalgamation will not be a poll of all electors in an existing local government area that may be structurally affected by de-amalgamation. Therefore, the provision may raise a potential FLP issue in relation to whether the proposal has sufficient regard to the democratic rights of individuals.

The proposed amendment recognises the very significant step that would be taken by the constituents of a certain area within a local government

area that might be de-amalgamated. The poll promotes the democratic rights of individuals by allowing all constituents of the proposed new local government area to have their say.

Hypothetically, a de-amalgamation could potentially result in increased costs to the remaining part of the old local government on a per capita basis. For instance, there would be a smaller number of ratepayers sharing the burden of the global costs of the local government. As far as the initial costs of de-amalgamation are concerned, if a de-amalgamation proceeds the costs of the de-amalgamation will be paid by the affected part of the local government area. It is not considered necessary to gauge the opinion of individuals in the existing local government area who will not be required to bear the cost of a de-amalgamation.

Provision relating to winding-up the Esk-Gatton-Laidley Water Board (EGLWB)

Clause 173 amends section 272 of the LGA to provide that a joint local government mentioned in that section (a *continued entity*) may discontinue its existence. It further provides that all action taken by a continued entity in relation to discontinuing its existence before the authorisation had effect are, and are taken to always have been, as validly done as it would be if the authorisation had been in force when the action was taken (for example, the disposal of all assets).

This amendment particularly relates to the winding-up of the EGLWB and could raise a potential FLP issue about legislation operating retrospectively. The EGLWB unilaterally resolved to be wound up and has distributed all monies in its possession to its constituent local governments. It is considered that the amendment is reasonably justifiable because the actions taken by the EGLWB have not adversely impacted any member of the community and that a validating provision in relation to the distribution of funds will not significantly interfere with the rights of individuals.

Remedial notices

Clauses 34 and 114 of the Bill insert new sections 127A and 138AA into CoBA and the LGA respectively. These sections clarify that a *remedial notice* is a written notice that requires the owner or occupier of a property to take action under a local government related law (or a Local Government Act) in relation to the property (including fencing a pool, for example). A remedial notice may only be given by the council to the person who, under a local government related law (or a Local Government Act), is required to take the action stated in the notice. *Reasonable entry notice* is a written

notice about a proposed entry of a property that informs the owner or occupier of the property of—

(a) who is to enter the property; and

(b) the reason for entering the property; and

(c) the days and times when the property is to be entered.

A reasonable entry notice given to the owner or occupier of a property must be given at least 7 days before the property is proposed to be entered.

Clauses 36 and 37 amend CoBA, sections 130 and 132 and clauses 116 and 117 amend the LGA, sections 140 and 142 about entry to a property. The amendments clarify the operation of entry powers and cost recovery for non-compliance with a remedial notice. The changes clarify the intent of the proposed amendments which is to provide that a local government may issue a remedial notice on an occupier for a matter that is the responsibility of the occupier. Local governments will not be able to issue a remedial notice on an occupier for a matter that is the responsibility of an owner. Also, local governments will only be able to recover any costs incurred in taking action in the case of non-compliance with a remedial notice from the person to whom the remedial notice was issued and who was ultimately responsible for taking the required action. The proposed amendments will clarify the intent of the legislation and remove any level of ambiguity that may currently exist with those provisions. The amendments support the FLPs by ensuring that the law is unambiguous and drafted in a clear and precise way.

Obstructing enforcement of the Act or local laws etc.

Clauses 39 and 119 of the Bill will amend CoBA, section 148 and the LGA, section 149 respectively. These provisions provide that a person must not obstruct an official in the exercise of a power under the Act or a local law, unless the person has a reasonable excuse. Specifically, the list of persons who qualify as an official for the section is being amended to include 'the mayor'.

A potential FLP issue may be raised about whether the provision is unambiguous and drafted in a sufficiently clear and precise way, in particular with respect to the powers a mayor may exercise under the Act or a local law, as opposed to the other types of officials mentioned in the provision. In this regard, while the mayor has stated responsibilities, their powers may not be explicitly expressed as such which could lead to a

person dealing with a mayor being unclear as to when their failure to do a particular thing may make them subject to prosecution.

It is noted that the government made a strong commitment during its election campaign that it would ensure that mayors and local councillors are clearly in charge of councils. The proposed amendment aligns with the government's commitment in this regard.

Furthermore, a number of proposed and current provisions enable mayors to take certain actions. For example under clause 135 of the Bill, mayors under the LGA are referred certain complaints in relation to the behaviour of a councillor and have the power to make specific orders. Also, under CoBA, section 170 and the LGA, proposed new section 170 the mayor may give a direction to the council CEO or senior executive employees. The amendments are intended to support the ability of mayors in taking any necessary action under such provisions.

Requests for assistance or information from council employees

Requests for information relating to ward/division a councillor represents

Clauses 43 and 125 of the Bill will replace CoBA, section 171 and the LGA, section 170A respectively.

Under these provisions a councillor may request a council employee provide advice to assist the councillor carry out their responsibilities under this Act. New section 171(4) of CoBA provides that a councillor may request the CEO provide information relating to the ward the councillor represents and new section 170A(4) of the LGA provides that the councillor may request similar information depending on whether the local government area is divided or not.

The new sections contain penalty provisions in relation to a breach by the CEO to observe a request. The new offences will carry penalties that are equivalent to existing penalties within the Acts and it is considered the proposed penalty amounts are reasonably proportionate to the seriousness of the offence.

Clauses 43 and 67 of the Bill will replace sections 171 and 244 of CoBA, respectively. Under section 171 of CoBA a councillor may request a council employee provide advice to help the councillor make a decision. Currently, any such request must comply with the acceptable requests guidelines or advice guidelines, adopted by council. Section 244 of CoBA sets out the requirements for these guidelines.

Under new section 171 of CoBA the acceptable requests guidelines do not apply to the mayor, the chairperson of the council if the requests relates to the role of the chairperson, or the chairperson of a committee of the council if the requests relates to the role of the chairperson.

Under new section 244 of CoBA the acceptable requests guidelines are made by the Establishment and Coordination Committee and there is no requirement for the guidelines to apply to all councillors equally, to afford natural justice to councillors in relation to decisions about a councillor's request, or for the guidelines to be published.

The amendment to section 244 of CoBA may raise concerns about a departure from FLPs relating to the rights and liberties of individuals because these requirements have been removed. Also, with the Establishment and Coordination Committee being empowered to make the guidelines and the committee having an exemption under schedule 3 of the *Right to Information Act 2009* there is concern that this could mean a councillor's request for information could effectively be subject to a secret document. Furthermore, the concern is that by not including such provisions this could remove transparency and hinder the functions of elected local government representatives.

Any departure from the FLPs may be justified on the basis that anyone who is performing a responsibility under CoBA or is taking any action under CoBA is required to do so in accordance with the local government principles (CoBA, section 4). The principles provide for matters including: transparent and effective processes and decision-making in the public interest; democratic representation, social inclusion and meaningful community engagement; good governance of, and by, local government; and ethical and legal behaviour of councillors and council employees. While a specific provision is not included which requires the acceptable requests guidelines to apply to all councillors equally, afford natural justice to councillors and be published, the intent of any such stipulation would be covered by the requirement for decision-makers to operate in accordance with the local government principles. The Minister is empowered to maintain a monitoring role over the council and to take remedial action to improve the council's or a councillor's performance or compliance with the requirements under CoBA or another local government related law (CoBA, section 110). Also, not including a specific requirement for such matters aligns with the government's election policy for local governments to be empowered to take responsibility for their own destinies and to be subject to a minimum of State interference. In accordance with its *Empowering*

Queensland Local Government Election Policy, the government expects that council, and committees of council, would always conduct themselves and their decision-making in accordance with the high standards under the local government principles thereby avoiding any need for statutory intervention powers to be considered.

Qualifications for a person to be the mayor or a councillor of the Torres Strait Island Regional Council

Clause 120 of the Bill will amend the LGA, section 152 to remove the prescribed qualifications for a person to be the mayor or a councillor of the Torres Strait Island Regional Council. Currently, section 152 requires councillors to be a Torres Strait Islander or an Aborigine and to have been a resident of their division for two years before they are eligible to be a mayor or a councillor on the Torres Strait Island Regional Council.

While this move may be considered as a departure from FLPs (LGA, section 4(3)(j)), any such departure can be justified on the basis that electoral restrictions like this are anachronistic in a modern, liberal democracy and run counter to the government's overall reform program to empower local governments and their communities. Also, restricting the candidate pool by discriminating against potential candidates purely on the basis of length of residency or heritage does not encourage good local governance, accountability or responsibility. For example, it is possible for someone to be born in the community and spend their whole life in the community but then leave for a time in order to undertake university study. Following completion of their study they could then return to their community, but because of the residency requirements may not be eligible to stand for public office even though they would potentially have a lot to offer as a candidate. If electors feel strongly about ensuring that a candidate has lived in the community for a certain period or that they need to be of a certain heritage, they have the option of voting accordingly.

Consultation

No public consultation was undertaken during the development of the Bill as the Government has an electoral mandate to implement its announced policy commitments, outlined in the Government's *Empowering*

Queensland Local Government Election Policy and its "Six month action plan July-December 2012".

Briefings were provided to key stakeholders (including the Local Government Association of Queensland (LGAQ) (the peak body for local government in Queensland), and Brisbane City Council (BCC)) during the development of the exposure draft of the Bill and on further drafts of the Bill.

An exposure draft of the Bill was released in August for targeted stakeholder consultation together with a table summarising the policy intent of each particular clause of the Bill to the LGAQ, Local Government Managers Australia (LGMA), BCC, Logan City Council, Moreton Bay Regional Council and Gold Coast City Council. LG Super and ECQ were also consulted on relevant aspects of the draft exposure Bill. Stakeholders were invited to provide comment. The Bill has been developed taking into consideration the feedback received.

In addition, the Minister for Local Government recently undertook visits to all 73 local governments across Queensland to ascertain their views about and suggestions for improvements to the local government portfolio legislation. Feedback provided by local governments was considered during drafting of the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and the extent to which it is uniform with or complementary to the Commonwealth or another State has been taken into consideration in the development of relevant parts of the Bill.

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that when enacted the Bill will be called the *Local Government and Other Legislation Amendment Act 2012*.

Clause 2 Commencement

Clause 2 provides for certain sections to commence upon enactment and for others to commence on a day to be fixed by proclamation. The following provisions commence on a day to be fixed by proclamation.

CoBA

- Clause 19 – Replacement of section 45 (Register of beneficial enterprises)
- Clause 57(3) – Amendment of section 194 (Disciplinary action against council employees) (omission of section 194(3))
- Clause 60 – Replacement of section 198 (Annual report must detail remuneration)
- Clause 65(2) and (3) – Amendment of section 238 (Delegation of council powers) (Omission of section 238(1)(e) and renumbering of section 238(1)(f))
- Clause 70 – Amendment of section 252 (Regulation-making power)

LGA

- Clause 91 – Replacement of section 41 (Register of beneficial enterprises)
- Clause 106 – Omission of section 102 (Financial sustainability criteria)
- Clause 107 – Replacement of section 104 (Financial management, planning and accountability documents)
- Clause 108 – Omission of section 106 (Sound contracting principles)

- Clause 139(3) – Amendment of section 197 (Disciplinary action against local government employees) (omission of section 197(3))
- Clause 142 – Replacement of section 201 (Annual report must detail remuneration)
- Clause 172(1) and (3) – Amendment of section 270 (Regulation-making power) (Omission of section 270(2)(b) and renumbering of section 270(2)(c) to (k))
- Clause 175, to the extent it inserts new section 297 – Insertion of new ch 9, pt 4 (section 297 – Continuation of particular provisions for corporate entities)

Public Sector Ethics Act 1994

- part 6 – Amendment of *Public Sector Ethics Act 1994*

Public Service Act 2008

- part 7 – Amendment of *Public Service Act 2008*

Judicial Review Act 1991 and the Public Interest Disclosure Act 2010

- schedule – Amendment of the *Judicial Review Act 1991* and the *Public Interest Disclosure Act 2010*

Part 2 Amendment of City of Brisbane Act 2010

Clause 3 Act amended

Clause 3 states that part 2 of the Bill amends the *City of Brisbane Act 2010* (CoBA).

Clause 4 Amendment of s 5 (Relationship with Local Government Act)

Clause 4 amends section 5 to clarify the relationship between CoBA and the *Local Government Act 2009* (LGA). It sets out that even though the LGA does not generally apply to BCC, there are certain provisions that may, such as provisions about superannuation or joint local governments.

Clause 5 Amendment of s 11 (Powers of council generally)

Clause 5 amends section 11 to provide boundaries about BCC's powers when it is a component local government for a joint local government. BCC can not exercise its powers over a joint local government area except as a delegate of the local government. See clause 6 for further information about the reinstatement of joint local government provisions.

Clause 6 Amendment of s 12 (Power includes power to conduct joint government activities)

Clause 6 amends section 12 to enact a government election commitment to reinstate joint local government provisions. The current provisions relating to the activities of joint local government entities to allow for multiple purposes that could also involve State and local agencies will be retained and joint local governments will be reinstated.

Joint local governments are developed to exercise a jurisdiction of local government that could go beyond the boundaries of a single local government. In this respect, BCC functions could be conducted on a regional basis enabling a greater level of co-ordination to occur in providing services to the community, i.e. a joint local government could be established to perform functions for component local governments.

A component local government is a local government entitled to be represented on a joint local government, either in its own right or as a member of a group of local governments.

The clause also notes that the provisions of the LGA about joint local governments apply to BCC (see explanatory note for clause 4).

Clause 7 Amendment of s 14 (Responsibilities of councillors)

Clause 7 amends section 14 to remove from the list of responsibilities of councillors the requirement to comply with the BCC councillors code of conduct as the requirement for this code is to be removed (see clause 49 which omits current section 179).

Clause 8 Amendment of s 25 (Chairperson of the council)

Clause 8 amends section 25 to relocate the definition ***rules of procedure*** to complement chapter 6, part 2, new division 7, new section 186A (Conduct in meetings of the council or its committees).

Clause 9 Amendment of s 27 (What this part is about)

Clause 9 clarifies the definition of a 'model local law' as being a local law that incorporates a local law as approved by the Minister under section 26(7) of the LGA.

Clause 10 Replacement of ss 30 and 31

Clause 10 implements the Government's *Empowering Queensland Local Government* Election Policy 19.1 to provide local communities with the

power to establish appropriate local laws through a responsible, accountable local government.

New section 30 (Local law making process) clarifies that BCC has the power to decide its own process for making local laws, subject to certain provisions in the Act, and clarifies that local laws are made by passing a resolution.

Currently there is uncertainty as to whether a model local law, when adopted by BCC, could be altered, for example, including a provision to amend/repeal an existing local law (that would be inconsistent) with the model local law without triggering a State interest check or public consultation.

The policy intent is to clarify that if BCC decides a model local law or part of a model local law is necessary, BCC may make a local law, by resolution, to the extent it 'incorporates' the model local law or part of the model law. The process for making the model local law is the same as for making any other local law. BCC has the flexibility to incorporate all or part of a model local law in the new local law but a State interest check/public consultation will be required on the part/parts of the new local law that are not model local law provisions and/or any amendment/repeal of an existing local law that would be inconsistent with the model local law. For further information about the operation of State interest checks refer new section 31.

New section 30 also clarifies that if BCC proposes to make a local law about a matter, and there is an existing local law about the matter that would be inconsistent with the new local law, BCC must amend or repeal the existing local law. The amendment or repeal could be in the same instrument as the new local law. A State interest check will not be required on the amending/repealing provisions, refer new section 31.

Under section 27 an interim local law has effect for 6 months or less. The policy intent is for interim local laws to be implemented quickly while community engagement is undertaken allowing either a quick regulatory response to an issue that might cause risk to health or safety, or regulating an issue while community engagement is undertaken to prevent potential transgressions against the proposed local law. Compared with the repealed *Local Government Act 1993* (LGA93), the existing provisions in CoBA are silent on the need for community engagement for interim local laws although under the local government principles it could be suggested.

To resolve any uncertainty, new section 30 provides for when an interim local law expires by requiring the interim local law to state when it expires, and clarifies that public consultation is not mandatory before making a local law for:

- an interim local law
- a local law to the extent it incorporates a model local law, and does not contain an anti-competitive provision (refer section 41).

However, there is nothing to prevent BCC from first engaging in consultation if it so chooses.

Further, new section 30 is consistent with the Government's policy to provide BCC with the power to establish appropriate local laws through a responsible, accountable local government by removing the requirement for the Minister to be satisfied that local laws are drafted substantially in accordance with the LSA and returns that responsibility to BCC for ensuring local laws are drafted in accordance with the guidelines issued by the Parliamentary Counsel under the LSA.

New section 31 (State interest check) removes the requirement for the Minister to be satisfied that the local law complies with the overall State interest before the local law is made. New section 31 instead requires BCC to consult with relevant government entities about the overall State interest in the proposed local law before making the local law.

Consistent with the Government's policy to remove unnecessary State interference from the local law making process and to empower local governments to establish appropriate local laws, BCC will no longer be required to give the Minister:

- a copy of the proposed local law;
- a drafting certificate for the proposed local law;
- information required by the Minister or under a regulation.

Further, before making a proposed local law, the Minister will no longer be required to assess the overall State interest impact of the proposed local law and will no longer—

- impose conditions on BCC that the Minister considers appropriate; or
- impede BCC from proceeding further in making the proposed local law only if it—

— satisfies any conditions about the content of the proposed local law; and

— agrees to satisfy any other conditions.

Although the Ministerial approval process is removed from the making of local laws, if BCC does not comply with the requirement under section 30 the Minister, on behalf of the State, may take action under section 42 to suspend or revoke a particular local law.

New section 31 also clarifies that if the proposed local law is a subordinate local law, or a local law that incorporates a model local law, or a part of a model local law, or any amendment or repeal of an existing local law that would be inconsistent with the model local law, then section 31 does not apply to a subordinate local law, or the extent that proposed local law is a model local law or amendment or repeal of an inconsistent local law.

