

# Local Government Electoral Bill 2011

## Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Paul Lucas MP

### **Title of Bill**

Local Government Electoral Bill 2011

### **Objectives of the amendments**

*Local Government Electoral Bill 2011*

The amendments are to aid the administration of local government elections by the Electoral Commission Queensland.

*Building Act 1975*

At present, the *Building Act 1975* (BA) restricts the Minister's power to appoint deputy members of the PSC; the Minister may only appoint deputies for representatives of the Department administering the BA and the Local Government Association of Queensland (LGAQ). This is inconsistent with the original intent of the legislation that the minister be empowered to appoint deputies for all members of the PSC. The amendments rectify this situation and validate any decisions made by the PSC where deputy members participated in PSC meetings.

A further amendment is necessary to clarify that only the deputies of members representing the Department or the LGAQ are required to represent the same organisation.

The BA is also silent as to the manner of appointment of a person to preside at PSC meetings in the absence of the chairperson and deputy chairperson. An amendment is necessary to provide clear guidance in this regard.

*City of Brisbane Act 2010 and the Local Government Act 2009—Conflict of interest provisions*

The amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009* are to clarify Councillor conflict of interest obligations and processes and to clarify the jurisdiction of the BCC councillor conduct review panel, the regional conduct review panels and the Local Government Remuneration and Discipline Tribunal to dismiss complaints about councillors that are lacking in substance or are misconceived.

*Local Government Act 2009—Torres Strait Island Regional Council's prescribed local laws*

The primary objective of the amendment is extend the operation of Torres Strait Island Regional Council's prescribed local laws until 30 September 2011.

Currently the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* allows indigenous communities to appoint community police officers. Community police officers are strategically located throughout Torres Strait and provide a basic first response policing service to the community. The Torres Strait Island Regional Council area is the only indigenous community within Queensland where policing is yet to be normalised.

The Queensland Government via the Queensland Police Service is preparing to implement a strategy to normalise policing in the Torres Strait region on 1 October 2012.

The extension of the prescribed local laws will provide the necessary legislative support to provide a community policing service until 30 September 2012.

## **Achievement of the objectives**

*Local Government Electoral Bill 2011*

The objectives are achieved by way of amendments to the Bill.

*Building Act 1975*

The objectives are achieved by way of amendments to the *Building Act 1975*.

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

The objectives are achieved by way of amendments to the Acts.

*Local Government Act 2009—Torres Strait Island Regional Council's prescribed local laws*

The amendment ensures the continuation of Torres Strait Island Regional Council's prescribed local laws until 30 September 2012.

**Alternative ways of achieving policy objectives**

*Local Government Electoral Bill 2011*

There is no alternative way of achieving the policy objectives other than to amend the Bill.

*Building Act 1975*

There is no alternative way of achieving the policy objectives other than to amend the *Building Act 1975*.

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

There is no alternative way of achieving the policy objectives other than to amend the Acts.

*Local Government Act 2009—Torres Strait Island Regional Council's prescribed local laws*

An alternative option to the amendment would be to allow the prescribed local laws to expire on 31 December 2011 as will currently occur. This option would create a service gap between 1 January 2012 and 1 October 2012. However, the Government has indicated its commitment to ensure continuity of community policing in the Torres Strait region until normalisation can be achieved on 1 October 2012. This outcome is only possible through legislative amendment.

**Estimated cost for government implementation**

*Local Government Electoral Bill 2011*

There is no cost associated with these amendments.

*Building Act 1975*

There is no cost associated with these amendments.

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

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There is no cost associated with these amendments.

*Local Government Act 2009—Torres Strait Island Regional Council's prescribed local laws*

Government proposes to financially support Torres Strait Island Regional Council's community policing function until 30 September 2012.

### **Consistency with fundamental legislative principles**

*Local Government Electoral Bill 2011*

The amendments are consistent with fundamental legislative principles.

*Building Act 1975*

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively –

*Legislative Standards Act 1992*, section 4(3)(g)

Clause 236E (Insertion of new Ch 11, Pt 13)

The original intent of the legislation was that the minister be empowered to appoint deputies for all members of the PSC and not just the members representing the department or the LGAQ. Appointments were made in good faith and consistently with this intent. Accordingly, it is important to validate appointments to the PSC and decisions made to ensure the original intent of the legislation is preserved.

