

Queensland



# LOCAL GOVERNMENT ACT 1993

**Reprinted as in force on 12 January 1998  
(includes amendments up to Act No. 78 of 1997)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 3C**

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# Information about this reprint

This Act is reprinted as at 12 January 1998. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

# Queensland



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# LOCAL GOVERNMENT ACT 1993

[as amended by all amendments that commenced on or before 12 January 1998]

**An Act to provide for local government, and for related purposes**

## CHAPTER 1—PRELIMINARY

### PART 1—INTRODUCTION

#### Short title

1. This Act may be cited as the *Local Government Act 1993*.

### PART 2—OBJECTS

#### Objects of this Act

3. The objects of this Act include—
  - (a) providing a legal framework for an effective, efficient and accountable system of local government; and
  - (b) recognising a jurisdiction of local government sufficient to allow a local government to take autonomous responsibility for the good rule and government of its area with a minimum of intervention by the State; and
  - (c) providing for community participation in the local government system; and

- (d) defining the role of participants in the local government system; and
- (e) establishing an independent process for ongoing review of certain important local government issues.

## PART 3—INTERPRETATION

### Definitions

#### 4. In this Act—

**“Aboriginal local government”** means a body that has the function of local government under the *Community Services (Aborigines) Act 1984*.

**“additional territorial unit”**, of a local government, has the meaning given by section 23 (Exercise of jurisdiction outside its local government area—the “additional territorial units”).

**“affected area”**, for a reviewable local government matter, means an area, or part of an area, prescribed under a regulation for the matter.

**“affected elector”** means—

- (a) for an affected area (that is not divided into voting areas) for a reviewable local government matter for which a referendum is to be held in relation to an electoral and boundaries review commission’s proposed determination of the matter—a person who, on the referendum roll cut-off day, is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the affected area; or
- (b) for a voting area of an affected area for a reviewable local government matter for which a referendum is to be held for an electoral and boundaries review commission’s proposed determination of the matter—a person who, on the referendum roll cut-off day, is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the voting area.



**“appeal tribunal”** means an appeal tribunal established under this Act to hear an appeal about the decision about which the expression is used.

**“appointer”**, of a local government employee, means—

- (a) for the chief executive officer—the local government; or
- (b) for a senior executive officer appointed by the local government—the local government; or
- (c) for another employee—the chief executive officer.

**“approve”**, a referendum question, see section 91A.

**“approved inspection program”** see section 690.

**“approved form”** see section 792A.

**“area”** means—

- (a) for a local government—its basic territorial unit; or
- (b) for a joint local government—its territorial unit.

**“authorised person”**—

- (a) in chapter 3 (Interaction with the State), part 2 (Intervention by the State)—means a person who is appointed under section 116 (Inquiries, investigations and inspections by authorised persons); and
- (b) in chapter 10 (Rates and charges), part 3 (Categorisation of land for differential rating), division 2 (Entry on land for categorisation)—has the meaning given by section 576 (Meaning of “authorised person” for division); and
- (c) in chapter 11 (Provisions aiding local government), part 5 (Enforcement of local government Acts)—has the meaning given by section 674 (Definitions).

**“basic territorial unit”**, of a local government, has the meaning given by section 22 (Exercise of jurisdiction for its local government area—the “basic territorial unit”).

**“budget meeting”**, of a local government, means a meeting of the local government at which it adopts its budget for a financial year.

**“certified copy”**, of a local government’s local law or local law policy, means a copy of the local law or local law policy certified by the local

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government's chief executive officer to be the local law or local law policy as made by the local government.

**“chairperson”**, of an expanded commission, means—

- (a) if the commission is a special commission—the member mentioned in section 66A(1)(a); or
- (b) if paragraph (a) does not apply—the commission member who is the commissioner or deputy commissioner.

**“cleansing services”** includes services for the removal of nightsoil, refuse or recyclable material.

**“combined form”** means a form that—

- (a) gives information required by this Act and other Acts about a change of ownership of land; and
- (b) may be given to the registrar of titles.

**“commercial business unit”**, of a local government, see section 458CK.

**“commission”** means the Local Government Grants Commission.

**“commissioner”** means the electoral commissioner under the *Electoral Act 1992*.

**“community titles Act”** means—

- the *Building Units and Group Titles Act 1980*
- the *Integrated Resort Development Act 1987*
- the *Mixed Use Development Act 1993*
- another Act prescribed by regulation.

**“company limited by shares”** has the same meaning as in the Corporations Law.

**“component local government”** means 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.

**“compulsory referendum”** see section 72F.

**“conclusion”**, of a local government election, has the meaning given by section 6 (Meaning of “conclusion” of local government election).

**“consultation period”**—

- (a) for a proposed local law—means the period mentioned in section 476 (Step 3—consult with public about proposed law); and
- (b) for a proposed local law policy—means the period mentioned in section 485 (Step 2—consult with public about proposed policy).

**“continuing candidate”**, for a counting of votes, means a candidate who has not been excluded at a previous count of votes.

**“councillor”**, of a local government, includes the local government’s mayor.

**“cut-off day”**, for the voters roll for an election, means the day to which the voters roll for the election must be compiled under section 225 (Cut-off day for voters roll).

**“decision maker”**, for the categorisation of land for a differential general rate, has the meaning given by section 579(2)(c)(i) (Notice to owner of categorisation).

**“declaration envelope”** means an envelope on which there is a declaration that has been, or a form of declaration that is to be, made by an elector.

**“declaration form”** means a form on which there is a declaration to be made by an elector.

**“declaration vote”** means a vote for which a declaration envelope must be completed.

**“declaration voter”** means a person mentioned in any of the following sections—

- section 289 (Who may cast a declaration vote)
- section 290 (Who must cast a declaration vote in ordinary elections)
- section 291 (Declaration voting for postal ballot elections).

**“delayed implementation determination”**, for a reviewable local government matter, means a determination, under section 72G(1A) or (1B) or section 73E(1A) or (1B), for the matter.

**“delayed implementation issues”**, for a reviewable local government

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matter mentioned in section 64(1)(c), means—

- (a) the likely cost of conducting fresh elections that may be held because of the implementation of the matter; and
- (b) the period since the conduct of the last elections of all councillors for the local governments affected by the matter; and
- (c) the period before the conduct of the next triennial elections for the local governments.

**“delayed implementation reference”**, for a reviewable local government matter, means a reference of a matter mentioned in section 64(1)(c), for a local government whose area is divided, that—

- (a) does not include a matter mentioned in section 64(1)(g), (h), (i) or (k); and
- (b) the Minister states in the reference is a delayed implementation reference.

**“deputy commissioner”** means the deputy electoral commissioner under the *Electoral Act 1992*.

**“differential general rate”** means a rate (other than a special rate) made and levied equally on the unimproved value of all rateable land in a local government area included in a category decided by the local government in levying the rate.

**“dispose”** of land or goods includes sell the land or goods.

**“division”**, of a local government area, means a division of the area established for the election of councillors or a councillor.

**“effective value”** of land for a financial year (the **“relevant financial year”**), for the purpose of calculating the land’s unimproved value to make and levy rates for a financial year (the **“current financial year”**), means—

- (a) if the relevant financial year is a financial year other than the current financial year—the unimproved value of the land decided under the *Valuation of Land Act 1944* effective on the last day of the financial year; or
- (b) if the relevant financial year is the current financial year—the unimproved value of the land decided under the *Valuation of*

*Land Act 1944.*

“**elect**” includes re-elect.

“**election**” means an election of councillors, or a councillor, of a local government.

“**election matter**” means anything able to, or intended to—

- (a) influence an elector about voting at an election; or
- (b) affect the result of an election.

“**election period**”, for an election, means the period—

- (a) starting on the day when public notice of the holding of the election is given under section 248(1) (Calling for nominations); and
- (b) ending on the close of the poll in the election.

“**elector**” means a person entitled to vote under this Act.

“**electoral and boundaries review commission**” means a Local Government Electoral and Boundaries Review Commission established under section 66.

“**electoral officer**”, for an election, means the returning officer, an assistant returning officer or a presiding or issuing officer.

“**electoral paper**” means a ballot paper or declaration envelope or form.

“**electoral roll**” means a roll kept under the *Electoral Act 1992*.

“**encumbrance**” includes any of the following that affects land—

- (a) a mortgage, lien or charge;
- (b) a caveat;
- (c) an agreement;
- (d) a judgment, writ or process;
- (e) an interest adverse to the interest of the land’s owner;

but does not include an easement.

“**enterprise**” includes any business, undertaking and activity.

“**enterprise power**” has the meaning given by section 410(2) (Engagement

in or help to enterprises).

**“exhausted ballot paper”**, for a count of votes, means a ballot paper on which there is not recorded a vote for a continuing candidate.

**“expanded commission”** means an electoral and boundaries review commission constituted by more than 1 commission member.

**“explanatory statement”** see section 92F.

**“facility”** includes work.

**“ferry”** includes a punt and floating pontoon.

**“foreshore”** means the land lying between high-watermark and low-watermark at ordinary spring tides.

**“fresh election”** means an election under chapter 5 (Local government elections), part 7 (Fresh elections).

**“general charge”** means a charge mentioned in section 570 (General charges).

**“general rate”** means a rate (other than a separate rate) made and levied by a local government equally on the unimproved value of all rateable land in its area.

**“government entity”** has the same meaning as in the *Government Owned Corporations Act 1993*.

**“holding”** means land held from the State for a leasehold interest.

**“implementation issues”**, for a reviewable local government matter mentioned in section 64(1)(a), (c), (e) or (f), means—

- (a) the apportionment of assets and liabilities between the local governments concerned; and
- (b) the application of existing local laws, planning schemes and interim development control provisions; and
- (c) the preservation of—
  - (i) valuations of, and rates levied on, rateable land that would be affected by the matter if it were implemented; and
  - (ii) any existing debentures issued by the local governments; and

- (d) the rationalisation of staff of the local governments; and
- (e) anything else prescribed under a regulation.

**“improved land”** means land, or the part of land, that is—

- (a) the site or curtilage of a building; or
- (b) a garden, lawn, yard or court; or
- (c) a park, plantation, planted walk or avenue; or
- (d) a nursery for trees; or
- (e) land under cultivation.

**“infringement notice”**, for an infringement notice offence, means a notice under the *Justices Act 1886*, section 98C.

**“infringement notice offence”** means an offence to which the *Justices Act 1886*, part 4A applies.

**“institution”** means any of the following—

- (a) a hospital;
- (b) a convalescent home;
- (c) a nursing home;
- (d) a home for the aged;
- (e) a hostel for the aged or infirm;
- (f) a prison or other place of confinement;
- (g) another place prescribed by regulation as an institution.

**“interim development control provisions”** has the meaning given by the *Local Government (Planning and Environment) Act 1990*.

**“interim local law”** has the meaning given by section 463 (Meaning of “interim local law”).

**“issuing officer”** means a person appointed to issue ballot papers, declaration envelopes or declaration forms to electors, and includes a returning officer, assistant returning officer and presiding officer when carrying out any of those functions.

**“joint local government”** means a joint local government established under this Act.

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**“joint local government area”** means a part of the State that is established as a joint local government area under this Act.

**“jurisdiction of local government”** has the meaning given by section 25 (Jurisdiction of local government).

**“keeper of the register”** has the meaning given by section 731 (Access to register of interests).

**“land”** includes—

- (a) freehold land; and
- (b) a holding; and
- (c) a mining claim.

**“land record”**, of a local government, means the record of rateable land in its area it is required to keep under section 590 (Land record to be kept).

**“levee bank”** means an embankment or structure by which—

- (a) water is prevented or reduced from flowing into or from land; or
- (b) the flooding of land is prevented or reduced.

**“LGO”** see section 458DH.

**“limited partner”** has the same meaning as in the *Partnership (Limited Liability) Act 1988*.

**“limited reviewable local government matter”** see section 65.

**“local governing body”** has the meaning given by the *Local Government (Financial Assistance) Act 1986* (Cwlth).

**“local government”** means a local government established under this Act.

**“local government Act”** means an Act under which a local government may exercise the jurisdiction of local government, and includes, for example, this Act, the *Local Government (Planning and Environment) Act 1990*, a local law, a planning scheme or interim development control provisions.

**“local government area”** means a part of the State that is established as a local government area under this Act.

**“Local Government Association”** means the Local Government



Association of Queensland (Incorporated).

**“Local Government Finance Standards”** means the standards in force under section 416 (Issue of standards).

**“local government matter”** means a matter about local government.

**“local law”** has the meaning given by section 461 (Meaning of “local law”).

**“local law policy”** has the meaning given by section 464 (Meaning of “local law policy”).

**“majority”**, of commission members of an expanded commission constituted by an even number of members, means at least one-half the members plus 1.

**“major reference”**, for a reviewable local government matter, means—

- (a) a reference of, or reference including, a reviewable local government matter mentioned in section 64(1)(g) or (h) that, if implemented, would affect the City of Brisbane; or
- (b) a reference of another reviewable local government matter that—
  - (i) the Minister states in the reference of the matter is a major reference; or
  - (ii) the commissioner or an electoral and boundaries review commission declares under section 71 or 71B is a major reference.<sup>1</sup>

**“material personal interest”** of a person has the meaning given by section 7 (Meaning of “material personal interest”).

**“member”** for—

- (a) a joint local government—includes the president and deputy president of the joint local government; or
- (b) a local government committee—includes the chairperson and deputy chairperson of the committee; or
- (c) the Local Government Grants Commission—includes the

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<sup>1</sup> A special reference is a major reference under paragraph (a)—see definition “special reference”.

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chairperson and deputy chairperson of the commission; or

- (d) an electoral and boundaries review commission—means a member of the commission.

**“merit”**, of an applicant, includes the applicant’s abilities, knowledge and skills relevant to the position concerned.

**“minimum general rate levy”** means an amount fixed as the minimum amount payable as a general rate or differential general rate for all or any rateable land in a local government area.

**“mining claim”** means a mining claim to which the *Mineral Resources Act 1989* applies.

**“mining lease”** means a mining lease to which the *Mineral Resources Act 1989* applies.

**“minor reference”**, for a reviewable local government matter, means a reference the commissioner declares, under section 71, is a minor reference, but does not include a reference an electoral and boundaries review commission declares, under section 71B, to be a major reference.

**“misconduct”**, of a local government employee, means—

- (a) disgraceful or improper conduct that shows unfitness to be or to continue as a local government employee; or
- (b) behaviour that does not satisfy a standard of behaviour generally expected of local government employees; or
- (c) a contravention of a provision of this or another Act setting out what the employee must or must not do (whether or not the Act provides for a penalty for contravening the provision).

**“mobile polling booth”** means a place declared by a returning officer as a mobile polling booth for a ballot in a poll.

**“model local law”** has the meaning given by section 462 (Meaning of “model local law”).

**“nomination day”** means the day specified as the nomination day for an election—

- (a) in a notice under section 248 (Calling for nominations); or

(b) in a gazette notice under section 262 (Extension of times).

**“non-compulsory referendum”** see section 72F.

**“notice of realignment”** means a notice under section 498(3) (Realignment of roads).

**“open to inspection”** has the meaning given by section 8 (Meaning of “open to inspection”).

**“oppose”**, a referendum question, see section 91A.

**“ordinary polling booth”** means a place, or part of a place, a returning officer arranges to be used on polling day to enable electors in general to vote.

**“ordinary voting hours”** means the hours between 8 a.m. and 6 p.m.

**“overdue rate”** has the meaning given by section 612 (Meaning of “overdue rate”).

**“owner”**, of land, see—

(a) for chapter 3, part 1—section 63; or

(b) for all provisions—section 5.

**“pensioner”** means a person receiving a pension, allowance or benefit prescribed by regulation.

**“perform work”** includes take action to comply with a local government Act.

**“permissible company”** has the meaning given by section 411 (Specific enterprise powers).

**“place”** includes a vehicle.

**“planning scheme”** has the meaning given by the *Local Government (Planning and Environment) Act 1990*.

**“political party”** means an organisation registered as a political party under the *Electoral Act 1992*.

**“polling booth”** means—

(a) an ordinary polling booth; or

(b) a mobile polling booth; or

- (c) the place declared as a polling booth to enable an elector to cast a declaration vote under section 298 (Declaration voting before polling day).

**“polling day”**, for an election, means the day—

- (a) specified in a notice under section 257 (Procedure if number of candidates exceeds number required); or
- (b) fixed by notice under section 259 (Procedure on death of candidate when poll to be conducted); or
- (c) fixed by a notice under section 262 (Extension of times); or
- (d) fixed by a notice under section 288 (Adjournment of poll).

**“postal ballot election”** means an election for a local government area, a division of a local government area or a part of a local government area for which the Governor in Council has directed that the poll be conducted by postal ballot.

**“prescribed offices”** see section 8.

**“public office”**, of a local government, means the premises kept as its public office under section 37 (Site of public office).

**“question”**, for a referendum, means the question asked at the referendum.

**“rate”** means a rate or charge mentioned in section 559(1) (Power to make and levy rates and charges), and includes any interest accrued, or premium owing, on a rate or charge mentioned in the section.

**“rateable land”** has the meaning given by section 553 (What land is rateable?).

**“rating category”** has the meaning given by section 579(2)(a) (Notice to owner of categorisation).

**“referendum”** means a referendum under chapter 3, part 1, division 4A, for an electoral and boundaries review commission’s proposed determination of a reviewable local government matter.

**“referendum day”** see section 92B.

**“referendum notice”**, for a referendum, see section 92C.

**“referendum roll cut-off day”**, for a referendum, means the day stated in the referendum notice for the referendum as the referendum roll

cut-off day.

**“registrar of titles”** means a public official or authority responsible for registering title to land and dealings affecting land.

**“remuneration”**, of a councillor or member of a committee of a local government, includes—

- (a) any fees or allowances, or reimbursement of expenses, paid to the councillor or member by the local government; and
- (b) any benefit or entitlement provided to the councillor or member by the local government.

**“required number”**, in chapter 8 (Local laws and local law policies), means the number decided by the Minister.

**“returning officer”**, for a referendum, means the person appointed under section 92A as the returning officer for the referendum.

**“review commissioner”** means a review commissioner appointed under chapter 3, part 1, division 5, subdivision 2.

**“reviewable local government matter”** has the meaning given by section 64 (Meaning of “reviewable local government matter”).

**“road”** means—

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d);

but does not include a State-controlled road under the *Transport Infrastructure Act 1994*.

**“senior executive officer”**, of a local government, means an employee of the local government—

- (a) who reports directly to the chief executive officer; and

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(b) whose position ordinarily would be considered to be a senior position in the local government's corporate structure.

**“separate charge”** means a charge made and levied by a local government equally on all rateable land in its area.

**“separate rate”** means a rate made and levied by a local government equally on the unimproved value of all rateable land in its area.

**“sign”** a thing includes the making of a mark on the thing before someone else who signs the thing as witness.

**“significant business activity”**, of a local government, means a significant business activity of the local government under chapter 7A.

**“special charge”** means a charge made and levied by a local government on some, but not all, rateable land in its area.

**“special commission”** means an electoral and boundaries review commission established for a special reference of a reviewable local government matter.

**“special rate”** means a rate made and levied by a local government on the unimproved value of some, but not all, rateable land in its area.

**“special reference”**, for a reviewable local government matter, means a reference under section 235 of a reviewable local government matter mentioned in section 64(1)(g) or (h) that, if implemented, would affect the City of Brisbane.

**“State-controlled road”** means a State-controlled road under the *Transport Infrastructure Act 1994*.

**“State interest”**, for a local law or local law policy, a provision of a local law or local law policy, or a provision of a proposed local law, is—

- (a) an interest that, in the Governor in Council or Minister's opinion, affects an economic, social or environmental interest of the State or a region; or
- (b) an interest in ensuring there is an efficient, effective and accountable system of local government; or
- (c) an interest prescribed by regulation.

**“State land”** means unallocated State land within the meaning of the *Land Act 1994*.

**“State office”**, of the department, means the department’s address prescribed by regulation.

**“structure”** means anything built or constructed, whether or not attached to land.

**“territorial unit”**—

- (a) for a local government—has the meaning given by section 24 (Territorial unit of local government); or
- (b) for a joint local government—means its joint local government area.

**“time share scheme”**, for a structure, means a scheme or arrangement that is to operate for at least 3 years during which time the participants in the scheme or arrangement are, or may become, entitled to use, occupy or possess the structure, or part of the structure, for 2 or more periods.

**“Torres Strait Islander local government”** means a body that has the function of local government under the *Community Services (Torres Strait) Act 1984*.

**“unimproved value”** of land for a financial year—

- (a) if the relevant local government has made a resolution under section 555 (Local government may decide to average land values for rating purposes) for the financial year—means the averaged value of the land calculated under chapter 10 (Rates and charges), part 1 (General), division 2 (Averaging of valuations); or
- (b) for a mining claim—is the amount specified under section 566 (Unimproved value of mining claims); or
- (c) in any other case—has the meaning given by the *Valuation of Land Act 1944*.

**“utility charge”** means a charge for the supply by a local government of water, gas, sewerage or cleansing services to any land or structure.

**“valuation authority”** means the chief executive within the meaning of the *Valuation of Land Act 1944*.

**“voters roll”**, for an election, is the roll compiled by the returning officer of persons entitled to vote at the election.

**“voting areas”**, of an affected area, mean the parts into which an affected

area is divided, under a regulation, for a referendum.

**“voting hours”**, for voting at a mobile polling booth or declaration voting at a place under section 298 (Declaration voting before polling day), means the hours when electors may enter the booth or place to vote at an election.

**“watercourse”** means a river, creek or channel where water flows naturally.

### Meaning of “owner” of land

5.(1) An “owner” of land is—

- (a) a registered proprietor of freehold land; or
- (b) a purchaser of land to be held as freehold land that is being purchased from the State under an Act; or
- (c) a lessee of land held from the State, and a manager, overseer or superintendent of the lessee who lives on the land; or
- (d) a holder of—
  - (i) a mining claim or lease; or
  - (ii) an area mentioned in the *Mineral Resources Act 1989*, schedule, section 5; or
- (e) a lessee under the *Petroleum Act 1923*; or
- (f) a lessee of land held from a government entity or local government; or
- (g) the holder of—
  - (i) an occupation permit under an Act, a stock grazing permit under an Act or a permit prescribed by regulation; or
  - (ii) a permit to occupy under the *Land Act 1994*.
  - (iii) a permission to occupy from the Primary Industries Corporation; or
- (h) a licensee under the *Land Act 1994*; or
- (i) for land on which there is a structure subject to a time share scheme—the person notified to the local government concerned



as the person responsible for the administration of the scheme as between participants in the scheme; or

- (j) another person who—
  - (i) is entitled to receive the rent for the land; or
  - (ii) would be entitled to receive the rent for the land if it were leased at a rack-rent.<sup>2</sup>

(2) However, an owner does not include the State or a government entity except so far as it is liable under an Act to pay a rate.

### **Meaning of “conclusion” of local government election**

**6.(1)** The “**conclusion**” of the election of a councillor, other than a councillor of the Brisbane City Council, is—

- (a) if the councillor is elected at an election of all councillors of the local government—the day on which the last declaration of a poll conducted in the election is displayed in the local government’s public office as required by this Act; or
- (b) if the councillor is elected at a by-election and—
  - (i) a poll is conducted—the day on which the declaration of the poll is displayed in the local government’s public office as required by this Act; or
  - (ii) a poll is not conducted—the day after the nomination day for the by-election; or
- (c) if, because the number of candidates nominated for election is the same or less than the number of councillors to be elected, the councillor is elected (other than at a by-election) and—
  - (i) 1 or more polls are conducted in the local government area—the day on which the last declaration of a poll conducted in the local government area is displayed in the local government’s public office as required by this Act; or
  - (ii) no poll is conducted in the local government area—6 p.m.

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<sup>2</sup> Rack-rent of land is a rent for the land that is the highest possible rent for the land. It implies that the land is leased commercially.

on the day that a poll would otherwise have been required under this Act to be conducted.

(2) The **“conclusion”** of the election of a councillor of the Brisbane City Council is—

- (a) for a triennial election—when the names of all candidates elected are published in the gazette; or
- (b) for a by-election whether or not a poll is conducted—when the name of the candidate elected is published in the gazette.<sup>3</sup>

### **Meaning of “material personal interest”**

7.(1) A person has a **“material personal interest”** in an issue if the person has, or should reasonably have, a realistic expectation that, whether directly or indirectly, the person or an associate stands to gain a benefit or suffer a loss, including a benefit or loss as a director of a significant business entity under chapter 7A, part 6 that is, or is to become, an LGOC, depending on the issue’s outcome.

(2) An **“associate”** is any of the following persons—

- (a) a spouse or other member of the person’s household;
- (b) an entity (other than a government entity) of which the person or the person’s nominee is a member;
- (c) a partner of the person;
- (d) an employer (other than a government entity) of the person;
- (e) a person prescribed by regulation.

(3) However, a person does not have a material personal interest in an issue—

- (a) if the issue is about—
  - (i) the remuneration of councillors or members of a local government committee or directors of significant business entities that are, or are to become, LGOCs; or

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<sup>3</sup> *Electoral Act 1992*, section 123(2)(c) provides for publication in the gazette of the name of each candidate elected. That section is applied to the conduct of Brisbane City Council elections—see *City of Brisbane Act 1924*, section 17(5).

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- (ii) salary, wages or other remuneration of local government employees; or
  - (iii) the terms on which goods, services or facilities are to be offered by the local government for use or enjoyment of the public in its area; or
  - (iv) the making of a rate or the levying of a rate or a general charge by the local government; or
  - (v) a planning scheme of general application in the local government's area; or
  - (vi) provision of superannuation entitlements or accident insurance for councillors or employees of the local government; or
- (b) if the interest is merely—
- (i) as an elector, ratepayer or resident of the local government's area; or
  - (ii) as a user of goods, services or facilities supplied, or to be supplied, by the local government (whether under a contract or otherwise) as a member of the public in common with other members of the public; or
  - (iii) as a member of a non-profit, charitable or religious organisation involving no personal gain or loss to the person; or
  - (iv) as a member of another entity in which the member does not have personal financial interest; or
- (c) merely because the person—
- (i) is an employee of the State or a government entity; or
  - (ii) is a candidate for election or appointment as mayor or deputy mayor of the local government or chairperson, deputy chairperson, member or delegate member of any of its committees or a director of a significant business entity that is, or is to become, an LGOC or the shareholder's delegate for an LGOC; or
  - (iii) may become entitled to benefits under a policy of accident

insurance, public liability or professional indemnity insurance held, or to be held, by the local government.

(4) This section does not apply to section 458IL.

### **Meaning of “open to inspection”**

**8.(1)** If a document is “**open to inspection**”—

- (aa) if a document is open to inspection under chapter 7A, 7B, 7C or 7D—it must be held in the local government’s public office.
- (a) if it is a document of a local government—it must be held in the local government’s public office; and
- (b) if it is a document relating to an electoral and boundaries review commission’s examination or determination of a reviewable local government matter—
  - (i) it must be held in the Electoral Commission’s office at Brisbane and the public office of each local government concerned (the “**prescribed offices**”); and
  - (ii) it may also be held at another office under arrangements made by the commission; and
- (c) if it is a document of another entity—it must be held in an office of the entity that is open to the public.

(2) If a person is authorised under this Act to inspect the document, the person may, free of charge and at any time when the office in which the document is held is open for business—

- (a) inspect the document; and
- (b) make copies of, or take extracts from, the document.

(3) The following persons are authorised to inspect the document—

- (a) if this Act specifies a description of person who may inspect the document—the person and the person’s agents;
- (b) in another case—all persons.

(4) The person (the “**custodian**”) who has the custody of the document is not required to supply any facility or service to a person in making a copy of, or taking an extract from, the document.

(5) However, if the custodian supplies a facility or service to a person in making a copy or extract, the custodian may charge a reasonable fee for the facility or service.

### **Documents open to inspection not to contain information about protected persons**

**8A.(1)** This section applies to a document that—

- (a) is, under this Act, open to inspection; and
- (b) is, or is based on, a document given to the local government by the chief executive (valuations); and
- (c) would, apart from this section, include the name and postal address of a protected person.

(2) If the chief executive (valuations) gives notice to the local government under the *Valuation of Land Act 1944*, section 73A, about a protected person, the local government must not include the name and postal address of the protected person in the document when the document is open to inspection.

(3) In this section—

**“chief executive (valuations)”** means the chief executive of the department in which the *Valuation of Land Act 1944* is administered.

**“protected person”** means a person for whose benefit the chief executive

(valuations) has made a direction under the *Valuation of Land Act 1944*, section 75B(2), that continues to have effect.<sup>4</sup>

## **PART 4—APPLICATION OF ACT TO BRISBANE CITY COUNCIL**

### **Act applies only so far as expressly provided**

**9.(1)** This Act applies to the Brisbane City Council only so far as is expressly provided by this or another Act.

**(2)** The provisions of this Act that apply to the Brisbane City Council include the following—

- chapter 2 (The local government system)
  - part 1 (Local governments), divisions 2 (Roles of local governments) and 3 (Jurisdiction of local governments)
  - part 2 (Joint local governments)
  - part 3 (Joint action by local governments)
- chapter 3 (Interaction with the State)

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<sup>4</sup> The *Valuation of Land Act 1944*, section 73A provides as follows—

#### **‘Local governments to be given notice about protected persons**

**73A.(1)** If a valuation roll or part of a valuation roll is, under section 73, given to a local government, the chief executive must, at the time the roll or part is given to the local government, give notice to the local government about the suppression directions for the benefit of each protected person whose name and address appears in the roll or part.

**(2)** If a valuation roll or part of a valuation roll has, under section 73, been given to a local government and a person, whose name and address appears in the roll or part, becomes a protected person, the chief executive must give notice to the local government about the suppression direction for the benefit of the protected person, no later than 7 days after the date of the direction.

**(3)** If matters stated in a suppression direction change (including, for example, the land stated in the direction), the chief executive must give notice to a local government that has previously been given notice about the direction.

**(4)** A notice under this section must be in the approved form.’

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- part 1 (Reviewable local government matters)
- part 3 (Local Government Grants Commission)
- chapter 4 (Local government councillors)
  - part 1 (Membership of local governments)
  - part 3 (Entitlements and obligations), division 2 (Obligations of councillors)
  - part 4 (Vacancies in membership of local governments)
- chapter 5 (Local government elections)
  - part 5 (Division of local government areas)
  - part 6 (Conduct of elections)
    - section 244 (Qualification for nomination)
    - section 245 (Prohibition of dual candidature)
    - section 246 (Leave to local government employee to contest election)
    - section 249 (Who may nominate)
- chapter 6 (General operation of local governments)
  - part 4 (Enterprises)
- chapter 7A (National competition reform of significant business activities)
- chapter 7B (Conduct of competitive business activities)
- chapter 7C (Reform of certain water and sewerage services)
- chapter 7D (Complaints about competitive neutrality)
- chapter 8 (Local laws and local law policies)
- chapter 9 (Local government infrastructure)
- chapter 10 (Rates and charges)
  - part 1 (General), division 2 (Averaging of valuations)
  - part 7 (Recovery of rates)
- chapter 11 (Provisions aiding local government)

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- chapter 14 (General)
  - part 2 (Miscellaneous)
    - section 793B (Application of Freedom of Information Act and Judicial Review Act)
- chapter 15 (Transitional and savings provisions, repeals and amendments)
  - part 1 (Transitional and savings provisions)
    - division 3 (Local laws and local law policies)
    - division 3A (Anti-competitive provisions of existing local laws and existing local law policies)
    - section 806 (Saving of averaged land values for rating purposes)
    - section 807 (Saving of proceedings to recover overdue rates)
    - section 808 (Saving of action to sell or acquire land for overdue rates)
    - section 816 (Transitional regulations).

**(3)** If the Brisbane City Council is or is to become a component local government in a joint local government, this Act applies to the Brisbane City Council as a component local government as if it were a local government established under this Act.

### **How local government Acts apply to Brisbane City Council**

**10.** If a provision of a local government Act (other than the *City of Brisbane Act 1924*) applies to the Brisbane City Council—

- (a) a reference in the provision—
  - (i) to a local government area includes a reference to the City of Brisbane; and
  - (ii) to a local government includes a reference to the Brisbane City Council; and
  - (iii) to a division of a local government area includes a reference



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- to a ward of the City of Brisbane; and
- (iv) to the chief executive officer of a local government includes a reference to the town clerk of the Brisbane City Council; and
  - (v) to the operating fund of a local government includes a reference to the City Fund; and
  - (vi) to a local government Act includes the *City of Brisbane Act 1924*; and
  - (vii) to a local government's public office includes a reference to the premises kept by the Brisbane City Council as its public office and a place the council has, by resolution or under a local law, declared to be its public office for a stated matter; and
  - (viii) to a triennial election includes a triennial election under the *City of Brisbane Act 1924*; and
  - (ix) to an election includes a reference to an election under the *City of Brisbane Act 1924*; and
  - (x) to a councillor includes the mayor and councillors of the Brisbane City Council; and
  - (xi) to a by-election includes a reference to a separate election to fill a vacancy in the office of mayor or other councillor of the Brisbane City Council; and
  - (xii) to a local government's annual report includes a reference to an annual report of the Brisbane City Council'; and
  - (xiii) to a utility charge includes a reference to a utility charge under the *City of Brisbane Act 1924*; and
- (b) the provision applies with all necessary changes and any changes prescribed by regulation.

## **PART 5—APPLICATION OF ACT TO JOINT LOCAL GOVERNMENTS**

### **Act applies except so far as application displaced**

**11.(1)** This Act applies to a joint local government except so far as its application is displaced by a contrary intention.

**(2)** The provisions of this Act that apply only to a joint local government include the following—

- chapter 2 (The local government system)
  - part 2 (Joint local governments)
- section 115 (Abolition of joint local government and its area)
- chapter 4 (Local government councillors)
  - part 5 (Membership of joint local governments)
- chapter 7 (Financial operation and accountability of local governments)
  - part 10 (Joint local governments)
- section 728(3) (Concurrent employment of local government employees).

**(3)** Other provisions that affect the application of this Act to a joint local government include the following—

- section 62 (Definitions for pt 1), definition “local government”
- section 64(3) to (5) (Meaning of “reviewable local government matter”).

### **How Act applies to joint local governments**

**12.(1)** A reference in this Act—

- (a) to a local government area includes a reference to a joint local government area; and
- (b) to a local government includes a reference to a joint local government; and

- (c) to the mayor of a local government includes a reference to the president of a joint local government; and
- (d) to the deputy mayor of a local government includes a reference to the deputy president of a joint local government; and
- (e) to a councillor of a local government includes a reference to a member of a joint local government; and
- (f) to the chief executive officer of a local government includes a reference to the chief executive officer of a joint local government.

(2) This Act applies to a joint local government with all necessary changes and any changes prescribed by regulation.

## **PART 6—APPLICATION OF ACT TO ABORIGINAL AND TORRES STRAIT ISLANDER LOCAL GOVERNMENTS**

### **Act applies only so far as expressly provided**

**13.(1)** This Act applies to an Aboriginal or Torres Strait Islander local government only so far as is expressly provided by this or another Act.

(2) The provisions of this Act that apply to an Aboriginal or Torres Strait Islander local government include the following—

- chapter 2 (The local government system)
  - part 2 (Joint local governments)
  - part 3 (Joint action by local governments)
- chapter 3 (Interaction with the State)
  - part 3 (Local Government Grants Commission).

(3) If an Aboriginal or Torres Strait Islander local government is or is to become a component local government in a joint local government, this Act applies to the Aboriginal or Torres Strait Islander local government as a component local government as if it were a local government established under this Act.

**How Act applies to Aboriginal and Torres Strait Islander local governments**

**14.** If a provision of this Act applies to an Aboriginal or Torres Strait Islander local government—

- (a) a reference in the provision—
  - (i) to a local government area includes a reference to an Aboriginal or Torres Strait Islander local government’s area; and
  - (ii) to a local government includes a reference to an Aboriginal or Torres Strait Islander local government; and
  - (iii) to the chief executive officer of a local government includes a reference to the clerk of an Aboriginal Council or Island Council; and
- (b) the provision applies with all necessary changes and any changes prescribed by regulation.

**CHAPTER 2—THE LOCAL GOVERNMENT SYSTEM****PART 1—LOCAL GOVERNMENTS***Division 1—Local government areas***Areas**

**15.** The local government area is the fundamental geographical basis of Queensland’s local government system.

**Declaration of local government areas**

**16.(1)** A regulation may declare a part of the State to be a local

government area.

(2) The regulations may not declare more than 1 local government area for a part of the State.

### **Local government required for each local government area**

17. There must be a local government for each local government area.

### **Declaration of classes of local government areas**

18.(1) A regulation may declare the class of a local government area.<sup>5</sup>

(2) The class of a local government area may be 1 of the following—

- city
- town
- shire.

(3) A local government area may be declared to be a city or town only if it satisfies the criteria prescribed by regulation.

## *Division 2—Roles of local governments*

### **Application to Brisbane City Council**

19. This division applies to the Brisbane City Council.

### **Roles of local government**

20. In exercising its jurisdiction of local government, a local government has—

- (a) a law-making role for local laws; and
- (b) an executive role for—
  - (i) adoption and implementation of policy; and

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<sup>5</sup> This is a reviewable local government matter and requires a report and recommendation by the commissioner before implementation.

- (ii) administration of local government; and
- (iii) enforcement of its local laws.

### *Division 3—Jurisdiction of local governments*

#### **Application to Brisbane City Council**

**21.** This division applies to the Brisbane City Council.

#### **Exercise of jurisdiction for its local government area—the “basic territorial unit”**

**22.(1)** A local government may exercise the jurisdiction of local government for all parts of its local government area.

**(2)** Its local government area is its “**basic territorial unit**”.

#### **Exercise of jurisdiction outside its local government area—the “additional territorial units”**

**23.** A local government also may exercise the jurisdiction of local government for any place (an “**additional territorial unit**”) outside its basic territorial unit that is put under its control or acquired by it.

#### **Territorial unit of local government**

**24.** The “**territorial unit**” of a local government consists of its basic territorial unit and any additional territorial units.

#### **Jurisdiction of local government**

**25.** Each local government has jurisdiction (the “**jurisdiction of local government**”) to make local laws for, and otherwise ensure, the good rule and government of, its territorial unit.

**Law-making matters included in jurisdiction of local government**

**26.(1)** A local government's jurisdiction of local government includes jurisdiction to make local laws with respect to any matter—

- (a) required or permitted to be prescribed under this or another Act; or
- (b) necessary or convenient to be prescribed or exercised for carrying out or giving effect to its local laws.

**(2)** To avoid any doubt, a local law may be made—

- (a) making it an offence to contravene a local law; and
- (b) fixing a penalty for an offence against a local law (including different penalties for successive offences against a local law) of not more than 850 penalty units.

**Limitation on exercise of jurisdiction for basic territorial unit**

**27.** A local government may not exercise the jurisdiction of local government for a part of its basic territorial unit to the extent to which another local government may exercise the jurisdiction of local government for the part.

**Limitation on exercise of jurisdiction for additional territorial units**

**28.** A local government may exercise the jurisdiction of local government for an additional territorial unit only for the purpose for which the place was put under its control or acquired by it.

**Local laws and policies apply to additional territorial units only if expressly applied**

**29.** A local government's local law or local law policy applies to an additional territorial unit of the local government only if the local law or local law policy expressly states that it applies to the additional territorial unit.

**General limitations on exercise of jurisdiction**

**30.(1)** A local government has no jurisdiction to make a local law—

- (a) that the Parliament could not validly make; or
- (b) purporting to exclude or limit the future repeal or amendment of the law.

**(2)** A local government also has no jurisdiction to do anything else that the State cannot do.

**Inconsistency with State law**

**31.** If a State law and a local law (whether made before or after the State law) are inconsistent, the State law prevails over the local law to the extent of the inconsistency.

***Division 4—Composition of local governments*****Membership of local governments**

**32.** A local government consists of a mayor and other councillors.

**Number of councillors**

**33.** A local government consists of the number of councillors, at least 5, prescribed by regulation.<sup>6</sup>

***Division 5—Names, legal status and general powers of local governments*****Local government name**

**34.** A local government may be called either—

- (a) ‘Council of the ... (*insert City/Town/Shire*) of ... (*insert name of*

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<sup>6</sup> This is a reviewable local government matter and requires a report and recommendation by the commissioner before implementation.



local government area)'; or

- (b) '... (*insert name of local government area*) ... (*insert City/Town/Shire*) Council'.

### **Local governments are bodies corporate etc.**

**35.** A local government—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its name.

### **General powers**

**36.(1)** A local government has, in the exercise of its jurisdiction, all the powers of an individual.

**(2)** A local government may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) make charges for services and facilities it supplies; and
- (d) do other things necessary or convenient to be done in the exercise of its jurisdiction.

**(3)** A local government also has the powers given to it under this or another Act.

**(4)** A local government may exercise its powers inside and outside its territorial unit.

**(5)** A local government may exercise its powers outside the State and outside Australia.

***Division 6—Other provisions about local governments*****Site of public office**

**37.(1)** A local government must keep premises for use as its public office.

**(2)** The public office must be in the local government's area or within a reasonable distance outside its area.

**Local government's seal**

**38.(1)** A local government's common seal must include its name.

**(2)** The seal must be kept in the custody directed by the local government and may be used only as authorised by it.

**(3)** The attaching of the seal to a document must be witnessed as authorised by the local government.

**(4)** Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

**PART 2—JOINT LOCAL GOVERNMENTS*****Division 1—Extended application of part*****Application of part to Brisbane City Council**

**39.** This part applies to the Brisbane City Council.

**Application of part to Aboriginal and Torres Strait Islander local governments**

**40.** This part applies to all Aboriginal and Torres Strait Islander local governments.

***Division 2—Consultation*****Consultation before exercise of powers under part**

**41.** Before the Governor in Council exercises a power under this part, the Minister must consult with the local governments that would be affected by the exercise of the power and take any views expressed by them into account.

***Division 3—Joint local government areas*****Declaration of joint local government areas**

**42.** A regulation may declare a part of the State consisting of the whole or parts of 2 or more local government areas to be a joint local government area.

***Division 4—Establishment of joint local governments*****Establishment**

**43.(1)** A regulation may establish a joint local government for a joint local government area.

**(2)** A regulation may establish 2 or more joint local governments for a joint local government area, or part of a joint local government area, if the joint local governments have different jurisdictions.

**Matters about establishment etc.**

**44.** A regulation may, for a joint local government (the “**joint body**”)—

- (a) specify its name; and
- (b) provide for the election or appointment of a president and deputy president of the joint body; and
- (c) fix the time and place for holding the first meeting of the joint body; and

- (d) specify the proportion of the cost of the operations of the joint body that must be contributed by each of its component local governments; and
- (e) specify that the first budget of the joint body be for a specified part of a financial year; and
- (f) provide for its initial local laws; and
- (g) provide for any other matter for which—
  - (i) it is necessary or convenient to provide for its establishment or operation; and
  - (ii) this Act does not make provision or adequate provision.

### *Division 5—Jurisdiction of joint local governments*

#### **Jurisdiction generally**

**45.** A joint local government has the jurisdiction of local government that it is given by regulation.

#### **Jurisdiction exclusive**

**46.(1)** A component local government may not exercise the jurisdiction of local government within its joint local government's area about a matter within the joint local government's jurisdiction.

**(2)** However, the component local government may exercise jurisdiction as a delegate of the joint local government.

**(3)** The component local government also may make and levy a rate on land for a matter within its jurisdiction, even though—

- (a) the land is within the joint local government's area; and
- (b) the purpose relates to a matter within the joint local government's jurisdiction.

***Division 6—Membership of joint local governments*****Members**

**47.** A joint local government consists of representatives of the local governments that are its component local governments.

**Number of representatives etc.**

**48.(1)** A regulation may specify the number of representatives to which each component local government is entitled, either in its own right or as a member of a group of local governments, on its joint local government.

**(2)** A regulation also may specify that a particular councillor of a component local government must be a member of the joint local government.

***Division 7—Legal status and general powers of joint local governments*****Joint local governments are bodies corporate etc.**

**49.** A joint local government—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its name.

**General powers**

**50.(1)** A joint local government has, in the exercise of its jurisdiction, all the powers of an individual.

**(2)** A joint local government may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) make charges for services and facilities it supplies; and
- (d) do other things necessary or convenient to be done in the exercise

of its jurisdiction.

(3) A joint local government also has the powers given to it under this or another Act.

(4) A joint local government may exercise its powers inside and outside its territorial unit.

(5) A joint local government may exercise its powers outside the State and outside Australia.

### **Restriction on power to make or levy rate**

51. A joint local government cannot make or levy a rate on land.

### **Delegation to component local governments**

52.(1) A joint local government may delegate its powers about a component local government's area to the component local government.

(2) Subsection (1) does not limit by implication the persons to whom the joint local government may make a delegation.

### ***Division 8—Other provisions about joint local governments***

#### **Joint local government's seal**

53.(1) A joint local government's common seal must include its name.

(2) The seal must be kept in the custody directed by the joint local government and may be used only as authorised by it.

(3) The attaching of the seal to a document must be witnessed as authorised by the joint local government.

(4) Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

**Adjustments between joint local government and component local governments**

- 54.** A regulation may make provision with respect to—
- (a) transferring assets and liabilities—
    - (i) to a joint local government—from its component local governments; or
    - (ii) from a joint local government to a local government that has ceased to be a component local government of it; and
  - (b) deciding, adjusting or settling anything in dispute between—
    - (i) a joint local government and any of its component local governments; or
    - (ii) a joint local government and a local government that has ceased to be a component local government of it.

**PART 3—JOINT ACTION BY LOCAL GOVERNMENTS***Division 1—Extended application of part***Application of part to Brisbane City Council**

- 55.** This part applies to the Brisbane City Council.

**Application of part to Aboriginal and Torres Strait Islander local governments**

- 56.** This part applies to all Aboriginal and Torres Strait Islander local governments.

***Division 2—Joint action*****Joint responsibility for boundary works**

**57.(1)** The cost of planning, constructing, maintaining and managing a bridge, road or other work that is to be, or is, built along the boundary between 2 or more local government areas, and partly in each of the areas, is the joint responsibility of the local governments of the areas.

**(2)** The local governments must enter into the arrangements, and make the contracts, that are necessary for the proper performance of the responsibility.

**Extension of operations outside local government area**

**58.** A local government may, under arrangements entered into by it with another local government, extend the operation of a facility, service or activity supplied or undertaken by it into the other local government's area.

**Cooperation between local governments**

**59.(1)** Local governments may enter into arrangements, and make contracts, between themselves for exercising the jurisdiction of local government in their areas.

**(2)** The local governments may establish joint standing committees to exercise the jurisdiction of local government for matters to which the arrangement or contract relates.

**(3)** A joint standing committee must consist of councillors from the local governments.

**(4)** This section does not limit by implication the powers of a local government.

**Interstate cooperation**

**60.(1)** If a local government's area borders another State or a Territory, the local government may—

- (a) enter into arrangements, and make contracts, with a person (the



**“responsible person”**) responsible for any jurisdiction of local government in an adjoining part of the other State or the Territory; or

- (b) acquire and hold land in the adjoining part and construct any facility on the land; or
- (c) contribute to the cost of the responsible person exercising its jurisdiction of local government.

(2) The local government that holds property in another State or a Territory for any purpose under subsection (1) may dispose of the property when it is no longer required for the purpose.

(3) This section does not limit by implication the powers of a local government.

## **CHAPTER 3—INTERACTION WITH THE STATE**

### **PART 1—REVIEWABLE LOCAL GOVERNMENT MATTERS**

#### *Division 1—Preliminary*

#### **Application of part to Brisbane City Council**

**61.** This part applies to the Brisbane City Council.

#### **Definitions for pt 1**

**62.** In this part—

**“commission”** means a Local Government Electoral and Boundaries Review Commission established under section 66.

**“local government”** does not include a joint local government.

**Meaning of “owner” of land for pt 1**

**63.(1)** In this part, an “owner” of land<sup>7</sup> includes—

- (a) the State—if the land—
  - (i) is State land; or
  - (ii) is to be held as freehold land and is being purchased from the State under an Act; or
  - (iii) is held under a lease from the State; or
  - (iv) is dedicated as a reserve, or granted in fee simple in trust, under the *Land Act 1994*, chapter 3, part 1; or
  - (v) is held under an occupation permit under an Act, a stock grazing permit under an Act or a permit prescribed under a regulation; or
  - (vi) is held under a permit to occupy under the *Land Act 1994*; or
  - (vii) is held under a permission to occupy from the Primary Industries Corporation; or
  - (viii) is held under a licence under the *Land Act 1994*; and
- (b) if the land is dedicated as a reserve, or granted in fee simple in trust, under the *Land Act 1994*, chapter 3, part 1—the trustees of the land.

**(2)** In addition to a person mentioned in subsection (1), a regulation may prescribe another person to be an owner of land for this part.

**Meaning of “reviewable local government matter”**

**64.(1)** The following are “reviewable local government matters”—

- (a) creating a new local government area, including, for example, creating a new local government area from—
  - (i) 2 or more local government areas that are abolished; or
  - (ii) a local government area that is abolished and a part of

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<sup>7</sup> This section extends the meaning of “owner”, of land, for this part—see section 4, definition “owner” and section 5 (Meaning of “owner” of land).

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- another local government area; or
- (iii) a part of a local government area that is excluded from the local government area; or
  - (iv) a part of the State that is not part of a local government area;
- (b) naming a new local government area;
  - (c) changing the external boundaries of a local government area by excluding part of the local government area and including the part in another local government area;
  - (d) changing the name of a local government area;
  - (e) including in a local government area a part of the State that is not part of a local government area;
  - (f) abolishing a local government area and merging the local government area with another local government area;
  - (g) dividing, redividing and abolishing divisions of a local government area;
  - (h) changing the boundaries of divisions of a local government area by—
    - (i) excluding part of a division and including the part in another division of the local government area; or
    - (ii) creating a new division of the local government area;
  - (i) assigning and reassigning councillors of a local government to divisions of its area;
  - (j) deciding and changing the class of a local government area;
  - (k) deciding and changing the composition of a local government;
  - (l) anything else relating to local government declared by regulation to be a reviewable local government matter.
- (1A)** However, for subsection (1)(d), (i), (j) or (k)—
- (a) Brisbane City Council is not a local government; and
  - (b) the City of Brisbane is not a local government area.

**(1B)** Also, for subsection (1)(a), the City of Brisbane is not a local government area except to the extent the provision relates to creating a new

local government area from a part excluded from the City of Brisbane.

(1C) In addition, for subsection (1)(f), the City of Brisbane is not a local government area except to the extent the provision relates to the merging of an abolished local government area with the City of Brisbane.

(2) A reviewable local government matter includes—

- (a) any aspect of a matter mentioned in subsection (1); and
- (b) a particular proposal about a matter, or an aspect of a matter, mentioned in subsection (1).

(2A) Without limiting subsection (2), naming the electoral wards of the City of Brisbane is an aspect of the matters mentioned in subsection (1)(g) and (h).

(3) A reviewable local government matter does not include a matter relating to—

- (a) the creation, naming, abolition or area of a joint local government; or
- (b) the composition of a joint local government.

(4) A matter (the “**relevant matter**”) relating to a local government area, the whole or part of which is in a joint local government’s area, may be a reviewable local government matter although its implementation would, apart from subsection (5), affect a matter mentioned in subsection (3)(a) or (b).

(5) If the relevant matter is a reviewable local government matter, implementation of the relevant matter does not affect the existence or extent of a joint local government’s area or the composition of a joint local government.

(6) In this section—

“**local government area**” includes a proposed local government area.

### **Meaning of “limited reviewable local government matter”**

**65.(1)** Changing the external boundaries of a local government area by excluding part of the local government area and including the part in another local government area is a “**limited reviewable local government matter**” if the local governments for the areas and all owners of land in the part have

agreed to the change.

(2) Also, including in a local government area a part of the State that is not part of a local government area is a “**limited reviewable local government matter**” if the local government for the area and all owners of land in the part have agreed to the inclusion.

### *Division 2—Local Government Electoral and Boundaries Review Commissions*

#### *Subdivision 1—Establishment, constitution and functions of commissions*

#### **Establishment**

**66.** There is to be a Local Government Electoral and Boundaries Review Commission for—

- (a) each reference of a reviewable local government matter made to the commissioner; and
- (b) each application for determination of a limited reviewable local government matter made to the commissioner.<sup>8</sup>

#### **Constitution**

**66A.(1)** A commission for a special reference of a reviewable local government matter is constituted by—

- (a) a person who—
  - (i) is a judge or former judge of a court of the Commonwealth or a State or Territory; and
  - (ii) has been, or was, a judge for at least 3 years; and
- (b) the chief executive of a department; and

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<sup>8</sup> See division 3 (References of, and applications for, reviewable local government matters), subdivision 1 (References to commissioner by Minister) and subdivision 2 (Applications to commissioner by local governments)

(c) the commissioner or, if the commissioner directs, the deputy commissioner.

(2) A commission for a reference of another reviewable local government matter is constituted by the commissioner or, if the commissioner directs, the deputy commissioner.

(3) However, if the commissioner considers it appropriate for the commission under subsection (2) to be partly constituted by review commissioners, the commission is to be partly constituted by the number of review commissioners the commissioner considers appropriate for the reference.

(4) Also, if the Minister has directed in the reference of the matter under subsection (2) that a minimum number of review commissioners partly constitute the commission for the reference, the commission is to be partly constituted by at least that number of review commissioners.

(5) A commission for an application for determination of a limited reviewable local government matter is constituted by the commissioner or, if the commissioner directs, the deputy commissioner.

## **Functions**

**66B.** The functions of a commission are, under this part, to—

- (a) examine and determine reviewable local government matters; and
- (b) examine, report and make recommendations to the Minister on implementation issues for reviewable local government matters.

### *Subdivision 2—Business and meetings of commissions*

## **Conduct of business**

**67.** A commission must conduct its business in the way prescribed under a regulation or, in the absence of a regulation, may conduct its business as it considers appropriate.

**Times and places of meetings**

**67A.(1)** Meetings of an expanded commission are to be held at the times and places it decides.

**(2)** However, the chairperson of an expanded commission may at any time call a meeting by giving the other commission members reasonable notice of the meeting.

**Quorum at meetings**

**67B.** Business may be conducted at an expanded commission meeting only if a majority of commission members are present.

**Presiding member**

**67C.** At a meeting of an expanded commission—

- (a) the chairperson of the commission presides; or
- (b) in the absence of the chairperson, the commission member chosen by the members present as chairperson for the meeting presides.

**Voting at meetings**

**67D.** At a meeting of an expanded commission—

- (a) a question is to be decided by a majority of commission members present and voting; and
- (b) each member (including the member presiding) has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

**Disclosure of interests by members of expanded commission**

**67E.(1)** This section applies if a member of an expanded commission—

- (a) has a direct or indirect financial interest in an issue being considered, or about to be considered, at a meeting; or
- (b) could reasonably be otherwise regarded as having a conflict of

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interest in an issue being considered, or about to be considered, at a meeting.

(2) The member must disclose to the meeting the member's interest in the issue.

(3) The disclosure must be recorded in the commission's minutes.

(4) Unless the commission otherwise directs the member must not—

- (a) be present when the commission considers the issue; and
- (b) take part in the commission's decision about the issue.

(5) The member must not be present when the commission is considering whether to give a direction under subsection (4).

(6) If there is another member who must, under subsection (2), also disclose an interest in the issue, the other member must not—

- (a) be present when the commission is considering whether to give a direction under subsection (4); or
- (b) take part in making the decision about giving a direction.

(7) If, because of this section, a member is not present at a commission meeting for considering or deciding the issue, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the issue at the meeting.

**Additional provisions for disclosure of interests by commissioner and deputy commissioner**

**67F.(1)** This section applies if the commissioner or deputy commissioner constituting a commission established for a reference of a reviewable local government matter or an application for determination of a limited reviewable local government matter—

- (a) has a direct or indirect financial interest in an issue relating to the matter; or
- (b) could reasonably be otherwise regarded as having a conflict of interest in an issue relating to the matter.

(2) The member must not take part, or take further part, in any consideration of the reviewable local government matter.



(3) As soon as practicable after the member becomes aware of the application of this section to the issue, the member must—

- (a) if the member is the commissioner—direct the deputy commissioner to constitute the commission in the commissioner’s place; or
- (b) if the member is the deputy commissioner—inform the commissioner.

(4) If subsection (3)(b) applies, the commissioner is to constitute the commission in the deputy commissioner’s place.

### *Subdivision 3—Miscellaneous*

#### **Resignation and removal**

**68.(1)** A review commissioner who partly constitutes a commission may resign from the commission by giving a signed notice of resignation to the commissioner.

(2) The *Acts Interpretation Act 1954*, section 25(1)(b) (other than subparagraph (iv)) and (2) to (4) does not apply to the appointment of a review commissioner to partly constitute a commission.<sup>9</sup>

### *Division 3—References of, and applications for, reviewable local government matters*

#### *Subdivision 1—References to commissioner by Minister*

#### **Minister may refer certain reviewable local government matters to commissioner**

**69.(1)** The Minister may refer a reviewable local government matter to the commissioner.

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<sup>9</sup> The *Acts Interpretation Act 1954*, section 25 deals with incidental powers to a power of appointment.

(2) The reference need not separately identify each reviewable local government matter dealt with in, or included in, the reference.

(3) The reference may be in general or specific terms or a combination of general and specific terms.

(4) The reference may specify the reviewable local government matter in any way, including, for example—

- (a) naming the local governments the reference directly affects; or
- (b) describing in a suitable way the geographical area to which the reference relates; or
- (c) specifying with reasonable certainty things that are, or are not, included in the reference.

*Examples of suitable ways of describing a geographical area—*

1. By reference to real property descriptions.
2. By reference to a map or plan held by an entity, or to a particular entry in a register kept by an entity, if the map, plan or register is available for inspection by the public.
3. By reference to a region of the State that is identifiable with reasonable certainty.
4. By reference to areas of named local governments.
5. By reference to a part of the area of a named local government that is identifiable with reasonable certainty.

(5) The reference may be made contingent on a determination another commission may make, or proposes to make, on a reference of another reviewable local government matter.

### **References of reviewable local government matters to be tabled etc.**

**69A.** The Minister must—

- (a) table a copy of each reference of a reviewable local government matter in the Legislative Assembly within 7 sitting days after it is given to the commissioner; and
- (b) give a copy of the reference to each local government mentioned in the reference.

**Request by commissioner for reference**

**69B.(1)** The commissioner may ask the Minister to refer a reviewable local government matter to the commissioner.

(2) The request must include reasons for the request.

(3) As soon as practicable after receiving the request, the Minister must—

(a) refer the matter to the commissioner; or

(b) advise the commissioner that the matter will not be referred.

(4) The Minister must table a copy of the request, and the reference or advice, in the Legislative Assembly within 7 sitting days after giving the reference or advice.

***Subdivision 2—Applications to commissioner by local governments*****Limited reviewable local government matters**

**70.(1)** A local government may apply to the commissioner for determination of a limited reviewable local government matter.

(2) However, the application may be made only if each local government that would be affected by the matter if it were implemented (an “**affected local government**”), has, by resolution, decided to make or support the application.

(3) The application must—

(a) be in the approved form; and

(b) be accompanied by—

(i) a report by each affected local government showing that the local government has examined the implementation issues for the matter; and

(ii) each affected local government’s suggestions about the implementation issues.

(4) The approved form must include—

(a) the relevant agreements mentioned in section 65(1) or (2); and

- (b) a certificate by each affected local government that the issues prescribed under a regulation under section 76 have been taken into consideration.

***Division 3A—Procedures for major and minor references of reviewable local government matters***

***Subdivision 1—Preliminary***

**References of reviewable local government matters**

**71.(1)** As soon as practicable after a special reference of a reviewable local government matter is referred to the commissioner—

- (a) the Governor in Council is to appoint the commission members mentioned in section 66A(1)(a) and (b)<sup>10</sup> to partly constitute a special commission for the reference; and
- (b) if the commissioner decides not to partly constitute the commission—the commissioner must direct the deputy commissioner to partly constitute the commission.

**(2)** As soon as practicable after another reference of a reviewable local government matter is referred to the commissioner, the commissioner must—

- (a) if the reference is not a major reference, under the definition “major reference”, paragraph (a) or (b)(i)—declare, by gazette notice, whether the reference is a major or minor reference; and
- (b) decide the constitution of a commission for the reference; and
- (c) if an expanded commission (other than a special commission) is, under section 66A, to be constituted for the reference—appoint a review commissioner or commissioners to partly constitute the commission.

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<sup>10</sup> The commission members under section 66A(1)(a) and (b) are a judge, or former judge, with standing of at least 3 years and the chief executive of a department.

**Appointment of additional review commissioners**

**71A.** The commissioner may, at any time after a commission (other than a special commission) is established, appoint a review commissioner, or an additional review commissioner, to partly constitute the commission.

**Commissions may declare major references**

**71B.(1)** This section applies if a commission is established for a reference of a reviewable local government matter the commissioner has declared is a minor reference.

(2) The commission may, at any time before it makes a final determination of the matter, declare, by gazette notice, the reference is a major reference.

(3) To remove any doubt, if a commission makes a declaration under subsection (2)—

- (a) subdivision 2 applies to the reference of the matter; and
- (b) the commission continues in existence to determine the matter.

**Commissions must have regard to prescribed issues**

**71C.(1)** When considering a reviewable local government matter, a commission must have regard to the issues that may be prescribed under a regulation.

(2) If the matter relates to the external boundaries of a local government area, the commission also must have regard to the need to ensure the provision of efficient and effective local government in the area.

**Restrictions on determinations for City of Brisbane**

**71D.(1)** A commission must not make a determination of a reviewable local government matter mentioned in section 64(1)(g) or (h) that would, if implemented, result in a change in the number of electoral wards for the City of Brisbane.<sup>11</sup>

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<sup>11</sup> Under the *City of Brisbane Act 1924*, section 14A, the City of Brisbane is divided into 26 electoral wards for the election of councillors (other than the mayor).

(2) If the naming of electoral wards of the City of Brisbane is an aspect of a reviewable local government matter, a commission must not determine that a name of an electoral ward be a name that is the name of an electoral district under the *Electoral Act 1992*.

### ***Subdivision 2—Major references of reviewable local government matters***

#### **Application of subdivision**

72. This subdivision applies for a reviewable local government matter, the subject of a major reference, being considered by a commission.

#### **Commission may make inquiries**

72A. In considering the reviewable local government matter, the commission may make the inquiries it considers appropriate.<sup>12</sup>

#### **Preliminary procedures for certain references**

72B.(1) This section applies if—

- (a) the reference of the reviewable local government matter is a special reference; or
- (b) the reference of the reviewable local government matter is a major reference (other than a special reference) and the commission declares, by gazette notice, that this section applies to the reference.

(2) As soon as practicable after the commission's establishment or the declaration, the commission must, by public notice, invite suggestions from persons and entities on the matter.

(3) The notice must state that suggestions are to be given to the commission at a stated address in writing within 30 days after the notice is

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<sup>12</sup> If the commission is an expanded commission established to determine a reviewable local government matter the subject of a major reference, the commission's powers of inquiry include the powers under division 4 (Inquiries by expanded commissions).

first published (the “**first notice period**”).

(4) As soon as practicable after the first notice period, the commission must—

- (a) ensure copies of all suggestions properly given to it are open to inspection at the prescribed offices and other stated offices; and
- (b) by public notice—
  - (i) state that copies of the suggestions are open to inspection at the prescribed offices and other stated offices; and
  - (ii) state that any person or other entity may make written comment on the suggestions within 21 days after the notice is first published (the “**second notice period**”); and
  - (iii) state the address to which the comments may be sent.

(5) A public notice under subsection (2) or (4) must be published in—

- (a) the gazette; and
- (b) a newspaper circulating generally in the local government areas that would be affected by the matter if it were implemented.

(6) As soon as practicable after the second notice period, the commission must ensure copies of all comments given to it within the period are open to inspection at the prescribed offices and other stated offices.

(7) The suggestions and comments properly given to the commission must be open to inspection until—

- (a) if, under section 72C, the commission determines that the matter not be implemented—notification in the gazette of its determination is given; or
- (b) if the commission proposes to determine that the matter be implemented—the day after the stated day under section 72D.

(8) In determining whether the matter should be implemented, the commission must consider all suggestions and comments properly given to it.

**Determination not to implement matter**

**72C.(1)** If the commission determines that the reviewable local government matter not be implemented, the commission must prepare a report on the matter.

(2) The report must state the determination and reasons for it.

**Public notice of proposed determination to implement matter**

**72D.(1)** If the commission proposes to determine that the reviewable local government matter be implemented, the commission must give public notice, by advertisement published at least once in—

- (a) the gazette; and
- (b) a newspaper circulating generally in the local government areas that would be affected by the matter if it were implemented.