Clause 11 Amendment of s 32 (Notice of new local law)

The current requirements for publication add significantly to the costs of the publication of a gazette notice. Consistent with the Government's policy objectives of removing red tape and the associated legislative burden on BCC, *clause 11* amends section 32 to:

- remove the requirement for the notice of the making of a local law to be published in a newspaper that is circulating generally in the local government area (this will remove a cost to local government);
- consistent with the gazette notification of State subordinate legislation, the amendment reduces the information required in the gazette notice to the following:

  (a) that the notice is made by BCC; and

  (b) the date when BCC made the resolution to make the local law; and

  (c) the name of the local law; and

  (d) the name of any existing local law that was amended or repealed by the new local law; and

- extends the time within which the BCC must give the Minister a copy of the gazette notice and local law from 7 days to 14 days and allows the copy of the local law to be given in electronic form.

Clause 12 Amendment of s 34 (Local law register)

Clause 12 amends section 34 to require the department's chief executive to keep a database of BCC's local laws and for a copy of the database to be publicly accessible on the department's website. The administrative practice of the Department of Local Government has been to have a central repository of local laws. Doing so facilitates transparency, scrutiny, and ease of access to local laws.

This approach of having a centralised database has been identified as "leading practice" by the Productivity Commission in a July 2012 study into Local Government Regulation. In this regard the Commission identified that only a few Australian jurisdictions, including Queensland, have adopted this leading practice. The amendments legislatively formalise the current administrative practice in this regard. The Bill makes the same amendment to the LGA to ensure Queenslanders have access to all local laws applying across the State.

Clause 13 Amendment of s 35 (Consolidated versions of local laws)

Clause 13 amends section 35 to provide that BCC must prepare and adopt consolidated versions of local laws to provide ease of access for the community to the up-to-date local laws of Brisbane. Once BCC has adopted the consolidated versions of the local laws, BCC must give the Minister a copy of the consolidated version of the local laws in electronic form within 7 days.

Clause 14 Omission of s 36 (Regular review of local laws)

Clause 14 removes the mandatory requirement for BCC to regularly review its local laws (including anti-competitive provisions, for example). Consistent with the Government's policy to provide BCC with the power to establish appropriate local laws, the Bill gives BCC the autonomy to manage the currency of its local laws.

Clause 15 Amendment of s 40 (Development processes)

Section 29 provides the power for BCC to make and enforce a local law that is necessary or convenient for the good rule and local government of Brisbane.

Section 40 provides that BCC must not make a local law that establishes an alternative development process. An alternative development process is a process that is similar to, or duplicates, all or part of a process in the *Sustainable Planning Act 2009* (SPA), chapter 6. SPA provides that the Integrated Development Assessment System regulates development that is made assessable through planning schemes and other planning instruments.

Clause 15 provides that if a local law already contains a provision that establishes an alternative development process, BCC may amend or repeal the provision at any time. However, in any implementation of this provision, BCC will need to ensure that relevant local laws comply with existing requirements under the legislation on the need for consistency with any law made by the State (refer section 28). Furthermore, the Minister has the power to suspend or revoke particular local laws if the Minister reasonably believes the local law is contrary to any other law (refer section 42).

Clause 15 also amends section 40 to provide that the section does not apply to local laws about advertising devices, gates and grids, levees and roadside dining, if these matters are not already covered in a planning scheme, the Planning Act or another instrument made under that Act.

The amendment aligns with the Government's *Empowering Queensland Local Government* Policy 19.2 which provides that the jurisdiction of local

laws is complementary to, and does not replicate the controls and management that already exist under Queensland legislation.

Clause 16 Amendment of s 42 (Suspending or revoking particular local laws)

Clause 16 consequentially amends section 42 to enable the Minister to suspend or revoke a local law if BCC has not satisfactorily dealt with the overall State interest as required under section 31. Although the Ministerial approval process is removed from the making of local laws, if BCC does not comply with the requirements under section 30, the Minister, on behalf of the State, may take action to revoke or suspend the local law.

Clause 17 Insertion of new s 42B (Owners' liability for party houses)

Clause 17 inserts a new section 42B to provide that BCC may make a local law that makes the owner of a residential property liable to a penalty because of excessive noise regularly emitted from the property. In recent years there has been a growing concern about the proliferation and impact of houses or units used as 'party houses'. For instance, large luxury mansions and waterfront houses on the Gold Coast are sometimes rented out for short periods (e.g. weekends) at higher than usual rates and ultimately become the venue for lengthy parties. Some 'party houses' can be rented for thousands of dollars per night as people pool their money to pay for the venue.

Permanent residents whose amenity has been affected by noise, anti-social behaviour, parking, excess waste and loss of neighbourhood amenity is not only restricted to holiday destinations, as 'party houses' may be the source of complaints in all residential areas.

To enable BCC to deal with these matters at a local level, the Bill clarifies that if necessary BCC may make a local law that makes the owner of a residential property, including a tenant if the tenant has a right of exclusive occupation of the property under a lease, liable to a penalty because of excessive noise regularly emitted from the property. The Bill defines a 'residential property' as a property that would ordinarily be used, or

intended to be used, as a place of residence or mainly as a place of residence but a property is not precluded from being a residential property merely because the property is rented on a short-term basis. The term "owner" is defined in the amendments to include a tenant if the tenant has a right of exclusive occupation of the property under a lease.

The policy intent is to clarify that BCC may make a local law about this matter, and to give BCC the flexibility in the local law to fix the number of times that excessive noise must be emitted from a property before the owner becomes liable to the penalty.

The Bill provides that in a proceeding about a contravention of the local law, a noise abatement direction given to a person at a property (a copy of information recorded in the register of enforcement acts, under the *Police Powers and Responsibilities Act 2000*, about the giving of the direction is evidence of the matters stated in it) is evidence of excessive noise being emitted from the property.

A noise abatement direction is a direction given to a person by a police officer under the *Police Powers and Responsibilities Act 2000*, section 581(3).

The Bill clarifies that BCC's chief executive officer may ask the police commissioner to give BCC's chief executive officer information about noise abatement directions given to persons in the Brisbane area and that the police commissioner must comply with the request. BCC may then take action against owners/tenants under the terms of its local law.

A defendant may, with the leave of the court, require the prosecution to call any person involved in the giving of the noise abatement direction to give evidence at the hearing. The court may give leave only if the court is satisfied that an irregularity may exist in relation to the information or the giving of a noise abatement direction or it is in the interests of justice that the person be called to give evidence.

With respect to other anti-social behaviour by occupiers of 'party houses', there are already existing State laws, for example, the offence of public nuisance could potentially apply to neighbourhood disruptions resulting from party house activities while damage to property could constitute wilful damage under the Criminal Code. Similarly, local governments already have the power to make local laws to regulate parking. Consequently, the Bill relates only to the regulation by local laws of excessive regular noise from 'party houses'.

It is important to note that local laws are required under the Bill to be drafted in accordance with guidelines issued by the Parliamentary Counsel under the LSA, section 9. Also, under the amendment to section 42 the Minister has the power to suspend or revoke particular local laws if the Minister reasonably believes a local law is contrary to any other law; or is inconsistent with the local government principles or does not satisfactorily deal with the overall State interest.

Clause 18 Replacement of s 44 (Conducting beneficial enterprises)

Chapter 3, part 3, division 1 provides for BCC to conduct beneficial enterprises as part of its day to day business. The CoBA beneficial enterprise provisions also operate under the *Statutory Bodies Financial Arrangements Act 1982* (the SBFA Act). The object of the SBFA Act is to provide for the efficient and effective management of the powers of statutory bodies to enter into financial arrangements. Section 5(2)(e) of the SBFA Act provides that a statutory body is an entity established under an Act, that is a local government.

Clause 18 replaces section 44 to remove unnecessary regulatory duplication and red tape and to rely on the SBFA Act beneficial enterprise processes.

The unamended section 44 applied if BCC wanted to conduct a beneficial enterprise. Amongst other things, the section sets out certain obligations that BCC must comply with before it may conduct a beneficial enterprise. However, section 44 does not contain a clear and express provision stating that BCC has the power to conduct a beneficial enterprise which may have implications in relation to the operation of the SBFA Act.

New section 44 clarifies that BCC has the power to conduct a beneficial enterprise, streamlines the requirements and processes for conducting a beneficial enterprise but does not relieve local governments from the requirement to obtain approvals required under the SBFA Act.

Clause 19 Replacement of s 45 (Register of beneficial enterprises)

Clause 19 replaces section 45 (Identifying beneficial enterprises) to require BCC to disclose in the annual report a list of all the beneficial enterprises conducted during the financial year. New section 45 replaces the prescriptive beneficial enterprises provisions in CoBA that required BCC to establish a register for each beneficial enterprise that it conducted and required BCC to give written notice of the establishment of the register and the making of entries to the department's chief executive and the auditor-general.

Clause 20 Omission of s 46 (Planning for a beneficial enterprise with the private sector)

Clause 20 omits section 46 to reduce the legislative burden on BCC. Section 46 required extensive planning requirements if BCC planned to invest in a beneficial enterprise to be conducted with the private sector, including requiring BCC to identify the amount that is to be invested, as a capital expenditure, in the budget and required BCC to obtain approval of the department's chief executive before it invested in a beneficial enterprise in certain circumstances.

Clause 21 Amendment of s 48 (Ways to apply the competitive neutrality principle)

Chapter 3, part 3, division 2 is about the application of the National Competition Policy Agreements in relation to the significant business activities of a council, including the application of the competitive neutrality principle if, in the circumstances, the public benefit (in terms of service quality and cost) outweighs the costs of implementation.

A significant business activity is a business activity of council that—

(a) is conducted in competition, or potential competition, with the private sector (including off-street parking, quarries, sporting facilities, waste services etc); and

(b) meets the threshold prescribed under a regulation.

The Bill removes the ability of BCC to corporatise an activity under these provisions and to provide that if BCC wants to corporatise an activity, it is to be done under the *Corporations Act 2001 (Cwlth).*

Section 48 currently provides that the competitive neutrality principle may be applied by commercialisation of a significant business activity; or corporatisation of a significant business activity; or full cost pricing of a significant business activity, and defines various terms and sets up a head of power for a regulation to provide for certain matters.

Clause 21 omits all references to corporatisation to remove legislative duplication with the *Corporations Act 2001* (Cwlth).

Clause 22 Omission of ch 3, pt 3, divs 3 and 4

As a consequence of the Bill requiring BCC to rely on the *Corporations Act 2001 (Cwlth)* in relation to corporatising an activity, *clause 22* omits chapter 3, part 3, divisions 3 and 4 (ss 53 to 64). Complementary amendments are being considered to the *City of Brisbane (Beneficial Enterprises and Business Activities) Regulation 2010.*

Clause 23 Amendment of s 66 (Control of roads)

Clause 23 amends section 66 to define a private road to mean a road on land that is owned by a person who can restrict others from using it. Currently there is confusion about whether the definition of a road under section 65(2)(b)(ii), and the elements of control under section 66(2) give rise to claims that council has responsibility to maintain or improve private roads. The Bill clarifies that BCC is not liable for the construction, maintenance or improvement of a private road but that BCC retains the control to approve the naming and numbering of private roads.

Clause 24 Amendment of s 67 (Notice of intention to acquire land to widen a road)

Clause 24 corrects an error to clarify that the owner of land applies to BCC for particular things relating to land, and not to the Planning and Environment Court.

Clause 25 Amendment of s 69 (Appeal on a claim for compensation)

Clause 25 corrects a reference to the Planning and Environment Court with the correct reference to the Land Court. Notwithstanding an inherent jurisdiction the Land Court may have to extend time for an appeal, the Bill clarifies that the Land Court has the discretion to extend an appeal period.

Clause 26 Amendment of s 72 (Compensation if realignment not carried out)

Clause 26 amends section 72 to clarify that if BCC decides not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land; and structural improvements have been made on land that adjoins the road on the basis of the proposed realignment being effected, BCC must pay the owner of the land reasonable compensation for the decrease in value of the land because of the decision.

Currently the reference in section 72 to BCC making structural improvements does not reflect the policy intent expressed in the explanatory notes for the *City of Brisbane Bill 2010* section 69 and the LGA93 section 912 which provide that if owners of affected land have made improvements to structures on the affected land, BCC must compensate the owners for the subsequent loss in value.

Clause 27 Amendment of s 75 (Closing roads)

Clause 27 amends section 75 to clarify that BCC may close a road to all traffic, or traffic of a particular class (e.g. heavy vehicles) under certain circumstances.

Clause 28 Amendment of s 92 (Materials in infrastructure are council property)

Clause 28 amends section 92 to insert a new subsection to clarify that if BCC is exercising a power and constructs a structure or performs any work, the materials in the structure or the works are clearly the property of BCC even if they are on someone else's land.

Clause 29 Amendment of ch 4, pt 3, hdg (Financial sustainability and accountability)

Clause 29 amends the part heading to better reflect that the part, consequential to amendments, is about financial planning and accountability of council.

Clause 30 Amendment of s 103 (Systems of financial management)

Clause 30 amends section 103 to remove the requirements for a long-term community plan and a financial plan providing BCC with the flexibility to plan for the community in the way it considers best. *Clause 30* also clarifies that a contract for the supply of goods or services includes a contract about carrying out work.

Clause 31 Amendment of s 106 (Councillor's discretionary funds)

Section 106 provides that a councillor must ensure that the councillor's discretionary funds are used in accordance with the requirements prescribed under a regulation. Discretionary funds are defined as being 'funds in BCC's operating fund that are budgeted for use by a councillor at the councillor's discretion'.

Clause 31 replaces the definition of 'discretionary funds' to clarify that discretionary funds are for community purposes only, consistent with the scope of the provisions in the regulations.

Clause 32 Replacement of s 112 (Gathering information)

Clause 32 replaces section 112 to clarify that the department may carry out an investigation of BCC or its councillors for monitoring or evaluation purposes.

Clause 33 Amendment of s 127 (What this division is about)

Generally, chapter 5, part 2, division 2 provides the powers that may be used to enable BCC to perform responsibilities or to ensure that a person complies with the Act. The division explains the circumstances in which a person is authorised to enter a property and the requirements for entry.

Clause 33 makes consequential amendments as a result of redefining 'remedial notice' and 'reasonable written notice' in new section 127A and clarifies that not all employees or agents of BCC would be authorised to use the powers to enter land under this division, only those that BCC authorises as appropriately qualified or trained to exercise a power to perform a responsibility under this division.

Clause 34 Insertion of new s 127A (Notices for this division)

Clause 34 inserts new section 127A to redefine 'remedial notice' and 'reasonable written notice' for entry onto land for the purposes of chapter 5, part 2, division 2.

Currently under CoBA, a remedial notice is a notice requiring action to be taken in relation to any property under a law under which BCC performs its responsibilities, for example, a notice requiring a pool to be fenced or building work to be remedied. Currently, council may only issue a remedial notice on a property owner.

However, there are instances where council may require action to be taken in relation to a matter that is the responsibility of the occupier, for example, if an unsightly and rusty vehicle owned by the occupier has been discarded and left raised on cinder blocks in the front yard of the property they occupy. In such circumstances, it would be more appropriate for council to issue a remedial notice on the occupier.

New section 127A provides that a remedial notice is a written notice that requires the owner or occupier of a property to take action under a local government related law in relation to the property and can only be given by BCC to the person who, under a local government related law, is required to take the action stated in the notice. Local government related law is defined in the schedule.

Reasonable written notice has been renamed 'reasonable entry notice' to better reflect the purpose of the notice – to inform who is to enter property, the reason for the entry and the days and times of the entry.

New section 127A clarifies that a remedial notice and a reasonable entry notice may not be combined unless the owner of the property is also the occupier of the property or the occupier of the property is the person who is required to take the action stated in the remedial notice.

Clause 35 Amendment of s 128 (Identity card for council workers)

Clause 35 amends section 128 to provide that BCC is not required to give a council worker an identity card unless the worker is exercising a power of entry under chapter 5, part 2, division 2. This section does not stop a single identity card being issued to a person for the Act and for another purpose. A person who stops being a council worker must return the person's identity card to BCC within 21 days after stopping being a council worker, unless the person has a reasonable excuse.

Clause 36 Amendment of s 130 (Entry by an owner, with reasonable written notice, under a remedial notice)

Currently, if a remedial notice is issued on a property owner, who is not the occupier, for example, a remedial notice to carry out property maintenance, the owner must give the occupier reasonable written notice of their intent to enter the property to take the action required under the notice. If the occupier refuses the owner entry to undertake the action, the owner is not liable for non-compliance of the remedial notice yet CoBA does not enable council to enter the property and take the action on behalf of the owner. Therefore, no action can be taken and the problem giving rise to the remedial notice persists.

Clause 36 amends section 130 to set out the circumstances in which an owner, who is not an occupier may enter a property after BCC has given a remedial notice to the owner. After giving a reasonable entry notice to the occupier of the intent to enter, the owner may enter the property and take the action required under the remedial notice. Existing section 130(4) is omitted to clarify that under renumbered section 130(4), section 130 does not affect the rights an owner has apart from this section.

Clause 37 Amendment of section 132 (Entry by a council worker, with reasonable written notice, under a remedial notice)

Currently section 132 has proven problematic in that a remedial notice can only be given to an owner of property and not to an occupier. There is an anomalous situation under section 132 that action can only be taken if both the owner and occupier fail to take the action required under the notice.

Clause 37 amends section 132 to provide that the section applies if BCC gives a remedial notice to the owner or the occupier of a property (the ***responsible person***, new section 127A provides that a remedial notice may only be given by BCC to the person who, under a local government related law, is required to take the action stated in the notice), and the responsible person fails to take the action. Section 132 further provides that after giving a reasonable entry notice, a council worker may enter the property and take the action. The reasonable entry notice is given to the occupier, even if the responsible person who refused to take the action stated in the remedial notice is the owner, as it is the occupier who will be affected by entry of the BCC worker and the action taken. Subsection (4) provides that BCC may recover the amount that BCC properly and reasonably incurs in taking the action as a debt payable by the person who failed to take the action.