A breach of fundamental legislative principles potentially arises in relation to the amendment in that it retrospectively validates decisions of the Pool Safety Council (PSC). These decisions may have been invalidly made if the invalid appointments influenced the quorum at meetings. However, PSC decisions have been made on the basis that the PSC was correctly constituted in accordance with the intention expressed in the explanatory notes of the *Building and Other Legislation Amendment Act 2010*. Decisions of the PSC have generally been made by consensus and it is considered that these amendments merely put beyond doubt the efficacy of those decisions.

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

The amendments are consistent with fundamental legislative principles.

*Local Government Act 2009—Torres Strait Island Regional Council's prescribed local laws*

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The amendment is consistent with fundamental legislative principles.

## **Consultation**

### *Local Government Electoral Bill 2011*

The amendments have been prepared based on feedback from the Electoral Commission Queensland.

### *Building Act 1975*

The amendments have been prepared following advice received from Crown Law.

### *City of Brisbane Act 2010 and the Local Government Act 2009*

The amendments have been prepared based on a submission to Government from the Local Government Association of Queensland (LGAQ) and subsequent consultation with Brisbane City Council, the Integrity Commissioner, the Crime and Misconduct Commission and the Queensland Ombudsman.

Queensland Treasury, the Department of Premier and Cabinet, the Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel have no issues with the amendments.

### *Local Government Act 2009—Torres Strait Island Regional Council's prescribed local laws*

Torres Strait Island Regional Council supports this amendment.

## Notes on provisions

### *Local Government Electoral Bill 2011 amendments*

#### **Amendment 1**

Amends clause 50 to provide that the time fixed for voting at an early polling booth may start 14 days before polling day which makes the clause consistent with when a pre-polling period starts.

#### **Amendment 2**

Amends clause 79 to provide that the unsealed reply paid post envelopes provided to particular voters need include only the name of the local government area.

The object of amendment 2 is to minimise wastage when printing postal envelopes for elections as it is difficult to estimate the number of envelopes that may be required for each division. All returned envelopes for a particular division will be returned to the same returning officer and enclosed declaration envelopes will have the division number recorded on them.

#### **Amendment 3**

Amends clause 80 to provide that the unsealed reply paid post envelopes provided to particular voters need include only the name of the local government area.

The object of amendment 3 is to minimise wastage when printing postal envelopes for elections as it is difficult to estimate the number of envelopes that may be required for each division. All returned envelopes for a particular division will be returned to the same returning officer and enclosed declaration envelopes will have the division number recorded on them.

#### **Amendment 4**

Amends clause 81 to provide that the unsealed reply paid post envelopes provided to particular voters need include only the name of the local government area.

The object of amendment 4 is to minimise wastage when printing postal envelopes for elections as it is difficult to estimate the number of envelopes that may be required for each division. All returned envelopes for a particular division will be returned to the same returning officer and enclosed declaration envelopes will have the division number recorded on them.

### **Amendment 5**

Amends clause 82 to provide that the unsealed reply paid post envelopes provided to particular voters need include only the name of the local government area.

The object of amendment 5 is to minimise wastage when printing postal envelopes for elections as it is difficult to estimate the number of envelopes that may be required for each division. All returned envelopes for a particular division will be returned to the same returning officer and enclosed declaration envelopes will have the division number recorded on them.

### **Amendments 6 and 7**

Amend clause 99 to remove subsection (2). As the ECQ will pursue multi-voter action centrally, this provision adds an unnecessary level of prescription to the process.

*Building Act 1975 amendments*

### **Amendment 8**

#### **Clause 236A Act Amended**

This clause states that this part amends the *Building Act 1975*.

#### **Clause 236B Amendment of s 246EK (Members)**

This clause omits the existing s 246EK(5) which clarified the meaning of the Local Government Association of Queensland (LGAQ) pre and post 1 July 2010. This distinction is no longer required.

### **Clause 236C Amendment of s 246EL (Appointment of deputy members)**

This clause amends s 246EL to empower the Minister to appoint a deputy to act on behalf of each member of the Pool Safety Council (PSC), rather than just those members representing the Department and the Local Government Association of Queensland (LGAQ). The clause also amends s 246EL to make it clear that, with the exception of members representing the Department or the LGAQ, the Minister is now empowered to appoint a deputy to act on behalf of a member, even if the deputy does not represent the entity that the member represents.

Currently, the Minister's ability to appoint deputies is confined to those members representing the Department and the LGAQ. The explanatory notes to the *Building and Other Legislation Amendment Act 2010* demonstrate that this outcome is incongruent with the legislation's intent that the Minister be empowered to appoint deputies for all members of the PSC. These amendments will align the operation of s 246EL with that intent.