(2) The notice must state—

- (a) the general effect of the proposed determination and, if applicable, recommendations on implementation issues for the matter; and
- (b) that particulars of the proposed determination and recommendations, including reasons and any relevant maps, are open to inspection at the prescribed offices and at other stated offices; and
- (c) that submissions about the proposed determination and recommendations—
  - (i) may be made, in writing, to the commission at a stated address; and
  - (ii) must state the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (d) a day (the “**stated day**”) on or before which the particulars may be inspected and submissions made.

(3) If the naming of electoral wards of the City of Brisbane is an aspect of the matter, the notice must also state the proposed names of the electoral wards.

(4) If the matter is a reviewable local government matter mentioned in



section 64(1)(a) or (f), the notice may also state—

- (a) the area the commission considers should be the affected area for the matter if a compulsory referendum were to be held for the matter; and
- (b) if the commission considers the affected area should be divided into voting areas—the areas the commission considers should be the voting areas of the affected area.

**(4A)** If, in the proposed determination of the matter, the commission proposes to adopt a margin of allowance under section 233(3) for the quota of voters for each councillor for a division of a local government, the notice must also state the margin of allowance to be adopted.

**(4B)** If the commission proposes to make a delayed implementation determination for the matter, the notice must also state—

- (a) the matter is to be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination to implement the matter; and
- (b) the elections are to be conducted as if the determination were implemented.

**(5)** The stated day must be at least 30 days after the later of—

- (a) the publication of the advertisement in the gazette; or
- (b) the publication, or first publication, of the advertisement in the newspaper.

**(6)** The particulars are to be open to inspection until the day after the stated day.

### **Commission to consider submissions**

**72E.(1)** The commission must consider all submissions properly made about the proposed determination and recommendations on implementation issues for the matter.

**(2)** The commission may amend the proposed determination to take account of the submissions.

**(3)** However, the commission may substantially amend the proposed

determination only if the commission gives public notice, under section 72D, of the amended proposed determination and recommendations on implementation issues for the matter.

(4) Section 72D and this section apply to the amended proposed determination as if it were the proposed determination.

### **Holding of referendum**

**72F.(1)** A referendum (a “**compulsory referendum**”) must be held in relation to the commission’s proposed determination of the reviewable local government matter if—

- (a) the matter is a reviewable local government matter mentioned in section 64(1)(a) or (f); and
- (b) after considering the submissions, the commission proposes to make a final determination that the matter be implemented.

(2) Also, the commission may decide that a referendum (a “**non-compulsory referendum**”) be held in relation to the commission’s proposed determination of the reviewable local government matter if—

- (a) the matter is a reviewable local government matter mentioned in section 64(1)(c) or (e); and
- (b) after considering the submissions, the commission proposes to make a final determination that the matter be implemented; and
- (c) the commission considers a referendum should be held for the matter.

(3) However, the commission may decide to hold a non-compulsory referendum only after it has consulted with the local governments that would be affected by the matter if it were implemented.<sup>13</sup>

### **Making final determination and preparation of report**

**72G.(1)** The commission must make a final determination of the reviewable local government matter and prepare a report for the Minister on

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<sup>13</sup> Division 4A applies to the holding of compulsory and non-compulsory referendums.

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the matter as soon as practicable after—

- (a) if a referendum is held for the commission's proposed determination of the matter—the final result of the referendum for the matter is notified; or
- (b) if a referendum is not held for the commission's proposed determination of the matter—the commission completes its consideration of submissions properly made about the matter.

**(1A)** If the matter is the subject of a delayed implementation reference and the commission makes a determination to implement the matter, the commission—

- (a) must determine the matter be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination to implement the matter; and
- (b) must determine not to implement a reviewable local government matter mentioned in section 64(1)(g), (h), (i) or (k) for the local governments or the local governments' areas.

**(1B)** If the matter is a reviewable local government matter mentioned in section 64(1)(c) (other than a matter the subject of a delayed implementation reference) for a local government area that is divided, the commission may determine the matter be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination only if—

- (a) the commission is satisfied it is appropriate to delay implementing the matter having regard to the delayed implementation issues for the matter; and
- (b) the commission determines not to implement a reviewable local government matter mentioned in section 64(1)(g), (h), (i) or (k) for the local governments or the local governments' areas.

**(1C)** Also, if the matter is a matter mentioned in section 64(1)(c) (the **“first matter”**) and the commission makes a determination to implement the first matter, the commission may, if it is satisfied it is appropriate for another reviewable local government matter mentioned in section 64(1)(g) or (h) included in the reference of the first matter, make a determination to implement the other matter only so far as the other matter relates to all of

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the divisions of a local government area directly affected by the determination of the first matter.

**(1D)** However, subsection (1C) does not apply if the commission makes a determination of a matter mentioned in section 64(1)(i) or (k) included in the reference of the first matter.

**(1E)** For subsection (1C), a division of a local government area is directly affected by the determination of the first matter only if, under the determination—

- (a) the division's boundaries are to be changed because of the exclusion of part of the local government area (the **“excluded part”**) and including the excluded part in another local government area; or
- (b) the division adjoins the excluded part; or
- (c) the division adjoins a division mentioned in paragraph (a) or (b).

**(2)** The report must—

- (a) state the determination and reasons for it and, if applicable, include recommendations on implementation issues for the matter; and
- (b) include a summary of—
  - (i) the submissions made to the commission on the matter; and
  - (ii) if section 72B<sup>14</sup> applies to the matter—the suggestions and comments properly given to the commission on the matter; and
- (c) be accompanied by copies of the submissions and, if applicable, the suggestions and comments.

**(3)** Also, if a referendum is held for the commission's proposed determination of the matter, the report must—

- (a) state the final result of the referendum; and
- (b) if the referendum is a compulsory referendum and the referendum question is not approved—be accompanied by a copy of the commission's proposed determination and, if applicable,

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<sup>14</sup> Section 72B (Preliminary procedures for certain references)

its recommendations on implementation issues for the matter and the reasons for them.

(4) If a compulsory referendum has been held for the commission's proposed determination of the matter, the commission—

- (a) must determine that the matter be implemented if the referendum question is approved by the affected area for the matter; but
- (b) must determine that the matter not be implemented if the referendum question is not approved by the affected area for the matter.

(5) If a non-compulsory referendum has been held for the commission's proposed determination of the matter, the commission may determine that the matter be implemented regardless of whether the referendum question is approved by the affected area for the matter.

### **Notification of determination and report to Minister**

**72H.(1)** The commission must—

- (a) give notification of its final determination, or its determination under section 72C—
  - (i) by gazette notice; and
  - (ii) by advertisement published in a newspaper circulating generally in the local government areas affected by the determination; and
- (b) give to the Minister a copy of the gazette notice and the commission's report on the matter; and
- (c) give a copy of the report to the local government affected by the determination.

(2) The notification must—

- (a) contain a summary of the determination; and
- (b) state that the commission's report on the matter is—
  - (i) open to inspection; and
  - (ii) available for purchase at the Electoral Commission's office at Brisbane; and

- (c) if the commission determines the matter be implemented—state that the matter is to be implemented by regulation; and
- (d) if the commission makes a delayed implementation determination for the matter—state in general terms the effect of the determination; and
- (e) if section 72J applies to the matter—state in general terms the effect of the section.

### **Implementation of matter on commission's report**

**72I.(1)** If the commission determines that the reviewable local government matter be implemented, the Governor in Council must implement the matter as soon as practicable after the Minister receives a copy of the gazette notice and the commission's report on the matter.

**(1A)** However, if the commission makes a delayed implementation determination for the matter—

- (a) the Governor in Council must implement the matter to commence on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination; and
- (b) a regulation implementing the matter must provide for the conduct of the next triennial elections of the local governments as if the matter were implemented.

**(2)** If a regulation is made to implement the matter and the regulation is to commence on a later day fixed in it, for subsection (1), the matter must not be taken not to have been implemented as soon as practicable merely because of the later commencement.

*Examples of subsection (2)—*

1. Because of the holding of triennial elections under this Act, or fresh elections under the regulation, the regulation may commence after its notification.

2. Because of financial implications, the regulation may commence at the start of a financial year.

**(3)** Subsection (1) has effect subject to section 107.<sup>15</sup>

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<sup>15</sup> Section 107 (Requirement before implementation)

**Implementation of matter at request of Legislative Assembly**

**72J.(1)** This section applies if—

- (a) a compulsory referendum has been held for the commission's proposed determination of the reviewable local government matter; and
- (b) the commission determines that the matter not be implemented because the referendum question was not approved by the affected area for the matter.

**(2)** Within 7 sitting days after the Minister tables the commission's report on the matter, the Legislative Assembly may resolve that the Governor in Council be asked to make a regulation implementing the matter.

**(3)** If the Legislative Assembly resolves that the Governor in Council be asked to implement the matter, the Governor in Council must implement the matter as soon as practicable after the resolution is passed.

**(4)** If a regulation is made to implement the matter and the regulation is to commence on a later day fixed in it, for subsection (3), the matter must not be taken not to have been implemented as soon as practicable merely because of the later commencement.

*Examples of subsection (4)—*

1. Because of the holding of triennial elections under this Act, or fresh elections under the regulation, the regulation may commence after its notification.
2. Because of financial implications, the regulation may commence at the start of a financial year.

***Subdivision 3—Minor references of reviewable local government matters***

**Application of subdivision**

**73.** This subdivision applies for a reviewable local government matter, the subject of a minor reference, being considered by a commission.

**Commission may make inquiries**

**73A.** In considering the reviewable local government matter, the commission may make the inquiries it considers appropriate.

**Determination not to implement matter**

**73B.(1)** If after considering the reviewable local government matter, the commission determines that the reviewable local government matter not be implemented, the commission must prepare a report on the matter.

(2) The report must state the determination and reasons for it.

**Notice of proposed determination to implement matter and recommendations**

**73C.(1)** If the commission proposes to determine that the reviewable local government matter be implemented, the commission—

- (a) must give written notice to—
  - (i) each local government that would be affected by the matter if it were implemented; and
  - (ii) if the matter is a reviewable local government matter mentioned in section 64(1)(c) or (e)—each owner of land in the part the subject of the matter; and
- (b) may give written notice to anyone else the commission considers would be directly affected by the matter if it were implemented.

(2) The notice must state—

- (a) the general effect of the proposed determination and, if applicable, recommendations on implementation issues for the matter; and
- (b) that particulars of the proposed determination and recommendations, including reasons and any relevant maps, are open to inspection; and
- (c) that submissions about the proposed determination and recommendations—
  - (i) may be made, in writing, to the commission at a stated address; and



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- (ii) must state the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (d) a day (the “**stated day**”) on or before which the particulars may be inspected and submissions made.

**(2A)** If, in the proposed determination of the matter, the commission proposes to adopt a margin of allowance under section 233(3) for the quota of voters for each councillor for a division of a local government, the notice must also state the margin of allowance to be adopted.

**(2B)** If the commission proposes to make a delayed implementation determination for the matter, the notice must also state—

- (a) the matter is to be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination to implement the matter; and
- (b) the elections are to be conducted as if the determination were implemented.

**(3)** The stated day must be at least 30 days after the particulars mentioned in subsection (2)(b) are first open to inspection at the Electoral Commission’s office at Brisbane.

**(4)** The notice given to the local governments must be accompanied by a copy of the particulars mentioned in subsection (2)(b).

**(5)** The particulars are to be open to inspection until the day after the stated day.

### **Commission to consider submissions**

**73D.(1)** The commission must consider all submissions properly made about the proposed determination and recommendations on implementation issues for the reviewable local government matter.

**(2)** The commission may amend the proposed determination to take account of the submissions.

**(3)** However, the commission may substantially amend the proposed determination only if the commission gives notice, under section 73C, of the amended proposed determination and recommendations on

implementation issues for the matter.

(4) Section 73C and this section apply to the amended proposed determination as if it were the proposed determination.

### **Making final determination and preparation of report**

**73E.(1)** As soon as practicable after completing its consideration of the submissions, the commission must make a final determination of the matter, and prepare a report for the Minister on the reviewable local government matter.

**(1A)** If the matter is the subject of a delayed implementation reference and the commission makes a determination to implement the matter, the commission—

- (a) must determine the matter be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination to implement the matter; and
- (b) must determine not to implement a reviewable local government matter mentioned in section 64(1)(g), (h), (i) or (k) for the local governments or the local governments' areas.

**(1B)** If the matter is a reviewable local government matter mentioned in section 64(1)(c) (other than a matter the subject of a delayed implementation reference) for a local government area that is divided, the commission may determine the matter be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination only if—

- (a) the commission is satisfied it is appropriate to delay implementing the matter having regard to the delayed implementation issues for the matter; and
- (b) the commission determines not to implement a reviewable local government matter mentioned in section 64(1)(g), (h), (i) or (k) for the local governments or the local governments' areas.

**(1C)** Also, if the matter is a matter mentioned in section 64(1)(c) (the “**first matter**”) and the commission makes a determination to implement the first matter, the commission may, if it is satisfied it is appropriate for

another reviewable local government matter mentioned in section 64(1)(g) or (h) included in the reference of the first matter, make a determination to implement the other matter only so far as the other matter relates to all of the divisions of a local government area directly affected by the determination of the first matter.

**(1D)** However, subsection (1C) does not apply if the commission makes a determination of a matter mentioned in section 64(1)(i) or (k) included in the reference of the first matter.

**(1E)** For subsection (1C), a division of a local government area is directly affected by the determination of the first matter only if, under the determination—

- (a) the division's boundaries are to be changed because of the exclusion of part of the local government area (the **“excluded part”**) and including the excluded part in another local government area; or
- (b) the division adjoins the excluded part; or
- (c) the division adjoins a division mentioned in paragraph (a) or (b).

**(2)** The report must—

- (a) state the determination and reasons for it and, if applicable, include recommendations on implementation issues for the matter; and
- (b) include a summary of the submissions made to the commission on the matter; and
- (c) be accompanied by copies of the submissions.

### **Notification of determination and report to Minister**

**73F.(1)** The commission must—

- (a) give notification of its final determination, or its determination under section 73B—
  - (i) by gazette notice; and
  - (ii) by advertisement published in a newspaper circulating generally in the local government areas affected by the determination; and

- (b) give to the Minister a copy of the gazette notice and the commission's report on the matter; and
- (c) give a copy of the report to the local governments affected by the determination.

(2) The notification must—

- (a) contain a summary of the determination; and
- (b) state that the commission's report on the matter is—
  - (i) open to inspection; and
  - (ii) available for purchase at the Electoral Commission's office at Brisbane; and
- (c) if the commission determines the matter be implemented—state that the matter is to be implemented by regulation; and
- (d) if the commission makes a delayed implementation determination for the matter—state in general terms the effect of the determination.

### **Implementation of matter**

**73G.(1)** If the commission determines that the reviewable local government matter be implemented, the Governor in Council must implement the matter as soon as practicable after the Minister receives a copy of the gazette notice and the commission's report on the matter.

**(1A)** However, if the commission makes a delayed implementation determination for the matter—

- (a) the Governor in Council must implement the matter to commence on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination; and
- (b) a regulation implementing the matter must provide for the conduct of the next triennial elections of the local governments as if the matter were implemented.

**(2)** If a regulation is made to implement the matter and the regulation is to commence on a later day fixed in it, for subsection (1), the matter must not be taken not to have been implemented as soon as practicable merely

because of the later commencement.

*Examples of subsection (2)—*

1. Because of the holding of triennial elections under this Act, the regulation may commence after its notification.

2. Because of financial implications, the regulation may commence at the start of a financial year.

(3) Subsection (1) has effect subject to section 107.<sup>16</sup>

### ***Division 3B—Limited reviewable local government matters***

#### **Application of division**

**74.(1)** This division applies for an application properly made for a determination of a limited reviewable local government matter.

(2) The application is to be dealt with by a commission determining whether the matter should be implemented.

(3) The commission must determine the application even if the matter is, at any time, the subject of a reference of a reviewable local government matter.

#### **Commission may make inquiries**

**75.** In considering the limited reviewable local government matter, the commission may make the inquiries it considers appropriate.

#### **Commission must have regard to prescribed issues**

**76.(1)** When considering the limited reviewable local government matter, the commission must have regard to the issues that may be prescribed under a regulation.

(2) If the matter relates to the external boundaries of a local government area, the commission also must have regard to the need to ensure the provision of efficient and effective local government in the area.

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<sup>16</sup> Section 107 (Requirement before implementation)

**Restriction on determination to implement matter**

**77.(1)** This section applies if a local government that would be affected by the limited reviewable local government matter if it were implemented is divided.

(2) The commission must make a determination not to implement the matter if its implementation would result in the margin of allowance mentioned in section 233(2) for a quota for a local government's area being departed from.<sup>17</sup>

**Action after determination to implement matter**

**78.(1)** This section applies if the commission determines that the limited reviewable local government matter be implemented.

(2) The commission must—

- (a) prepare a report for the Minister on the matter; and
- (b) give notification of its determination—
  - (i) by gazette notice; and
  - (ii) by advertisement published in a newspaper circulating generally in the local government areas that will be affected by the implementation of the matter; and
- (c) give to the Minister a copy of the gazette notice and the commission's report on the matter; and
- (d) give a copy of the report to the local governments affected by the determination.

(3) The report must state the determination and reasons for it, and include recommendations on implementation issues for the matter.

(4) The notification must—

- (a) contain a summary of the determination; and
- (b) state that the commission's report on the matter is—
  - (i) open to inspection; and

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<sup>17</sup> See chapter 5 (Local government elections), part 5 (Division of local government areas).

- (ii) available for purchase at the Electoral Commission's office at Brisbane; and
- (c) state that the determination is to be implemented by regulation.

### **Action after determination not to implement matter**

**78A.(1)** This section applies if the commission determines that the limited reviewable local government matter not be implemented.

**(2)** The commission must—

- (a) prepare a report for the Minister on the matter; and
- (b) give written notice of its determination to the landowners whose agreements accompanied the application for the determination of the matter; and
- (c) give to the Minister a copy of the commission's report on the matter; and
- (d) give a copy of the report to the local governments whose agreements accompanied the application for determination of the matter.

**(3)** The report must state the determination and reasons for it.

**(4)** The notice must state that the commission's report on the matter is—

- (a) open to inspection; and
- (b) available for purchase at the Electoral Commission's office at Brisbane.

### **Implementation of matter**

**79.(1)** If the commission determines that the limited reviewable local government matter be implemented, the Governor in Council must implement the matter as soon as practicable after the Minister receives a copy of the commission's report on the matter.

**(2)** If a regulation is made to implement the matter and the regulation is to commence on a later day fixed in it, for subsection (1), the matter must not be taken not to have been implemented as soon as practicable merely because of the later commencement.

*Examples of subsection (2)—*

1. Because of the holding of triennial elections under this Act, the regulation may commence after its notification.

2. Because of financial implications, the regulation may commence at the start of a financial year.

(3) Subsection (1) has effect subject to section 107.<sup>18</sup>

### ***Division 4—Inquiries by expanded commissions***

#### ***Subdivision 1—General***

#### **Expanded commission may decide to hold inquiry for certain matters**

**80.** In considering a reviewable local government matter the subject of a major reference, an expanded commission may decide to hold an inquiry under this division.

#### **Notice of decision to hold inquiry**

**81.** Before starting the inquiry, the commission must—

- (a) publish in a newspaper circulating in the areas of the local governments concerned a notice outlining the processes to be followed in the inquiry; and
- (b) give a copy of the notice to the local governments.

#### ***Subdivision 2—Conduct of inquiries***

#### **Presiding member**

**82.** The chairperson presides at the inquiry.

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<sup>18</sup> Section 107 (Requirement before implementation)



**Commission's duties on inquiry**

**83.** When conducting an inquiry, the commission—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

**Commission may decide procedures**

**84.(1)** The commission—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way the commission considers appropriate; and
- (c) may decide the procedures to be followed at an inquiry.

**(2)** However, the commission must comply with this subdivision and any procedural rules prescribed by regulation.

**Public may attend**

**85.** The commission must allow members of the public to attend an inquiry.

**Commission's powers on inquiry**

**86.(1)** In conducting an inquiry, the commission may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and
- (c) adjourn the inquiry; and
- (d) permit a document to be amended; and
- (e) disregard any defect, error, omission or insufficiency in a document; and
- (f) permit or refuse to permit a person (including a legal practitioner

enrolled in Queensland or elsewhere) to represent someone else at the inquiry.

(2) A commission member may administer an oath or affirmation to a person appearing as a witness before the inquiry.

### **Notice to witness**

**87.(1)** The commission may, by written notice given to a person, require the person to attend an inquiry at a specified time and place to give evidence or produce specified documents.

(2) A person who is given a notice must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the commission until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to appear as a witness before an inquiry is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the commission.

### **Duty of witness at inquiry**

**88.(1)** A person appearing as a witness at an inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the commission; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the commission; or
- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under section 87(1) (Notice to witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

**Contempt**

**89.** A person must not—

- (a) insult the commission or a commission member in an inquiry; or
- (b) deliberately interrupt an inquiry; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the commission is conducting an inquiry; or
- (d) do anything that would be a contempt of court if the commission were a judge acting judicially.

Maximum penalty—50 penalty units.

**Change of commission members**

**90.** The inquiry is not affected by a change in the commission members.

*Division 4A—Referendums**Subdivision 1—Preliminary***Application of div 4A**

**91.** This division applies to a compulsory or non-compulsory referendum to be held in relation to a commission's proposed determination of a reviewable local government matter.

**“Approving” or “opposing” referendum question**

**91A.(1)** This section applies for deciding whether the referendum question for the proposed determination of the reviewable local government matter is approved.

**(2)** A person **“approves”** the referendum question if the person answers the question in the affirmative.

**(3)** If the affected area for the reviewable local government matter is not divided into voting areas, the affected area **“approves”** the referendum

question for the matter if the affected electors for the affected area who vote to approve the question are greater in number than the affected electors who vote to oppose the question.

(4) If the affected area is divided into voting areas—

- (a) a voting area “**approves**” the referendum question if the affected electors for the voting area who vote to approve the question are greater in number than the affected electors who vote to oppose the question; and
- (b) the affected area “**approves**” the referendum question if each voting area approves the question.

(5) A person “**opposes**” the referendum question if the person answers the question in the negative.

### *Subdivision 2—Holding referendums*

#### **Wording of referendum question**

**92.** The precise wording for the referendum question must be set under a regulation.

#### **Appointment and role of returning officers for referendum**

**92A.(1)** The commissioner must appoint a returning officer and an assistant returning officer for the referendum.

(2) As soon as practicable after making an appointment, the commissioner must, by gazette notice, advise of the appointment.

(3) The returning officer and the assistant returning officer are each entitled to the fees and allowances decided by the commissioner.

(4) The returning officer must conduct the referendum.

(5) If, for any reason, the returning officer cannot perform the functions of office, the assistant returning officer must act as the returning officer.

(6) The returning officer for the referendum must have a public office for the referendum.

(7) The local governments for the affected area must give the returning

officer all reasonable assistance the returning officer asks for in conducting the referendum.

### **Referendum day**

**92B.(1)** The day for holding the referendum for the commission's proposed determination of the reviewable local government matter (the "**referendum day**") must be a Saturday.

(2) The returning officer must fix the referendum day.

(3) However, the Governor in Council may, by gazette notice, fix as the referendum day a day that is later than the day previously fixed by the returning officer as the referendum day.

(4) If a gazette notice is published under subsection (3), the returning officer must publish a notice giving necessary directions to affected electors about the procedures to be followed.

(5) The returning officer's notice must be published in a newspaper circulating generally in the affected area.

### **Notice of referendum day and other information**

**92C.(1)** The returning officer for the referendum must publish a notice (the "**referendum notice**")—

- (a) stating the referendum day for the referendum; and
- (b) stating the referendum roll cut-off day fixed by the returning officer; and
- (c) advising whether, and if so to what extent, the referendum is to be conducted by postal ballot; and
- (d) giving a brief explanation about—
  - (i) the question for the referendum; and
  - (ii) who is an affected elector; and
- (e) giving notice of the address and telephone number of the returning officer's public office.

(2) The referendum notice must be published in a newspaper circulating

generally in the affected area.

(3) The returning officer may also publish the referendum notice in other ways the returning officer considers appropriate.

(4) The referendum notice must also be displayed in a conspicuous position at the returning officer's public office from as soon as practicable after the referendum notice is first published in a newspaper until 6.00 p.m. on the referendum day.

(5) The returning officer may also display a copy of the referendum notice at other places the returning officer considers appropriate.

(6) The referendum notice may be published before the making or commencement of the regulation setting the precise wording for the question for the referendum.

(7) To the extent the referendum is not conducted by postal ballot, the referendum notice must state—

- (a) the location of ordinary polling booths to be used for the referendum; and
- (b) that the ordinary voting hours are from 8.00 a.m. and 6.00 p.m.

(8) The referendum roll cut-off day must be at least 5 days, but not more than 7 days, after the referendum notice is first published in a newspaper.

### **Voters rolls**

**92D.(1)** As soon as practicable after the referendum roll cut-off day, the returning officer must compile a voters roll for—

- (a) the affected area for the reviewable local government matter; or
- (b) if the affected area for the reviewable local government matter is divided into voting areas—each voting area.

(2) A voters roll must consist of persons who, on the referendum roll cut-off day, are electors under the *Electoral Act 1992* and are enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the affected area or, if subsection (1)(b) applies, the voting area concerned.

(3) A voters roll—

- (a) must be in the form of the electoral roll used for elections of the Legislative Assembly; and
- (b) must not include an elector's address that, under the *Electoral Act 1992*, is excluded from the publicly available part of an electoral roll.

### **Voters roll to be open to inspection and purchase**

**92E.(1)** A voters roll is open to inspection until the final result of the referendum for the matter is notified.

(2) The returning officer must sell a copy of a voters roll to anyone who asks to buy it.

(3) The price of a voters roll must be no more than the cost of making a copy of the roll and, if the copy is posted to the purchaser, the postage cost.

### **Explanatory statement**

**92F.** The commission for the reviewable local government matter must prepare a statement (the "**explanatory statement**") about the advantages and disadvantages of the proposed determination that, in the commission's opinion, should be taken into account by an affected elector voting in the referendum.

### **Commission may request information from local government**

**92G.(1)** The commission for the reviewable local government matter may, by written notice, request a local government to give the commission, in writing, information the commission reasonably needs from the local government for the preparation of an explanatory statement.

(2) The request must specify a reasonable time within which the information must be given to the commission.

(3) The local government must comply with the request.

**Giving statements to affected electors and display of statements and proposed determination**

**92H.(1)** The returning officer must give the explanatory statement for the referendum to each affected elector on the voters roll for the affected area or, if the affected area is divided into voting areas, a voting area.

(2) The statement must be given to the affected elector at a reasonable time before the referendum day.

(3) If the referendum is to be conducted by postal ballot for all or part of the affected area, the explanatory statement may be given to an affected elector when the elector is given the ballot paper for the referendum.

(4) An affected elector, other than an affected elector to whom the returning officer has given an explanatory statement, must be given a copy of the statement if the elector asks for it.

(5) The returning officer must display a copy of the explanatory statement and the commission's proposed determination of the matter—

- (a) in a prominent place in the returning officer's public office; and
- (b) at other places the returning officer considers appropriate.

**Local government views on referendum**

**92I.** The provisions of this division do not prevent a local government that considers that it will be affected by the proposed determination of the commission about the reviewable local government matter to which the referendum relates from informing affected electors of its views about the referendum question.

**Compulsory voting**

**92J.** Voting at the referendum is compulsory, and each affected elector for the affected area for the reviewable local government matter, or a voting area in the affected area, is entitled to only 1 vote.

**Conduct of referendum**

**92K.(1)** Chapter 5 (Local government elections), part 6 (Conduct of



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elections) applies (with any necessary changes and any additional changes specified in subsection (8) or changes prescribed under a regulation) to the referendum as if the referendum were an election.

(2) Without limiting subsection (1), the necessary changes mentioned in subsection (1) include the non-application of provisions of chapter 5, part 6 to the extent that their application is inappropriate or unnecessary.

(3) The application of provisions of chapter 5, part 6 is unnecessary to the extent that the provisions have particular reference to candidates.

(4) Without limiting subsections (2) and (3)—

- (a) section 238A (Assistant returning officers) has no application; and
- (b) chapter 5, part 6, divisions 3 (Candidates for election or appointment) and 11 (Marking of ballot papers) have no application; and
- (c) chapter 5, part 6, division 4 (Nominations of candidates for election), has no application; and
- (d) section 271(2)(d) to (f), (3) and (4) (Requirements of ballot papers) does not apply to the ballot paper to be used for the referendum; and
- (e) section 272 (Separate ballot papers for separate polls) has no application; and
- (f) section 273 (Order of listing of candidates' names) has no application; and
- (g) sections 302 (Effect of ballot papers—optional-preferential voting) and 303 (Effect of ballot papers—first-past-the-post voting) have no application; and
- (h) in section 311(1) (Official counting of votes) and 312 (Treatment of ballot paper to which objection is made), the reference to a candidate, but not the reference to a scrutineer, may be ignored; and
- (i) sections 313 (Counting of votes for optional-preferential system) and 314 (Counting of votes for first-past-the-post system) have no application; and

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- (j) section 316(1)(b) (Declaration of poll) has no application; and
- (k) section 327(1)(b) (Bribery) has no application; and
- (l) in section 349(2) (Injunctions to restrain contravention of chapter), the reference to a candidate or nominee as a candidate for election may be ignored, but not the reference to the returning officer.

(5) Necessary changes also include the following changes having general operation—

- (a) a reference to chapter 5, part 6 is a reference to that part as applied under this section, and is also taken to include a reference to the other provisions of this division;
- (b) a reference to the returning officer is a reference to the returning officer for the referendum;
- (c) a reference to an assistant returning officer is a reference to the assistant returning officer for the referendum;
- (d) a reference to an elector is a reference to an affected elector for the affected area or, if the affected area is divided into voting areas, each voting area in relation to the referendum;
- (e) a reference to a scrutineer for a candidate is a reference to a scrutineer for the referendum;
- (f) a reference to the voters roll is a reference to the voters roll compiled under this division for the affected area or, if the affected area is divided into voting areas, each voting area;
- (g) a reference to the local government area, or a division of the local government area, is, for the referendum, a reference to—
  - (i) the affected area; or
  - (ii) a voting area of the affected area;
- (h) a reference to the local government's public office is a reference to the public office of the returning officer for the referendum;
- (i) a reference to the poll for the election is a reference to the poll for the referendum;
- (j) a reference to polling day is a reference to the referendum day for

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the referendum;

- (k) a reference to the notice under section 257 (Procedure if number of candidates exceeds number required) is a reference to the referendum notice for the referendum;
- (l) a reference to the election period is a reference to the period—
  - (i) starting on the day the referendum notice for the referendum is first published; and
  - (ii) ending at 6.00 p.m. on the referendum day for the referendum;
- (m) a reference to an electoral officer for an election is a reference to an electoral officer for the referendum.

**(6)** Necessary changes also include the following changes having more specific operation—

- (a) for applying sections 267(6) (Declaration of mobile polling booths), 286(5) (Arrangements for electoral visitor voting) and 310(1) (Procedure for processing declaration envelopes), the returning officer for the referendum, instead of advising candidates, must advise the persons and groups who have appointed scrutineers for the referendum;
- (b) for applying sections 282(10)(b) (Procedure for voting at polling booth), 287(2)(c) (Help for electors in voting), 294(3)(c) (How declaration vote may be cast at a polling booth) and 297 (Casting a declaration vote by post), a reference to division 11 (Marking of ballot papers) is a reference to the provisions of this division about the marking of a ballot paper;
- (c) for applying section 287(2)(a) (Help for electors in voting), a reference to stating the names of candidates is a reference to reading out the referendum question;
- (d) for applying sections 308(1)(c)(ii) and (iii) (Preliminary counting by presiding officer) and 311(3)(b) and (4)(c) (Official counting of votes), the returning officer for the referendum must—
  - (i) count the number of votes approving the referendum question marked on all formal ballot papers, and keep the ballot papers in a separate parcel; and

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- (ii) count the number of votes opposing the referendum question marked on all formal ballot papers, and keep the ballot papers in a separate parcel;
- (e) for applying section 308(1)(d)(i) (Preliminary counting by presiding officer), the written statement must set out, in words and numerals, the number of votes approving the referendum question and the number of votes opposing the referendum question;
- (f) for applying section 311(2) (Official counting of votes), the returning officer for the referendum must ascertain the number of votes approving the referendum question and the number of votes opposing the referendum question;
- (g) for applying section 311(3) and (4) (Official counting of votes), the returning officer for the referendum must count the number of votes approving the referendum question and the number of votes opposing the referendum question;
- (h) for applying section 311(5) (Official counting of votes), the returning officer for the referendum must add together the number of votes counted as approving the referendum question and the number of votes counted as opposing the referendum question;
- (i) for applying section 312(2) (Treatment of ballot paper to which objection is made), the reference to a vote for a particular candidate is a reference to whether the vote is a vote approving or opposing the referendum question, and the reference to the name of the candidate for whom a vote is counted is a reference to whether the vote is counted as a vote approving or opposing the referendum question;
- (j) for applying section 317 (Notice of final result of poll), the reference to each candidate is a reference to the commission;
- (k) the result the returning officer must give under section 317 (Notice of final result of poll) as applied under this division is—
  - (i) if the affected area is divided into voting areas—
    - (A) for each voting area of the affected area—how the voting area voted on the referendum question, including

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whether the voting area has approved the referendum question; and

- (B) for the affected area—whether the affected area has approved the referendum question; or
    - (ii) if the affected area is not divided into voting areas—whether the affected area has approved the referendum question;
  - (l) for applying sections 317A (Resolution about electors who fail to vote), 318(1) and (3)(b) (List of electors failing to vote), 319 (Notice of failure to vote etc.), 319A (Payments for failure to vote) and 320 (Recording response to notice), the reference to the local government is a reference to the local government for the local government area, or part of a local government area, for which a person listed as having failed to vote is enrolled;
  - (m) for applying section 321 (Evidentiary value of list under s 318), the reference to the local government’s chief executive officer is a reference to the returning officer for the referendum;
  - (n) for applying sections 322 (Disposal of material resulting from election) and 323 (Ballot papers as evidence), a reference to the local government’s chief executive officer is a reference to the commissioner, but section 322(4) has no application at all;
  - (o) for applying section 323A (Notice to electors whose ballot papers are not accepted), the reference to the local government is a reference to the commissioner;
  - (p) for applying section 327(1)(c) (Bribery), the reference to support of, or opposition to, a candidate or a political party is a reference to approval of, or opposition to, the referendum question;
  - (q) sections 333 (No record to be made of vote cast) and 346 (Breach of confidentiality of vote) are about how a person votes at the referendum, rather than the candidate for whom a person votes;
  - (r) for applying section 349 (Injunctions to restrain contravention of chapter), the reference in section 349(1)(b) to chapter 5 is a reference to chapter 5, part 6 as applied under this division, and is also taken to include a reference to the other provisions of this division.
- (7) To avoid any doubt, sections 304 (Posted vote presumed valid until

contrary proved) and 305 (Formal and informal ballot papers) have application.

(8) The following additional changes are specified—

- (a) for applying section 309(1) (Preliminary processing of declaration votes by returning officer), the returning officer need not wait until after 8.00 a.m. on the referendum day to start the preliminary processing of declaration votes under that section, but may start at any time before the referendum day;
- (b) for applying section 349 (Injunctions to restrain contravention of chapter), an application to the Supreme Court may additionally be made by—
  - (i) a local government; or
  - (ii) an individual or group of individuals reasonably identified in the community, in the court's opinion, as supporting or opposing the referendum question.

(9) Subsections (2) to (8) do not limit by implication the changes that may be prescribed under a regulation.

### *Subdivision 3—Replacement provisions*

#### **Preliminary**

**93.** A provision of chapter 5 (Local government elections), part 6 (Conduct of elections) has no application to the extent it is inconsistent with the replacement provisions in this subdivision.

#### **Direction that poll be conducted by postal ballot**

**93A.(1)** The Governor in Council may, by gazette notice, direct that the poll for the referendum for the commission's proposed determination of the reviewable local government matter be conducted by postal ballot.

(2) The direction may be given for—

- (a) all of the affected area; or

(b) a part of the affected area marked on a map.

(3) The map is open to inspection at the place stated in the gazette notice.

### **Ballot papers**

**93B.** If the affected area for the reviewable local government matter is divided into voting areas, a different coloured ballot paper must be used for each voting area.

### **Mode of voting**

**93C.(1)** If an affected elector wishes to vote to approve the referendum question, the elector must place a tick in the square opposite the word ‘YES’ on the ballot paper.

(2) If an affected elector wishes to vote to oppose the referendum question, the elector must place a tick in the square opposite the word ‘NO’ on the ballot paper.

(3) An affected elector is taken to have marked a ballot paper in the way mentioned in subsection (1) if the elector—

- (a) writes the word ‘YES’ in the square opposite the word ‘YES’ on the ballot paper; or
- (b) otherwise marks the ballot paper in a way clearly showing that the voter approves of the referendum question.

(4) An affected elector is taken to have marked a ballot paper in the way mentioned in subsection (2) if the elector—

- (a) writes the word ‘NO’ in the square opposite the word ‘NO’ on the ballot paper; or
- (b) otherwise marks the ballot paper in a way clearly showing that the voter opposes the referendum question.

(5) For the application of section 271(2)(a),<sup>19</sup> the approved form of ballot paper must allow for the method of voting stated in this section.

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<sup>19</sup> Section 271 (Requirements of ballot papers)

**Effect of ballot paper**

**93D.** For a ballot paper to have effect as a vote of an affected elector in the referendum—

- (a) the ballot paper must be completed in the way stated in this subdivision; and
- (b) the ballot paper must not contain any writing or mark (other than a mark authorised under this division) by which the elector can, in the returning officer's opinion, be identified; and
- (c) the ballot paper must have been put in a ballot box; and
- (d) for a ballot paper put in a declaration envelope as required under section 297<sup>20</sup> as applied under this division—
  - (i) section 297(1) must have been complied with; and
  - (ii) if the elector is an elector mentioned in section 289 or 290<sup>21</sup> or an applicant who is given an approved declaration form under section 293(4) or an elector who is given an approved declaration form under section 295(2),<sup>22</sup> and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 293, or the relevant elector under section 295; and
  - (iii) if the declaration envelope is posted to the returning officer for the referendum—it must be received by the returning officer within 10 days after the referendum day.

**Scrutineers**

**93E.(1)** For the appointment of scrutineers for the referendum, a

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<sup>20</sup> Section 297 (Casting a declaration vote by post)

<sup>21</sup> Section 289 (Who may cast a declaration vote) or 290 (Who must cast a declaration vote in ordinary elections)

<sup>22</sup> Section 295 (Distribution of ballot papers to electors for postal ballot election)



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reference in section 276, 277 or 279<sup>23</sup> to a candidate for election is a reference to—

- (a) a local government for the affected area for the reviewable local government matter; or
- (b) an individual or group of individuals reasonably identified in the community, in the returning officer's opinion, as supporting or opposing the referendum question.

(2) An individual mentioned may appoint himself or herself as a scrutineer, and a group of individuals may appoint 1 or more of the group as a scrutineer or as scrutineers.

(3) For appointing a scrutineer for a group, the appointment may be made on the group's behalf by any of its members.

(4) The returning officer may reject an appointment if the returning officer reasonably believes that if more scrutineers are appointed, the efficiency of the conduct of the referendum may be adversely affected.

(5) The returning officer may direct 1 or more scrutineers to leave a place if the returning officer reasonably believes that the number of scrutineers at the place may adversely affect the efficiency of the conduct of the referendum.

(6) A scrutineer must comply with a direction given under subsection (5).

Maximum penalty for subsection (6)—10 penalty units.

*Subdivision 4—Miscellaneous***Referendum cost**

**94.(1)** The cost of conducting the referendum, including the fees and allowances to which the returning officer and assistant returning officer for the referendum are entitled, must be paid by the local governments prescribed under a regulation for the referendum in the way stated in the

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<sup>23</sup> Section 276 (Candidates' entitlement to scrutineers), 277 (Appointment of scrutineers) or 279 (Powers of scrutineers)

regulation.

(2) An amount required for the cost may, without resolution of a local government, be spent by it whether or not the disbursement is provided for in its budget.

(3) An amount may be paid only if the returning officer for the referendum has presented an account to the local government's chief executive officer.

### **Proof of voters roll**

**94A.** In a proceeding, a document purporting to be a copy of a voters roll for an affected area, or a voting area of an affected area, and to be certified by the returning officer for the referendum, is evidence of the roll and the matters contained in the roll.

## *Division 5—Provisions about commission members*

### *Subdivision 1—Commissioner and deputy commissioner*

#### **Commissioner may direct deputy commissioner to perform commissioner's functions**

**95.(1)** This section applies if the commissioner—

- (a) constitutes, or partly constitutes, a commission; and
- (b) is unable, for any reason, to perform the functions of the commission or a commission member.

(2) For the purpose of the commission performing a function or exercising a power, the commissioner may direct the deputy commissioner to act in the place of the commissioner.

(3) Anything done by the deputy commissioner in the place of the commissioner is taken to have been done by the commissioner as constituting the commission or as a commission member.

***Subdivision 2—Appointment, and duration of appointment, of review commissioners***

**Appointment**

**96.(1)** The Governor in Council is to appoint qualified individuals as review commissioners.

**(2)** The Governor in Council may appoint the number of review commissioners the Governor in Council considers necessary.

**(3)** An initial appointment as a review commissioner may be made only if the Minister has consulted with the Local Government Association about it.

**(4)** A person is qualified for appointment as a review commissioner only if the person—

- (a) has extensive knowledge and experience in local government, public administration, law, public finance or community affairs; or
- (b) has other qualifications and experience the Governor in Council considers appropriate.

**(5)** A person is not qualified for appointment as a review commissioner if the person—

- (a) is a member of an Australian Parliament; or
- (b) is a nominee for election as a member of an Australian Parliament; or
- (c) is a councillor; or
- (d) is a nominee for election as a councillor; or
- (e) accepts appointment as a councillor; or
- (f) is a member of a political party.

**Duration of appointment**

**96A.** A review commissioner may be appointed for a term not longer than 3 years.

***Subdivision 3—Terms of appointment, resignation and termination of appointment of certain commission members***

**Definition for subdiv 3**

97. In this subdivision—

“**commissioner**” means a review commissioner or the chairperson of a special commission.<sup>24</sup>

**Terms of appointment**

98.(1) A commissioner is entitled to be paid the remuneration and allowances the Governor in Council may decide.

(2) A commissioner holds office on the terms, not provided in this Act, the Governor in Council decides.

**Resignation**

99. A commissioner may resign by giving a signed notice of resignation to the Minister.

**Termination of appointment**

100.(1) The Governor in Council may terminate the appointment of a commissioner for misbehaviour or physical or mental incapacity.

(2) The Governor in Council must terminate the appointment of a commissioner if the person—

- (a) nominates for election to an Australian Parliament; or
- (b) nominates for election to a local government or accepts appointment as a local government councillor; or
- (c) becomes a member of a political party; or
- (d) becomes bankrupt, applies to take the benefit of a law for the

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<sup>24</sup> The chairperson of a special commission is appointed by the Governor in Council under section 71(1)(a).

relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

- (e) contravenes section 67E<sup>25</sup> without reasonable excuse.

### *Division 6—Miscellaneous*

#### **Staff and administrative support**

**101.** The Electoral Commission must ensure that a commission has the staff and administrative support services required to carry out its functions effectively and efficiently.

#### **Annual reports**

**102.(1)** As soon as practicable, but not later than 4 months, after the end of each financial year, the commissioner must give to the Minister a report of Local Government Electoral and Boundaries Review Commissions' operations for the year (the **“review commissions' report”**).

**(2)** The Electoral Commission's annual report prepared under the *Electoral Act 1992*, section 19, for the year must include the review commissions' report.

#### **Certain reports to be tabled etc.**

**103.(1)** In this section—

**“report”** means a report on a major or minor reference of a reviewable local government matter.<sup>26</sup>

**(2)** The Minister must table a copy of a commission's report in the Legislative Assembly within 7 sitting days after receiving it.

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<sup>25</sup> Section 67E (Disclosure of interests by members of expanded commission)

<sup>26</sup> See sections 72C (Determination not to implement matter) and 72H (Notification of determination and report to Minister) for major references of reviewable local government matters and sections 73B (Determination not to implement matter) and 73F (Notification of determination and report to Minister) for minor references of reviewable local government matters.

**Reports open to inspection and available for purchase**

**104.** The commissioner must ensure copies of each commission's report on a reviewable local government matter or a limited reviewable local government matter—

- (a) are open to inspection at the Electoral Commission's office at Brisbane; and
- (b) are available for purchase at the Electoral Commission's office at Brisbane for 6 months after—
  - (i) for a report on a major or minor reference of a reviewable local government matter—it is tabled in the Legislative Assembly; or
  - (ii) for a report on a limited reviewable local government matter—notification of the commission's determination under section 78 or 78A.

**Additional procedures may be prescribed by regulation**

**105.** A regulation may be made about additional procedures for the following—

- (a) major and minor references of reviewable local government matters;
- (b) applications relating to limited reviewable local government matters.

***Division 7—Implementing reviewable local government matters*****Implementation of reviewable local government matter**

**106.(1)** A reviewable local government matter may be implemented by regulation.

- (2)** A regulation may provide for—
- (a) holding, postponing or cancelling an election for a local government area or a division of a local government area; or
  - (b) appointing a returning officer for an election; or

- (c) recovering unpaid rates; or
- (d) exempting a local government from the requirement to prepare and adopt a corporate or operational plan, and the application of this Act because of the exemption; or
- (e) the application of budgets; or
- (f) giving or keeping records; or
- (g) implementation issues for the matter; or
- (h) the giving of directions by the Governor in Council or the Minister about a matter; or
- (i) the transfer of assets and liabilities; or
- (j) in the case of a reviewable local government matter the subject of a delayed implementation determination—payment by a local government for not adequately supplying services and facilities in the interim period for the matter in a part of a local government area that, under the matter, has been, or is to be, transferred from 1 local government area to another local government area; or
- (k) any other matter for which—
  - (i) it is necessary or convenient to provide to implement the reviewable local government matter; and
  - (ii) this Act does not make provision or adequate provision.

**(2A)** Subsection (2)(a) has effect subject to section 350(2A).<sup>27</sup>

**(3)** A regulation under subsection (2)(a) applies despite the following provisions—

- section 218 (Date of later triennial elections)
- section 219 (Date of by-elections).

**(4)** Chapter 5 (Local government elections) applies to an election for the implementation of a reviewable local government matter with all necessary changes and any changes prescribed by regulation as if the election were an election of the appropriate type.

**(5)** In this section—

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<sup>27</sup> Section 350 (Requirements for fresh election)

“**division**” includes a proposed division.

“**interim period**”, for a reviewable local government matter the subject of a delayed implementation determination, means the period from the notification of the determination by gazette notice to the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination.

“**local government area**” includes a proposed local government area.

### **Requirement before implementation**

**107.(1)** A reviewable local government matter may be implemented under section 106 (Implementation of reviewable local government matter) only if the commissioner, and the commission that determined the matter, have complied with this Act in relation to the matter.

**(2)** For the purposes of subsection (1), strict compliance with this Act is not necessary and substantial compliance is sufficient.

### **Liability for State taxes**

**108.(1)** A local government is not liable to pay a State tax in relation to a transfer or other arrangement made to implement a reviewable local government matter under this division.

**(2)** In this section—

“**State tax**” means stamp duty or another tax, fee, duty, levy or charge imposed under an Act.

## **PART 2—INTERVENTION BY THE STATE**

### *Division 1—Powers of intervention*

#### **Procedures before exercise of certain powers**

**109.(1)** Before the Governor in Council or Minister exercises a power



under this division in relation to a local government, the Minister must give written notice of the proposed exercise of the power to the local government.

(2) However, notice need not be given if—

- (a) the power is proposed to be exercised at the local government's request; or
- (b) in the Minister's opinion, giving notice—
  - (i) is likely to defeat the purpose of the proposed exercise of the power; or
  - (ii) would serve no useful purpose.

(3) The notice must state—

- (a) the reasons for the proposed exercise of power; and
- (b) a time within which the local government may make submissions to the Minister about the proposed exercise of power.

(4) Reasons stated in the notice are the only reasons that can be relied on in support of the exercise of the power.

(5) The Minister must have regard to all submissions made by the local government within the specified time.

(6) If—

- (a) the proposed exercise of power is to proceed despite submissions of the local government; or
- (b) no submissions of the local government are received by the Minister within the specified time;

the power may be exercised without further notice to the local government.

### **Revocation and suspension of resolutions and orders**

**110.(1)** The Governor in Council may, by regulation—

- (a) revoke, or suspend the operation of, a resolution of a local government or an order issued by a local government to give effect to a resolution; and

(b) end the suspension of the resolution or order.

(2) The suspension may be for a specified period or indefinite.

### **Effect of revocation or suspension**

**111.(1)** A resolution or order of a local government that is revoked by regulation—

(a) ceases to have effect on the day specified by the regulation; or

(b) if no day is specified—is taken never to have had effect.

(2) A resolution or order of a local government whose operation is suspended by a regulation does not have effect while it is suspended.

(3) The State is not legally liable for any loss or expense incurred by a person because of the revocation or suspension by regulation of a local government's resolution or order.

### **Overruling local laws and local law policies etc.**

**112.(1)** The Governor in Council may, by regulation, declare that a local law or local law policy, or a provision of a local law or local law policy, ceases to have effect, if the Governor in Council is of the opinion that it is necessary to make the declaration to protect State interests.

(2) The Governor in Council may, by regulation, later declare that the local law, local law policy or provision again has effect, if the Governor in Council is of the opinion that it is no longer necessary for the declaration under subsection (1) to continue to have effect to protect State interests.

### **Dissolution of local government**

**113.(1)** The Governor in Council may, by regulation, dissolve a local government if the Minister is satisfied that the local government—

(a) has acted unlawfully or corruptly; or

(b) has acted in a way that puts at risk its capacity to exercise properly its jurisdiction of local government ; or

(c) is incompetent or cannot properly exercise its jurisdiction of local government.

(2) Subsection (1) is subject to the *Constitution Act 1867*, section 55 (Manner of appointing persons to exercise powers, authorities, duties and functions of local government).

(3) On dissolution of the local government—

- (a) the local government’s councillors go out of office; and
- (b) an administrator must be appointed; and
- (c) the local government continues in existence as a body corporate and is constituted by the administrator.

### **Exclusion of part of local government area from Act**

**114.(1)** The Governor in Council may, by regulation, declare that this Act does not apply to a specified part of a local government’s area.

(2) On the making of the declaration, the local government’s local laws and local law policies cease to apply to the specified part of its area.

(3) The Governor in Council may, by regulation, later declare that this Act again applies to the specified part of the local government’s area.

(4) On the making of the declaration, the local government’s local laws and local law policies again apply to the specified part of its area.

(5) Subsections (2) and (4) do not limit by implication the effect of a declaration under this section.

(6) In this section—

“**local law**” includes a planning scheme and interim development control provisions.

### **Abolition of joint local government and its area**

**115.(1)** The Governor in Council may, by regulation, abolish a joint local government and its area.

(2) A regulation may provide for—

- (a) the apportionment of the joint local government’s assets and liabilities among its component local governments; and

- (b) any other matter for which it is necessary or convenient to make provision on the dissolution of the joint local government.

### *Division 2—Inquiries, investigations and inspections*

#### **Inquiries, investigations and inspections by authorised persons**

**116.(1)** The chief executive of the department may appoint an officer of the department or another appropriately qualified person (an “**authorised person**”) to conduct an inquiry, investigation or inspection about—

- (a) the functioning of local government in the State; or  
(b) any matter relevant to the administration of this Act.

(2) However, subsection (1) does not permit the chief executive to appoint a person to conduct an inquiry, investigation or inspection about a reviewable local government matter.

(3) A local government must cooperate fully with an inquiry, investigation or inspection by a person appointed under subsection (1).

#### **Reports on inquiries, investigations and inspections**

**117.(1)** When an authorised person has completed the inquiry, investigation or inspection for which the person was appointed, the authorised person must, as quickly as possible, give the chief executive of the department a written report on the inquiry, investigation or inspection.

(2) The Minister may table a copy of the report in the Legislative Assembly.

#### **Chief executive may request information from local government**

**118.(1)** The chief executive of the department may, by written notice, request a local government to give to the chief executive information in writing about anything within its jurisdiction of local government.

(2) The request must specify a reasonable time within which the information must be given to the chief executive.

(3) The local government must comply with the request.  
Maximum penalty for subsection (3)—35 penalty units.

### *Division 3—Conduct of inquiries*

#### **Authorised person’s duties on inquiry**

**119.** When conducting an inquiry, an authorised person—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

#### **Authorised person may decide procedures**

**120.(1)** The authorised person—

- (a) is not bound by the rules of evidence; and
- (b) may inform himself or herself in any way the authorised person considers appropriate; and
- (c) may decide the procedures to be followed at the inquiry.

(2) However, the authorised person must comply with this division and any procedural rules prescribed by regulation.

#### **Public may attend**

**121.** The authorised person must allow members of the public to attend the inquiry.

#### **Authorised person’s powers on inquiry**

**122.(1)** In conducting the inquiry, the authorised person may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and

- (c) adjourn the inquiry; and
- (d) permit a document to be amended; and
- (e) disregard any defect, error, omission or insufficiency in a document; and
- (f) permit or refuse to permit a person (including a legal practitioner enrolled in Queensland or elsewhere) to represent someone else at the inquiry.

(2) The authorised person may administer an oath or affirmation to a person appearing as a witness before the inquiry.

### **Notice to witness**

**123.(1)** The authorised person may, by written notice given to a person, require the person to attend at a specified time and place to give evidence or produce specified documents.

(2) A person who is given a notice must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the authorised person until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to appear as a witness before an inquiry is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the authorised person.

### **Duty of witness at inquiry**

**124.(1)** A person appearing as a witness at the inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the authorised person; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the authorised person; or
- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under section 123(1) (Notice to

witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

### **Contempt of authorised person**

**125.** A person must not—

- (a) insult the authorised person in the inquiry; or
- (b) deliberately interrupt an inquiry; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the authorised person is conducting the inquiry; or
- (d) do anything that would be a contempt of court if the authorised person were a judge acting judicially.

Maximum penalty—50 penalty units.

### **Change of authorised person**

**126.** An inquiry is not affected by a change in the authorised person holding the inquiry.

## *Division 4—Administrators*

### **When administrator may be appointed**

**127.** If a local government is dissolved under section 113 (Dissolution of local government), the Governor in Council must, by gazette notice, appoint a person as administrator of the local government.

### **Jurisdiction, powers and duties of administrator**

**128.(1)** The administrator of a local government has all the jurisdiction, powers and duties of the local government concerned.

**(2)** However—

- (a) a regulation may limit the jurisdiction, powers and duties of the administrator; and
- (b) the administrator does not have a duty of a local government appropriate only to a body of persons.

**(3)** If the mayor of a local government is required or permitted by law to exercise a power, the administrator is required or permitted to exercise the power instead of the mayor.

**(4)** This Act and other Acts apply to the administrator, with all necessary changes and any changes prescribed by regulation, as if the administrator were the local government.

### **Title of administrator**

**129.** For the purpose of exercising the jurisdiction of local government, the title of an administrator is ‘Administrator of the ... (name of the local government).’.

### **Committee to help administrator**

**130.(1)** When an administrator is appointed, the Minister may appoint a committee of persons to help the administrator in exercising the jurisdiction of local government of the local government concerned.

**(2)** A person may be appointed as a member of a committee for a limited time or indefinitely.

**(3)** The administrator is chairperson of the committee and must preside at every meeting of the committee at which the administrator is present.

**(4)** If, because of absence or incapacity, the administrator cannot perform the functions of chairperson of the committee, the other members of the committee must appoint a member to act as chairperson at meetings of the committee until the administrator is able to perform the functions.

### **Conditions of appointment as administrator or member of committee**

**131.(1)** An administrator or a member of a committee is entitled to the



fees, allowances and expenses decided by the Governor in Council.

(2) The fees, allowances and expenses are payable by the local government concerned.

(3) An officer of the public service who is appointed as an administrator or as a member of a committee may hold the appointment as well as the public service office.

### **Recovery of amounts from local governments**

**132.(1)** The Governor in Council may direct a local government for which an administrator is appointed to pay to the Minister an amount specified in the direction as the costs and expenses of the administrator.

(2) The specified amount may include salary and allowances payable to an officer of the public service who is appointed as administrator or a member of a committee.

(3) The direction may specify a time for payment.

(4) The specified amount is a debt payable to the State.

### **Role of committee**

**133.(1)** An administrator appointed for a local government must ensure that every decision of the committee about the exercise of the jurisdiction of local government for the local government's area is implemented as soon as is practicable after the committee's decision is taken.

(2) However, if the administrator considers that implementing a decision of the committee would not be in the best interests of the area, the administrator must refer the issue to the Minister for decision.

(3) The referral must be made within 14 days after the administrator becomes aware of the committee's decision.

### **Decision by Minister on referral by administrator**

**134.(1)** If an issue is referred to the Minister by an administrator under section 133(2) (Role of committee), the Minister may cause the chief executive of the department to make the inquiries, investigations and

inspections that the Minister considers appropriate.

(2) The Minister's decision on the issue is taken to be the decision of the committee and is final and binding on the administrator and the committee.

(3) The administrator must ensure the Minister's decision is implemented as quickly as practicable.

### **Procedures of committee**

**135.(1)** In this section—

**“relevant provision”** means a provision of this Act that deals with any of the following matters for a local government—

- (a) the times of its meetings;
- (b) the quorum at its meetings;
- (c) notice of its meetings;
- (d) adjournment of its meetings;
- (e) entitlements of members to vote at its meetings;
- (f) disability of a member to vote because of material personal interest;
- (g) registers of interests;
- (h) minutes of its proceedings;
- (i) revocation or amendment of its resolutions;
- (j) a matter prescribed by regulation.

(2) A relevant provision applies to a committee appointed to help an administrator as if—

- (a) the committee were a local government; and
- (b) the administrator, or person acting as chairperson of the committee, were the mayor of the local government.

### **Termination of administrator's appointment**

**136.(1)** The appointment of an administrator—

- (a) may be terminated by the Governor in Council for any reason; or
- (b) ceases on the conclusion of a fresh election of the councillors of the local government concerned.

(2) It is the intention of the Parliament that a fresh election of the councillors of the local government should be held as soon as possible after the appointment of an administrator for the local government.

### **Termination of appointment of committee member etc.**

**137.(1)** The appointment of all members or any member of a committee to help an administrator may be terminated by the Minister, for any reason, by written notice signed by the Minister and given to the members or member.

(2) A committee appointed to help an administrator ceases to exist on the conclusion of a fresh election of councillors of the local government concerned.

**PART 2A—REINSTATEMENT OF CERTAIN AREAS*****Division 1—Preliminary***<sup>28</sup>***Purpose of pt 2A***

*137A.(1) The purpose of this part is to specify a process for the possible reinstatement of certain local government areas and external boundaries affected by the implementation of reviewable local government matters under amalgamation regulations in 1993, 1994 and 1995.*

*(2) The complete process includes—*

- petition for a referendum*
- referendum*
- approval by the Legislative Assembly*
- regulation providing for reinstatement, including arrangements for fresh elections.*

*(3) The process also includes the possibility of triennial elections in 1997 for the councillors of the local governments of the cities of Cairns, Gold Coast and Ipswich.*

***Basic concepts—affected areas and amalgamated areas***

*137B.(1) The affected area and the amalgamated area are basic concepts for understanding this part.*

*(2) There were 7 local government amalgamation regulations over the years 1993, 1994 and 1995, and accordingly there are 7 affected areas.*

*(3) In general terms, an affected area is made up of all the areas and parts of areas directly affected by an amalgamation regulation.*

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<sup>28</sup> Part 2A, division 1 (ss 137A–137E) has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

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(4) *Division 2<sup>29</sup> deals with each affected area in turn, but, again in general terms, each affected area is made up of—*

- (a) *the local government areas (usually 2) that were abolished and then combined to form a new amalgamated area; and*
- (b) *in some cases<sup>30</sup>—parts of other adjoining local government areas that were included in the amalgamated area; and*
- (c) *in some cases<sup>31</sup>—a part or parts of the amalgamated area excluded from it and included in an adjoining local government area.*

(5) *The amalgamated area is the new local government area formed under the amalgamation regulation.<sup>32</sup>*

(6) *The distinction between an affected area and an amalgamated area can be seen in the following—*

- *a petition is for an entire affected area, and asks for a referendum for the affected area*
- *if the petition succeeds, a referendum is held on the question of reinstatement for the entire affected area*
- *if the referendum succeeds, a resolution of the Legislative Assembly leads to a reinstatement regulation that effectively reverses the relevant amalgamation regulation*
- *for Cairns, a second referendum, on the question of the holding of triennial elections in 1997 instead of 2000, is held when the first referendum is held*
- *for Gold Coast or Ipswich, a second referendum, on the question of the holding of triennial elections in 1997 instead of 2000, is held when the first referendum is held, but only for electors in the amalgamated area, not the wider affected area*

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<sup>29</sup> Division 2 (Specific information about affected areas and amalgamated areas and other important concepts)

<sup>30</sup> Cairns, Gold Coast, and Ipswich

<sup>31</sup> Burnett, Gold Coast and Ipswich

<sup>32</sup> For Cairns, Cooloola, Mackay and Warwick, the amalgamated areas are identical to the affected areas.

- *for Cairns, Gold Coast or Ipswich, if the first referendum does not succeed (or, if it does, but the Legislative Assembly does not approve reinstatement), the answer to the question for the second referendum becomes relevant.*

*(7) In division 2, each affected area and amalgamated area is defined more precisely, and some other important concepts for understanding this part are established.*

### **Definitions for pt 2A**

*137C. In this part—*

*“abolished area”, for an affected area, means a local government area abolished under the affected area’s amalgamation regulation.<sup>33</sup>*

*“affected area” means the affected Burnett, Cairns, Cooloola, Gold Coast, Ipswich, Mackay or Warwick area.<sup>34</sup>*

*“affected Burnett area” see section 137F(1).*

*“affected Cairns area” see section 137G(1).*

*“affected Cooloola area” see section 137H(1).*

*“affected elector” means—*

- (a) for an affected area in relation to a petition for the area—a person who, on 27 March 1996—*
  - (i) was an elector under the Electoral Act 1992 for an electoral district, or part of an electoral district, included in the affected area; and*
  - (ii) was enrolled under that Act on an electoral roll for the district or part; or*
- (b) for a voting area of an affected area in relation to a referendum for the affected area—a person who, on the referendum roll cut-off day, is an elector under the Electoral Act 1992 for an electoral*

<sup>33</sup> See division 2 (Specific information about affected areas and amalgamated areas and other important concepts) for more detail about the abolished areas.

<sup>34</sup> See division 2 (Specific information about affected areas and amalgamated areas and other important concepts) for more detail about the affected areas.

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*district, or part of an electoral district, included in the affected area; or*

- (c) *for an amalgamated area in relation to a referendum for the amalgamated area—a person who, on the referendum roll cut-off day, is an elector under the Electoral Act 1992 for an electoral district, or part of an electoral district, included in the amalgamated area.*

*Example for paragraph (a)—*

*An affected elector for the affected Gold Coast area in relation to a petition for the area is a person who, on 27 March 1996—*

- (a) *was an elector under the Electoral Act 1992 for an electoral district, or part of an electoral district, included in the affected Gold Coast area; and*
- (b) *was enrolled under that Act on an electoral roll for the district or part.*

**“affected Gold Coast area”** *see section 137I(1).*

**“affected Ipswich area”** *see section 137J(1).*

**“affected Mackay area”** *see section 137K(1).*

**“affected Warwick area”** *see section 137L(1).*

**“amalgamated area”** *means the amalgamated Burnett, Cairns, Cooloola, Gold Coast, Ipswich, Mackay or Warwick area.<sup>35</sup>*

**“amalgamated Burnett area”** *see section 137F(2).*

**“amalgamated Cairns area”** *see section 137G(2).*

**“amalgamated Cooloola area”** *see section 137H(2).*

**“amalgamated Gold Coast area”** *see section 137I(2).*

**“amalgamated Ipswich area”** *see section 137J(2).*

**“amalgamated local government”** *means a local government whose area was created under an amalgamation regulation.*

**“amalgamated Mackay area”** *see section 137K(2).*

**“amalgamated Warwick area”** *see section 137L(2).*

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<sup>35</sup> See division 2 (Specific information about affected areas and amalgamated areas and other important concepts) for more detail about amalgamated areas.