Clause 38 Amendment of s 133 (Entry by a council worker, with reasonable written notice, to take materials)

Clause 38 makes consequential amendments as a result of the renaming of 'reasonable written notice' to 'reasonable entry notice'.

Clause 39 Amendment of s 148 (Obstructing enforcement of this Act or local laws etc.)

Section 148 provides that a person must not obstruct an official in the exercise of a power under the Act or a local law, unless the person has a reasonable excuse. The maximum penalty is 50 penalty units. An ***official*** is any of the following persons—

(a) the Minister;

(b) the department's chief executive;

(c) an authorised officer;

(d) an investigator;

(e) the chief executive officer;

(f) an authorised person.

Clause 39 adds that the mayor is an 'official' for the purpose of this section.

The note inserted to subsection (3) clarifies that council workers are only those employees and agents of the council who are authorised to act under chapter 5, part 2, division 2, and clarifies that in particular circumstances a council worker may enter a property and carry out work or obtain materials in compliance with chapter 5, part 2, division 2.

Clause 40 Amendment of s 155 (Disqualification because of other high office)

Clause 40 amends section 155 so that councillors need not have to resign upon becoming a candidate for election as a member of the Queensland Legislative Assembly. If the person becomes a government member, the person automatically stops being a councillor when the person becomes a government member.

Clause 41 Insertion of new s 160A (Compulsory leave without pay)

Clause 41 inserts a new section 160A in keeping with the rules under the *Parliament of Queensland Act 2001*, to require councillors to take leave without pay for the election period when they are a candidate for election as a member of the Queensland Legislative Assembly.

Clause 42 Omission of s 168 (Councillors and full-time government jobs)

Clause 42 omits section 168 to remove the prohibition on councillors from having a full-time government job and enables councillors to manage their own commitments within the context of their jurisdictional responsibilities. This amendment is in line with the government's policy to minimise State interference in the management of BCC.

Clause 42 does not negate the onus on councillors to comply with the local government principles set out in section 4(2) of CoBA which provides that councillors observe very high standards of ethical and legal behaviour and make decisions in the public interest.

Clause 43 Replacement of s 171 (Requests for help or advice)

Current section 171 provides that a councillor may request that a council employee provide advice, according to guidelines, to help the councillor make a decision. A councillor may also request the chief executive officer provide information, that BCC has access to, relating to the ward the councillor represents.

It has been submitted that section 171 has created expectations contrary to the original policy intent. The original Explanatory Notes for this section explain that *'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'.

Clause 43 replaces section 171 with a new section to provide that:

- a councillor may request a council employee to provide advice to assist the councillor carry out their responsibilities under CoBA, not just to help the councillor make a decision as is the case under current section 171
- a councillor may, subject to any limits prescribed under a regulation, request the chief executive officer provide information BCC has access to. For example a regulation may prescribe the maximum cost to the council of providing information. The request can not apply to a record of the BCC conduct review panel or if the disclosure would be contrary to an order of a court or tribunal or that would be privileged from production in a legal proceeding. It is an offence for the chief executive officer not to make all reasonable endeavours to comply with the request
- a councillor's request, has no effect if the request relates to any ward other than the ward the councillor represents and does not comply with the acceptable requests guidelines. This provision does not apply to the mayor, the chairperson of BCC or the chairperson of a committee of BCC if the request relates to the role of the mayor or the chairperson.

See also clause 67 new section 244 (Acceptable requests guidelines). The 'acceptable requests guidelines' are made by the Establishment and Coordination Committee.

Clause 44 Amendment of s 173 (Use of information by councillors)

The LGA section 171(3) provides that a councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government. The CoBA has no similar provision.

Clause 44 amends section 173 to insert this subsection, including the proposal that a contravention of this subsection is dealt with as misconduct by the BCC councillor conduct review panel.

Clause 45 Insertion of new s 173A (Prohibited conduct by councillor in possession of inside information)

Currently, section 173 provides that a person who is, or has been, a councillor must not use information that was acquired as a councillor to gain a financial benefit. It is an offence for a person to use such information for a financial benefit unless the information is lawfully available to the public. A councillor convicted of this offence is liable to a maximum penalty of 100 penalty units ($10 000) or two years imprisonment and is disqualified from being a councillor for four years.

In order to establish that a councillor has used information acquired as a councillor to gain a financial benefit, the court would need to be satisfied not only that the councillor used the information as the basis for their decision to gain a financial advantage (e.g. to purchase an asset at an advantageous price) but also that the information relied on was acquired as a councillor and not generally available in the public arena. This will be frustrated if the councillor can establish that there are a range of factors which contributed to the councillor's decision to acquire the asset.

Clause 45 inserts new section 173A to clarify that a person, who is or was a councillor, (the insider) is prohibited from doing certain things if the insider is in possession of inside information, that is, information acquired as a councillor and information that the insider knows or ought reasonably to know, is not generally available to the public, similar to the insider trading provisions in the *Corporations Act 2001* (Cwlth).

As a result of the reforms to empower mayors and councillors, it is anticipated that these persons may, amongst other things, have increased access to confidential information in circumstances that are external to the rigour and record keeping processes associated with usual council and committee meetings. To serve as a check and balance to the empowering provisions, the maximum penalty for offences under this section are 1000 penalty units or 2 years to reflect the seriousness of the offences.

The amendment is consistent with the government's election commitment to ensure that councils operate with increased accountability and transparency to their communities.

Clause 46 Amendment of s 174 (Councillor's material personal interest at a meeting)

Currently compliance with section 174(2)(c) may be confusing if the councillor is honestly unaware of their parent's, child's or sibling's interest in the matter. *Clause 46* amends section 174 to provide that a councillor has an MPI under subsection (2)(c) if the councillor knows or should reasonably know, that their parent, child or sibling stands to gain a benefit or suffer a loss.

Clause 46 also amends section 174 to provide that a councillor does not have a MPI if the councillor's interest is no greater than that of other persons in Brisbane. The amendment follows a recommendation of the Queensland Integrity Commissioner, that councillors also be exempt from disclosing a COI/MPI at a meeting for an interest common to a significant number of electors or ratepayers. A similar exemption applies to Members of Parliament in relation to proceedings in the Parliament and the Queensland Ministerial Code of Ethics contains a similar exemption for discussions in Cabinet concerning 'a matter of general public policy or whether the Minister has no greater interest than that of other classes of people in the community or within the Cabinet generally'.

Clause 47 Amendment of s 175 (Councillor's conflict of interest at a meeting)

Current section 175 prescribes the disclosure requirements for a councillor if the councillor has a COI (or perceived COI) in a matter to be discussed at a meeting of the local government, or any of its committees. A "conflict of interest" is defined as 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.

Amongst other things, a councillor is required to deal with the COI in a transparent and accountable way and inform the meeting of the councillor's personal interests in the matter and how the councillor intends to deal with the COI if the councillor participates in the meeting. Details relating to the COI must be recorded in the minutes of the meeting and on BCC's website. Unlike the MPI provisions for councillors there is no exemption from disclosing a COI in a matter to be discussed at a meeting if the matter to be discussed is an ordinary business matter.

Clause 47 amends section 175, in accordance with the Government's election commitment to restore clearer, fair COI provisions, to provide an exemption for councillors from disclosing a COI in a matter to be discussed at a meeting if the matter to be discussed is an ordinary business matter. Also following a recommendation of the Queensland Integrity Commissioner, amended section 175 exempts councillors from disclosing a COI at a meeting if the councillor has no greater personal interest in the matter than that of other persons in Brisbane. A similar exemption applies to Members of Parliament in relation to proceedings in the Parliament and the Queensland Ministerial Code of Ethics contains a similar exemption for discussions in Cabinet concerning 'a matter of general public policy or whether the Minister has no greater interest than that of other classes of people in the community or within the Cabinet generally'.

Amended section 175 also clarifies that a councillor does not have a COI merely because of:

(a) an engagement with community groups, sporting clubs and similar organisations undertaken in their capacity as a councillor; or

(b) membership of a political party; or

(c) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or

(d) their religious beliefs; or

(e) they were a student of a particular school or their involvement with a school as a parent of a student at the school.

Clause 48 Omission of s 176 (Duty to report another councillor's material personal interest, conflict of interest or misconduct)

Under the current section 176, all councillors have an obligation to report another councillor's MPI, COI or misconduct. If the MPI or COI arises during a meeting, the councillor is to report the matter to the person presiding over that meeting or otherwise, to the chief executive officer. All reports of another councillor's misconduct are to be directed to the chief executive officer.

Clause 48 omits section 176 to remove the requirement for a councillor to report another councillor's MPI, COI or misconduct. This requirement is an unnecessary duplication as all councillors are bound by the local government principles. Not disclosing another councillor's MPI, COI or misconduct knowingly would breach these principles, particularly ethical and legal behaviour.

Clause 49 Replacement of ss 178 - 180

Clause 49 replaces sections 178, 179 (BCC councillors code of conduct) and 180 (Assessing complaints).

New section 178 (What this division is about) provides:

- this division is about dealing with complaints about the conduct and performance of councillors to ensure appropriate standards of conduct and performance are maintained and that a councillor who engages in inappropriate conduct or misconduct is appropriately disciplined;
- the BCC councillor conduct review panel is the body responsible for hearing and deciding a complaint of misconduct or inappropriate conduct by a councillor. The jurisdiction of the tribunal is omitted from chapter 6 part 2 division 6. The policy intent is for complaints of inappropriate conduct and misconduct to be heard and decided by the panel at the local level;
- this division does not apply to the conduct and performance of councillors at meetings of the council or its committees, other than a

failure of a councillor to comply with a direction to leave a meeting of the council or its committees made by the chairperson of the meeting. The council's rules of procedure deal with these matters (refer new section 186A);

- that a councillor may be dealt with for an act or omission that constitutes misconduct under CoBA may also be dealt with for the same act or omission as the commission of an offence or under the Crime and Misconduct Act;
- a decision under this division by the BCC councillor conduct review panel, the department's chief executive or the chief executive officer of BCC is not subject to appeal.

Clause 49 amends section 178 to include in the definition of misconduct the following:

- a refusal by the councillor to comply with a direction or order of the BCC councillor conduct review panel about the councillor;
- a failure of a councillor to comply with a direction to leave a meeting of the council or its committees made by the chairperson of the meeting;
- a contravention of section 173(3) (Use of information by councillors) (a councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the council);
- a contravention of section 175(4) (Councillors conflict of interest at a meeting) (A councillor must deal with the real COI or perceived COI in a transparent and accountable way).

New section 178A (Application to former councillors) makes provision for the division to be applied to a person (councillor) who is no longer a councillor. Currently, for the purposes of assessing and referring complaints, a 'councillor' is defined to include 'a person who is no longer a councillor but who was a councillor when the misconduct is alleged to have happened'. All past councillors are therefore subject to the conduct review process. However, disciplinary actions that may be taken after an investigation are mostly applicable to serving councillors. There may be circumstances where it may not be appropriate/possible for disciplinary action to be taken against a former councillor. For example, the appropriate disciplinary action resulting from a complaint against a former councillor is dismissal, which would not be relevant.

New section 178A excludes former councillors from the mandatory conduct review process but provides discretion for disciplinary action to be taken within two years after the person ceases being a councillor. Further, an entity dealing with the complaint may decide to take no further action if the decision is considered to be in the public interest, similar to the provisions under the *Public Service Act 2008*.

The current section 179 (BCC councillors code of conduct) is repealed to enable BCC to make/apply a code as they see fit and will align CoBA with the LGA which does not make provision for a councillors' code of conduct.

New section 179 (Preliminary assessments of complaints) applies new section 179 to a complaint about the conduct or performance of a councillor received or made by the department's chief executive or the BCC and provides:

- the BCC or the department's chief executive must give written notice of the complaint to the chief executive officer of the local government;
- however, if the complaint was made by the chief executive officer, written notice must be given to the department's chief executive and the department's chief executive must conduct the preliminary assessment of the complaint.

A preliminary assessment is an assessment of a complaint about the conduct or performance of a councillor to decide whether the complaint is:

- about a frivolous matter or was made vexatiously;
- about inappropriate conduct, misconduct, official misconduct or another matter (including a general complaint against the council, for example);
- lacking in substance.

Section 179 does not apply to a complaint about official misconduct referred to the department's chief executive by the Crime and Misconduct Commission established under the Crime and Misconduct Act. Further, a complaint about conduct at a meeting is of no effect as these matters are dealt with under BCC's rules of procedure.

New section 180 (Action after preliminary assessments) sets out the action to be taken after the preliminary assessment is conducted by the complaints assessor (i.e. the chief executive officer of BCC or the department's chief executive, i.e. the person who conducted the preliminary assessment).

A) The complaints assessor may decide no further action be taken if the preliminary assessment is that the complaint is about a frivolous matter or was made vexatiously or is lacking in substance.

B) If the preliminary assessment is that the complaint is about misconduct or inappropriate conduct, the complaints assessor must refer the complaint to the BCC councillor conduct review panel.

C) If the preliminary assessment is that the complaint is about official conduct under the *Crime and Misconduct Act*, the complaints assessor must deal with the complaint in accordance with that Act.

D) If the preliminary assessment is that the complaint is about another matter, the complaints assessor must deal with the complaint in an appropriate way.

After taking action under section 180, the complaints assessor must give the entity who made the complaint, and the accused councillor, a written notice that states the type of complaint that the assessor has assessed the complaint as; the proposed action (if any) to be taken and if the complaint was about a frivolous matter or was made vexatiously or was lacking in substance, the written notice must state that it is an offence under subsection (7) for a person to make a complaint that is substantially about a matter that the complaints assessor has assessed as being frivolous or vexatious.

Clause 50 Amendment of s 180A (Preliminary dealings with complaints before hearing)

Clause 50 amends section 180A so that the section also applies if the department's chief executive refers a complaint to the BCC councillor conduct review panel and provides that if the complainant is also a councillor, the councillor must appear before the panel to confirm the complaint. Clause 50 also clarifies that despite section 178(3) (misconduct) and (4) (Inappropriate conduct), a failure of a councillor to comply with a requirement under section 180A(5)(a) (failure to appear before the panel) is not misconduct or inappropriate conduct.

Clause 51 Amendment of s 182 (Hearing and deciding complaints)

Clause 51 amends section 182 to apply the section to all complaints referred to the BCC councillor conduct review panel, not just misconduct, and removes the reference to the tribunal following the repeal of the jurisdiction of the tribunal from this division.

Clause 52 Amendment of s 183 (Taking disciplinary action – BCC councillor conduct review panel

Currently, the BCC councillor conduct review panel is restricted to taking certain prescribed disciplinary action, which may prevent the panel from taking more appropriate disciplinary action. For example, in the instance of a non-entitled claim for a small amount of travel allowance, the BCC councillor conduct review panel is prevented from ordering a repayment and the matter must be referred to the tribunal.

Currently under section 183, the BCC councillor conduct review panel may make any of the following orders/recommendations relating to inappropriate conduct or misconduct:

- an order that the councillor be counselled;
- an order the councillor make an admission of error or apologise;
- an order that the councillor enters into mediation; or
- an recommendation to the department to monitor the councillor.

To streamline the process and reduce the administrative complexity for assessing councillor complaints, the BCC councillor conduct review panel is empowered to hear and decide complaints, and the jurisdiction of the tribunal is omitted from chapter 6 part 2 division 6. The policy intent is for complaints of inappropriate conduct and misconduct to be heard and decided by the panel at the local level.

The BCC councillor conduct review panel is empowered to make orders listed above and also the following orders/recommendations:

- an order that the councillor reimburse BCC;

- a recommendation to the Minister that the councillor be suspended (including details of the suspension);
- a recommendation to the CMC or police that the matter be further investigated;
- a order that the councillor pay to BCC an amount of not more than the monetary value of 50 penalty units.

When deciding what disciplinary action is appropriate, the panel may consider, any inappropriate conduct or misconduct of the councillor in the past and any allegations made in the hearing that was admitted, or was not challenged (these considerations were previously available to the tribunal relating to misconduct).

If the panel decides that a councillor engaged in inappropriate conduct (the ***repeat conduct***) and the panel has during the year preceding the decision, twice decided that the councillor engaged in inappropriate conduct, the panel must consider the repeat conduct by the councillor to be misconduct.

Clause 53 Replacement of section 183A (Taking disciplinary action-tribunal)

Clause 53 inserts new section 183A to provide that the chief executive officer must keep a record of all written complaints received by the chief executive officer under this part and the outcome of each written complaint. The chief executive officer must ensure the public may inspect the part of the record that relates to outcomes of written complaints at the BCC public office or on the website except for complaints that were frivolous or vexatious, or lacking in substance, or that are a public interest disclosure under the *Public Disclosure Interest Act 2010*.

Clause 54 Omission of ss 184 and 185

Clause 54 repeals section 184 (Costs of tribunal to be paid by council) as the jurisdiction of the tribunal is omitted from chapter 6 part 2 division 6. The policy intent is for complaints of inappropriate conduct and misconduct to be heard and decided by the BCC councillor conduct review panel at the local level.

Clause 54 also omits section 185 (Inappropriate conduct in meeting of council) as a consequence of new chapter 6, part 3 division 7 (Conduct in meetings of the council).

Clause 55 Insertion of new ch 6, pt 2, div 7(Conduct in meetings of the council)

Clause 55 inserts a new chapter 6, part 2, division 7 (section 186A Conduct in meetings of the council or its committees) to apply the section to the chairperson of the council or a committee chairperson in addition to any powers they may have under the rules of procedure. The rules of procedure are under a local law the rules decided by BCC for the conduct of the participants at meetings of the council or its committees (including the rules for challenging decisions of the chairperson relating to observing or enforcing the rules).

New section 186A aligns with the Government's election policy to ensure that mayors and local councillors are clearly in charge of councils, by providing that if disorderly conduct happens in a meeting of the council or its committees, the chairperson of the meeting may make an order that the chairperson consider appropriate, including an order that the councillor leave the place where the meeting is being held or an order to remove the person if the person fails to leave when ordered. Under section 226 a decision of the chairperson of the council and a committee chairperson is not subject to appeal.