### **Clause 236D Amendment of s 246EX (Presiding at meetings)**

Clause 236ED amends s 246EX to delineate who shall preside over a meeting of the Pool Safety Council (PSC) in the absence of the chairperson. In the chairperson's absence, the deputy chairperson shall preside. In the absence of both the chairperson and the deputy chairperson, the members present shall choose one among their number to preside.

These amendments supplement the guidance provided to the PSC in terms of who shall chair its meetings.

### **Clause 236E Insertion of new ch 11, Pt 13**

This clause inserts a new part into the *Building Act 1975* to declare that appointments made within the intended scope of the Minister's power to appoint deputies are valid, notwithstanding the fact that these appointments were made outside the authority conferred by the legislation as initially drafted. The new section indicates that these appointments will remain valid until the expiry or termination of the deputy's term.

The new section also notes that any act or omission by a deputy in their capacity as a deputy member of the Pool Safety Council (PSC) are valid and lawful. This removes any doubt in relation to the validity of decisions



taken by the PSC when deputies were present and formed part of a meeting's Quorum.

This clause is intended to act retrospectively. All PSC decisions to date have been made in accordance with the intention expressed in the explanatory notes to the *Building and Other Legislation Amendment Act 2010*. These decisions have generally been made by consensus and these amendments simply provide them with legislative authority.

### **Clause 236F Amendment of sch 2 (Dictionary)**

This clause inserts a definition of 'LGAQ' into the Dictionary. A definition of 'LGAQ' was formerly included in s 246EK(5), however, this has been removed and an updated definition provided in the Dictionary for clarity.

*City of Brisbane Act 2010 amendments*

## **Amendment 9**

### **Inserts clause 240A (Amendment of s 153 (Disqualification for certain offences))**

Clause 240A amends section 153 to omit from the list of integrity offences the reference to section 175 which has the effect that a breach by a councillor for failing to inform the meeting about the councillor's interest in the matter, and for a councillor to fail to comply with the direction of the other persons who are entitled to vote at the meeting is not an integrity offence. Each offence under section 175 carried a maximum penalty of 100 penalty units. A breach of an integrity offence meant that a councillor, for four years after the person is convicted of an integrity offence, could not be a councillor. Section 178 is amended to provide that a councillor who now fails to declare a conflict of interest may be dealt with for misconduct.

## **Amendment 10**

### **Inserts clause 242A (Replacement of s 175 (Councillor's conflict of interest at a meeting))**

Clause 242A replaces section 175(1) to clarify that section 175 applies if a matter is to be discussed at a meeting of the Council, or any of its

committees, and a councillor at the meeting has a “real conflict of interest” or could reasonably be taken to have a conflict of interest which is the “perceived conflict of interest”.

Section 175(2) provides that the definition of “conflict of interest” is a conflict between a councillor’s personal interest and the public interest that might lead to a decision that is contrary to the public interest. The new definition of conflict of interest omits the reference that a councillor’s personal interest includes interests arising from the councillor’s relationships or club memberships to clarify that each matter is to be considered according to the specific circumstances of the councillor. New subsection 175(8) further clarifies that a councillor who is nominated by the Council to be a member of a board of a corporation or other association does not have a personal interest merely because of the nomination or subsequent appointment as the member.

Subsection 175(3) provides that a councillor is to be responsible, in the first instance, for determining if he or she has a real or perceived conflict of interest and to deal with it in a transparent and accountable way. Transparency and accountability is provided for in subsection 175(4) which requires the councillor to inform the meeting of the councillor’s conflict of interest in the matter, and if the councillor participates in the meeting, how the councillor intends to deal with the real or perceived conflict of interest. Further, subsection 175(7) requires the minutes of the meeting and the Council’s website to record the name of the councillor, the nature of the interest, how the councillor dealt with the real or perceived conflict of interest, how the councillor voted on the matter, and how the majority of persons who were entitled to vote at the meeting voted.

Subsections 175(5) and (6) provide that if a quorum at the meeting can not be formed because the councillor proposes to exclude himself or herself from the meeting to deal with his or her real or perceived conflict of interest in a transparent and accountable way, the councillor does not contravene subsection (3) by participating (including voting, for example) in the meeting in relation to the matter if the attendance of the councillor, together with any other required number of councillors, forms a quorum for the meeting. Subsection (9) removes any doubt by declaring that nonparticipation in the meeting is not the only way the councillor may appropriately deal with the real or perceived conflict of interest in a transparent and accountable way.

