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# Local Government Electoral Bill 2011

## Amendments agreed to during Consideration

**1 Clause 50 (Declaration of early polling booths)**

Page 48, line 16, ‘11 days’—

*omit, insert—*

‘14 days’.

**2 Clause 79 (Applications to cast postal votes in local government elections that are not postal ballot elections)**

Page 68, lines 25 and 26—

*omit, insert—*

“Ballot paper—(*insert* name of local government area)’.”.

**3 Clause 80 (Distribution of ballot papers to electors for postal ballot elections)**

Page 69, lines 12 and 13—

*omit, insert—*

‘the words ‘Ballot paper—(*insert* name of local government area)’;’.

**4 Clause 81 (Applications to cast postal votes in postal ballot elections)**

Page 70, lines 24 and 25—

*omit, insert—*

“Ballot paper—(*insert* name of local government area)’.”.

**5 Clause 82 (Distribution of ballot papers to particular electors whose address has been omitted from a voters roll)**

Page 71, lines 11 and 12—

*omit, insert—*

‘paper—(*insert* name of local government area)’.

**6 Clause 99 (Returning officer’s duty after counting votes)**

Page 88, line 24, ‘(1)’—

*omit.*

**7 Clause 99 (Returning officer’s duty after counting votes)**

Page 89, lines 5 to 14—

*omit.*

**8 After clause 236 (Amendment of sch 2 (Dictionary))**

Page 198, after line 7—

*insert—*

**‘Division 4A Amendment of Building Act 1975 relating to Pool Safety Council**

**‘236A Act amended**

This division amends the *Building Act 1975*.

**‘236B Amendment of s 246EK (Members)**

Section 246EK(5)—

*omit.*

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

- ‘(1) Section 246EL(1), ‘member, mentioned in section 246EK(3),’—  
*omit, insert—*  
‘member’.
- ‘(2) Section 246EL(2), ‘a member,’—  
*omit, insert—*  
‘a member who is a representative of the department or LGAQ.’.
- ‘(3) Section 246EL(2), from ‘the member,’—  
*omit, insert—*  
‘the member represents.’.

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

- ‘Section 246EX—  
*insert—*
- ‘(2) If the chairperson is absent from a PSC meeting, but the deputy chairperson is present, the deputy chairperson is to preside.
- ‘(3) If the chairperson and deputy chairperson are absent from a PSC meeting, a member chosen by the members present at the meeting is to preside.’.

**‘236E Insertion of new ch 11, pt 13**

‘Chapter 11—  
*insert—*

**‘Part 13 Validation provision inserted under the Local Government Electoral Act 2011**

**‘307 Validation of particular appointments to PSC**

- ‘(1) If, before the commencement of this section, the Minister purportedly appointed a person as a deputy member, the person is declared to always have been validly appointed as a deputy member.
- ‘(2) Anything done or omitted to be done by a person mentioned in subsection (1) as a deputy member that would have been valid and lawful under this Act had the person been validly appointed is declared to always have been valid and lawful.
- ‘(3) If, before the commencement of this section, the Minister purportedly appointed a deputy member to be the deputy chairperson of PSC, despite section 246EM(1) the deputy member is declared to always have been validly appointed as the deputy chairperson of PSC.
- ‘(4) Anything done or omitted to be done by a deputy member mentioned in subsection (3) as deputy chairperson of PSC that would have been valid and lawful under this Act had the deputy member been validly appointed is declared to always have been valid and lawful.
- ‘(5) To remove any doubt, it is declared that a quorum for a PSC meeting can be, and could always have been, made up of any combination of attendees if the number of attendees at the meeting is, or was, more than half of the number of persons appointed as members of PSC at the time of the meeting.
- ‘(6) In this section—
  - attendee*, for a PSC meeting, means—
    - (a) a member; or
    - (b) a deputy member, including a deputy member to whom subsection (1) applies, acting for a member who is absent from the PSC meeting.
  - deputy member* means a deputy appointed under section 246EL(1) to act for a member.
  - member* means a person appointed under section 246EK(1) as a member of PSC.’.

**‘236F Amendment of sch 2 (Dictionary)**

‘Schedule 2—

*insert—*

‘**LGAQ** means the LGAQ Ltd. under the *Local Government Act 2009*, section 287(2).’.