Clause 56 Amendment of s 191 (Appointing an acting chief executive officer)

Section 3(2) provides that compared to other local governments in Queensland, BCC is unique in its nature and the extent of its responsibilities and powers for a number of reasons including the fact that BCC has an Establishment and Coordination Committee that coordinates its business.

Under section 24 the standing committee of BCC called the Establishment and Coordination Committee is continued as a statutory committee of BCC. The committee coordinates the business of BCC. The committee

consists of the mayor and all committee chairpersons of the standing committees of BCC. Only a councillor may be a member of the committee. The mayor is the chairperson of the committee. The committee is collectively responsible to BCC.

Currently under section 191, BCC may appoint a qualified person to act as the chief executive officer during—

(a) any vacancy, or all vacancies, in the position;

(b) any period, or all periods, when the chief executive officer is absent from duty or can not, for another reason, perform the chief executive officer's responsibilities.

Clause 56 amends section 191 to replace 'council' with the 'Establishment and Coordination Committee' to give the Establishment and Coordination Committee the power to appoint a qualified person to act as the chief executive officer.

A further amendment is made to section 238 to provide that BCC may, by resolution, delegate a power under this Act or another Act to the Establishment and Coordination Committee (refer to clause 65).

Clause 57 Amendment of s 194 (Disciplinary action against council employees)

Currently the chief executive officer is the only person who may take disciplinary action against a BCC employee. It is considered that the requirements of these provisions should reflect the arrangements at the State level. At the State level, the Director-General is not always the decision-maker on disciplinary actions.

Clause 57 amends section 194 so that the chief executive officer is not the only person who may take disciplinary action against a BCC employee. Further a regulation may prescribe when disciplinary action may be taken against a council employee and the types of disciplinary action that may be taken against a council employee. The policy intent is that the chief executive officer may delegate this power under section 239 to an appropriately qualified employee or contractor of BCC.

Also currently, under section 194(3) the Local Government Employee Disciplinary Appeal Board is the entity that is prescribed by regulation to

hear and decide appeals against a decision of the chief executive officer to take disciplinary action against a local government employee.

Consistent with the government's policy to reduce unnecessary red tape and duplication, *clause 57* omits section 194(3) to remove the head of power for a regulation to prescribe an appeal entity, as the policy intent is for appeals in relation to discipline decisions to go to the QIRC.

Clause 58 Amendment of s 196 (Improper conduct by council employees)

Clause 58 makes consequential amendments to section 196 as a result of the Bill requiring BCC to rely on the *Corporations Act 2001 (Cwlth)* in relation to corporatising an activity.

Clause 59 Amendment of s 197 (Use of information by council employees)

Clause 59 makes consequential amendments to section 197 as a result of the Bill requiring BCC to rely on the *Corporations Act 2001 (Cwlth)* in relation to corporatising an activity.

Clause 60 Amendment of s 198 (Annual report must detail remuneration)

Currently section 198 provides that the annual report of BCC must state—

(a) the total remuneration packages that are payable (in the year to which the annual report relates) to the chief executive officer and senior contract employees; and

(b) the number of senior contract employees who are being paid each of the total remuneration packages.

Remuneration packages differ between executives across specified levels and within those specified levels. It is normal practice that each executive's

remuneration package is confidential between the chief executive officer and the relevant executive.

If packages are identified individually, then effectively all executives will know exactly what each executive receives. If the packages are identified by reference to specific or general descriptions of executive positions then the remuneration packages of individual executives will also be able to be ascertained.

Clause 60 amends section 198 to clarify that the annual report of BCC must state the total remuneration packages that are payable to the chief executive officer together with all senior executive employees and the number of senior executive employees who are being paid each band of remuneration, so that a particular package can not be ascertained. Band of remuneration is an increment of $100 000.

Clause 61 Amendment of s 215 (False or misleading information)

Clause 61 makes consequential amendments to section 215 as a result of removing the tribunal from the councillor complaints process.

Clause 62 Amendment of s 216 (Administrators who act honestly and without negligence are protected from liability)

Clause 62 amendments are consequential to the restoration of body corporate status and the removal of the jurisdiction of the tribunal from BCC.

Clause 63 Amendment of s 217 (Who is authorised to sign council documents)

Clause 63 amends section 217 to clarify that the head of BCC is the mayor.

Clause 64 Amendment of s 218 (Name in proceeding by or against council)

The recent Court of Appeal decision in *Ipswich City Council v Dixonbuild P/L* [2012] QCA 98 highlighted that under the LGA section 237 (equivalent section 218 CoBA), a local government can only start proceedings in one of two ways:

- an officer of a local government brings the proceeding as an individual. (In this case the person is not acting in their official capacity and would not attract the protection of the 'public officer' provisions in the *Justices Act 1886* (JA), making the officer potentially liable for costs in their own right); or
- the local government commences the proceedings in the local government's name. (In this case no individual person is classified as a public officer and the public officer provisions under the JA do not operate, making the local government itself potentially liable for a defendant's costs).

The Court of Appeal determined that section 237 did not allow for actions to be brought by local government employees on behalf of their respective local governments.

The JA provides that a matter may proceed in the absence of a defendant where the complaint is brought by a public officer (s142A(1)), and costs can only be awarded against public officers who are complainants if the judge is satisfied that it is proper to do so (s158A(1)).

A local government may continue to bring a JA complaint in its own name but the Dixonbuild case highlighted that this approach will not address the issue of costs or ex parte hearings under sections 142A and 158A of the JA as a local government is neither a police officer nor a public officer within the meaning of JA, section 158A. The practical issue is noted whereby a

local government will need to exercise care when commencing proceedings. If a local government commences in their own name they will be unable to gain the benefit of s158A of the JA but proceedings commenced by a local government officer on a council's behalf will gain the benefit of that provision.

Clause 64 amends section 218 to clarify that BCC may start a proceeding in either the name of BCC or the name of a 'public officer' (as defined under the JA) of BCC. A council officer or employee who brings a JA complaint as a public officer will then have the benefit of the JA, section 158A.

Clause 65 Amendment of s 238 (Delegation of council powers)

Section 3(2) provides that compared to other local governments in Queensland, BCC is unique in its nature and the extent of its responsibilities and powers for a number of reasons including the fact that BCC has an Establishment and Coordination Committee that coordinates its business.

Under section 24 the standing committee of BCC called the Establishment and Coordination Committee is continued as a statutory committee of BCC. The committee coordinates the business of BCC. The committee consists of the mayor and all committee chairpersons of the standing committees of BCC. Only a councillor may be a member of the committee. The mayor is the chairperson of the committee. The committee is collectively responsible to BCC.

Under CoBA, section 238 BCC may, by resolution, delegate a power under this Act or another Act to—

(a) the mayor; or

(b) the chief executive officer; or

(c) a standing committee or joint standing committee (i.e. a committee consisting of councillors of BCC and other local governments); or

(d) another local government, for the purposes of a joint government activity; or

(e) a councillor, for the purpose of exercising a power as a shareholder in relation to a corporate entity.

However, BCC must not delegate a power that an Act states must be exercised by resolution.

Section 238 of CoBA allows council to delegate its powers to standing committees of council. Prior to the commencement of CoBA, it was clear that the Establishment and Coordination Committee was a standing committee and therefore could receive delegations. However, the Establishment and Coordination Committee is constituted as a Statutory Committee under section 24 of CoBA, and it is not clear whether the Establishment and Coordination Committee retains its status as a standing committee of council, (in which case it is disqualified from receiving delegations under section 238).

Clause 65 amends section 238 to put beyond doubt that BCC may by resolution, delegate a power to the Establishment and Coordination Committee.

Also, the Bill amends schedule 3, section 4A(2) of the *Right to Information Act 2009* (RTI) to provide that if BCC delegates a power to the Establishment and Coordination Committee under section 238 of CoBA, the information relating to the delegation or the power to be exercised under the delegation is not included within the scope of the right to information exemption. This amendment will ensure the Establishment and Coordination Committee is subject to transparency and scrutiny when delegated such a council power.

Clause 66 Amendment of s 239 (Delegation of chief executive officer's powers)

Clause 66 amends section 239 as a consequence of removing the requirement for BCC to have a drafting certificate for a local law.

Clause 67 Replacement of s 244 (Requirements for particular guidelines)

A councillor may request advice from a council employee/chief executive officer if the request complies with the acceptable requests guidelines and if it relates to the ward which the councillor represents (refer s 171 Requests for assistance or information).

Clause 67 replaces section 244 to provide for the acceptable requests guidelines. Acceptable requests guidelines and advice guidelines are now one and the same and referred to as 'acceptable requests guidelines'. The acceptable requests guidelines are about:

- the way a councillor can ask a council employee for advice to help the councillor to carry out their responsibilities under this Act;
- when advice relates to the ward a councillor represents;
- the reasonable limits on the request a councillor can make.

The acceptable requests guidelines are made by the Establishment and Coordination Committee.

Clause 68 Omission of s 249 (Review of this Act)

Clause 68 omits section 249 to remove the statutory requirement for the Minister to review the operation and effectiveness of CoBA within 4 years of its commencement. In accordance with the Council of Australian Governments' regulatory best practice principles, to which Queensland is a signatory, it is good practice for legislation to be periodically and systematically reviewed to ensure that it remains relevant and effective over time. This has been the approach taken with respect to CoBA since its commencement. Consequently, the statutory review requirement under CoBA is redundant and only adds to the volume of unnecessary legislative prescription. Removing this section is consistent with the Government's policy to reduce such unnecessary statutory volume and prescription.

Clause 69 Insertion of new s 250A (Advisory polls)

The LGA93 enabled local governments to hold advisory polls on a range of factors that affected a local government area. Voting was compulsory, however, the results of the poll did not bind the local government.

There is no provision in CoBA to enable BCC to conduct polls in the manner in which it could under the LGA93. In contrast, NSW and Victoria permit their local governments to conduct non-binding polls.

Clause 69 inserts a new section 250A to reinstate BCC's powers to hold a voluntary poll of the electors in Brisbane or part of Brisbane on issues concerning the Brisbane area.

Clause 70 Amendment of s 252 (Regulation-making power)

Clause 70 amends section 252 to remove a reference to 'corporate entity' as a consequence of removing the ability for BCC to corporatise under CoBA (see clause 22).

Clause 71 Insertion of new ch 8, pt 5 (Transitional provisions for Local Government and Other Legislation Amendment Act 2012)

Clause 71 inserts a new chapter 8, part 5 (ss 267 and 268) to provide for transitional arrangements upon commencement of the provisions providing for the new complaints and local law processes.

New section 267 (Change in dealing with complaints) provides that if a complaint had been started upon commencement about the conduct or performance of a councillor, the complaint must be finalised and dealt with under the process that was in place when the complaint was started (i.e. before the commencement of the section).

Similarly, new section 268 (Change in process for making local laws) provides that if BCC started making a local law upon commencement, BCC may finalise making the local law under the process that was in place when BCC began making the local law (i.e. before the commencement of the section).

Clause 72 Amendment of schedule (Dictionary)

Clause 72 consequentially amends definitions in the dictionary and specifically amends the definition of ***ordinary business matter*** to provide BCC with the flexibility to prescribe by regulation for another matter as an ordinary business matter.

Part 3 Amendment of Local Government Act 2009

Clause 73 Act amended

Clause 73 states that part 3 and the schedule of the Bill amends the *Local Government Act 2009* (LGA).

Clause 74 Amendment of s 5 (Relationship with City of Brisbane Act 2010)

Clause 74 amends section 5 to clarify the relationship between CoBA and the LGA. CoBA provides for the system of local government in Brisbane by providing for the constitution of BCC and the nature and extent of BCC's responsibilities and powers.

Clause 74 omits section 5(2) as the amendments in this Bill now apply certain provisions of the LGA to BCC such as provisions about superannuation and joint local governments.

Clause 75 Amendment of s 7 (What this part is about)

Clause 75 amends section 7 as a consequence of the substitution of section 11 (see clause 77) to reinstate the body corporate status of local governments.

Clause 76 Amendment of s 9 (Powers of local government generally)

Clause 76 provides boundaries about a local government's powers when it is a component local government for a joint local government. A local government can not exercise its powers over a joint local government area except as a delegate of the local government. See clause 80 for further information about the reinstatement of joint local government provisions.

Clause 77 Replacement of s 11 (Who a local government is constituted by)

Under its *Empowering Queensland Local Government* Election Policy, the government undertook to restore the body corporate status of local governments which had been removed by the *Local Government and Industrial Relations Amendment Act 2008*. Brisbane City Council was not affected by this move and retained its body corporate status under the *City of Brisbane Act 1924* and subsequently the *City of Brisbane Act 2010*.

Clause 77 replaces section 11 (Local governments are bodies corporate) to restore body corporate status to local governments. Whether or not local government employees consequently fall under the ambit of the *Commonwealth Fair Work Act 2009* will be a matter for each local government to determine, based upon its own trading activities and whether or not it is a 'constitutional corporation' for the purposes of the Fair Work Act.

Clause 78 Amendment of s 12 (Responsibilities of councillors)

Under both CoBA and the LGA, it is the responsibility of the mayor to provide a strategic role in the economic, social and environmental management of the local government area. However, one of the differences between the LGA and CoBA is that the mayor of Brisbane has a responsibility in the preparation of the budget.

Clause 78 amends section 12 to align the LGA mayoral responsibility to prepare the budget with those of CoBA, removes the mayor's responsibility to liaise with the chief executive officer on behalf of other councillors and includes as a mayoral responsibility the power to direct not only the chief executive officer but also senior executive employees in line with the Government's policy commitment to ensure that mayors and councillors are in charge of councils.

Clause 79 Amendment of s 13 (Responsibilities of local government employees)

Clause 79(1) omits section 13(3)(e) to align the LGA with CoBA by removing the requirement for the chief executive officer to keep a record, and give the local government access to a record, of all directions that the mayor gives to the chief executive. The obligation on the chief executive officer under section 13(3)(e) is considered inconsistent with the government's objectives of removing red tape and associated legislative burdens on local governments.

Clause 79(2) amends section 13(3)(g) to provide that requests for advice by councillors is not limited to seeking advice to help the councillor make a decision, but the councillor may request advice to help a councillor perform his or her role as a councillor.

Clause 80 Insertion of new ch 2A (Joint local governments)

Clause 80 inserts new ch 2A to enact a government election commitment to reinstate joint local government provisions. The current provisions relating to the activities of joint local government entities to allow for multiple purposes that could also involve State and local agencies will be retained and the effective tool of joint local governments to enhance capacity in Queensland's rural/regional local governments will be reinstated.

Joint local governments are developed to exercise a jurisdiction of local government that could go beyond the boundaries of a single local government. In this respect, local government functions could be conducted on a regional basis enabling a greater level of co-ordination to occur in providing services to the community, i.e. a joint local government could be established to perform functions for component local governments. A component local government is a local government entitled to be represented on a joint local government, either in its own right or as a member of a group of local governments.

New chapter 2A, section 25B to section 25J provide for the constitution, establishment, body corporate status, powers, restrictions/limitations on powers, the appointment of a chairperson/deputy chairperson, disbursements from the operating funds of a joint local government and their winding up.

Clause 81 Amendment of s 26 (What this part is about)

Clause 81 clarifies the definition of a 'model local law' as being a local law that incorporates a local law as approved by the Minister under section 26(7).

Clause 82 Replacement of ss 29 and 29A

Clause 82 implements the Government's *Empowering Queensland Local Government* Election Policy 19.1 to provide local communities with the

power to establish appropriate local laws through a responsible, accountable local government.

New section 29 (Local law making process) clarifies that a local government has the power to decide its own process for making local laws, subject to certain provisions in the Act, and clarifies that local laws are made by passing a resolution.

Currently there is uncertainty as to whether a model local law, when adopted by a local government, could be altered, for example, including a provision to amend/repeal an existing local law (that would be inconsistent) with the model local law without triggering a State interest check.

The policy intent is to clarify that if a local government decides a model local law or part of a model local law is necessary as a local law applying in a local government's area, the local government may make a local law, by resolution, to the extent it 'incorporates' the model local law or part of the model law. The process for making the model local law is the same as for making any other local law. The local government has the flexibility to incorporate all or part of a model local law in the new local law but a State interest check/public consultation will be required on the part/parts of the new local law that are not model local law provisions and/or any amendment/repeal of an existing local law that would be inconsistent with the model local law. For further information about the operation of State interest checks refer new section 29A.

New section 29 also clarifies that if a local government proposes to make a local law about a matter, and there is an existing local law about the matter that would be inconsistent with the new local law, the local government must amend or repeal an existing local law. The amendment or repeal could be in the same instrument as the new local law. A State interest check will not be required on the amending/repealing provisions.

Under section 26 an interim local law has effect for 6 months or less. The policy intent is for interim local laws to be implemented quickly while community engagement is undertaken allowing either a quick regulatory response to an issue that might cause risk to health or safety, or regulating an issue while community engagement is undertaken to prevent potential transgressions against the proposed local law (e.g. preventing damage to vegetation while the proposed law is out for consultation). Compared with the LGA93 the existing provisions in the LGA are silent on community engagement requirements for interim local laws causing uncertainty.

New section 29 provides certainty about when an interim local law expires by requiring the interim local law to state when it expires, and clarifies that public consultation is not mandatory before making a local law for:

- an interim local law
- a local law to the extent it incorporates a model local law, and does not contain an anti-competitive provision (refer section 38).

There is nothing to prevent a local government from first engaging in consultation if the local government chooses.

Further, new section 29 is consistent with the Government's policy to provide local governments with the power to establish appropriate local laws through a responsible, accountable local government by removing the requirement for the Minister to be satisfied that local laws are drafted substantially in accordance with the LSA and returns that responsibility local governments to ensure local laws are drafted in accordance with the guidelines issued by the Parliamentary Counsel under the LSA.

Clause 82 replaces section 29A (State interest check) to remove the requirement for the Minister to be satisfied that the local law complies with State interests before the local law is made. New section 29A instead requires a local government to consult with relevant government entities about the overall State interest in the proposed local law before making the local law.

Consistent with the Government's policy to remove unnecessary State interference from the local law making process and to empower local governments to establish appropriate local laws, local governments will no longer be required to give the Minister:

- copy of the proposed local law;
- a drafting certificate for the proposed local law;
- information required by the Minister or under a regulation.