Unamended section 175 required councillors to decide whether another councillor had a conflict of interest. The nature of some potential conflicts

of interest are such that it is possible, and at times appropriate, for a councillor to determine that they are able to make a decision in the public interest, particularly where the conflict of interest is at best tenuous. Also, the other councillors of the Council may not be in a better position than the councillor concerned to determine whether that councillor has a conflict of interest.

The amendments are consistent with the provisions under the repealed *Local Government Act 1993*, whereby a councillor with a conflict of interest or perception of a conflict of interest, in a matter under consideration at a local government's meeting could decide whether he or she was able to make a decision in the public interest. If the councillor was able to act in the public interest, then the councillor was able to participate in the discussion and vote on the matter. Any councillor who failed to adequately manage his or her conflict of interest at a meeting was subject to disciplinary proceedings before the conduct review panels that operated under that legislation.

### **Clause 242B (Amendment of s 178 (What this division is about))**

Clause 242B amends section 178 to provide that a contravention of section 175(3) and section 175(4) is misconduct and subject to disciplinary action. Section 175(3) provides that a councillor must deal with a real or perceived conflict of interest in a transparent and accountable way. Section 175(4) provides that a councillor must inform the meeting of their interest in the matter and if they participate in the meeting in relation to the matter, how they intend to deal with the real or perceived conflict of interest. Serious disciplinary action may result in the Local Government Remuneration and Discipline Tribunal making a recommendation to the Crime and Misconduct Commission or the Commissioner of Police that the councillor's conduct be further investigated.

### **Clause 242C (Amendment of s 180 (Assessing complaints))**

Clause 242C amends section 180(12) to clarify that the chief executive officer of the Council must make public the details of the complaint only when the outcome of the complaint has been determined.

### **Clause 242D (Insertion of new s 180A (Preliminary dealings with complaints before hearing))**

Clause 242D inserts new section 180A to confer a discretionary power on the BCC councillor conduct review panel to order, without conducting a hearing, that a complaint, or part of a complaint be dismissed or struck out if the panel considers the complaint, or part of the complaint is frivolous, vexatious, misconceived, lacking in substance or otherwise an abuse of process. The panel's power to preliminarily deal with a complaint will be consistent with the jurisdiction of the Queensland Civil and Administrative Tribunal. If the BCC councillor conduct review panel makes an order under this section, the panel must give written notice of the order to the chief executive officer, the accused councillor and the entity that made the complaint.

### **Clause 242E (Amendment of s 181 (Notifying councillor of the hearing of a complaint))**

Clause 242E amends section 181 to clarify that in the event that the BCC councillor conduct review panel does not dismiss or strike out a complaint under section 180A, then section 181 provides that at least 7 days before the hearing of a complaint, the panel must give the accused councillor a written notice about the hearing.

*Local Government Act 2009 amendments*

## **Amendment 11**

### **Inserts clause 260A (Amendment of s 153 (Disqualification for certain offences))**

Clause 260A amends section 153 to omit from the list of integrity offences the reference to section 173 which has the effect that a breach by a councillor for failing to inform the meeting about the councillor's interest in the matter and for a councillor to fail to comply with the direction of the other persons who are entitled to vote at the meeting is not an integrity offence. Each offence under section 173 carried a maximum penalty of 100 penalty units. A breach of an integrity offence meant that a councillor, for four years after the person is convicted of an integrity offence, could not be a councillor. Section 176 is amended to provide that a councillor who now fails to declare a conflict of interest may be dealt with for misconduct.

## **Amendment 12**

### **Inserts clause 264A (Replacement of s 173 (Councillor's conflict of interest at a meeting))**

Clause 264A replaces section 173(1) to clarify that section 173 applies if a matter is to be discussed at a meeting of the local government, or any of its committees, and a councillor at the meeting has a “real conflict of interest” or could reasonably be taken to have a conflict of interest which is the “perceived conflict of interest”.

Section 173(2) provides that the definition of “conflict of interest” is a conflict between a councillor’s personal interest and the public interest that might lead to a decision that is contrary to the public interest. The new definition of conflict of interest omits the reference that a councillor’s personal interest includes interests arising from the councillor’s relationships or club memberships to clarify that each matter is to be considered according to the specific circumstances of the councillor. New subsection 173(8) further clarifies that a councillor who is nominated by the local government to be a member of a board of a corporation or other association does not have a personal interest merely because of the nomination or subsequent appointment as the member.