**“amalgamation regulation”** means the Burnett, Cairns, Cooloola, Gold Coast, Ipswich, Mackay or Warwick amalgamation regulation.<sup>36</sup>

**“appointed person”** see section 137ZD(1).

**“approve”** a referendum question see section 137D(1) to (4).

**“approved form of petition page”** see division 2.<sup>37</sup>

**“boundary affected local government”**, means a local government (other than an amalgamated local government) whose external boundaries were changed under an amalgamation regulation.<sup>38</sup>

**“Burnett amalgamation regulation”** see section 137F(4).

**“Cairns amalgamation regulation”** see section 137G(4).

**“changeover day”** see division 2.<sup>39</sup>

**“chief executive”** means the chief executive of the department.

**“Cooloola amalgamation regulation”** see section 137H(4).

**“early elections regulation”** means a regulation made under section 137ZZB.

**“electoral arrangements”**, for a local government area, means the following—

- (a) the composition of the area’s local government;
- (b) whether the area is divided into divisions;
- (c) if the area is divided into divisions—the boundaries of each division and the assignment of councillors to the divisions.

**“electoral arrangements statement”** see sections 137ZH.

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<sup>36</sup> See division 2 (Specific information about affected areas and amalgamated areas and other important concepts) for more detail about amalgamation regulations.

<sup>37</sup> The approved form of petition page for an affected area is identified in the section of division 2 about the affected area.

<sup>38</sup> See division 2 (Specific information about affected areas and amalgamated areas and other important concepts) for more detail about boundary affected local governments.

<sup>39</sup> The changeover day for an affected area is identified in the section of division 2 about the affected area.



**“explanatory statement”** see section 137ZD(1).

**“Gold Coast amalgamation regulation”** see section 137I(4).

**“Ipswich amalgamation regulation”** see section 137J(4).

**“Mackay amalgamation regulation”** see section 137K(4).

**“oppose”** a referendum question see section 137D(5).

**“petition page”** means a sheet of paper intended to form part of a petition.

**“petition page requirements”** see section 137N(6).

**“postal address”**, for an affected elector, means an address shown in a roll under the Electoral Act 1992 in addition to the elector’s residential address.

**“question”**, for a referendum, means the question asked at the referendum.

**“referendum”** means a referendum under this part for an affected area or amalgamated area.

**“referendum action”**, for a referendum, means the action necessary or desirable to give effect to the proposal contained in the referendum question.

**“referendum day”** see section 137V.<sup>40</sup>

**“referendum notice”**, for a referendum, see section 137W(1).

**“referendum roll cut-off day”** means 10 May 1996.

**“reinstated area”** see section 137ZW(3)(b).

**“reinstatement regulation”** see section 137ZV(2).

**“returning officer”**, for a referendum, means a person appointed under section 137U as the returning officer for the referendum.

**“short form electoral arrangements statement”** see section 137ZI.

**“transition officer”** see section 137ZW(3)(h).

**“voting areas”**, of an affected area, mean the parts into which an affected

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<sup>40</sup> See also section 137X for the extension of time.

*area is divided for a referendum for the affected area.*<sup>41</sup>

**“Warwick amalgamation regulation”** see section 137L(4).

### **“Approving” or “opposing” a referendum question**

**137D.(1)** A person **“approves”** a referendum question if the person answers the question in the affirmative.

(2) A voting area **“approves”** a question for a referendum if the affected electors for the voting area who vote to approve the question are greater in number than the affected electors who vote to oppose the question.

(3) An affected area **“approves”** a question for a referendum if each voting area of the affected area approves the question.

(4) An amalgamated area **“approves”** a question for a referendum if the affected electors for the amalgamated area who vote to approve the question are greater in number than the affected electors who vote to oppose the question.

(5) A person **“opposes”** a question for a referendum if the person answers the question in the negative.

### **Correspondingly named areas**

**137E.(1)** If this part refers to an affected area’s amalgamated area, the reference is to the amalgamated area with the name corresponding to the affected area’s name.

*Example for subsection (1)—*

*The affected Gold Coast area’s amalgamated area is the amalgamated Gold Coast area.*

(2) If this part refers to an amalgamated area’s affected area, the reference is to the affected area with the name corresponding to the amalgamated area’s name.

*Example for subsection (2)—*

*The amalgamated Gold Coast area’s affected area is the affected Gold Coast area.*

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<sup>41</sup> See division 2 (Specific information about affected areas and amalgamated areas and other important concepts) for more detail about voting areas.

***Division 2—Specific information about affected areas and amalgamated areas and other important concepts<sup>42</sup>***

***Shire of Burnett***

**137F.(1)** *The “affected Burnett area” is—*

- (a) the local government area of the Shire of Burnett; and*
- (b) the relevant area under the Burnett amalgamation regulation.<sup>43</sup>*

**(2)** *The “amalgamated Burnett area” is the local government area of the shire.*

**(3)** *The “changeover day” for the affected Burnett area is 30 March 1994.*

**(4)** *The Local Government (Bundaberg and Burnett) Regulation 1993 (the “Burnett amalgamation regulation”) is the amalgamation regulation for the affected and amalgamated Burnett areas.*

**(5)** *The “approved form of petition page” for the affected Burnett area is that notified in the gazette on 20 March 1996 at pages 1 199 (front) and 1 200 (back) (form 1).*

**(6)** *If a referendum is held for the affected Burnett area, the area is taken to be divided into the following voting areas—*

- (a) voting area 1 is the part of the shire and the part of the City of Bundaberg that, immediately before the changeover day, was the then local government area of the Shire of Gooburrum;*
- (b) voting area 2 is the part of the shire and the part of the City of Bundaberg that, immediately before the changeover day, was the then local government area of the Shire of Woongarra.*

**(7)** *For the affected Burnett area—*

- (a) the abolished areas are the local government areas of the shires*

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<sup>42</sup> Part 2A, division 2 (ss 137F–137L) has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

<sup>43</sup> The relevant area is made up of the parts of the former Shires of Gooburrum and Woongarra that were included in the City of Bundaberg under the Burnett amalgamation regulation.

*of Gooburrum and Woongarra that existed immediately before the changeover day; and*

- (b) the boundary affected local government is the Bundaberg City Council.*

### ***City of Cairns***

**137G.(1)** *The “affected Cairns area” is the local government area of the City of Cairns.*

**(2)** *The “amalgamated Cairns area” is the local government area of the city.*

**(3)** *The “changeover day” for the affected Cairns area is 22 March 1995.*

**(4)** *The Local Government (Cairns, Douglas, Mareeba and Mulgrave) Regulation 1994 (the “Cairns amalgamation regulation”) is the amalgamation regulation for the affected and amalgamated Cairns areas.*

**(5)** *The “approved form of petition page” for the affected Cairns area is that notified in the gazette on 20 March 1996 at pages 1 201 (front) and 1 202 (back) (form 2).*

**(6)** *If a referendum is held for the affected Cairns area, the area is taken to be divided into the following voting areas—*

- (a) voting area 1 is the part of the city that, immediately before the changeover day, was the then local government area of the City of Cairns;*

*(b) voting area 2 is—*

- (i) the part of the city that, immediately before the changeover day, was the then local government area of the Shire of Mulgrave; and*

- (ii) areas A and B under the Cairns amalgamation regulation.<sup>44</sup>*

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<sup>44</sup> Area A is the part of the Shire of Douglas that was included in the City of Cairns under the Cairns amalgamation regulation. Area B is the part of the Shire of Mareeba that was included in the City of Cairns under the Cairns amalgamation regulation.

(7) *For the affected Cairns area—*

- (a) *the abolished areas are the local government areas of the City of Cairns and Shire of Mulgrave that existed immediately before the changeover day; and*
- (b) *the boundary affected local governments are Douglas Shire Council and Mareeba Shire Council.*

### ***Shire of Cooloola***

**137H.(1)** *The “affected Cooloola area” is the local government area of the Shire of Cooloola.*

(2) *The “amalgamated Cooloola area” is the local government area of the shire.*

(3) *The “changeover day” for the affected Cooloola area is 2 December 1993.*

(4) *The Local Government (Shire of Cooloola) Regulation 1993 (the “Cooloola amalgamation regulation”) is the amalgamation regulation for the affected and amalgamated Cooloola areas.*

(5) *The “approved form of petition page” for the affected Cooloola area is that notified in the gazette on 20 March 1996 at pages 1 203 (front) and 1 204 (back) (form 3).*

(6) *If a referendum is held for the affected Cooloola area, the area is taken to be divided into the following voting areas—*

- (a) *voting area 1 is the part of the shire that, immediately before the changeover day, was the then local government area of the City of Gympie;*
- (b) *voting area 2 is the part of the shire that, immediately before the changeover day, was the then local government area of the Shire of Widgee.*

(7) *For the affected Cooloola area—*

- (a) *the abolished areas are the local government areas of the City of Gympie and Shire of Widgee that existed immediately before the changeover day; and*
- (b) *there are no boundary affected local governments.*

***City of Gold Coast***

**137I.(1)** *The “affected Gold Coast area” means—*

(a) *the local government area of the City of Gold Coast; and*

(b) *area A under the Gold Coast amalgamation regulation.<sup>45</sup>*

**(2)** *The “amalgamated Gold Coast area” means the local government area of the city.*

**(3)** *The “changeover day” for the affected Gold Coast area is 22 March 1995.*

**(4)** *The Local Government (Albert, Beaudesert and Gold Coast) Regulation 1994 (the “Gold Coast amalgamation regulation”) is the amalgamation regulation for the affected and amalgamated Gold Coast areas.*

**(5)** *The “approved form of petition page” for the affected Gold Coast area is that notified in the gazette on 20 March 1996 at pages 1 205 (front) and 1 206 (back) (form 4).*

**(6)** *If a referendum is held for the affected Gold Coast area, the area is taken to be divided into the following voting areas—*

(a) *voting area 1 is the part of the city that, immediately before the changeover day, was the then local government area of the City of Gold Coast;*

(b) *voting area 2 is—*

(i) *the part of the city and the part of the Shire of Beaudesert that, immediately before the changeover day, was the then local government area of the Shire of Albert; and*

(ii) *area B under the Gold Coast amalgamation regulation.<sup>46</sup>*

**(7)** *For the affected Gold Coast area—*

(a) *the abolished areas are the local government areas of the Shire of Albert and City of Gold Coast that existed immediately before*

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<sup>45</sup> Area A is the part of the former Shire of Albert that was included in the Shire of Beaudesert under the Gold Coast amalgamation regulation.

<sup>46</sup> Area B is the part of the Shire of Beaudesert that was included in the City of Gold Coast under the Gold Coast amalgamation regulation.

*the changeover day; and*

- (b) *the boundary affected local government is Beaudesert Shire Council.*

### **City of Ipswich**

**137J.(1)** *The “affected Ipswich area” is—*

- (a) *the local government area of the City of Ipswich; and*  
(b) *areas A, B and C under the Ipswich amalgamation regulation.<sup>47</sup>*

(2) *The “amalgamated Ipswich area” is the local government area of the city.*

(3) *The “changeover day” for the affected Ipswich area is 22 March 1995.*

(4) *The Local Government (Brisbane, Esk, Ipswich, Logan and Moreton) Regulation 1994 (the “Ipswich amalgamation regulation”) is the amalgamation regulation for the affected and amalgamated Ipswich areas.*

(5) *The “approved form of petition page” for the affected Ipswich area is that notified in the gazette on 20 March 1996 at pages 1 207 (front) and 1 208 (back) (form 5).*

(6) *If a referendum is held for the affected Ipswich area, the area is taken to be divided into the following voting areas—*

- (a) *voting area 1 is the part of the city that, immediately before the changeover day, was the then local government area of the City of Ipswich;*  
(b) *voting area 2 is—*  
(i) *the part of the city, the part of the City of Brisbane, the part of the City of Logan and the part of the Shire of Esk that,*

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<sup>47</sup> Area A is the part of the former Shire of Moreton that was included in the Shire of Esk under the Ipswich amalgamation regulation. Area B is the part of the former Shire of Moreton that was included in the City of Brisbane under the Ipswich amalgamation regulation. Area C is the part of the former Shire of Moreton that was included in the City of Logan under the Ipswich amalgamation regulation.

*immediately before the changeover day, was the then local government area of the Shire of Moreton; and*

*(ii) area D under the Ipswich amalgamation regulation.<sup>48</sup>*

*(7) For the affected Ipswich area—*

- (a) the abolished areas are the local government areas of the City of Ipswich and Shire of Moreton that existed immediately before the changeover day; and*
- (b) the boundary affected local governments are Brisbane City Council, Esk Shire Council and Logan City Council.*

### **City of Mackay**

*137K.(1) The “affected Mackay area” is the local government area of the City of Mackay.*

*(2) The “amalgamated Mackay area” is the local government area of the city.*

*(3) The “changeover day” for the affected Mackay area is 8 April 1994.*

*(4) The Local Government (Mackay and Pioneer) Regulation 1993 (the “Mackay amalgamation regulation”) is the amalgamation regulation for the affected and amalgamated Mackay areas.*

*(5) The “approved form of petition page” for the affected Mackay area is that notified in the gazette on 20 March 1996 at pages 1 209 (front) and 1 210 (back) (form 6).*

*(6) If a referendum is held for the affected Mackay area, the area is taken to be divided into the following voting areas—*

- (a) voting area 1 is the part of the city that, immediately before the changeover day, was the then local government area of the City of Mackay;*
- (b) voting area 2 is the part of the city that, immediately before the changeover day, was the then local government area of the Shire of Pioneer.*

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<sup>48</sup> Area D is the part of the City of Logan that was included in the City of Ipswich under the Ipswich amalgamation regulation.



(7) *For the affected Mackay area—*

- (a) *the abolished areas are the local government areas of the City of Mackay and the Shire of Pioneer that existed immediately before the changeover day; and*
- (b) *there are no boundary affected local governments.*

### ***Shire of Warwick***

**137L.(1)** *The “affected Warwick area” is the local government area of the Shire of Warwick.*

(2) *The “amalgamated Warwick area” is the local government area of the shire.*

(3) *The “changeover day” for the affected Warwick area is 1 July 1994.*

(4) *The Local Government (Allora, Glengallan, Rosenthal and Warwick) Regulation 1994 (the “Warwick amalgamation regulation”) is the amalgamation regulation for the affected and amalgamated Warwick areas.*

(5) *The “approved form of petition page” for the affected Warwick area is that notified in the gazette on 20 March 1996 at pages 1 211 (front) and 1 212 (back) (form 7).*

(6) *If a referendum is held for the affected Warwick area, the area is taken to be divided into the following voting areas—*

- (a) *voting area 1 is the part of the shire that, immediately before the changeover day, was the then local government area of the Shire of Allora;*
- (b) *voting area 2 is the part of the shire that, immediately before the changeover day, was the then local government area of the Shire of Glengallan;*
- (c) *voting area 3 is the part of the shire that, immediately before the changeover day, was the then local government area of the Shire of Rosenthal;*
- (d) *voting area 4 is the part of the shire that, immediately before the changeover day, was the then local government area of the City of Warwick.*

(7) *For the affected Warwick area—*

- (a) *the abolished areas are the local government areas of the Shire of Allora, Shire of Glengallan, Shire of Rosenthal and the City of Warwick that existed immediately before the changeover day; and*
- (b) *there are no boundary affected local governments.*

### ***Division 3—Petition<sup>49</sup>***

#### ***Affected electors may petition Minister***

**137M.(1)** *Affected electors for an affected area may petition the Minister for a referendum for the area.*

(2) *The petitioning may have happened in whole or part before the commencement.*

(3) *The petition must ask for a referendum for the affected area on the question of abolishing its amalgamated area, and—*

- (a) *for the affected Cooloola, Mackay or Warwick area—reinstating the local government areas existing immediately before the area’s changeover day; or*
- (b) *for the affected Burnett, Cairns, Gold Coast or Ipswich area—reinstating the local government areas and external boundaries existing immediately before the area’s changeover day.*

#### ***Requirements for a petition***

**137N.(1)** *A petition is made up of petition pages.*

(2) *Each petition page must be in the approved form of petition page for its affected area.*

(3) *Without limiting subsection (2), a petition page is not in the approved form of petition page if—*

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<sup>49</sup> Part 2A, division 3 (ss 137M–137P) has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

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- (a) *it does not include both the front and back of the approved form of petition page; or*
- (b) *the wording of the petition page is appreciably less readable than the corresponding wording of the approved form of petition page as gazetted.*

**(4)** *When an entry on a petition page is, or was, completed, the petition page must be, or have been, in the approved form of petition page.*

**(5)** *However, it is not necessary for a person checking a petition page under this division to consider whether the page was in the approved form of petition page when an entry on the page was completed if, on the face of it, the entry was completed on the approved form.*

**(6)** *If the completion of an entry on a petition page does not comply with the section of the approved form of petition page headed ‘Requirements for completing this petition page’ (the “**petition page requirements**”), the entry is not counted in deciding whether the necessary number of affected electors has signed the petition.*

**(7)** *Despite subsection (6), an entry may be counted in deciding whether the necessary number of affected electors has signed the petition if, in all the circumstances, it is clear from a comparison of the entry and information gained from the relevant electoral roll that the entry is that of an affected elector.*

*Example 1 for subsection (7)—*

*In the circumstances applying, an entry showing the names ‘Alexander, Peter’ might be counted even though the name should have been shown as ‘Alexander, Peter Michael’.*

*Example 2 for subsection (7)—*

*In the circumstances applying, an entry showing an address as ‘123 Sunshine Boulevard, Isle of Capri Qld 4217’ might be counted even though the address should have been shown as ‘123 Sunshine Boulevard, Surfers Paradise Qld 4217’.*

*Example 3 for subsection (7)—*

*In the circumstances applying, an entry showing an address as ‘47 Echidna Street, Currumbin Qld 4223’ might be counted even though the address should have been shown as ‘1/47 Echidna Street, Currumbin Qld 4223’.*

**(8)** *None of the entries on a petition page are to be counted if the name*

*and address of the person submitting the petition page is not shown in the appropriate place on the petition page.*

### ***Receiving and checking petitions***

**137O.(1)** *To form part of a petition for an affected area, a petition page must be received by 5.00 pm on 10 May 1996—*

- (a) at the office of the Minister at level 13, 111 George Street, Brisbane; or*
- (b) in GPO Box 37, Brisbane 4001.*

**(2)** *The Minister must refer the petition pages received for an affected area to the chief executive for checking.*

**(3)** *The chief executive must ensure that the petition pages are checked and must tell the Minister whether the pages form a petition that is a qualifying petition for the area.*

**(4)** *A petition is a qualifying petition if it is signed by at least 10% of the affected electors for the area.*

**(5)** *When the chief executive is satisfied that a petition is a qualifying petition, it is not necessary for all the petition pages received to be checked.*

### ***Notification about petition***

**137P.(1)** *If the chief executive tells the Minister that a petition for an affected area is a qualifying petition, the Minister must, as soon as practicable—*

- (a) by gazette notice, advise that—*
  - (i) the petition is a qualifying petition; and*
  - (ii) a referendum is to be held for—*
    - (A) the affected area; and*
    - (B) if the area is the affected Cairns, Gold Coast or Ipswich area—its amalgamated area; and*
- (b) table in the Legislative Assembly a copy of—*
  - (i) the petition; and*

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(ii) *the gazette notice; and*

(iii) *the advice the Minister received from the chief executive telling the Minister that the petition is a qualifying petition.*

**(2)** *If the chief executive tells the Minister that a petition for an affected area is not a qualifying petition, the Minister must, as soon as practicable—*

(a) *by gazette notice, advise that the petition is not a qualifying petition; and*

(b) *table in the Legislative Assembly a copy of—*

(i) *the petition; and*

(ii) *the gazette notice; and*

(iii) *the advice the Minister received from the chief executive telling the Minister that the petition is not a qualifying petition.*

### ***Division 4—Referendum***<sup>50</sup>

#### ***Subdivision 1—Preliminary***

##### ***When this division applies***

**137Q.** *This division applies if the Minister has advised that there is to be a referendum for an affected area.*

#### ***Subdivision 2—Holding a referendum***

##### ***Referendum to be held***

**137R.(1)** *There must be a referendum for the affected area.*

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<sup>50</sup> Part 2A, division 4 (ss 137Q–137ZT) has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

*(2) If the area is the affected Cairns, Gold Coast or Ipswich area, there must also be a referendum for the area's amalgamated area.*

### ***Referendum for affected area***

*137S.(1) This section provides for setting the question for the referendum for the affected area.*

*(2) The precise wording for the question must be set under a regulation.*

*(3) However, in substance, the question must ask affected electors whether they approve or oppose abolishing the area's amalgamated area, and—*

*(a) if the area is the affected Cooloola, Mackay or Warwick area—reinstating each of the area's abolished areas as a local government area; or*

*(b) if the area is the affected Burnett, Cairns, Gold Coast or Ipswich area—*

*(i) reinstating each of the area's abolished areas as a local government area; and*

*(ii) for the local government area of each of the area's boundary affected local governments—reinstating the external boundaries to the extent that they were changed under the area's amalgamation regulation.*

### ***Referendum for amalgamated area***

*137T.(1) This section provides for setting the question for a referendum for the affected area's amalgamated area.*

*(2) The precise wording for the question must be set under a regulation.*

*(3) However, in substance, the question must ask affected electors whether they approve or oppose the holding of triennial elections in 1997 for the councillors of the amalgamated area's local government.*

### ***Appointment and role of returning officers for referendum***

*137U.(1) The Minister must appoint a returning officer and an assistant*

*returning officer for the referendum for the affected area.*

*(2) If under this part there is also to be a referendum for the area's amalgamated area, the Minister must appoint the returning officer and assistant returning officer for the referendum for the affected area as returning officer and assistant returning officer for the referendum for the amalgamated area.*

*(3) As soon as practicable after making an appointment, the Minister must, by gazette notice, advise of the appointment.*

*(4) The returning officer and the assistant returning officer are each entitled to the fees and allowances decided by the Minister.*

*(5) The returning officer for a referendum must conduct the referendum.*

*(6) If, for any reason, the returning officer cannot perform the functions of office, the assistant returning officer must act as the returning officer.*

*(7) The returning officer for a referendum must conduct a public office for the referendum.*

*(8) The local government for the affected area's amalgamated area must give the returning officer all reasonable assistance the returning officer asks for in conducting the referendum for the affected area or a referendum for the affected area's amalgamated area.*

*(9) Each boundary affected local government for the affected area must give the returning officer all reasonable assistance the returning officer asks for in conducting the referendum for the affected area.*

### **Referendum day**

*137V.(1) The day for holding the referendum for the affected area (the "referendum day") must be a Saturday.*

*(2) The returning officer may fix the referendum day.*

*(3) If the returning officer fixes the referendum day, the day fixed must be before 28 July 1996.*

*(4) The Governor in Council may also fix the referendum day.*

*(5) If the Governor in Council fixes the referendum day under subsection (4)—*

- (a) *the day fixed must be 3, 10, 17 or 24 August 1996; and*
- (b) *the Governor in Council must advise the returning officer of the day fixed.*

*(6) However, the Governor in Council must not fix the referendum day, or advise the returning officer of the day fixed, if the returning officer has already published the referendum notice notifying a day fixed by the returning officer as the referendum day.*

*(7) The returning officer must not fix the referendum day if the Governor in Council has already advised the returning officer of the referendum day fixed by the Governor in Council.*

*(8) If under this part there is also to be a referendum for the affected area's amalgamated area, the day for holding the referendum (also the "referendum day") is the referendum day for the affected area.*

### ***Notice of referendum day and other information***

***137W.(1) The returning officer for a referendum must publish a notice (the "referendum notice")—***

- (a) *stating the referendum day for the referendum; and*
- (b) *advising whether, and if so to what extent, the referendum is to be conducted by postal ballot; and*
- (c) *giving a brief explanation about—*
  - (i) *the question for the referendum; and*
  - (ii) *for a referendum for the affected area—who is an affected elector for a voting area of the affected area; and*
  - (iii) *for a referendum for an amalgamated area—who is an affected elector for the amalgamated area; and*
- (d) *giving notice of the address and telephone number of the returning officer's public office.*

***(2) To the extent the referendum is not conducted by postal ballot, the referendum notice must state—***

- (a) *the location of ordinary polling booths to be used for the referendum; and*



(b) *that the ordinary voting hours are from 8.00 am to 6.00 pm.*

(3) *The referendum notice must be published—*

(a) *for the referendum for the affected area—in a newspaper circulating generally in the area; and*

(b) *for a referendum for the area's amalgamated area—in a newspaper circulating generally in the amalgamated area; and*

(c) *in other ways the returning officer considers appropriate.*

(4) *The referendum notice must also be displayed in a conspicuous position at the returning officer's public office from as soon as practicable after the referendum notice is first published in a newspaper until 6.00 pm on the referendum day.*

(5) *The referendum notice may be published before the making or commencement of the regulation setting the precise wording for the question for the referendum.*

### ***Extension of time***

**137X.(1)** *The Governor in Council may, by gazette notice, fix as a referendum day a day that is later than the day previously fixed by the returning officer or the Governor in Council as the referendum day.*

(2) *However, the day fixed by the Governor in Council must be before 25 August 1996.*

(3) *If a gazette notice is published under subsection (1), the returning officer must publish a notice giving necessary directions to affected electors about the procedures to be followed.*

(4) *The returning officer's notice must be published in a newspaper circulating generally in—*

(a) *for the referendum for the affected area—the affected area; or*

(b) *for a referendum for the area's amalgamated area—the amalgamated area.*

**Voters rolls**

**137Y.(1)** *As soon as practicable after the referendum roll cut-off day, the returning officer must compile a voters roll for each voting area of the affected area.*

**(2)** *The voters roll must consist of persons who, on the referendum roll cut-off day, are electors under the Electoral Act 1992 and are enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the voting area.*

**(3)** *If there is also to be a referendum for the area's amalgamated area, then, as soon as practicable after the referendum roll cut-off day, the returning officer must also compile a voters roll for the amalgamated area.*

**(4)** *The voters roll must consist of persons who, on the referendum roll cut-off day, are electors under the Electoral Act 1992 and are enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the amalgamated area.*

**(5)** *A voters roll—*

- (a) must be in the form of the electoral roll used for elections of the Legislative Assembly; and*
- (b) must not include an elector's address that, under the Electoral Act 1992, is excluded from the publicly available part of an electoral roll.*

**Single document for Cairns**

**137Z.(1)** *The voters rolls for the 2 voting areas of the affected Cairns area, and for the amalgamated Cairns area, may be compiled as a single document.*

**(2)** *The document must consist of the following 2 segments—*

- segment 1—the electors enrolled for the part of the City of Cairns that, immediately before the changeover day for the affected Cairns area, was the then local government area of the City of Cairns*
- segment 2—the electors enrolled for the part of the City of Cairns that, immediately before the changeover day, was the then local*

*government area of the Shire of Mulgrave or part of the local government area of the Shire of Douglas or Shire of Maree.*

- (3) *An explanation at the front of the document must identify—*
- (a) *the voters roll for voting area 1 of the affected Cairns area as comprising segment 1; and*
  - (b) *the voters roll for voting area 2 of the affected Cairns area as comprising segment 2; and*
  - (c) *the voters roll for the amalgamated Cairns area as comprising segments 1 and 2.*

### **Single document for Gold Coast**

**137ZA.(1)** *The voters rolls for the 2 voting areas of the affected Gold Coast area, and for the amalgamated Gold Coast area, may be compiled as a single document.*

- (2) *The document must consist of the following 3 segments—*
- *segment 1—the electors enrolled for the part of the City of Gold Coast that, immediately before the changeover day for the affected Gold Coast area, was the then local government area of the City of Gold Coast*
  - *segment 2—the electors enrolled for the part of the City of Gold Coast that, immediately before the changeover day, was the then local government area of the Shire of Albert or part of the local government area of the Shire of Beaudesert*
  - *segment 3—the electors enrolled for the part of the Shire of Beaudesert that, immediately before the changeover day, was part of the then local government area of the Shire of Albert.*
- (3) *An explanation at the front of the document must identify—*
- (a) *the voters roll for voting area 1 of the affected Gold Coast area as comprising segment 1; and*
  - (b) *the voters roll for voting area 2 of the affected Gold Coast area as comprising segments 2 and 3; and*
  - (c) *the voters roll for the amalgamated Gold Coast area as comprising segments 1 and 2.*

**Single document for Ipswich**

**137ZB.(1)** *The voters rolls for the 2 voting areas of the affected Ipswich area, and for the amalgamated Ipswich area, may be compiled as a single document.*

**(2)** *The document must consist of 5 segments, as follows—*

- *segment 1—the electors enrolled for the part of the City of Ipswich that, immediately before the changeover day for the affected Ipswich area, was the then local government area of the City of Ipswich*
- *segment 2—the electors enrolled for the part of the City of Ipswich that, immediately before the changeover day, was part of the then local government area of the Shire of Moreton or part of the local government area of the City of Logan*
- *segment 3—the electors enrolled for the part of the City of Brisbane that, immediately before the changeover day, was part of the then local government area of the Shire of Moreton*
- *segment 4—the electors enrolled for the part of the City of Logan that, immediately before the changeover day, was part of the then local government area of the Shire of Moreton*
- *segment 5—the electors enrolled for the part of the Shire of Esk that, immediately before the changeover day, was part of the then local government area of the Shire of Moreton.*

**(3)** *An explanation at the front of the document must identify—*

- (a) the voters roll for voting area 1 of the affected Ipswich area as comprising segment 1; and*
- (b) the voters roll for voting area 2 of the affected Ipswich area as comprising segments 2 to 5; and*
- (c) the voters roll for the amalgamated Ipswich area as comprising segments 1 and 2.*

**Voters roll to be open to inspection and purchase**

**137ZC.(1)** *A voters roll for a voting area of the affected area is open to inspection at the public office of the returning officer for the referendum for*

*the affected area.*

*(2) A voters roll for an amalgamated area is open to inspection at the public office of the returning officer for the referendum for the amalgamated area.*

*(3) The returning officer must sell a copy of a voters roll to anyone who asks to buy it.*

*(4) The price of a voters roll must be no more than the cost of making a copy of the roll and, if the copy is posted to the purchaser, the postage cost.*

### ***Explanatory statement***

***137ZD.(1)*** *The Minister must appoint a person (the “appointed person”) to prepare a statement (the “explanatory statement”) about the advantages and disadvantages of the referendum action for a referendum.*

*(2) The explanatory statement must include—*

- (a) for the referendum for the affected area—the appointed person’s estimate of the financial cost to local government of abolishing the area’s amalgamated area and—*
  - (i) if the area is the affected Cooloola, Mackay or Warwick area—reinstating each of the area’s abolished areas as a local government area; or*
  - (ii) if the area is the affected Burnett, Cairns, Gold Coast or Ipswich area—*
    - (A) reinstating each of the area’s abolished areas as a local government area; and*
    - (B) for the local government area of each of the area’s boundary affected local governments—reinstating the external boundaries to the extent that they were changed under the area’s amalgamation regulation; and*
- (b) for a referendum for the affected area’s amalgamated area—the appointed person’s estimate of the financial cost to local government of holding triennial elections in 1997 for the amalgamated area; and*

(c) *for the referendum for the affected area or for a referendum for the affected area's amalgamated area—a statement (the “advantages and disadvantages statement”) of the advantages and disadvantages that, in the appointed person's opinion, should be taken into account by an affected elector voting in the referendum.*

(3) *The advantages and disadvantages statement for the referendum for the amalgamated area mentioned in subsection (2)(c) must also explain that the answer to the question for the referendum has effect only if—*

(a) *the affected area does not approve the question for the referendum for the affected area; or*

(b) *the affected area approves the question for the referendum for the affected area, but the Legislative Assembly does not, under this part, pass a resolution for the making of a reinstatement regulation for the affected area.*

(4) *The advantages and disadvantages statement included in an explanatory statement should not be more than 2 000 words.*

(5) *The Minister may give directions to the appointed person about the format in which the explanatory statement is to be presented.*

(6) *As soon as practicable after making an appointment under subsection (1), the Minister must, by gazette notice, advise of the appointment.*

### ***Appointment provisions***

**137ZE.(1)** *An appointed person is entitled to receive—*

(a) *reasonable remuneration for preparing an explanatory statement; and*

(b) *reimbursement of expenses reasonably incurred in preparing the statement.*

(2) *The Minister may enter into an agreement with the appointed person about the preparation of the explanatory statement.*

(3) *Without limiting subsection (2), the agreement may include provision for the following—*

- (a) *subject to subsection (1), the person's remuneration and expenses reimbursement;*
- (b) *the nature and extent of anything to be done by the department to help the person to prepare the explanatory statement;*
- (c) *time constraints to apply for the completion of the explanatory statement.*

### ***Appointed person may request information from local government***

**137ZF.(1)** *An appointed person may, by written notice, request a local government to give the appointed person, in writing, information the appointed person reasonably needs from the local government for the preparation of an explanatory statement.*

(2) *The request must specify a reasonable time within which the information must be given to the appointed person.*

(3) *The local government must comply with the request.*

### ***Justiciability of and decisions about explanatory statement***

**137ZG.(1)** *An explanatory statement or a document appearing to be an explanatory statement is not justiciable.*

(2) *In addition, a decision of an appointed person made, or appearing to be made, in preparing an explanatory statement, including a decision about the content of the explanatory statement—*

- (a) *is final and conclusive; and*
- (b) *cannot be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the Judicial Review Act 1991 (whether by the Supreme Court, another court, a tribunal or another entity); and*
- (c) *is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.*

(3) *In subsection (2)—*

**“decision”** *includes—*

- (a) *conduct engaged in to make a decision; and*

- (b) *conduct related to making the decision; and*
- (c) *failure to make a decision.*

### ***Electoral arrangements statement for referendum for affected area or amalgamated area***

**137ZH.(1)** *For the referendum for the affected area, the commissioner must prepare an assessment (the “electoral arrangements statement”) of the electoral arrangements the commissioner considers are likely to be put in place under a reinstatement regulation for each local government area created in reinstating an abolished area as a local government area if the referendum action for the referendum is implemented.*

**(2)** *If the local government area is likely to be divided into divisions, the electoral arrangements statement must include an explanation of the application of sections 232 and 233<sup>51</sup> in preparing the likely divisional boundaries.*

**(3)** *For a referendum for an amalgamated area, the commissioner must prepare an assessment (also an “electoral arrangements statement”) of the divisional boundary adjustments the commissioner considers are likely to be put in place under an early elections regulation for the amalgamated area if the referendum action for the referendum is implemented.*

**(4)** *The electoral arrangements statement for the amalgamated area must include an explanation of the application of sections 232 and 233 in preparing the likely adjustments.*

**(5)** *In preparing an electoral arrangements statement, the commissioner is performing a function additional to the functions the commissioner has for reviewable local government matters and referable local government matters.*

### ***Short form electoral arrangements statements***

**137ZI.(1)** *The returning officer for a referendum must prepare an abbreviated form (a “short form electoral arrangements statement”) of*

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<sup>51</sup> Sections 232 (Equitable division of local government areas) and 233 (Quota to be complied with in division of local government area and assignment of councillors)



*an electoral arrangements statement prepared by the commissioner about—*

- (a) a local government area (a “**relevant reinstated area**”) that would be created in reinstating an abolished area as a local government area; or*
- (b) an amalgamated area.*

*(2) The short form electoral arrangements statement for a relevant reinstated area must include the following—*

- (a) the likely composition of the area’s local government;*
- (b) whether the area is likely to be divided into divisions;*
- (c) if the area is likely to be divided into divisions—*
  - (i) the number of divisions; and*
  - (ii) the likely assignment of councillors to divisions; and*
  - (iii) a brief explanation of the application of sections 232 and 233<sup>52</sup> in preparing the likely divisional boundaries for the area;*
- (d) information about where the full electoral arrangements statement may be inspected.*

*(3) The short form electoral arrangements statement for an amalgamated area must include the following—*

- (a) the current composition of the area’s local government;*
- (b) the fact that the area is divided into divisions;*
- (c) the number of divisions and the assignment of councillors to divisions;*
- (d) a brief explanation of the application of sections 232 and 233 in preparing the likely adjustments to the divisional boundaries for the area;*
- (e) information about where the full electoral arrangements*

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<sup>52</sup> Sections 232 (Equitable division of local government areas) and 233 (Quota to be complied with in division of local government area and assignment of councillors)

*statement may be inspected.*

*(4) If a relevant reinstated area's abolished area was not divided into divisions—*

- (a) the returning officer need not prepare a short form electoral arrangements statement; and*
- (b) for a provision of this part requiring the returning officer to give a short form electoral arrangements statement to a person—the commissioner's electoral arrangements statement is taken to be the short form electoral arrangements statement.*

### ***Giving statements to affected electors***

***137ZJ.(1) The returning officer must—***

- (a) for the referendum for the affected area—*
  - (i) give the explanatory statement for the referendum to each affected elector on the voters roll for a voting area of the affected area; and*
  - (ii) if a short form electoral arrangements statement is relevant to the part of the voting area for which an affected elector is enrolled—give the statement to the affected elector; and*
- (b) for a referendum for the area's amalgamated area—give to each affected elector on the voters roll for the amalgamated area the explanatory statement and the short form electoral arrangements statement for the referendum.*

*(2) The statements must be given to the affected elector at a reasonable time before the referendum day.*

*(3) If a referendum is to be conducted by postal ballot for all or part of the affected area or an amalgamated area, the explanatory statement and the short form electoral arrangements statement may be given to an affected elector when the elector is given the ballot paper for the referendum.*

*(4) An explanatory statement or short form electoral arrangements statement for a referendum is taken to have been given to an affected elector if it is posted to the affected elector at—*

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- (a) *the address shown for the affected elector on the voters roll; or*
- (b) *if the returning officer has been advised of an address that, on the referendum roll cut-off day, was the affected elector's postal address—that address.*

*(5) An affected elector, other than an affected elector to whom the returning officer has given an explanatory statement and short form electoral arrangements statement, must be given a copy of each statement if the elector asks for it.*

*(6) The returning officer must display a copy of each explanatory statement and electoral arrangements statement in a prominent place in—*

- (a) *the officer's public office; and*
- (b) *other places the returning officer considers appropriate.*

***Local government views on referendum***

*137ZK. The provisions of this division do not prevent a local government that considers that it will be affected by the outcome of a referendum from informing affected electors of its views about the referendum question.*

***Compulsory voting***

*137ZL.(1) Voting at the referendum for the affected area is compulsory, and each affected elector for a voting area of the affected area is entitled to only 1 vote.*

*(2) Voting at a referendum for an amalgamated area is also compulsory, and each affected elector for the amalgamated area is entitled to only 1 vote.*

***Conduct of referendum***

*137ZM.(1) The provisions of chapter 5 (Local government elections), part 6 (Conduct of elections) apply (with any necessary changes and any additional changes specified in subsection (8) or changes prescribed under a regulation) to the referendum for the affected area or a referendum for the area's amalgamated area as if the referendum were an election.*

*(2) Without limiting subsection (1), the necessary changes mentioned in subsection (1) include the non-application of provisions of chapter 5, part 6 to the extent that their application is inappropriate or unnecessary.*

*(3) The application of provisions of chapter 5, part 6 is unnecessary to the extent that the provisions have particular reference to candidates.*

*(4) Without limiting subsections (2) and (3)—*

- (a) chapter 5, part 6, divisions 3 (Candidates for election or appointment) and 11 (Marking of ballot papers) have no application at all; and*
- (b) neither does chapter 5, part 6, division 4 (Nominations of candidates for election), mainly because of subsection (3), but also because of certain other provisions of this part; and*
- (c) section 271(2)(d) to (f), (3) and (4) (Requirements of ballot papers) does not apply to the ballot paper to be used for the referendum; and*
- (d) section 272 (Separate ballot papers for separate polls) has no application; and*
- (e) section 273 (Order of listing of candidates' names) has no application; and*
- (f) in section 311(1) (Official counting of votes) and 312 (Treatment of ballot paper to which objection is made), the reference to a candidate, but not the reference to a scrutineer, may be ignored; and*
- (g) sections 313 (Counting of votes for optional-preferential system) and 314 (Counting of votes for first-past-the-post system) have no application; and*
- (h) section 316(1)(b) (Declaration of poll) has no application; and*
- (i) section 318(2)(c)(i) (List of electors failing to vote) has no application; and*
- (j) section 327(1)(b) (Bribery) has no application; and*
- (k) in section 349(2) (Injunctions to restrain contravention of chapter), the reference to a candidate for election may be ignored, but not the reference to the returning officer.*

(5) *Necessary changes also include the following changes having general operation—*

- (a) *a reference to part 6 (of chapter 5) is a reference to that part as applied under this section, and is also taken to include a reference to the other provisions of this division;*
- (b) *a reference to the returning officer is a reference to the returning officer for the referendum;*
- (c) *a reference to an elector is a reference to an affected elector for a voting area or an amalgamated area in relation to the referendum;*
- (d) *a reference to the voters roll is a reference to—*
  - (i) *for the referendum for the affected area—the voters roll compiled under this division for each voting area of the affected area; and*
  - (ii) *for a referendum for the affected area’s amalgamated area—the voters roll for the amalgamated area compiled under this division;*
- (e) *a reference to the local government area, or a division of the local government area, is, for a referendum for the affected area, a reference to—*
  - (i) *the affected area; or*
  - (ii) *a voting area of the affected area;*
- (f) *a reference to the local government area is, for a referendum for the affected area’s amalgamated area, a reference to the amalgamated area;*
- (g) *a reference to the local government’s public office is a reference to the public office of the returning officer for the referendum;*
- (h) *a reference to the poll for the election is a reference to the poll for the referendum;*
- (i) *a reference to polling day is a reference to the referendum day for the referendum;*
- (j) *a reference to the notice under section 257 (Procedure if number of candidates exceeds number required) is a reference to the*

*referendum notice for the referendum;*

- (k) *a reference to the election period is a reference to the period—*
  - (i) *starting on the day the referendum notice for the referendum is first published; and*
  - (ii) *ending at 6 p.m. on the referendum day for the referendum.*

**(6)** *Necessary changes also include the following changes having more specific operation—*

- (a) *for applying section 267(6) (Declaration of mobile polling booths), the returning officer for the referendum, instead of advising candidates, must advise the persons and groups who have appointed scrutineers for the referendum;*
- (b) *for applying sections 282(10)(b) (Procedure for voting at polling booth), 287(2)(c) (Help for electors in voting), 294(3)(c) (How declaration vote may be cast at a polling booth) and 297 (Casting a declaration vote by post), a reference to division 11 (Marking of ballot papers) is a reference to the provisions of this division about the marking of a ballot paper;*
- (c) *for applying section 287(2)(a) (Help for electors in voting), a reference to stating the names of candidates is a reference to reading out the referendum question;*
- (d) *for applying sections 293(6) and 295(4) (Distribution of ballot papers to electors for postal ballot election), the addressing and identification of the envelope must be in the way decided by the returning officer for the referendum;*
- (e) *for applying sections 308(1)(c)(ii) and (iii) (Preliminary counting by presiding officer) and 311(3)(b) and (4)(c) (Official counting of votes), the returning officer for the referendum must—*
  - (i) *count the number of votes approving the referendum question marked on all formal ballot papers, and keep the ballot papers in a separate parcel; and*
  - (ii) *count the number of votes opposing the referendum question marked on all formal ballot papers, and keep the ballot papers in a separate parcel;*
- (f) *for applying section 308(1)(d)(i) (Preliminary counting by*

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*presiding officer), the written statement must set out, in words and numerals, the number of votes approving the referendum question and the number of votes opposing the referendum question;*

- (g) for applying section 310(1) (Procedure for processing declaration envelopes), the returning officer for the referendum, instead of advising candidates, must advise the persons and groups who have appointed scrutineers for the referendum;*
- (h) for applying section 311(2) (Official counting of votes), the returning officer for the referendum must ascertain the number of votes approving the referendum question and the number of votes opposing the referendum question;*
- (i) for applying section 311(3) and (4) (Official counting of votes), the returning officer for the referendum must count the number of votes approving the referendum question and the number of votes opposing the referendum question;*
- (j) for applying section 311(5) (Official counting of votes), the returning officer for the referendum must add together the number of votes counted as approving the referendum question and the number of votes counted as opposing the referendum question;*
- (k) for applying section 312(2) (Treatment of ballot paper to which objection is made), the reference to a vote for a particular candidate is a reference to whether the vote is a vote approving or opposing the referendum question, and the reference to the name of the candidate for whom a vote is counted is a reference to whether the vote is counted as a vote approving or opposing the referendum question;*
- (l) for applying section 317 (Notice of final result of poll), the reference to each candidate is a reference to the Minister;*
- (m) the result the returning officer must give under section 317 (Notice of final result of poll) as applied under this division is—*
  - (i) for the referendum for the affected area—*
    - (A) for each voting area of the affected area—how the voting area voted on the referendum question,*

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- including whether the voting area has approved the referendum question; and*
- (B) for the affected area—whether the area has approved the referendum question; and*
- (ii) for a referendum for an amalgamated area—how the area voted on the referendum question, including whether the area has approved the referendum question;*
- (n) for applying sections 318(2)(b) (List of electors failing to vote), 319 (Notice to elector failing to vote) and 320 (Recording response to notice), the reference to the local government is a reference to—*
- (i) for a referendum for an affected area—the local government (which may include the Brisbane City Council) for the local government area, or part of a local government area, for which a person listed as having failed to vote is enrolled; or*
- (ii) for a referendum for an amalgamated area—the local government for the amalgamated area;*
- (o) for applying section 321 (Evidentiary value of list under s 318), the reference to the local government’s chief executive officer is a reference to the returning officer for the referendum;*
- (p) for applying sections 322 (Disposal of material resulting from election) and 323 (Ballot papers as evidence), a reference to the local government’s chief executive officer is a reference to the chief executive, but section 322(4) has no application at all;*
- (q) for applying section 327(1)(c) (Bribery), the reference to support of, or opposition to, a candidate or a political party is a reference to approval of, or opposition to, a referendum question;*
- (r) sections 333 (No record to be made of vote cast) and 346 (Breach of confidentiality of vote) are about how a person votes at the referendum, rather than the candidate for whom a person votes;*
- (s) for applying section 349 (Injunctions to restrain contravention of chapter), the reference in section 349(1)(b) to chapter 5 is a reference to chapter 5, part 6 as applied under this division, and is also taken to include a reference to the other provisions of this*



*division.*

*(7) To avoid any doubt, sections 304 (Posted vote presumed valid until contrary proved) and 305 (Formal and informal ballot papers) have application.*

*(8) The following additional changes are specified—*

- (a) for applying sections 293(6) (Distribution of ballot papers to electors who may or must cast declaration vote), 295(4) (Distribution of ballot papers to electors for postal ballot election) and 297(1)(d) (Casting a declaration vote by post)—*
  - (i) a reply paid envelope, rather than a prepaid post envelope, is to be used; and*
  - (ii) the things mentioned in section 293(6) and 295(4) are to include the instructions mentioned in section 297(1)(a) to (d);*
- (b) for applying section 298(1) (Declaration voting before polling day), the returning officer for the referendum may declare as a polling booth not only the returning officer's public office but also any other place the returning officer considers to be suitable for use for voting before referendum day;*
- (c) for applying section 309(1) (Preliminary processing of declaration votes by returning officer), the returning officer need not wait until after 8 a.m. on the referendum day to start the preliminary processing of declaration votes under that section, but may start at any time before the referendum day;*
- (d) for applying section 349 (Injunctions to restrain contravention of chapter), an application to the Supreme Court may additionally be made by—*
  - (i) a local government; or*
  - (ii) an individual or group of individuals reasonably identified in the community, in the court's opinion, as supporting or opposing the referendum question.*

*(9) Subsections (2) to (8) do not limit by implication the changes that may be prescribed under a regulation.*

### ***Subdivision 3—Alternative provisions***

#### ***Preliminary***

**137ZN.** *A provision of chapter 5, part 6 has no application to the extent it is inconsistent with the alternative provisions in this subdivision.*

#### ***Direction that poll be conducted by postal ballot***

**137ZO.(1)** *The Governor in Council may, by gazette notice, direct that the poll for the referendum for the affected area or a referendum for an amalgamated area be conducted by postal ballot.*

**(2)** *The direction may be given for—*

*(a) all of the affected or amalgamated area; or*

*(b) a part of the affected or amalgamated area marked on a map.*

**(3)** *The map is open to inspection at the place stated in the gazette notice.*

#### ***Ballot papers***

**137ZP.(1)** *For the referendum for the affected area, a different coloured ballot paper must be used for each voting area of the affected area.*

**(2)** *If under this part there is to be a referendum for the area's amalgamated area, an affected elector must be given a single ballot paper for voting in the polls for both the referendums.*

**(3)** *If a ballot paper mentioned in subsection (2), as completed for one referendum is informal, but as completed for the other referendum is formal, the informal part must be rejected and the formal part must be counted under chapter 5, part 6, division 14,<sup>53</sup> as applied under this part.*

#### ***Mode of voting***

**137ZQ.(1)** *If an affected elector wishes to vote to approve a referendum question, the elector must place a tick in the square opposite the word*

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<sup>53</sup> Chapter 5 (Local government elections), part 6 (Conduct of elections), division 14 (Counting of votes)

*‘YES’ on the ballot paper.*

*(2) If an affected elector wishes to vote to oppose a referendum question, the elector must place a tick in the square opposite the word ‘NO’ on the ballot paper.*

*(3) An affected elector is taken to have marked a ballot paper in the way mentioned in subsection (1) if the elector—*

- (a) writes the word ‘YES’ in the square opposite the word ‘YES’ on the ballot paper; or*
- (b) otherwise marks the ballot paper in a way clearly showing that the voter approves of the referendum question.*

*(4) An affected elector is taken to have marked a ballot paper in the way mentioned in subsection (2) if the elector—*

- (a) writes the word ‘NO’ in the square opposite the word ‘NO’ on the ballot paper; or*
- (b) otherwise marks the ballot paper in a way clearly showing that the voter opposes the referendum question.*

*(5) For the application of section 271(2)(a),<sup>54</sup> the approved form of ballot paper must allow for the method of voting stated in this section.*

### ***Effect of ballot paper***

***137ZR.*** *For a ballot paper to have effect as a vote of an affected elector in the referendum—*

- (a) the ballot paper must be completed in the way stated in this subdivision; and*
- (b) the ballot paper must not contain any writing or mark (other than a mark authorised under this division) by which the elector can, in the returning officer’s opinion, be identified; and*
- (c) the ballot paper must have been put in a ballot box; and*
- (d) for a ballot paper put in a declaration envelope as required*

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<sup>54</sup> Section 271(2)(a) (Requirements of ballot papers)

*under section 297<sup>55</sup> as applied under this division—*

- (i) section 297(1) must have been complied with; and*
- (ii) if the elector is an affected elector mentioned in section 289<sup>56</sup> as applied under this division, or an applicant who is given an approved declaration form under section 293(4)<sup>57</sup> as applied under this division, or an affected elector who, under section 295(2)<sup>58</sup> as applied under this division, and is given an approved declaration form, and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 293 as applied under this division, or the relevant affected elector under section 295 as applied under this division; and*
- (iii) if the declaration envelope is posted to the returning officer for the referendum—it must be received by the returning officer within 10 days after the referendum day.*

### ***Scrutineers***

**137ZS.(1)** *For the appointment of scrutineers for a referendum, a reference in section 276, 277 or 279<sup>59</sup> to a candidate for election is a reference to 1 or more of the following—*

- (a) an individual or group of individuals reasonably identified in the community, in the returning officer's opinion, as supporting or opposing the referendum question;*
- (b) the local government for the affected area's amalgamated area;*

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<sup>55</sup> Section 297 (Casting a declaration vote by post)

<sup>56</sup> Section 289 (Who may cast a declaration vote)

<sup>57</sup> Section 293 (Distribution of ballot papers to electors who may or must cast declaration vote)

<sup>58</sup> Section 295 (Distribution of ballot papers to electors for postal ballot election)

<sup>59</sup> Section 276 (Candidates' entitlement to scrutineers), 277 (Appointment of scrutineers) or 279 (Powers of scrutineers)

(c) *a boundary affected local government for the affected area.*

(2) *An individual mentioned in subsection (1)(a) may appoint himself or herself as a scrutineer, and a group of individuals mentioned in subsection (1)(a) may appoint 1 or more of the group as a scrutineer or as scrutineers.*

(3) *For appointing a scrutineer for a group, the appointment may be made on the group's behalf by any of its members.*

(4) *The returning officer may reject an appointment if the returning officer reasonably believes that if more scrutineers are appointed, the efficiency of the conduct of the referendum may be adversely affected.*

(5) *The returning officer may direct 1 or more scrutineers to leave a place if the returning officer reasonably believes that the number of scrutineers at the place may adversely affect the efficiency of the conduct of the referendum.*

(6) *A scrutineer must comply with a direction given under subsection (5).  
Maximum penalty for subsection (6)—10 penalty units.*

### ***Declaration envelope tear-offs***

**137ZT.(1)** *In approving a form of declaration envelope, the chief executive must approve that the declaration be attached to the envelope in a way that allows the declaration to be torn off the envelope.*

(2) *The application of chapter 5, part 6, division 14<sup>60</sup> to a referendum is varied to the extent necessary for subsections (3) to (6) to have effect.*

(3) *Instead of opening a declaration envelope and putting the ballot paper in a ballot box in the way mentioned in section 310,<sup>61</sup> the returning officer must tear off the declaration and put the unopened envelope in the ballot box.*

(4) *After 8 a.m. on referendum day, the returning officer may open ballot boxes containing envelopes dealt with under subsection (3).*

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<sup>60</sup> Chapter 5 (Local government elections), part 6 (Conduct of elections), division 14 (Counting of votes)

<sup>61</sup> Section 310 (Procedure for processing declaration envelopes)

(5) *If the returning officer acts under subsection (4), the officer must take from each envelope the ballot paper without unfolding it, or allowing anyone else to unfold it, put it in a sealed ballot box, and keep it there until it is dealt with in the official counting of votes.*

(6) *The returning officer must inform the persons who have appointed scrutineers for the referendum of the times when, and the places where, envelopes will be dealt with under subsections (4) and (5).*

### ***Division 5—Implementing referendum action for affected area<sup>62</sup>***

#### ***Application of division***

***137ZU.*** *This division applies if—*

- (a) *the Minister is notified of the result of a referendum for an affected area; and*
- (b) *the affected area has approved the question for the referendum.*

#### ***Reference to Legislative Assembly for resolution***

***137ZV.(1)*** *The Minister must table the result of the referendum in the Legislative Assembly within 7 sitting days after the Minister is notified of the result.*

(2) *Within 7 sitting days after the Minister tables the result of the referendum, the Legislative Assembly may resolve that the Governor in Council be asked to make a regulation (a “**reinstatement regulation**”) for the affected area implementing the referendum action for the referendum.*

(3) *However, if, within 7 sitting days of the Minister tabling the result of the referendum, the Legislative Assembly does not resolve in the way mentioned in subsection (2), the referendum action must not be implemented under this part.*

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<sup>62</sup> Part 2A, division 5 (ss 137ZU–137ZZ) has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

**Reinstatement regulation**

**137ZW.(1)** *This section applies if the Legislative Assembly resolves that the Governor in Council be asked to make a reinstatement regulation for the affected area.*

**(2)** *The Governor in Council may make the reinstatement regulation.*

**(3)** *The reinstatement regulation may include provisions for the following—*

- (a) abolishing the area's amalgamated area;*
- (b) reinstating each abolished area for the affected area by creating a new local government area (the “reinstated area”) with the name and area the abolished area had immediately before the changeover day for the affected area;*
- (c) for the local government area of each boundary affected local government—reinstating the external boundaries that were changed under the affected area's amalgamation regulation;*
- (d) putting in place the electoral arrangements to apply for each reinstated area and for the local government area of each boundary affected local government (other than the Brisbane City Council);*
- (e) holding fresh elections for councillors for each reinstated area at the time of the triennial elections in 1997, including provisions about how local governments for the reinstated areas are to share the cost of conducting the fresh elections;*
- (f) dividing up assets and liabilities of the local government for the amalgamated area and each boundary affected local government, including, for example—*
  - (i) in the way provided in the reinstatement regulation; and*
  - (ii) if considered appropriate—through the appointment by the Minister or local governments of transitional committees with power to advise about the division of assets and liabilities;*
- (g) the day the reinstated areas come into existence;*
- (h) the appointment by the Minister of a person (the “transition*

*officer”)* to give directions to the local government for the amalgamated area, the local governments for the reinstated areas, and each boundary affected local government, necessary and appropriate for the purpose of an efficient and effective transition under the regulation;

- (i) *compliance by local governments with directions mentioned in paragraph (h);*
- (j) *disposing of a reference of a reviewable local government matter, including a reference under section 235,<sup>63</sup> if the reference has not been the subject of a regulation under chapter 3, part 1;<sup>64</sup>*
- (k) *amending or repealing the affected area’s amalgamation regulation.*

*(4) If provisions mentioned in subsection (3)(h) and (i) are included in the reinstatement regulation, the provisions must include a process under which—*

- (a) *a local government may refer to the Minister a dispute between it and the transition officer about a direction given or proposed to be given by the officer; and*
- (b) *the Minister may give a direction confirming, supplementing or changing a direction given or to be given by the officer.*

*(5) The reinstatement regulation may provide for all matters that may be provided for in a regulation implementing a reviewable local government matter.*

### ***Division of assets and liabilities***

*137ZX.(1) The Minister may ask the commissioner for information or advice about the division of assets and liabilities of the affected area’s amalgamated area and each boundary affected local government.*

*(2) In providing the information or advice, the commissioner is performing a function additional to the functions the commissioner has for*

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<sup>63</sup> Section 235 (Matter of area’s division referred to commissioner)

<sup>64</sup> Chapter 3 (Interaction with the State), part 1 (Review of local government matters)



*reviewable local government matters and referable local government matters.*

### ***Electoral arrangements for reinstated area***

*137ZY.(1) This section gives more detail about the way a reinstatement regulation for an affected area must provide for electoral arrangements for a reinstated area.*

*(2) The electoral arrangements must be the arrangements that, in substance, applied for the reinstated area's abolished area immediately before the changeover day for the affected area.*

*(3) However, if immediately before the changeover day for the affected area the abolished area was divided into divisions, the regulation must provide for an adjustment of the boundaries of divisions of the reinstated area to the extent necessary to make the division of the area consistent with the basis specified in sections 232 and 233.<sup>65</sup>*

*(4) The adjustment mentioned in subsection (3) must be based on electoral roll information available on the referendum roll cut-off day.*

*(5) Before the regulation is made, the Minister must ask the commissioner for information or advice about the adjustment.*

*(6) In providing the information or advice, the commissioner is performing a function additional to the functions the commissioner has for reviewable local government matters and referable local government matters.*

### ***Electoral arrangements for area of boundary affected local government***

*137ZZ.(1) This section applies if the reinstatement regulation for the affected area is to put in place electoral arrangements for the local government area of a boundary affected local government.*

*(2) Before the electoral arrangements are included in the regulation, the Minister must invite the local government to submit to the Minister, within a*

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<sup>65</sup> Sections 232 (Equitable division of local government areas) and 233 (Quota to be complied with in division of local government area and assignment of councillors)

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*reasonable time specified by the Minister, a proposal about the electoral arrangements that should apply for the local government's area when the external boundaries of the area are reinstated under the regulation.*

*(3) If the local government submits a proposal, the Minister must refer it to the commissioner.*

*(4) The Minister may also refer to the commissioner any other issues about the electoral arrangements.*

*(5) The commissioner must give the Minister recommendations about the electoral arrangements that should apply for the local government.*

*(6) If the commissioner gives a recommendation to the Minister about proposed boundaries for divisions of the local government area and for the assignment of councillors to the divisions, the commissioner must ensure that the recommended divisions and assignment—*

*(a) would be consistent with the basis specified in sections 232 and 233;<sup>66</sup> and*

*(b) is based on electoral roll information available as near as practicable to when the recommendation is given.*

*(7) The regulation may be made despite anything in this Act about implementing reviewable local government matters.*

*(8) In giving the Minister recommendations, the commissioner is performing a function additional to the functions the commissioner has for reviewable local government matters and referable local government matters.*

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<sup>66</sup> Sections 232 (Equitable division of local government areas) and 233 (Quota to be complied with in division of local government area and assignment of councillors)

***Division 6—Implementing referendum action for amalgamated area<sup>67</sup>******Application of division***

***137ZZA.(1)*** *This division applies if—*

- (a) the Minister is notified of the result of a referendum for an amalgamated area; and*
- (b) the area has approved the question under the referendum.*

***(2)*** *However, this division does not apply if—*

- (a) the area's affected area approves the referendum question for the referendum for the affected area; and*
- (b) within 7 sitting days of the Minister tabling the result of the affected area referendum in the Legislative Assembly, the Legislative Assembly resolves that the Governor in Council be asked to make a reinstatement regulation for the affected area.*

***Early elections regulation***

***137ZZB.(1)*** *The Governor in Council may make a regulation implementing the referendum action for the referendum for the amalgamated area.*

***(2)*** *The regulation may amend the amalgamated area's amalgamation regulation, and may include provisions for—*

- (a) revoking the cancellation of the 1997 triennial elections for the councillors of the local government of the amalgamated area; and*
- (b) requiring triennial elections for the councillors of the local government of the area to be held in 1997; and*
- (c) clarifying that the term of office of a person who was elected as a councillor of the local government for the area at the fresh elections held on 11 March 1995 ends at the conclusion of the triennial elections to be held in 1997; and*

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<sup>67</sup> Part 2A, division 6 (ss 137ZZA–137ZZB) has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

(d) *the adjustment of the boundaries of divisions of the area to the extent necessary to make the division of the area consistent with the basis specified in sections 232 and 233.*<sup>68</sup>

(3) *The adjustment mentioned in subsection (2)(d) must be based on electoral roll information available as near as practicable to when the regulation is made.*

(4) *Before the regulation is made, the Minister must ask the commissioner for information or advice about the adjustment.*

(5) *In providing information or advice, the commissioner is performing a function additional to the functions the commissioner has for reviewable local government matters and referable local government matters.*

### **Division 7—Costs<sup>69</sup>**

#### **Minister's directions about costs**

**137ZZC.(1)** *The Minister may give directions—*

(a) *to a local government about meeting the costs of implementing this part (including implementing a regulation made under this part); and*

(b) *to an entity about how the entity must account to a local government for costs incurred by the entity that are payable by the local government.*

(2) *The Minister may also give directions about how costs that are to be met by more than 1 local government are to be shared between them.*

(3) *If the Minister directs that a local government pay an amount to an entity, the amount is a debt owed to the entity by the local government.*

(4) *In deciding what directions should be given under subsection (1), the Minister must apply the following principles—*

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<sup>68</sup> Sections 232 (Equitable division of local government areas) and 233 (Quota to be complied with in division of local government area and assignment of councillors)

<sup>69</sup> Part 2A, division 7 (ss 137ZZC–137ZZE) has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

- (a) *the costs incurred in notifying the approved form of petition page for an affected area and supplying petition pages, and in receiving, collating and checking petition pages for a petition for the area, should be met by the local government for the area's amalgamated area;*
- (b) *the costs incurred in giving public notice in an affected area about the referendum roll cut-off day should be met by the local government for the area's amalgamated area;*
- (c) *the remuneration and expenses reimbursement paid to an appointed person for preparing an explanatory statement for a referendum for an affected area or its amalgamated area, and the costs of providing departmental assistance to the appointed person, should be met by the local government for the amalgamated area;*
- (d) *the costs of preparing the electoral arrangements statement for a referendum for an affected area or its amalgamated area should be met by the local government for the amalgamated area;*
- (e) *a local government should meet the costs of complying with a regulation implementing referendum action under a referendum.*

*(5) The costs mentioned in subsection (4)(b) include costs incurred by the Minister before the commencement.*

*(6) If a direction that could have been given to the local government for an amalgamated area is not given to the local government before the area is abolished, the direction may be given to the local governments for the reinstated areas.*

### **Referendum costs**

*137ZZD.(1) The local government for an affected area's amalgamated area must pay for the cost of conducting a referendum for the affected area or amalgamated area, including the fees and allowances to which the returning officer and assistant returning officer for the referendum are entitled.*

*(2) An amount required for the cost may, without resolution of the local government for the amalgamated area, be spent by the local government whether or not the disbursement is provided for in its budget.*

(3) *An amount may be paid only if the returning officer for the referendum has presented an account to the local government's chief executive officer.*

### ***Conditions of appointment as transition officer***

**137ZZE.(1)** *A transition officer appointed under a reinstatement regulation for an affected area is entitled to the fees, allowances and expenses decided by the Minister.*

(2) *The fees, allowances and expenses are payable by—*

- (a) *until the affected area's abolished areas are reinstated—the local government for the affected area's amalgamated area; and*
- (b) *after the affected area's abolished areas are reinstated—the local governments for the reinstated areas, and the affected area's boundary affected local governments, in the proportions prescribed under the reinstatement regulation.*

## ***Division 8—Miscellaneous<sup>70</sup>***

### ***Proof of voters roll***

**137ZZF.** *In a proceeding, a document purporting to be a copy of the voters roll for a voting area of an affected area, or for an amalgamated area, and to be certified by the returning officer for a referendum for the affected area or amalgamated area, is evidence of the roll and the matters contained in the roll.*

### ***Additional regulation making power***

**137ZZG.(1)** *The Governor in Council may make regulations for this part.*

(2) *Without limiting subsection (1), a regulation may—*

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<sup>70</sup> Part 2A, division 8 (ss 137ZZF–137ZZI) has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

- (a) *make further changes to the way chapter 5, part 6 is applied to referendums, including changes in the way this part provides for the application of chapter 5, part 6; or*
- (b) *despite any other provision of this part, provide for the referendum day for a referendum to be later than the day that would otherwise apply; or*
- (c) *make provision about a matter for which this Act does not make provision or enough provision.*

**(3)** *A regulation made under this section may be given retrospective effect to a day not earlier than 20 March 1996.*

### ***Regulatory impact statements***

**137ZZH.** *A regulatory impact statement under the Statutory Instruments Act 1992 need not be prepared for a regulation made under this part.*

### ***Expiry and savings***

**137ZZI.(1)** *This part expires on 1 July 1997.*

**(2)** *Despite subsection (1), an adjustment of boundaries of the divisions of the amalgamated Gold Coast area under a regulation under section 137ZZB(2)(d) continues to have effect until the boundaries are otherwise changed under this Act.*

## **PART 3—LOCAL GOVERNMENT GRANTS COMMISSION**

### *Division 1—Extended application of part*

#### **Application of part to Brisbane City Council**

**138.** This part applies to the Brisbane City Council.

#### **Application of part to Aboriginal and Torres Strait Islander local governments**

**139.** This part applies to all Aboriginal and Torres Strait Islander local governments.

### *Division 2—Commission membership*

#### **Local Government Grants Commission and its members**

**140.(1)** The Local Government Grants Commission is established.

**(2)** The commission is to consist of 5 members.

**(3)** The 5 members of the commission are to comprise—

- (a)** 4 persons with knowledge of local government; and
- (b)** an officer of the department.