**9 After clause 240 (Insertion of new ch 3, pt 5)**

Page 200, after line 22—

*insert—*

**‘240A Amendment of s 153 (Disqualification for certain offences)**

‘Section 153(5)(a), ‘175,’—

*omit.’.*

**10 After clause 242 (Amendment of s 166 (Filling a vacancy in the office of another councillor))**

Page 201, after line 8—

*insert—*

**‘242A Replacement of s 175 (Councillor’s conflict of interest at a meeting)**

‘Section 175—

*omit, insert—*

**‘175 Councillor’s conflict of interest at a meeting**

‘(1) This section 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—

- (a) has a conflict of interest in the matter (the *real conflict of interest*); or
- (b) could reasonably be taken to have a conflict of interest in the matter (the *perceived conflict of interest*).

‘(2) A *conflict of interest* is a conflict between—

- (a) a councillor's personal interests; and
  - (b) the public interest;
- that might lead to a decision that is contrary to the public interest.
- '(3) The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.
  - '(4) Without limiting subsection (3), the councillor must inform the meeting of—
    - (a) the councillor's personal interests in the matter; and
    - (b) if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.
  - '(5) Subsection (6) applies if a quorum at the meeting can not be formed because the councillor proposes to exclude himself or herself from the meeting to comply with subsection (3).
  - '(6) The councillor does not contravene subsection (3) by participating (including by 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.
  - '(7) The following must be recorded in the minutes of the meeting, and on the council's website—
    - (a) the name of the councillor who has the real or perceived conflict of interest;
    - (b) the nature of the personal interests, as described by the councillor;
    - (c) how the councillor dealt with the real or perceived conflict of interest;
    - (d) if the councillor voted on the matter—how the councillor voted on the matter;
    - (e) how the majority of persons who were entitled to vote at the meeting voted on the matter.

- ‘(8) For subsection (2), 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.
- ‘(9) To remove any doubt, it is declared 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.’.

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

‘Section 178(3)(c), ‘176(2)’—

*omit, insert—*

‘175(3), 175(4) or 176(2)’.

**‘242C Amendment of s 180 (Assessing complaints)**

‘Section 180(12), from ‘the record’—

*omit, insert—*

‘the part of the record that relates to outcomes of written complaints—

- (a) at the council’s public office; or
- (b) on the council’s website.’.

**‘242D Insertion of new s 180A**

‘After section 180—

*insert—*

**‘180A Preliminary dealings with complaints before hearing**

- ‘(1) This section applies if the chief executive officer refers a complaint to the BCC councillor conduct review panel.
- ‘(2) The BCC councillor conduct review panel may, without conducting a hearing of the complaint, order the complaint, or a part of the complaint, be dismissed or struck out if the panel considers the complaint or part is—

- (a) frivolous, vexatious or misconceived; or
  - (b) lacking in substance; or
  - (c) otherwise an abuse of process.
- ‘(3) If the BCC councillor conduct review panel acts under subsection (2), the panel must give written notice of the order to the chief executive officer, the accused councillor and the entity that made the complaint.’

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

- ‘(1) Section 181(1)—  
*omit, insert—*
- ‘(1) At least 7 days before the hearing of a complaint by the BCC councillor conduct review panel, the panel must give the accused councillor a written notice about the hearing.’
- ‘(2) Section 181(3)—  
*omit.*
- ‘(3) Section 181(4)—  
*renumber as section 181(3).’.*

**11 After clause 260 (Insertion of new ch 3, pt 5)**

Page 208, after line 15—

*insert—*

**‘260A Amendment of s 153 (Disqualification for certain offences)**

‘Section 153(5)(a), ‘173,’—

*omit.’.*

**12 After clause 264 (Amendment of s 166 (Filling a vacancy in the office of another councillor))**

Page 209, after line 15—



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*insert—*

**‘264A Replacement of s 173 (Councillor’s conflict of interest at a meeting)**

‘Section 173—

*omit, insert—*

**‘173 Councillor’s conflict of interest at a meeting**

- ‘(1) This section applies if a matter is to be discussed at a meeting of a local government, or any of its committees, and a councillor at the meeting—
- (a) has a conflict of interest in the matter (the *real conflict of interest*); or
  - (b) could reasonably be taken to have a conflict of interest in the matter (the *perceived conflict of interest*).
- ‘(2) A *conflict of interest* is a conflict between—
- (a) a councillor’s personal interests; and
  - (b) the public interest;
- that might lead to a decision that is contrary to the public interest.
- ‘(3) The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.
- ‘(4) Without limiting subsection (3), the councillor must inform the meeting of—
- (a) the councillor’s personal interests in the matter; and
  - (b) if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.
- ‘(5) Subsection (6) applies if a quorum at the meeting can not be formed because the councillor proposes to exclude himself or herself from the meeting to comply with subsection (3).
- ‘(6) The councillor does not contravene subsection (3) by participating (including by 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.