Further, before making a proposed local law, the Minister will no longer be required to assess the overall State interest impact of the proposed local law and will no longer—

- impose conditions on the local government that the Minister considers appropriate; or
- impede the local government from proceeding further in making the proposed local law only if it—

— satisfies any conditions about the content of the proposed local law; and

— agrees to satisfy any other conditions.

Although the Ministerial approval process is removed from the making of local laws, if a local government does not comply with the requirements under section 29 the Minister, on behalf of the State, may take action under section 38AB to suspend or revoke a particular local law.

New section 29A also further clarifies that section 29A does not apply:

- if the proposed local law is a subordinate local law; or
- to a local law that incorporates a model local law, or a part of a model local law; or
- to any amendment or repeal of an existing local law that would be inconsistent with the model local law.

Clause 83 Amendment of s 29B (Notice of new local law)

The current requirements for publication add significantly to the costs of the publication of a gazette notice. Consistent with the Government's policy objectives of removing red tape and the associated legislative burden on local governments, *clause 83* amends section 29B to:

- remove the requirement for the notice of the making of a local law to be published in a newspaper that is circulating generally in the local government area (this will remove a cost to local government);
- consistent with the gazette notification of State subordinate legislation, new section 29B(3) reduces the information required in the gazette notice to the following:

  (a) the name of the local government;

  (b) the date when the local government made the resolution to make the local law;

  (c) the name of the local law;

  (d) the name of any existing local law that was amended or repealed by the new local law;

- extend the time within which the local government must give the Minister a copy of the gazette notice and local law from 7 days to 14 days and allows the copy of the local law to be given in electronic form.

Clause 84 Amendment of s 31 (Local law register)

Clause 84 amends section 31 to require the department's chief executive to keep a database of all Queensland local governments' local laws and for a copy of the database to be publicly accessible on the department's website. The administrative practice of the Department of Local Government has been to have a central repository of local laws. Doing so facilitates transparency, scrutiny, and ease of access to local laws. The amendments legislatively formalise the current administrative practice in this regard. Furthermore, they are in line with "leading practice" as identified by the Productivity Commission in its July 2012 study into Local Government Regulation.

Clause 85 Omission of s 33 (Regular review of local laws)

Clause 85 removes the mandatory requirement for local governments to regularly review the provisions of their local laws. Consistent with the Government's policy to provide local governments with the power to establish appropriate local laws, the Bill gives local governments the autonomy to manage the currency of their local laws.

Clause 86 Amendment of s 37 (Development processes)

The LGA section 28 provides the power for a local government to make and enforce a local law that is necessary or convenient for the good rule and local government of its local government area.

Section 37 provides that a local government must not make a local law that establishes an alternative development process. An alternative development process is a process that is similar to, or duplicates, all or part of a process in the *Sustainable Planning Act 2009* (SPA), chapter 6. SPA provides that the Integrated Development Assessment System (IDAS) regulates development that is made assessable through planning schemes and other planning instruments.

Clause 37 provides that if a local law already contains a provision that establishes an alternative development process, a local government may amend or repeal the provision at any time. However, in any implementation of this provision, a local government will need to ensure that relevant local laws comply with existing requirements under the legislation on the need for consistency with any law made by the State (refer section 27). Furthermore, the Minister has the power to suspend or revoke particular local laws if the Minister reasonably believes the local law is contrary to any other law (refer new section 38AB).

Clause 86 amends section 37 to provide that the section does not apply to local laws about advertising devices, gates and grids, levees and roadside dining, if these matters are not already dealt with in a planning scheme, the Planning Act or another instrument made under that Act.

The amendment aligns with the Government's *Empowering Queensland Local Government* Election Policy 19.2 which provides that the jurisdiction of local laws is complementary to, and does not replicate the controls and management that already exist under Queensland legislation.

Clause 87 Renumbering of ch 3, pt 1, div 4 (Miscellaneous)

Clause 87 renumbers chapter 3 part 1 division 4 (Miscellaneous) as division 5 so that new division 4 (Action by the Minister about particular local laws) new section 38AB (Suspending or revoking particular local laws) is inserted before section 38A (Local Law about seizing and disposing of personal property).

Clause 88 Insertion of new ch 3, pt 1, div 4

Clause 88 inserts new chapter 3 part 1 division 4 (Action by the Minister about particular local laws) section 38AB (Suspending or revoking particular local laws) to provide that the Minister may revoke/suspend a local law if the Minister reasonably believes a local law is contrary to any other law, is inconsistent with the local government principles or does not satisfactorily deal with the overall State interest.

Clause 89 Insertion of new s 38B

Clause 89 inserts in new chapter 3 part 1 section 38B (Owners' liability for party houses) to provide that a local government may make a local law that makes the owner of a residential property liable to a penalty because of excessive noise regularly emitted from the property.

In recent years there has been a growing concern about the proliferation and impact of houses or units used as 'party houses'. For instance, large luxury mansions and waterfront houses on the Gold Coast are sometimes rented out for short periods (e.g. weekends) at higher than usual rates and ultimately become the venue for lengthy parties. Some 'party houses' can be rented for thousands of dollars per night as people pool their money to pay for the venue.

Permanent residents whose amenity has been affected by noise, anti-social behaviour, parking, excess waste and loss of neighbourhood amenity is not only restricted to holiday destinations, as 'party houses' may be the source of complaints in all residential areas.

To enable local governments to deal with these matters at a local level, the Bill clarifies that a local government may make a local law that makes the owner of a residential property, including a tenant if the tenant has a right of exclusive occupation of the property under a lease, liable to a penalty because of excessive noise regularly emitted from the property. The Bill defines a 'residential property' as a property that would ordinarily be used, or intended to be used, as a place of residence or mainly as a place of residence but a property is not precluded from being a residential property merely because the property is rented on a short-term basis.

The policy intent is to clarify that a local government may make a local law about this matter, and to give the local government the flexibility in the local law to fix the number of times that excessive noise must be emitted from a property before the owner becomes liable to the penalty.

The Bill provides that in a proceeding about a contravention of the local law, a noise abatement direction given to a person at a property (a copy of information recorded in the register of enforcement acts, under the *Police Powers and Responsibilities Act 2000*, about the giving of the direction is evidence of the matters stated in it) is evidence of excessive noise being emitted from the property.

A noise abatement direction is a direction given to a person by a police officer under the *Police Powers and Responsibilities Act 2000*, section 581(3).

The Bill clarifies that a local government's chief executive officer may ask the police commissioner to give the local government's chief executive officer information about noise abatement directions given to persons in the Brisbane and that the police commissioner must comply with the request. A local government may then take action against owners/tenants under the terms of the local laws.

A defendant may, with the leave of the court, require the prosecution to call any person involved in the giving of the noise abatement direction to give evidence at the hearing. The court may give leave only if the court is satisfied that an irregularity may exist in relation to the information or the giving of a noise abatement direction or it is in the interests of justice that the person be called to give evidence.

With respect to other anti-social behaviour by occupiers of 'party houses', there are already existing State laws, for example, the offence of public nuisance could potentially apply to neighbourhood disruptions resulting from party house activities while damage to property could constitute wilful damage under the Criminal Code. Similarly, local governments already have the power to make local laws to regulate parking. Consequently, the Bill relates only to the regulation by local laws of excessive regular noise from 'party houses'.

It is important to note that local laws are required under the Bill to be drafted in accordance with guidelines issued by the Parliamentary Counsel under the LSA, section 9. Also, under new section 38AB the Minister may suspend or revoke a local law the Minister reasonably believes is contrary

to any other law, is inconsistent with the local government principles, or does not satisfactorily deal with the overall State interest.

Clause 90 Replacement of s 40 (Conducting beneficial enterprises)

Chapter 3, part 2, division 1 provides for local governments to conduct beneficial enterprises as part of their day to day business. The LGA beneficial enterprise provisions operate also operate under the *Statutory Bodies Financial Arrangements Act 1982* (the SBFA Act). The object of the SBFA Act is to provide for the efficient and effective management of the powers of statutory bodies to enter into financial arrangements. Section 5(2)(e) of the SBFA Act provides that a statutory body is an entity established under an Act, that is a local government.

Section 40 is replaced to remove unnecessary regulatory duplication and red tape and to rely on the SBFA beneficial enterprise processes.

Clause 90 replaces the existing section 40 to apply if a local government wants to conduct a beneficial enterprise. Amongst other things, the section sets out certain obligations that a local government must comply with before it may conduct a beneficial enterprise. However, section 40 does not contain a clear and express provision stating that a local government has the power to conduct a beneficial enterprise which may have implications in relation to the operation of the SBFA Act.

New section 40 clarifies that a local government has the power to conduct a beneficial enterprise, streamlines the requirements and processes for conducting a beneficial enterprise but does not relieve local governments from the requirement to obtain approvals required under the SBFA.

Clause 91 Replacement of s 41 (Register of beneficial enterprises)

Clause 91 replaces section 41 (Identifying beneficial enterprises) to require local governments to list in the annual report for each financial year, all beneficial enterprises that the local government conducted during the financial year. New section 41 replaces the prescriptive beneficial

enterprises provisions in the LGA that required local governments to establish a register for each beneficial enterprise conducted and required local governments to give written notice of the establishment of the register and the making of entries to the department's chief executive and the auditor-general.

Clause 92 Omission of s 42 (Planning for a beneficial enterprise with the private sector)

Clause 92 omits section 42 to reduce the legislative burden on local governments. Section 42 required extensive planning requirements if a local government planned to invest in a beneficial enterprise to be conducted with the private sector, including requiring local governments to identify the amount that is to be invested, as a capital expenditure, in the budget and required local governments to obtain approval of the department's chief executive before investing in a beneficial enterprise in certain circumstances.

Clause 93 Amendment of s 44 (Ways to apply the competitive neutrality principle)

Chapter 3, part 3, division 2 is about the application of the National Competition Policy Agreements in relation to the significant business activities of a local government, including the application of the competitive neutrality principle if, in the circumstances, the public benefit (in terms of service quality and cost) outweighs the costs of implementation.

A significant business activity is a business activity of a local government that—

(a) is conducted in competition, or potential competition, with the private sector (including off-street parking, quarries, sporting facilities, waste services etc); and

(b) meets the threshold prescribed under a regulation.

The Bill removes the ability of a local government to corporatise an activity under these provisions and provides that if a local government wants to corporatise an activity, it is to be done under the *Corporations Act 2001 (Cwlth).*

Section 44 provides that the competitive neutrality principle may be applied by commercialisation of a significant business activity; or corporatisation of a significant business activity; or full cost pricing of a significant business activity, and defines various terms and sets up a head of power for a regulation to provide for certain matters.

Clause 93 omits all references to corporatisation to remove legislative duplication of the LGA with the *Corporations Act 2001* (Cwlth).

Clause 94 Omission of ch 3, pt 2, divs 3 and 4

As a consequence of the Bill requiring local governments to rely on the *Corporations Act 2001 (Cwlth)* in relation to corporatising an activity, *clause 94* omits chapter 3, part 2, divisions 3 and 4 (sections 49 to 58B). Complementary amendments are being considered to the *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010*.

Clause 95 Amendment of s 60 (Control of roads)

Clause 95 amends section 60 to define a private road to mean a road on land that is owned by a person who can restrict others from using it. Currently there is confusion about whether the definition of a road under section 59(2)(b)(ii), and the elements of control under section 60(2) give rise to claims that a local government has responsibility to maintain or improve private roads. The Bill clarifies that a local government is not liable for the construction, maintenance or improvement of a private road but that a local government retains the control to approve the naming and numbering of private roads.

Clause 96 Amendment of s 61 (Notice of intention to acquire land to widen a road)

Clause 96 corrects an error to clarify that the owner of land applies to the local government for particular things relating to land, and not to the Planning and Environment Court.

Clause 97 Amendment of s 63 (Appeal on a claim for compensation)

Clause 97 corrects a reference to the Planning and Environment Court with the correct reference to the Land Court. Notwithstanding an inherent jurisdiction the Land Court may have to extend time for an appeal, the Bill clarifies that the Land Court has the discretion to extend an appeal period.

Clause 98 Amendment of s 66 (Compensation if realignment not carried out)

Clause 98 amends section 66 to clarify that if a local government decides not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land; and structural improvements have been made on land that adjoins the road on the basis of the proposed realignment being effected, the local government must pay the owner of the land reasonable compensation for the decrease in value of the land because of the decision.

The reference in section 66 to the local government making structural improvements do not reflect the policy intent expressed in the explanatory notes for *Local Government Bill 2009* and the LGA93 section 912 which provide that if owners of affected land have made improvements to structures on the affected land, the local government must compensate the owners for the subsequent loss in value.

Clause 99 Amendment of s 69 (Closing roads)

Clause 99 amends section 69 to clarify that a local government may close a road to all traffic, or traffic of a particular class (e.g. heavy vehicles) under certain circumstances.

Clause 100 Amendment of ch 3, pt 4, hdg (The business of indigenous regional councils)

Clause 100 amends the heading of the part as a consequence of applying trust land provisions to all indigenous local governments (see clause 101).

Clause 101 Replacement of s 81 (What this part is about)

Under section 83 and 84 a trustee council is required to conduct its trustee business separately from normal local government business and all meetings relating to trust land are generally to be open to the public. A "trustee council" is defined as an indigenous regional council that is a trustee of trust land. "Trust land" is defined as land described in a deed of grant in trust that is issued under the *Land Act 1994*.

At present, the definitions of indigenous regional council and trustee council mean that the provisions relating to managing trust land only apply to two indigenous councils - Torres Strait Island Regional Council and Northern Peninsula Area Regional Council with other indigenous councils who are also trustees of land and conduct business relating to trust land not subject to these provisions.

The policy intent of the Act and the relevant legislation governing land trusts including the *Land Act 1994*, *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*, is for local government and land trustee business to be conducted separately.

Clause 101 replaces section 81 to apply the part to the indigenous local governments that are trustees of trust land. This will ensure transparency of decision-making and minimise the potential for, and perceptions of, COIs.

Clause 102 Amendment of s 82 (What this division is about)

Clause 102 amends section 82 to define trustee council to mean any one of the local governments listed in section 82(2) is a trustee of trust land and ensures that certain sections relating to managing trust land apply to those local governments.

Clause 103 Amendment of s 85 (Community forum input on trust change proposals)

Clause 103 clarifies that section 85 applies if:

- a trustee council that is an indigenous regional council; and
- the trustee council wants to consider a trust change proposal; and
- a community forum has been established for the division of the local government where the trust land is located.

Clause 104 Amendment of s 85A (Trust change decisions if no community forum)

Clause 104 clarifies that section 85A applies if a trustee council is an indigenous regional council and a trustee council proposes to make a trust change decision and a community forum has not been established for the division of the local government where the trust land is located.

Clause 105 Amendment of ch 4, pt 3, hdg (Financial sustainability and accountability)

Clause 105 amends the part heading to better reflect that the part, consequential to amendments, is about financial planning and accountability of local governments.

Clause 106 Omission of s 102 (Financial sustainability criteria)

Clause 106 consequentially omits section 102 as a result of new section 104 which aims to reduce the prescription and regulatory burden on local governments relating to financial management.

Clause 107 Replacement of s 104 (Financial management, planning and accountability documents)

Clause 107 replaces section 104 to reduce the prescription and regulatory burden on local governments relating to financial management and aims to clearly separate the financial planning components from the financial accountability components of the Act.

New section 104 removes the requirement for a long term community plan and allows local governments to plan for the community in the way they know best. It also reduces the number of financial management documents required and provides that the following documents will form the basis of local governments' financial management system:

Financial planning documents:

Strategic

- 5 year corporate plan which incorporates community engagement
- Long-term asset management plan

- Long-term financial forecast

Operational

- Annual budget including revenue statement
- Annual operational plan

Financial accountability documents:

- General purpose financial statements
- Asset registers
- An annual report
- A report on the results of an annual review of the implementation of the annual operational plan.

These documents are to be supported by financial policies that must include a revenue policy, investment policy and debt policy (to be reviewed regularly and updated when necessary).

Clause 107 clarifies that:

- a contract for the supply of goods or services includes a contract about carrying out work; and
- each of the sound contracting principles do not have to be given equal weight; and
- the local government determines the appropriate weighting based on individual circumstances.

The ***sound contracting principles*** are—

(a) value for money; and

(b) open and effective competition; and

(c) the development of competitive local business and industry; and

(d) environmental protection; and

(e) ethical behaviour and fair dealing.

Clause 108 Omission of s 106 (Sound contracting principles)

Clause 108 consequentially omits section 106 as the definition of sound contracting principles is relocated to new section 104 which aims to reduce the prescription and regulatory burden on local governments relating to financial management.

Clause 109 Insertion of new s 107A (Approval of budget)

Clause 109 inserts new section 107A to require the mayor to present the budget to the local government and that the local government must adopt the budget by resolution, with or without amendment. In addition, the mayor must give a copy of the budget the mayor proposes to present to the local government, to each councillor at least two weeks before the local government is to consider adopting the budget.

The local government must adopt the budget before 1 August in the financial year to which the budget relates.

Clause 110 Amendment of s 109 (Councillor's discretionary funds)

Currently, section 109 provides that a councillor must ensure that the councillor's discretionary funds are used in accordance with the requirements prescribed under a regulation. Discretionary funds are defined as being 'funds in the local government's operating fund that are budgeted for use by a councillor at the councillor's discretion'.

Clause 110 replaces the definition of 'discretionary funds' in section 109 to clarify that discretionary funds are for community purposes only, consistent with the scope of the provisions in the regulations.

Clause 111 Replacement of s 115 (Gathering information)

Clause 111 replaces section 115 to clarify that the department may carry out an investigation of a local government or its councillors for monitoring or evaluation purposes.

Clause 112 Amendment of section 121 (Removing unsound decisions)

Clause 112 consequentially amends section 121 as a result of amendments to section 29 to remove the requirement for the Minister to be satisfied that local laws are drafted substantially in accordance with the LSA before the local laws are made. New section 38AB however provides a separate head of power in relation to the Minister's power to revoke and suspend local laws if the Minister reasonably believes a local law is contrary to any other law; is inconsistent with the local government principles, or does not satisfactorily deal with the overall State interest.