**(4)** The chairperson of the commission is to be a member mentioned in subsection (3)(a), and the deputy chairperson of the commission is to be the member mentioned in subsection (3)(b).

#### **Appointments**

**141.(1)** The members and chairperson of the commission are to be appointed by the Governor in Council.

**(2)** A member of the commission is to be appointed for a term of not longer than 3 years.



(3) A member is entitled to be paid the remuneration, fees and allowances decided by the Governor in Council.

(4) Payment for a member (as a member or in an additional or other capacity) may differ according to class or rate of payment from payment for another member.

(5) A member holds office on other terms not provided in this Act as are decided by the Governor in Council.

(6) If a provision of another Act—

- (a) requires the holder of an office to devote all of the person's time to the duties of the office; or
- (b) prohibits the holder of an office from engaging in employment outside the duties of the office;

the provision does not disqualify the holder of the office from—

- (c) holding the office and the office of member of the commission at the same time; and
- (d) accepting and retaining the remuneration, fees and allowances payable under this section.

### **Vacation of and removal from office**

**142.(1)** The office of a member of the commission becomes vacant if the member—

- (a) resigns by signed notice of resignation given to the Minister; or
- (b) is convicted of an indictable offence; or
- (c) is removed from office under subsection (2); or
- (d) if the member is the officer of the department mentioned in section 140(3)(b) (Local Government Grants Commission and its members)—stops being an officer of the department.

(2) The Governor in Council may remove a member from office if the member—

- (a) engages in misbehaviour; or
- (b) becomes incapable of performing the duties of a member because

- of physical or mental incapacity; or
- (c) is incompetent; or
  - (d) uses the office for party political purposes; or
  - (e) does anything else that, in the Governor in Council's opinion, is a reasonable and sufficient justification for removal from office.

### **Acting members**

**143.(1)** The Governor in Council may appoint a person to act in the office of the member if the member is absent or unable to discharge the functions of the office (whether because of illness or otherwise).

**(2)** The acting member for the chairperson of the commission is the chairperson of the commission while acting.

**(3)** The acting member for the deputy chairperson of the commission is the deputy chairperson of the commission while acting.

### *Division 3—Role of commission*

#### **Commission makes recommendations to Minister**

**144.(1)** The commission must make recommendations to the Minister about the allocation of the amount (the “**financial assistance amount**”) the State is entitled to receive from the Commonwealth under the *Local Government (Financial Assistance) Act 1986* (Cwlth) (the “**Commonwealth Act**”) for financial assistance for local government purposes.

**(2)** The commission must also make recommendations to the Minister about a matter referred to it by the Minister about the finances of 1 or more local governing bodies.

**(3)** In making recommendations under subsection (1), the commission must comply with the Commonwealth Act.

***Division 4—Recommendations, allocation and distribution*****Preparing recommendations**

**145.(1)** In preparing its recommendations, the commission may inform itself in the way it considers appropriate.

**(2)** The commission must accept and consider any submission made to it by a local governing body or association of local governing bodies.

**Commission's recommendations to Minister**

**146.(1)** When the commission makes a recommendation to the Minister under section 144(1) (Commission makes recommendations to Minister), the Minister may—

- (a) accept the recommendation; or
- (b) refer the recommendation back to the commission and ask it—
  - (i) to reconsider its recommendation or a part of it; or
  - (ii) to consider a matter raised by the Minister about the recommendation.

**(2)** The Minister must give the commission reasons for asking it to do something under subsection (1)(b).

**(3)** After doing what it is asked to do under subsection (1)(b), the commission must consider whether any change should be made to its recommendation, and resubmit its recommendation to the Minister with or without change.

**(4)** A member of the commission may submit a minority recommendation to the Minister.

**Allocation of amount after recommendations**

**147.** In allocating the financial assistance amount, the Minister must—

- (a) have regard to the commission's recommendations about the allocation; and
- (b) comply with the Commonwealth Act.

**Recommendations to be tabled**

**148.** When the Minister has allocated the financial assistance amount among local governing bodies, the following must be tabled in the Legislative Assembly—

- (a) the commission's recommendations;
- (b) particulars of the allocation of the financial assistance amount.

**Distribution of financial assistance amount**

**149.** When the financial assistance amount is received from the Commonwealth, it must be distributed among local governing bodies as allocated by the Minister.

*Division 5—Inquiries by commission**Subdivision 1—General***Commission may decide to hold inquiry**

**150.** In considering a matter about which it is to make recommendations, the commission may decide to hold an inquiry under this division.

**Notice of decision to hold inquiry**

**151.** Before starting the inquiry, the commission must—

- (a) publish in a newspaper circulating generally in the State a notice outlining the processes to be followed in the inquiry; and
- (b) give a copy of the notice to all local governing bodies likely to be concerned in the inquiry.

***Subdivision 2—Conduct of inquiries*****Extended meaning of “commission” in subdivision**

**152.** In this subdivision—

“**commission**” includes a member or members of the commission holding an inquiry on a direction given by the commission.

**Commission’s duties on inquiry**

**153.** When conducting an inquiry, the commission—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of issues raised in the inquiry.

**Commission may decide procedures**

**154.(1)** The commission—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate; and
- (c) may decide the procedures to be followed at an inquiry.

**(2)** However, the commission must comply with this subdivision and any procedural rules prescribed by regulation.

**Public may attend**

**155.** The commission must allow members of the public to attend an inquiry unless in the commission’s opinion it is in the public interest not to allow members of the public to attend the inquiry.

**Commission’s powers on inquiry**

**156.(1)** In conducting an inquiry, the commission may—

- (a) act in the absence of a person who has been given reasonable

notice; and

- (b) receive evidence on oath or by statutory declaration; and
- (c) adjourn the inquiry; and
- (d) permit a document to be amended; and
- (e) disregard any defect, error, omission or insufficiency in a document; and
- (f) permit or refuse to permit a person (including a legal practitioner enrolled in Queensland or elsewhere) to represent someone else at the inquiry.

(2) The commission may administer an oath to a person appearing as a witness before the inquiry.

### **Notice to witness**

**157.(1)** The commission may, by written notice given to a person, require the person to attend an inquiry at a specified time and place to give evidence or produce specified documents.

(2) A person who is given a notice must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the commission until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to appear as a witness before an inquiry is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the commission.

### **Duty of witness at inquiry**

**158.(1)** A person appearing as a witness at an inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the commission; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the commission; or

- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under section 157 (Notice to witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

### **Contempt of commission**

**159.** A person must not—

- (a) insult a member of the commission in an inquiry; or
- (b) deliberately interrupt an inquiry; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the commission is conducting an inquiry; or
- (d) do anything that would be a contempt of court if the commission were a judge acting judicially.

Maximum penalty—50 penalty units.

### **Change of member**

**160.** An inquiry is not affected by a change in the member or members of the commission holding the inquiry.

## ***Division 6—Commission proceedings***

### **Time and place of meetings**

**161.(1)** Meetings of the commission are to be held at the times and places it decides.

(2) However, the chairperson (or, in the absence of the chairperson, the deputy chairperson) of the commission may at any time call a meeting by giving the other members of the commission at least 7 days written notice

of the meeting.

(3) The chairperson (or, in the absence of the chairperson, the deputy chairperson) of the commission must call a commission meeting if asked by the Minister.

### **Quorum at meetings**

**162.** Business may be conducted at a commission meeting only if at least 3 members of the commission are present.

### **Presiding member**

**163.** At a meeting—

- (a) the chairperson (or, in the absence of the chairperson, the deputy chairperson) of the commission presides; or
- (b) in the absence of the chairperson and deputy chairperson, the member chosen by the members present as chairperson for the meeting presides.

### **Voting at meetings**

**164.** At a meeting—

- (a) a question is to be decided by a majority of the members of the commission present and voting; and
- (b) each member (including the member presiding) has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

### **Way business to be conducted**

**165.** The commission must conduct its business in the way prescribed by regulation or, in the absence of a regulation, may conduct its business as it considers appropriate.



***Division 7—Miscellaneous*****Cooperation by departments etc.**

**166.(1)** This section applies to the following entities—

- (a) a government entity;
- (b) a local governing body.

**(2)** An entity must—

- (a) cooperate with the commission in performing its role; and
- (b) give the commission all information it reasonably requires to perform its role.

**Assistance to the commission**

**167.** The chief executive of the department must make available to the commission the staff assistance it needs to perform its role effectively.

**CHAPTER 4—LOCAL GOVERNMENT  
COUNCILLORS****PART 1—MEMBERSHIP OF LOCAL  
GOVERNMENTS*****Division 1—Extended application of part*****Application of part to Brisbane City Council**

**168.** This part applies to the Brisbane City Council.

***Division 2—Qualifications and disqualifications*****General qualifications for membership**

**169.(1)** A person is qualified to become a councillor of a local government if the person—

- (a) lives in the local government’s area; and
- (b) is, under the *Electoral Act 1992*, an elector for an electoral district, or a part of an electoral district, included in the local government’s area—
  - (i) for the person’s election as a councillor, other than at a Brisbane City Council election—when the voters roll for the election is compiled under section 225 or 353;<sup>71</sup> or
  - (ii) for the person’s election as councillor of the Brisbane City Council at a triennial election—on 31 January of the year in which the election is to be held; or
  - (iii) for the person’s election as a councillor of the Brisbane City Council at an election other than a triennial election—on the cut-off day for the electoral rolls for the election;<sup>72</sup> or
  - (iv) for the person’s appointment as a councillor under section 202<sup>73</sup>—for at least 30 days before the appointment.

*Example—*

For a by-election in division 1 of a local government area, a person who lives in division 2 of the area and is an elector for division 2 of the area, when the voters roll is compiled for division 1, may nominate for election even though the person is not on the voters roll for division 1.

**(1A)** A councillor, whether elected or appointed, is qualified to be a councillor of a local government only while the councillor lives in the local government’s area and is, under the *Electoral Act 1992*, an elector for an

<sup>71</sup> Section 225 (Cut-off day for voters roll) or 353 (Voters roll for fresh election)

<sup>72</sup> The cut-off day for electoral rolls for an election, other than a triennial election, for Brisbane City Council is decided under the *Electoral Act 1992*, section 80(1)(b) as applied by the *City of Brisbane Act 1924*, section 17(5).

<sup>73</sup> Section 202 (Filling of later vacancies by appointment)

electoral district, or a part of an electoral district, included in the local government's area.

(2) This section is subject to the following sections—

- section 170 (General disqualifications)
- section 171 (Disqualification and vacation of office for certain offences).

### **General disqualifications**

**170.** A person is not qualified to be or become a councillor if—

- (a) the person is an undischarged bankrupt under the *Bankruptcy Act 1966* (Cwlth); or
- (b) the person has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X and the terms of the deed have not been fully complied with; or
- (c) the person's creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X and a final payment has not been made under the composition; or
- (d) the person is in prison; or
- (e) the person is not entitled to be elected as a member of the Legislative Assembly under the *Electoral Act 1992*, section 176 or under another law; or
- (f) the person is a member of an Australian Parliament.

### **Disqualification and vacation of office for certain offences**

**171.(1)** This section applies if a person is found guilty of an offence against any of the following provisions—

- section 190(8) (Requirements of councillors before acting in office)
- section 194 (Penalty for contravening exclusion from meeting)
- section 195 (Registers of interests)
- section 326 (False, misleading or incomplete electoral

documents)

- section 341 (Influencing voting)
- section 343(a) or (b) (Voting if not entitled)
- section 355W(1) or (2) (Offences about returns).

(2) The person is not qualified to become a local government councillor for 3 years after the conviction and, if the person is a local government councillor, the person vacates the office—

- (a) if the person appeals against the conviction—on the appeal being dismissed, struck out or discontinued; or
- (b) if the person does not appeal against the conviction—at the end of the time fixed by law within which an appeal must be started.

(3) A court may, by order, direct that this section does not apply to a person if the court is satisfied that it would be just to give the direction.

### **Review of lawfulness of membership of local government**

**172.(1)** This section applies to an application for review under the *Judicial Review Act 1991* of—

- (a) the lawfulness of the election or appointment of a councillor; or
- (b) the continued eligibility of a person to act as a councillor.

(2) For the purposes of the *Judicial Review Act 1991*, any elector of the local government is a person who may make the application.

(3) However, subsection (2) does not limit the persons who may make the application.

### **Termination of membership of Legislative Assembly on becoming councillor**

**173.** If a member of the Legislative Assembly is elected or appointed as a councillor, the person is taken to have resigned as a member of the Legislative Assembly on the day the person becomes a councillor.

**Councillor ceases to be councillor on becoming director of significant business entity**

**173A.** On a councillor becoming a director of a significant business entity contrary to section 458FE, the councillor ceases to be a councillor.

**Termination of local government employment on becoming councillor**

**174.(1)** If a local government employee is elected or appointed as a councillor, the person is taken to have resigned as an employee on the day the person becomes a councillor.

**(2)** In this section—

**“local government employee”** includes an employee of a local government’s significant business entity but does not include—

- (a) a person employed under a Commonwealth funded community development project for Aborigines or Torres Strait Islanders; or
- (b) a person prescribed by regulation.

***Division 3—Term of office*****Duration of membership**

**175.(1)** If a councillor is elected at a triennial election, the councillor is elected until the next triennial election.

**(2)** If a councillor (the **“new councillor”**) is elected or appointed to fill a vacancy in the office of a councillor (the **“former councillor”**), the new councillor is elected or appointed for the balance of the former councillor’s term of office.

**(3)** If a councillor is elected at a fresh election, the councillor is elected for a term of office to—

- (a) if a declaration under section 355 (Extension of term of councillors) applies to the election—the triennial elections after the next triennial elections; and
- (b) in any other case—the next triennial elections.

**(4)** A councillor’s term of office starts—

- (a) if the councillor is elected—the day after the day of the conclusion of the councillor’s election; or
  - (b) if the councillor is appointed—the day on which the councillor is appointed.
- (5) A councillor’s term of office ends on the day—
- (a) the next relevant triennial election concludes; or
  - (b) the local government is dissolved; or
  - (c) the councillor’s office otherwise becomes vacant.

### **Resignation from office as a councillor**

**176.(1)** A councillor may resign by signed notice of resignation given to the local government’s chief executive officer.

**(2)** The resignation takes effect when it is given to the chief executive officer unless it is expressed to take effect on a future date.

## **PART 2—COUNCILLORS’ ROLES**

### *Division 1—Councillors’ roles generally*

#### **Councillors’ role**

- 177.(1)** A local government councillor—
- (a) represents the overall public interest of the local government’s area and, if the councillor is a councillor for a division of the area, also represents the public interest of the division; and
  - (b) takes part in deciding the facilities, services and enterprises that are appropriate for the area; and
  - (c) takes part in formulating, adopting and reviewing—
    - (i) the local government’s corporate plan and operational plans; and

- (ii) the policies and goals of the local government; and
  - (d) takes part in making decisions for achieving the goals and implementing the policies of the local government.
- (2) In performing the role, a councillor—
- (a) must serve the overall public interest of the area and, if the councillor is a councillor for a division, the public interest of the division; and
  - (b) if conflict arises between the public interest and the private interest of the councillor or another person—must give preference to the public interest.
- (3) A councillor must ensure there is no conflict, or possible conflict, between the councillor's private interest and the honest performance of the councillor's role of serving the public interest.

### **Limitations on councillors' roles**

**178.(1)** A councillor who is not the mayor must not assume any part of the mayor's role without the mayor's prior approval.

(2) A councillor cannot direct, and must not attempt to direct, an employee of the local government about the way in which the employee's duties are to be performed.

### **Additional roles of mayor**

**179.(1)** The mayor of a local government—

- (a) presides at, and is responsible for the orderly conduct of, meetings of the local government at which the mayor is present; and
  - (b) ensures the carrying out of the local government's decisions; and
  - (c) exercises the powers, and performs the duties, given to the mayor by the local government; and
  - (d) ensures the appropriate representation of the local government at civic or ceremonial functions.
- (2) In performing the role mentioned in subsection (1)(b), the mayor

may identify to the chief executive officer of the local government the officer's duty in carrying out policies and decisions of the local government.

### *Division 2—Deputy mayor and acting mayor*

#### **Deputy mayor of local government**

**180.** A local government must appoint a deputy mayor from its councillors, by resolution, at—

- (a) its first meeting after the conclusion of each of the triennial elections; and
- (b) its first meeting after the conclusion of a fresh election of all of its councillors; and
- (c) its first meeting after the deputy mayor's office as councillor otherwise becomes vacant.

#### **Office of deputy mayor may be declared vacant**

**181.(1)** A local government may, by resolution, declare that the office of deputy mayor is vacant.

**(2)** The resolution may be passed only if written notice of the resolution has been given to the councillors at least 14 days before the meeting.

**(3)** If a local government declares that the office is vacant, it must immediately appoint a deputy mayor from its councillors.

#### **Additional role of deputy mayor**

**182.** The deputy mayor of a local government acts in the office, and performs the role, of the mayor during—

- (a) a vacancy in the office of mayor; or
- (b) the absence or temporary incapacity of the mayor.



**Appointment of acting mayor**

**183.** A local government may, by resolution, appoint from its councillors an acting mayor, if at any time—

- (a) vacancies exist in the offices of mayor and deputy mayor; or
- (b) a vacancy exists in the office of mayor and the deputy mayor is prevented, by absence or temporary incapacity, from acting in the office; or
- (c) the mayor and deputy mayor are prevented, by absence or temporary incapacity, from performing the role of mayor.

**Role of acting mayor**

**184.** The acting mayor of a local government acts in the office of the mayor while the circumstances in which the person was appointed as acting mayor continue.

**PART 3—ENTITLEMENTS AND OBLIGATIONS***Division 1—Entitlements of councillors and committee members***Remuneration for service on local government and advisory committees**

**185.(1)** A local government may, by resolution, authorise the payment or provision of remuneration to a person who is—

- (a) a councillor of the local government; or
- (b) a member of an advisory committee of the local government who is not a councillor.

**(2)** The resolution must specify—

- (a) the purpose for which the remuneration is to be paid or provided; and

- (b) the persons entitled to remuneration; and
- (c) the amount or value of the remuneration or the basis on which it is calculated.

(3) The basis on which remuneration is calculated may vary according to—

- (a) the purpose for which the remuneration is paid or provided; or
- (b) whether or not the person entitled to the remuneration is a councillor of the local government.

(4) The resolution must specify—

- (a) the principles or remuneration system on which the remuneration is based; and
- (b) the reasons for adopting the principles or system.

(5) A resolution under this section operates for no longer than 6 months after the next triennial elections.

### **Superannuation benefits for councillors**

**186.(1)** In this section—

“**audit**”, of a superannuation scheme, means an audit required under the Commonwealth Superannuation Act.

“**Commonwealth Superannuation Act**” means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

“**scheme**” means a voluntary superannuation scheme for councillors.

“**standard permanent employee**” has the meaning given by section 761.

(2) A local government may—

- (a) establish and amend a scheme; or
- (b) join in establishing and amending a scheme; or
- (c) take part in a scheme.

(3) However, a local government may not establish or take part in a scheme—

- (a) under which the contribution to the scheme payable by the local

government for its councillors (expressed as a percentage of payment in the nature of salary) is more than—

- (i) for the year starting 1 July 1995—11%; or
  - (ii) for the year starting 1 July 1996—11.5%; or
  - (iii) for each later year—12%;<sup>74</sup> or
- (b) under which the proportion of contribution to the scheme payable by the local government for its councillors is more or less than the proportion of contribution to the Local Government Superannuation Scheme payable by the local government for its standard permanent employees; or
- (c) under which the local government is required to contribute to the scheme for a person who has ceased to be a councillor; or
- (d) that does not meet the requirements of the Commonwealth Superannuation Act.

(4) If a local government acts under subsection (2), it may pay an amount from its operating fund by way of a subsidy or contribution to the scheme.

(5) An audit of a superannuation scheme established by a local government (whether alone or with another local government) must be carried out by the Auditor-General.

### **Insurance of councillors**

**187.(1)** A local government may enter into a contract of insurance with WorkCover Queensland or another insurer for insurance for councillors.

(4) For the purpose of the insurance cover, a councillor's role includes, for example, attendance—

- (a) at the meetings of the local government or its committees that the councillor is entitled or asked to attend, or at which the councillor

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<sup>74</sup> The percentages mentioned in the paragraph represent local governments' liability for standard permanent employees under section 743M(2)(b) (Local governments' liability for permanent employees) less standard permanent employees' liability under section 743N(b) (Permanent employees' liability for contributions).

- has business for a resident of the local government's area; and
- (b) at inspections or deputations, conferences and meetings at which the councillor's attendance is permitted by the local government; and
  - (c) at official functions organised for the local government; and
  - (d) on residents of the area for the purpose of local government business.

### **Indemnity for councillors**

**188.(1)** A councillor does not incur civil liability for an act or omission done honestly and without negligence under this Act.

**(2)** A liability that would, apart from this section, attach to a councillor attaches instead to the local government.

### *Division 2—Obligations of councillors*

#### **Application to Brisbane City Council**

**189.** This division applies to the Brisbane City Council.

#### **Requirements of councillors before acting in office**

**190.(1)** A person elected as a councillor must not act in the office until the person—

- (a) if elected as a councillor of the Brisbane City Council—makes a declaration of office; or
- (b) if elected as a councillor of another local government—
  - (i) firstly gives the chief executive officer of the local government a return in the approved form;<sup>75</sup> and
  - (ii) subsequently makes a declaration of office.

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<sup>75</sup> A return given under section 190(1)(b)(i) is part of the register kept under section 355T (Registers of electoral gifts).

(2) A person appointed as a councillor must not act in the office until the person makes a declaration of office.

(3) The return under subsection (1)(b)(i) must state the information the person is required to give under section 355N<sup>76</sup> relating to the disclosure period for the election of the person to the extent that the person states the information is readily available when giving the return.

(4) The declaration of office must be in the following form—

‘I, ....., having been elected/appointed as a councillor of the Council of the City/Town/Shire of ....., declare that I will faithfully and impartially fulfil the duties of the office to the best of my judgment and ability.’.

(5) The chief executive officer of the local government is authorised to take the declaration.

(6) The chief executive officer must keep a record of the taking of the declaration.

(7) The person ceases to hold office as a councillor if the person does not comply with subsection (1) or (2) within 1 month after being elected or appointed or a longer period allowed by the Minister.

(8) The person must not give a return, under subsection (1)(b)(i), containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty for subsection (8)—100 penalty units.

### **Acting as councillor without authority**

**191.** A person must not act as a councillor if the person knows that—

- (a) the person is not qualified to be a councillor; or
- (b) the person’s office as a councillor has been vacated.

Maximum penalty—85 penalty units.

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<sup>76</sup> Section 355N (Gifts to candidates)

**Exclusion from meeting of councillor with material personal interest**

**192.(1)** A councillor who has a material personal interest in an issue to be considered at a meeting of the local government, or any of its committees—

- (a) must disclose the interest to the meeting; and
- (b) must not be present at or take part in the meeting while the issue is being considered or voted on.

**(2)** A councillor who is barred from a meeting under subsection (1) must not be in the chamber where the meeting is being conducted, including any area set apart for the public.

**Removal of disability**

**193.(1)** The Minister may, by signed notice, relieve a councillor of a local government of a disability to which the councillor is subject under section 192 (Exclusion from meeting of councillor with material personal interest) if—

- (a) because of the number of councillors subject to the disability, conduct of a meeting of the local government or committee would be obstructed if relief were not given; or
- (b) it appears to the Minister to be in the interests of the local government's area that relief be given.

**(2)** The Minister may give the relief subject to conditions specified in the notice.

**(3)** A councillor does not contravene section 192 by taking part in a meeting, or being in the chamber where the meeting is being conducted, if—

- (a) the councillor is a person to whom relief is given under subsection (1); and
- (b) the councillor is complying with the conditions on which the relief is given.

**Penalty for contravening exclusion from meeting**

**194.** A councillor of a local government who contravenes section 192 (Exclusion from meeting of councillor with material personal interest) is liable to a maximum penalty of—

- (a) if the councillor voted on the issue with an intention to gain an advantage for the councillor or anyone else—200 penalty units;
- (b) in any other case—85 penalty units.

**Registers of interests**

**195.(1)** The chief executive officer of a local government must keep—

- (a) a register of interests of each local government councillor; and
- (b) a register of interests of the persons who, under a regulation, are related to the councillor.

**(2)** A register—

- (a) must relate to only 1 person; and
- (b) must contain the financial and non-financial particulars prescribed by regulation.

**(3)** If a councillor knows—

- (a) of an interest that the chief executive officer must record in a register of interests kept under subsection (1) in relation to the councillor or a person who, under a regulation, is related to the councillor (a “**related person**”); or
- (b) that particulars of an interest recorded in a register kept under subsection (1) in relation to the councillor or a related person are no longer correct;

the councillor must tell the chief executive officer of the interest, or the correct particulars, in accordance with the regulations.

Maximum penalty for subsection (3)—85 penalty units.

**Access to registers**

**196.(1)** A register of councillor’s interests is open to inspection.

(2) A register of other persons' interests is not open to inspection other than by—

- (a) a councillor of the local government; and
- (b) a person permitted by law to have access to information in the register, or the person's agent.

(3) A person seeking access to a register must apply in writing to the chief executive officer.

(4) The chief executive officer must record—

- (a) the name and home or business address of each person given access to the register; and
- (b) the day the access is given.

(5) The chief executive officer must advise a councillor of any access given to the councillor's register and any register of a person who, under a regulation, is related to a councillor.

(6) A person must not knowingly disclose information obtained from the register—

- (a) if it is not a true copy, or a fair summary, of the particulars in the register; or
- (b) for information from a register of other persons' interests—to a person other than—
  - (i) a councillor or the chief executive officer; or
  - (ii) a person mentioned in subsection (2)(b).

Maximum penalty for subsection (6)—85 penalty units.

### **Queries on contents of register**

**197.(1)** A person who suspects on reasonable grounds that a register does not contain particulars that should be in the register may inform the chief executive officer of the local government.

(2) The chief executive officer must immediately inform the councillor concerned.

(3) The councillor must, within 30 days of being informed—



- (a) establish whether the register should be amended to make it a true record of fact; and
- (b) if the register should be amended—give the chief executive officer the appropriate particulars in writing.

(4) If the councillor establishes that the register does not need to be amended, the councillor must—

- (a) complete a statutory declaration to the effect that the particulars in the register are a true record of fact; and
- (b) give the statutory declaration to the chief executive officer.

### **Improper use of information by councillors**

**198.(1)** A person who is or has been a local government councillor must not make improper use of information acquired as a councillor—

- (a) to gain, directly or indirectly, a financial advantage for the person or someone else; or
- (b) to harm the local government.

(2) A person who is or has been a local government councillor must not release information that the person knows, or should reasonably know, is information that—

- (a) is confidential to the local government; and
- (b) the local government wishes to keep confidential.

Maximum penalty—35 penalty units.

## **PART 4—VACANCIES IN MEMBERSHIP OF LOCAL GOVERNMENTS**

### **Application of part to Brisbane City Council**

**199.** This part applies to the Brisbane City Council.

**When councillor's office becomes vacant**

**200.(1)** A person's office as a local government councillor is vacated if the person—

- (a) ceases to be qualified to be or become a councillor under part 1 (Membership of local governments), division 2 (Qualifications and disqualifications); or
- (b) without the local government's leave, is absent from 3 or more consecutive ordinary meetings of the local government over at least 3 months; or
- (c) on a review under the *Judicial Review Act 1991*, is found to be unlawfully elected or appointed, or ineligible to continue to act as, a councillor of the local government; or
- (d) resigns as a councillor; or
- (e) becomes a local government employee; or
- (f) otherwise ceases to hold the office before the end of the councillor's term of office.

**(2)** In this section—

**“local government employee”** does not include—

- (a) a person employed under a Commonwealth funded community development project for Aborigines or Torres Strait Islanders; or
- (b) a person prescribed by regulation.

**Filling of earlier vacancies by by-election**

**201.(1)** This section applies if a person's office as a local government councillor becomes vacant before 1 March (the **“cut-off date”**) in the year before the year in which the next triennial elections for the local government are to be held.

**(2)** The vacancy must be filled by a by-election.

**Filling of later vacancies by appointment**

**202.(1)** This section applies if the office of a person (the **“former**

**councillor**”) as a local government councillor becomes vacant on or after the cut-off date.

(2) The local government must fill the office by appointing a qualified person (the “**new councillor**”) to the office.

(3) Subsection (3A) applies if—

- (a) the last filling of the office of the former councillor was by an election; and
- (b) the former councillor was a candidate for the election; and
- (c) the former councillor was nominated for the election by a registered officer of a political party under—
  - (i) section 250(1)(a);<sup>77</sup> or
  - (ii) if the former councillor was a councillor of the Brisbane City Council—the *Electoral Act 1992*, section 84(1)(a).<sup>78</sup>

(3A) The new councillor must be the political party’s nominee.

(3B) If the last filling of the office of the former councillor was by an appointment of a political party’s nominee made in accordance with subsection (3A) or this subsection, the new councillor must be a nominee of the political party.

(4) If the former councillor held office as mayor of the local government, the local government must fill that office by appointing—

- (a) an existing councillor as mayor; or
- (b) another qualified person as mayor.

(5) Subsection (5A) applies if—

- (a) the former councillor held office as mayor; and
- (b) the last filling of the office of mayor was at an election; and
- (c) the former councillor was a candidate for the election; and

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<sup>77</sup> Section 250 (How and when nomination is given)

<sup>78</sup> The *Electoral Act 1992*, section 84 is applied to nominations for election as a councillor of the Brisbane City Council under the *City of Brisbane Act 1924*, section 17(5).

(d) the former councillor was nominated for the election by a registered officer of a political party under—

(i) section 250(1)(a);<sup>79</sup> or

(ii) if the former councillor was a councillor of the Brisbane City Council—the *Electoral Act 1992*, section 84(1)(a).<sup>80</sup>

**(5A)** The person appointed under subsection (4) must be the political party's nominee.

**(5B)** If the last filling of the office of mayor was by an appointment of a political party's nominee made in accordance with subsection (5A) or this subsection, the person appointed under subsection (4) must be a nominee of the political party.

**(6)** If the former councillor held office as mayor, the local government may act under subsection (2) for the vacancy only if it has already appointed an existing councillor as mayor.

**(7)** If a vacancy that should be filled under this section is not properly filled within 2 months after the vacancy happens, the Governor in Council may appoint a qualified person to fill the vacancy.

**(8)** In this section—

**“qualified person”** means a person who is qualified to become a councillor of the local government.

### **Duty to seek political party's nominee for appointment to vacancy**

**203.(1)** This section applies if there is a vacancy in the office of a local government councillor and the vacancy is to be filled by the nominee of a political party.

**(2)** Within 14 days after the vacancy happens, the chief executive officer of the local government must, by written notice given to the political party, request the party to inform the officer of the full name and address of its nominee to fill the vacancy.

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<sup>79</sup> Section 250 (How and when nomination is given)

<sup>80</sup> The *Electoral Act 1992*, section 84 is applied to nominations for election as a councillor of the Brisbane City Council under the *City of Brisbane Act 1984*, section 17(5).

(3) The notice may be given to the political party by giving it to the party's registered officer under the *Electoral Act 1992*.

### **Duty to seek other nominees for appointment to vacancy**

**204.(1)** This section applies if there is a vacancy in the office of a local government councillor and the vacancy is not to be filled by the nominee of a political party.

(2) Within 14 days after the vacancy happens, the chief executive officer must—

- (a) by notice published in a newspaper circulating generally in the local government's area, invite nominations from persons qualified to fill the vacancy; and
- (b) by written notice to each person who was a candidate for the office at the last election—
  - (i) inform the person of the vacancy; and
  - (ii) ask the person to indicate in writing whether the person is willing to accept the office if appointed.

(3) If persons qualified to fill the vacancy nominate for appointment or indicate a willingness to accept the office if appointed, the local government must fill the vacancy by appointment from among the persons.

## **PART 5—MEMBERSHIP OF JOINT LOCAL GOVERNMENTS**

### **Election of members**

**205.(1)** Each component local government or group of component local governments of a joint local government must elect the number of representatives to which the local government or group is entitled on the joint local government.

(2) The representatives must be elected from—

- (a) for a component local government—its councillors; or
- (b) for a group of local governments—the councillors of the local governments in the group.

(3) This section is subject to any regulation made for the joint local government under section 48(2) (Number of representatives etc.).

### **When members are to be elected**

**206.** The election of the members of a joint local government must be held—

- (a) before the first meeting of the joint local government; and
- (b) within 1 month after each of the later triennial elections of local governments.

### **Delegate members**

**207.(1)** Each component local government or group of component local governments must elect 1 person as a delegate representative on the joint local government.

(2) The delegate representative must be elected from—

- (a) for a component local government—its councillors; or
- (b) for a group of local governments—the councillors of the local governments in the group.

(3) In the absence of a representative of a component local government or group of component local governments, the delegate representative may act as the representative.

### **Filling of casual vacancies**

**208.(1)** If a vacancy happens in the office of a representative or delegate representative of a component local government or group of component local governments, the component local government or group must, within 2 months after the vacancy happens, elect a new representative or new delegate representative to fill the vacancy.

(2) The representative or delegate representative must be elected from—

- (a) for a component local government—its councillors; or
- (b) for a group of local governments—the councillors of the local governments in the group.

(3) This section is subject to any regulation made for the joint local government under section 48(2) (Number of representatives etc.).

### **Returning officer for elections**

**209.** The returning officer for an election of a representative or delegate representative of a group of component local governments in a joint local government is—

- (a) the joint local government’s chief executive officer; or
- (b) if there is no chief executive officer of the joint local government—a person appointed by the Minister for the purpose.

### **Appointment of representatives on default**

**210.** If a component local government or group of component local governments fails to elect the number of representatives in a joint local government to which it is entitled at or within the time it is required to elect them, the Governor in Council may, by gazette notice, appoint a number of councillors of the component local government or group of component local governments necessary to make up the required number of representatives.

### **President and deputy president**

**211.(1)** A joint local government must appoint a president and deputy president from its members, by resolution, at—

- (a) the first meeting of the joint local government; and
- (b) at its first meeting after each of the later triennial elections of local governments.

(2) For the purpose of electing the president, the chief executive officer or someone else appointed by the Minister is to preside (without entitlement to vote).

(3) This section applies subject to any regulation made for the joint local government under section 44(b) (Matters about establishment etc.).

### **Presiding at meetings**

**212.(1)** The president of a joint local government presides at meetings of the joint local government at which the president is present.

(2) If the president is not present at a meeting, the deputy president is to preside.

### **Overriding duty of joint local government member**

**213.** In taking part in the exercise of a joint local government's jurisdiction, a member of the joint local government must act in the best interests of—

- (a) the whole of its area; and
- (b) the responsible exercise of the joint local government's jurisdiction in its area.

## **CHAPTER 5—LOCAL GOVERNMENT ELECTIONS**

### **PART 1—GENERAL**

#### **Triennial elections**

**214.** Councillors of a local government are to be elected once every 3 years.

#### **Types of elections**

**215.(1)** A triennial or fresh election of the mayor of a local government is an election for the whole of the local government's area.



(2) A triennial or fresh election for another councillor of a local government is—

- (a) if the local government's area does not have divisions—an election for the whole of the area; or
- (b) if the local government's area has divisions—an election for each division of the area.

(3) A by-election to fill a vacancy in the office of a local government councillor is an election for its area, or the division of its area, for which the councillor was elected.

### **Elections to be held on a Saturday**

**216.** Every local government election must be held on a Saturday.

### **Date of triennial elections**

**217.(1)** Triennial elections are to be held in every third year after 1994.

(2) A triennial election is to be held on the last Saturday in March.

(3) However, a regulation may fix a different date for a particular year.

### **Date of by-elections**

**219.(1)** A by-election to fill a vacancy in the office of a local government councillor is to be held on the date fixed by the returning officer for the election.

(2) The date fixed must be within 2 months after the vacancy happens.

### **Local governments responsible for expenditure for conducting elections**

**219A.** A local government is responsible for expenditure incurred for the conduct of an election in its local government area.

## **PART 2—RETURNING OFFICERS**

### **Chief executive officer is returning officer**

**220.(1)** The chief executive officer of a local government is the returning officer for every election of a councillor of the local government.

**(2)** This section is subject to section 221 (Appointment of returning officer in place of the chief executive officer).

### **Appointment of returning officer in place of the chief executive officer**

**221.(1)** If the chief executive officer considers on reasonable grounds that it is appropriate to appoint another individual as returning officer for an election, the chief executive officer may make the appointment in the approved form.

**(2)** An individual who is not a current employee of the local government cannot be appointed as returning officer for an election unless the chief executive officer—

- (a)** has to the extent practicable, by public notice in a newspaper circulating generally in the local government area and in any other newspaper the chief executive officer considers appropriate, invited expressions of interest from individuals who are suitably qualified to conduct elections; and
- (b)** if the chief executive officer considers it appropriate—has invited submissions for appointment as returning officer from any individual the chief executive officer considers may be suitably qualified to conduct elections; and
- (c)** has taken into account—
  - (i)** the individual's qualifications to be a returning officer; and
  - (ii)** information supplied by the individual and any referees; and
  - (iii)** the cost of the individual providing the services required.

**(3)** Subsections (4) to (6) apply if a returning officer appointed by the chief executive officer is, for any reason, unable to perform the duties of the returning officer.

(4) If possible, the returning officer must immediately inform the chief executive officer.

(5) The chief executive officer may become the returning officer or appoint another individual to be the returning officer for the election.

(6) To the extent practicable, subsection (2) applies to the appointment of a returning officer under subsection (5) who is not a current employee of the local government.

(7) If the chief executive officer believes he or she cannot properly perform the duties of returning officer for an election because of a possible conflict of interest, the chief executive officer must ask the Minister to appoint another individual as returning officer for the election.

(8) The Minister may appoint another individual as returning officer for the election.

### **Returning officer's duty for by-election**

**222.** As soon as practicable after fixing the day for holding a by-election, the returning officer must—

- (a) publish, in a newspaper circulating generally in the local government area and in the other ways that the officer may consider appropriate, notice of—
  - (i) the day fixed; and
  - (ii) the cut-off day for the voters roll for the by-election; and
- (b) take the steps required by this Act for holding the by-election.

## **PART 3—VOTERS ROLL**

### **Returning officer must compile voters roll**

**223.** The returning officer for a local government election must compile the roll of persons entitled to vote at the election (the “**voters roll**”).

**Qualification for enrolment on voters roll**

**224.** A person is entitled to vote at a local government election if the person is an elector under the *Electoral Act 1992* for an electoral district, or a part of an electoral district, included—

- (a) for an election for the whole of the local government's area—in the area; or
- (b) for an election for a division of the local government's area—in the division.

**Cut-off day for voters roll**

**225.** A voters roll must be compiled to 1 of the following dates—

- (a) for a triennial election for a local government area, or a division of a local government area, in which a postal ballot is to be taken in any part of the area or division—31 December in the year before the year of the election;
- (b) for another triennial election—31 January in the year of the election;
- (c) for a by-election to fill a vacancy in the office of a local government councillor—at least 5 days, and not more than 7 days, after the publication in a newspaper, under section 222 (Returning officer's duty for by-election), of notice of the day of the by-election.

**Use of electoral roll when practicable**

**226.(1)** The voters roll for an election for a local government must consist of the persons enrolled on an electoral roll for an electoral district, or a part of an electoral district, included—

- (a) for an election for the whole of the local government's area—in the area; or
- (b) for an election for a division of the local government's area—in the division.

**(2)** However, the returning officer may make the changes to the electoral roll, compiled to the cut-off day for the voters roll, that are necessary

because the boundaries of the area or its divisions are not identical with the boundaries of the electoral district.

### **Requirements of voters roll**

**227.(1)** A voters roll for an election must—

- (a) show the names of all persons entitled to vote at the election; and
- (b) be in the form of the electoral roll used for elections of the Legislative Assembly.

**(2)** The returning officer must not include in a voters roll an elector's address that, under the *Electoral Act 1992*, is excluded from the publicly available part of an electoral roll.

### **Voters roll to be open to inspection and purchase**

**228.(1)** A voters roll for an election is open to inspection.

**(2)** Copies of the voters roll must be available for purchase at the local government's public office.

**(3)** The price of a copy of the voters roll must be no more than the cost to the local government of having the copy available for purchase and, if the copy is posted to the purchaser, the postage cost.

### **Electoral registrars to help returning officers**

**229.** An electoral registrar under the *Electoral Act 1992* must give a returning officer the assistance that the returning officer reasonably requires to compile a voters roll for a local government election.

## **PART 4—VOTING**

### **Compulsory voting**

**230.** Voting at an election for a local government is compulsory and each elector is entitled to 1 vote only.

**System of voting**

**231.** The system of voting at an election for a councillor is—

- (a) for a local government area divided into single-member divisions—optional-preferential voting; and
- (b) in any other case—first-past-the-post voting.

**PART 5—DIVISION OF LOCAL GOVERNMENT AREAS****Application of pt to Brisbane City Council**

**231A.** This part applies to the Brisbane City Council.

**Equitable division of local government areas**

**232.(1)** For each divided local government area and each local government area, or proposed local government area, that is proposed to be divided, there must be a quota of voters for each councillor to be elected for a division of the area.

**(2)** The quota is worked out by dividing the total number of electors, as nearly as can be found out, by the number of councillors (other than the mayor) of the local government.

**Quota to be complied with in division of local government area and assignment of councillors**

**233.(1)** The quota worked out for a local government area or proposed local government area under section 232 (Equitable division of local government areas) must be complied with in the determination of—

- (a) a reviewable local government matter (other than a limited reviewable local government matter); or
- (b) a limited reviewable local government matter.

**(2)** However, a margin of allowance may be adopted if necessary, but the

quota must not be departed from—

- (a) for a local government area with more than 10 000 electors—by more than 10%; or
- (b) for another local government area—by more than 20%.

**(3)** Also, an electoral and boundaries review commission may, if it is satisfied it is appropriate in its determination, under section 72G(1C) or 73E(1C), of a reviewable local government matter, adopt a margin of allowance, but the quota must not be departed from—

- (a) for a local government area with more than 10 000 electors—by not more than 20%; or
- (b) for another local government area—by not more than 40%.

**(4)** However, a commission must not make a determination under subsection (3) in the period starting on the information date mentioned in section 234 for a local government and ending on the date of the next triennial elections.

**(5)** Also, subsection (3) does not apply if—

- (a) the reference for the matter includes a reviewable local government matter mentioned in section 64(1)(a) or (f); or
- (b) the matter is referred to the commissioner under section 235.

**(6)** For subsection (2), the quota must be worked out as near as practicable to—

- (a) if the matter is a reviewable local government matter (other than a limited reviewable local government matter)—the time notice of the proposed determination of the matter is given under section 72D or 73C; or
- (b) if the matter is a limited reviewable local government matter—the time notification in the gazette of the determination of the matter is given under section 78.

**(7)** For subsection (3), the quota must be worked out as near as practicable to the time notice of the proposed determination of the matter is given under section 72D or 73C.

**Disclosure of compliance or noncompliance with quota requirements**

**234.(1)** Not later than the information date, each local government whose area is divided must inform the Minister, in writing, whether each division of its area is consistent with the basis specified in section 233(2) (Quota to be complied with in division of local government area and assignment of councillors).

**(2)** The information must be based on the roll of electors in each division available as near as practicable to the information date.

**(2A)** However, subsection (1) does not apply to a local government, if—

- (a) an electoral and boundaries review commission has made a delayed implementation determination for a reviewable local government matter for the local government’s area; and
- (b) the determination was made after the conduct of the last election of all councillors for the local governments affected by the determination.

**(3)** In this section—

**“information date”** means—

- (a) for Brisbane City Council—1 October in the year that is 2 years before the year of the triennial elections for local governments; or
- (b) for another local government—1 March in the year before the year of the triennial elections for local governments.

**Matter of area’s division referred to commissioner**

**235.(1)** The Minister must refer the matter of the division of a local government’s area to the commissioner if—

- (a) the local government informs the Minister that a division of its area is not consistent with the basis specified in section 233(2) (Quota to be complied with in division of local government area and assignment of councillors); or
- (b) the local government fails to inform the Minister as required by section 234 (Disclosure of compliance or noncompliance with quota requirements) about its area; or
- (c) the Minister suspects that information given under section 234 is



incorrect.

(2) Also, the Minister must refer the matter of the division of a local government's area to the commissioner—

(a) if—

- (i) an electoral and boundaries review commission has made a determination, under section 72G(1C) or 73E(1C), for a reviewable local government matter for the area; or
- (ii) an electoral and boundaries review commission has made a delayed implementation determination for a reviewable local government matter for the area; and

(b) the determination was made since the conduct of the last election of all councillors for the local governments affected by the determination.

(3) A reference under subsection (2) must be made as soon as practicable after the information date for the local government.

## **PART 6—CONDUCT OF ELECTIONS**

### *Division 1—Preliminary*

#### **Conduct of elections**

**236.** An election must be conducted under this part.

### *Division 2—Electoral officers*

#### **Returning officer**

**238.** The returning officer for an election is responsible for its proper conduct.

**Assistant returning officers**

**238A.(1)** The returning officer for an election may appoint 1 or more assistant returning officers for the election.

(2) An appointment under subsection (1) must be in the approved form.

**Presiding officers**

**239.(1)** The returning officer—

- (a) may be presiding officer at a polling booth; and
- (b) must appoint an adult as presiding officer at each polling booth other than the booth where the returning officer is the presiding officer.

(2) A presiding officer at a polling booth is responsible for the proper conduct of the poll at the booth and for carrying out the other duties for the election that are required by the returning officer.

(3) If a person is unable to act as presiding officer at a polling booth, the returning officer, or someone else with the returning officer's approval, may appoint an adult as presiding officer at the booth while the person is unable to act.

(4) An appointment under subsection (1) or (3) must be in the approved form.

**Issuing officers**

**240.(1)** The returning officer, or a presiding officer with the returning officer's approval, may appoint adults ("**issuing officers**") to—

- (a) give ballot papers, declaration envelopes and declaration forms to electors; and
- (b) perform the other duties for the election that are required by the presiding officer.

(2) The appointment must be in the approved form.

(3) Anything done by an issuing officer under subsection (1)(b) is taken to be done by the returning officer or the presiding officer.

**Declaration by issuing officers**

**241.** An issuing officer must make a declaration in the approved form before acting as an issuing officer.

**Returning officer may act through other officers**

**242.** If—

- (a) the returning officer may, under this part, do anything; and
- (b) the returning officer authorises an assistant returning officer, presiding officer or issuing officer (the “**authorised officer**”) to do the thing; and
- (c) the authorised officer does the thing;

the thing is taken to have been done by the returning officer.

*Examples—*

1. For an election, if the returning officer authorises an assistant returning officer to conduct the election in a division, and the assistant returning officer does so, the returning officer is taken to have conducted the election in the division.

2. For an election, if the returning officer authorises an assistant returning officer to carry out the functions of the returning officer under section 311,<sup>81</sup> the returning officer is taken to have carried out those functions.

3. Under section 297, declaration envelopes are to be posted or given to the returning officer. For an election, the returning officer could authorise an issuing officer to receive declaration envelopes, to remove the declaration envelopes containing the ballot papers from the return address envelopes and place the declaration envelopes in a ballot box.

**Assistant returning officer may act through certain authorised officers**

**242A.** If—

- (a) an assistant returning officer may, under this part, do anything; and
- (b) the assistant returning officer authorises a presiding officer or issuing officer to do the thing; and

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<sup>81</sup> Section 311 (Official counting of votes)

(c) the presiding officer or issuing officer does the thing;  
the thing is taken to have been done by the assistant returning officer.

### **Supply and use of voters rolls**

**243.(1)** The returning officer must give to the presiding officer at each polling booth enough copies of the voters roll certified in the approved form by the returning officer.

**(2)** An issuing officer must use a certified copy of the voters roll for taking the ballot in the election.

### *Division 3—Candidates for election or appointment*

### **Qualification for nomination**

**244.(1)** A person who is qualified under chapter 4 (Local government councillors), part 1 (Membership of local governments), division 2 (Qualifications and disqualifications), to become a councillor of a local government may nominate for election or appointment to the local government.

**(2)** A person is not disqualified from nominating because the person is a member of the Legislative Assembly or a local government employee.

**(3)** This section applies to the Brisbane City Council.

### **Prohibition of dual candidature**

**245.(1)** A person cannot, at the same time, be a candidate—

- (a) for election as mayor of a local government and as another councillor of the local government; or
- (b) for election as a councillor of a local government for more than 1 division of the local government's area.

**(2)** If, at noon on the nomination day, a person is nominated as a candidate in contravention of subsection (1), each of the nominations is of

no effect.

(3) This section applies to the Brisbane City Council.

### **Leave to local government employee to contest election**

**246.(1)** A local government employee who nominates as a candidate for election as a local government councillor is entitled to leave of absence for a period of not more than 2 months to contest the election.

(2) A local government employee may use any entitlement to accrued leave with pay as leave to which the employee is entitled under subsection (1).

(3) Unless leave is taken under subsection (2), the local government employee is not entitled to payment of salary or wages for any period of leave taken under subsection (1).

(4) This section applies to the Brisbane City Council.

### *Division 4—Nominations of candidates for election*

#### **Calling for nominations**

**248.(1)** The returning officer must publish notice of the election in a newspaper circulating generally in the local government area, or division of the local government area, for which the election is to be held.

(2) The notice must—

- (a) be in the approved form; and
- (b) specify a day as the nomination day—
  - (i) not less than 10, or more than 21, days after the day of publication of the notice; and
  - (ii) not less than 21, or more than 42, days before the day on which the election is to be held; and
- (c) specify a place of nomination; and
- (d) invite nominations of candidates for the election.

(3) The place of nomination must be—

- (a) the local government's public office; or
- (b) a place in its area convenient generally to persons in its area.

### **Who may nominate**

**249.(1)** A candidate for election as a councillor of a local government must be a person who is qualified under section 244 (Qualification for nomination) to nominate for the election.

**(2)** This section applies to the Brisbane City Council.

### **How and when nomination is given**

**250.(1)** A person who wishes to be a candidate for election must be nominated by—

- (a) the registered officer under the *Electoral Act 1992* of a political party that has endorsed the person as a candidate for the election; or
- (b) at least 6 electors for the local government area, or division of the local government area, for which the election is to be held.

**(2)** A nomination must be—

- (a) in the approved form; and
- (b) given to the returning officer after the nominations are invited for the election but before noon on the nomination day.

### **Deposit to accompany nomination**

**251.(1)** Before noon on the nomination day, the person nominating as a candidate must deposit, in cash or by a cheque drawn by a financial institution, with the returning officer—

- (a) \$150; or
- (b) if another amount is prescribed by regulation—the amount.

**(2)** The deposit must be held in the trust fund of the local government until it is refunded, or becomes the property of the local government, under this part.

**Special grounds for deciding a person is not properly nominated**

**251A.(1)** In this section—

**“nomination name”** means the name proposed by a candidate to be used on the ballot paper as the candidate’s name under section 271(3).<sup>82</sup>

**“parliamentary party”** means an organisation—

- (a) whose object or activity, or 1 of whose objects or activities, is the promotion of the election to an Australian parliament of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part; and
- (b) of which at least 1 member is a member of an Australian parliament.

**“party name”** means the name, or an abbreviation or acronym of the name of—

- (a) a parliamentary party; or
- (b) a political party; or
- (c) an organisation or group whose object or activity, or 1 of whose objects or activities, is the promotion of the election of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part to—
  - (i) an Australian parliament; or
  - (ii) an office of councillor of a local government.

**“public body name”** means the name, or an abbreviation or acronym of the name, of a prominent public body.

**(2)** The returning officer may decide that a person whose name has been changed is not properly nominated because the nomination name—

- (a) is a party name; or
- (b) so nearly resembles a party name that it is likely to be confused with or mistaken for the party name; or
- (c) includes the word ‘independent’; or

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<sup>82</sup> Section 271 (Requirements of ballot papers)

- (d) is a public body name; or
- (e) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name; or
- (f) is obscene or offensive.

(3) The returning officer may also decide that a person whose name has been changed is not properly nominated if the returning officer considers the name could cause confusion.

*Example of subsection (3)—*

If a person's name is Informal, the returning officer may consider that the name could cause confusion to electors.

(4) If the returning officer decides a person is not properly nominated under this section for an election, the returning officer must give the person a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the person's right to apply for an injunction.<sup>83</sup>

### **Certificate of returning officer**

**252.(1)** If the returning officer is satisfied a person has been properly nominated for election, the returning officer must—

- (a) certify the nomination, in the approved form; and
- (b) give a copy of the certificate to the candidate.

(1A) The certificate must specify the time, day and place proposed for a draw, if necessary, for the order of listing of candidates' names on the ballot paper.

(2) A person is properly nominated for election if—

- (a) sections 249 (Who may nominate) to 251 (Deposit to accompany nomination) have been complied with, or have been substantially complied with apart from a mere formal defect or error in the

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<sup>83</sup> For a person's right to seek an injunction, see section 349 (Injunctions to restrain contravention of chapter).



nomination; and

(b) section 245 (Prohibition of dual candidature) does not apply to the person's nomination; and

(c) the nomination has not been withdrawn.

(3) The returning officer is not obliged to look beyond—

(a) the form of nomination and payment of the deposit; and

(b) the voters roll; and

(c) documentary evidence produced by the nominee or nominator that at the time the voters roll is compiled for the election—

(i) the nominator is an elector for the election or the registered officer under the *Electoral Act 1992* of a political party; or

(ii) the nominee is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the local government's area.

(4) If a nomination is wrongly certified by the returning officer, the certification, or the issue of a copy of the certificate, does not validate the nomination.

### **Display of nominations**

**253.** As soon as practicable after receipt of a nomination, the returning officer must display a copy of the nomination in a conspicuous position at the place of nomination and, if that place is not the local government's public office, at the public office.

### **Termination of candidature before noon on nomination day**

**254.(1)** A person nominated as a candidate for election may withdraw the person's agreement to the nomination by signed notice given to the returning officer before noon on the nomination day.

(2) If this happens—

(a) the nomination is of no effect; and

(b) the person's deposit must be refunded to the person.

**Death of candidate**

**255.** If a person nominated as a candidate for election dies before noon on the nomination day—

- (a) the nomination is of no effect; and
- (b) the person's deposit must be refunded to the person's personal representative.

**Procedure if number of candidates not more than number required**

**256.(1)** If the number of candidates properly nominated for election does not exceed the number required to be elected—

- (a) the nominees are taken to have been elected; and
- (b) the returning officer must, as soon as practicable after the nomination day, publish a notice in the approved form in a newspaper circulating generally in the local government area, or division of the local government area, for which the election was to be held, that the nominees are taken to have been elected.

**(2)** If—

- (a) no-one is nominated as a candidate for an election; or
- (b) the number of candidates nominated is less than the number required to be elected;

the Governor in Council may, by gazette notice, appoint as councillors of the local government, the number of persons necessary to constitute fully the local government.

**(3)** Each person appointed as a councillor must be qualified to be elected as a councillor of the local government for the local government area, or division of the local government area, for which the election was to be held.

**(4)** The persons appointed are taken to have been properly elected as councillors of the local government.

**Procedure if number of candidates exceeds number required**

**257.(1)** If the number of candidates properly nominated for election exceeds the number required to be elected, a poll must be conducted under

this part.

(2) The returning officer must give public notice that a poll will be conducted.

(3) The notice must—

- (a) be in the approved form; and
- (b) specify—
  - (i) the day the poll will be conducted; and
  - (ii) the names of all candidates properly nominated for election in the order decided under section 273 (Order of listing of candidates' names); and
  - (iii) the location of all ordinary polling booths to be used for taking the ballot in the poll; and
  - (iv) that the ordinary voting hours are from 8 a.m. to 6 p.m.; and
- (c) be displayed in a conspicuous position at the place of nomination and, if that place is not the local government's public office, displayed at the public office; and
- (d) be published in a newspaper circulating generally in the local government area, or division of the local government area, for which the poll will be conducted.

(4) Display of a notice under subsection (3)(c) must—

- (a) start as soon as practicable after noon on the nomination day; and
- (b) continue until the close of the poll.

### **Supply of voters roll**

**258.(1)** If a poll is to be conducted in the election, the returning officer must give a copy of the voters roll to each candidate as soon as practicable after the nomination day.

(2) The copy of the roll must be certified by the returning officer in the approved form.

**Procedure on death of candidate when poll to be conducted**

**259.(1)** If a poll is to be conducted and a candidate dies after noon on the nomination day but before the polling day—

- (a) for a candidate as mayor—the proceedings for the election of the mayor must start again; and
- (b) for a candidate as councillor (other than mayor) if the local government's area is undivided—the proceedings for the election of the councillors must start again; and
- (c) for a candidate as a councillor for a division of local government's area—the proceedings for the election of councillors for the division must start again.

**(2)** The deceased candidate's deposit must be refunded to the candidate's personal representative.

**(3)** The deposits of other candidates must be refunded to the candidates.

**(4)** Despite subsection (1), the Governor in Council may, by gazette notice, direct that proceedings for holding an election of all councillors of the local government start again.

**(5)** If proceedings are started again, the Governor in Council must, by gazette notice, fix a new polling day for the election.

**Disposal of deposits generally**

**260.(1)** As soon as practicable after the declaration of the result of a poll, each candidate's deposit must be refunded to the candidate if—

- (a) the candidate is elected; or
- (b) if the system of voting at the election is optional-preferential voting—the number of first preference votes received by the candidate is more than 4% of the total number of formal first preference votes cast in the election; or
- (c) if the system of voting at the election is first-past-the-post voting—the number of votes received by the candidate is more than 4% of the total number of formal votes cast in the election.

**(1A)** Despite subsection (1), a candidate's deposit must not be refunded until the candidate has given the chief executive officer of the local

government the return the candidate is required to give under section 355N<sup>84</sup> in relation to the candidate's disclosure period for the election.

(2) All other candidates' deposits become the property of the local government and must be paid into its operating fund.

### **If successful candidate dies**

**261.** If a candidate who is successful at the election dies before the final result of the poll is declared, the candidate must be declared elected to the office for which the person was a candidate.

### **Extension of times**

**262.(1)** This section applies if—

- (a) a nomination day is specified under section 248 (Calling for nominations) for the election; or
- (b) a polling day is specified under section 257 (Procedure if number of candidates exceeds number required) for the election.

(2) The Governor in Council may, by gazette notice, fix a later day as the nomination or polling day.

(3) The returning officer must publish a notice in a newspaper circulating generally in the local government area, or division of the local government area, for which the election is to be held giving any necessary directions to candidates for election, and to electors, about the procedures to be followed.

## ***Division 5—Ballots***

### **Poll by ballot**

**263.** A poll must be conducted by ballot taken under this part.

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<sup>84</sup> Section 355N (Gifts to candidates)

**Direction that poll be conducted by postal ballot**

**264.(1)** If the local government's area includes a large rural sector, the Governor in Council may, by gazette notice, direct that a poll be conducted by postal ballot.

**(2)** The direction may be given for—

- (a) the whole of its area; or
- (b) 1 or more divisions of its area; or
- (c) a part of its area marked on a map.

**(3)** The map is open to inspection at the public office of the local government.

***Division 6—Polling booths*****Polling booths—general**

**265.(1)** A place on or from which liquor may lawfully be sold cannot be used as a polling booth.

**(2)** However, a civic or cultural centre, community hall or similar place under the local government's control, may be used as a polling booth if—

- (a) the floor area for taking the ballot is designated in the notice of the conduct of the poll under section 257 (Procedure if number of candidates exceeds number required); and
- (b) the local government ensures that no liquor will be sold or supplied in that area during the taking of the ballot.

**(3)** The returning officer—

- (a) may arrange for a polling booth within or outside the local government area, or division of the local government area, to be used in an election; and
- (b) may arrange for 2 or more polling booths at any place if the number of electors likely to vote at the place is greater than could conveniently vote in 1 booth at the place; and
- (c) must ensure that each polling booth is provided with enough

ballot boxes, ballot papers and materials to enable electors to mark the ballot papers.

(4) The returning officer may arrange for all polling booths or specified polling booths for an election in a division of the local government area to also be used for any other election conducted at the same time for, or for a division of, the local government area.

### **Provision of ordinary polling booths**

**266.(1)** For the purpose of taking a ballot in the election, the returning officer must arrange for places, or parts of places, to be used on polling day as ordinary polling booths to enable electors in general to vote.

(2) The returning officer may—

- (a) less than 3 days before polling day, arrange for an ordinary polling booth to be used; or
- (b) less than 6 days before polling day, cancel arrangements for the use of an ordinary polling booth;

only if it is necessary because of circumstances beyond the returning officer's control.

(3) If, after publication of the notice under section 257 (Procedure if number of candidates exceeds number required), the returning officer arranges for the use of an ordinary polling booth, the officer must give public notice—

- (a) of the location of the booth; and
- (b) that the ordinary voting hours of the booth are from 8 a.m. to 6 p.m.

(4) If the returning officer cancels arrangements for the use of an ordinary polling booth, the officer must give public notice of the cancellation.

(5) Notice under subsection (3) or (4) must be given in the way that the returning officer considers is the best way to inform electors generally.

**Declaration of mobile polling booths**

**267.(1)** If the returning officer is satisfied residents in an institution should be able to vote at the institution in a poll, the returning officer may arrange for the whole or a part of the institution to be available as a mobile polling booth to enable residents in the institution to vote there in the poll.

**(2)** If the returning officer is satisfied a part of the local government area or division of the local government area does not have enough electors to justify the use of an ordinary polling booth in the part, the returning officer may arrange for the whole or part of any place in the part to be available as a mobile polling booth to enable electors in the part to vote in the poll.

**(3)** If the returning officer acts under subsection (1) or (2), the officer must fix the times, during the period starting 11 days before the polling day and ending at 6 p.m. on the polling day, when the mobile polling booth may be used for voting.

**(4)** The returning officer must, by notice published in a newspaper circulating generally in the relevant part of the local government area—

- (a) declare the whole or part of the relevant institution or place as a mobile polling booth for the election; and
- (b) specify the times at which votes may be cast at the booth.

**(5)** The notice must be in the approved form.

**(6)** The returning officer also must give written notice to the candidates for election of the declaration of the mobile polling booth and the times at which votes may be cast at the booth.

**(7)** On the declaration of a mobile polling booth for an election, the electors resident in the relevant institution or the electors resident in the part of the local government area in which the booth is situated, may vote in the election at the booth during the times specified for the booth in the notice published under subsection (4).