Subsection 173(3) provides that a councillor is to be responsible, in the first instance, for determining if he or she has a real or perceived conflict of interest and to deal with the conflict of interest in a transparent and accountable way. Transparency and accountability is provided for in subsection 173(4) which requires the councillor to inform the meeting of the councillor’s conflict of interest in the matter, and if the councillor participates in the meeting, how the councillor intends to deal with the real or perceived conflict of interest. Further, subsection 173(7) requires the minutes of the meeting and the local government’s website to record the name of the councillor, the nature of the interest, how the councillor dealt with the real or perceived conflict of interest, how the councillor voted on the matter, and how the majority of persons who were entitled to vote at the meeting voted.

Subsections 173(5) and (6) provide that if a quorum at the meeting can not be formed because the councillor proposes to exclude himself or herself from the meeting to deal with his or her real or perceived conflict of interest in a transparent and accountable way, the councillor does not contravene subsection (3) by participating (including voting, for example)

in the meeting in relation to the matter if the attendance of the councillor, together with any other required number of councillors, forms a quorum for the meeting. Subsection (9) removes any doubt by declaring that nonparticipation in the meeting is not the only way the councillor may appropriately deal with the real or perceived conflict of interest in a transparent and accountable way.

Unamended section 173 required councillors to decide whether another councillor had a conflict of interest. The nature of some potential conflicts of interest are such that it is possible, and at times appropriate, for a councillor to determine that they are able to make a decision in the public interest, particularly where the conflict of interest is at best tenuous. Also, the other councillors of the local government may not be in a better position than the councillor concerned to determine whether that councillor has a conflict of interest.

The amendments are consistent with the provisions under the repealed *Local Government Act 1993*, whereby a councillor with a conflict of interest or perception of a conflict of interest, in a matter under consideration at a local government's meeting could decide whether he or she was able to make a decision in the public interest. If the councillor was able to act in the public interest, then the councillor was able to participate in the discussion and vote on the matter. Any councillor who failed to adequately manage his or her conflict of interest at a meeting was subject to disciplinary proceedings before the conduct review panels that operated under that legislation.

### **Clause 264B (Amendment of s 176 (What this division is about))**

Clause 264B amends section 176 to provide that a contravention of section 173(3) and section 173(4) is misconduct and subject to disciplinary action. Unamended section 173 provided a maximum penalty of 100 penalty units for a councillor who fails to inform the meeting about the councillor's interest in the matter and for a councillor to fail to comply with the direction of the other persons who are entitled to vote at the meeting at the meeting and unamended section 153 provided that an integrity offence is an offence against section 173. As a consequence, for four years after the person is convicted of an integrity offence, the person can not be a councillor (section 153). Section 176 is amended to provide that a councillor who fails to declare a conflict of interest may be dealt with for misconduct and subject to disciplinary action. Serious disciplinary action

may result in the Local Government Remuneration and Discipline Tribunal making a recommendation to the Crime and Misconduct Commission or the Commissioner of Police that the councillor's conduct be further investigated.

**Clause 264C (Amendment of s 177 (Assessing complaints))**

Clause 264C amends section 177 to clarify that the chief executive officer of a local government must make public the details of the complaint only when the outcome of the complaint has been determined.

**Clause 264D (Insertion of new s 177A Preliminary dealings with complaints before hearing))**

Clause 264D inserts new section 177A to confer a discretionary power on the regional conduct review panels or the Local Government Remuneration and Discipline Tribunal to order, without conducting a hearing, that a complaint, or part of a complaint be dismissed or struck out if the panel or tribunal considers the complaint, or part of the complaint is frivolous, vexatious, misconceived, lacking in substance or otherwise an abuse of process. The power to preliminary deal with a complaint will be consistent with the jurisdiction of the Queensland Civil and Administrative Tribunal. If the panel or tribunal makes an order under this section, the panel or tribunal must give written notice of the order to the chief executive officer of the local government, the department's chief executive, the accused councillor and the entity that made the complaint.

**Clause 264E (Amendment of s 178 (Notifying councillor of the hearing of a complaint of misconduct))**

Clause 264E amends section 178 to clarify that in the event that a regional conduct review panel or Local Government Remuneration and Discipline Tribunal does not dismiss or strike out a complaint under section 177A, then section 178 provides that at least 7 days before the hearing of a complaint, the department's chief executive is to notify the accused councillor a written notice about the hearing.

## **Amendment 13**

### **Clause 269A (Insertion of new ch 9, pt 3)**

Clause 269A includes a new part that continues the application of Torres Strait Island Regional Council's prescribed local laws until 30 September 2012. The amendment provides the necessary legislative support to Council's community policing function until the normalisation of policing in the Torres Strait region on 1 October 2012.

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