Clause 113 Amendment of s 138 (What this division is about)

Generally, chapter 5, part 2, division 2 provides the powers that may be used to enable a local government to perform its responsibilities or to ensure that a person complies with the Act. The division explains the circumstances in which a person is authorised to enter a property and under the requirements set out in the division.

Clause 113 makes consequential amendments as a result of redefining 'remedial notice' and 'reasonable written notice' in new section 138AA and clarifies that not all employees or agents of a local government would ordinarily be authorised to use the powers to enter land under this division, only those that a local government authorises as appropriately qualified or trained to exercise a power to perform a responsibility under this division.

Clause 114 Insertion of new s 138AA (Notices for this division)

Clause 114 inserts new section 138AA to redefine 'remedial notice' and 'reasonable written notice' for entry onto land for the purposes of chapter 5, part 2, division 2.

Currently a remedial notice is a notice requiring action to be taken in relation to any property under a law under which the local government performs its responsibilities, for example, a notice requiring a pool to be fenced or building work to be remedied. Currently, a local government may only issue a remedial notice on a property owner.

However, there are instances where the local government may require action to be taken in relation to a matter that is the responsibility of the occupier, for example, if an unsightly and rusty vehicle owned by the occupier has been discarded and left raised on cinder blocks in the front yard of the property they occupy. In such circumstances, it would be more appropriate for the local government to issue a remedial notice on the occupier.

New section 138AA provides that a remedial notice is a written notice that requires the owner or occupier of a property to take action under a Local Government Act in relation to the property and can only be given by the local government to the person who, under a local government related law, is required to take the action stated in the notice. Local Government Act is defined in schedule 4 (dictionary).

Reasonable written notice is renamed 'reasonable entry notice' to better reflect the purpose of the notice – to inform who is to enter property, the reason for the entry and the days and times of the entry.

New section 138AA clarifies that a remedial notice and a reasonable entry notice may not be combined unless the owner of the property is also the occupier of the property or the occupier of the property is the person who is required to take the action stated in the remedial notice.

Clause 115 Amendment of s 138A (Identity card for local government workers)

Clause 115 amends section 138A to provide that a local government is not required to give a local government worker an identity card unless the worker is exercising a power of entry under the under chapter 5, part 2, division 2. A local government is not required to give a local government worker an identity card unless the worker is exercising a power of entry under this division.

This section does not stop a single identity card being issued to a person for the Act and for another purpose. A person who stops being a local government worker must return the person's identity card to the local government within 21 days after stopping being a local government worker, unless the person has a reasonable excuse. The maximum penalty for not returning an identity card is 10 penalty units.

Clause 116 Amendment of s 140 (Entry by an owner, with reasonable written notice, under a remedial notice)

Currently, if a remedial notice is given to a property owner, who is not the occupier, in circumstances such as to carry out property maintenance, the owner must give the occupier reasonable written notice of their intent to enter the property to take the action required under the notice. If the occupier refuses the owner entry to undertake the action, the LGA provides that the owner is not liable for non-compliance of the remedial notice yet the LGA does not enable a local government to enter the property and take the action on behalf of the owner. Therefore, no action can be taken and the problem giving rise to the remedial notice persists.

Clause 116 amends section 140 to set out the circumstances in which an owner, who is not an occupier may enter a property after the local government has given a remedial notice to the owner. After giving a reasonable entry notice to the occupier of the intent to enter, the owner may enter the property and take the action required under the remedial notice. Existing section 140(4) is omitted to clarify that under renumbered section

140(4), section 140 does not affect the rights an owner has apart from this section.

Clause 117 Amendment of section 142 (Entry by a local government worker, with reasonable written notice, under a remedial notice)

Currently, section 142 has proven problematic in that a remedial notice can only be given to an owner of property and not to an occupier. There is an anomalous situation under section 142 that action can only be taken if both the owner and occupier fail to take the action required under the notice.

Clause 117 amends section 142 to provide that if the local government gives a remedial notice to the owner or the occupier of a property (the **responsible person**, section 138AA provides that a remedial notice may only be given by the local government to the person who, under a Local Government Act, is required to take the action stated in the notice), and the responsible person fails to take the action.

Section 142 provides that after giving a reasonable entry notice, a local government worker may enter the property and take the action that is required under the remedial notice. The reasonable entry notice is given to the occupier, even if the responsible person who refused to take the action stated in the remedial notice is the owner, as it is the occupier who will be affected by the local government worker's entry and the action taken. Subsection (4) provides that the local government may recover the amount that the local government properly and reasonably incurs in taking the action as a debt payable by the person who failed to take the action.

Clause 118 Amendment of s 143 (Entry by a local government worker, with reasonable written notice, to take materials)

Clause 118 makes consequential amendments as a result of the renaming of 'reasonable written notice' to 'reasonable entry notice'.

Clause 119 Amendment of s 149 (Obstructing enforcement of Local Government Acts etc.)

Section 149 provides that a person must not obstruct an official in the exercise of a power under the Act or a local law, unless the person has a reasonable excuse. The maximum penalty for the offence is 50 penalty units. An ***official*** is any of the following persons—

(a) the Minister;

(b) the department's chief executive;

(c) an authorised officer;

(d) an investigator;

(e) the chief executive officer;

(f) an authorised person.

Clause 119 adds that the Mayor is an 'official' for the purpose of this section.

The note inserted to subsection (3) clarifies that local government workers are only those employees and agents who are authorised to act under chapter 5, part 2, division 2, and clarifies that in particular circumstances a local government worker may enter a property and carry out work or obtain materials in compliance with chapter 5, part 2, division 2.

Clause 120 Amendment of s 152 (Qualifications of councillors)

Clause 120 of the Bill amends section 152 to remove the prescribed qualifications for a person to be the mayor or a councillor of the Torres Strait Island Regional Council. The section of the explanatory notes under the heading "Consistency with fundamental legislative principles" contains further information regarding the policy rationale for the removal of these requirements.

Clause 121 Amendment of s 155 (Disqualification because of other high office)

Clause 121 amends section 155 so that councillors need not have to resign upon becoming a candidate for election as a member of the Queensland Legislative Assembly. If the person is elected as a Member of State Parliament, he or she will automatically stop being a councillor.

Clause 122 Insertion of new s 160B (Compulsory leave without pay)

Clause 122 inserts a new section 160B in keeping with the rules under the *Parliament of Queensland Act 2001*, to require councillors to take leave without pay for the election period when they are a candidate for election as a member of the Queensland Legislative Assembly.

Clause 123 Omission of s 168 (Senior councillors and full-time government jobs)

Clause 123 omits section 168 to remove the prohibition on senior councillors from having a full-time government job and enable councillors to manage their own commitments within the context of their jurisdictional responsibilities. This amendment is in line with the government's policy to minimise State interference in the management of local governments.

Clause 123 does not negate the onus on councillors to comply with the local government principles set out in section 4(2) of the LGA which provides that councillors observe very high standards of ethical and legal behaviour and make decisions in the public interest.

Clause 124 Amendment of s 170 (Giving directions to local government staff)

Clause 124 amends section 170 to give mayors the capacity to direct both the chief executive officer or senior executive employees, in line with CoBA. Under section 170 no councillor, including the mayor, may give a direction to any other council employee.

A senior executive employee of a local government is defined in amended section 196(5) to mean an employee of the local government who reports directly to the chief executive officer and whose position ordinarily would be considered to be a senior position in the local government's corporate structure.

Clause 125 Replacement of s 170A (Requests by councillors for advice or information)

To enact the government's election policy to ensure that mayors and councillors are clearly in charge of councils, *clause 125* replaces section 170A to provide for the acceptable request guidelines to be adopted by a resolution of the local government and not by the chief executive officer.

The acceptable request guidelines are guidelines about the way in which a councillor is to ask a local government employee for advice to assist the councillor carry out their responsibilities under the Act and the reasonable limits on requests that a councillor may make.

New section 170A also provides that a councillor's request to a local government employee for advice will not be limited to asking for advice to help the councillor make a decision but will be broadened to allow the councillor to ask for advice to help the councillor to carry out their responsibilities under the Act.

New section 170A(2) also provides that a councillor may, subject to any limits prescribed under a regulation, request the chief executive officer to provide information, that the local government has access to relating to the local government. A regulation can set limits on requests for information, for example, the maximum cost to a local government of providing information to a councillor.

A request has no effect if it does not comply with the guidelines and if the local government area is divided and the request relates to any division other than the division the councillor making the request represents. These restrictions do not apply to a request made by the mayor or the chairperson of a committee of the local government if the request relates to the role of the chairperson.

Clause 126 Insertion of new s 171A (Prohibited conduct by councillor in possession of inside information)

Section 171 provides that a person who is, or has been, a councillor must not use information that was acquired as a councillor to gain a financial benefit. It is an offence for a person to use such information for a financial benefit unless the information is lawfully available to the public. A councillor convicted of this offence is liable to a maximum penalty of 100 penalty units ($10 000) or two years imprisonment and is disqualified from being a councillor for four years.

In order to establish that a councillor has used information acquired as a councillor to gain a financial benefit, the court would need to be satisfied not only that the councillor used the information as the basis for their decision to gain a financial advantage (e.g. to purchase an asset at an advantageous price) but also that the information relied on was acquired as a councillor and not generally available in the public arena. This will be frustrated if the councillor can establish that there are a range of factors which contributed to the councillor's decision to acquire the asset.

Clause 126 inserts a new section 171A to clarify that a person, who is or was a councillor, (the insider) is prohibited from doing certain things if the insider is in possession of inside information, that is, information acquired as a councillor and information that the insider knows or ought reasonably to know, is not generally available to the public, similar to the insider trading provisions in the *Corporations Act 2001* (Cwlth).

As a result of the reforms to empower mayors and councillors, it is anticipated that these persons may, amongst other things, have increased access to confidential information in circumstances that are external to the rigour and record keeping processes associated with usual council and committee meetings. To serve as a check and balance to the empowering

provisions, the maximum penalty for offences under this section are 1000 penalty units or 2 years to reflect the seriousness of the offences.

Clause 127 Amendment of s 172 (Councillor's material personal interest at a meeting)

Currently, compliance with section 172(2)(c) may be confusing if the councillor is honestly unaware of their parent's, child's or sibling's interest in the matter. *Clause 127* provides that section 174(2)(c) only applies to a councillor if the councillor knows or should reasonably know, that their parent, child or sibling stands to gain a benefit or suffer a loss.

Clause 127 also amends section 172 to provide that a councillor does not have an MPI if the councillor's interest is no greater than that of other persons in the local government area. The amendment follows a recommendation of the Queensland Integrity Commissioner, that councillors also be exempt from disclosing a COI/MPI at a meeting for an interest common to a significant number of electors or ratepayers. A similar exemption applies to Members of Parliament in relation to proceedings in the Parliament and the Queensland Ministerial Code of Ethics contains a similar exemption for discussions in Cabinet concerning 'a matter of general public policy or whether the Minister has no greater interest than that of other classes of people in the community or within the Cabinet generally'.

Clause 128 Amendment of s 173 (Councillor's conflict of interest at a meeting)

Current section 173 prescribes the disclosure requirements for a councillor if the councillor has a COI (or perceived COI) in a matter to be discussed at a meeting of the local government, or any of its committees. A "conflict of interest" is defined as 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.

Among other things, a councillor is required to deal with the COI in a transparent and accountable way and inform the meeting of the councillor's

personal interests in the matter and how the councillor intends to deal with the COI if the councillor participates in the meeting. Details relating to the COI must be recorded in the minutes of the meeting and on the local government's website. Unlike the MPI provisions for councillors there is no exemption from disclosing a COI in a matter to be discussed at a meeting if the matter to be discussed is an ordinary business matter.

Clause 128 amends section 173, in accordance with the Government's election commitment to restore clearer, fair COI provisions, to provide an exemption for councillors from disclosing a COI in a matter to be discussed at a meeting if the matter to be discussed is an ordinary business matter. Also, following a recommendation of the Queensland Integrity Commissioner, amended section 173 exempts councillors from disclosing a COI at a meeting if the councillor has no greater personal interest in the matter than that of other persons in the local government area. A similar exemption applies to Members of Parliament in relation to proceedings in the Parliament and the Queensland Ministerial Code of Ethics contains a similar exemption for discussions in Cabinet concerning 'a matter of general public policy or whether the Minister has no greater interest than that of other classes of people in the community or within the Cabinet generally'.

Amended section 173 also clarifies that a councillor does not have a COI merely because of:

(a) an engagement with community groups, sporting clubs and similar organisations undertaken in their capacity as a councillor; or

(b) membership of a political party; or

(c) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or

(d) their religious beliefs; or

(e) they were a student of a particular school or their involvement with a school as a parent of a student at the school.

Clause 129 Omission of s 174 (Duty to report another councillor's material personal interest, conflict of interest or misconduct)

Under the current section 174, all councillors have an obligation to report another councillor's MPI, COI or misconduct. If the MPI or COI arises during a meeting, the councillor is to report the matter to the person presiding over that meeting or otherwise, to the CEO. All reports of another councillor's misconduct are to be directed to the CEO.

Clause 129 omits section 174 to remove the requirement for a councillor to report another councillor's MPI, COI or misconduct. This requirement is an unnecessary duplication as all councillors are bound by the local government principles. Not disclosing another councillor's MPI, COI or misconduct knowingly would breach these principles, particularly the need for ethical and legal behaviour.

Clause 130 Amendment of s 176 (What this division is about)

Chapter 6 part 2 division 6 is about dealing with complaints about the conduct and performance of councillors to ensure that appropriate standards of conduct and performance are maintained and a councillor who engages in misconduct is disciplined.

Clause 130 amends section 176 to summarise that misconduct is dealt with by the regional conduct review panel or tribunal and inappropriate conduct is dealt with by the mayor or the department's chief executive.

Clause 130 amends section 176(3) to add to the existing misconduct actions listed under section 176(3) the following:

- a failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting
- a refusal by the councillor to comply with a direction or order of the regional conduct review panel or tribunal about a councillor

- a repeat of inappropriate conduct that the mayor or the department's chief executive has ordered to be referred to the regional conduct review panel under section 181(2). Section 181(2) provides that the mayor or the department's chief executive may order that any repeat of the inappropriate conduct be referred to the regional conduct review panel as misconduct. Three orders of inappropriate conduct about the same councillor within 1 year must be referred to the regional conduct review panel or the tribunal and the matter is taken to be a complaint about misconduct.

Clause 130 amends section 176(10) to include that a decision under this part by the department's chief executive is not appealable.

Clause 131 Insertion of new ss 176A-176C

Clause 131 inserts new section 176A (Application to former councillors) to apply the division to a person (councillor) who is no longer a councillor. Discretion is provided to an entity to deal with the complaint under the division or to decide to take no further action in relation to the complaint, despite any contrary requirement of this division, if the entity considers the decision is in the public interest, similar to the provisions under the *Public Service Act 2008*.

Currently, for the purposes of assessing and referring complaints, a 'councillor' is defined to include 'a person who is no longer a councillor but who was a councillor when the misconduct is alleged to have happened'. This means that all past councillors are subject to the conduct review processes.

The disciplinary actions that can be taken after an investigation are mostly only applicable to current councillors. There may be circumstances where it may not be appropriate/possible for disciplinary action to be taken following the determination of a complaint against a former councillor. For example, when the appropriate disciplinary action resulting from a complaint against a former councillor is dismissal, such would no longer be relevant as the person is no longer a councillor.

New section 176B (Preliminary assessments of complaints) applies new section 176B to a complaint about the conduct or performance of a councillor received or made by the department's chief executive or the local government and provides:

- the local government or the department's chief executive must give written notice of the complaint to the chief executive officer of the local government;
- if the complaint is made by the mayor or the chief executive officer of the local government, written notice of the complaint must be given to the department's chief executive to conduct the preliminary assessment. This requirement is to prevent the mayor or the chief executive officer of the local government from conducting a preliminary assessment of their own complaint;
- that a preliminary assessment is an assessment to decide whether the complaint is about a frivolous matter or was made vexatiously or may be about inappropriate conduct, misconduct, official misconduct or another matter (including a general complaint against a councillor, for example) or is lacking in substance.

Clause 131 inserts new section 176C (Action after preliminary assessments) to set out the action to be taken after the preliminary assessment by the complaints assessor (i.e. the chief executive officer of the council or the department's chief executive officer, i.e. the person who conducted the preliminary assessment).

The action taken depends on whether the preliminary assessment determines the complaint to be about a frivolous matter or was made vexatiously; or whether the complaint is about inappropriate conduct, misconduct, official misconduct or another matter (including a general complaint against a councillor, for example) or is lacking in substance.

A) If the preliminary assessment is that the complaint is about a frivolous matter or was made vexatiously or lacking in substance, the complaints assessor may decide no further action be taken.

B) Inappropriate conduct—If the preliminary assessment is that the complaint is about inappropriate conduct, the following action is taken depending on the complaints assessor and who made the complaint.

Complaints assessor is the chief executive of the council

- if the complaints assessor is the chief executive officer of the local government and the complaint is about the conduct of the mayor or the deputy mayor, the complaint is referred to the department's chief executive. The referral to the department's chief executive is to prevent the chief executive officer of the council being put in a

potentially difficult position of assessing complaints about inappropriate conduct by the mayor or deputy mayor;

- if the complaints assessor is the chief executive officer of the council and the complaint is about the conduct of a councillor (other than the mayor or deputy mayor), the complaint is referred to the mayor for the mayor to take disciplinary action under section 181 (Inappropriate conduct).

Complaints assessor is the department's chief executive

- if the complaints assessor is the department's chief executive and the complaint is about the conduct or performance of a councillor (other than the mayor or deputy mayor) made by any person other than the mayor, the complaint is referred to the mayor;
- otherwise, take disciplinary action under section 181 (Inappropriate conduct).

C) Misconduct— If the preliminary assessment is that the complaint is about misconduct, the following action is taken depending on the complaints assessor and the who made the complaint.