**Duty of person in charge of institution**

**268.(1)** If the returning officer arranges for the whole or part of an institution to be used as an ordinary polling booth, the person in charge of the institution must allow electors and issuing officers to have access to the booth whenever votes may be cast at the booth.



(2) If the returning officer declares the whole or part of an institution as a mobile polling booth, the person in charge of the institution must allow residents in the institution and issuing officers to have access to the booth whenever votes may be cast at the booth.

### **Privacy of voting**

**269.** The returning officer must ensure that each polling booth is provided with enough voting compartments, or other adequate facilities, to allow the casting of votes in private.

### *Division 7—Ballot boxes, papers and other documents*

#### **Ballot boxes generally**

**270.(1)** A ballot box used in a poll must be under the scrutiny and effective control of an issuing officer.

(2) A ballot box must—

- (a) have an opening of a size sufficient to allow folded ballot papers and declaration envelopes to be put in the box; and
- (b) be open to inspection by issuing officers, candidates for election at the poll, and scrutineers properly appointed for the poll, before the box is locked or sealed for receipt of ballot papers.

#### **Requirements of ballot papers**

**271.(1)** If a poll is to be conducted, the returning officer must arrange for the printing of all ballot papers to be used in taking the ballot in the poll.

(2) A ballot paper must—

- (a) be in the approved form; and
- (b) be of material that, when folded, the vote cast by the elector on the paper is effectively concealed; and
- (c) be attached to a butt that—
  - (i) is not part of the ballot paper; and

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- (ii) is perforated to allow the ballot paper to be easily detached from the butt; and
  - (iii) is numbered in regular arithmetical sequence, starting with the numeral 1 and proceeding by intervals of one whole numeral, so that each butt for the local government area, or division of the local government area, for which the poll is conducted has a unique number; and
  - (d) show the name of each candidate for election as required by subsection (3); and
  - (e) if the names of 2 or more candidates are so similar as to be likely to cause confusion to electors—contain an appropriate description or addition, in the returning officer’s opinion, to distinguish the persons’ names; and
  - (f) if a candidate endorsed by a political party was nominated under section 250(1)(a) (How and when nomination is given)—contain, printed adjacent to the candidate’s name, the name of the political party as it would be required to be shown in a ballot paper under the *Electoral Act 1992*.
- (3) A ballot paper must—
- (a) contain the name of each candidate once only by showing first the surname followed by the given name or names; and
  - (b) show the names of the candidates in the order decided under section 273 (Order of listing of candidates’ names).
- (4) A ballot paper must not contain anyone else’s name.

**Separate ballot papers for separate polls**

**272.(1)** This section applies if a poll for election of mayor of the local government is to be conducted when a poll for election of another councillor of the local government is conducted.

(2) One ballot paper must be used in both polls, unless the local government, by resolution, instructs the returning officer that separate ballot papers be printed for use in the polls.

(3) The returning officer must comply with the instruction.

**Order of listing of candidates' names**

**273.(1)** The order in which names of candidates for election are to be listed on ballot papers and notices under section 257 (Procedure if number of candidates exceeds number required) is to be decided under this section.

(2) The order must be decided by the returning officer as soon as practicable after noon on the nomination day.

(3) The returning officer must, in the presence of 2 witnesses—

- (a) write the name of each candidate on a separate sheet of paper; and
- (b) ensure that each piece of paper is of the same kind, shape, size and colour; and
- (c) put each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same way to make each the same size and thickness; and
- (d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and
- (e) after each piece of paper has been placed in an envelope, seal the envelope; and
- (f) put all the envelopes in a container and shuffle them; and
- (g) draw out the envelopes, 1 at a time; and
- (h) as each envelope is drawn out, open it and record the name of the candidate shown on the piece of paper in the envelope.

(4) The order in which the names are recorded is the order in which the names are to appear on the ballot paper and notices under section 257 (Procedure if number of candidates exceeds number required).

(5) The returning officer must allow each candidate, or the candidate's representative, to be present when the order of candidates' names is decided.

**Distribution of ballot papers**

**274.(1)** The returning officer must ensure a sufficient number of ballot papers is available at all polling booths.

(2) The returning officer must prepare a delivery note in the approved form in triplicate for each parcel of ballot papers supplied by the returning officer to presiding officers at polling booths.

(3) The approved form must—

- (a) show details of the number of ballot papers supplied; and
- (b) show the range of numbers of the ballot papers; and
- (c) include a form of acknowledgment of receipt of the ballot papers.

(4) Two copies of the delivery note must be included in the parcel of ballot papers.

(5) As soon as practicable after a presiding officer receives a parcel of ballot papers, the presiding officer must—

- (a) check the contents against the details shown in the delivery note; and
- (b) complete the particulars prescribed by the delivery note; and
- (c) sign the form of acknowledgment included in the delivery note.

(6) If there is a discrepancy between the details shown in the delivery note and the contents of the parcel, the presiding officer must cause a countercheck to be made by—

- (a) if another presiding officer is available—the other presiding officer; or
- (b) if another presiding officer is not available—a responsible person.

(7) A discrepancy confirmed by a countercheck must be noted in the form of acknowledgment and the form must be signed by the presiding officer and the person who made the countercheck.

(8) The presiding officer must return 1 copy of the delivery note to the returning officer and retain the other copy of the delivery note until it is given to the returning officer with the sealed parcels of ballot papers under section 308 (Preliminary counting by presiding officer).

### **Correction of errors etc.**

**275.** Any error, omission or delay in respect of any voters roll, ballot

papers or other document to be used in a poll may be corrected by procedures directed by the Governor in Council, by gazette notice.

### *Division 8—Scrutineers*

#### **Candidates' entitlement to scrutineers**

**276.** A candidate for election is entitled to have 1 scrutineer present for each issuing officer at a polling booth or at a place for examination of declaration envelopes or counting of votes—

- (a) before and at all times when electors may vote in the booth; and
- (b) at all times during the examination or counting.

#### **Appointment of scrutineers**

**277.(1)** A candidate for election may, in the approved form, appoint adults as scrutineers for the candidate.

**(2)** On appointment, a scrutineer must make a declaration in the approved form before the returning officer or a presiding officer.

#### **Proof of identification**

**278.** A scrutineer must—

- (a) carry evidence of identification and of the person's appointment as a scrutineer; and
- (b) on demand, produce the evidence to an issuing officer.

#### **Powers of scrutineers**

**279.(1)** A scrutineer for a candidate for election is entitled to be present—

- (a) in a polling booth—before taking the ballot in the poll starts to inspect ballot boxes; and
- (b) in a polling booth and any office of the presiding officer at the booth—when electors may vote in the booth; and

- (c) in a polling booth or other place—to watch the examination of declaration envelopes and counting of votes.
- (2) A scrutineer may—
- (a) object to an issuing officer's decision on a person's entitlement to vote at the election; and
  - (b) object to the acceptance or rejection of a ballot paper by the returning or presiding officer; and
  - (c) record details of persons who vote at the election at a polling booth and remove the record from the booth.

### *Division 9—Voting generally*

#### **Who may vote**

- 280.(1)** Only electors may vote in a ballot taken in a poll.
- (2) The returning officer must not vote in the election.

#### **When votes may be cast at an ordinary polling booth or mobile polling booth**

- 281.(1)** Voting at an ordinary polling booth must take place between 8 a.m. and 6 p.m. on polling day.
- (2) However, an elector who is in an ordinary polling booth at 6 p.m. on polling day, for the purpose of voting in the poll, must be allowed to vote.
- (3) Voting at a mobile polling booth must take place during the times fixed for the booth by the returning officer.
- (4) However, an elector who is in a mobile polling booth at the time of the close of voting at the booth, for the purpose of voting in the poll, must be allowed to vote.

#### **Procedure for voting at a polling booth**

- 282.(1)** Subject to sections 284 (Arrangements for electors with disability) and 286 (Arrangements for electoral visitor voting), an elector,

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other than a declaration voter, must vote at a polling booth under the procedures set out in this section.

(2) The elector must enter a polling booth for the local government area, or division of the local government area, during voting hours at the booth.

(3) In the polling booth, the elector must give the elector's full name and address to an issuing officer.

(4) If the elector—

- (a) has a ballot paper and declaration envelope for the election; and
- (b) does not intend to cast a declaration vote;

the elector must return the ballot paper and declaration envelope to the issuing officer.

(5) The issuing officer must give a ballot paper to a person asking for it if the issuing officer is satisfied the person is entitled to vote at the election.

(6) The issuing officer may ask a person questions to decide whether the person is entitled to vote at the election.

(7) If, because of the answers to the questions—

- (a) the issuing officer is satisfied the person is an elector mentioned in section 290(a), (b) or (c) (Who must cast a declaration vote in ordinary elections); or
- (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;

the person may only cast a declaration vote.

(8) The issuing officer must place a mark, in ink, on the officer's copy of the voters roll against the name of each person given a ballot paper by the officer.

(9) An issuing officer who gives a ballot paper to a person must, if asked by a scrutineer, keep a record of the objection by the scrutineer to the entitlement of the person to vote.

(10) On being given the ballot paper, the elector must, without delay—

- (a) go alone into an unoccupied voting compartment in the polling booth; and
- (b) there, in private, mark a vote on the ballot paper in accordance

- with division 11 (Marking of ballot papers); and
- (c) fold the ballot paper, concealing the vote, and put it in the appropriate ballot box in the polling booth; and
- (d) leave the polling booth.

### **Duties of issuing officer for returned papers**

**283.(1)** An issuing officer must—

- (a) record in the approved form the giving of a ballot paper to a person who has returned a ballot paper and declaration envelope to the officer under section 282(4) (Procedure for voting at a polling booth); and
- (b) attach to the form all ballot papers and declaration envelopes returned to the officer; and
- (c) give the form and the attached documents to the presiding officer.

**(2)** The presiding officer must set aside the form and attached documents in the officer's custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

### **Arrangements for electors with disability**

**284.(1)** This section applies if an elector cannot enter a polling booth because of illness, disability or advanced pregnancy, but is able to come to a place (the “**voting place**”) close to the polling booth.

**(2)** The issuing officer may perform the issuing officer's functions, and the elector may vote at the voting place, as if it were the polling booth.

**(3)** However, the issuing officer must—

- (a) before taking any action under subsection (2), inform the scrutineers present of the proposed action; and
- (b) allow 1 scrutineer for each candidate to be present at the voting place; and
- (c) ensure that after the ballot paper is marked, it is—
  - (i) folded to conceal the vote; and



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- (ii) put in an envelope or, if the vote is a declaration vote, a declaration envelope; and
- (d) seal the envelope; and
- (e) if—
  - (i) the vote is a declaration vote—put the sealed declaration envelope in the appropriate ballot box inside the polling booth; or
  - (ii) if the vote is not a declaration vote—open the envelope inside the polling booth in the presence of any scrutineers, ensuring the ballot paper remains folded, and put the folded ballot paper in the appropriate ballot box.
- (4)** The issuing officer must ensure that, as far as practicable—
  - (a) for a declaration vote—section 294 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
  - (b) for another vote—section 282 (Procedure for voting at a polling booth) is complied with when the elector votes.
- (5)** Subsections (2) and (3) apply to all types of voting under this division.

**Arrangements for electors at institutions**

**285.(1)** If a polling booth is an institution or part of an institution, an issuing officer may visit electors resident in the institution, or part of the institution, for the purpose of enabling them to vote.

**(2)** Before taking action under subsection (1), the issuing officer must inform the scrutineers present of the proposed action.

**(3)** When visiting an elector in an institution, the issuing officer must—

- (a) take to the elector—
  - (i) a ballot paper or a declaration form, ballot paper and declaration envelope; and
  - (ii) a ballot box; and
  - (iii) anything else necessary to enable the elector to vote; and

- (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (4) The issuing officer must ensure that, as far as practicable—
  - (a) for a declaration vote—section 294 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
  - (b) for another vote—section 282 (Procedure for voting at a polling booth) is complied with when the elector votes.

### **Arrangements for electoral visitor voting**

**286.(1)** The following electors are entitled to be electoral visitor voters—

- (a) electors who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;
- (b) electors who, because they are caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth.

(2) An elector who is entitled to be an electoral visitor voter may apply to the returning officer to vote as an electoral visitor voter.

(3) The application must be in the approved form.

(4) If the application is received not later than 6 p.m. on the Thursday before polling day, the returning officer must direct an issuing officer to visit the elector to enable the elector to vote.

(5) As soon as practicable after the returning officer has directed an issuing officer to visit electors, the returning officer must inform each candidate for election of—

- (a) the place from which the issuing officer proposes to start making visits; and
- (b) the time or times on the day or days when the issuing officer proposes to start making visits.

(6) The issuing officer must visit an elector at a reasonable hour before 6 p.m. on polling day.

(7) When visiting an elector, the issuing officer must—

- (a) take to the elector—

- (i) a ballot paper or a declaration form, ballot paper and declaration envelope; and
  - (ii) a ballot box; and
  - (iii) anything else necessary to enable the elector to vote; and
- (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (8)** The issuing officer must ensure that, as far as practicable—
- (a) for a declaration vote—section 294 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
  - (b) for another vote—section 282 (Procedure for voting at a polling booth) is complied with when the elector votes.

### **Help for electors in voting**

**287.(1)** If an elector satisfies an issuing officer that the elector cannot vote without help, the elector may be accompanied into an unoccupied voting compartment in a polling booth, or be otherwise helped, by someone chosen by the elector.

- (2)** The person may help the elector in any of the following ways—
- (a) if asked by the elector—stating the names of candidates;
  - (b) acting as interpreter;
  - (c) explaining the ballot paper and the requirements of division 11 (Marking of ballot papers) about its marking;
  - (d) marking, or helping to mark, the ballot paper in the way the elector wishes;
  - (e) folding the ballot paper and putting it into a ballot box or a declaration envelope;
  - (f) sealing a declaration envelope or putting it into a ballot box.
- (3)** Subsections (1) and (2) apply to all types of voting.
- (4)** This section applies despite any of the following provisions—
- section 282(10) (Procedure for voting at a polling booth)

- section 294 (How declaration vote may be cast at a polling booth)
- section 297 (Casting a declaration vote by post).

### **Adjournment of poll**

**288.(1)** If the conduct of a poll is, or is likely to be, obstructed or interrupted from any cause, the returning officer may adjourn the conduct of the poll generally or at a particular polling booth.

**(2)** If the conduct of a poll at a particular polling booth is, or is likely to be, obstructed or interrupted from any cause, the presiding officer at the booth may adjourn the conduct of the poll at the booth.

**(3)** If a poll is adjourned under subsection (1) or (2), the returning officer must fix a day (not later than 34 days after the day on which the poll is adjourned) for conducting the adjourned poll.

**(4)** The returning officer must give public notice of the day fixed—

- (a) in a newspaper circulating generally in the relevant part of the local government area; and
- (b) in other ways the returning officer considers appropriate.

### ***Division 10—Declaration voting***

#### **Who may cast a declaration vote**

**289.** The following electors may cast a declaration vote—

- (a) an elector who, during ordinary voting hours on polling day, will not be within 8 km, by the nearest practicable route, from a polling booth;
- (b) an elector who, during ordinary voting hours on polling day, will be working or travelling under conditions that prevent voting at a polling booth;
- (c) an elector who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;
- (d) an elector who, because the elector is caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at

a polling booth;

- (e) an elector who, because of membership of a religious order or because of religious beliefs, will be prevented from voting at a polling booth for all, or most, of the ordinary voting hours on polling day;
- (f) an elector who, on polling day, will be serving a sentence of imprisonment, or under other detention;
- (g) an elector whose address has been omitted from a voters roll—
  - (i) because of the *Electoral Act 1992*, section 58; or
  - (ii) under an arrangement under the *Electoral Act 1992*, section 62 because of the *Electoral Act 1918* (Cwlth), section 104.

### **Who must cast a declaration vote in ordinary elections**

**290.** In an election (other than a postal ballot election), the following persons must cast a declaration vote—

- (a) an elector whose name is not on the voters roll apparently because of an official error;
- (b) an elector who is not enrolled on the voters roll, but is entitled to be enrolled, because of the *Electoral Act 1992*, section 64(1)(a)(ii);
- (c) an elector who appears, from a record apparently made in error, to have already voted in the election;
- (d) a person who is given a ballot paper and declaration envelope for voting because an issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election.

### **Declaration voting for postal ballot elections**

**291.** An elector in a postal ballot election must cast a declaration vote.

**How declaration vote is cast**

**292.** Subject to section 282 (Procedure for voting at a polling booth), an elector who may or must make a declaration vote must cast the vote by—

- (a) if the elector cannot enter a polling booth because of illness, disability or advanced pregnancy—going to a place close to a polling booth and voting at that place; or
- (b) going to a polling booth in the local government area, or division of the local government area, during voting hours at the booth and following the procedures set out in section 294 (How declaration vote may be cast at a polling booth); or
- (c) going to the local government’s public office before polling day and following the procedures set out in section 298 (Declaration voting before polling day); or
- (d) if the elector is an elector mentioned in section 289 (Who may cast a declaration vote) or an elector for a postal ballot election—using the ballot paper and declaration envelope given to the elector by the returning officer, and following the procedures set out in section 297 (Casting a declaration vote by post).

**Distribution of ballot papers to electors who may or must cast declaration vote**

**293.(1)** An elector mentioned in section 289 (Who may cast a declaration vote) may apply to the returning officer, or a presiding officer for the election, for a ballot paper and a declaration envelope.

**(2)** The application must be in the approved form.

**(3)** The returning officer or presiding officer must, as soon as practicable, give a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to the applicant if—

- (a) the application is received by the officer not later than 6 p.m. on the Thursday before polling day; and
- (b) the officer is satisfied the applicant is entitled to vote and make the application.

(4) If the returning officer or presiding officer is satisfied the applicant is an elector mentioned in section 290 (Who must cast a declaration vote in ordinary elections), the officer—

- (a) must not give a ballot paper to the applicant; but
- (b) must give to the applicant an approved declaration form.

(5) If the returning officer or presiding officer is satisfied the applicant has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to the applicant.

(6) The things given to an applicant under subsection (3) or (5) must be accompanied by an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(*insert* City, Town or Shire) of (*insert* name of local government area)’.

(7) The returning officer may give things to be given to an applicant under subsection (3) or (5) by posting the things to the applicant’s address stated in the voters roll, an electoral roll mentioned in the *Electoral Act 1992*, section 58(5),<sup>85</sup> the application or the declaration form.

*Example of addresses—*

An applicant’s address could be stated as a residential address, post office box number, mail service number or in another appropriate way.

(8) If things mentioned in subsection (6) are posted to an address outside Australia, the envelope mentioned in subsection (6) need not be reply paid.

### **How declaration vote may be cast at a polling booth**

**294.(1)** An elector who must cast a declaration vote, other than an elector for a postal ballot election, may cast the vote by—

- (a) entering a polling booth in the local government area, or division of the local government area, during voting hours at the booth; and
- (b) completing the declaration form given to the elector by an issuing

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<sup>85</sup> An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

officer.

(2) If the issuing officer is satisfied the elector has properly completed the declaration form, the officer must give a ballot paper and the approved declaration envelope to the elector.

(3) On being given the ballot paper and the declaration envelope, the elector must, without delay—

- (a) sign the appropriate declaration on the declaration envelope before the issuing officer and have the officer sign the envelope as witness; and
- (b) go alone into an unoccupied voting compartment in the polling booth; and
- (c) there, in private, mark a vote on the ballot paper in accordance with division 11 (Marking of ballot papers); and
- (d) fold the ballot paper, put it in the envelope and seal the envelope; and
- (e) put the sealed envelope in the appropriate ballot box in the polling booth; and
- (f) leave the polling booth.

### **Distribution of ballot papers to electors for postal ballot election**

**295.(1)** For a postal ballot election, the returning officer must post a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to each elector for the postal ballot election as soon as practicable after the nomination day.

(2) However, if—

- (a) the issuing officer is satisfied a person is an elector mentioned in section 290(a), (b) or (c) (Who must cast a declaration vote in ordinary elections); or
- (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;

the officer—

- (c) must not give a ballot paper and declaration envelope to the



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elector; and

(d) must give to the elector an approved declaration form.

(3) If the returning officer is satisfied the elector has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to the elector.

(4) The things posted to electors under subsection (1) or (3) must be accompanied by an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(*insert* City, Town or Shire) of (*insert* name of local government area).’.

(5) The returning officer may post the things to an elector under subsection (1), by posting them to the elector’s address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(5).<sup>86</sup>

(6) The returning officer may give the things to a person to whom subsection (2) applies by posting them to the elector’s address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(5), or to another address given by the person.

(7) The returning officer may give the things to an elector under subsection (3), by posting them to the elector’s address stated in the voters roll, an electoral roll mentioned in the *Electoral Act 1992*, section 58(5)<sup>87</sup> or the declaration form.

*Example of addresses for subsections (6) and (7)—*

An address could be stated as a residential address, post office box number, mail service or in another appropriate way.

(8) If things for an elector mentioned in subsection (4) are posted to an address outside Australia, the envelope mentioned in subsection (4) need not be reply paid.

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<sup>86</sup> An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

<sup>87</sup> An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

**Record of ballot papers given to postal voters**

**296.** The issuing officer who gives a ballot paper and declaration envelope under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote) or 295 (Distribution of ballot papers to electors for postal ballot election) must—

- (a) keep a record of the ballot paper and envelope given; and
- (b) sign the record.

**Casting a declaration vote by post**

**297.(1)** An elector who has received a ballot paper and declaration envelope under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote) or 295 (Distribution of ballot papers to electors for postal ballot election) must, before 6 p.m. on polling day—

- (a) sign the declaration on the declaration envelope in the presence of an adult, and have the adult sign the envelope as witness; and
- (b) in private, mark a vote on the ballot paper in accordance with division 11 (Marking of ballot papers); and
- (c) fold the ballot paper, put it in the declaration envelope and seal the envelope; and
- (d) put the sealed declaration envelope containing the ballot paper in the reply paid post envelope mentioned in section 293(6) or 295(4) and post or give the envelope to the returning officer for the election.

**(2)** On receipt of the sealed envelope, the returning officer must put it in the appropriate ballot box.

**Declaration voting before polling day**

**298.(1)** The returning officer must declare at least 1 of the following places as a polling booth to enable electors entitled to cast a declaration vote under section 289 (Who may cast a declaration vote) to cast a vote at the election before polling day—

- (a) the local government's public office, or a part of the public office;

- (b) another office used by the local government to receive rate payments;
- (c) another convenient place in the local government area.

(2) An elector mentioned in subsection (1) may, at any time during the relevant election period when the public office is open for the conduct of business, ask an issuing officer at the public office for a ballot paper.

(3) Subject to section 282(5) to (7) (Procedure for voting at a polling booth), the issuing officer must comply with the request.

(4) An elector who wishes to vote under subsection (1)—

- (a) must complete and sign the approved application form; and
- (b) must comply with section 282; and
- (c) need not complete a declaration envelope.

(5) If an elector is an elector who must cast a declaration vote under section 290 (Who must cast a declaration vote in ordinary elections), the elector—

- (a) must complete and sign the approved application form and declaration form; and
- (b) on being given a ballot paper and the approved declaration envelope, must comply with section 294(3) (How declaration vote may be cast at a polling booth) without delay.

(6) In subsection (2)—

**“relevant election period”** means the period—

- (a) not earlier than—
  - (i) 14 days before polling day; or
  - (ii) the longer period that the returning officer fixes and notifies in a newspaper circulating in the local government area, or division of the local government area; and
- (b) not later than 6 p.m. on the day before polling day.

**Distribution of declaration envelopes when separate ballot papers or polls on same day**

**298A.(1)** This section applies if a local government—

- (a) under section 272,<sup>88</sup> instructs the use of separate ballot papers in polls for elections of the mayor and another councillor conducted on the same day; or
- (b) under this part, conducts a poll under chapter 6, part 2<sup>89</sup> on the day of the poll for an election.

**(2)** In the conduct of the polls—

- (a) only 1 declaration envelope may be distributed to a declaration voter with the ballot papers for use in the polls; and
- (b) this part, other than this section, applies (with any necessary changes) as if the references to the distribution, marking and other dealing with a ballot paper were a reference to all or each of the ballot papers in the polls, as the case requires.

***Division 11—Marking of ballot papers*****Optional-preferential voting**

**299.(1)** For an election of a councillor if the local government area is divided into single-member divisions, a vote is validly cast if the elector votes in accordance with subsection (2) or (3).

**(2)** An elector may vote by marking on a ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of the candidate whom the elector prefers.

**(3)** Instead of voting in accordance with subsection (2), an elector may vote by—

- (a) marking on a ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of a candidate to record the elector's first preference for the candidate; and

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<sup>88</sup> Section 272 (Separate ballot papers for separate polls)

<sup>89</sup> Chapter 6, part 2 (Polls)

- (b) marking—
- (i) the numeral 2 in another square; or
  - (ii) the numerals 2, 3, and so on (in regular arithmetical sequence by intervals of 1 whole numeral) in other squares;
- to record the order of the elector's preferences for 1 or more (but not necessarily all) of the other candidates.

### **First-past-the-post voting**

**300.(1)** For an election other than one mentioned in section 299 (Optional-preferential voting), a vote is validly cast if the elector votes in accordance with this section.

**(2)** For an election of mayor, the elector must mark on the ballot paper the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers.

**(3)** For an election of other councillors, the elector must mark on the ballot paper—

- (a) if 1 candidate is to be elected—the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers; or
- (b) if 2 or more candidates are to be elected—
  - (i) the numeral 1, or a tick or a cross, in the square opposite the name of 1 candidate for whom the elector wishes to vote; and
  - (ii) the numeral 2, or the numerals 2, 3 and so on (in regular arithmetical sequence by intervals of 1 whole numeral), as the case may be, in the squares opposite the names of the other candidate or candidates for whom the elector wishes to vote, up to the number of candidates to be elected.

*Division 12—Replacement ballot papers***Use of replacement ballot papers**

**301.(1)** If, while voting at a polling booth or voting under section 284 (Arrangements for electors with disability) or 286 (Arrangements for electoral visitor voting), a ballot paper given to an elector is accidentally defaced or destroyed, an issuing officer must give to the elector a replacement ballot paper for use in the poll.

**(2)** However, before a replacement ballot paper can be given—

- (a) the ballot paper it replaces (the **“replaced ballot paper”**) must not have been already put in a ballot box in use in the poll; and
- (b) the elector must declare, in the approved declaration form, before the issuing officer that—
  - (i) the replaced ballot paper has been accidentally defaced or destroyed; and
  - (ii) the elector has not voted in the election; and
- (c) if the replaced ballot paper has been accidentally defaced—the elector must give the defaced ballot paper to the issuing officer; and
- (d) if the replaced ballot paper has been accidentally destroyed—the elector must give to the issuing officer, if practicable, the remains of the ballot paper; and
- (e) the issuing officer must put the defaced ballot paper, or any remains of the destroyed ballot paper, in an envelope, seal the envelope and set it aside in the officer’s custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

**(3)** If a ballot paper given to an elector under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote), or 295 (Distribution of ballot papers to electors for postal ballot election) is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6 p.m. on polling day, give to the elector a replacement ballot paper and the approved declaration envelope for use in the election.

(4) However, before a replacement ballot paper can be given—

- (a) the elector must declare, in the approved declaration form, before the issuing officer or an adult witness that—
  - (i) the ballot paper it replaces (the “**replaced ballot paper**”) has not been received by the elector or has been accidentally defaced or destroyed; and
  - (ii) the elector has not voted in the election; and
- (b) if the replaced ballot paper has been accidentally defaced—the elector must put the defaced ballot paper into the elector’s original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
- (c) if the replaced ballot paper has been accidentally destroyed—the elector must, if practicable, put the remains of the destroyed ballot paper into the elector’s original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
- (d) the issuing officer must set aside the elector’s declaration envelope in the officer’s custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

(5) The returning officer must record, in the approved form, the name and place of residence of each person to whom a replacement ballot paper is given.

(6) If a replacement ballot paper is used for voting—

- (a) the voting must take place under the appropriate provisions of division 9 (Voting generally) or 10 (Declaration voting); and
- (b) the vote cast must be dealt with under the appropriate provisions of division 14 (Counting of votes).

### *Division 13—Effect of ballot papers*

#### **Effect of ballot papers—optional-preferential voting**

**302.(1)** This section applies to the election if the system of voting is optional-preferential voting.

- (2)** For a ballot paper to have effect as recording a vote in the election—
- (a) the ballot paper—
    - (i) must be completed in accordance with section 299 (Optional-preferential voting); or
    - (ii) must contain writing or marking, other than marks mentioned in the section, indicating the elector’s intended preference, or intended order of preferences; and
  - (b) the ballot paper must not contain any writing or mark (other than one permitted by this part) by which the elector can, in the returning officer’s opinion, be identified; and
  - (c) the ballot paper must have been put into the appropriate ballot box as required by this part; and
  - (d) for a ballot paper put into a declaration envelope as required by section 297 (Casting a declaration vote by post)—
    - (i) section 297(1) must have been complied with; and
    - (ii) if the elector is an elector mentioned in section 289 or 290,<sup>90</sup> or an applicant who is given an approved declaration form under section 293(4)<sup>91</sup> or an elector who is given an approved declaration form under section 295(2),<sup>92</sup> and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 293, or the relevant elector under section 295; and
    - (iii) if the declaration envelope is posted to the returning officer—it must be received by the returning officer within 10 days after polling day.

- (3)** If a ballot paper shows 2 or more squares in which the same numeral

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<sup>90</sup> Section 289 (Who may cast a declaration vote) or 290 (Who must cast a declaration vote in ordinary elections)

<sup>91</sup> Section 293 (Distribution of ballot papers to electors who may or must cast declaration vote)

<sup>92</sup> Section 295 (Distribution of ballot papers to electors for postal ballot election)



is marked, those numerals and any higher numerals marked in other squares must be disregarded.

(4) If a ballot paper shows a break in the sequence of numerals marked in the squares on the ballot paper to indicate preferences, the numeral that breaks the sequence and any higher numerals marked in other squares must be disregarded.

### **Effect of ballot papers—first-past-the-post voting**

**303.(1)** This section applies to the election if the system of voting is first-past-the-post voting.

(2) For a ballot paper to have effect as recording a vote in the election—

(a) the ballot paper—

(i) must be completed in accordance with section 300 (First-past-the-post voting); or

(ii) must contain writing or marking indicating the elector's intended preference, or intention to vote for any particular candidate or candidates; and

(b) the ballot paper must not contain any writing or mark (other than one authorised by this part) by which the elector can, in the returning officer's opinion, be identified; and

(c) the ballot paper must have been put in the appropriate ballot box as required by this part; and

(d) for a ballot paper put into a declaration envelope as required by section 297 (Casting a declaration vote by post)—

(i) section 297(1) must have been complied with; and

(ii) if the elector is an elector mentioned in section 289 or 290<sup>93</sup> or an applicant who is given an approved declaration form under section 293(4)<sup>94</sup> or an elector who is given an

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<sup>93</sup> Section 289 (Who may cast a declaration vote) or 290 (Who must cast a declaration vote in ordinary elections)

<sup>94</sup> Section 293 (Distribution of ballot papers to electors who may or must cast declaration vote)

approved declaration form under section 295(2),<sup>95</sup> and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 293, or the relevant elector under section 295; and

- (iii) if the declaration envelope is posted to the returning officer—it must be received by the returning officer within 10 days after polling day.

(3) A ballot paper must not be rejected merely because it indicates the elector's intention to vote for a number of candidates greater than the number to be elected.

### **Posted vote presumed valid until contrary proved**

**304.** If a declaration envelope and ballot paper to which section 297 (Casting a declaration vote by post) applies is received by a returning officer by post, it must be presumed the provisions of section 297(1) have been complied with in relation to the declaration on the envelope until the contrary is proved.

### **Formal and informal ballot papers**

**305.(1)** A ballot paper that has effect to record a vote is a formal ballot paper.

(2) A ballot paper that has no effect to record a vote is an informal ballot paper.

### **Ballot paper partly formal and partly informal**

**306.(1)** This section applies if—

- (a) an election for mayor and an election for the other councillors of the local government are held at the same time and 1 ballot paper is used for both elections; and

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<sup>95</sup> Section 295 (Distribution of ballot papers to electors for postal ballot election)

- (b) the ballot paper, as completed for an election, is informal but, as completed for the other election, is formal.

(2) The informal part of the ballot paper must be rejected and the formal part of the ballot paper must be counted under division 14 (Counting of votes).

### *Division 14—Counting of votes*

#### **Votes to be counted in accordance with this division**

**307.** Votes cast in an election are to be counted as required by this division.

#### **Preliminary counting by presiding officer**

**308.(1)** As soon as practicable after the end of ordinary voting hours on polling day, the presiding officer for a polling booth, at a place nominated by the presiding officer, in the presence of another issuing officer and any candidates and scrutineers who wish to attend, must—

- (a) open all ballot boxes used at the polling booth; and
- (b) identify, and keep in a separate parcel, all declaration votes; and
- (c) examine all ballot papers that are not in declaration envelopes, and—
  - (i) identify, and keep in a separate parcel, all informal ballot papers; and
  - (ii) if the system of voting is first-past-the-post voting—count the number of votes for each candidate marked on all formal ballot papers, and keep the ballot papers in a separate parcel;
  - (iii) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel all formal ballot papers on which a first preference vote is recorded for the same candidate; and
- (d) prepare a written statement in duplicate in the approved form

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that—

- (i) sets out, in words and numerals, the number of votes for each candidate if subsection (1)(c)(ii) applies, or the number of first preference votes for each candidate if subsection (1)(c)(iii) applies; and
  - (ii) sets out the number of declaration envelopes and informal ballot papers; and
  - (iii) is signed by the presiding officer, and the issuing officer and any scrutineers who are present and wish to sign; and
- (e) seal up in separate parcels all formal and informal ballot papers, declaration envelopes and unused ballot papers; and
- (f) endorse on each parcel a description of its contents, sign the endorsement and allow any scrutineers, who wish to do so, to countersign the endorsement; and
- (g) put into separate parcels—
- (i) the voters roll and all books and papers used by the presiding officer in the poll with 1 copy of the statement prepared under paragraph (d); and
  - (ii) all ballot papers or remains of ballot papers set aside, under section 283(2) (Duties of issuing officer for returned papers) or 301(2)(e) or (4)(d) (Use of replacement ballot papers), for separate identification;
- and endorse on each parcel a description of its contents; and
- (h) endorse on each parcel—
- (i) the name of the local government area, or division of the local government area, for which the election was held; and
  - (ii) the name of the polling booth from which the parcel has come; and
- (i) sign each endorsement.

(2) The presiding officer must then, if the officer is not the returning officer, give to the returning officer, or to a person nominated by the returning officer, as soon as practicable—

- (a) the parcels mentioned in subsection (1); and
- (b) the copy of the statement prepared under subsection (1)(d) (other than the copy mentioned in subsection (1)(g)); and
- (c) a reconciliation statement in the approved form for all ballot papers given out at the presiding officer's polling booth and all votes put in ballot boxes at the booth.

(3) The returning officer or other person who receives things from the presiding officer under subsection (2) must give to the presiding officer a receipt for the things.

(4) The presiding officer may do anything required under subsection (1) or (2) through an issuing officer authorised by the presiding officer for that purpose.

*Example for subsection (4)—*

An issuing officer could be authorised to sort and bundle ballot papers and prepare a reconciliation statement for the presiding officer.

### **Preliminary processing of declaration votes by returning officer**

**309.(1)** After 8 a.m. on polling day, the returning officer may open all ballot boxes containing only declaration votes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

(2) As soon as practicable after 6 p.m. on polling day, the returning officer may open all other ballot boxes containing declaration votes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

(3) As soon as practicable after receipt by the returning officer of a parcel of declaration votes from a polling booth, the returning officer may open the parcel and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

### **Procedure for processing declaration envelopes**

**310.(1)** The returning officer must inform all candidates for election of the times when, and the places where, declaration envelopes will be examined by the returning officer and allow them, or their scrutineers, to

attend at the processing of declaration votes.

(2) On examining the declaration envelopes, if the returning officer is satisfied the declaration has been properly completed, the envelope is sealed and the declarant on the envelope is entitled to cast a declaration vote, the returning officer must—

- (a) detach the elector's declaration from the envelope; and
- (b) either—
  - (i) place a mark in ink against the declarant's name on the voters roll; or
  - (ii) if the voters roll is kept in an electronic form—record in a way approved by the returning officer that the declarant has voted; and
- (c) place the envelope containing the ballot paper (the **“accepted envelope”**) in a locked or sealed ballot box; and
- (d) keep the accepted envelope in the ballot box until dealt with under subsection (3) or section 311.<sup>96</sup>

(3) The returning officer may take the accepted envelopes from the locked or sealed ballot box and remove the ballot papers from the envelopes, without unfolding them, or allowing anyone else to unfold them, and keep them in a locked or sealed ballot box until dealt with under section 311.<sup>97</sup>

(4) The returning officer must—

- (a) put all ballot papers (not in declaration envelopes) that are in a ballot box opened under section 309(2) (Preliminary processing of declaration votes by returning officer) into a locked or sealed ballot box, without unfolding them, or allowing anyone else to unfold them; and
- (b) keep them there until they are dealt with in the official counting of votes.

(5) If a declaration envelope is rejected, the returning officer must set it

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<sup>96</sup> Section 311 (Official counting of votes)

<sup>97</sup> Section 311 (Official counting of votes)

aside in the officer's custody for separate identification.

(6) The returning officer must seal up in separate parcels, and keep in the officer's custody for separate identification, all rejected declaration envelopes, accepted envelopes from which ballot papers have been removed and elector's declarations that have been removed from declaration envelopes.

### **Official counting of votes**

**311.(1)** As soon as practicable after close of the poll in an election, the returning officer must follow the procedures set out in this section, in the presence of candidates for election, or scrutineers, who wish to attend.

(2) First, the returning officer must ascertain from the presiding officers' statements under section 308(2) (Preliminary counting by presiding officer)—

- (a) if the system of voting is first-past-the-post voting—the number of votes cast for each candidate; or
- (b) if the system of voting is optional-preferential voting—the number of first preference votes cast for each candidate.

(3) Second, the returning officer must—

- (a) open all sealed parcels of ballot papers given to the returning officer under section 308(2); and
- (b) examine all ballot papers that are not in declaration envelopes and—
  - (i) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on formal ballot papers, and keep the ballot papers in a separate parcel; or
  - (ii) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel the formal ballot papers on which a first preference vote is indicated for the same candidate, and count the number of first preference votes for each candidate on the formal ballot papers.

(4) Third, the returning officer must—

- (a) open all other ballot boxes on hand; and
- (aa) open all accepted envelopes mentioned in section 310(2)(d)<sup>98</sup> that have not yet been opened and remove the ballot papers; and
- (b) identify, and keep in a separate parcel, all informal ballot papers; and
- (c) examine all formal ballot papers and—
  - (i) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on the ballot papers, and keep the ballot papers in a separate parcel; or
  - (ii) if the system of voting is optional-preferential voting—arrange the ballot papers under the names of the candidates by putting in a separate parcel the ballot papers on which a first preference vote is recorded for the same candidate, and count the number of first preference votes for each candidate on the ballot papers.

(5) Fourth, the returning officer must add together—

- (a) if the system of voting is first-past-the-post voting—the number counted under subsections (3)(b)(i) and (4)(c)(i); or
- (b) if the system of voting is optional-preferential voting—the number counted under subsections (3)(b)(ii) and (4)(c)(ii).

(6) Fifth, the returning officer must reapply subsections (4) and (5) as more declaration envelopes are received by the returning officer under section 297 (Casting a declaration vote by post) after close of the poll.

### **Treatment of ballot paper to which objection is made**

**312.(1)** If, while a presiding officer or returning officer is complying with section 308 (Preliminary counting by presiding officer) or 311 (Official counting of votes), a candidate or scrutineer objects to treatment of a ballot paper as informal, the officer must mark on the back of it ‘formal’ or ‘informal’ according to whether the officer’s decision is to treat it as formal or informal.

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<sup>98</sup> Section 310 (Procedure for processing declaration envelopes)



(2) If, while a presiding officer or returning officer, is complying with section 308 or 311, a candidate or scrutineer objects to the counting of a vote for a particular candidate, the officer must mark on the back of the relevant ballot paper the name of the candidate for whom it is counted.

### **Counting of votes for optional-preferential system**

**313.(1)** This section applies to the counting of votes in an election in which the system of voting is optional-preferential voting.

(2) If, on final counting under section 311 (Official counting of votes), a majority of the first preference votes is for 1 candidate, that candidate is elected.

(3) If not, a second count must take place.

(4) On the second count—

- (a) the candidate who has the fewest first preference votes must be excluded; and
- (b) each ballot paper that records a first preference vote for the excluded candidate, and is not an exhausted ballot paper, must be transferred to the candidate next in the order of the elector's preference; and
- (c) the ballot paper must be counted as recording a vote for the candidate to whom it is transferred.

(5) If, on the second count, a candidate has a majority of the votes remaining in the count, the candidate is elected.

(6) If not, the process of—

- (a) excluding the candidate who has fewest votes; and
- (b) transferring each ballot paper that records a vote for the excluded candidate, and is not an exhausted ballot paper, to the continuing candidate next in order of the elector's preference; and
- (c) counting the ballot paper as recording a vote for the candidate to whom it is transferred;

must be repeated until 1 candidate has a majority of the votes remaining in the count.

(7) The candidate who under subsection (6) has a majority of the votes remaining in the count is elected.

(8) If, 2 or more candidates have an equal number of votes and 1 of them must be excluded—

- (a) if there has been an earlier count—the candidate who had the fewest votes at the last count at which the candidates did not have an equal number of votes must be excluded; or
- (b) if there has not been an earlier count or the candidates had an equal number of votes at all earlier counts—the candidate whose name is on a slip chosen under subsection (9) must be excluded.

(9) For the purposes of subsection (8)(b), the returning officer must—

- (a) write the names of the candidates who have an equal number of votes on similar slips of paper; and
- (b) fold the slips, concealing the names; and
- (c) put the slips in an opaque container and shuffle them; and
- (d) raise the container so that its contents cannot be seen and choose a slip at random.

(10) If, after a count at which the candidate with fewest votes must be excluded, 2 candidates have an equal number of votes and are the only candidates not excluded, the returning officer must decide, by way of a casting vote, which candidate is elected.

(11) In casting a vote under subsection (10), the returning officer need not complete a ballot paper.

(12) Subsection (10) has effect despite section 280 (Who may vote).

### **Counting of votes for first-past-the-post system**

**314.(1)** This section applies to the counting of votes in an election in which the system of voting is first-past-the-post voting.

(2) If the election is for mayor of the local government, the candidate who receives the greatest number of votes is elected.

(3) If the election is for councillors (other than the mayor) of the local government—

- (a) if 1 person only is to be elected—the candidate who receives the greatest number of votes is elected; and
- (b) if 2 or more persons are to be elected—the candidates elected are—
  - (i) the candidate who receives the greatest number of votes; and
  - (ii) the candidate who receives the next highest number of votes; and
  - (iii) the candidate who receives the next highest number of votes; and so on, up to the number of persons to be elected.

(4) If 2 or more candidates receive the same number of votes so that subsection (2) or (3)(a) or (b) cannot be applied, the returning officer must decide, by way of a casting vote, which candidate is elected.

(5) In casting a vote under subsection (4), the returning officer need not complete a ballot paper.

(6) Subsection (4) has effect despite section 280 (Who may vote).

### **Returning officer's duty after counting votes**

**315.(1)** When the result of the poll for the election is known, the returning officer must—

- (a) seal up all of the formal ballot papers, informal ballot papers, rejected declaration envelopes, accepted envelopes from which ballot papers have been removed, electors' declarations that have been removed from declaration envelopes, defaced ballot papers, remains of destroyed ballot papers, unused ballot papers, books and papers (other than the voters roll) of each presiding officer used in the poll; and
- (b) endorse on each parcel a description of its contents and sign the endorsement; and
- (c) allow any scrutineers, who wish to do so, to countersign the endorsement.

(2) The returning officer must then—

- (a) examine the voters rolls used in the election and marked by

issuing officers to ascertain whether any elector has voted more than once; and

- (b) make a list in the approved form of the names and numbers on the voters roll of all electors who appear to have voted more than once in the election, enclose the original of the list with the voters rolls in a sealed up parcel, and give a copy of the list to each person who was a candidate in the election.

### *Division 15—Actions following poll*

#### **Declaration of poll**

**316.(1)** As soon as practicable after the result of a poll for the election is known, the returning officer must, by notice in the approved form, declare—

- (a) the result of the poll; and
- (b) the names of each candidate who has been elected.

**(2)** The returning officer must—

- (a) display the notice in a conspicuous place in the local government's public office; and
- (b) publish the notice in a newspaper circulating generally in the local government area, or the division of the local government area, for which the election was held.

**(3)** The returning officer must not delay complying with subsection (1) or (2) merely because some ballot papers have not been received by the returning officer, if it is clear the votes recorded on the ballot papers could not affect the result of the election.

#### **Notice of final result of poll**

**317.(1)** The returning officer must give notice of the final result of the poll to each candidate as soon as practicable after—

- (a) all ballot papers used in the poll have been examined; and
- (b) all votes cast in the poll on ballot papers that appear to be formal

have been counted.

(2) The notice must be in the approved form.

### **Resolution about electors who fail to vote**

**317A.** As soon as practicable after the conclusion of the election, the local government must make a resolution deciding whether to take action under section 319<sup>99</sup> about electors who failed to vote in the election.

### **List of electors failing to vote**

**318.(1)** This section applies only if the local government makes a resolution under section 317A<sup>100</sup> deciding to take action under section 319 about electors who failed to vote in the election.

(2) The returning officer must make a list of the names and addresses, and the numbers shown on the voters roll, of all electors who—

- (a) have not been issued with ballot papers for the election; or
- (b) in the case of electors mentioned in section 289 (Who may cast a declaration vote) or electors for a postal ballot election—have not given their ballot papers to the returning officer.

(3) The returning officer must—

- (a) certify the list by declaration in the approved form; and
- (b) deposit the list with the local government.

(4) The list is to be held in the local government's public office, in the chief executive officer's custody.

### **Notice of failure to vote etc.**

**319.(1)** Subject to subsection (2), the local government—

- (a) must, as soon as practicable after a resolution by the local government to take action under this section, send a notice in the

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<sup>99</sup> Section 319 (Notice of failure to vote etc.)

<sup>100</sup> Section 317A (Resolution about electors who fail to vote)

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approved form to each elector shown on the list deposited under section 318<sup>101</sup> at the elector's address shown on the list; and

- (b) must record on the list, against the elector's name, the fact that the notice has been given.

(2) The notice must—

- (a) show the elector's full name and address and number on the voters roll; and

- (b) state that—

- (i) the elector appears to have failed to vote at the election; and
- (ii) it is an offence to fail, without a valid and sufficient reason, to vote at an election; and

- (iii) the elector may, if the elector considers the elector has committed the offence, pay one-half of a penalty unit (the "**penalty**") to the local government by a specified day, not earlier than 21 days after the elector receives the notice (the "**appropriate day**"), and, if the local government receives the payment by the appropriate day, no further steps will be taken against the elector about the offence; and

- (c) require the elector—

- (i) if the elector intends paying the penalty by the appropriate day—to sign the approved form about payment of the penalty included in or with the notice and post or give the form, together with the amount of the penalty, to the local government so it is received by the appropriate day; or
- (ii) if the elector does not intend paying the penalty by the appropriate day—to state, in the approved form included in or with the notice, whether the elector voted and, if not, the reason for failing to vote and to sign the form and post or give it to the local government so it is received by the appropriate day.

(3) The elector must comply with the requirements of the notice.

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<sup>101</sup> Section 318 (List of electors failing to vote)

**(4)** If—

- (a) the elector is absent, or unable, because of physical incapacity, to comply with the requirements of the notice; and
- (b) another elector who has personal knowledge of the facts complies with the requirements and in doing so also has his or her signature on the form witnessed;

the first elector is taken to have complied with the notice's requirements.

**Payments for failure to vote**

**319A.(1)** If the local government sends an elector a notice under section 319(1) for an election and payment is made to the local government under section 319(2) to (4), the local government must—

- (a) accept the payment; and
- (b) give the person a receipt for the payment; and
- (c) not take any proceeding against the elector for failing to vote at the election.

**(2)** In this section—

“**proceeding**” includes serving an infringement notice.

**Recording response to notice**

**320.** The local government must record against the name of an elector who is given a notice under section 319 (Notice to elector failing to vote) on the list made under section 318 (List of electors failing to vote) whether the elector—

- (a) has complied with the requirements of the notice under section 319(2)(c); and
- (b) had a valid and sufficient reason for failing to vote at the election.

**Evidentiary value of list under s 318**

**321.** In a proceeding, a document purporting to be a list, or a copy of or extract from a list, made under section 318 (List of electors failing to vote),

and to be certified by the local government's chief executive officer is evidence of the matters contained in the document.

### **Disposal of material resulting from election**

**322.(1)** As soon as practicable after giving notice of the final result of the poll to candidates, the returning officer must—

- (a) destroy all unused ballot papers; and
- (b) seal up in packets all other parcels sealed up under section 315 (Returning officer's duty after counting votes); and
- (c) endorse on each packet—
  - (i) a description of its contents; and
  - (ii) the name of the local government area, or division of the local government area, for which the election was held; and
  - (iii) the polling day;and sign the endorsement; and
- (d) if the returning officer is not the local government's chief executive officer—give each packet to the chief executive officer.

**(2)** The chief executive officer must keep the packets in safe custody for 1 year.

**(3)** At the end of the year, the chief executive officer must—

- (a) destroy all ballot papers contained in the packets; and
- (b) dispose of the other contents of the packets in the way the officer considers appropriate.

**(4)** Each councillor of the local government may attend during the destruction of ballot papers by, or at the direction of, its chief executive officer to ensure the papers are destroyed.

### **Ballot papers as evidence**

**323.** In a proceeding, a ballot paper apparently used at an election and identified by evidence as 1 of the ballot papers given to, or held by, the local government's chief executive officer under section 322 (Disposal of



material resulting from election) is evidence of the vote or votes cast in the election as recorded on the ballot paper.

### **Notice to electors whose ballot papers are not accepted**

**323A.(1)** Subsection (2) applies if—

- (a) in an election, a person makes a declaration vote under section 290(a);<sup>102</sup> and
- (b) the person's ballot paper is not accepted for counting under section 310<sup>103</sup> because the returning officer is not satisfied that the declarant on the declaration envelope is entitled to cast a declaration vote in the election.

(2) As soon as practicable after an election, the local government must send a notice in the approved form to the person advising the person why the ballot paper was not accepted for counting.

### **Notice to Electoral Commission of certain declaration votes**

**324.** As soon as practicable after the election, the returning officer must give to the Electoral Commission notice of the names and addresses of all persons permitted to vote at the election whose names are not on the voters roll, apparently because of official error, if the error relates to the keeping of an electoral roll under the *Electoral Act 1992*.

## ***Division 16—Enforcement***

### ***Subdivision 1—Offences in general***

#### **False or misleading statements**

**325.(1)** A person must not—

- (a) state something under this chapter that the person knows is false

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<sup>102</sup> Section 290 (Who must cast a declaration vote in ordinary elections)

<sup>103</sup> Section 310 (Procedure for processing declaration envelopes)

or misleading in a material particular; or

- (b) omit from a statement made under this chapter anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—20 penalty units or imprisonment for 6 months.

(2) A complaint against a person for a contravention of subsection (1) is sufficient if it states that the statement was false or misleading to the person's knowledge.

### **False, misleading or incomplete electoral documents**

**326.** A person must not give a document under this chapter containing information that the person knows is false, misleading or incomplete in a material particular without—

- (a) indicating that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Bribery**

**327.(1)** In this section—

**“election conduct”** of a person means—

- (a) the way in which the person votes at an election; or
- (b) the person's nominating as a candidate for an election; or
- (c) the person's support of, or opposition to, a candidate or a political party at an election.

(2) A person must not—

- (a) ask for or receive; or
- (b) offer, or agree, to ask for or receive;

property or a benefit of any kind (whether for the person or someone else)

on the understanding that the person's election conduct will be influenced or affected.

**(3)** A person must not, in order to influence or affect another person's election conduct, give, or promise or offer to give, property or a benefit of any kind to anyone else.

Maximum penalty—85 penalty units or imprisonment for 2 years.

### **Providing money for illegal payments**

**328.** A person must not knowingly give money for—

- (a) any payment that is contrary to law relating to elections; or
- (b) replacing any money that has been spent in making a payment mentioned in paragraph (a).

Maximum penalty—85 penalty units or imprisonment for 2 years.

### **Improperly influencing electoral officers**

**329.** A person must not improperly influence an electoral officer in the performance of the officer's duties under this Act.

Maximum penalty—35 penalty units or imprisonment for 1 year.

### **Interfering with election right or duty**

**330.** A person must not hinder or interfere with the free exercise or performance, by another person, of another right or duty under this Act that relates to an election.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Forging or uttering electoral papers**

**331.(1)** A person must not—

- (a) forge an electoral paper; or
- (b) utter a forged electoral paper knowing it to be forged.

Maximum penalty—20 penalty units or imprisonment for 6 months.

(2) A person must not make someone else's signature on an electoral paper.

Maximum penalty—20 penalty units.

### **Wilful neglect etc. of electoral officers**

**332.** An electoral officer must not wilfully neglect or fail to perform a duty under this Act.

Maximum penalty—20 penalty units.

### **No record to be made of vote cast**

**333.** An electoral officer, or scrutineer, must not make a mark, memorandum or note on a voters roll or other list of voters or otherwise—

- (a) that indicates for whom a person has cast a vote; or
- (b) that would enable the officer or scrutineer to know or remember for whom a person has cast a vote.

Maximum penalty—10 penalty units.

### ***Subdivision 2—Offences about electoral advertising and information***

#### **Responsibility for election matter**

**334.(1)** A person must not, during the election period for an election—

- (a) print, publish, distribute or broadcast; or
- (b) permit or authorise someone else to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing election matter unless there appears, or is stated, at its end the particulars required by subsection (2).

Maximum penalty—20 penalty units.

(2) The particulars are—

- (a) in any case—the name and address (other than a post office box

or facility) of the person who authorised the advertisement, handbill, pamphlet or notice; and

- (b) for an advertisement or notice printed except in a newspaper—the name and place of business of the printer.

(3) Subsection (1) does not apply to an advertisement that—

- (a) is printed, published or distributed on a car sticker, T-shirt, lapel badge, pen, pencil or balloon; or
- (b) is of a kind prescribed by regulation.

### **Headline to electoral advertisements**

**335.** The proprietor of a newspaper commits an offence if—

- (a) an article, or a paragraph, containing matter about an election is printed in the newspaper; and
- (b) either—
  - (i) the insertion of the article or paragraph is, or is to be, paid for; or
  - (ii) any reward or compensation, or promise of reward or compensation, is, or is to be, made for the insertion of the article or paragraph; and
- (c) the proprietor does not cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

Maximum penalty—10 penalty units.

### **Misleading voters**

**336.(1)** During an election period, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the election.

(2) A person must not, for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate.

(3) During an election period, a person must not print, publish, distribute or broadcast by television anything that purports to be a representation of a ballot paper for use in the election, if it is likely to induce an elector to vote other than in accordance with this part.

Maximum penalty—40 penalty units.

### *Subdivision 3—Offences about voting*

#### **Failure to vote**

**337.(1)** An elector must not—

- (a) fail to vote at an election without valid and sufficient reason; or
- (b) fail to comply with the requirements of a notice given to the elector under section 319 (Notice to elector failing to vote); or
- (c) purport to comply with the requirements of a notice given to the elector under section 319, make a statement the elector knows to be false or misleading in a material particular.

Maximum penalty—1 penalty unit.

(2) An elector's belief that it is part of the elector's religious duty not to vote at elections is valid and sufficient reason for the elector's failure to vote in a particular election.

(3) A complaint against a person for a contravention of subsection (1)(c) is sufficient if it states that the statement was false or misleading to the person's knowledge.

#### **Leave to vote**

**338.(1)** This section applies if—

- (a) an employee who is an elector asks his or her employer, before polling day for an election, for leave of absence to vote at the election; and
- (b) the absence is necessary to enable the employee to vote at the election.

(2) The employer must allow the employee leave of absence for a

reasonable period (not more than 2 hours) to enable the employee to vote at the election, unless the absence is reasonably likely to cause danger or substantial loss to the employer in relation to the employment concerned.

(3) The employer must not impose any penalty or disproportionate deduction of pay for the leave of absence.

(4) An employee must not ask for leave of absence under subsection (1) to vote at an election unless the employee genuinely intends to vote at the election.

Maximum penalty—10 penalty units.

### **Canvassing in or near polling booths**

**339.(1)** During an election period, a person must not do any of the things mentioned in subsection (2)—

- (a) inside a polling booth; or
- (b) within 6 m of an entrance to a building if—
  - (i) the building is, or is part of, a polling booth; and
  - (ii) either a ballot box is in the building for use in the election, or a person is in the building for the purpose of casting a vote in the election.

(2) The things are—

- (a) canvassing for votes; or
- (b) inducing an elector not to—
  - (i) vote in a particular way; or
  - (ii) vote at all in the election; or
- (c) loitering; or
- (d) obstructing the free passage of a person seeking to vote.

Maximum penalty—10 penalty units.

### **Interrupting voting etc.**

**340.** A person must not—

- (a) enter or remain in a polling booth other than under this Act; or
- (b) wilfully interrupt, obstruct or disturb any proceeding at an election; or
- (c) enter a voting compartment other than under this Act; or
- (d) prevent a scrutineer from entering or leaving a polling place—
  - (i) during voting hours for the polling place; or
  - (ii) while votes are being counted at the polling place; or
- (e) obstruct or wilfully mislead an electoral officer in the performance of a duty.

Maximum penalty—10 penalty units.

### **Influencing voting**

**341.** A person must not, by violence or intimidation, influence a person's vote at an election.

Maximum penalty—85 penalty units or imprisonment for 2 years.

### **Party badges not to be worn in polling booths**

**342.** A person must not wear or display any badge or emblem of a political party in a polling booth.

Maximum penalty—1 penalty unit.

### **Voting if not entitled**

**343.** A person must not, at an election—

- (a) vote in someone else's name (including a dead or fictitious person); or
- (b) vote more than once; or
- (c) cast a vote that the person knows the person is not entitled to cast; or
- (d) if the person knows someone else is not entitled to vote at the



election, procure the other person to vote.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Offences relating to ballot papers**

**344.(1)** A person must not—

- (a) wilfully fail to comply with section 282 (Procedure for voting at a polling booth) or 297 (Casting a declaration vote by post); or
- (b) take a ballot paper out of a polling booth other than under this part; or
- (c) place in a ballot box a ballot paper that has not been—
  - (i) given to an elector under this part; or
  - (ii) marked by the elector.

**(2)** A person must not, without lawful excuse, obtain possession of or have in the person's possession—

- (a) a ballot paper that has been marked by anyone else; or
- (b) a declaration form or envelope that has been signed by anyone else.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Failure to deliver or post documents for someone else**

**345.(1)** If a person is given, for delivery or posting to the returning officer—

- (a) an application by someone else to be treated as a declaration voter; or
- (b) a declaration form that appears to be completed;

the person must promptly deliver or post it to the returning officer.

**(2)** If a person is given, for delivery or posting to the returning officer, a declaration envelope that appears to be completed, the person must give or post it to the returning officer before 6 p.m. on polling day.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**Breach of confidentiality of vote**

**346.(1)** A person must not examine a ballot paper used in the election to ascertain the candidates for whom an elector has voted.

**(2)** Subsection (1) does not apply to a proceeding in a court or a person in the performance of functions under this Act.

**(3)** If, in performing a function for an election, a person has ascertained the candidates for whom an elector has cast a vote, the person must not disclose, or assist in disclosing, that fact, unless the person is required by law to make the disclosure.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**Breaking seals on parcels**

**347.** A person must not wilfully open or break the seal of a parcel or packet sealed under this part unless the person is authorised under this Act or ordered by a court to open or break the seal.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**Duty of witness to signing of declaration voting papers**

**348.** A person (the “**witness**”) must not sign a declaration envelope as witness under section 297 (Casting a declaration vote by post) unless—

- (a) the witness is satisfied of the identity of the elector who signs the declaration before the witness; and
- (b) the witness has seen the elector sign the declaration; and
- (c) either—
  - (i) the witness knows that the declaration made by the elector is true; or
  - (ii) the witness is satisfied that the declaration is true because of inquiries of the elector or otherwise.

Maximum penalty—20 penalty units or imprisonment for 6 months.

***Subdivision 4—Injunctions*****Injunctions to restrain contravention of chapter**

**349.(1)** An application may be made to the Supreme Court for an injunction if—

- (a) either—
  - (i) a person (the “**offending party**”) has engaged, is engaging or proposes to engage in conduct; or
  - (ii) a person (also the “**offending party**”) has failed, is failing or proposes to fail to do anything; and
- (b) the conduct or failure constituted, constitutes or would constitute a contravention of, or an offence against, this chapter.

**(1A)** Without limiting the operation of subsection (1), an application may also be made to the Supreme Court for an injunction if a returning officer for an election decides a person is not properly nominated for the election.

**(2)** The application may be made by the returning officer or a candidate, or nominee as a candidate, for election.

**(3)** The court may grant an interim injunction pending determination of the application.

**(4)** If a returning officer makes the application, the court must not require the officer or anyone else to give an undertaking about damages as a condition of granting an interim injunction.

**(5)** On consideration of the application, the court may—

- (a) if subsection (1)(a)(i) applies—
  - (i) grant an injunction restraining the offending party from engaging in the conduct concerned; and
  - (ii) also require the offending party to do anything to prevent or remedy the contravention; or
- (b) if subsection (1)(a)(ii) applies—grant an injunction requiring the offending party to do the thing in question;
- (c) if subsection (1A) applies—grant an injunction requiring the returning officer to accept the person’s nomination for the

election.

(6) The court may grant the injunction—

- (a) if the court is satisfied the offending party has engaged in the conduct, or failed to do the thing, mentioned in subsection (1)—whether or not it appears to the court that the offending party intends—
  - (i) to engage again or continue to engage in the conduct; or
  - (ii) to fail or continue to fail to do the thing; or
- (b) if it appears to the court that, if the injunction is not granted, it is likely the offending party will engage in the conduct, or fail to do the thing, mentioned in subsection (1), whether or not—
  - (i) the offending party has previously engaged in the conduct or failed to do the thing; or
  - (ii) there is imminent danger of substantial damage to any person if the offending party engages in the conduct or fails to do the thing.

(7) The court may refuse to grant an injunction if it appears to the court that application was not made to the court at the earliest possible opportunity.

(8) The court may discharge or vary the injunction or an interim injunction.

(9) The powers conferred on the court by this section are in addition to, and do not limit, other powers of the court.

## **PART 7—FRESH ELECTIONS**

### **Requirements for fresh election**

**350.(1)** A regulation may direct that a fresh election of councillors of a local government be held if the local government is dissolved under section 113 (Dissolution of local government).

(2) A regulation may direct that a fresh election of councillors of a local government, or a division of a local government, be held if action is taken to implement a reviewable local government matter under chapter 3 (Interaction with the State), part 1 (Reviewable local government matters).

(2A) However, subsection (2) does not apply if the matter is the subject of a determination of an electoral and boundaries review commission under section 72G(1C) or 73E(1C).

(3) A direction may be given at the time of the dissolution or the action is taken as mentioned in subsection (2), or at a later time.

### **Time for fresh election**

**351.** The day on which a fresh election is to be held is a Saturday fixed by regulation made under section 350 (Requirements for fresh election).

### **Returning officer for fresh election**

**352.** The returning officer for a fresh election of councillors of a local government is the local government's chief executive officer or, if there is no chief executive officer, a person appointed by the Minister.

### **Voters roll for fresh election**

**353.** A voters roll for a fresh election must be compiled under the regulation directing the holding of the fresh election.

### **Other provisions of chapter apply**

**354.** The provisions of this chapter (other than this part) apply, with all necessary changes and any changes prescribed by regulation, to a fresh election as if the election were a triennial election.

### **Extension of term of councillors**

**355.** In directing a fresh election, a regulation may declare that the councillors elected at the fresh election are elected for a term ending at the conclusion of the triennial elections after the next triennial elections.

## **PART 8—DISCLOSURE OF ELECTION GIFTS**

### *Division 1—Preliminary*

#### **Definitions for pt 8**

**355A.** In this part—

**“associated entity”** means an incorporated or unincorporated body, or the trustee of a trust, that—

- (a) is controlled by 1 or more political parties; or
- (b) operates wholly or mainly for the benefit of 1 or more political parties.

**“disclosure period”**—

- (a) for a candidate for an election—see division 2, subdivision 1; and
- (b) for section 355Q,<sup>104</sup> for an election—see division 2, subdivision 2.