- ‘(7) The following must be recorded in the minutes of the meeting, and on the local government’s website—
- (a) the name of the councillor who has the real or perceived conflict of interest;
  - (b) the nature of the personal interest, as described by the councillor;
  - (c) how the councillor dealt with the real or perceived conflict of interest;
  - (d) if the councillor voted on the matter—how the councillor voted on the matter;
  - (e) how the majority of persons who were entitled to vote at the meeting voted on the matter.
- ‘(8) For subsection (2), a councillor who is nominated by a 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.
- ‘(9) To remove any doubt, it is declared 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.’.

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

‘Section 176(3)(c), ‘171(3) or 174(2)’—

*omit, insert—*

‘171(3), 173(3), 173(4) or 174(2)’.

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

‘Section 177(12), ‘the record’—

*omit, insert—*

‘the part of the record that relates to outcomes of written complaints’.

**‘264D Insertion of new s 177A**

‘After section 177—

*insert—*

**‘177A Preliminary dealings with complaints before hearing**

- ‘(1) This section applies if the department’s chief executive refers a complaint of misconduct to a regional conduct review panel or the tribunal.
- ‘(2) The regional conduct review panel or the tribunal may, without conducting a hearing of the complaint, order the complaint, or a part of the complaint, be dismissed or struck out if the panel or tribunal considers the complaint or part is—
- (a) frivolous, vexatious or misconceived; or
  - (b) lacking in substance; or
  - (c) otherwise an abuse of process.
- ‘(3) If the regional conduct review panel or the tribunal acts under subsection (2), the panel or tribunal must give written notice of the order to all the following—
- (a) the chief executive officer (if any) who originally assessed the complaint;
  - (b) the department’s chief executive;
  - (c) the accused councillor;
  - (d) the entity that made the complaint.’.

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

‘(1) Section 178(1) and (2)—

*omit, insert—*

‘(1) At least 7 days before the hearing of a complaint of misconduct by a regional conduct review panel or the tribunal,

the department's chief executive must give the accused councillor a written notice about the hearing.'.

'(2) Section 178(4)—

*omit.*

'(3) Section 178(3) and (5)—

*renumber* as section 178(2) and (3).'

**13 After clause 269 (Insertion of new ch 9, pt 2, hdg)**

Page 210, after line 19—

*insert—*

**'269A Insertion of new ch 9, pt 3**

'Chapter 9—

*insert—*

**'Part 3 Transitional provision inserted under the Local Government Electoral Act 2011**

**'294 Continuation of particular local laws of Torres Strait Island Regional Council**

'(1) A prescribed local law in force immediately before 1 January 2012 continues in force until the earlier of the following—

(a) the local law's repeal by the Torres Strait Island Regional Council;

(b) the end of 30 September 2012.

'(2) However, that Council may, by local law, amend a local law continued under subsection (1) while it continues under that subsection.

'(3) In this section—

***prescribed local law*** means any of the following local laws—

(a) Badu Island Council By-Law No. 2 (Law and Order);

- (b) Boigu Island Council By-Law No. 2 (Law and Order);
- (c) Dauan Island Council By-Laws 1995;
- (d) Erub Island Council By-Laws 1995;
- (e) Hammond Island Council By-Law No. 2 (Law and Order);
- (f) Iama Island Council By-Law No. 2 (Law and Order);
- (g) Kubin Island Council By-Law No. 2 (Law and Order);
- (h) Mabuiag Island Council By-Laws 1995;
- (i) Mer Island Council By-Laws 1995;
- (j) Poruma Island Council By-Laws 1995;
- (k) Saibai Island Council By-Laws 1997;
- (l) St Pauls Island Council By-Laws 1995;
- (m) Ugar Island Council By-Laws 1997;
- (n) Warraber Island Council By-Laws 1997;
- (o) Yorke Island Council By-Laws 1995.'.'. .

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