- if the complaints assessor is the chief executive officer of the local government, and the preliminary assessment is that complaint is about misconduct, the complaint is referred to the department's chief executive. Under new section 177 (Complaints referred to the department's chief executive) the department may take certain action (refer section 177);
- if the complaints assessor is the department's chief executive and the preliminary assessment is that the complaint is about misconduct, the complaint is referred to the conduct review panel or the tribunal.

D) Official misconduct—If the preliminary assessment is that the complaint is about official conduct under the Crime and Misconduct Act, the complaints assessor must deal with the complaint in accordance with that Act.

E) Another matter—If the preliminary assessment is that the complaint is about another matter, the complaints assessor must deal with the complaint in an appropriate way.

Under section 176C(7), the complaints assessor must give the entity who made the complaint, and the accused councillor, a written notice that states the type of complaint that the person has assessed the complaint as; the

proposed action (if any) to be taken and if the complaint was about a frivolous matter or was made vexatiously or is lacking in substance, and the written notice must state that it is an offence under subsection (8) for a person to make a complaint that is substantially the same as a complaint that the person has previously made.

Clause 132 Replacement of s 177 (Assessing complaints)

Clause 132 replaces section 177 to provide for the action the department's chief executive may take if the chief executive officer of the local government refers a complaint under section 176C (Action after preliminary assessment).

The chief executive officer of the local government refers a complaint to the department's chief executive officer under 176C in the following circumstances:

- the local government's chief executive officer has preliminary assessed a complaint about the mayor or deputy mayor to be about inappropriate conduct -176C(3)(a)(i);
- the local government's chief executive officer has preliminary assessed a complaint to be about misconduct – 176C(4)(a).

The department's chief executive may decide the following action to be taken:

- the complaint be dismissed (frivolous, vexatious or misconceived, lacking in substance, or otherwise an abuse of process);
- the complaint is about inappropriate conduct and not misconduct, or the complaint is about misconduct and not inappropriate conduct;
- no further action;
- some other action be taken.

Misconduct—If the department's chief executive agrees/decides the complaint is about misconduct the department's chief executive may refer the complaint to the regional conduct review panel/tribunal (depending on the severity/nature of the conduct performance that is the subject of the complaint).

Inappropriate conduct—If the department's chief executive agrees/decides the complaint is about inappropriate conduct, the department's chief executive must take disciplinary action under section 181 (Inappropriate conduct).

Clause 133 Amendment of s 177A (Preliminary dealings with complaints before hearing)

Section 177A of the LGA applies if the department's chief executive refers a complaint of misconduct to a regional conduct review panel or the tribunal.

Clause 133 amends section 177A to provide that before conducting a hearing of the complaint, if the complainant is also a councillor, the councillor must appear before the regional conduct review panel or the tribunal to confirm the complaint. Clause 133 also clarifies that despite section 176(3) (misconduct) and (4) (Inappropriate conduct), a failure of a councillor to comply with a requirement under section 177A(5)(a) (failure to appear before the panel) is not misconduct or inappropriate conduct.

Clause 134 Amendment of s 180 (Taking disciplinary action)

Currently under section 180, the regional conduct review panel may make any of the following orders/recommendations that it considers appropriate in view of the circumstances relating to misconduct:

- an order that the councillor be counselled;
- an order the councillor make an admission of error or apologise;
- an order that the councillor enters into mediation; or
- a recommendation to the department to monitor the councillor.

Because the regional conduct review panel is restricted to taking the prescribed disciplinary action they may be prevented from taking more appropriate disciplinary action. For example, in the instance of a non-entitled claim for a small amount of travel allowance, the regional

conduct review panel is prevented from ordering a repayment and the matter must be referred to the tribunal.

Clause 134 replaces section 180(2) to add the following the orders/recommendation that the panel may make:

- an order that the councillor pay the local government an amount of not more than the monetary value of 50 penalty units;
- an order that the councillor reimburse the local government;
- a recommendation to the CMC or police that the matter be further investigated.

Clause 134 also amends section 180(5) to allow the tribunal to order that the councillor pay to the local government an amount of not more than the monetary value of 50 penalty units.

Clause 135 Replacement of s 181 (Inappropriate conduct)

Clause 135 replaces section 181 (Inappropriate conduct) to enable the mayor or the department's chief executive to take the following disciplinary action against a councillor for inappropriate conduct under section 176C or 177(4):

- an order reprimanding the councillor for the inappropriate conduct; or
- an order that any repeat of the inappropriate conduct be referred to the regional conduct review panel as misconduct.

If the mayor or department's chief executive make three orders about the same councillor within one year, the mayor or the department's chief executive must refer the repeat of inappropriate conduct by the councillor to a regional conduct review panel or the tribunal and the matter is taken to be a complaint about misconduct and sections 178 (Notifying councillor of the hearing of a complaint of misconduct) and section 180 (Taking disciplinary action) apply for the purpose of hearing a complaint.

Further, if inappropriate conduct happens in a meeting of the local government or its committees, the chairperson of the meeting may make any one of the following orders appropriate to the circumstances:

- an order that the councillor's inappropriate conduct be noted in the minutes;
- an order that the councillor leave the place where the meeting is being held; or
- an order that a councillor who fails to leave the place where the meeting is being held when ordered to do so, be removed from the place.

Clause 136 Insertion of new s 181A

Clause 136 inserts new section 181A (Records about complaints) to provide that the chief executive officer must keep a record of all written complaints received by the chief executive officer under this part and the outcome of each written complaint. The chief executive officer must ensure the public may inspect the part of the record that relates to outcomes of written complaints at the local government's public office or on the website except for complaints that were frivolous or vexatious, or lacking in substance, or that are a public interest disclosure under the *Public Disclosure Interest Act 2010*.

Clause 137 Amendment of s 189 (Appointing members of regional conduct review panels)

Clause 137 amends section 189 to provide that a regional conduct review panel is constituted by at least three members that the department's chief executive may choose from a pool members. Unamended section 189(1) required that the three panel members for a region reside in the region. This requirement created difficulties for the department's chief executive to choose a panel, particularly in the regions for which there is a greater workload.

A regional conduct review panel, as defined in the LGA, section 176, is a body, created under the LGA, responsible for hearing and deciding a complaint of misconduct by a councillor. Chapter 6, part 4 of the LGA contains provisions about the creation of a regional conduct review panel

and for the department's chief executive to appoint members. A person is qualified to be a member of the pool of members only if the person—

(a) has extensive knowledge of, and experience in, 1 or more of the following—

(i) local government;

(ii) community affairs;

(iii) investigations;

(iv) law;

(v) public administration;

(vi) public sector ethics;

(vii) public finance; or

(b) has the other qualifications and experience that the department's chief executive considers appropriate.

As a hearing of a regional conduct review panel is usually conducted by teleconference, the amendments will enable panel members from one region to participate in the hearing of a matter for another region, enabling the workload of regions to be shared, and thereby creating more opportunity for knowledge and experience of panellists throughout the State to be enhanced.

Clause 138 Amendment of s 196 (Appointing other local government employees)

Clause 138 implements the government election commitment of ensuring local governments have the right to full consultation on the appointment of other senior council staff (*Empowering Queensland Local Government* Election Policy 18.2).

Currently the chief executive officer must appoint the local government employees but the chief executive officer must consult with the councillors before appointing a senior contract employee. A senior contract employee is defined under the LGA as a local government employee who is employed on a contractual basis and in a position that reports directly to the chief executive officer.

Under the LGA93 the chief executive officer appointed all employees of the local government, however, a council had reserve power to appoint employees to fill particular senior executive positions (a senior executive officer was defined as an employee of the local government who reports directly to the CEO and whose position ordinarily would be considered to be a senior position in the local government's corporate structure).

Clause 138 amends section 196 to provide that senior executive employees are to be appointed by a panel constituted by the mayor, the chief executive officer, and either the chairperson of a committee (if the senior executive employee reports to a single committee) or the deputy mayor (if the senior executive employee reports to more than one committee or is responsible to more than one committee).

The Bill also replaces the definition of 'senior contract employee' with 'senior executive employee' to clarify that senior executive employees are the next line of management to the chief executive officer regardless of whether that employee is a contracted or tenured employee.

Clause 139 Amendment of s 197 (Disciplinary action against local government employees)

Currently, the chief executive officer is the only person who may take disciplinary action against a local government employee. It is considered that the requirements of these provisions should reflect the arrangements at a State level. At a State level, the director-general is not always the decision-maker on employee disciplinary actions.

Clause 139 amends section 197 to implement the policy intent for the chief executive officer to delegate the chief executive officer's power to take disciplinary action against a local government employee to an appropriately qualified employee of the local government (refer section 259 Delegation of chief executive officer's powers).

Also currently, under section 197(3) the Local Government Employee Disciplinary Appeal Board is the entity that is prescribed by regulation to hear and decide appeals against a decision of the chief executive officer to take disciplinary action against a local government employee.

Consistent with the government's policy to reduce unnecessary red tape and duplication, *clause 139* omits section 197(3) to remove the head of power for a regulation to prescribe an appeal entity, as the policy intent is for appeals in relation to discipline decisions to go to Queensland Industrial Relations Commission (QIRC). The timing for the commencement of this provision will coincide with a complementary amendment to the *Local Government (Operations) Regulation 2010*.

Clause 140 Amendment of s 199 (Improper conduct by local government employees)

Clause 140 makes consequential amendments to section 199 as a result of removing corporate entities.

Clause 141 Amendment of s 200 (Use of information by local government employees)

Clause 141 makes consequential amendments to section 200 as a result of removing corporate entities.

Clause 142 Replacement of s 201 (Annual report must detail remuneration)

Currently, section 201 provides that the annual report of the council must state—

- the total remuneration packages that are payable (in the year to which the annual report relates) to the chief executive officer and senior contract employees; and
- the number of senior contract employees who are being paid each of the total remuneration packages.

Remuneration packages differ between executives across specified levels and within those specified levels. It is normal practice for each executive's remuneration package is confidential between the CEO and the relevant executive. If packages are identified individually, then effectively all executives will know exactly what each executive receives. If the packages are identified by reference to specific or general descriptions of executive positions then the remuneration packages of individual executives will also be able to be ascertained.

Clause 142 amends section 201 to clarify that the annual report of a local government must state the total remuneration packages that are payable to the chief executive officer together with all senior executive employees and the number of senior executive employees who are being paid each band of remuneration. Each band of remuneration is defined as an increment of $100 000.

Clause 143 Omission of ch 6, pt 5, div 4 (Equality of employment opportunity)

Clause 143 omits chapter 6, part 5, division 4. The removal of these provisions is consistent with the government's election commitment to reduce unnecessary prescription and duplication from the local government legislation. The removal will also align the LGA with COBA in this matter.

The removal of the referral powers to the Queensland Civil and Administrative Tribunal (QCAT) in these sections does not create a need for consequential amendments to the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) as the QCAT Act simply provides that QCAT draws its jurisdiction from conferring Acts.

Local governments must still comply with EEO matters through their own polices and guidelines, the local government principles laid down in the LGA as well State and Commonwealth industrial relations and anti-discrimination laws that apply to local governments in their role as an employer.

Clause 144 Amendment of s 202 (Appointing authorised persons)

Clause 144 amends section 202 to clarify that a person is qualified to be an authorised person for another local government on resolution of the adopting local government. The policy intent is to enable local governments to use authorised persons across local governments, including a joint local government.

Clause 145 Amendment of s 209 (Board's responsibilities)

Chapter 6, part 8 (ss 208 to 211) of the LGA establishes the superannuation board, and sets out its responsibilities and constitution. Chapter 7, part 2 (ss 216 to 227) of the LGA deals with superannuation.

Unamended section 209 provides that the board, in addition to its responsibilities to act as trustee of the Local Government Superannuation Scheme (LG super scheme), has extra responsibilities, with the approval of the Governor in Council. Further section 209 permits the board of LGsuper to delegate its powers to an employee of LGsuper. Consistent with policy intent to reduce administrative and legislative red tape, *clause 145* amends section 209 to enable the super board to delegate its powers to a committee of its directors or an employee of the board.

Clause 146 Amendment of s 210 (Board of directors)

Section 210 prescribes that the board of directors is made up of three directors appointed on the nomination of the LGAQ, one director appointed on the nomination of BCC, four directors appointed on the nomination of members of the LG super scheme, and independent directors may be appointed under the trust deed. The directors must be appointed under the rules established to comply with the *Superannuation Industry (Supervision) Act 1993* (Cwlth) (SIS Act), and a regulation may change the

number of directors appointed on the nomination of the LGAQ, the BCC or the nomination of the members of the LG super scheme.

The SIS Act provides minimum requirements in that a fund complies with the basic equal representation rules if both the fund has a single corporate trustee and the board of corporate trustee consists of equal numbers of employer representatives and member representatives. *Clause 146* removes unnecessary prescription by amending section 210 to enable the composition of the board of directors to be specified in the trust deed and not prescribed under the LGA.

Clause 147 Amendment of s 217 (LG super scheme)

Clause 147 amends section 217 to clarify that the trust deed provides for yearly contributions for defined benefit members. For completeness, *clause 147* also notes that a regulation provides for the contributions for accumulation members.

Clause 148 Amendment of s 220C (Exemption from payment of yearly contributions on grounds of financial hardship)

Unamended section 220C provides that where there is agreement in writing between a prescribed employee of BCC, who is an accumulation benefit member and his or her employee, the BCC accumulation benefit member's superannuation contributions may be reduced from those prescribed in the *Local Government (Operations) Regulation 2010* (LGOR) in instances of financial hardship, consistent with arrangements in place for BCC members prior to the merger of City Super with LG Super on 1 July 2011.

Clause 148 amends section 220C to provide that superannuation contributions may be reduced in cases of proven financial hardship, where there is agreement in writing between employer and employee, for all accumulation benefit members not just BCC accumulation benefit members.

Clause 149 Amendment of s 227 (Super schemes to be audited by auditor-general)

Unamended section 227 provides that the audit of the LGsuper scheme (required under the SIS (Cwlth)) must be carried out by the Auditor-General.

The SIS Act provides that an audit must be conducted for each year of income by an 'approved auditor' and the *Superannuation Industry (Supervision) Regulations 1994* provides that an 'approved auditor' is either, registered, or taken to be registered, as an auditor the *Corporations Act 2001*; or the auditor-general of the Commonwealth, a State or Territory, or is a delegate of the auditor-general.

Clause 149 amends section 227, to allow the appointment of the auditor to be determined in the trust deed to give LGsuper choice in the appointment of auditor.

Providing LG Super with the flexibility to select the auditor is broadly consistent with the Government's *Empowering Queensland Local Government* Election Policy 11.5—the Government supports greater choice for local government in the selection of auditing services for local government finance and administration.

Clause 150 Amendment of s 235 (Administrators who act honestly and without negligence are protected from liability)

Clause 150 amendments are consequential to the restoration of body corporate status and the establishment of joint local governments.

Clause 151 Amendment of s 236 (Who is authorised to sign local government documents)

Clause 151 amends section 236 as a consequence of the restoration of body corporate status and the removal of the 'constituter of a local government' by the amendments to section 235.

Further, the definition of 'head of the local government' is relocated from the dictionary to section 236 and clarifies that the mayor is clearly the head of the local government and that if all of the councillors have been dismissed under section 123 and an interim administrator is appointed, the head of the local government is the interim administrator and if there are no councillors for any other reason and an interim administrator has not been appointed, the head of the local government is the chief executive officer.

Clause 152 Insertion of new s 236A

Clause 152 inserts new section 236A (Who is authorised to sign joint local government documents) to provide for the persons who may sign a document on behalf of a joint local government.

Clause 153 Amendment of s 237 (Name in proceeding by or against a local government)

It is common practice for local government employees to commence legal proceedings on behalf of the local government.

The Court of Appeal decision in *Ipswich City Council v Dixonbuild P/L* [2012] QCA 98 highlighted that under section 237, a local government can only start proceedings in one of two ways:

- an officer of a local government brings the proceeding as an individual. (In this case the person is not acting in their official capacity and would not attract the protection of the 'public officer'

provisions in the *Justices Act 1886* (JA), making the officer potentially liable for costs in their own right); or

- the local government commences the proceedings in the local government's name. (In this case no individual person is classified as a public officer and the public officer provisions under the JA do not operate, making the local government itself potentially liable for a defendant's costs).

The Court of Appeal determined that section 237 did not allow for actions to be brought by local government employees on behalf of their respective local governments.

The JA provides that a matter may proceed in the absence of a defendant where the complaint is brought by a public officer (s142A(1)), and costs can only be awarded against public officers who are complainants if the judge is satisfied that it is proper to do so (s158A(1)).

A local government may continue to bring a JA complaint in its own name but the Dixonbuild case highlighted that this approach will not address the issue of costs or ex parte hearings under sections 142A and 158A of the JA as a local government is neither a police officer nor a public officer within the meaning of JA section 158A. The practical issue is noted whereby a local government will need to exercise care when commencing proceedings.

Clause 153 amends section 237 to clarify that a local government may start a proceeding in either the name of the local government or under the JA in the name of a local government employee who is a public officer within the meaning of the JA.

Clause 154 Insertion of a new s 237A (Name in proceedings by or against a joint local government)

Clause 154 inserts new section 237A (Name of proceedings by or against a joint local government) to provide that a proceeding by or against a joint local government must be started in the name of the joint local government. A joint local government may also start a proceeding under the *Justices Act 1886* (JA) in the name of a joint local government employee who is a public officer within the meaning of the JA.

Clause 155 Amendment of s 239 (Substituted service)

Clause 155 amends section 239 to apply this section to joint local governments in the same manner as it applies to other local governments as a consequence of the establishment of joint local governments (refer chapter 2A).

Clause 156 Amendment of s 240 (Acting for a local government in legal proceedings)

Clause 156 amends section 240 to apply this section to joint local governments in the same manner as it applies to other local governments as a consequence of the establishment of joint local governments (refer chapter 2A).

Clause 157 Amendment of s 245 (Judges and other office holders are not disqualified from adjudicating)

Clause 157 amends section 245 to apply this section to joint local governments in the same manner as it applies to other local governments as a consequence of the establishment of joint local governments (refer chapter 2A).