**“disposition of property”** means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

- (a) the allotment of shares in a corporation; and
- (b) the creation of a trust in property; and
- (c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in property; and
- (e) the exercise by a person of a general power of appointment of property in favour of someone else; and
- (f) a transaction by a person with intent to diminish, directly or indirectly, the value of the person’s own property and to increase

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<sup>104</sup> Section 355Q (Gifts for third party expenditure for political purposes)

the value of someone else's property.

**“gift”** means the disposition of property or the provision of a service, without consideration or for a consideration less than the full consideration, but does not include—

- (a) transmission of property under a will; or
- (b) provision of a service by volunteer labour.

**“prescribed amount”** means an amount prescribed under a regulation but, until a regulation is made, means—

- (a) in sections 355N(2)(b)(iii) and 355O(1)<sup>105</sup>—\$200; or
- (b) in section 355Q(1)(b) and (6),<sup>106</sup> definition “prescribed gift”, paragraph (c)—\$1 000.

**“prescribed period”** means a period prescribed under a regulation but, until a regulation is made, means 30 days.

**“register”**, for a local government, see section 355T(1).<sup>107</sup>

**“registered industrial organisation”** means an organisation registered under a law of the State, another State or the Commonwealth about the registration of industrial organisations.

**“relevant details”**, for a gift, means the value of the gift and when the gift was made and—

- (a) for a gift purportedly made on behalf of the members of an unincorporated association—
  - (i) the association's name; and
  - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association; or
- (b) for a gift purportedly made out of a trust fund or out of the funds

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<sup>105</sup> Section 355N (Gifts to candidates) and section 355O (Certain gifts not to be received)

<sup>106</sup> Section 355Q (Gifts for third party expenditure for political purposes)

<sup>107</sup> Section 355T (Registers of electoral gifts)

of a foundation—

- (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
  - (ii) the title or other description of the trust fund or the name of the foundation; or
- (c) for a gift not mentioned in paragraph (a) or (b)—the name and residential or business address of the person who made the gift.

**“value”**, for a gift, means—

- (a) if the gift is money—the amount of the money; or
- (b) if the gift is property other than money—
  - (i) the market value of the property; or
  - (ii) if a regulation prescribes principles under which the value of the property is to be determined—the value determined under the principles; or
- (c) if the gift is the provision of a service—
  - (i) the amount that would reasonably be charged for providing the service if the service were provided on a commercial basis; or
  - (ii) if a regulation prescribes principles under which the amount that would reasonably be charged for providing the service is to be determined—the amount determined under the principles.

## **Candidates**

**355B.** For this part, a reference to a candidate for an election is a reference to a person who, at noon on the nomination day for the election, is properly nominated for the election.

## **Things taken to be done by political party**

**355C.** For this part, for a political party that is not a body corporate,



things done by or with the authority of members or officers of the party on behalf of the party are done by or for a political party.

### **Related corporations**

**355D.** For this part—

- (a) a body corporate and any other body corporate related to it are taken to be the one person; and
- (b) whether a body corporate is related to another body corporate must be decided in the same way a corporation is decided to be related to another corporation under the Corporations Law.

### *Division 2—Disclosure periods*

#### *Subdivision 1—Disclosure periods for candidates for elections*

### **Purpose of subdivision**

**355E.** This subdivision defines the disclosure periods for candidates for elections.

### **Disclosure period for candidates at previous elections**

**355F.(1)** This section applies if a candidate for an election (the “**current election**”) was a candidate for another election relating to any local government the conclusion of which was within the relevant period before the polling day for the current election.

(2) The disclosure period for the candidate for the current election starts at the end of the prescribed period after the conclusion of the most recent election happening before the current election in which the candidate was a candidate.

(3) The disclosure period ends at the end of the prescribed period after the conclusion of the current election.

(4) In this section—

**“relevant period”** means the period prescribed under a regulation but, until a regulation is made, means 4 years.

### **Disclosure period for candidates at previous fresh elections**

**355G.(1)** This section applies if a person—

- (a) was a candidate at a fresh election (the **“previous election”**) relating to a local government (the **“first local government”**); and
- (b) is a candidate for a subsequent election relating to any local government (the **“relevant election”**) up to and including the next triennial election relating to the first local government.

**(2)** Despite section 355F,<sup>108</sup> the disclosure period for the candidate for the relevant election starts at the end of the prescribed period after the conclusion of whichever is the later of—

- (a) the previous election; or
- (b) a later election in which the candidate was a candidate before the relevant election.

**(3)** The disclosure period ends at the end of the prescribed period after the conclusion of the relevant election.

### **Disclosure period for new candidates**

**355H.(1)** This section applies if sections 355F, 355G and 355I<sup>109</sup> do not apply to a person who is a candidate for an election.

**(2)** The disclosure period for the candidate for the election starts when the first of the following happens or, if they happen at the same time, when they happen—

- (a) the person announces the person is to be a candidate in the

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<sup>108</sup> Section 355F (Disclosure period for candidates at previous elections)

<sup>109</sup> Section 355F (Disclosure period for candidates at previous elections), section 355G (Disclosure period for candidates at previous fresh elections) and section 355I (Disclosure period for certain candidates who are appointed councillors)

election;

(b) the person nominates as a candidate in the election.

(3) The disclosure period ends at the end of the prescribed period after the conclusion of the election.

### **Disclosure period for certain candidates who are appointed councillors**

**355I.(1)** This section applies if a candidate for an election, when nominating as a candidate, is an appointed councillor of a local government to whom neither section 355F nor section 355G<sup>110</sup> applies.

(2) Despite section 355H,<sup>111</sup> the disclosure period for the candidate for the election starts when the candidate was appointed a councillor.

(3) The disclosure period ends at the end of the prescribed period after the conclusion of the election.

### *Subdivision 2—Disclosure period for third parties for elections*

#### **Purpose of subdivision**

**355J.** This subdivision defines the disclosure period for section 355Q<sup>112</sup> for an election.

#### **Disclosure period for s 355Q**

**355K.** For section 355Q, the disclosure period for an election—

(a) starts at the end of the prescribed period after the date of the immediately preceding triennial elections for local governments under section 217;<sup>113</sup> and

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<sup>110</sup> Section 355F (Disclosure periods for candidates at previous elections) and section 355G (Disclosure period for candidates at previous fresh elections)

<sup>111</sup> Section 355H (Disclosure period for new candidates)

<sup>112</sup> Section 355Q (Gifts for third party expenditure for political purposes)

<sup>113</sup> Section 217 (Date of triennial elections)

- (b) ends at the end of the prescribed period after the polling day for the election.

*Subdivision 3—Transitional provisions for start of disclosure periods*

**Transitional provisions**

**355L.(1)** Despite subdivisions 1 and 2—

- (a) if a disclosure period would otherwise start before 1 January 1997, it starts on 1 January 1997; and
- (b) for a candidate to whom section 355H<sup>114</sup> would otherwise apply, the disclosure period for a 1997 triennial election starts on 1 January 1997, regardless of the day of the candidate's announcement of candidature or nomination as a candidate; and
- (c) for a candidate to whom section 355I<sup>115</sup> would otherwise apply, the disclosure period for a 1997 triennial election starts on 1 January 1997, regardless of when the candidate was appointed a councillor.

(2) This subdivision expires on 1 January 2001.

*Division 3—Disclosure of gifts*

*Subdivision 1—Disclosure by candidates for elections*

**Definitions**

**355M.** In this subdivision—

**“candidate’s campaign committee”**, for a candidate for an election, means a committee formed to help the candidate’s campaign in the election but does not include a committee that is recognised by a

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<sup>114</sup> Section 355H (Disclosure period for new candidates)

<sup>115</sup> Section 355I (Disclosure period for certain candidates who are appointed councillors)

political party as being part of the political party.

**“gifts received by a candidate for an election”** includes gifts received by the candidate’s campaign committee for or on behalf of the candidate.

### **Gifts to candidates**

**355N.(1)** This section applies to gifts received by a candidate for an election during the candidate’s disclosure period for the election but not to a gift made in a private capacity to the candidate, for the candidate’s personal use, that the candidate has not used, and does not intend to use, solely or substantially for a purpose related to any election.

**(2)** Each candidate for the election must, within 3 months after the conclusion of the election, give to the chief executive officer of the local government to which the election relates a return, in the approved form, stating—

- (a) whether the candidate received any gifts to which this section applies; and
- (b) if so—
  - (i) the total value of all of the gifts; and
  - (ii) how many persons made the gifts; and
  - (iii) the relevant details for each gift made by a person to the candidate, if the total value of all gifts made by the person to the candidate during the disclosure period is the prescribed amount or more.

### **Certain gifts not to be received**

**355O.(1)** It is unlawful for a candidate for an election, or a person acting on behalf of a candidate for an election, to receive, during the disclosure period for the candidate for the election, a gift made to or for the benefit of the candidate the value of which is the prescribed amount or more unless—

- (a) the relevant details for the gift are known to the person receiving the gift; or
- (b) when the gift is made—

- (i) the person making the gift gives to the person receiving the gift details of the gift; and
- (ii) the person receiving the gift has no reasonable grounds to believe that the details given are not the relevant details for the gift.

(2) If a person receives a gift that, under subsection (1), it is unlawful for the person to receive, an amount equal to the value of the gift—

- (a) is payable by the person to the local government to which the election relates; and
- (b) may be recovered by the local government as a debt owing to the local government by action in a court of competent jurisdiction against the person.

(3) For subsection (1), a person who is a candidate in an election remains a candidate for the prescribed period after the conclusion of the election.

(4) For this section, 2 or more gifts made by the one person to or for the benefit of the one candidate, are to be treated as 1 gift.

(5) In this section—

**“person acting on behalf of a candidate for an election”** includes the candidate’s campaign committee for the election.

**“person making a gift”** includes an unincorporated association on whose behalf a gift is made.

### **Chief executive officer to give reminder notice to candidates**

**355P.(1)** This section applies if a candidate for election has not given the return the candidate is required to give for the election under section 355N.<sup>116</sup>

(2) Within 2 months after the conclusion of the election, the chief executive officer to whom the return must be given must give in writing the information mentioned in subsection (3) to the candidate.

(3) The information is—

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<sup>116</sup> Section 355N (Gifts to candidates)

- (a) a reminder that the candidate is required to give the return within 3 months after the conclusion of the election; and
- (b) the following provisions, or a general outline of them, to the extent they may be relevant to the candidate—
  - section 171 (Disqualification and vacation of office for certain offences)
  - section 260(1A) (Disposal of deposits generally)
  - section 355N (Gifts to candidates)
  - section 355W (Offences about returns)
  - section 355Y (Obtaining of information and completion of returns).

***Subdivision 2—Disclosure by third parties for elections***

**Gifts for third party expenditure for political purposes**

**355Q.(1)** This section applies if, during the disclosure period for this section<sup>117</sup> for an election (the “**relevant election**”) relating to a local government (the “**relevant local government**”)—

- (a) a person (other than a political party, an associated entity or a candidate for the election) incurs or has incurred expenditure for a political purpose about an election or elections relating to the relevant local government; and
- (b) the total amount of all the expenditure mentioned in paragraph (a) is the prescribed amount or more; and
- (c) the person receives a gift that is a prescribed gift in relation to the relevant local government.

**(2)** The person must, before the end of 3 months after the conclusion of the relevant election, give to the chief executive officer of the relevant local government a return, in the approved form, stating the relevant details for all gifts that—

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<sup>117</sup> The disclosure period for this section is defined in section 355K.

(a) are prescribed gifts in relation to the relevant local government; and

(b) are received by the person during the disclosure period.

(3) For subsection (1), a person does not include persons appointed to form a committee to help the campaign in an election of a candidate who has been nominated for election by the registered officer of a political party if the campaign committee is recognised by the political party as being part of the political party.

(4) Expenditure for a political purpose relating to 2 or more local governments is taken to have been incurred for a political purpose about an election relating to each local government.

(5) In this section, 2 or more gifts made, during the disclosure period for this section for an election, by the one person to another person are to be treated as 1 gift.

(6) In this section—

**“expenditure”**, for a political purpose, means expenditure for 1 or more of the following—

(a) publication by any means (including radio or television) of election matter;

(b) public expression of views on an issue in an election;

(c) a gift to a political party;

(d) a gift to a candidate in an election;

(e) a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in paragraph (a), (b), (c) or (d).

**“prescribed gift”**, in relation to a relevant local government, means a gift—

(a) intended by the giver to be used by the receiver, either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose; and

(b) used, either wholly or partly, for a political purpose about 1 or



- more elections relating to the relevant local government; and
- (c) the value of which is the prescribed amount or more.

**No requirement to give return if no further gifts to disclose**

**355R.(1)** This section applies to a person if—

- (a) the person gives a return relating to an election disclosing gifts under section 355Q<sup>118</sup> to a chief executive officer of a local government; and
- (b) apart from this section, because of a later election, the person would be required to give another return under section 355Q to the chief executive officer of the same local government; and
- (c) the other return, if given, would disclose no other gifts.

**(2)** The person is not required to give the other return.

***Subdivision 3—Amendment of returns*****Amendment of returns**

**355S.(1)** A person who has given a return under this part to the chief executive officer of a local government may at any time apply to amend the return to correct an error or omission.

**(2)** An application under subsection (1) must—

- (a) be signed by the applicant; and
- (b) state particulars of the amendment; and
- (c) be given to the chief executive officer of the local government.

**(3)** The chief executive officer must—

- (a) permit the applicant to amend the return in accordance with the application; and
- (b) record in the register particulars of the date and time of the

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<sup>118</sup> Section 355Q (Gifts for third party expenditure for political purposes)

amendment.

(4) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence under section 355W(2)<sup>119</sup> committed before the amendment.

### *Division 4—Registers*

#### **Registers of electoral gifts**

**355T.(1)** The chief executive officer of a local government must keep, for the local government, a register of electoral gifts (the “**register**”).

(2) The register must include the following—

- (a) all returns given to the chief executive officer under this part or section 190;<sup>120</sup>
- (b) applications made to the chief executive officer under section 355S;<sup>121</sup>
- (c) copies of information given by the chief executive officer under section 355V(2);<sup>122</sup>
- (d) statutory declarations given to the chief executive officer under section 355V(5);
- (e) copies of notices given by the chief executive officer under section 355Y(3);<sup>123</sup>
- (f) particulars given to the chief executive officer after a request made under section 355Y(3);
- (g) notices given to the chief executive officer under section 355Y(5).

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<sup>119</sup> Section 355W (Offences about returns)

<sup>120</sup> Section 190 (Requirements of councillors before acting in office)

<sup>121</sup> Section 355S (Amendment of returns)

<sup>122</sup> Section 355V (Queries on contents of register)

<sup>123</sup> Section 355Y (Obtaining of information and completion of returns)

**Access to registers**

**355U.(1)** A local government's register is open to inspection.

(2) A person must not knowingly disclose information obtained from the register if it is not a true copy, or a fair summary, of particulars in the register.

Maximum penalty for subsection (2)—20 penalty units.

**Queries on contents of register**

**355V.(1)** A person who suspects, or believes, on reasonable grounds that a return given to the chief executive officer of a local government under this part has an error or omission, may inform the chief executive officer.

(2) The chief executive officer must immediately take reasonable steps to inform the person who gave the return about the suspicion or belief.

(3) The person who gave the return must, within 30 days of being informed, establish whether the return should be amended to make it a true record of fact.

(4) If the person establishes that the return should be amended, the person must apply to the chief executive officer to amend the return to correct the error or omission.<sup>124</sup>

(5) If the person establishes the return does not need to be amended, the person must—

- (a) complete a statutory declaration to the effect that the particulars in the return are a true record of fact; and
- (b) give the statutory declaration to the chief executive officer.

***Division 5—Miscellaneous*****Offences about returns**

**355W.(1)** A person must give a return the person is required to give

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<sup>124</sup> Section 355S (Amendment of returns) provides for applications to amend returns.

under division 3<sup>125</sup> within the time required by the division.

Maximum penalty—20 penalty units.

(2) A person must not give a return the person is required to give under division 3 containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty—

- (a) if the person is required to give the return as a candidate—100 penalty units;
- (b) if paragraph (a) does not apply—50 penalty units.

(3) A person (the “**first person**”) must not give to another person who is required to give a return under division 3 or section 190<sup>126</sup> information to which the return relates that is, to the knowledge of the first person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

(4) A prosecution for an offence against a provision of this section may be started at any time within 4 years after the offence was committed.

(5) If a person is found guilty of an offence under subsection (1), a court may, as well as imposing a penalty under the subsection, order the person to give the relevant return within a time stated in the order.

(6) If a person is found guilty of an offence under subsection (2), a court may, as well as imposing a penalty under the subsection, order the person to pay, within a time stated in the order, to a local government an amount equal to the amount of the value of any gifts made to, or for the benefit of, the person and not disclosed in a return.

### **Records to be kept**

**355X.(1)** A person who makes or receives a relevant record for an election must keep the record for at least 4 years after the conclusion of the election unless the record, in the normal course of business or administration, is transferred to someone else.

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<sup>125</sup> Division 3 (Disclosure of gifts)

<sup>126</sup> Section 190 (Requirements of councillors before acting in office)

Maximum penalty—20 penalty units.

(2) In this section—

**“relevant record”**, for an election, is a document or other thing that is or includes a record about a matter particulars of which—

- (a) are, or could be, required to be stated in a return under division 3<sup>127</sup> about the election; or
- (b) evidence that the giver of a gift had an intention mentioned in section 355Q(6),<sup>128</sup> definition “prescribed gift”, paragraph (a).

### **Obtaining of information and completion of returns**

**355Y.(1)** A person who is required to give a return under division 3<sup>129</sup> must—

- (a) take all reasonable steps to obtain the particulars required to complete the return; and
- (b) complete the return to the extent that it is possible with the particulars obtained.

Maximum penalty—20 penalty units.

(2) The return must state whether the return is complete as required by division 3 and, if not complete, state—

- (a) the nature and type of particulars the person has not been able to obtain; and
- (b) the reasons why the person has not been able to obtain the particulars; and
- (c) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give the particulars—that belief and the reasons for it and the name and address of the other person.

(3) If a return contains a statement mentioned in subsection (2)(c), the

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<sup>127</sup> Division 3 (Disclosure of gifts)

<sup>128</sup> Section 355Q (Gifts for third party expenditure for political purposes)

<sup>129</sup> Division 3 (Disclosure of gifts)

chief executive officer of the local government who receives the return must give a written notice to the person named in the statement asking the person to give the chief executive officer the particulars the person knows.

(4) Subsection (5) applies if, at any time, within 4 years after the conclusion of an election, a person, who has made a statement under subsection (2) in a return about the election that the return is not complete, obtains information or particulars relevant to the return that the person was not able to obtain before completing the return.

(5) The person must give to the chief executive officer of the local government to whom the return was given a written notice of the information or particulars obtained.

Maximum penalty for subsection (5)—20 penalty units.

### **Attempts to commit offences**

**355Z.(1)** A person who attempts to commit an offence against this part commits an offence.

Maximum penalty—half the maximum penalty for committing the offence.

(2) The Criminal Code, section 4<sup>130</sup> applies to subsection (1).

### **Non-compliance with part does not affect election**

**355ZA.(1)** A failure of a person to comply with a provision of this part for an election does not invalidate the election.

(2) Without limiting subsection (1) but subject to section 171,<sup>131</sup> if a candidate who is elected at an election fails to comply with a provision of this part for the election, the failure does not invalidate the election of the candidate.

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<sup>130</sup> The Criminal Code, section 4 (Attempts to commit offences)

<sup>131</sup> Section 171 (Disqualification and vacation of office for certain offences)

***Division 6—Evidence*****Evidentiary provisions**

**355ZB.(1)** This section applies to a proceeding under this part.

**(2)** A certificate purporting to be signed by the chief executive officer of a local government and stating any of the following matters is evidence of the matter—

- (a) a stated document is an application, declaration, notice or return given or kept under this part, or a copy of it;
- (b) on a stated day, a stated person was given a stated notice, under this part.

**CHAPTER 6—GENERAL OPERATION OF  
LOCAL GOVERNMENTS****PART 1—PROCEEDINGS OF LOCAL  
GOVERNMENTS*****Division 1—What meetings are held*****Post-election meetings**

**356.** A local government must hold a meeting within 14 days after the conclusion of the triennial elections and each fresh election of its councillors.

**Agenda of post-election meetings**

**357.** The matters a local government must consider at a meeting mentioned in section 356 (Post-election meetings) include—

- (a) the day and time for holding other meetings; and

- (b) the appointment of its deputy mayor; and
- (c) the appointment of its standing committees.

### **Other meetings**

**358.(1)** Other meetings of a local government are to be held at the times and places it decides.

**(2)** However, it must meet—

- (a) for a city or town—at least once in each month; or
- (b) for a shire—at least once in each period of 3 months.

### *Division 2—Local government meetings*

#### **Place of meetings**

**359.(1)** All meetings of a local government must be held at its public office.

**(2)** However, a local government may, by resolution, fix another place for a particular meeting.

#### **Quorum at meetings**

**360.(1)** A quorum of a local government is a majority of its councillors.

**(2)** However, if the number of councillors is an even number, one-half of the number is a quorum.

#### **Procedure at meetings**

**361.(1)** Business may be conducted at a meeting of a local government only if a quorum is present.

**(2)** At a meeting—

- (a) voting must be open; and
- (b) a question is decided by a majority of the votes of the councillors present; and



- (c) each councillor present has a vote on each question to be decided and, if the votes are equal, the councillor presiding has a casting vote; and
- (d) if a councillor present fails to vote, the councillor is taken to have voted in the negative.

### **Minutes must be kept**

**362.(1)** A local government must keep minutes of its proceedings.

(2) The minutes must be taken and confirmed under section 375 (Minutes).

### **Adjournment of meetings**

**363.(1)** The majority of councillors present at a meeting of a local government may adjourn the meeting to a later hour of the same day or to a later day.

(2) If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting may be adjourned to a later hour or another day within 14 days after the day of adjournment, by—

- (a) a majority of the councillors present; or
- (b) if only 1 councillor is present—the councillor; or
- (c) if no councillors are present—the chief executive officer.

### **Notice of meetings**

**364.(1)** Written notice of each meeting or adjourned meeting of a local government must be given to each councillor at least 2 days before the day of the meeting unless it is impracticable to give the notice.

(2) A notice must specify—

- (a) the day and time of the meeting; and
- (b) for a special meeting—the object of the meeting.

(3) The only business that may be conducted at a special meeting is the business specified in the notice of meeting.

**Repeal or amendment of resolutions**

**365.(1)** A resolution of a local government may be repealed or amended only if written notice of intention to propose the repeal or amendment is given to each councillor at least 5 days before the meeting at which the proposal is to be made.

**(2)** At the meeting to decide the proposal, the proposal is taken to have been defeated unless it is agreed to by—

- (a) if the number of councillors present at the meeting is more than the number present at the meeting at which the resolution was adopted—a majority of the councillors present; or
- (b) in any other case—a majority of all councillors.

***Division 3—Committees and their meetings*****Appointment of committees**

**366.** A local government may—

- (a) appoint, from its councillors, standing committees or special committees; and
- (b) appoint advisory committees; and
- (c) fix the quorum of each committee; and
- (d) appoint a chairperson of each committee.

**Advisory committees**

**367.(1)** An advisory committee—

- (a) must not be appointed as a standing committee; and
- (b) may include in its members persons who are not councillors.

**(2)** A member of an advisory committee who is not a councillor may vote on business before the committee.

**Delegate members of committees**

**368.(1)** A local government that appoints a committee may appoint 1 person as a delegate member of the committee.

**(2)** In the absence of a member of the committee, the delegate member may attend meetings of the committee and act as a member of the committee.

**Quorum**

**369.** A quorum of a committee is the number—

- (a) fixed by the local government; or
- (b) if a number is not fixed by the local government—fixed by the committee.

**Chairperson of committee**

**370.(1)** If the local government does not appoint a chairperson for a committee, the committee may appoint 1 of its members as chairperson.

**(2)** If the chairperson is not present at a meeting, the members present may appoint a chairperson for the meeting.

**Committee meetings**

**371.(1)** Meetings of a committee are to be held at the times and places it decides.

**(2)** At a meeting—

- (a) voting must be open; and
- (b) a question is decided by a majority of the votes of the members present; and
- (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote; and
- (d) if a member present fails to vote, the member is taken to have voted in the negative.

**Reports**

**372.** A committee must report to the local government as directed by the local government.

**Minutes must be kept unless committee exempted**

**373.(1)** A committee must keep minutes of its proceedings unless it is exempted under subsection (3).

**(2)** The minutes must be taken and confirmed under section 375 (Minutes).

**(3)** A local government may, by resolution, exempt a committee from the requirement to keep minutes of its proceedings if the committee's function is only to advise or recommend to the local government.

**(4)** If a committee is exempted under subsection (3), it must give to the local government a written report of its deliberations and its advice or recommendations.

***Division 4—Meetings generally*****Division applies to local governments and their committees**

**374.** This division applies to a meeting of a local government or a committee.

**Minutes**

**375.(1)** A local government's chief executive officer must ensure that minutes of each meeting are taken under the supervision of the person presiding at the meeting.

**(2)** Minutes of each meeting must include—

- (a)** the names of councillors or committee members present at the meeting; and
- (b)** if a division is called on a question—the names of all persons voting on the question and how they voted.

- (3) At each meeting, the minutes of the previous meeting must be—
- (a) confirmed by the councillors or members present; and
  - (b) signed by the person presiding at the later meeting.

### **Meetings in public unless otherwise resolved**

**376.** A meeting is open to the public unless the local government or committee has resolved that the meeting be closed under section 377 (Closed meetings).

### **Closed meetings**

**377.(1)** A local government or committee may resolve that a meeting be closed to the public if its councillors or members consider it necessary to close the meeting to discuss—

- (a) the appointment, dismissal or discipline of employees; or
- (b) industrial matters affecting employees; or
- (c) the local government's budget; or
- (d) rating concessions; or
- (e) contracts proposed to be made by it; or
- (f) starting or defending legal proceedings involving it; or
- (g) any action to be taken by the local government under the *Local Government (Planning and Environment) Act 1990*, including deciding applications made to it under that Act; or
- (h) other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.

(2) A resolution that a meeting be closed must specify the nature of the matters to be considered while the meeting is closed.

(3) A local government or committee must not make a resolution (other than a procedural resolution) in a closed meeting.

**Public notice of meetings**

**378.(1)** A local government must, at least once in each year, publish in a newspaper circulating generally in its area a notice of the days and times when its ordinary meetings, and the ordinary meetings of its standing committees, will be held.

**(2)** The local government must display in a conspicuous place in its public office a notice of the days and times when—

- (a) its meetings will be held; or
- (b) meetings of its committees will be held.

**(3)** The local government must immediately notify any change to the days and times mentioned in subsection (1) or (2) in the same way as the days and times were previously notified.

**(4)** A list of the items to be discussed at a meeting mentioned in subsection (2) must be open to inspection at the time the agenda for the meeting is made available to councillors.

**(5)** Subsection (4) does not affect the right to discuss or deal with, at any meeting, items arising after the agenda for the meeting is made available to councillors.

**Public notice of resolution authorising remuneration etc.**

**379.(1)** A resolution authorising the payment or provision of remuneration to councillors of a local government may be passed only if notice has been given of the proposed resolution.

**(2)** Notice must be given by—

- (a) publishing, at least 4 weeks, and not more than 6 weeks, before the meeting, a notice setting out the proposed resolution, and the day and time of the proposed meeting, in a newspaper circulated generally in its area; and
- (b) putting a copy of the notice on display in a conspicuous place in its public office on the day on which the notice is published under paragraph (a); and
- (c) keeping the copy of the notice on display until after the meeting.

***Division 5—Records*****Safe custody of records**

**380.** The chief executive officer of a local government is responsible for safe custody of—

- (a) all records about the proceedings, accounts or transactions of the local government or its committees; and
- (b) all documents owned or held by the local government.

**Loss or destruction of records**

**381.(1)** If a document owned or held by a local government is lost or destroyed, the Governor in Council may make regulations for the purpose of repairing the loss.

**(2)** A regulation may, for example, provide that a copy of the document is effective for all purposes, including being admissible in evidence, as if it were the original.

**Inspection of records by the public**

**382.(1)** A copy of the minutes of each meeting of a local government—

- (a) must be available for inspection at its public office within 10 days after the end of the meeting; and
- (b) when the minutes have been confirmed—must be available for purchase at the public office.

**(2)** The price of a copy of confirmed minutes must not be more than—

- (a) the cost to the local government of having the copy printed and made available for purchase; and
- (b) if the copy is supplied to a purchaser by post—the cost of postage.

**Inspection of records by members**

**383.(1)** This section applies to local government records, whether or not they are open to inspection under section 382 (Inspection of records by the public).

(2) A councillor of the local government may inspect, and make a copy of or take an extract from, a record about its operations or the operations of any of its committees.

(3) A member of a committee may inspect, and make a copy of, a record about the committee's operations.

(4) This section is subject to section 726 (Requests to employees for help or advice).

**Duty to make records available**

**384.** A person who has charge of a document owned or held by a local government must not obstruct or hinder the inspection or copying of the document under section 382 (Inspection of records by the public) or 383 (Inspection of records by members).

Maximum penalty—10 penalty units.

***Division 6—Miscellaneous*****Correspondence with local government**

**385.(1)** All correspondence with a local government about matters affecting it is taken to be addressed to the chief executive officer.

(2) The chief executive officer is responsible for taking the appropriate action for the correspondence.

**Delegation by local government**

**386.(1)** A local government may, by resolution, delegate its powers under a local government Act.

(2) The delegation may be made to—



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- (a) the mayor; or
- (b) a standing committee or joint standing committee; or
- (c) the chairperson of a standing committee or joint standing committee; or
- (d) the chief executive officer.

**(3)** However, a local government may not delegate a power if—

- (a) the power is to take disciplinary action against an employee appointed by it; or
- (b) an Act provides that the power must be exercised by resolution.

**(4)** All delegations made by a local government must be recorded in a register of delegations kept by its chief executive officer.

**(4A)** All appointments by a local government of shareholder's delegates for its LGOCs under section 458GM must be recorded in the register.

**(5)** The register must contain the particulars prescribed by regulation.

**(6)** The register is open to inspection.

**(7)** Subsections (1) to (4) do not apply to powers of a local government as a shareholder of an LGOC, under chapter 7A, part 6.

**(8)** Subsections (4) to (6) apply to delegations by shareholder's delegates under section 458KF as if the shareholder's delegates were the local government.

### **Preservation of proceedings**

**387.** Proceedings of a local government or any of its committees or actions of a person acting as a councillor or member of a committee, are not invalid merely because of—

- (a) vacancies in the membership of the local government or committee; or
- (b) a defect or irregularity in the election or appointment of any councillor or committee member; or
- (c) the disqualification of a councillor or committee member from acting as a councillor or committee member.

## **PART 2—POLLS**

### **Authority to conduct poll**

**388.** A local government may conduct a poll of the electors in its area or a part of its area.

### **Subject matter of polls**

**389.** A poll may be conducted on any local government issue of concern to a local government area or part of a local government area.

### **Poll must be on Saturday**

**390.** A poll must be conducted on a Saturday.

### **Electoral provisions that apply to a poll**

**391.(1)** The provisions mentioned in subsection (2) apply (with any necessary changes and any changes prescribed by regulation) to a poll as if—

- (a) if the poll is conducted on the day of triennial elections—the poll were a triennial election; or
- (b) if the poll is conducted on any other day—the poll were a by-election.

**(2)** The relevant provisions are as follows—

- chapter 5 (Local government elections)
  - parts 2 (Returning officers) and 3 (Voters roll)
  - section 230 (Compulsory voting)
  - part 6 (Conduct of elections).

### **Cases for and against question in poll**

**392.(1)** In every poll, a statement of the case for, and a statement of the case against, the question to be voted on in the poll is open to inspection.

(2) In every poll, the returning officer for the poll must ensure that the statements of the cases for and against the question to be voted on are given to each elector a reasonable time before the day of the poll.

(3) A regulation may make provision about how the statements of the cases for and against the question are to be prepared for the purposes of this section.

### **Publication of poll result**

**393.** As soon as practicable after the result of a poll is decided, the returning officer for the poll must give public notice of the result, by advertisement in a newspaper circulating generally in the local government area or part of the local government area.

### **Restrictions on conducting another poll on the same question**

**394.(1)** If a local government conducts a poll on a question in its area, it must not conduct another poll on the same, or substantially the same, question within 1 year of the poll.

(2) If a local government conducts a poll in part of its area, subsection (1) applies for that part.

(3) However, subsections (1) and (2) do not apply to a second poll held on the day of—

- (a) the next triennial elections; or
- (b) if the second poll is conducted only in part of the local government's area—a by-election for that part.

## **PART 3—CONTRACTS AND TENDERING**

### *Division 1—Preliminary*

#### **Principles governing the making of contracts**

**395.** In entering into contracts for the carrying out of work, or the supply of goods or services, a local government must have regard to the following principles—

- (a) open and effective competition;
- (b) value for money;
- (c) enhancement of the capabilities of local business and industry;
- (d) environmental protection;
- (e) ethical behaviour and fair dealing.

#### **Ways of entering into a contract**

**396.** A local government may make, vary or discharge a contract—

- (a) under seal; or
- (b) by a delegate under section 397 (Entering into a contract under delegation).

#### **Entering into a contract under delegation**

**397.(1)** A local government's delegate may make, vary or discharge a contract for the local government in the same way as if the contract were made, varied or discharged by an individual.

**(2)** However, subsection (1) applies only if—

- (a) the spending incurred for the local government because of the making, variation or discharge of the contract—
  - (i) has been provided for in an approved budget for the financial year when the making, variation or discharge happens; or
  - (ii) is incurred under section 436 (Spending of local government

pending adoption of budget) but is within the limits stated in the resolution of the local government delegating the power under which the contract is made, varied or discharged; or

- (b) the contract has been entered into because of genuine emergency or hardship.
- (3) This section does not affect another law that requires—
- (a) an approval, consent or permission to be obtained; or
  - (b) a procedure to be complied with for the making, varying or discharging of a contract.

### *Division 2—Purchasing*

#### **When tenders are required**

**398.(1)** A local government must invite tenders before making a contract for the carrying out of work, or the supply of goods or services, involving a cost of more than \$100 000 or, if a greater amount is prescribed by regulation, the greater amount.

- (2) The invitation must—
- (a) be by an advertisement in a newspaper circulating generally in the local government's area; and
  - (b) allow at least 21 days from the day of the advertisement for the submission of tenders.
- (3) This section applies subject to the following sections—
- section 400 (Exceptions to the requirement to seek tenders or quotations)
  - section 403 (Short listing after calling for expressions of interest).

#### **When quotations are required**

**399.(1)** A local government must invite written quotations before making a contract for the carrying out of work, or the supply of goods or services, involving a cost of between \$10 000 and \$100 000 or, if another range of amounts is prescribed by regulation, the range of amounts.

(2) The invitation must be given to at least 3 persons who the local government considers can meet its requirements at competitive prices.

(3) This section applies subject to section 400 (Exceptions to the requirement to seek tenders or quotations).

### **Exceptions to the requirement to seek tenders or quotations**

**400.(1)** A local government may enter into a contract without complying with section 398 (When tenders are required) or 399 (When quotations are required) if—

- (a) it resolves that it is satisfied that there is only 1 supplier reasonably available to it; or
- (b) it resolves that a genuine emergency exists; or
- (c) it resolves to obtain second-hand goods; or
- (d) it resolves to purchase goods at an auction; or
- (e) the contract is made under an exemption to open competition in the Local Government Finance Standards; or
- (f) the contract is made with, or under an arrangement with or made by—
  - (i) the State, a government entity, the Brisbane City Council or another local government; or
  - (ii) another Australian government, an entity of another Australian government or a local government of another State or a Territory.

(2) A local government also may enter into a contract for the supply of services without complying with section 398 or 399 if—

- (a) the contract is made with a person on the panel mentioned in section 401 (Panel of suitable providers); or
- (b) it resolves that it is satisfied that the services to be supplied are of such a specialised or confidential nature that it would be impractical or disadvantageous to the local government to invite tenders or quotations.

**Panel of suitable providers**

**401.(1)** A local government may compile a panel of the names of persons suitably qualified to provide a service.

**(2)** A panel must be compiled by—

- (a) inviting expressions of interest from persons to be included on the panel in the way provided for inviting tenders under section 398 (When tenders are required); and
- (b) selecting persons on the basis of the principles mentioned in section 395 (Principles governing the making of contracts).

**Changes to tenders**

**402.(1)** This section applies if—

- (a) a local government invites tenders for a contract; and
- (b) the invitation to tender states that the local government might later invite all tenderers to change their tenders.

**(2)** Before making a decision on the tenders, the local government may invite all the persons who have submitted a tender to change their tender to take account of a change in the tender specifications.

**Short listing after calling for expressions of interest**

**403.(1)** A local government may invite expressions of interest under this section before inviting tenders if it resolves that it is satisfied that it would be in the public interest.

**(2)** The local government must record its reasons for making the resolution.

**(3)** Expressions of interest must be invited in the way provided for inviting tenders under section 398 (When tenders are required).

**(4)** The local government may prepare a short list from the persons who responded to the invitation and invite tenders from the persons on the short list.

**(5)** If a local government makes a contract after inviting tenders under subsection (4), section 398 does not apply to the contract.

**Acceptance of tender or quotation**

**404.(1)** If a local government decides to accept a tender or quotation, it must accept the tender or quotation most advantageous to it.

**(2)** In deciding the tender or quotation most advantageous to it, the local government must have regard to the principles mentioned in section 395 (Principles governing the making of contracts).

**(3)** However, a local government may decide not to accept any tender or quotation available to it.

***Division 3—Disposal of land or goods*****When tenders or auctions are required**

**405.(1)** This section applies to—

- (a) land (including an interest in land); or
- (b) goods with an apparent value of \$1 000 or, if a greater amount is prescribed by regulation, the greater amount.

**(2)** A local government may dispose of the land or goods only—

- (a) by auction; or
- (b) after inviting tenders in the way mentioned in section 398(2) (When tenders are required).

**(3)** If it invites tenders, sections 402 (Changes to tenders) and 404(1) and (3) (Acceptance of tender or quotation) apply.

**(4)** This section is subject to section 406 (Exemptions).

**Exemptions**

**406.(1)** A local government may dispose of land (including an interest in land) or goods without complying with section 405 (When tenders or auctions are required) if—

- (a) the disposal is to—
  - (i) the State; or



- (ii) a government entity; or
  - (iii) another local government; or
  - (iv) a community organisation; or
  - (v) another Australian government, an entity of another Australian government or a local government of another State or a Territory; or
- (b) for land—the land would not be rateable land after the disposal; or
  - (c) the Minister exempts the local government from complying with the section; or
  - (d) the land or goods were previously offered for sale under section 405 and were not sold; or
  - (e) the disposal is declared by regulation to be a disposal to which this division does not apply.

**(1A)** An exemption under subsection (1)(c) may be given subject to conditions.

**(2)** If subsection (1)(d) applies, the land or goods must not be sold for less than the highest bid or tender received.

**(3)** In this section—

**“community organisation”** means an entity that is a non-profit entity or otherwise exists for a public purpose.

## **PART 4—ENTERPRISES**

### *Division 1—Preliminary*

#### **Application to Brisbane City Council**

**407.** This part applies to Brisbane City Council.

**Matters relevant to good rule and government**

**408.(1)** A matter that, in a local government's opinion, is directed to benefiting, and can reasonably be expected to benefit, its area, or a part of its area, is taken to be conducive to the good rule and government of its territorial unit.

**(2)** The matters that may be of benefit to a local government area include, for example—

- (a) promoting or contributing to economic development of a part of the area; and
- (b) promoting or attracting commerce, industry or tourism in or to a part of the area; and
- (c) promoting or providing opportunities for employment in a part of the area; and
- (d) promoting or helping the supply of services to a part of the area; and
- (e) helping the finances of the area's local government; and
- (f) helping the exercise of the jurisdiction of local government in the area.

**Application of part**

**409.(1)** This part does not apply to an enterprise (an “**exempt enterprise**”) declared by regulation to be an exempt enterprise.

**(2)** However, if the exempt enterprise is undertaken as a joint venture with someone else, this part applies to the enterprise unless—

- (a) the local government is authorised to conduct the enterprise under another Act; or
- (b) the joint venture is with any of the following—
  - (i) the State;
  - (ii) a government entity;
  - (iii) another local government;
  - (iv) another Australian government, an entity of another

Australian government or a local government of another State or a Territory.

### *Division 2—Enterprise powers*

#### **Engagement in or help to enterprises**

**410.(1)** A local government may engage in or help an enterprise if the enterprise concerns a matter that, in its opinion, is directed to benefiting, and can reasonably be expected to benefit, its area or a part of its area.

**(2)** A local government may exercise a power under subsection (1) (the **“enterprise power”**) either alone or with another entity.

**(3)** A local government may do all things necessary or convenient to be done to exercise an enterprise power.

#### **Specific enterprise powers**

**411.(1)** For the purpose of exercising an enterprise power, a local government may—

- (a) form or take part in forming—
  - (i) a company limited by shares that are not listed on a stock exchange (a **“permissible company”**); or
  - (ii) a partnership; or
  - (iii) an association of persons; or
- (b) be a member of a permissible company, acquire and dispose of shares, debentures and securities of a permissible company and take part in the management of a permissible company; or
- (c) be a member of a partnership or other association of persons and take part in the management of the business of a partnership or association of persons; or
- (d) commercially exploit its property rights (whether tangible or intangible).

(2) In subsection (1)—  
“**association of persons**” does not include a company.

### *Division 3—Safeguards*

#### **Requirements for exercise of enterprise powers**

**412.(1)** A local government may exercise an enterprise power only by resolution.

(2) Before exercising an enterprise power, a local government must consult with, and have proper regard to the advice of, persons who, in its opinion, possess relevant competence about—

- (a) the end to which the exercise of the power is, or would be, directed; and
- (b) the ways of achieving the end; and
- (c) the lawfulness of the exercise of the power.

#### **Restrictions on exercise of enterprise powers**

**413.** In exercising, or before exercising, an enterprise power, a local government must not—

- (a) engage in or help enterprises in a financial year to an extent that requires the local government to commit in the year an amount that is more than the amount calculated under section 414 (Establishing enterprise powers limits); or
- (b) borrow or provide a guarantee for a borrowing; or
- (c) form, take part in forming, be a member of, or take part in the management of, a company other than a permissible company; or
- (d) be a member of a partnership other than as a limited partner; or
- (e) enter into an agreement or arrangement that does not restrict the liability of the local government, as between the parties, to the amount committed by the local government under the agreement or arrangement.

**Establishing enterprise powers limits**

**414.(1)** The amount of commitment to enterprises in a financial year to which a local government is limited includes the value of all property committed by the local government to any enterprise.

**(2)** A regulation may prescribe for the purposes of this part—

- (a) the components of a local government's own source revenue; and
- (b) the percentage of its own source revenue by reference to which the maximum amount of commitment to enterprises in a financial year to which a local government is limited by section 413(a) (Restrictions on exercise of enterprise powers) is to be established.

**(3)** If, in a financial year, a local government does not commit to enterprises an amount provided for in its budget for the purpose, the uncommitted amount may be carried forward to be committed to enterprises in a later financial year.

**(4)** However, if a maximum number of years for which local governments may carry forward uncommitted amounts under subsection (3) is prescribed by regulation, a local government must not exercise the power under the subsection for a financial year beyond the maximum number until the local government has lawfully applied the total amount carried forward by it.

**(5)** An amount carried forward under subsection (3), an accumulation of amounts carried forward under the subsection, or assets to the value of the amount or accumulation, may be committed (in whole or part) to enterprises by the local government in a financial year in addition to the amount of commitment permitted to the local government in the year under section 413(a).

**(6)** An amount carried forward under subsection (3) must be held in a reserve established by the local government in its operating fund until it is lawfully applied by it.

**Register of enterprises**

**415.(1)** A local government that exercises an enterprise power must keep a register that includes a record of—

- (a) each enterprise engaged in, or helped by, the local government; and
- (b) the identity of any entity with which the local government has engaged in, or helped, an enterprise as a joint venture; and
- (c) particulars of the purpose to be achieved by the engagement or help; and
- (d) the value of property committed by the local government to each enterprise engaged in, or helped by, the local government; and
- (e) for each enterprise—the identity of the persons of relevant competence with whom the local government has consulted in exercising an enterprise power.

(2) Subsection (1)(d) is complied with if the value of property committed to an enterprise is shown as the market value of the property when it is committed.

(3) The register is open to inspection.

(4) A local government must give to the chief executive of the department and the Auditor-General written notice of—

- (a) the establishment of a register as soon as practicable after it is established; and
- (b) each entry in the register as soon as practicable after it is made.

## **CHAPTER 7—FINANCIAL OPERATION AND ACCOUNTABILITY OF LOCAL GOVERNMENTS**

### **PART 1—LOCAL GOVERNMENT FINANCE STANDARDS**

#### **Issue of standards**

**416.(1)** The Minister may make standards (the “**Local Government Finance Standards**”) about—

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- (a) the policies and principles to be complied with in financial management, including internal audit, by—
  - (i) local governments; or
  - (ii) the trustees of a superannuation scheme (a “**relevant superannuation scheme**”) established by a local government (whether alone or with other local governments); and
- (b) the content of financial statements and annual reports by—
  - (i) local governments; or
  - (ii) the trustees of a relevant superannuation scheme; and
- (c) any matter that is required or permitted to be prescribed by standard; and
- (d) requirements for full cost pricing and their application to significant business activities of local governments under chapter 7A, part 4;<sup>132</sup> and
- (e) commercialisation and its application to local governments’ commercial business units under chapter 7A, part 5; and
- (f) corporatisation and its application to corporatised corporations of local governments under chapter 7A, part 6;<sup>133</sup> and
- (g) a code of competitive conduct for application of competitive neutrality principles to local governments’ business activities and roads business activities under chapter 7B; and
- (h) facilitating the implementation of chapter 7C<sup>134</sup> including—
  - (i) charging arrangements for, and bases of operation of, relevant business activities providing water and sewerage services; and

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<sup>132</sup> *Local Government Act 1993*, chapter 7A, part 4 (Full cost pricing for significant business activities)

<sup>133</sup> *Local Government Act 1993*, chapter 7A, part 6 (Local government owned corporations)

<sup>134</sup> *Local Government Act 1993*, chapter 7C (Reform of certain water and sewerage services)

- (ii) providing how the following are to be applied—
  - (A) consumption as the basis for utility charges for water services;
  - (B) full cost recovery for water and sewerage services;
  - (C) identification and disclosure of cross-subsidies between classes of consumers and community service obligations in the provision of water and sewerage services;
  - (D) disclosure of the classes of consumers who are provided with water or sewerage services at an amount below full cost and the amount.

(2) Before making a standard, the Minister must consult with the Auditor-General about the standard.

(3) The standards may include practice statements if the Minister considers a uniform standard of practice or procedure is necessary or desirable.

(4) In preparing standards, the Minister must have regard to relevant standards made by appropriate professional bodies.

(5) A standard made under subsection (1) is subordinate legislation.

### **Standards must be complied with**

**417.** Every local government, and the trustees of every relevant superannuation scheme and significant business entity (including a corporatised corporation), must comply with the Local Government Finance Standards.

## **PART 2—CORPORATE AND OPERATIONAL PLANS**

### **Preparation and adoption of corporate plan**

**418.(1)** A local government must, from time to time, prepare and, by resolution, adopt a corporate plan.



(2) The local government must ensure each corporate plan is prepared and adopted in enough time, before the start of the first financial year covered by the plan, to allow preparation and adoption of a budget for the financial year consistent with the plan.

### **Period of corporate plan**

**419.(1)** A corporate plan of a local government continues in force for the period specified in the plan or until the earlier adoption by the local government of a new corporate plan.

(2) The specified period for a corporate plan must be at least 3 years.

### **Amendment of corporate plan**

**420.** A local government may, by resolution, amend its corporate plan at any time.

### **Requirements of corporate plans**

**421.** A corporate plan or amendment of a corporate plan—

- (a) must comply with the Local Government Finance Standards; and
- (b) must be open to inspection for 30 days at least before the local government adopts the plan or amendment.

### **Preparation and adoption of operational plan**

**422.(1)** A local government must, for each financial year, prepare and, by resolution, adopt an operational plan.

(2) The local government must ensure each operational plan is prepared and adopted in enough time, before the start of the financial year for which it is prepared, to allow preparation and adoption of a budget for the financial year consistent with the plan.

(3) When the plan is adopted by a local government, it becomes its operational plan for the financial year for which it is prepared.

**Amendment of operational plan**

**423.** A local government may, by resolution, amend an operational plan at any time before the end of the financial year for which it is prepared.

**Requirements of operational plan**

**424.** A local government's operational plan or an amendment of its operational plan must comply with the Local Government Finance Standards and its corporate plan.

**Compliance with corporate and operational plans**

**425.** A local government's exercise of the jurisdiction of local government must be consistent with its corporate plan and operational plan.

**Evaluation of activities**

**426.(1)** A local government must make assessments of its progress towards implementing its corporate and operational plans.

**(2)** The chief executive officer must present a written report on the assessments to a meeting of the local government at regular intervals, of not more than 3 months, decided by it.

**Copies of plans to be available for inspection and purchase**

**427.(1)** A local government must have its corporate and operational plans printed and a reasonable number of copies of the plans made.

**(2)** The local government must—

- (a) keep the plans open for inspection; and
- (b) make copies available for purchase at its public office at a price not more than the cost to the local government of producing the copy and, if a copy is supplied to a purchaser by post, the cost of postage.

## **PART 3—FUNDS AND ACCOUNTING PROCEDURES**

### **Funds**

**428.** A local government must establish and keep—

- (a) an operating fund; and
- (b) a trust fund.

### **Reserves**

**429.(1)** A local government may establish specific reserves within its operating fund.

**(2)** It must keep separate accounting records for each reserve.

**(3)** Amounts held in a reserve that are no longer required may be applied for any purpose.

### **Trust fund**

**430.(1)** A local government must credit to its trust fund—

- (a) an amount paid to the local government—
  - (i) by way of deposit; or
  - (ii) in trust for a person; and
- (b) an amount required by an Act to be paid to the trust fund.

**(2)** An amount credited to the trust fund must be applied—

- (a) in payment to or for the person entitled to the amount according to law; or
- (b) as required by the Act under which the amount was paid to the trust fund.

**(3)** An amount credited to the trust fund may, with the Minister's earlier agreement, be transferred to the operating fund if the purpose for which the amount was credited has ceased to exist.

**(4)** A local government must keep a separate account for its trust fund.

**Compliance with sound accounting principles and procedures**

**431.(1)** Payment to, and withdrawal from, funds kept by a local government must be consistent with sound accounting principles and procedures.

**(2)** A local government must establish and comply with—

- (a) systems for managing its finances; and
- (b) procedures for recording and reporting its financial operations and position.

**(3)** The systems and procedures must comply with the Local Government Finance Standards.

**PART 4—BUDGET****Adoption of budget**

**432.(1)** A local government must adopt a budget for each financial year for its operating fund.

**(2)** The budget must be adopted—

- (a) after 31 May before the financial year; and
- (b) before—
  - (i) 1 September in the financial year; or
  - (ii) a later date fixed by the Minister.

**Requirements of budgets**

**433.(1)** The adoption of a budget, or an amendment, that does not comply with this section is void.

**(2)** Each budget of a local government—

- (a) must be developed consistently with its corporate plan and operational plan; and

- (b) must be clearly linked with the matters specified in the plans; and
- (c) must comply with the Local Government Finance Standards.

(3) A local government may amend its budget for a financial year at any time before the year ends.

(4) A local government may incur, for a purpose of genuine emergency or hardship, spending that is not authorised by its budget.

### **Content of operating fund budgets**

**434.(1)** A local government's budget developed for its operating fund must specify the following matters for the financial year—

- (a) its estimated costs in total, and for each of its significant activities;
- (b) the sources of funds necessary for spending provided for in the budget;
- (c) the local government's revenue policy.

(2) The budget also must specify the matters mentioned in subsection (1), in general terms, for the next 2 financial years.

(3) The budget must be the basis on which rates are to be made and levied by the local government for the financial year.

(4) For subsection (1)(a), the following are included as significant activities of the local government—

- (a) the local government's significant business activities carried on, under chapter 7A, part 4, on a full cost pricing basis;
- (b) the activities of the local government's commercial business units under chapter 7A, part 5;
- (c) the local government's significant business activities to which chapter 7C applies.

### **Financial information to be presented to budget meeting**

**435.(1)** The chief executive officer of a local government must present to its budget meeting for a financial year a document about the financial operations and financial position of the local government for the previous

financial year.

(2) If the budget meeting for a financial year is held in June, a document presented to the meeting under subsection (1)—

- (a) must relate to the financial operations of the local government for the financial year in which the meeting is held to the latest day to which the document can reasonably be compiled; and
- (b) must contain an estimate of the financial operations of the local government from that day to the end of the financial year in which the meeting is held.

(3) The document must comply with the Local Government Finance Standards.

### **Spending of local government pending adoption of budget**

**436.** A local government may, in a financial year, incur spending before adoption of its budget for the year, but the spending must be provided for in the appropriate budget for the year.

### **Councillors' liability for disbursements**

**437.(1)** This section applies if—

- (a) a local government makes a disbursement in a financial year from an operating fund; and
- (b) the disbursement is not provided for in the budget adopted for the fund for the year.

(2) The councillors who knowingly agreed to the disbursement are jointly and severally liable to repay to the local government—

- (a) the amount of the disbursement; and
- (b) interest on the amount, calculated from the day of the disbursement to the day of repayment, at the rate at which interest accrues on overdue rates.

(3) However, subsection (2) does not apply if the disbursement was made for a purpose of genuine emergency or hardship.

(4) An amount for which councillors are jointly and severally liable

under subsection (2) may be recovered, as a debt payable to the local government, by—

- (a) the local government; or
- (b) a person appointed by the Minister for the purpose; or
- (c) an elector or ratepayer.

(5) An amount recovered by a person mentioned in subsection (4)(b) or (c) must be immediately paid to the local government.

### **Budgets to be available for inspection and purchase**

**438.(1)** A local government must have its budget printed and a reasonable number of copies of the budget made.

(2) The local government must—

- (a) keep the budget open for inspection; and
- (b) make copies available for purchase at its public office at a price not more than the cost to the local government of producing the copy and, if a copy is supplied to a purchaser by post, the cost of postage.

## **PART 5—BORROWING AND INVESTMENT**

### **Local governments are statutory bodies**

**439.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, a local government is a statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the powers under this Act of a local government are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **Councillors' liability for unauthorised borrowings**

**442.(1)** If a local government borrows money—

- (a) without authority conferred under the *Statutory Bodies Financial Arrangements Act 1982*; or
- (b) for a purpose that is not a proper exercise of its jurisdiction; or
- (c) in contravention of this Act;

the councillors who knowingly agreed to the borrowing are jointly and severally liable to pay to the local government the amount borrowed and all interest, and other penalties incurred by the local government, for the borrowing.

(2) An amount for which councillors are jointly and severally liable under subsection (1) may be recovered, as a debt to the local government by—

- (a) the local government; or
- (b) a person appointed by the Minister for the purpose; or
- (c) an elector or ratepayer.

(3) An amount recovered by a person mentioned in subsection (2)(b) or (c) must be immediately paid to the local government.

(4) This section must be given effect despite—

- (a) the issue of a security for the borrowing by a local government; and
- (b) the *Statutory Bodies Financial Arrangements Act 1982*.

## PART 6—ACCOUNTS

### Accounting records to be kept

**443.(1)** A local government must keep accounting records that present fairly its financial operations for a financial year and give a comparison with its budget for the year.

(2) The accounting records must be kept in a way that complies with the Local Government Finance Standards.



**Statements of account to be presented to local government**

**444.(1)** The chief executive officer of a local government must present statements of its accounts to the local government.

**(2)** The statements must be presented—

- (a) if the local government holds its ordinary meetings monthly or less frequently—to each meeting; or
- (b) if the local government holds its ordinary meetings more frequently—to a meeting in each month.

**(3)** Statements presented to a meeting must be for the period of the financial year up to a day as near as practicable to the end of the previous month.

**(4)** A statement must be consistent with the Local Government Finance Standards.

**Statements of accounts open to inspection**

**445.** The statements presented under section 444 (Statements of account to be presented to local government) are open to inspection.

**PART 7—AUDIT****General reporting provisions**

**446.(1)** The Auditor-General may prepare a report on any audit performed by the Auditor-General for the purposes of this Act.

**(2)** A copy of the report must be given to—

- (a) the Minister; and
- (b) the mayor and chief executive officer of the relevant local government.

**(3)** If the report is on an audit of the accounts of a scheme for superannuation benefits under section 186 (Superannuation benefits for councillors), a copy of the report also must be given to—

- (a) the trustees of the scheme; and
- (b) the mayor of the local government.

(4) The mayor must table a copy of any report at the next ordinary meeting of the local government.

## **PART 8—ANNUAL REPORT**

### **Annual report to be prepared and adopted**

**447.(1)** A local government must prepare an annual report for each financial year.

(2) The report must be presented to the local government for adoption, and must be adopted by it before 30 November in the year after the end of the financial year to which the report relates.

(3) However, the Minister may allow a longer period for a local government to comply with subsection (2).

### **Content of report about financial position of local government**

**448.** An annual report must contain—

- (a) the financial statements for the year as certified by the Auditor-General; and
- (b) the Auditor-General's certificate on the financial statements.

### **Content of report about implementing corporate and operational plans**

**449.** A local government's annual report also must contain an assessment of its performance in implementing its corporate and operational plans.

**Content of report about other issues of public interest**

**450.** In addition, a local government's annual report must contain—

- (a) details of its revenue policy for the financial year; and
- (b) a list of all action taken under section 402(2) (Changes to tenders) during the year; and
- (c) a list of all resolutions made during the year under section 403(1) (Short listing after calling for expressions of interest); and
- (d) a list of the registers kept by it and open to inspection; and
- (e) its policy on rebates and concessions for rates levied, and particulars of all the rebates and concessions allowed; and
- (f) a copy of any resolution made during the year authorising the payment or provision of remuneration to councillors or members of committees of the local government; and
- (g) particulars of—
  - (i) the total remuneration paid or provided by it to each of its councillors during the year; and
  - (ii) the total superannuation contributions paid by it for each of its councillors during the year; and
- (h) details of the number of meetings attended by each councillor during the year; and
- (i) a statement of its activities during the year to implement its plan for equal opportunity in employment; and
- (j) particulars of other issues relevant to making an informed assessment of its operations and performance in the financial year; and
- (k) particulars of issues required by the Local Government Finance Standards; and
- (l) names of shareholder's delegates of the local government for its LGOCs for the year under section 458GM; and
- (m) particulars required to be included under section 458RA.

**Copies of report to be available for inspection and purchase**

**451.(1)** A local government must have the annual report adopted by it printed and a reasonable number of copies of the report made.

**(2)** The local government must—

- (a) keep the report open to inspection; and
- (b) make copies available for purchase at its public office at a price not more than the cost to the local government of producing the copy and, if a copy is supplied to a purchaser by post, the cost of postage.

**PART 9—DUTIES ABOUT PROPERTY STOLEN OR UNACCOUNTED FOR****Report of missing property**

**452.(1)** If a local government becomes aware that property of, or received by, it may have been stolen, the local government must immediately give written notice to—

- (a) the police officer in charge of the police station at, or nearest to, the place where the property is suspected to have been stolen; and
- (b) the Auditor-General.

**(2)** If a local government becomes aware that property of, or received by it, is missing, but the property is not suspected to have been stolen, the local government must immediately give written notice to the Auditor-General.

**(3)** Subsection (2) applies only to property that has a total value of at least—

- (a) \$1 000; or
- (b) if a greater amount is prescribed by regulation—the greater amount.

**Local Government to take part in prosecution**

**453.(1)** A local government must not—

- (a) obstruct, attempt to obstruct or fail to take part in a prosecution for an offence committed in relation to property mentioned in section 452 (Report of missing property); or
- (b) deliberately withhold evidence relevant to the prosecution.

**(2)** The local government must not promise—

- (a) to do anything prohibited under subsection (1); or
- (b) to secure discontinuance of the prosecution.

**PART 10—JOINT LOCAL GOVERNMENTS****Contribution by component local governments**

**454.** Each component local government of a joint local government must pay to the operating fund of the joint local government the proportion prescribed by regulation of the amount required in each financial year for the operations of the joint local government.

**Notice for contribution to joint local government**

**455.(1)** To inform a component local government of the amount required to be paid by it in a financial year, a joint local government may issue a contribution notice.

**(2)** The contribution notice must—

- (a) be signed by the president or deputy president, and bear the common seal of the joint local government; and
- (b) specify the amount of contribution payable by the component local government; and
- (c) require the component local government to pay the specified amount on or before a specified day (not earlier than 30 days after the notice is given to the component local government).

**Results of failure to pay contribution**

**456.(1)** If a component local government liable to pay an amount specified by a contribution notice fails to pay the amount to the joint local government by the specified day or within a longer period allowed by the joint local government—

- (a) the unpaid amount bears interest at the rate decided by the joint local government; and
- (b) the joint local government may recover the unpaid amount (and interest).

**(2)** The rate of interest must not be more than—

- (a) the rate prescribed by regulation; or
- (b) if no rate is prescribed—15% a year.

**Adoption of a budget by joint local government for part of a year**

**457.(1)** This section applies to a joint local government if a regulation specifies that its first budget must be for a specified part of a financial year.

**(2)** Section 432 (Adoption of budget) applies to the joint local government's first budget as if a reference to 'financial year' were a reference to the specified part of the financial year.

**Disbursement of surplus in operating fund of joint local government**

**458.(1)** If at the end of a financial year there is a surplus in the operating fund of a joint local government, the surplus may be disbursed to any purpose within the jurisdiction of local government approved by all the component local governments.

**(2)** Despite section 437 (Councillors' liability for disbursements), a purpose to which the surplus is disbursed need not be a purpose within the jurisdiction of the joint local government.

## **CHAPTER 7A—NATIONAL COMPETITION REFORM OF SIGNIFICANT BUSINESS ACTIVITIES**

### **PART 1—OBJECT AND APPLICATION**

#### **Object**

**458A.** The object of this chapter is to provide ways to facilitate the implementation of the National Competition Policy Inter-Governmental Agreements to the extent that the agreements are intended to be applied to significant business activities of local governments.

#### **Application to Brisbane City Council**

**458AA.** This chapter applies to the Brisbane City Council.

### **PART 2—DEFINITIONS**

#### **Definitions for ch 7A**

**458AB.** In this chapter—

**“business activity”**, of a local government, means an activity of the local government trading in goods and services to clients, including, for example, providing cleansing services, water and sewerage services, off-street parking and cultural, sporting and recreational facilities, but does not include the construction or maintenance of roads or State-controlled roads or library services.

**“Commonwealth tax”** means tax imposed under a Commonwealth Act.

**“Competition Principles Agreement”** means the Competition Principles Agreement made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South

Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory, as in force for the time being.

**“Conduct Code Agreement”** means the Conduct Code Agreement made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

**“government tax”** means tax imposed under a Commonwealth Act, or a State Act, including this Act.

**“Implementation Agreement”** means the Agreement to Implement National Competition Policy and Related Reforms made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory of Australia, as in force for the time being.

**“National Competition Policy Inter-Governmental Agreements”** means the Conduct Code Agreement, the Competition Principles Agreement and the Implementation Agreement.

**“new type 1 business activity”** means a business activity of a local government identified by it as a new type 1 business activity under section 458AD.

**“new type 1 or 2 business activity”** means a new type 1 business activity or a new type 2 business activity.

**“new type 2 business activity”** means a business activity of a local government identified by it as a new type 2 business activity under section 458AD.

**“public benefit assessment”** means an assessment of a significant business activity of a local government under this chapter.

**“public benefit assessment report”** means the report, including recommendations, on a public benefit assessment.

**“significant business activity”**, of a local government, means—

- (a) a type 1 or 2 business activity; or



- (b) a new type 1 or 2 business activity;  
and includes a part of the activity.

**“significant business entity”** means an entity established by resolution of a local government under part 6, and includes a significant business entity after it becomes a corporatised corporation.

**“State tax”** means tax imposed under an Act, including this Act.

**“tax”** includes any charge, duty, fee, levy and rate.

**“threshold amount”**, for identifying a new type 1 or 2 business activity, see section 458AC.

**“type 1 business activity”** means the provision of the following—

- (a) for Brisbane City Council—
- public transport services
  - cleansing services
  - water and sewerage services;
- (b) for Gold Coast City Council—
- cleansing services
  - water and sewerage services;
- (c) for Ipswich City Council—
- water and sewerage services;
- (d) for Logan City Council—
- water and sewerage services;
- (e) for Townsville City Council—
- water and sewerage services.

**“type 1 or 2 business activity”** means a type 1 business activity or a type 2 business activity.

**“type 2 business activity”** means the provision of the following—

- (a) for Caboolture Shire Council—
- water and sewerage services;
- (b) for Cairns City Council—

- cleansing services
- water and sewerage services;
- (c) for Caloundra City Council—
  - water and sewerage services;
- (d) for Hervey Bay City Council—
  - water and sewerage services;
- (e) for Ipswich City Council—
  - cleansing services;
- (f) for Logan City Council—
  - cleansing services;
- (g) for Mackay City Council—
  - water and sewerage services;
- (h) for Maroochy Shire Council—
  - cleansing services;
  - water and sewerage services;
- (i) for Noosa Shire Council—
  - water and sewerage services;
- (j) for Pine Rivers Shire Council—
  - water and sewerage services;
- (k) for Redland Shire Council—
  - water and sewerage services;
- (l) for Rockhampton City Council—
  - water and sewerage services;
- (m) for Thuringowa City Council—
  - water and sewerage services;
- (n) for Toowoomba City Council—
  - water and sewerage services;

- (o) for Townsville City Council—
- cleansing services.

## **PART 2A—IDENTIFICATION OF NEW TYPE 1 AND 2 BUSINESS ACTIVITIES**

### **Minister to decide threshold amounts for identifying new type 1 or 2 business activities**

**458AC.(1)** Before the end of each financial year, the Minister must decide for the financial year amounts (the “**threshold amounts**”) for identifying a business activity that should be a new type 1 or 2 business activity.

(2) The Minister may decide threshold amounts only after consultation with the Local Government Association.

(3) For identifying an activity that should be a new type 1 business activity, a threshold amount is an amount of expenditure the Minister considers is the equivalent (at 30 June in the financial year in which the amount is decided after adjustment for actual or estimated cost of living movements and changes to applicable accounting systems) of current expenditure of—

- (a) for water and sewerage combined activities—\$25 million at 30 June 1993; or
- (b) for other activities—\$15 million at 30 June 1993.

(4) For identifying an activity that should be a new type 2 business activity, a threshold amount is an amount of expenditure the Minister considers is the equivalent (at 30 June in the financial year in which the amount is decided after adjustment for actual or estimated cost of living movements and changes to applicable accounting systems) of current expenditure of—

- (a) for water and sewerage combined activities—\$7.5 million at 30 June 1993; or

(b) for other activities—\$5 million at 30 June 1993.

(5) The Minister must in the financial year in which threshold amounts are decided publish the threshold amounts by gazette notice.

### **Annual review of business activities**

**458AD.(1)** As soon as practicable after its budget meeting for a financial year (the “**relevant year**”), a local government must, for the financial year, identify its business activities that—

- (a) are new type 1 or 2 business activities; and
- (b) have not previously been identified as being significant business activities.

(2) For subsection (1), a business activity is a new type 1 or 2 business activity of a local government, if, based on financial information presented to the local government’s budget meeting for the relevant year, the activity had expenditure for the preceding financial year greater than the threshold amount decided for the activity in that preceding financial year.

(3) A notice under section 458AC(5) may state matters in financial information presented to the budget meeting for a financial year, the local government must, or must not, consider in deciding if an activity should be a new type 1 or 2 business activity for the following financial year.

### **Notice to Minister of new type 1 or 2 business activities**

**458AE.** As soon as practicable after deciding a business activity is a new type 1 or 2 business activity, a local government must give written notice to the Minister.

## **PART 3—PUBLIC BENEFIT ASSESSMENT OF SIGNIFICANT BUSINESS ACTIVITIES**

### *Division 1—Subject matter of public benefit assessments*

#### **Matters to be addressed by public benefit assessment for type 1 or new type 1 business activity**

**458B.(1)** A public benefit assessment for a type 1 or new type 1 business activity must consider how the activity should be carried on by—

- (a) reviewing the appropriateness of each of the following reforms for the activity—
  - (i) corporatisation of the activity;
  - (ii) commercialisation of the activity;
  - (iii) full cost pricing for the activity; and
- (b) concluding whether or not and, if so, to what extent, the benefits that would be realised from implementation of the reforms mentioned in paragraph (a) would outweigh the costs.

**(2)** An assessment may, and it is declared always could, consider—

- (a) different reforms for separate parts of the activity; and
- (b) sequential reforms for the whole or part of the activity.

*Example for subsection (2)—*

An assessment may consider whether the whole or part of an activity should be reformed and, in recommending reform of part of the activity, the public benefit assessment report could recommend that for the part—

- (a) full cost pricing be implemented by 1 July 1999; and
- (b) commercialisation be implemented by 1 July 2000; and
- (c) the activity be corporatised by 1 July 2002.

#### **Matters to be addressed by public benefit assessment for type 2 or new type 2 business activity**

**458BA.(1)** A public benefit assessment for a type 2 or new type 2

business activity must consider how the activity should be carried on by—

- (a) reviewing the appropriateness of each of the following reforms for the activity—
  - (i) commercialisation of the activity;
  - (ii) full cost pricing for the activity;
  - (iii) if the local government decides, by resolution, it is appropriate for consideration—corporatisation of the activity; and
- (b) concluding whether or not and, if so, to what extent, the benefits that would be realised from implementation of the reforms mentioned in paragraph (a) would outweigh the costs.

**(2)** An assessment may, and it is declared always could, consider—

- (a) different reforms for separate parts of the activity; and
- (b) sequential reforms for the whole or part of the activity.

*Example for subsection (2)—*

An assessment may consider whether the whole or part of an activity should be reformed and, in recommending reform of part of the activity, the public benefit assessment report could recommend that for the part—

- (a) full cost pricing be implemented by 1 July 1999; and
- (b) commercialisation be implemented by 1 July 2000; and
- (c) the activity be corporatised by 1 July 2002.

### **What is corporatisation**

**458BB.(1)** For a public benefit assessment, corporatisation of a significant business activity of a local government involves—

- (a) the establishment of a legal entity for the activity separate from, but owned by, the local government and supported by a full corporate governance structure, including a board of directors; and
- (b) the entity providing goods and services on a commercial basis; and
- (c) the entity receiving subsidies to provide goods and services, as

community service obligations, that it would not otherwise be in the commercial interests of the entity to provide.

(2) Implications of corporatisation include—

- (a) the question of—
  - (i) payment of government taxes or retention by the local government of amounts equivalent to taxes or rates; and
  - (ii) retention by the local government of amounts equivalent to debt guarantee fees for State guarantees; and
- (b) compliance with Commonwealth, State and local government requirements that apply only if the activity is carried on by a private sector business, such as those relating to the protection of the environment and planning and approval processes.

(3) If, before corporatisation of a significant business activity by a local government, the local government is not liable to pay a State tax that would be payable if the activity were corporatised, an amount equivalent to the tax is to be payable by the entity to the local government in place of payment of the tax to the State.

(4) Part 6 applies to the implementation of corporatisation for a significant business activity of a local government.

### **What is commercialisation**

**458BC.(1)** For a public benefit assessment, commercialisation of a significant business activity of a local government involves—

- (a) the activity being carried on by a business unit of the local government that is not a legal entity separate from the local government; and
- (b) the unit providing goods and services on a commercial basis; and
- (c) the unit receiving subsidies to provide goods and services, as community service obligations, that it would not otherwise be in the commercial interests of the unit to provide.

(2) Implications of commercialisation include—

- (a) the question of retention by the local government of—

- (i) amounts equivalent to government taxes that are not otherwise payable to the Commonwealth, State or local government; and
  - (ii) amounts equivalent to debt guarantee fees for State guarantees; and
- (b) compliance with Commonwealth, State and local government requirements that apply only if the activity is carried on by a private sector business, such as those relating to the protection of the environment and planning and approval processes.
- (3) Part 5 applies to the commercialisation of a significant business activity of a local government.

### **What is full cost pricing**

**458BD.(1)** For a public benefit assessment, full cost pricing for a significant business activity means prices are charged for goods and services taking into account the full cost of providing the goods or services including estimates of the amounts mentioned in section 458BC(2)(a).<sup>135</sup>

(2) Part 4 applies to the application of full cost pricing for a significant business activity of a local government.

### *Division 2—Content of public benefit assessment report*

#### **Matters to be addressed in public benefit assessment reports**

**458BE.(1)** A public benefit assessment report must include—

- (a) a statement on whether or not and, if so, to what extent, the benefits that would be realised from implementation of any of the reforms considered under section 458B or 458BA would outweigh the costs; and
- (b) details of those costs and benefits; and
- (c) a recommendation on whether any of the reforms should be implemented for the significant business activity; and

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<sup>135</sup> Section 458G (What is commercialisation)



- (d) if reform is recommended—
  - (i) a statement of which reform should be implemented; and
  - (ii) a timetable for its implementation.
- (2) A report may, and it is declared always could, recommend—
  - (a) different reforms for separate parts of the activity; and
  - (b) sequential reforms for the whole or part of the activity.

*Example for subsection (2)—*

An assessment may consider whether the whole or part of an activity should be reformed and, in recommending reform of part of the activity, the public benefit assessment report could recommend that for the part—

- (a) full cost pricing be implemented by 1 July 1999; and
- (b) commercialisation be implemented by 1 July 2000; and
- (c) the activity be corporatised by 1 July 2002.

### ***Division 3—Local government to undertake assessments***

#### **Public benefit assessments to be undertaken**

**458BF.(1)** A local government must ensure that a public benefit assessment is undertaken and a public benefit assessment report prepared for each of its significant business activities.

(2) A local government may, by resolution, decide a public benefit assessment is to be carried out and a public benefit assessment report be prepared for any of its activities that are not significant business activities.

(3) If a local government acts under subsection (2), this chapter, (other than sections 458BG, 458BI(1) and 458BO(3)<sup>136</sup>), applies, with all necessary changes, to the activity as if it were a type 2 business activity.

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<sup>136</sup> Sections 458BG (Fresh public benefit assessment if reforms not implemented within 3 years), 458BI (Timing for assessments and reports), 458BO (Timetable for implementation of reforms)

**Fresh public benefit assessment if reforms not implemented within 3 years**

**458BG.(1)** This section applies if—

- (a) a public benefit assessment report on a significant business activity of a local government recommends reforms under this part; and
- (b) the local government resolves not to implement any reforms.

(2) The local government must ensure a fresh public benefit assessment is carried out and a fresh public benefit assessment report prepared for the activity within 3 years after the end of the financial year in which the report was first presented to the local government.

**Local government to resolve on assessment and report process**

**458BH.(1)** The local government must, by resolution, decide—

- (a) how the public benefit assessment is to be conducted; and
- (b) the matters the public benefit assessment report must deal with; and
- (c) when the report is to be presented to the local government.

*Example for paragraph (a)—*

The local government may decide the public benefit assessment is to be undertaken by the local government or by external consultants or in cooperation with other local governments undertaking public benefit assessments of similar significant business activities.

(2) The resolution must provide for a consultation process and state how the process is to be used in the assessment.

*Example for subsection (2)—*

A local government may resolve that the consultation process must include—

- (a) giving notice of the assessment and inviting submissions about the assessment; and
- (b) a period for submissions to be received; and
- (c) direct consultation with interested parties; and
- (d) consideration of the submissions received about the assessment; and

- (e) publication of a draft public benefit assessment report for public comment before the report is finalised.

(3) The resolution is subject to section 458BE and a regulation under section 458BJ.

### **Timing for assessments and reports**

**458BI.(1)** The public benefit assessment report must be completed—

- (a) for a type 1 or 2 business activity—
  - (i) before 30 June 1997; or
  - (ii) a day (not later than 30 September 1997) approved by the Minister; or
- (b) for a new type 1 business activity—
  - (i) before the end of the financial year for which the activity is first identified by the local government as a new type 1 business activity; or
  - (ii) a day (not later than 3 months after the end of the financial year) approved by the Minister; or
- (c) for a new type 2 business activity—
  - (i) before the end of the financial year for which the activity is first identified by the local government as a new type 2 business activity; or
  - (ii) a day (not later than 3 months after the end of the financial year) approved by the Minister.

(2) The report must be presented to a meeting of the local government as soon as practicable after the report is completed.

### **Regulation about public benefit assessment and public benefit assessment reports**

**458BJ.** A regulation may prescribe requirements for public benefit assessments and public benefit assessment reports.

***Division 4—Action to be taken on public benefit assessment reports*****Object of division**

**458BK.** The object of this division is to require local governments to consider public benefit assessment reports and to decide whether or not to implement reforms of their significant business activities and, if reforms are to be implemented, timetables for implementation of the reforms.

**Local government to give public notice of public benefit assessment report**

**458BL.(1)** A local government must give public notice of the public benefit assessment report for each of its significant business activities.

**(2)** The notice must be given by—

- (a) publishing the notice, as soon as practicable after the report has been presented to a meeting of the local government under section 458BI(2), once in a newspaper circulating generally in the local government's area; and
- (b) putting a copy of the notice on display in a conspicuous place in the local government's public office on the day on which the notice is published under paragraph (a); and
- (c) keeping the copy of the notice on display until the local government resolves under section 458BN whether any of the reforms considered under section 458B or 458BA<sup>137</sup> should be implemented for the significant business activity.

**(3)** The notice must state the following—

- (a) the name of the local government;
- (b) the report has been presented to the local government;
- (c) a summary of the report's recommendations;
- (d) the day, under section 458BN, on or before which the local

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<sup>137</sup> Section 458B (Matters to be addressed by public benefit assessment for type 1 or new type 1 business activity) Section 458BA (Matters to be addressed by public benefit assessment for type 2 or new type 2 business activity)

government is required to decide whether to implement any of the reforms mentioned in the report;

- (e) the report is open to inspection.

### **Public access to public benefit assessment reports**

**458BM.** From the day the public benefit assessment report for a significant business activity is presented to a meeting of a local government until the local government decides under section 458BN whether to implement any of the reforms—

- (a) a copy of the report must be open to inspection; and
- (b) copies of the report must be available for purchase at the local government's public office at the price stated in the notice about the report.

### **Local government to resolve whether to implement reforms**

**458BN.(1)** As soon as practicable, and not later than 3 months after a public benefit assessment report for a significant business activity has been first presented to a meeting of a local government, the local government must resolve whether any of the reforms considered under section 458B or 458BA<sup>138</sup> should be implemented for the whole or part of the activity.

**(2)** A resolution not to implement a reform recommended in the report must include a statement of the reasons for not implementing the reform.

### **Timetable for implementation of reforms**

**458BO.(1)** This section applies if a local government resolves under section 458BN to implement a reform of a significant business activity.

**(2)** The local government must also, by the resolution, decide a timetable for implementation of the reform under subsection (3).

**(3)** The reform of the activity must be implemented on or before—

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<sup>138</sup> Section 458B (Matters to be addressed by public benefit assessment for type 1 or new type 1 business activity) or 458BA (Matters to be addressed by public benefit assessment for type 2 or new type 2 business activity)

- (a) for a type 1 or 2 business activity—1 July 1998; or
- (b) for a new type 1 or 2 business activity—the start of the second financial year after the financial year for which the activity was identified as being a new type 1 or 2 business activity.

(4) For a particular significant business activity, the Minister may extend the time for its implementation subject to the terms the Minister considers appropriate.

(5) If the Minister extends the time for implementation, the local government may, by resolution, amend the timetable for implementation in accordance with the extension.

(6) Subsection (7) applies if, under section 458BN, a local government resolves to implement a series of reforms for the whole or part of a significant business activity.

(7) Subsection (3) applies only to the first of the series of reforms for the significant business activity but the resolution of the local government must include a timetable for implementation of the remaining reforms.

### **Notice to Minister of resolution**

**458BP.** As soon as practicable after making a resolution to implement, or not to implement, a reform considered under section 458B or 458BA, a local government must give to the Minister—

- (a) a copy of the public benefit assessment report; and
- (b) a copy of the resolution.

### **Reforms not implemented, may later be implemented**

**458BQ.(1)** Although a local government resolves not to implement a reform recommended in a public benefit assessment report for a significant business activity, the local government may, at a later time, resolve to implement the reform.

(2) Sections 458BO (other than subsection (3)) and 458BP apply, with all necessary changes, to a local government acting under this section.

## **PART 4—FULL COST PRICING FOR SIGNIFICANT BUSINESS ACTIVITIES**

### **Application of pt 4**

**458C.** This part applies to a significant business activity of a local government if the local government has resolved under section 458BN or 458BQ<sup>139</sup> to implement full cost pricing for the activity.

### **Meaning of “full cost pricing”**

**458CA.(1) “Full cost pricing”**, for a significant business activity of a local government, is charging for goods or services taking into account the full cost of providing the goods or services, including estimates of amounts equivalent to—

- (a) government taxes that are not otherwise payable to the Commonwealth, State or local government; and
- (b) cost of funds advantage the local government obtains over commercial rates of interest because of State guarantees used for providing the goods or services.

#### **(2) Full cost pricing includes—**

- (a) where possible and appropriate, the removal of advantages and disadvantages that would not apply to the significant business activity if it were carried on by a private sector business; and
- (b) if removal of the advantages or disadvantages does not happen, taking them into account in charging for goods or services.

**(3) Full cost pricing also includes compliance with Commonwealth, State and local government requirements that apply only if the activity were carried on by a private sector business, including, for example, requirements relating to the protection of the environment and planning and approval processes.**

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<sup>139</sup> Section 458BN (Local government to resolve whether to implement reforms) or 458BQ (Reforms not implemented, may be later implemented)

**Guarantees by State**

**458CB.** If the State guarantees repayment of a debt of a local government for a significant business activity for which full cost pricing is implemented, the local government must, in carrying on the activity, take account of amounts equivalent to the cost of funds advantage the local government obtains over commercial rates of interest because of the guarantee.

**Local government to implement full cost pricing for significant business activities**

**458CC.** The local government must implement full cost pricing for each of its significant business activities in accordance with the timetable for its implementation.<sup>140</sup>

**PART 5—COMMERCIALISATION OF SIGNIFICANT BUSINESS ACTIVITIES***Division 1—Preliminary***Application of pt 5**

**458CD.** This part applies to a significant business activity of a local government if the local government has resolved under section 458BN or 458BQ<sup>141</sup> to implement commercialisation of the activity.

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<sup>140</sup> Section 458BO (Timetable for implementation of reforms) requires a local government to decide a timetable for implementation of reforms

<sup>141</sup> Section 458BN (Local government to resolve whether to implement reforms) or 458BQ (Reforms not implemented, may be later implemented)



## ***Division 2—Background and objectives of part***

### **Objectives of commercialisation**

**458CE.** The objectives of commercialisation of significant business activities of a local government are to improve overall economic performance and the local government’s ability to carry out its responsibilities for the good rule and government of its area by—

- (a) establishing efficient and effective commercial business units; and
- (b) establishing a framework for operation and accountability of the units.

### **How objectives of commercialisation are to be achieved—key principles and their elements**

**458CF.** The objectives of commercialisation of significant business activities are to be achieved through application of the key principles of commercialisation and their elements.

### **Key objectives of commercial business units under commercialisation**

**458CG.(1)** Under commercialisation, the key objectives of a local government’s commercial business unit are to be commercially successful in carrying on its activities and efficient and effective in the provision of goods and delivery of its services, including things done as community service obligations.

(2) The commercial success, efficiency and effectiveness of a commercial business unit are to be measured against its financial and non-financial performance targets.

## ***Division 3—Interpretation***

### **Meaning of “commercialisation”**

**458CH.(1)** “Commercialisation” of a significant business activity of a local government involves—

- (a) the activity being carried on by a commercial business unit of the local government that is not a legal entity separate from the local government; and
- (b) the unit providing goods or services on a commercial and full cost pricing basis; and
- (c) subsidies to do anything, as community service obligations, that would not otherwise be in the commercial interests of the unit to do.

**(2) “Commercialisation”** includes—

- (a) retention by the local government of—
  - (i) amounts equivalent to government taxes that are not otherwise payable to the Commonwealth, State or local government; and
  - (ii) cost of funds advantage the local government obtains over commercial rates of interest because of State guarantees used for providing the goods or services; and
- (b) compliance with Commonwealth, State and local government requirements that apply only if the activity were carried on by a private sector business, including, for example, requirements relating to the protection of the environment and planning and approval processes.

**Meaning of “key principles of commercialisation”**

**458CI.(1)** The “key principles of commercialisation” are—

- (a) principle 1—clarity of objectives; and
- (b) principle 2—management autonomy and authority; and
- (c) principle 3—accountability for performance; and
- (d) principle 4—competitive neutrality.

**(2)** The elements of principle 1 are that—

- (a) the commercial business unit will have clear, non-conflicting objectives; and
- (b) specific financial and non-financial performance targets will be set

- for the commercial activities of the commercial business unit; and
- (c) any activities of a local government policy formulation or regulatory nature will, wherever possible, be kept separate from its commercial business unit; and
  - (d) any community service obligations of the commercial business unit will be—
    - (i) clearly identified in the unit's annual performance plan; and
    - (ii) separately costed; and
  - (e) the commercial business unit will be appropriately funded for its community service obligations and any funding will be made apparent; and
  - (f) the commercial business unit will be set performance targets for its community service obligations.
- (3)** The elements of principle 2 are that—
- (a) the commercial business unit will be required to use its best endeavours to ensure it meets its performance targets; and
  - (b) the commercial business unit will be given the autonomy in its day to day operations subject to overarching control mechanisms under the commercialisation framework; and
  - (c) local government directions for the commercial business unit to achieve non-commercial objectives will be exercised in an open way; and
  - (d) in its day to day operations the commercial business unit will be at arms length to its local government.
- (4)** The elements of principle 3 are that—
- (a) performance of the commercial business unit will be monitored by the local government against performance targets specified in its annual performance plan; and
  - (b) commercial business units will generally be subject to the basic management framework of the local government and will comply with the requirements of laws applying to local governments.
- (5)** The elements of principle 4 are that—

- (a) the efficiency of overall resource use is promoted by ensuring markets are not unnecessarily distorted; and
- (b) wherever possible and appropriate, advantages and disadvantages accruing to a commercial business unit because it is part of the local government should be removed.

### **Definitions for pt 5**

**458CJ.** In this part—

**“commercialisation”** see s 458CH.

**“community service obligations”**, of a commercial business unit of a local government, means the obligations to do anything the local government is satisfied—

- (a) are not in the unit’s commercial interests to perform; and
- (b) arise because of a direction by the local government; and
- (c) do not arise because of the application of the following key principles of commercialisation and their elements—
  - (i) principle 3—accountability for performance;
  - (ii) principle 4—competitive neutrality.

**“full cost pricing”**, for a significant business activity of a local government, is charging for goods or services taking into account the full cost of providing the goods or services, including amounts equivalent to—

- (a) government taxes that are not otherwise payable to the Commonwealth, State or local government; and
- (b) debt guarantee fees for State guarantees.

**“key principles of commercialisation”** see section 458CI.

*Division 4—Establishment of commercial business unit***Local government to establish commercial business unit**

**458CK.** A local government must establish a unit of the local government (a “**commercial business unit**”) for carrying on of 1 or more of the local government’s significant business activities under the resolution to implement commercialisation of the activity.<sup>142</sup>

*Division 5—Operations of commercial business unit***Additional requirements for corporate plan**

**458CL.** A local government’s corporate plan under chapter 7, part 2, must include, for each of its commercial business units, an outline of—

- (a) its objectives; and
- (b) the nature and scope of the activities proposed to be carried out by the unit.

**Performance plan for commercial business units**

**458CM.(1)** There must be an annual performance plan for each commercial business unit.

**(2)** A local government’s operational plan under chapter 7, part 2, must include the annual performance plan for each of its commercial business units.

**(3)** A performance plan may be amended at any time before the end of the financial year for which it is prepared.

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<sup>142</sup> Section 458BN (Local government to resolve whether to implement reforms) requires a resolution.

***Division 6—Annual statement of operations on commercial business unit***

**Annual statement of operations on commercial business unit**

**458CN.(1)** A local government must ensure an annual statement on the operations of each commercial business unit for the preceding financial year is given to the local government.

**(2)** The statement must contain—

- (a) information to enable an informed assessment to be made of the unit's operations, including a comparison of the unit's performance with its annual performance plan; and
- (b) particulars of any amendments made to its annual performance plan in the financial year; and
- (c) particulars of any directions (including directions about community service obligations to be carried out by the unit) to the unit for the financial year; and
- (d) particulars of the impact that any changes to its annual performance plan may have had on the unit's financial position, operating surpluses and deficits and prospects.

**(3)** The statement must be included in the local government's annual report.

**Commonwealth and State tax equivalents**

**458CO.(1)** The Treasurer may issue a manual (the "**tax equivalents manual**") about deciding the amounts ("**tax equivalents**") that must be taken into account by a commercial business unit in applying full cost pricing to its operations as the value of benefits derived by the unit if there is no liability to pay a government tax that would be payable by the unit if it were not a part of a local government.

**(2)** Without limiting subsection (1), the tax equivalents manual may provide for—

- (a) rulings by the tax assessor appointed under subsection (3) on issues about tax equivalents, including the application of rulings

under a Commonwealth Act about Commonwealth tax; and

- (b) lodging of returns and giving of information; and
- (c) assessing returns; and
- (d) functions and powers of the tax assessor; and
- (e) objections and appeals against assessments and rulings.

(3) The Treasurer may appoint a person to be the tax assessor under the tax equivalents manual.

(4) A commercial business unit must, as required under the tax equivalents manual, account for tax equivalents.

(5) The Treasurer must table a copy of the tax equivalents manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment made.

### **Guarantees by State**

**458CP.** If the State guarantees repayment of a debt of a local government for a significant business activity carried on by a commercial business unit of the local government, the local government must, in the unit's operations, take account of amounts equivalent to the cost of funds advantage the unit obtains over commercial rates of interest because of the guarantee.

## **PART 6—LOCAL GOVERNMENT OWNED CORPORATIONS**

### *Division 1—Preliminary*

#### *Subdivision 1—Application of part*

#### **Application of pt 6**

**458D.** This part applies to a significant business activity of a local government if the local government resolves to implement corporatisation in relation to the activity.<sup>143</sup>

#### *Subdivision 2—Outline of part and its background and objectives*

#### **What this part provides**

**458DA.** This part provides for the processes necessary to allow for—

- (a) local governments to propose the acquisition of a part of a local government, or parts of local governments, carrying on a significant business activity by corporatised corporations; and
- (b) the nomination of parts of local governments carrying on significant business activities as candidate LGOCs or candidate subsidiaries; and
- (c) the preparation and approval of corporatisation charters for candidate LGOCs; and
- (d) the establishment of significant business entities as separate legal entities; and
- (e) significant business entities to become corporatised corporations

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<sup>143</sup> See sections 458BN (Local government to resolve whether to implement reforms), 458BQ (If partial reforms implemented, further reforms may be implemented), 458FA (Local government proposes corporatisation of significant business activity).



- and to acquire the business of candidates; and
- (f) the operation of corporatised corporations.

### **Objectives of corporatisation**

**458DB.** The objectives of corporatisation are to improve overall economic performance, and the ability of local governments to carry out their responsibilities for the good rule and government of their areas, by—

- (a) establishing efficient and effective corporatised corporations; and
- (b) establishing a framework for accountability of corporatised corporations.

### **How objectives of corporatisation are to be achieved—key principles and their elements**

**458DC.** The objectives of corporatisation are to be achieved through application of the key principles of corporatisation and their elements.

### **Key objectives of corporatised corporation under corporatisation**

**458DD.(1)** Under corporatisation, the key objectives of a corporatised corporation are to be commercially successful in the carrying on of its activities and efficient and effective in the provision of goods and delivery of its services, including services provided as community service obligations.

(2) The commercial success, efficiency and effectiveness of a corporatised corporation are to be measured against its financial and non-financial performance targets.

### ***Subdivision 3—Interpretation***

#### **Meaning of “corporatisation”**

**458DE.** “**Corporatisation**” is a reform process for certain significant business activities of local governments that—

- (a) changes the conditions and the structure under which the business activities are carried on so they are acquired and carried on by separate legal entities (corporatised corporations) and, as far as practicable, on a commercial basis and in a competitive environment; and
- (b) provides for local government ownership (whether directly or through ownership of an LGOC) of the corporatised corporations operating the business activities; and
- (c) allows local governments to provide strategic direction to the corporatised corporations by setting financial and non-financial performance targets and community service obligations.

### **Meaning of “key principles of corporatisation”**

**458DF.(1)** The “key principles of corporatisation” are—

- (a) principle 1—clarity of objectives; and
- (b) principle 2—management autonomy and authority; and
- (c) principle 3—strict accountability for performance; and
- (d) principle 4—competitive neutrality.

**(2)** The elements of principle 1 are that—

- (a) each corporatised corporation will have clear, non-conflicting objectives; and
- (b) each corporatised corporation will be set specific financial and non-financial performance targets for its commercial activities; and
- (c) any activities of a local governmental policy formulation or regulatory nature will, wherever possible, be kept separate from its corporatised corporation; and
- (d) any community service obligations of the corporatised corporation will be—
  - (i) clearly identified in the corporation’s statement of corporate intent; and
  - (ii) separately costed; and

- (e) the corporatised corporation will be appropriately compensated for its community service obligations and any funding will be made apparent; and
  - (f) the corporatised corporation will be set performance targets for its community service obligations.
- (3) The elements of principle 2 are that—
- (a) each corporatised corporation will have a board of directors appointed on merit; and
  - (b) the board will be required to use its best endeavours to ensure that the corporation meets its performance targets; and
  - (c) the board will be given the autonomy and authority to make commercial decisions within areas of responsibility defined by the corporatisation framework; and
  - (d) the local government's former power to make decisions on the operation of a significant business activity will be replaced with procedures for strategic monitoring of corporatised corporations; and
  - (e) the role of the shareholder in relation to the corporatised corporation will be clearly defined; and
  - (f) local government reserve powers will be required to be exercised in an open way.
- (4) The elements of principle 3 are that—
- (a) the board of the corporatised corporation will be accountable to the shareholder for the corporation's performance; and
  - (b) the corporation's statement of corporate intent will form the basis for accountability; and
  - (c) performance will be monitored by the shareholder against performance targets stated in the statement of corporate intent; and
  - (d) shareholder monitoring of the corporation is intended to compensate for the absence of the wide range of monitoring to which listed corporations are subject by, for example, the sharemarket and Commonwealth regulatory agencies.

- (5) The elements of principle 4 are that—
- (a) the efficiency of overall resource use is promoted by ensuring markets are not unnecessarily distorted; and
  - (b) to ensure, wherever possible, the removal of advantages and disadvantages accruing to the corporatised corporation as a result of local government ownership; and
  - (c) if a corporation has monopoly or near monopoly power—
    - (i) if a local government decides it is appropriate to increase competition, there may be reform of the business activity; and
    - (ii) special monitoring may be necessary to prevent abuse of this power.

### **Meaning of “statement of corporate intent”**

**458DG.(1)** The “**statement of corporate intent**” of a corporatised corporation is a document created for the corporation under division 3, subdivision 9.<sup>144</sup>

(2) It is intended that the statement of corporate intent should represent an agreement between the board of the corporation and its shareholder but the statement is not a contract for carrying out of work or for supply of goods or services.

### **Definitions for pt 6**

**458DH.** In this part—

“**board**”, of a corporatised corporation, means the corporation’s board of directors.

“**borrow**” includes—

- (a) raise money or credit; and
- (b) obtain financial accommodation; and

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<sup>144</sup> Division 3 (Local government owned corporatisation and subsidiaries), subdivision 9 (Statement of corporate intent—general)

(c) borrow in a foreign currency.

**“candidate”** means a candidate LGOC or a candidate subsidiary.

**“candidate LGOC”** means a part of a local government carrying on a significant business activity nominated by the local government under section 458EA<sup>145</sup> for its business to become the business of an LGOC.

**“candidate subsidiary”** means a part of a local government carrying on a significant business activity nominated by the local government under section 458EA for its business to become the business of a subsidiary of an LGOC.

**“charter transitional part”** see section 458EI.

**“community service obligations”** see section 458I.

**“corporatisation”** see section 458DE.

**“corporatisation charter”** means—

- (a) for a candidate LGOC—
  - (i) the draft corporatisation charter approved by the candidate LGOC’s local government as its corporatisation charter; or
  - (ii) if the local government approves an amendment of the corporatisation charter—the corporatisation charter as amended; or
- (b) for an LGOC—the corporatisation charter for the LGOC when it was a candidate LGOC as amended from time to time and, on expiry of the charter transitional part, the remainder of the charter.

**“corporatised corporation”** means an LGOC or a subsidiary of an LGOC.

**“financial accommodation”**, for a corporatised corporation, includes a financial benefit and assistance to obtain a financial benefit, arising from or because of—

- (a) a loan; or
- (b) issuing, endorsing or other dealing in promissory notes; or

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<sup>145</sup> Section 458EA (Nomination of candidate LGOC or LGOC’s subsidiary)

- (c) drawing, accepting, endorsing or other dealing in bills of exchange; or
- (d) issuing, purchasing or other dealing in securities; or
- (e) granting or taking a lease of any property for financing purposes; or
- (f) another arrangement prescribed under a regulation.

**“instrument”** means an instrument of any kind (whether express or implied and whether made or given orally or in writing), and includes—

- (a) a contract, deed, agreement, arrangement, understanding or undertaking; and
- (b) a mandate, instruction, notice, authority or order; and
- (c) a lease, licence, transfer, conveyance or other assurance; and
- (d) a guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) a mortgage, charge, lien or security.

**“key principles of corporatisation”** see section 458DF.

**“lease”** includes—

- (a) licence, charter or hiring arrangement of property; and
- (b) an arrangement under which a right to use, operate or provide goods or services in relation to property is granted by a person to another person.

**“LGOC”** (or **“local government owned corporation”**) means a significant business entity declared to be a local government’s LGOC by resolution of the local government that has taken effect.

**“main undertakings”**, for a corporatised corporation, means the undertakings stated in the corporation’s most recent statement of corporate intent as the corporation’s main undertakings.

**“officer”**, of a corporatised corporation, means—

- (a) a director of the corporation; or
- (b) the corporation’s chief executive officer; or

*Local Government Act 1993*

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- (c) for sections other than sections 458IU, 458JB and 458JC—another person who is concerned, or takes part, in the corporation’s management; or
- (d) for sections 458IU, 458JB and 458JC—an employee of the corporation.

**“security”** includes inscribed stock, debenture, bond, debenture stock, note and any other document creating, evidencing or acknowledging indebtedness (whether or not constituting a charge on property).

**“share”**, for a significant business entity (including a corporatised corporation) or another corporation, means a share in the entity’s or corporation’s share capital.

**“shareholder”** means—

- (a) for an LGOC—
  - (i) if a local government holds all the shares in the LGOC—the local government; or
  - (ii) if 2 or more local governments hold shares in the LGOC—all local governments holding the shares in the LGOC; or
- (b) for a subsidiary of an LGOC—its LGOC.

**“shareholder’s delegate”** see section 458GM.

**“statement of corporate intent”** see section 458DG.

**“subsidiary”**, for an LGOC, means a significant business entity declared under this part to be a subsidiary of the LGOC by resolution of a local government that has taken effect.

**“terms”**, of appointment or employment, include terms relating to—

- (a) remuneration and allowances; and
- (b) duration of appointment or employment; and
- (c) termination of appointment or employment.

### **References to doing of act by corporatised corporation**

**458DI.** In this part, a reference to the doing of an act by a corporatised

corporation includes a reference to—

- (a) the making or giving of an instrument by the corporation; and
- (b) the transfer of property by or to the corporation; and
- (c) the incurring of a liability by the corporation.

### **References to local governments etc.**

**458DJ.(1)** In this part, a reference to a candidate’s local government is a reference to the local government that, under section 458EA,<sup>146</sup> nominated the candidate to become the business of an LGOC or a subsidiary.

**(2)** In this part, a reference to an LGOC’s local government is a reference to the LGOC’s shareholder.

**(3)** In this part, a reference to a subsidiary’s local government is a reference to the local government whose LGOC is the subsidiary’s shareholder.

**(4)** In this part, a reference to a significant business entity’s local government is a reference to the local government that resolved to establish the entity.

**(5)** If 2 or more local governments make a resolution about an LGOC, a significant business entity, a candidate or a subsidiary (in each case, the “**entity**”)—

- (a) a reference, in subsections (1) to (4), to the entity’s local government is a reference to all of the local governments acting jointly; and
- (b) a reference to the local government area of the entity’s local government is a reference to the local government areas of all the local governments.

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<sup>146</sup> Section 458EA (Nomination of candidate LGOC or LGOC’s subsidiary)



***Subdivision 4—Corporatised corporation not a local government*****Corporatised corporation not a local government**

**458DK.** A corporatised corporation does not form part of a local government.

***Subdivision 5—Operation of part and application of laws*****Extraterritorial operation**

**458DL.** It is the intention of Parliament that this part should apply, as far as possible, to—

- (a) land and things outside Queensland (whether in or outside Australia); and
- (b) acts, transactions and things done, entered into or happening outside Queensland (whether in or outside Australia); and
- (c) land, things, acts and transactions (wherever situated, done, entered into or happening) that would, apart from this part, be governed or otherwise affected by the law of another jurisdiction (including a foreign country).

**Application of existing laws**

**458DM.(1)** This part applies to a corporatised corporation and a local government despite anything in an Act, including this Act, that was enacted before the commencement of this part.

**(2)** If there is an inconsistency between this part and an Act enacted before the commencement of this part, this part prevails to the extent of the inconsistency.

**(3)** A regulation may provide that an Act or a provision of an Act, including this Act (other than this part), enacted before the commencement of this part applies to a corporatised corporation with changes stated in the regulation.

**(4)** A regulation made under subsection (3)—

- (a) expires 6 months after its notification in the gazette unless it is earlier repealed or its operation is extended by regulation; and
- (b) cannot operate after 1 year after its notification in the gazette.

### **Delegation of powers for corporatised corporations**

**458DN.(1)** A local government may, by resolution, delegate to a corporatised corporation the local government's powers under a local government Act the local government decides are necessary or convenient to facilitate carrying on the corporatised corporation's business.

**(2)** In deciding whether to delegate a power, the local government must have regard to the key principles of corporatisation and their elements.

**(3)** A regulation may provide that a power of a local government under this or another Act cannot be delegated under this section.

**(4)** A delegation of a power ceases to have effect on the making of a regulation under subsection (3) providing that the power cannot be delegated under this section.

**(5)** Despite a requirement of this or another Act that a power of a local government may only be exercised by resolution of the local government, (including the making of a utility charge at a budget meeting) the power may be delegated under this section but may only be exercised by the corporatised corporation by resolution of its board.

**(6)** Subsections (1) and (5) do not apply to a power that, under this part, must be exercised by resolution of a local government.

**(7)** A local government may, by resolution, authorise its corporatised corporation to subdelegate powers delegated to the corporatised corporation under this section (other than powers of a local government mentioned in subsection (5)) to a person under section 458GP.

**(8)** The local government must notify the Minister in writing of each delegation it makes under this section.

**(9)** For local governments to which section 386 applies, section 386(4) to (6) applies to delegations under this section.

**(10)** For Brisbane City Council, the *City of Brisbane Act 1924*,

section 39C(1)(d) applies to delegations under this section.

(11) This section expires on 1 July 1999.

## **How Corporations Law is to be applied to corporatised corporations**

**458DO.** If this part provides that the Corporations Law, or a particular provision of the Corporations Law, applies to a corporatised corporation, the Law or provision applies to the corporation, with all necessary changes and any changes prescribed under a regulation, to the greatest extent possible.

### *Division 2—Mechanisms for creating LGOCs and subsidiaries*

#### *Subdivision 1—Proposal for corporatisation*

### **Local government proposes corporatisation**

**458E.(1)** A local government may, by resolution, propose that a part of the local government carrying on a significant business activity will be acquired by a corporatised corporation.

(2) The local government may also propose, by resolution, that a corporatised corporation will be an LGOC or a subsidiary of an LGOC.

(3) To remove any doubt, it is declared that a local government may propose a corporatised corporation will acquire—

- (a) parts of the local government carrying on more than 1 significant business activity; or
- (b) parts of 2 or more local governments.

(4) A resolution under subsection (3)(b) is not effective until each local government makes the resolution.

*Example of resolutions for this section—*

A local government may, by resolution, propose a part of the local government carrying on its significant business activity will be acquired and operated by a corporatised corporation as a subsidiary of another corporatised corporation that will be an LGOC. While the subsidiary will carry on the business, it is answerable to its

LGOC which in turn is responsible to the local government for the subsidiary carrying on the business.

### **Nomination of candidate LGOC or LGOC's subsidiary**

**458EA.(1)** A local government may, by resolution, nominate a part of a local government carrying on a significant business activity to be a candidate LGOC or candidate subsidiary.

(2) A nomination of a candidate subsidiary must also nominate the LGOC or candidate LGOC of which it is to be a subsidiary.

(3) If parts of 2 or more local governments are nominated, the nomination is not effective until each of the local governments makes a nomination.

### *Subdivision 2—Preparation of corporatisation charter—preliminary*

#### **Meaning of “corporatisation charter”**

**458EB.** The “corporatisation charter” for a candidate LGOC sets out the steps by which, and the basis on which—

- (a) a candidate LGOC's business is to become the business of an LGOC; and
- (b) the key principles of corporatisation, and their elements, are to be implemented.

#### **Candidate LGOC's business may become business of LGOC following corporatisation charter**

**458EC.(1)** A candidate LGOC's business may become the business of an LGOC following the preparation and approval of a corporatisation charter and the implementation of its charter transitional part.

(2) However, a candidate LGOC's business may become the business of an LGOC if a corporatisation charter has been prepared and approved although its charter transitional part has not been fully implemented.

***Subdivision 3—Preparation of corporatisation charter—establishment committee***

**Establishment committee to be appointed**

**458ED.(1)** The local government of a candidate LGOC must appoint a committee (the “**establishment committee**”) to—

- (a) prepare a draft corporatisation charter for the candidate; and
- (b) report to the local government on whether the candidate’s corporatisation charter is being implemented in a timely, efficient and effective way.

**(2)** If chapter 6, part 1, division 3<sup>147</sup> applies to a local government, the establishment committee must be appointed under the division.

**(3)** The establishment committee goes out of existence when the LGOC is established.

**Composition of establishment committee**

**458EE.** Councillors and employees of a local government may be members of an establishment committee appointed by the local government but together must not, at any time, be more than—

- (a) before 1 July 1999—two-thirds of the members; or
- (b) from 1 July 1999—one-half of the members.

**Procedure for appointment of establishment committee**

**458EF.(1)** The local government of a candidate LGOC must adopt processes for selection of appropriate persons for appointment as members of the establishment committee for the candidate.

**(2)** In appointing a person as a member, the local government must have regard to the person’s ability to make a contribution to the committee’s performance of its role.

**(3)** The processes are to be based on the principle that the committee

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<sup>147</sup> Chapter 6, part 1, division 3 (Committees and their meetings)

should have the appropriate range of skills to ensure the corporatisation is a success.

*Example of the application of this section—*

The local government may—

- (a) identify the key attributes required; and
- (b) call for nominations through public advertising and canvassing of suitable individuals; and
- (c) evaluate nominations using independent expertise; and
- (d) provide for interviews of shortlisted individuals by a nominated group assisted by independent experts; and
- (e) appoint the most suitable individuals as members.

### **Draft corporatisation charter to be given to local government**

**458EG.(1)** When the establishment committee for a candidate LGOC has prepared the candidate LGOC's draft corporatisation charter, the committee must give a copy of the draft charter to the local government.

**(2)** The local government may return the draft charter to the committee and ask it to—

- (a) consider or further consider any matter and deal with the matter in the draft charter; and
- (b) revise the draft charter in the light of its consideration or further consideration.

**(3)** The establishment committee must comply with the request.

### ***Subdivision 4—Preparation of corporatisation charter—requirements for charter***

### **Matters to be included in draft corporatisation charter**

**458EH.(1)** The draft corporatisation charter must contain the following matters—

- (a) an outline of how the key principles of corporatisation and their elements are to be applied by the LGOC and a timetable for their

application;

- (b) specification of appropriate systems of accounting for the LGOC and a timetable for their adoption;
- (c) a timetable for the adoption of commercial management and performance systems by the LGOC;
- (d) the scope of the LGOC's business activities, including any undertakings outside the LGOC's local government area;
- (e) a timetable and method for valuing the assets to be transferred to the LGOC and determining the LGOC's capital structure;
- (f) any other matter stated by the local government.

(2) The local government may determine that the draft corporatisation charter should also contain a timetable for—

- (a) identifying any existing activities of a policy formulation or regulatory nature of the candidate; and
- (b) identifying options for the activities to remain within the local government; and
- (c) identifying any community service obligations of the LGOC; and
- (d) costing any community service obligations of the LGOC.

(3) If there is a candidate subsidiary for the candidate LGOC, a reference in this section to an LGOC includes a reference to the subsidiary.

### **Other matters relevant to draft corporatisation charter preparation**

**458EI.(1)** The local government may determine—

- (a) steps to be taken in preparing the draft corporatisation charter; and
- (b) any other matter about the preparation of the draft corporatisation charter.

(2) The local government must also determine that the charter identify its parts that are concerned with the process to achieve corporatisation for the candidate LGOC (the “**charter transitional part**”).

***Subdivision 5—Corporatisation charter—approvals*****Approval of draft corporatisation charter**

**458EJ.** The local government may, by resolution, approve the establishment committee's draft corporatisation charter, or that charter as amended by the local government, as the candidate LGOC's corporatisation charter.

**Approval of amendments of corporatisation charter**

**458EK.** The local government may, by resolution, at any time (whether before or after corporatisation is achieved) approve an amendment of a corporatisation charter.

**Corporatisation charter open to inspection**

**458EL.(1)** A copy of a corporatisation charter must be open to inspection.

**(2)** A copy of the charter may be purchased at the local government's public office.

**(3)** The price of a copy of the charter must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

**Deletion of commercially sensitive matters from corporatisation charter**

**458EM.(1)** A local government may, by resolution, approve a matter in the corporatisation charter may be omitted from the copies of it to be made public if—

- (a) the matter is of a commercially sensitive nature to the corporatised corporation; and
- (b) a full statement of the matter is given to each councillor.

**(2)** For section 198(2)(a), a full statement of the matter given to



councillors under subsection (1)(b) is information that is confidential to the local government.

*Subdivision 6—Corporatisation charter—expiry of charter transitional part*

**Expiry of charter transitional part**

**458EN.** The charter transitional part of the corporatisation charter for a candidate LGOC expires on the approval by the shareholder of the first statement of corporate intent for the LGOC.

*Subdivision 7—Corporatisation facilitative mechanisms—significant business entities*

**Purpose of subdivision**

**458F.** This subdivision provides mechanisms to facilitate the corporatisation process by enabling, among other things, the establishment of a significant business entity.

**Significant business entities**

**458FA.(1)** In accordance with a resolution under section 458E, a local government, or 2 or more local governments, may resolve that a significant business entity be established.

**(2)** The resolution must state, among other things—

- (a) the name of the entity and its functions and powers; and
- (b) the part of the local government, or parts of local governments, the business of which is to be acquired by the significant business entity after it becomes a corporatised corporation.

**(3)** The significant business entity is established on the publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

**(4)** On establishment, the significant business entity—

- (a) is a body corporate; and
- (b) has the name stated in the resolution; and
- (c) has a seal; and
- (d) may sue and be sued in its corporate name; and
- (e) has such functions and powers as may be specified in the resolution.

(5) A resolution under subsection (1) is not effective until each local government makes the resolution under this section.

### **Transfer of assets, liabilities etc. to significant business entity**

**458FB.(1)** For a significant business entity, a local government may, by resolution, make provision about—

- (a) whether, and, if so, the extent to which, the entity is the successor in law of a particular person; and
- (b) the assets and liabilities that are, or are not, assets and liabilities of the entity or of someone else; and
- (c) the consideration for a transfer of assets to the entity, which may include a debt to be owed by the entity to the local government; and
- (d) the instruments that are, or are not, to apply to the entity, including whether or not the instruments are taken to be instruments—
  - (i) to which the entity is a party; or
  - (ii) that were given to, by or in favour of the entity; or
  - (iii) in which a reference is made to the entity; or
  - (iv) under which money is or may become payable, or other property is to be, or may become liable to be, transferred, conveyed or assigned to or by the entity; and
- (e) the proceedings to which the entity becomes a party in substitution for someone else; and
- (f) the existing employees of the local government and their rights.

**(2)** Without limiting subsection (1)—

- (a) a resolution under subsection (1)(c) may make provision about—
  - (i) how the consideration is to be decided; and
  - (ii) the changing of the consideration, whether before or after the entity concerned becomes a corporatised corporation; and
  - (iii) the terms of the debt; and
- (b) a resolution under subsection (1)(d) may make provision about whether, and, if so, the extent to which, instruments apply to the entity in substitution for someone else; and
- (c) a resolution under subsection (1)(f) may provide for the office (including that of chief executive officer or a senior executive) the employee is to hold in the entity when it becomes a corporatised corporation.

**(3)** A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

**(4)** A resolution under subsection (1)(f) has effect despite the following provisions—

- (a) section 458FH;
- (b) division 6, section 458LQ.<sup>148</sup>

**(5)** A resolution under this section must be stated to commence on the entity becoming a corporatised corporation or at a later time.

***Subdivision 8—Significant business entities—directors and employees*****Composition of boards including councillors and local government employees**

**458FC.(1)** A councillor or local government employee may be a director

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<sup>148</sup> Section 458FH (Application of certain provisions about directors and executives to significant business entities), division 6 (Additional provisions relating to chief executive officers), section 458LQ (Appointment of chief executive officer)

of the local government's significant business entity that is, or is to become, an LGOC if the councillor or employee is qualified for appointment.

(2) However, directors mentioned in subsection (1) must not, at any time, be more than—

- (a) before 1 July 1999—two-thirds of all directors; or
- (b) from 1 July 1999—one-half of all directors.

(3) At least one-third of directors of a significant business entity that is, or is to become, an LGOC must not be councillors or employees of the local government or employees of the significant business entity.

(4) At least one-third of directors of a subsidiary must not be employees of its LGOC or the subsidiary.

(5) An appointment of a councillor or local government employee as director is made on the terms the local government decides.

(6) In taking part in meetings of the board of a significant business entity that is, or is to become, an LGOC, a director who is a councillor or local government employee must act in the best interests of the significant business entity.

(7) For a councillor to whom section 177<sup>149</sup> applies, if the councillor acts in accordance with subsection (6), the councillor is taken, for section 177(2), to act in compliance with the section.

(8) For a local government employee to whom section 729<sup>150</sup> applies, if the employee acts in accordance with subsection (6) the employee is taken, for section 729, to act in a way that shows proper concern for the public interest.

(9) Before 1 July 2001, the Minister must complete a review of the appropriateness of councillors and employees of local governments being directors of LGOCs, including LGOCs mentioned in subsection (10).

(10) From 1 July 2001, this section only applies to a significant business entity that is, or is to become, an LGOC, if its activities (being former significant business activities of its local government) are carried on by its subsidiaries.

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<sup>149</sup> Section 177 (Councillors' role)

<sup>150</sup> Section 729 (Integrity of local government employees)

*Example for subsection (10)—*

From 1 July 2001, this section will apply to an LGOC which does not itself trade in goods and services but is the shareholder of subsidiaries that do trade in goods and services.

**(11)** Subsections (2)(a), (3) and (4) expire on 1 July 2001.

### **Remuneration and allowances to directors of significant business entities who are councillors or employees of a local government**

**458FD.(1)** Unless the local government decides otherwise, a councillor or employee of the local government who is also a director of the local government's significant business entity is entitled as a director to remuneration and allowances payable to a director of the significant business entity.

**(2)** If the local government decides its councillors or employees are not entitled to directors' remuneration and allowances, those remunerations and allowances must be paid by the significant business entity to the local government.

**(3)** From 1 July 2001, this section only applies to an LGOC mentioned in section 458FC(10).

### **Restrictions on councillors and employees being directors**

**458FE.(1)** A person must not be both a councillor or employee of a local government and a director of the local government's significant business entity.

**(2)** Subsection (1) does not apply to a significant business entity that is, or is to become, an LGOC—

- (a) if it is a significant business entity mentioned in section 458FC(10); or
- (b) for another significant business entity—until 1 July 2001.

**(3)** A person who is both a councillor or employee of a local government and a director of a significant business entity (that is, or is to become, an LGOC) immediately before subsection (1) applies to it, ceases to be a director on the subsection applying to the entity.

(4) From 1 July 2001—

- (a) at least one-half of the directors of a significant business entity that is or is to become an LGOC must not be employees of the entity; and
- (b) at least one-half of the directors of a subsidiary must not be employees of the subsidiary or its LGOC; and
- (c) at least one-half of the directors of a significant business entity mentioned in section 458FC(10) must not be councillors or employees of the local government or employees of the entity.

### **Prohibition on councillors being employees**

**458FF.** A person must not be both a councillor of a local government and an employee of a significant business entity.

### *Subdivision 9—Interim board*

#### **Interim board of directors for significant business entity**

**458FG.(1)** A local government may, by resolution, decide—

- (a) on a stated day, its significant business entity that is not a corporatised corporation is to have an interim board of directors; and
- (b) the role of the board.

(2) On the significant business entity becoming a corporatised corporation, the directors on the interim board go out of office.

#### **Application of certain provisions about directors and executives to significant business entities**

**458FH.(1)** This section applies to a significant business entity that is not a corporatised corporation.

(2) Sections 458GU to 458GW apply in relation to the significant business entity, with all necessary changes and any changes prescribed by regulation, as if it were a corporatised corporation.

(3) Division 5 applies in relation to the significant business entity, with all necessary changes and any changes prescribed by regulation, as if it were a corporatised corporation and its interim board of directors were its board of directors.

(4) Division 6 applies in relation to a significant business entity that is to become an LGOC, with all necessary changes and any changes prescribed by regulation, as if it were a corporatised corporation and its interim board of directors were its board of directors.

(5) Division 6 applies in relation to a significant business entity that is to become a subsidiary, with all necessary changes, and any changes prescribed by regulation and the change in subsection (6), as if it were a corporatised corporation and its interim board of directors were its board of directors.

(6) For a significant business entity that is to become a subsidiary, section 458LQ<sup>151</sup> is changed as follows—

**Appointment of chief executive officer for significant business entity that is to become a subsidiary**

**458LQ.(1)** A chief executive officer for a significant business entity that is to become a subsidiary is to be appointed by the entity's interim board of directors.

(2) However, before the interim board of directors makes the appointment, it must consult with the interim board of directors of its parent corporation.

(3) In this section—

**“parent corporation”** of a significant business entity that is to become a subsidiary means the significant business entity that is to become the LGOC of which the candidate subsidiary is a subsidiary.

(7) A regulation made under this section—

- (a) expires 6 months after its notification in the gazette unless it is earlier repealed or its operation is extended under a regulation; and
- (b) cannot operate after 1 year after its notification in the gazette.

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<sup>151</sup> Section 458LQ (Appointment of chief executive officer)

***Subdivision 10—Corporatisation facilitative mechanisms—general*****Assistance to significant business entities**

**458FI.** A significant business entity, that is not a corporatised corporation, may arrange with the chief executive officer of the local government for the services of employees of the local government to be made available to it.

**Share capital and issue of shares**

**458FJ.(1)** The local government may, by resolution, provide that, on a stated day before a significant business entity becomes a corporatised corporation, the significant business entity is taken to have a share capital of a stated amount.

**(2)** The resolution takes effect on publication in the gazette of notice of the making of the resolution or on a later day stated in the resolution and the notice.

**(3)** Before becoming a corporatised corporation, the entity must apply the part of its capital that the local government directs in paying up, in full, shares in itself.

**(4)** As soon as practicable after complying with subsection (3), the entity must issue the shares paid up under the subsection.

**(5)** If an entity does not have an interim board of directors, the local government may apply the part of the capital and issue the shares on the entity's behalf.

**(6)** Division 3, subdivision 3 applies to the entity as if it were a corporatised corporation.

**(7)** The local government may, by written notice to the entity, give directions about the issue, holding and transfer of shares paid up under subsection (3).

**(8)** The entity must ensure the directions are complied with.



**Variation of share capital**

**458FK.(1)** This section applies to a significant business entity that is not a corporatised corporation.

**(2)** A local government may, by resolution, vary the share capital of the significant business entity.

**(3)** Without limiting subsection (2), a resolution may provide for—

- (a) the issue of further shares in the significant business entity; or
- (b) the cancellation of issued shares in the significant business entity; or
- (c) the consolidation or division of issued shares in the significant business entity.

**(4)** A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or on a later day stated in the resolution and the notice.

**Division does not affect existing legal relationships**

**458FL.(1)** This division has effect despite anything in any instrument.

**(2)** Nothing done under this division in relation to a significant business entity—

- (a) places the entity or the local government in breach of contract or confidence or otherwise makes the entity or the local government liable for a civil wrong; or
- (b) makes the entity or the local government in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; or
- (c) is taken to fulfil a condition—
  - (i) allowing a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
  - (ii) requiring any money to be paid before its stated maturity; or
- (d) releases a surety or other obligee (in whole or part) from an

obligation.

(3) If, apart from this subsection, the advice or consent of a person would be necessary under an instrument in order to give effect to this part, the advice is taken to have been obtained or the consent is taken to have been given.

### **Local government may deal with other matters**

**458FM.(1)** A local government may, by resolution, make provision about any matter for which it is necessary or convenient to make provision to facilitate the corporatisation of a significant business entity.

(2) Also, a resolution under subsection (1) may change the name of a significant business entity.

(3) A resolution under subsection (2) does not affect the legal personality of the entity whose name is changed.

(4) Unless a contrary intention appears, a reference in an Act or document to the entity by its former name is taken to be a reference to the entity by its new name.

(5) A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or on a later day stated in the resolution and the notice.

### ***Subdivision 11—Acting chief executive officer of significant business entity on corporatisation***

#### **Appointment of acting chief executive officer for significant business entity on corporatisation**

**458FN.(1)** Before a significant business entity becomes a corporatised corporation, the entity's local government may, on the recommendation of the establishment committee, appoint an acting chief executive officer for the entity.

(2) An appointment under this section takes effect on the day the entity becomes a corporatised corporation.

(3) This section does not apply if there is an interim board for the entity.

***Division 3—Local government owned corporations and subsidiaries******Subdivision 1—Declaration of LGOCs and subsidiaries*****Declaration of entity as LGOC**

**458G.(1)** If a local government is satisfied the transitional part of the corporatisation charter of its candidate LGOC has been sufficiently implemented or the candidate's business would, apart from a resolution under section 458FB, be otherwise ready to become the business of an LGOC, the local government may resolve that a significant business entity that is not a corporatised corporation become an LGOC.

(2) The resolution must state the functions of the LGOC.

(3) A significant business entity cannot become an LGOC unless it complies with, or on becoming an LGOC will comply with, section 458GA.

(4) The significant business entity becomes an LGOC in accordance with the resolution under subsection (1) with the functions stated in the resolution on publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

**Requirements for LGOCs**

**458GA.(1)** An LGOC is not a corporation registered under the Corporations Law.

(2) An LGOC must have a board of directors and have a share capital and issued shares.

**Declaration of entity as subsidiary**

**458GB.(1)** If a local government is satisfied the candidate subsidiary's business would, apart from a resolution under section 458FB, be ready to become the business of a subsidiary of an LGOC, the local government may resolve that a significant business entity that is not a corporatised corporation become a subsidiary of the LGOC.

(2) The resolution must state the functions of the subsidiary.

(3) A significant business entity cannot become a subsidiary of an LGOC unless it complies with, or on becoming a subsidiary of an LGOC will comply with, section 458GC.

(4) The significant business entity becomes a subsidiary of an LGOC in accordance with the resolution under subsection (1) with the functions stated in the resolution on publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

### **Requirements for subsidiaries**

**458GC.(1)** A subsidiary of an LGOC is not a corporation registered under the Corporations Law.

(2) A subsidiary of an LGOC must have a board of directors and have a share capital and issued shares.

### **Declaration does not affect legal personality etc.**

**458GD.** The declaration of a significant business entity as a corporatised corporation does not, of itself, affect the legal personality of the entity or its functions and powers.

### *Subdivision 2—Application of Corporations Law*

### **Application of Corporations Law to corporatised corporations**

**458GE.(1)** The provisions of the Corporations Law stated under a regulation as applying to a corporatised corporation apply to the corporatised corporation as if—

- (a) the corporatised corporation were a public company and a company limited by shares; and
- (b) the shares in the corporatised corporation held by the corporatised corporation's shareholder were shares held in the corporatised corporation as a public company and a company limited by shares.

(2) The provisions of the Corporations Law (other than those applied to a corporatised corporation under subsection (1) or another provision of this

part) do not apply to the corporatised corporation.

(3) A regulation made under subsection (1)—

- (a) expires 6 months from the day on which it is notified in the gazette unless it is earlier repealed or its operation is extended under a regulation; and
- (b) cannot operate after 1 year after its notification in the gazette.

### **Corporatised corporation exempt public authority**

**458GF.** A corporatised corporation is an exempt public authority for the Corporations Law.

### *Subdivision 3—Shares of corporatised corporations*

#### **Local governments to be shareholders of LGOCs**

**458GG.(1)** The local government that resolved the establishment of an LGOC must be the LGOC's shareholder.

(2) If the LGOC is formed on the resolution of more than 1 local government, each of the local governments must be a shareholder of the LGOC.

#### **LGOC to be shareholder of LGOC's subsidiary**

**458GH.** For a subsidiary of an LGOC, the LGOC must be the shareholder of the subsidiary.

#### **If 2 or more local governments are shareholders, shares and entitlements apportioned by agreement**

**458GI.(1)** This section applies if 2 or more local governments are, or are to be, shareholders of an LGOC.

(2) Each local government is to hold the number or proportion of shares in the LGOC as the local governments agree.

(3) Subject to section 458GL, each local government is entitled to rights

as a shareholder of the LGOC as agreed by resolution of the local governments.

### **Variation of shares and share capital of corporatised corporation**

**458GJ.(1)** The shareholder of a corporatised corporation may vary the share capital of the corporation.

(2) Without limiting subsection (1), the shareholder may provide for—

- (a) the issue of further shares in the corporation; or
- (b) the cancellation of issued shares in the corporation; or
- (c) the consolidation or division of issued shares in the corporation.

(3) If the shareholder is a local government, the local government may only act under this section by resolution.

(4) If the shareholder is an LGOC, the LGOC may only act under this section by resolution of its board.

(5) A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or on a later day stated in the resolution and the notice.

### **Transfer, issue etc. of shares**

**458GK.(1)** An LGOC's shareholder may transfer shares in the LGOC only to—

- (a) another local government; or
- (b) if the LGOC is to become a subsidiary of another LGOC—the other LGOC.

(2) An LGOC may transfer shares in its subsidiary only to—

- (a) another LGOC; or
- (b) if the subsidiary is to become an LGOC—to its local government.

### **Shareholders must act jointly**

**458GL.(1)** This section applies if an LGOC has more than

1 shareholder.

(2) If this part authorises an LGOC's shareholder to do an act, the shareholders may only do the act jointly.

(3) If this part requires the shareholder to do an act, the shareholders must do the act jointly.

#### *Subdivision 4—Shareholders and councillors*

#### **Appointment of councillors as shareholder's delegates**

**458GM.(1)** A local government may, by resolution, on the terms the local government decides, appoint 2 of its councillors as delegates (“**shareholder's delegates**”) of the local government in its capacity as shareholder of its LGOC.

(2) If more than one-half of the directors of the LGOC are councillors or employees of the local government, the directors must not be shareholder's delegates for the LGOC.

(3) Subsection (2) and this subsection expire on 1 July 1999.

(4) When acting as delegates of a local government under this part, the shareholder's delegates must act jointly.

(5) Subject to direction by the local government by resolution, its shareholder's delegates may, on behalf of the local government, exercise the following powers of the local government in relation to the local government's corporatised corporations—

- (a) appointment (including terms of appointment) and removal of directors of the board of an LGOC or of the first board of a subsidiary of an LGOC (including chairpersons and deputy chairpersons);
- (b) monitoring the performance of the LGOC and its subsidiaries;
- (c) making requests, or giving directions about and agreeing to a corporate plan and statement of corporate intent or changes to them;
- (d) exempting an LGOC from including matters in its statement of corporate intent;

(e) giving directions to a board of an LGOC, other than if the power is stated to be by resolution of the local government.

(6) A shareholder's delegate, in exercising a power under this section, must act to promote the principles of this part as they apply to the LGOC.

(7) A power exercised by a shareholder's delegate of a local government is taken to have been exercised by the local government.