Clause 158 Amendment of s 246 (Where fines are to be paid to)

Clause 158 amends section 246 to apply this section to joint local governments in the same manner as it applies to other local governments as a consequence of the establishment of joint local governments (refer chapter 2A).

Clause 159 Amendment of s 248 (Evidence of local laws)

Clause 159 amends section 248 to apply this section to joint local governments in the same manner as it applies to other local governments as a consequence of the establishment of joint local governments (refer chapter 2A).

Clause 160 Amendment of s 249 (Evidence of proceedings of local government)

Clause 160 amends section 249 to apply the section to joint local governments to provide that a document of a joint local government purporting to be a copy of an entry in a record of proceedings which has been signed and certified correctly is taken to be a true copy of the document.

Clause 161 Amendment of s 250 (Evidentiary value of copies)

Clause 161 amends section 250 to apply this section to joint local governments in the same manner as it applies to other local governments as a consequence of the establishment of joint local governments (refer chapter 2A).

Clause 162 Amendment of s 251 (Evidentiary value of certificates)

Clause 162 amends section 251 to apply this section to joint local governments in the same manner as it applies to other local governments as a consequence of the establishment of joint local governments (refer chapter 2A).

Clause 163 Amendment of s 252 (Evidence of directions given to local government

Clause 163 amends section 252 to apply this section to joint local governments in the same manner as it applies to other local governments as a consequence of the establishment of joint local governments (refer chapter 2A).

Clause 164 Amendment of s 257 (Delegation of local government powers)

Clause 164 consequentially omits the reference to corporate entity as a result of the Bill providing that if a local government wants to corporatise an activity, it is to be done under the *Corporations Act 2001 (Cwlth)* (refer clause 93).

Further, the LGA provides that a local government may by resolution delegate a power to the chief executive officer. While a delegation can be revoked at any time by the local government c*lause 164* requires that a delegation to the chief executive officer must be reviewed annually by the local government to ensure that the delegations remain consistent with the local government's policy direction and intent.

Clause 165 Insertion of new s 257A (Delegation of joint local government's powers)

Clause 165 inserts a new section 257A (Delegation of joint local government's powers) to provide that a joint local government may delegate its powers about a component local government (refer Chapter 2A) and clarifies that a joint local government must not delegate a power that an Act states must be exercised by resolution. This provision is similar to what currently applies to other local governments.

Clause 166 Amendment of s 258 (Delegation of mayor's powers)

Clause 166 amends section 258 to provide that the mayor must not delegate the power to give directions to the chief executive officer or senior executive employees.

Clause 167 Amendment of s 259 (Delegation of chief executive officer powers)

Clause 167 amends section 259 as a consequence of removing the requirement for local government to have a drafting certificate for a local law (refer clause 82, new section 29). Local laws are required under the Bill to be drafted in accordance with the *Legislative Standards Act 1992*, section 9 and it is the responsibility of local governments to ensure local laws are so drafted.

Clause 168 Insertion of new ch 7, pt 5A (Provisions about de-amalgamation)

To implement the government's *Empowering Queensland Local Government* Election Policy, the Queensland Boundaries Commissioner (QBC) is to consider boundary alignments resulting from the 2007 local government reform process and to consider the feasibility of de-amalgamation proposals in an open and logical way, with adequate public consultation, before any changes are made to implement a local government de-amalgamation.

New section 260A (What this part is about) provides that the part is about de-amalgamation of a local government area and defines 'de-amalgamation' of a local government area as the separation of the area into different local government areas, each governed by its own local government. The de-amalgamation provisions in the Bill are transitional as period for submissions on de-amalgamation to be lodged closed on 29 August 2012. Should the government decide to implement a de-amalgamation, the provisions in the Bill will operate for as long as

necessary but once de-amalgamation has been implemented, the provisions will no longer be required.

New section 260B applies if the Minister asks the Electoral Commission of Queensland (ECQ) to conduct a poll about the implementation of a de-amalgamation of a local government area. The ECQ must conduct the poll of the electors in the affected part of a local government area and as soon as practicable after the conclusion of the poll, the ECQ must advise the Minister of the results.

The affected part of a local government area is defined as that part of the area that is proposed to be separated from the rest of the local government area and governed by its own local government. The poll must be conducted by ballot taken in accordance with the requirements prescribed under a regulation and voting is compulsory for electors in the affected part of the local government area with a maximum penalty of 1 penalty unit for an elector who fails to vote without valid and sufficient reason (refer sections 260C, 260D). Section 260E (Voting if not entitled) provides for offences for voting when a person is not entitled to vote.

Section 260B provides that the Minister may request a poll under the provision only within 1 year after the commencement of the section.

Under new section 260B if the result of the poll is a majority for de-amalgamation, the costs of the poll are to be paid by the affected part of the local government area, and if the result of the poll is a majority against de-amalgamation, the costs of the poll are to be paid by the local government for the area.

New section 260F (Implementation) provides a de-amalgamation to be implemented by regulation made by Governor in Council. A regulation is to provide for anything that is necessary or convenient to facilitate implementation including, for example, the regulation may provide for holding, postponing or cancelling a local government election, the transfer of assets and liabilities from a local government to another, the recovery of the costs of the de-amalgamation of the local government and the temporary continuation of a local law for the affected part of the local government area. Section 260F also clarifies that a local government is not liable to pay a State tax under the *Duties Act 2001* in relation to a transfer or other arrangements made to implement a local government change.

Clause 169 Amendment of s 265 (Materials in infrastructure are local government property)

Clause 169 amends section 265 to clarify that materials in a structure or works, constructed or performed on someone else's land by a local government, are clearly the property of that local government.

Clause 170 Omission of s 267 (Review of this Act)

Clause 170 omits section 267 to omit the statutory requirement for the Minister to review the operation and effectiveness of the LGA within 4 years of its commencement. In accordance with the Council of Australian Governments' regulatory best practice principles, to which Queensland is a signatory, it is good practice for legislation to be periodically and systematically reviewed to ensure that it remains relevant and effective over time. This has been the approach taken with respect to the LGA since its commencement. Consequently, the statutory review requirement under the LGA is redundant and only adds to the volume of unnecessary legislative prescription. Removing this section is consistent with the Government's policy to reduce such unnecessary statutory volume and prescription.

Clause 171 Insertion of new s 268A (Advisory polls)

The LGA93 enabled local governments to hold advisory polls on a range of factors that affected a local government area. Voting was compulsory, however, the results of the poll did not bind the local government.

There is no provision in the LGA to enable local governments to conduct polls in the manner in which they could under the LGA93. In contrast, NSW and Victoria permit their local governments to conduct non-binding polls.

Clause 171 inserts a new section 268A to provide that a local government may, in a way decided by the local government, conduct a voluntary poll of electors in its local government area or part of its area on issues concerning

their local government area which to implement the Government's election policy to allow local governments to hold voter polls to better inform council decision making.

Clause 172 Amendment of s 270 (Regulation-making power)

Clause 172 amends section 270 to:

- insert a head of power for a regulation to be made for matters relating to joint local governments
- align with CoBA and clarify that a regulation can be about the financial planning and accountability of local governments.

Clause 173 Amendment of s 272 (Local governments, including joint local governments)

The Esk Gatton Laidley Water Board (EGLWB) is a joint local government initially formed by the local governments of Esk, Gatton and Laidley under the LGA93. With the repeal of the LGA93 and the *Local Government (Community Government Areas) Act 2004*, the LGA section 272 provided a transitional provision to continue in existence under the LGA the EGLWB and the Nogoa River Flood Plain Board.

Clause 173 amends section 272 to enable a join local government under section 272 to discontinue its existence and to validate all action taken by a continued entity in relation to its discontinuance, before the authorisation had effect.

Clause 174 Amendment of s 275 (Local government owned corporation)

With the repeal of the LGA93, section 275 provides a transitional provision to continue in existence the local government owned corporation know as

Wide Bay Water Corporation as a corporate entity under the LGA. *Clause 174* amends section 275 to clarify that section 275(1) does not stop Wide Bay Water Corporation from being wound up.

As the Bill removes the ability of local governments to corporatise an activity under the LGA, (the policy intent is to rely on the *Corporations Act 2001* (Cwlth) for local governments to corporatise an activity), the Bill also provides for the continuation of particular provisions for corporate entities under the transitional provisions (refer new chapter 9, part 4, division 2, section 297).

Clause 175 Insertion of new ch 9, pt 4 (Transitional provision for Local Government and Other Legislation Amendment Act 2012)

Clause 175 inserts a new part 4 (Transitional provisions for Local Government and Other Legislation Amendment Act 2012) to provide for several transitional matters.

New Division 1 (Transitional provisions about change of legal status)

A new section 295 is inserted to provide for the change that local governments (including joint local governments) will now be constituted as body corporates. The section provides protection for local governments' rights, assets, liabilities and any matter or thing done by for in relation to the local government, from being affected in any way by the change in body corporate status.

A new section 296 is inserted to make it clear that the change in body corporate status does not affect any contracts, instruments, obligations or decisions of a local government.

Division 2 (Other transitional provisions)

New section 297 (Continuation of particular provisions for corporate entities) provides that the provisions in the LGA/relevant regulations that applied to corporate entities corporatised under the LGA before the commencement of the provision removing corporate entities and to which the Corporations Act doe not apply, continues to apply in relation to the corporate entity.

Transitional provision for complaints against councillor performance or conduct

New section 298 (Change in dealing with complaints) provides that if a complaint about the conduct or performance of a councillor had been started, but not finally dealt with, at the commencement of the relevant provisions of the Bill that change the complaints process, the complaint must be finalised and dealt with under the LGA that was in place when the complaint was started (i.e. before the commencement).

Transitional provision for local law process

Similarly, new section 299 (Change in process for making local laws) provides that if a local government has begun but not completed, its process for making a local law before the commencement of this section, the local government may continue making the local law despite any amendments of the LGA by the Bill.

Clause 176 Amendment of schedule 4 (Dictionary)

Clause 176 makes amendments to schedule 4 (Dictionary) including consequential amendments made as a result of the Bill.

Currently the LGA defines ***conclusion*** of the election of a councillor as occurring "when the last declaration of a poll conducted in the election is displayed in the local government's public office." The *Local Government Electoral Act 2011* (LGEA) defines the ***conclusion*** of the election of a councillor as occurring on "the day on which the last declaration of a poll is displayed at the office of the returning officer as required by this Act."

Following the 2008 local government amalgamations some councils acquired the public offices of the former local governments, for example,

Bundaberg Regional Council has four public offices. For the purposes of the 28 April 2012 quadrennial local government elections, the offices of many of the returning offices were not the local government's public office which meant that declarations of poll were displayed in both the local government's public office (for the purposes of the LGA) and the office of the returning officer (for the purposes of the LGEA).

As the office of the returning officer is chosen to ensure it is geographically at the centre of the local government area, which may or may not be a council's chambers, the Bill amends the LGA to require the ECQ to display the declaration of poll at the office of the returning officer as required under the LGEA.

The definition of ***ordinary business matter*** is amended to give local governments the flexibility to prescribe for another matter as an ordinary business matter of the local government.

Part 4 Amendment of Local Government Electoral Act 2011

Clause 177 Act amended

Clause 177 states that part 4 of the Bill amends the *Local Government Electoral Act 2011* (LGEA).

Clause 178 Amendment of s 18 (Cut-off day for compiling voters roll)

The LGEA, section 23 provides that a local government quadrennial election must be held in, and every fourth year after, 2012, on the last Saturday in March. The provision also enables a regulation to fix a different day for a quadrennial election for a particular year. On 9 February 2012, the *Local Government Electoral Regulation 2012* deferred the date of the 2012 quadrennial election from 31 March to 28 April 2012.

The LGEA, section 18 provides that a voters' roll for a quadrennial election must be compiled at 31 January in the year of the quadrennial election, that is, approximately two months before the date on which the election would be held. As the LGEA does not provide a complementary power for a regulation to extend the cut-off date for the compilation of a voters roll, it was necessary for the LGEA to be amended for the purposes of the 2012 elections to extend the cut-off day for the voters roll to 25 February 2012.

At the State level, the *Electoral Act 1992* provides the ECQ must prepare all electoral rolls as soon as practicable after an electoral redistribution becomes final; or after the cut-off day for electoral rolls for an election or referendum; or after two years pass after the day on which the writ for the last general election was returned. Further, the ECQ may also prepare all or any of the electoral rolls at any other time that it considers appropriate.

Clause 178 amends section 18 to align the LGEA to enable a regulation to fix a different date for compiling a voters' roll should a regulation be made to fix a different day for a quadrennial election for a particular year.

Clause 179 Amendment of s 24 (Date of by-elections)

Clause 179 amends section 24 as consequence of the amendment to section 18.

Clause 180 Amendment of s 32 (Announcement of nominations)

The LGEA, section 32(1) and (2)(a) are inconsistent in relation to when a copy of the nomination of a candidate for election must be publicly displayed. Section 32(1) provides that as soon as practicable after the returning officer has certified the nomination of a person for an election, the returning officer must display a copy of the nomination in a conspicuous position at the office of the returning officer. Section 32(2)(a) provides that the display of a copy of the nomination must start as soon as practicable after noon on the nomination day.

Clause 180 amends section 32(2)(a) to provide for the display of a copy of the nomination must continue until the conclusion of the election.

Clause 181 Amendment of s 34 (Procedure if number of candidates not more than number required)

For the 2012 quadrennial local government elections no nominations were received for the position of councillor for division 6 of Tablelands Regional Council (TRC). The LGEA, section 34 provides that if no one is nominated as a candidate in an election, or the number of candidates nominating is less than the number required to be elected, the Governor in Council may, by gazette notice, appoint as councillors the number of persons necessary to constitute the local government.

Other than the requirement that the person/s appointed must be qualified to be councillors in accordance with the provisions of the LGA chapter 6 part 2, the LGEA/LGA do not prescribe a process to determine nominations for Governor in Council consideration.

Clause 181 amends section 34 to provide that in a situation where no one has nominated as a candidate in a local government election, or the number of candidates nominating is less than the number required to be elected, a by-election for the vacant councillor position must be held. If proceedings for an election are started again under section 34(2), the deposits of any candidates must be refunded to the persons who paid the deposits and the electoral commission must by gazette notice fix a new polling day for the election.

The amendment makes the LGEA consistent with the Queensland State election process as well as the New South Wales and Victorian local government Acts. Where no one has nominated as a candidate for such a by-election, or the number of candidates is less than the number required to be elected, the Governor in Council may by gazette notice appoint an appropriately qualified person to the vacant councillor position as is currently provided for under the LGEA.

Clause 182 Amendment of s 36 (Procedure on death of candidate when poll to be conducted)

Before the commencement of the LGEA in September 2011, the LGA schedule 2 provided that if a candidate died after nomination but before the polling day, the Minister had the ability to direct, by gazette notice, that the holding of an election of all councillors (including the mayor) start again and fix a new polling day for the election.

The Ministerial power in the LGA schedule 2 to fix another day for the election of all councillors and the mayor was not transferred to the LGEA and consequently, proceedings start again for the candidate for mayor only, on a polling day to be fixed by gazette notice by the ECQ.

The Bill amends the LGEA to re-introduce the former provisions of the LGA schedule 2 to provide that the Minister may direct by gazette notice that proceedings for holding an election of the mayor or all councillors of the local government start again.

Clause 182 amends section 36 to further provide the option for the Minister to:

- upon the death of a mayoral candidate – direct that the process for the election of all the other councillors also start again;
- upon the death of another councillor for undivided local governments – direct that the process for the election of the mayor also start again;
- upon the death of another councillor for a division of a local government – direct that the process for the election of the mayor start again and direct that the process for the election of councillors for the other divisions start again.

Part 5 Amendment of Parliament of Queensland Act 2001

Clause 183 Act amended

Clause 183 states that part 5 of the Bill amends the *Parliament of Queensland Act 2001*.

Clause 184 Amendment of s 68 (Effect of election on particular candidates)

Clause 184 replaces a note in section 68 as a consequence of the removal of the requirement that a councillor has to stand down to contest a State election and that the councillor ceases to be a councillor only upon becoming a member of the Legislative Assembly.

Part 6 Amendment of Public Sector Ethics Act 1994

Clause 185 Act amended

Clause 185 states that part 6 of the Bill amends the *Public Sector Ethics Act 1994*.

Clause 186 Amendment of schedule (Dictionary)

Clause 186 amends the definition of 'public sector entity' to remove a reference to a corporate entity under the LGA or COBA as a consequence of removing the ability for local governments to corporatise under those Acts (see clauses 93 and 21).

Part 7 Amendment of Public Service Act 2008

Clause 187 Act amended

Clause 187 states that part 7 of the Bill amends the *Public Service Act 2008*.

Clause 188 Amendment of s 24 (What is a *government entity*)

Clause 188 amends section 24 to remove a reference to a corporate entity under the LGA or COBA as a consequence of removing the ability for local governments to corporatise under those Acts (see clauses 93 and 21).

Part 8 Amendment of Right to Information Act 2009

Clause 189 Act amended

Clause 189 states that part 8 of the Bill amends the *Right to Information Act 2009*.

Clause 190 Amendment of s 113 (Disciplinary action)

Clause 190 amends section 113 to update a reference.

Clause 191 Amendment of sch 3 (Exempt information)

Clause 191 amends schedule 3, section 4A(2) to provide that information officially published by decision of the BCC or if BCC delegates a power to the Establishment and Coordination Committee under section 238 of CoBA, the information officially published or the information relating to the delegation or the power to be exercised under the delegation is not included within the scope of the RTI exemption.

Part 9 Minor and consequential amendments

Clause 192 Act amended

Clause 192 states that part 9 of the Bill amends the Acts mentioned in it.

Schedule Acts amended

Minor and/or consequential amendments are to be made to the *City of Brisbane Act 2010*, the *Judicial Review Act 1991*, the *Libraries Act 1988*, the *Local Government Act 2009*, the *Public Interest Disclosure Act 2010* and the *Transport Infrastructure Act 1994*.