(8) A shareholder's delegate must give the local government the reports on the performance of the LGOC requested by the local government, including information on decisions made by the LGOC, but excluding relevant commercially sensitive material given to the delegates by the LGOC.

(9) A shareholder's delegate does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under this subdivision in relation to the LGOC or its subsidiaries.

(10) A liability that would, apart from subsection (9), attach to a shareholder's delegate attaches instead to the local government.

(11) If a shareholders' delegate lawfully makes a request or gives a direction to an LGOC under this section, the LGOC must comply with the request or direction as if the delegate were the local government.

### *Subdivision 5—Board of directors*

#### **Corporatised corporation to have board of directors**

**458GN.** Each corporatised corporation must have a board of directors (the “**board**”).

#### **Role of board**

**458GO.** The role of a corporatised corporation's board includes the following matters—

- (a) responsibility for the corporation's commercial policy and management;
- (b) ensuring, as far as possible, the corporation achieves, and acts in



accordance with, its statement of corporate intent and, for an LGOC, its corporatisation charter and carries out its objectives in its statement of corporate intent;

- (c) accounting to the corporation's shareholder for its performance as required by this part and other laws applying to the corporation;
- (d) ensuring the corporation otherwise performs its functions in a proper, effective and efficient way.

### **Delegation by board**

**458GP.** A corporatised corporation's board may, by resolution, delegate its powers to—

- (a) a director; or
- (b) a committee of the board; or
- (c) the corporation's chief executive officer; or
- (d) an employee of the corporation.

### **Additional provisions about board—div 5**

**458GQ.** Additional provisions about the board are in division 5.

### **First board of LGOC**

**458GR.(1)** For the appointment of the first board of an LGOC, the local government of the candidate LGOC must act under sections 458L(1) and 458LA(1) before the LGOC is established under section 458G.

**(2)** The appointment takes effect when the LGOC is established.

### **First board of LGOC subsidiary**

**458GS.(1)** For the appointment of the first board of a subsidiary of an LGOC—

- (a) the LGOC; or
- (b) if the LGOC is not yet established—the local government of the

candidate subsidiary;

must act under sections 458L(2) and 458LA(2) before the subsidiary is established under section 458GB.

(2) For the local government acting under the sections, a reference in the sections to the LGOC is taken to be a reference to the local government of the candidate subsidiary.

(3) An appointment under this section—

- (a) takes effect when the subsidiary is established; and
- (b) if made by the local government—must be for not more than 3 months.

### *Subdivision 6—Chief executive officer*

#### **Corporatised corporations to have chief executive officer**

**458GT.** Each corporatised corporation is to have a chief executive officer.

#### **Duties of chief executive officer**

**458GU.** A corporatised corporation's chief executive officer is, under its board, to manage the corporation.

#### **Things done by chief executive officer**

**458GV.** Anything done in the name of, or for, a corporatised corporation by its chief executive officer is taken to have been done by the corporation.

#### **Delegation by chief executive officer**

**458GW.(1)** A corporatised corporation's chief executive officer may delegate the chief executive officer's powers (including a power delegated to the chief executive officer) to an employee of the corporation.

(2) Subsection (1) has effect subject to any directions of the corporation's board.

**Additional provisions about chief executive officer—div 6**

**458GX.** Additional provisions about a corporatised corporation's chief executive officer are in division 6.

***Subdivision 7—Corporate plan—general*****LGOC must have corporate plan**

**458H.** Each LGOC must have a corporate plan.

**Corporate plan to apply to subsidiaries**

**458HA.** If an LGOC has a subsidiary, the LGOC's corporate plan must apply to the LGOC and its subsidiary.

***Subdivision 8—Preparation, agreement on and changes to corporate plan*****Draft corporate plan**

**458HB.(1)** Before 1 May of each year, an LGOC's board must prepare, and submit to its shareholder for agreement, a draft corporate plan for at least 3 years starting on 1 July of the year.

**(2)** However, for the LGOC's first corporate plan, the LGOC must, within 1 month after becoming an LGOC, prepare, and submit to its shareholder for agreement, a draft corporate plan to apply from its corporatisation to, at the earliest, the third 30 June after it becomes a corporatised corporation.

**(3)** The board and the shareholder must try to reach agreement on the draft plan as soon as possible and, except if subsection (2) applies, not later than 1 month before the start of the period covered by the plan.

**Duration of corporate plan**

**458HC.** Subject to section 458HF, a corporate plan of an LGOC continues in force until a new corporate plan takes effect.

**Special procedures in relation to draft corporate plan**

**458HD.(1)** The shareholder may return the draft corporate plan to the board and ask it to—

- (a) consider or further consider any matter and deal with the matter in the draft plan; and
- (b) revise the draft plan in the light of its consideration or further consideration.

**(2)** The board must comply with the request as a matter of urgency.

**(3)** If a draft corporate plan has not been agreed to by the shareholder within 2 months from the day on which the LGOC becomes an LGOC, the shareholder may, by written notice, direct the board to—

- (a) take stated steps in relation to the draft plan; or
- (b) make stated changes to the draft plan.

**(4)** If a draft corporate plan, other than the first corporate plan, for a period from 1 July in a year has not been agreed to by the shareholder by 1 June of the year, the shareholder may, by written notice, direct the board to—

- (a) take stated steps in relation to the draft plan; or
- (b) make stated changes to the draft plan.

**(5)** The board must immediately comply with a direction under subsection (3) or (4).

**(6)** A copy of a direction must be open to inspection.

**Corporate plan on agreement**

**458HE.** Subject to section 458HC, when a draft corporate plan of an LGOC is agreed to by the shareholder, it becomes the LGOC's corporate plan for the period of the plan.

**Corporate plan pending agreement**

**458HF.(1)** If a draft corporate plan for an LGOC has not been agreed to by the shareholder within 1 month from the day on which it becomes an

LGOC (“**the time**”), the last draft corporate plan before the time is taken to be the LGOC’s corporate plan until a draft corporate plan becomes the LGOC’s corporate plan under section 458HE.

(2) If an LGOC’s shareholder has not agreed to a draft corporate plan, other than the first corporate plan, on or before 1 July in a year (also “**the time**”), the last draft corporate plan before the time is taken to be the LGOC’s corporate plan until a draft corporate plan becomes the LGOC’s corporate plan under section 458HE.

(3) In this section—

“**last draft corporate plan**”, before the time, means the draft corporate plan submitted, or last submitted, by the board to the shareholder (with any changes made by the board, whether before or after the time, at the direction of the shareholder).

### **Changes to corporate plan**

**458HG.(1)** An LGOC’s corporate plan may be changed by its board with the agreement of its shareholder.

(2) The shareholder may, by written notice, direct the board to change the corporate plan.

(3) Before giving the direction, the shareholder must consult with the board and take its views into account.

(4) A copy of the direction must be open to inspection.

### **Corporate plan open to inspection**

**458HH.(1)** A copy of an LGOC’s corporate plan must be open to inspection at the local government’s public office.

(2) A copy of the corporate plan may be purchased at the local government’s public office.

(3) The price of a copy of the corporate plan must be no more than the cost to the local government of having a copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

**Deletion of commercially sensitive matters from corporate plan**

**458HI.(1)** A matter in the corporate plan of an LGOC may be omitted from the copies of it to be made public if—

- (a) the matter is of a commercially sensitive nature to the LGOC or its subsidiary; and
- (b) a full statement of the matter is given—
  - (i) if there are shareholder’s delegates<sup>152</sup>—to the delegates; or
  - (ii) if there are no shareholder’s delegates—to each councillor of the LGOC’s local government.

**(2)** For section 198(2)(a), a full statement of the matter given to shareholder’s delegates or councillors under subsection (1)(b), is information that is confidential to the local government.<sup>153</sup>

***Subdivision 9—Statement of corporate intent—general*****Corporatised corporations must have statements of corporate intent**

**458HJ.(1)** Each corporatised corporation must have a statement of corporate intent for each financial year.

**(2)** If the corporation becomes a corporatised corporation other than on 1 July in a year, its first statement of corporate intent must be for the period from its corporatisation to 30 June next following.

**LGOC’s statement of corporate intent must be consistent with corporate plan**

**458HK.** An LGOC’s statement of corporate intent must be consistent with its corporate plan.

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<sup>152</sup> Section 458GM (Appointment of councillors as shareholder’s delegates) provides for appointment of shareholder’s delegates.

<sup>153</sup> Section 198 (Improper use of information by councillors)

**Subsidiary's statement of corporate intent to be consistent with LGOC's corporate plan and statement of corporate intent**

**458HL.** A subsidiary's statement of corporate intent must be consistent with its LGOC's corporate plan and statement of corporate intent.

***Subdivision 10—Matters to be included in statement of corporate intent*****Matters to be included in statement of corporate intent**

**458HM.(1)** A corporatised corporation's statement of corporate intent must state the corporation's financial and non-financial performance targets for its activities for the relevant financial year.

**(2)** A corporatised corporation's statement of corporate intent must include the following additional matters—

- (a) an outline of the corporation's objectives and functions;
- (b) an outline of the nature and scope of the activities proposed to be carried on by the corporation in the relevant financial year, including details of any changes, since the last statement of corporate intent, to the corporation's undertakings outside the area of its local government;
- (c) an outline of the corporation's main undertakings and any intention to dispose of any of them in the relevant financial year;
- (d) the corporation's capital structure and dividend policies;
- (e) an outline of the major infrastructure investments proposed to be carried out by the corporation in the relevant financial year;
- (f) an outline of the outstanding and proposed borrowings by the corporation;
- (g) an outline of the policies adopted by the corporation to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability;
- (h) an outline of the corporation's policies and procedures relating to the acquisition and disposal of major assets;
- (i) the corporation's accounting policies applying to the preparation

of its accounts;

- (j) the type of information to be given to the shareholder, including information to be given in quarterly and annual reports;
- (k) an outline of the employment and industrial relations policies of the corporation;
- (l) for an LGOC—any proposal for the establishment of a subsidiary of the LGOC;
- (m) the matters set out in the LGOC's charter transitional part that continue to be relevant to the operations of the corporatised corporation.

(3) The corporatised corporation's shareholder may exempt the corporation from including any matter, or any aspect of a matter, mentioned in subsection (2) in the statement of corporate intent if the shareholder considers the matter or aspect is not materially relevant to the corporatised corporation or its activities.

(4) The statement of corporate intent must also include the matters concerning its community service obligations required under section 458IA.<sup>154</sup>

(5) Subsections (1), (2) and (4) do not limit the matters that may be included in a statement of corporate intent.

*Example for subsection (5)—*

The statement of corporate intent could include matters set out in the LGOC's corporatisation charter.

### **Deletion of commercially sensitive matters from statement of corporate intent**

**458HN.(1)** A matter in the statement of corporate intent of a corporatised corporation may be omitted from the copies of it to be made public if—

- (a) the matter is of a commercially sensitive nature to the corporatised corporation; and

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<sup>154</sup> Section 458IA (Community service obligations to be specified in statement of corporate intent)



- (b) a full statement of the matter is given—
- (i) if the corporatised corporation is an LGOC and there are shareholder's delegates<sup>155</sup>—to the delegates; or
  - (ii) if the corporatised corporation is an LGOC and there are no shareholder's delegates—to each councillor of the LGOC's local government; or
  - (iii) if the corporatised corporation is a subsidiary and there are shareholder's delegates of its LGOC—to the delegates; or
  - (iv) if the corporatised corporation is a subsidiary and there are no shareholder's delegates of its LGOC—to each councillor of the LGOC's local government.

(2) For section 198(2)(a), a full statement of the matter given to shareholder's delegates or councillors under subsection (1)(b), is information that is confidential to the local government.<sup>156</sup>

***Subdivision 11—Preparation, agreement on and modification of statement of corporate intent***

**Draft statement of corporate intent**

**458HO.(1)** For each financial year, a corporatised corporation's board must prepare, and submit to its shareholder for agreement, a draft statement of corporate intent before 1 May preceding the financial year.

(2) However, for a corporatised corporation's first statement of corporate intent, the corporation must, within 1 month after becoming a corporatised corporation, prepare, and submit to its shareholder for agreement, a draft statement of corporate intent to apply from its becoming a corporatised corporation.

(3) The board and the shareholder must try to reach agreement on the draft statement as soon as possible and, except if subsection (2) applies, not later than the start of the financial year.

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<sup>155</sup> Section 458GM (Appointment of councillors as shareholder's delegates) provides for appointment of shareholder's delegates.

<sup>156</sup> Section 198 (Improper use of information by councillors)

**Consultation with industrial organisations etc.**

**458HP.** In preparing a statement of corporate intent, a corporatised corporation's board may consult with interested industrial organisations and employees.

**Special procedures in relation to draft statement of corporate intent**

**458HQ.(1)** The shareholder may return the draft statement of corporate intent to the board and ask it to—

- (a) consider or further consider any matter and deal with the matter in the draft statement; and
- (b) revise the draft statement in the light of its consideration or further consideration.

**(2)** The board must comply with the request as a matter of urgency.

**(3)** If a draft statement of corporate intent has not been agreed to by the shareholder within 2 months from the day on which the corporation becomes a corporatised corporation, the shareholder may, by written notice, direct the board to—

- (a) take stated steps in relation to the draft statement; or
- (b) make stated changes to the draft statement.

**(4)** If a draft statement of corporate intent of the corporation, other than its first statement of corporate intent, for a period from 1 July in a year has not been agreed to by its shareholder by 1 July of the year, the shareholder may, by written notice, direct the board to—

- (a) take stated steps in relation to the draft statement; or
- (b) make stated changes to the draft statement.

**(5)** The board must immediately comply with a direction under subsection (3) or (4).

**(6)** A copy of a direction must be open to inspection.

**Statement of corporate intent on agreement**

**458HR.** When a draft statement of corporate intent of a corporatised

corporation is agreed to by its shareholder, it becomes the corporation's statement of corporate intent for the period of the statement.

### **Statement of corporate intent pending agreement**

**458HS.(1)** If a draft statement of corporate intent has not been agreed to by its shareholder within 2 months from the day on which the corporation becomes a corporatised corporation (“**the time**”), the last draft statement of corporate intent is taken to be the corporation's statement of corporate intent until a draft statement of corporate intent becomes the corporation's statement of corporate intent under section 458HR.

(2) If the shareholder of a corporatised corporation has not agreed to a draft statement of corporate intent, other than the first statement of corporate intent, by 1 July in a year (also “**the time**”), the last draft statement of corporate intent is taken to be the corporation's statement of corporate intent until a draft statement of corporate intent becomes the corporation's statement of corporate intent under section 458HR.

(3) In this section—

“**last draft statement of corporate intent**”, before the time, means the draft statement of corporate intent submitted, or last submitted, by the board to the shareholder (with any changes by the board, whether before or after the time, at the direction of the shareholder).

### **Changes to statement of corporate intent**

**458HT.(1)** A corporatised corporation's statement of corporate intent may be changed by its board with the agreement of its shareholder.

(2) The shareholder may, by written notice, direct the board to change the statement of corporate intent.

(3) Before giving the direction, the shareholder must consult with the board and take its views into account.

(4) A copy of the direction must be open to inspection.

**Statement of corporate intent open to inspection**

**458HU.(1)** Subject to section 458HN, a copy of a corporatised corporation's statement of corporate intent must be open to inspection at the local government's public office.

(2) A copy of the statement of corporate intent may be purchased at the local government's public office.

(3) The price of a copy of the statement of corporate intent must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

(4) The LGOC must give to the chief executive officer of the local government a copy of the current statement of corporate intent of each of its subsidiaries.

***Subdivision 12—Community service obligations*****Meaning of “community service obligations”**

**458I.(1)** The “community service obligations” of a corporatised corporation are obligations to do anything that the corporation's board establishes to the satisfaction of the shareholder—

- (a) are not in the commercial interests of the corporation to do; and
- (b) arise because of a direction by the corporation's local government to its LGOC; and
- (c) do not arise because of the application of the following key principles of corporatisation and their elements—
  - (i) principle 3—strict accountability for performance;
  - (ii) principle 4—competitive neutrality.

(2) This section applies to the following directions and duties—

- (a) directions given to the LGOC's board under section 458HD or 458HG;<sup>157</sup>

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<sup>157</sup> Section 458HD (Changes to corporate plan) or 458HG (Special procedures in relation to draft corporate plan)

- (b) a direction given to the corporatised corporation's board under section 458HQ, 458HT, 458IB or 458JN;<sup>158</sup>
- (c) any duty to carry out activities (including any economic development activities or activities of a regulatory or policy formulation nature) arising under an Act applying specifically to the corporatised corporation or corporatised corporations generally.

### **Community service obligations to be stated in statement of corporate intent**

**458IA.(1)** The community service obligations that a corporatised corporation is to do are to be stated in its statement of corporate intent.

**(2)** The costings of, funding for, or other arrangements to make adjustments relating to, the corporation's community service obligations are also to be stated in its statement of corporate intent.

**(3)** A corporatised corporation's statement of corporate intent is conclusive, as between the corporation and its shareholder, of—

- (a) the nature and extent of the community service obligations of the corporation; and
- (b) the ways in which, and the extent to which, the corporation is to be compensated by the shareholder for the community service obligations.

### ***Subdivision 13—General reserve powers of shareholder***

### **Reserve power of shareholder to give directions to LGOC in public interest**

**458IB.(1)** An LGOC's shareholder may, by resolution, give the LGOC's board a written direction in relation to the LGOC and its

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<sup>158</sup> Section 458HQ (Special procedures in relation to draft statement of corporate intent), 458HT (Changes of statement of corporate intent), 458IB (Reserve power of shareholder to give directions to LGOC in public interest) or 458JN (Reserve power of shareholder to direct that asset not be disposed of)

subsidiaries if the shareholder is satisfied, because of exceptional circumstances, it is necessary to give the direction in the public interest.

(2) The board must ensure the direction is complied with by the LGOC.

(3) If the direction concerns the LGOC's subsidiary, the LGOC board must, to the extent the direction concerns the subsidiary—

(a) notify the subsidiary of the direction; and

(b) ensure the direction is complied with by the subsidiary.

(4) The subsidiary's board must ensure that a direction of which it has been notified is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

(5) Before giving the direction, the shareholder must—

(a) consult with the LGOC; and

(b) ask the board to advise it whether, in its opinion, complying with the direction would not be in the commercial interests of the LGOC or any of its subsidiaries.

(6) A copy of the direction must be open to inspection.

#### *Subdivision 14—Suspected insolvency from directions*

### **Notice of suspected insolvency because of direction**

**458IC.(1)** This section applies if—

(a) a corporatised corporation's board is given a direction by its shareholder; and

(b) the board suspects the corporation, or, for an LGOC, its subsidiary, will or may become insolvent; and

(c) in the board's opinion, the cause or a substantial cause of the suspected insolvency would be compliance with the direction.

(2) The board must immediately give written notice to the shareholder, the auditor-general and, if the corporation is a subsidiary, its local government of—

(a) the suspicion; and

(b) its reasons for the opinion.

(3) The notice must state that it is given under this section.

(4) The giving of the notice operates to suspend the direction until—

(a) the shareholder advises the board, in writing, that the shareholder is not satisfied—

(i) the board's suspicion mentioned in subsection (1)(b) is well-founded; or

(ii) the board's opinion mentioned in subsection (1)(c) is justified; or

(b) the direction is revoked.

(5) If the shareholder is satisfied the board's suspicion is well-founded, the shareholder must immediately—

(a) if also satisfied the board's opinion is justified—revoke the direction; and

(b) in any case—give the board the written directions the shareholder considers necessary or desirable, including any directions necessary or desirable to ensure—

(i) the corporation or, for an LGOC, its subsidiary does not incur further debts; or

(ii) the LGOC or its subsidiary will be able to pay all its debts as and when they become due.

(6) Without limiting subsection (5), a direction under this section may require an LGOC or any of its subsidiaries to stop or limit particular activities.

(7) If the shareholder is a local government, a direction under subsection (5) must be by resolution of the local government.

(8) The board of the corporatised corporation must ensure a direction under this section is complied with by the corporation.

(9) If the direction to an LGOC's board concerns the LGOC's subsidiary, the LGOC board must, to the extent the direction concerns the subsidiary—

(a) notify the subsidiary of the direction; and

(b) ensure the direction is complied with by the subsidiary.

(10) The subsidiary's board must ensure that a direction of which it has been notified is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

(11) A copy of the direction by a local government must be open to inspection.

(12) This section is in addition to, and does not limit, another provision of this part or another law.

(13) The shareholder must give the auditor-general a copy of every advice or direction given under this section to the board.

#### *Subdivision 15—Limitation on local government directions*

### **Corporatised corporation and board not otherwise subject to local government direction**

**458ID.** Except as otherwise provided by this or another Act, a corporatised corporation and its board are not subject to direction by or on behalf of its local government under this part.

#### *Subdivision 16—Reports and other accountability matters*

### **Application of Financial Administration and Audit Act**

**458IE.(1)** The provisions of the *Financial Administration and Audit Act 1977* that apply to local governments (“**the provisions**”) apply to a corporatised corporation with any changes prescribed by regulation.

(2) A regulation made under subsection (1)—

- (a) expires 6 months after its notification in the gazette unless it is earlier repealed or its operation is extended under a regulation; and
- (b) cannot operate after 1 year after its notification in the gazette.

(3) For the purposes of the provisions, a corporatised corporation is a controlled entity.



(4) The provisions apply to a corporatised corporation as if a reference in the Act to the appropriate Minister were a reference to the local government.

### **Quarterly reports**

**458IF.(1)** A corporatised corporation's board must give to its shareholder a report on the corporation's operations including, for an LGOC, its subsidiaries for each of the first 3 quarters of a financial year.

(2) A quarterly report must be given to—

- (a) for an LGOC if there are shareholder's delegates—the shareholder's delegates; and
- (b) for corporatised corporations to which paragraph (a) does not apply—the shareholder.

(3) A quarterly report must be given—

- (a) within 1 month after the end of the quarter; or
- (b) if another period after the end of the quarter is agreed between the board and the shareholder—within the agreed period.

(4) A quarterly report must include the information required to be given in the report by the corporation's statement of corporate intent.

(5) For section 198(2)(a), a quarterly report of an LGOC is information that is confidential to the LGOC's local government.<sup>159</sup>

### **Annual reports**

**458IG.(1)** A corporatised corporation's board must give to its shareholder an annual report on the corporation's operations including, for an LGOC, its subsidiaries for each financial year.

(2) The annual report must be given to the shareholder—

- (a) within 4 months after the end of the financial year; or
- (b) if another period after the end of the financial year is agreed between the board and the shareholder—within the agreed period.

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<sup>159</sup> Section 198 (Improper use of information by councillors)

**(3)** The annual report<sup>160</sup> must—

- (a) contain the information that is required to be included in the report by its shareholder to enable an informed assessment to be made of the corporation's operations, including for an LGOC, the operations of its subsidiaries, and including a comparison of the performance of the corporation with its statement of corporate intent; and
- (b) state the corporation's dividend policy for the financial year to which the report relates; and
- (c) include the statement of corporate intent for the relevant financial year; and
- (d) include particulars of any changes made to the statement of corporate intent during the relevant financial year; and
- (e) include particulars of any directions given to the board by the shareholder relating to the relevant financial year;<sup>161</sup> and
- (f) include particulars of the impact on the financial position, profits and losses and prospects of the corporation, including, for an

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<sup>160</sup> Under section 458II certain material may be deleted from the report.

<sup>161</sup> An LGOC's shareholder may give directions to the board of an LGOC under—

- section 458HD (Special procedures in relation to draft corporate plan)
- section 458HG (Changes to corporate plan)
- section 458HQ (Draft statement of corporate intent)
- section 458HT (Changes to statement of corporate intent)
- section 458IB (Reserve power of shareholder to give directions to LGOC in public interest)
- section 458IC (Notice of suspected insolvency because of direction)
- section 458IV (Notice of suspected insolvency otherwise than because of direction)
- section 458JK (Payment of dividends)
- section 458JL (Interim dividends)
- section 458JN (Reserve power of shareholder to direct that asset not be disposed of)

LGOC, its subsidiaries, of any changes to the statement of corporate intent and of any directions given to the board by the shareholder, relating to the relevant financial year.

(4) The annual report must also state whether or not, in the directors' opinion, there are, when the statement is made, reasonable grounds to believe the corporation will be able to pay its debts as and when they fall due.

(5) This section does not limit the matters required to be included in, or to accompany, a corporation's annual report under another Act or law.

### **Annual report open to inspection**

**458IH.(1)** A copy of an LGOC's annual report must be open to inspection at the local government's public office.

(2) A copy of the report may be purchased at the local government's public office.

(3) The price of a copy of the report must be no more than the cost to the local government of having a copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

### **Omission of certain matters from annual report etc.**

**458II.(1)** A matter required to be included in the annual report of an LGOC for a financial year may be omitted from the copies of the annual report (and accompanying documents) to be made public if—

- (a) the matter is of a commercially sensitive nature to the LGOC or its subsidiary; and
- (b) a full statement of the matter is given—
  - (i) if there are shareholder's delegates<sup>162</sup>—to the delegates; or
  - (ii) if there are no shareholder's delegates—to each councillor of the LGOC's local government.

(2) For section 198(2)(a), a full statement of the matter given to

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<sup>162</sup> Section 458GM (Appointment of councillors as shareholder's delegates) provides for appointment of shareholder's delegates.

shareholder's delegates or councillors under subsection (1)(b), is information that is confidential to the LGOC's local government.<sup>163</sup>

(3) An annual report of an LGOC may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates it is a summary only; and
- (b) a full statement of the matter is given to the local government when the annual report is given to the shareholder.

(4) Subsections (1) to (3) have effect despite section 458IG or another Act or law.

(5) Subsection (1) has effect despite subsection (3).

### **LGOC board to keep shareholder informed**

**458IJ.(1)** An LGOC's board must—

- (a) keep its shareholder reasonably informed of the operations, financial performance and financial position of the LGOC and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the LGOC and its subsidiaries; and
- (b) give to the shareholder reports and information that the shareholder requires to enable the shareholder to—
  - (i) make informed assessments of matters mentioned in paragraph (a); or
  - (ii) comply with reporting requirements on the shareholder under an Act; and
- (c) if matters arise that, in the board's opinion, may prevent or significantly affect achievement of the LGOC's objectives or targets in its statement of corporate intent—immediately inform the shareholder of the matters and its opinion in relation to them.

(2) However, a matter that is of a commercially sensitive nature to an LGOC or its subsidiary may be omitted from information given by the LGOC under subsection (1) if a full statement of the matter is given—

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<sup>163</sup> Section 198 (Improper use of information by councillors)

- (a) if there are shareholder's delegates—to the delegates; or
- (b) if there are no shareholder's delegates—to each councillor of the LGOC's local government.

(3) For section 198(2)(a), a full statement of the matter given to shareholder's delegates or councillors under subsection (2) is information that is confidential to the LGOC's local government.<sup>164</sup>

(4) Subsection (1) does not limit the matters of which the board is required to keep the shareholder informed, or limit the reports or information the board is required, or may be required, to give to the shareholder, under another Act or law.

(5) If there are shareholder's delegates for the LGOC, the reports and information under subsection (1) must be given to the shareholder's delegates on behalf of the local government.

### *Subdivision 17—Duties and liabilities of directors and other officers*

#### **Disclosure of interests by directors**

**458IK.(1)** If a corporatised corporation's director has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

- (2) The disclosure must be recorded in the board's minutes.

#### **Voting by interested director**

**458IL.(1)** A corporatised corporation's director who has a material personal interest in a matter being considered by the board must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a “**related resolution**”) under

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<sup>164</sup> Section 198 (Improper use of information by councillors)

subsection (2) in relation to the matter (whether in relation to the director or another director); or

- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the matter if the board has, at any time, passed a resolution that—

- (a) states the director, the interest and the matter; and
- (b) states that the directors voting for the resolution are satisfied the interest should not disqualify the director from considering or voting on the matter.

(3) A quorum is present during a consideration of a matter by the board only if at least 2 directors are present who are entitled to vote on any motion that may be moved in relation to the matter.

(4) The corporation's shareholder or the shareholder's delegate may, by signing consent to a proposed resolution, deal with a matter if the board cannot deal with it because of subsection (3).

### **Duty and liability of certain officers of corporatised corporation**

**458IM.(1)** An officer of a corporatised corporation must act honestly in the exercise of powers, and discharge of functions, as an officer of the corporatised corporation.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the corporatised corporation, creditors of the corporation or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or
- (b) in any other case—100 penalty units.

(2) In the exercise of powers and the discharge of functions, an officer of a corporatised corporation must exercise the degree of care and diligence that a reasonable person in a like position in a corporatised corporation

would exercise in the corporation's circumstances.

Maximum penalty—100 penalty units.

(3) An officer of a corporatised corporation, or a person who has been an officer of a corporatised corporation, must not make improper use of information acquired as an officer of the corporatised corporation—

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person; or
- (b) to cause detriment to the corporation.

Maximum penalty—500 penalty units or 5 years imprisonment.

(4) An officer of a corporatised corporation must not make improper use of the officer's position as an officer of the corporatised corporation—

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person; or
- (b) to cause detriment to the corporation.

Maximum penalty—500 penalty units or 5 years imprisonment.

(5) If a person contravenes this section in relation to a corporatised corporation, the corporation may recover from the person as a debt due to the corporation—

- (a) if anyone made a profit because of the contravention—an amount equal to the profit; and
- (b) if the corporation suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(6) An amount may be recovered from the person under subsection (5) whether or not the person has been convicted of an offence in relation to the contravention.

(7) Subsection (5) is in addition to, and does not limit, the *Crimes (Confiscation of Profits) Act 1989*.

(8) In determining for the purposes of subsection (2) the degree of care and diligence that a reasonable person in a like position in a corporatised corporation would exercise in the circumstances of the corporatised corporation concerned, regard must be had to—

- (a) the fact that the person is an officer of the corporatised

corporation; and

- (b) the application of this part to the corporation; and
- (c) relevant matters required or permitted to be done under this part in relation to the corporation;

including, for example—

- (d) any relevant community service obligations of the corporation; and
- (e) any relevant directions or approvals given to the corporation by its shareholder.

(9) Subsection (8) does not limit the matters to which regard may be had for subsection (2).

(10) This section—

- (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in relation to a corporation; and
- (b) does not prevent civil proceedings being started for a breach of the duty or the liability.

### **Prohibition on loans to directors**

**458IN.(1)** A corporatised corporation must not, whether directly or indirectly—

- (a) make a loan to a director, a spouse of a director or a relative of either of them; or
- (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of either of them.

(2) Subsection (1) does not apply to the entering into by the corporation of an instrument with a person mentioned in subsection (1) if the instrument is entered into on the same terms as similar instruments are entered into by the corporation with members of the public.

(3) A director of a corporatised corporation who is knowingly concerned in a contravention of subsection (1) by the corporation (whether or not in



relation to the director) commits an offence.

Maximum penalty—100 penalty units.

(4) In this section—

“**relative**” means—

- (a) a parent or remoter lineal ancestor; or
- (b) a son, daughter or remoter issue; or
- (c) a brother or sister.

### **When corporatised corporation not to indemnify officers**

**458IO.(1)** A corporatised corporation must not—

- (a) indemnify a person who is or has been an officer of the corporation against a liability incurred as an officer; or
- (b) exempt a person who is or has been an officer of the corporation from a liability incurred as an officer.

(2) An instrument is void so far as it provides for the corporation to do something that subsection (1) prohibits.

(3) Subsection (1) does not prevent the corporation from indemnifying a person against a civil liability (other than a liability to the corporation or a subsidiary of the corporation) unless the liability arises out of conduct involving a lack of good faith.

(4) Subsection (1) does not prevent the corporation from indemnifying a person against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

(5) The corporation may give an indemnity mentioned in subsection (3) or (4) only with the prior approval of its shareholder.

(6) In this section—

“**indemnify**” includes indemnify indirectly through 1 or more interposed entities.

### **Corporatised corporation not to pay premiums for certain liabilities of officers**

**458IP.(1)** A corporatised corporation must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the corporation against a liability—

- (a) incurred by the person as an officer; and
- (b) arising out of conduct involving—
  - (i) a wilful breach of duty in relation to the corporation; or
  - (ii) without limiting subparagraph (i), a contravention of section 458IM (3) or (4).

(2) Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.

(3) An instrument is void so far as it insures a person against a liability in contravention of subsection (1).

(4) In this section—

“**pay**” includes pay indirectly through 1 or more interposed entities.

### **Director’s duty to prevent insolvent trading**

**458IQ.(1)** If—

- (a) immediately before a corporatised corporation incurs a debt—
  - (i) there are reasonable grounds to suspect that the corporation will not be able to pay all its debts as and when they become payable; or
  - (ii) there are reasonable grounds to suspect that, if the corporation incurs the debt, it will not be able to pay all its debts as and when they become payable; and

- (b) the corporation is, or later becomes, unable to pay all its debts as and when they become payable;

a person who is a director of the corporation, or takes part in the corporation's management, at the time when the debt is incurred commits an offence.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(2) In a proceeding against a person for an offence against this section, it is a defence if it is proved—

- (a) that the debt was incurred without the person's express or implied authority or consent; or
- (b) that, at the time when the debt was incurred, the person did not have reasonable cause to suspect—
- (i) that the corporation would not be able to pay all its debts as and when they became payable; or
- (ii) that, if the corporation incurred that debt, it would not be able to pay all its debts as and when they became payable; or
- (c) that the person took all reasonable steps to prevent the corporation from incurring the debt; or
- (d) for a director—that the person did not take part at the time in the corporation's management because of illness or for some other good cause.

### **Court may order compensation**

**458IR.(1)** If a person is found guilty of an offence against section 458IQ in relation to the incurring of a debt by a corporatised corporation, the Supreme Court or a District Court may declare that the person is to be personally responsible without any limitation of liability for the payment to the corporation of the amount required to satisfy the part of the corporation's debts that the court considers proper.

(2) This section does not affect any rights of a person to indemnity, subrogation or contribution.

(3) This section—

- (a) is in addition to, and does not limit, any rule of law about the duty

or liability of a person because of the person's office in relation to a corporation; and

- (b) does not prevent proceedings being instituted for a breach of the duty or the liability.

### **Examination of persons concerned with corporatised corporations**

**458IS.(1)** If it appears to the attorney-general or a local government that there are reasonable grounds to believe—

- (a) a person who has been concerned, or taken part, in a corporatised corporation's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the corporation; or
- (b) a person may be capable of giving information in relation to a corporatised corporation's management, administration or affairs;

the attorney-general or local government may apply to the Supreme Court or a District Court for an order under this section in relation to the person.

(2) If the attorney-general makes an application under subsection (1) about a corporatised corporation, the attorney-general must, as soon as practicable, advise the corporation's local government.

(3) A local government may only make an application under subsection (1) in relation to its corporatised corporation and must, as soon as practicable after making an application, advise the attorney-general.

(4) If the court is satisfied it is reasonable and appropriate for the person to be examined, the court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the corporation's management, administration or affairs.

(5) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

(6) The court may give directions about—

- (a) the matters to be inquired into at the examination; and
- (b) the procedures to be followed at the examination (including, if the

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examination is to be held in private, the persons who may be present).

**(7)** The person must not fail, without reasonable excuse—

- (a) to attend as required by the order; or
- (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

**(8)** The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

**(9)** The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or 2 years imprisonment.

**(10)** The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

**(11)** The person must not, without reasonable excuse, contravene a direction under subsection (10).

Maximum penalty—200 penalty units or 2 years imprisonment.

**(12)** If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

**(13)** The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—500 penalty units or 5 years imprisonment.

**(14)** The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

**(15)** If—

- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the

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person or make the person liable to a penalty; and

- (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty;

the answer is not admissible in evidence against the person in—

- (c) a criminal proceeding; or
- (d) a proceeding for the imposition of a penalty;

other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.

**(16)** The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.

**(17)** Subject to subsection (15), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.

**(18)** The person may, at the person's own expense, employ a lawyer, and the lawyer may put to the person questions that the court considers just to enable the person to explain or qualify any answers given by the person.

**(19)** The court may adjourn the examination from time to time.

**(20)** The court may order the whole or any part of the costs incurred by the person be paid by—

- (a) if the application was made by the attorney-general—the State; or
- (b) if the application was made by a local government—the local government.

### **Power to grant relief**

**458IT.(1)** This section applies to a corporatised corporation's director, chief executive officer or employee.

**(2)** If, in a proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty as a person to whom this section applies, it appears to the court that—

- (a) the person is or may be liable for the negligence, default or

breach; but

- (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person's appointment) the person ought fairly to be excused for the negligence, default or breach;

the court may relieve the person (in whole or part) from liability on terms the court considers appropriate.

(3) If a person to whom this section applies believes a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the person may apply to the Supreme Court or a District Court for relief.

(4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.

(5) If—

- (a) a proceeding mentioned in subsection (2) is being tried by a judge with a jury; and
- (b) the judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved (in whole or part) from the liability sought to be enforced against the person;

the judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) the judge considers appropriate.

### **False or misleading information or documents**

**458IU.(1)** An officer of a corporatised corporation must not—

- (a) make a statement concerning the affairs of the corporation to another officer or the corporation's shareholder that the first officer knows is false or misleading in a material particular; or
- (b) omit from a statement concerning the corporation's affairs made to another officer or the corporation's shareholder anything without which the statement is, to the first officer's knowledge, misleading in a material particular.

(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.

(3) An officer of a corporatised corporation must not give to an officer, the corporation's shareholder, a director, officer or employee of the shareholder, the corporation's local government or a councillor of the corporation's local government a document containing information that the first officer knows is false, misleading or incomplete in a material particular without—

- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty for subsections (1) and (3)—

- (a) if the contravention is committed with intent to deceive or defraud the corporatised corporation, creditors of the corporation or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or
- (b) in any other case—100 penalty units.

### **Notice of suspected insolvency otherwise than because of direction**

**458IV.(1)** This section applies if—

- (a) a corporatised corporation's board suspects that the corporation or, for an LGOC, its subsidiary is, may be, will or may become insolvent; and
- (b) in the board's opinion, compliance with a direction given by the shareholder is not or would not be the cause or a substantial cause of the suspected insolvency.

(2) The board must immediately give written notice to the corporation's shareholder and the auditor-general and, if the corporation is a subsidiary, to its local government of—

- (a) the suspicion; and



(b) its reasons for the opinion.

(3) The notice must state that it is given under this section.

(4) If the shareholder is satisfied that the board's suspicion is well-founded, the shareholder must immediately give the board the written directions that the shareholder considers necessary or desirable, including any directions necessary or desirable to ensure—

(a) the corporation or subsidiary does not incur further debts; or

(b) the corporation or subsidiary will be able to pay all its debts as and when they become due.

(5) Without limiting subsection (4), a direction under this section may require the corporation or, for an LGOC, any of its subsidiaries, to cease or limit particular activities.

(6) If the shareholder is a local government, a direction under subsection (4) must be by resolution of the local government.

(7) The board must ensure a direction under this section is complied with by the corporation.

(8) If the direction to an LGOC's board concerns the LGOC's subsidiary, the LGOC's board must, to the extent the direction concerns the subsidiary—

(a) notify the subsidiary of the direction; and

(b) ensure the direction is complied with by the subsidiary.

(9) The subsidiary's board must ensure that a direction of which it has been notified is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

(10) A copy of the direction by a local government must be open to inspection.

(11) This section is in addition to, and does not limit, another provision of this part or another law.

(12) This section has effect despite the Corporations Law.

(13) The shareholder must give the auditor-general a copy of every advice or direction given under this section to the board.

***Subdivision 18—Legal capacity and powers*****Objects of subdivision**

**458J.** The objects of this subdivision include—

- (a) abolishing any application of the doctrine of ultra vires to corporatised corporations; and
- (b) ensuring corporatised corporations give effect to any restrictions on their objects or powers, but without affecting the validity of their dealings with others.

**General powers of corporatised corporations**

**458JA.(1)** A corporatised corporation has, for or in connection with the performance of its functions, all the powers of a natural person, including, for example, the power to—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint agents and attorneys; and
- (d) charge, and fix terms, for goods, services and information supplied by it; and
- (e) engage consultants; and
- (f) do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** Without limiting subsection (1), the corporatised corporation has the powers that are conferred on it by this or another Act.

**(3)** The corporatised corporation may exercise its powers inside and outside Queensland.

**(4)** Without limiting subsection (3), the corporatised corporation may exercise its powers in a foreign country.

**(5)** The fact that the doing of an act by the corporatised corporation would not be, or is not, in its best interests does not affect its power to do the act.

(6) In this section—  
“power” includes legal capacity.

### **Restrictions on powers of corporatised corporations**

**458JB.(1)** Section 458JA has effect in relation to a corporatised corporation subject to any restrictions on the corporation’s powers expressly imposed under this or another Act.

(2) Section 458JA also has effect in relation to the corporatised corporation subject to any restrictions expressly imposed by—

- (a) any relevant statement of corporate intent of the corporation; and
- (b) any relevant directions or approvals given to the corporation by the corporation’s shareholder.

(3) A corporatised corporation must not—

- (a) exercise a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) do an act otherwise than in pursuance of the corporation’s objects or functions.

(4) The exercise of a power or the doing of an act is not invalid merely because—

- (a) the power is exercised in contravention of subsection (3)(a); or
- (b) the act is done in contravention of subsection (3)(b).

(5) An officer of the corporatised corporation who is involved in the contravention contravenes this subsection.

(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

(7) The corporatised corporation or officer of the corporation is not guilty of an offence merely because of the relevant contravention.

(8) The fact that—

- (a) by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), the corporatised corporation contravened, or would contravene, subsection (3); or

- (b) by doing a particular act, an officer of the corporation contravened, or would contravene, subsection (5);

may be asserted or relied on only in proceedings between the corporation and officers of the corporation.

(9) In this section—

“**restriction**” includes prohibition.

### **Persons having dealings with corporatised corporations etc.**

**458JC.(1)** A person having dealings with a corporatised corporation is entitled to make the assumptions mentioned in subsection (4) and, in a proceeding in relation to the dealings, any assertion by the corporation that the matters that the person is entitled to assume were not correct must be disregarded.

(2) A person (the “**first person**”) having dealings with a person (the “**second person**”) who has acquired, or purports to have acquired, title to property from a corporatised corporation (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (4).

(3) In a proceeding in relation to the dealings mentioned in subsection (2), any assertion by the corporation or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

(4) The assumptions that a person is, because of subsections (1) to (3), entitled to make are—

- (a) that, at all relevant times, this part has been complied with; and
- (b) that a person who is held out by the corporation to be an officer or agent of the corporation has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the corporation who has authority to issue a document on behalf of the corporation has authority to warrant that the document is genuine and that an officer or agent of the corporation who has authority to issue a certified copy of a document on behalf of the corporation has authority to warrant

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that the copy is a true copy; and

- (d) that a document has been properly sealed by the corporation if—
  - (i) it bears what appears to be an imprint of the corporation's seal; and
  - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a director of the corporation or the corporation's chief executive officer; and
- (e) that the corporation's directors, chief executive officer, employees and agents have properly performed their duties to the corporation.

**(5)** However, a person is not entitled to assume a matter mentioned in subsection (4) if—

- (a) the person has actual knowledge the assumption would be incorrect; or
- (b) because of the person's connection or relationship with the corporation, the person ought to know the assumption would be incorrect.

**(6)** If, because of subsection (5), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with the corporation—subsection (1) does not apply to any assertion by the corporation in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the corporation of title to property—subsections (2) and (3) do not apply to any assertion by the corporation or another person in relation to the assumption.

**LGOC may direct subsidiary**

**458JD.(1)** An LGOC may give written directions to a subsidiary of the LGOC—

- (a) to ensure the subsidiary complies with, and gives effect to the purposes of, this part; and

(b) about the payment of amounts to allow the LGOC to make payments under sections 458JK and 458JL.<sup>165</sup>

(2) An LGOC's local government may, by resolution, provide for an LGOC to give directions to a subsidiary about anything else.

### **Subsidiaries must comply with directions**

**458JE.** A subsidiary must comply with a direction given to it under section 458JD.

### **Sections 458JD and 458JE not limiting**

**458JF.** Sections 458JD and 458JE do not, by implication, limit the powers that an LGOC otherwise has to direct a subsidiary.

## ***Subdivision 19—Finance—taxation***

### **State taxes**

**458JG.(1)** A corporatised corporation is not liable to pay State taxes in relation to any matter, instrument, transaction or thing greater than the State taxes that it would have been liable to pay in relation to the matter, instrument, transaction or thing if the corporation were a local government.

*Examples for subsection (1)—*

1. If the local government is liable to pay payroll tax in relation to the payroll for employees, an LGOC would also be liable to pay the tax.

2. If, as a local government, stamp duty is not payable on a transaction, the LGOC is not liable to pay that duty.

(2) State tax is not payable in relation to anything done (including, for example, a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of,

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<sup>165</sup> Section 458JK (Payment of dividends) and 458JL (Interim dividends)

division 2 or subdivision 3 of this division.<sup>166</sup>

(3) So far as the legislative power of the Parliament permits, the reference in subsection (2) to State tax includes a reference to tax imposed under an Act of another State.

### **Commonwealth and State tax equivalents**

**458JH.(1)** The Treasurer may issue a manual (the “**tax equivalents manual**”) about deciding the amounts (“**tax equivalents**”) to be paid by a corporatised corporation to its local government as the value of benefits derived by the corporation because it is not liable to pay Commonwealth or State tax that would be payable if it were neither a corporatised corporation nor a local government.

(2) Without limiting subsection (1), the tax equivalents manual may provide for—

- (a) rulings by the tax assessor appointed under subsection (3) on issues about tax equivalents, including the application of rulings under a Commonwealth Act about Commonwealth tax; and
- (b) the lodging of returns and giving of information by corporatised corporations; and
- (c) assessing returns; and
- (d) the functions and powers of the tax assessor; and
- (e) objections and appeals against assessments and rulings.

(3) The Treasurer may appoint a person to be the tax assessor under the tax equivalents manual.

(4) A corporatised corporation must, as required under the tax equivalents manual, pay tax equivalents to its local government.

(5) The Treasurer must table a copy of the tax equivalents manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment made.

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<sup>166</sup> Division 2 (Mechanisms for creating LGOCs and subsidiaries) and division 3 (Local government owned corporations and subsidiaries), subdivision 3 (Shares of corporatised corporations)

***Subdivision 20—Finance—borrowings and guarantees*****Guarantees by local government**

**458JI.** A local government is liable for the debts and other liabilities of its corporatised corporations only if, and to the extent that, the liability is expressly and lawfully undertaken on behalf of the local government.

**Payment for cost of funds advantage of guarantees by local government**

**458JJ.** If the State or a local government guarantees repayment by a corporatised corporation of its debt, the corporation must pay to its local government amounts equivalent to the cost of funds advantage over commercial rates of interests.

***Subdivision 21—Finance—dividends*****Payment of dividends**

**458JK.(1)** Within 1 month after the end of each financial year, a corporatised corporation's board must advise the corporation's shareholder of the recommendation that, in the light of the information then available to the board, it is likely to make under subsection (2).

**(2)** Within 4 months after the end of the financial year, the board must recommend to the shareholder that the corporation pay a stated dividend, or not pay a dividend, for the financial year.

**(3)** The board must consult with the shareholder before making the recommendation.

**(4)** Within 1 month after receiving the recommendation, the shareholder must either—

- (a)** approve the recommendation; or
- (b)** direct the payment of a stated dividend or a different stated dividend.

**(5)** If the shareholder is a local government, the approval or direction



must be by resolution of the local government.

(6) The corporation's dividend for a financial year must not exceed its profits, after—

- (a) provision has been made for any income tax or its equivalents; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

(7) The dividend must be paid within 6 months after the end of the financial year or any further period that the shareholder allows.

(8) For a corporation that is corporatised other than on 1 July, its first financial year is the period from the day of its corporatisation to 30 June following, unless its local government resolves a longer period.

(9) A copy of the direction must be open to inspection.

### **Interim dividends**

**458JL.(1)** A corporatised corporation's shareholder may, at any time after 1 January in a financial year, require the corporation's board to make a recommendation about the payment of interim amounts to the shareholder (including the times at which the amounts are to be paid) on account of the dividend that may become payable under section 458JK for the financial year.

(2) Within 1 month after receiving notice of the requirement, the board must make a recommendation to the shareholder.

(3) The shareholder must, within 1 month after receiving the recommendation, either—

- (a) approve the recommendation; or
- (b) direct the payment, at stated times, of stated amounts, or different stated amounts, on account of the dividend that may become payable for the financial year.

(4) If the shareholder is a local government, the approval and direction must be by resolution of the local government.

(5) A direction under subsection (3)(b) must not direct the payment of an amount that is more than the corporatised corporation's estimated profit for

the first 6 months of the financial year, after—

- (a) provision has been made for any income tax or its equivalents; and
  - (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.
- (6) A copy of the direction must be open to inspection.

### **Dividend payment for financial year of becoming a corporatised corporation**

**458JM.** For applying section 458JK to a corporatised corporation for the financial year when it became a corporatised corporation, a dividend, or an amount in the nature of a dividend, payable by the corporation is payable for, at the discretion of the corporation's shareholder—

- (a) the entire financial year; or
- (b) the part of the financial year for which it was a corporatised corporation.

*Example—*

A candidate LGOC becomes the business of an LGOC on 1 January 2000. Depending on what the shareholder decides, the dividend the LGOC has to pay for the 1999–2000 financial year will relate either to the entire financial year (even though it is an LGOC for only half the year), or only to the period 1 January 2000 to 30 June 2000.

### ***Subdivision 22—Acquisition and disposal of assets and subsidiaries***

#### **Reserve power of shareholder to direct that asset not be disposed of**

**458JN.(1)** An LGOC's shareholder may, after consultation with the LGOC's board, give the board a written direction requiring the LGOC or a subsidiary of the LGOC not to dispose of a stated asset or class of assets.

- (2) The direction must be by resolution of the local government.
- (3) The board must ensure the direction is complied with by its subsidiaries.

(4) If the direction to an LGOC's board concerns the LGOC's subsidiary, the LGOC's board must, to the extent the direction concerns the subsidiary—

- (a) notify the subsidiary of the direction; and
- (b) ensure the direction is complied with by the subsidiary.

(5) The subsidiary's board must ensure that a direction of which it has been notified is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

(6) A copy of the direction must be open to inspection.

### **Disposal of main undertakings**

**458JO.(1)** An LGOC or a subsidiary may dispose of any of its main undertakings only with the prior approval, by resolution, of the LGOC's local government.

(2) Subject to subsection (1), if an LGOC or its subsidiary disposes of any of its main undertakings, the LGOC must, as soon as practicable, give the local government written notice of the disposal.

### **Acquiring of other subsidiaries prohibited**

**458JP.(1)** A corporatised corporation must not form, or participate in forming, a company that would become its subsidiary if the corporatised corporation were a corporation registered under the Corporations Law.

(2) A corporatised corporation may only acquire shares, or participate in any other transaction, that will result in a body corporate becoming or ceasing to be its subsidiary if the body corporate is established under this part.

## *Subdivision 23—Employees*

### **Employees of corporatised corporations**

**458JQ.** The chief executive officer of a corporatised corporation may, on

behalf of the corporation, engage the employees the chief executive officer considers necessary to perform the corporation's functions.

### **Terms of employment**

**458JR.(1)** The terms of employment of the employees of a corporatised corporation are as determined by the corporation.

(2) Subsection (1) has effect subject to any relevant award or industrial agreement.

(3) Employees of a corporatised corporation are not employees of its local government.

### **Arrangements relating to staff**

**458JS.(1)** A corporatised corporation may arrange with the chief executive of a department, or with an authority of the State, or the chief executive officer of a local government for the services of officers or employees of the department or authority or local government to be made available to it.

(2) A corporatised corporation may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) A corporatised corporation may arrange for the services of an employee of the corporation to be made available to—

- (a) the Commonwealth or another State; or
- (b) an authority of the Commonwealth or another State; or
- (c) a local government.

### **Superannuation schemes**

**458JT.(1)** A corporatised corporation may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or

(c) take part in superannuation schemes.

(2) However, the corporation may not establish or take part in a superannuation scheme that does not meet the requirements of the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

### **Superannuation for officers and employees of corporatised corporation who were previously officers of a local government**

**458JU.(1)** In this section—

**“existing scheme”**, for a person to whom this section applies, means the Local Government Superannuation Scheme or a superannuation scheme established by Brisbane City Council for council employees under the *City of Brisbane Act 1924*.

**“person to whom this section applies”** means a person employed by a corporatised corporation who, immediately before becoming employed, was a member of an existing scheme.

(2) If a person to whom this section applies was employed by Brisbane City Council, subject to subsection (4)—

- (a) the person is to continue to be a member of the existing scheme and, for that purpose, is taken to be a council employee; and
- (b) the existing scheme continues to apply to the person and, for the purpose, the corporatised corporation is to contribute to the scheme as if it were the Brisbane City Council.

(3) If a person to whom this section applies was employed by another local government, subject to subsection (4)—

- (a) the person is to continue to be a member of the existing scheme and, for that purpose, is taken to be an employee of a local government and an eligible member under section 772(1);<sup>167</sup> and
- (b) the existing scheme continues to apply to the person, and, for the purpose, the corporatised corporation is taken to be a local government employing the person for chapter 13, part 3.

(4) If—

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<sup>167</sup> Section 772 (Membership of scheme)

- (a) the corporatised corporation establishes, joins in establishing or takes part in establishing a superannuation scheme (other than an existing scheme); and
- (b) a person continued to be a member of an existing scheme under subsection (2) or (3);

the person may, under arrangements prescribed under a regulation, stop being a member and become a member of the scheme established or taken part in by the corporation.

### **Preservation of leave and other entitlements of certain former employees of local government**

**458JV.(1)** This section applies to a person who—

- (a) becomes employed by a corporatised corporation in a permanent or full-time capacity within 1 year after the corporation becomes a corporatised corporation; and
- (b) was an employee of a local government employed in a permanent or full-time capacity immediately before becoming employed by the corporation.

(2) If, when first employed by the corporatised corporation, the person had leave entitlements that had been accrued as an employee of a local government, the person must be treated as having accrued the entitlements as an employee of the corporation.

(3) If, when first employed by the corporatised corporation, the person had not accrued leave entitlements as an employee of a local government, for accruing leave entitlements of the person as an employee of the corporation, the person's employment with the local government is taken to be employment by the corporation.

(4) A person is not under this section to claim or receive benefits twice for the same entitlement.

(5) If the person, as an employee of the corporatised corporation, is or becomes entitled to another entitlement based on the person's length of service with the corporation, the person's employment with the local government is taken to be employment by the corporation.

(6) A person's cessation of employment with a local government to

become an employee of the corporatised corporation is not to be treated as a termination of the person's employment with the local government under a redundancy or voluntary early retirement or other similar arrangement.

### *Subdivision 24—Other matters*

#### **Corporatised corporation's seal**

**458K.(1)** A corporatised corporation's seal is to be kept in the custody directed by the board and may be used only as authorised by the board.

(2) The attaching of the seal to a document must be witnessed by—

- (a) 2 or more directors; or
- (b) at least 1 director and the corporation's chief executive officer; or
- (c) a director or the corporation's chief executive officer and 1 or more persons authorised by the board.

(3) Judicial notice must be taken of the imprint of the corporation's seal appearing on a document.

#### **Change of functions and name of corporatised corporation**

**458KA.(1)** A local government may, by resolution, change the functions or name of its corporatised corporation.

(2) A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

#### **Authentication of documents**

**458KB.** A document made by a corporatised corporation (other than a document that is required by law to be sealed) is sufficiently authenticated if it is signed by—

- (a) the chairperson of the board; or
- (b) the corporation's chief executive officer; or
- (c) a person authorised to sign the document by—

- (i) resolution of the board; or
- (ii) direction of the corporation's chief executive officer.

### **Judicial notice of certain signatures**

**458KC.** Judicial notice must be taken of—

- (a) the official signature of a person who is or has been chairperson of the board of a corporatised corporation or a corporatised corporation's director or chief executive officer; and
- (b) the fact that the person holds or has held the office concerned.

### **Application of Criminal Justice Act**

**458KD.** A corporatised corporation is a unit of public administration for the *Criminal Justice Act 1989*.

### **Application of Parliamentary Commissioner Act 1974**

**458KE.(1)** The *Parliamentary Commissioner Act 1974* does not apply to—

- (a) a corporatised corporation prescribed under a regulation; or
- (b) the making of a recommendation to the shareholder of a corporatised corporation; or
- (c) a decision about a corporatised corporation's commercial policy; or
- (d) a corporatised corporation in relation to its commercially competitive activities.

**(2)** In this section—

**“commercially competitive activity”** means activity carried on, on a commercial basis, in competition with a person, other than—

- (a) the Commonwealth or a State; or
- (b) a State authority; or
- (c) a local government.



***Division 4—Miscellaneous*****Monitoring and assessment of corporatised corporations**

**458KF.(1)** The shareholder of an LGOC or its shareholder's delegate may delegate the shareholder's powers under section 458IJ<sup>168</sup> to an appropriately qualified person.

(2) The shareholder of a corporatised corporation may ask the chief executive officer of the local government to investigate, and report on, any matter relating to the corporatised corporation.

(3) For the investigation, the chief executive officer may give the corporation written directions.

(4) Without limiting subsection (3), the chief executive officer may direct the corporation—

- (a) to give to the chief executive officer any information about the corporation and its subsidiaries the chief executive officer considers necessary or desirable in connection with the investigation; and
- (b) to permit persons authorised by the chief executive officer to have access to stated records and other documents about the corporation and its subsidiaries that the chief executive officer considers necessary or desirable in connection with the investigation; and
- (c) to take steps that the chief executive officer considers necessary or desirable for the investigation.

(5) The corporation must ensure any direction given to it under this section—

- (a) is complied with by itself; and
- (b) is also complied with by its subsidiaries.

(6) The chief executive officer may delegate to an appropriately qualified employee of the local government or another appropriately qualified person

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<sup>168</sup> Section 458IJ (LGOC board to keep shareholder informed)

the chief executive officer's powers under this section (including powers delegated to the chief executive officer under subsection (1)).

### **Giving of documents to board**

**458KG.** If this part authorises or requires a document to be given to a board of a corporatised corporation, it may be given to the chairperson of the board.

### **Judicial notice of certain resolutions**

**458KH.(1)** This section applies to resolutions under this part that, to be effective, must be published in the gazette.

**(2)** To avoid any doubt, it is declared that on a resolution taking effect, it has the force of law.

**(3)** On publication in the gazette of a notice of the resolution, judicial notice must be taken of the resolution.

### **When resolutions amending certain resolutions take effect**

**458KI.** If, under this part, a resolution of a local government (the “**first resolution**”) does not take effect until publication in the gazette of a notice of the making of the resolution, another resolution of the local government amending the first resolution also has no effect until publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

### **Local governments and certain officers not directors etc.**

**458KJ.(1)** This section does not apply to a councillor or employee of a local government who is a director of an LGOC to the extent the councillor or employee acts in the capacity of director.

**(2)** The following are not to be treated as officers of an LGOC or any subsidiary of the LGOC—

- (a) shareholders of the LGOC;
- (b) the shareholder's delegates;

- (c) for a subsidiary—its LGOC;
- (d) councillors of the LGOC's local government in the performance of their duties as councillors for the local government;
- (e) employees of the LGOC's local government in the performance of their duties as employees for the local government.

(3) A councillor or employee of a local government does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under this part in relation to an LGOC or a subsidiary of an LGOC.

(4) A liability that would, apart from subsection (3), attach to the councillor or employee attaches instead to the local government.

(5) This section has effect despite the Corporations Law.

### *Division 5—Additional provisions relating to board of corporatised corporations*

#### *Subdivision 1—Composition of board*

#### **Composition of board**

**458L.(1)** An LGOC's board must consist of at least 5 directors appointed by its shareholder.

(2) A LGOC's subsidiary's board must consist of at least 5 directors appointed by its LGOC.

#### **Chairperson and deputy chairperson**

**458LA.(1)** The shareholder must appoint a director to be the chairperson of its LGOC's board and may appoint another director to be the board's deputy chairperson.

(2) The LGOC must appoint a director of its subsidiary to be the chairperson of the subsidiary's board and may appoint another director to be the board's deputy chairperson.

(3) If there is a deputy chairperson, the deputy chairperson is to act as

chairperson—

- (a) during a vacancy in the office of chairperson; and
- (b) during all periods when the chairperson is absent from duty or, for another reason, cannot perform the functions of the office.

### *Subdivision 2—Meetings and other business of board*

#### **Meaning of “required minimum number” of directors**

**458LB.** In this part, “required minimum number” of directors is the number that is half the number of directors of which the board for the time being consists or, if that number is not a whole number, the next higher whole number.

#### **Conduct of meetings and other business**

**458LC.** Subject to this part, the board may conduct its business (including its meetings) in the way it considers appropriate.

#### **Times and places of meetings**

**458LD.(1)** Meetings of the board are to be held at the times and places that the board determines.

**(2)** However, the chairperson—

- (a) may at any time call a meeting; and
- (b) if asked by at least the required minimum number of directors—must call a meeting as requested.

#### **Presiding at meetings**

**458LE.(1)** The chairperson is to preside at all meetings at which the chairperson is present.

**(2)** If the chairperson is not present at a meeting, the deputy chairperson is to preside.

**(3)** If both the chairperson and deputy chairperson are not present at a

meeting, the director chosen by the directors present at the meeting is to preside.

### **Quorum and voting at meetings**

**458LF.(1)** At a meeting of the board—

- (a) the required minimum number of directors constitutes a quorum; and
- (b) a question is to be decided by a majority of the votes of the directors present and voting; and
- (c) each director present has a vote on each question arising for decision and, if the votes are equal, the director presiding also has a casting vote.

**(2)** Subsection (1)(a) has effect subject to section 458IL(3).<sup>169</sup>

### **Participation in meetings by telephone etc.**

**458LG.(1)** The board may permit directors to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) another form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.

**(2)** A director who participates in a meeting of the board under a permission under subsection (1) is taken to be present at the meeting.

### **Resolutions without meetings**

**458LH.(1)** If at least a majority of directors sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors

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<sup>169</sup> Section 458IL (Voting by interested director)

do not sign it on the same day, the day on which the last of the directors constituting the majority signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each director must immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, are taken to constitute a single document.

## **Minutes**

**458LI.** The board must keep minutes of its proceedings.

### *Subdivision 3—Provisions relating to directors*

## **Appointment of directors**

**458LJ.(1)** A director of a corporatised corporation is to be appointed by its shareholder for a term of not more than 5 years.

(2) A person is not eligible for appointment if the person is not able to manage a corporation, within the meaning of the Corporations Law, because of section 229 of the Corporations Law.

## **LGOC director not to be chief executive officer or other employee of LGOC's subsidiary**

**458LK.** A person must not be both a director of an LGOC and the chief executive officer or another employee of a subsidiary of the LGOC.

## **Procedure for appointment of directors**

**458LL.(1)** A shareholder of a corporatised corporation must adopt processes for selection of appropriate persons for appointment as directors of the corporation.

(2) In appointing a person as a director, the shareholder must have regard to the person's ability to make a contribution to the corporation's

commercial performance and implementation of its statement of corporate intent.

(3) The processes are to be based on the principle that the board should have the appropriate range of skills to ensure the corporation is a successful business.

(4) The shareholder must—

- (a) identify the key attributes required; and
- (b) call for nominations through public advertising and canvassing of suitable individuals; and
- (c) evaluate nominations using independent expertise; and
- (d) provide for interviews of shortlisted individuals by a nominated group assisted by independent experts; and
- (e) appoint the most suitable individuals as directors.

(5) The process for selection and appointment of directors of the corporation may be carried out in conjunction with the process for appointment of members of the establishment committee for the corporation.<sup>170</sup>

(6) A shareholder may act under this section to prepare a panel of names of persons suitably qualified for appointment as directors of the corporation.

### **Terms of appointment not provided for under divs 1–4**

**458LM.(1)** In relation to matters not provided for under divisions 1 to 4, a director holds office on the terms of appointment determined by the shareholder.

(2) Except as determined by the shareholder, a director is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a director; or
- (b) in connection with retirement from office, or other termination of office, as a director.

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<sup>170</sup> Section 458EF (Procedure for appointment of establishment committee) refers.

**Appointment of acting director**

**458LN.** The shareholder may appoint a person to act as a director of a board during any period, or all periods, when a director is absent from duty or, for another reason, cannot perform the functions of the office.

**Resignation**

**458LO.(1)** A director, or person appointed under section 458LA,<sup>171</sup> may resign by signed notice given to the shareholder.

(2) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson and remain a director.

**Termination of appointment as director**

**458LP.(1)** The shareholder may, at any time, terminate the appointment of all or any directors of the board for any reason or none.

(2) A person ceases to be a director of an LGOC if—

- (a) when appointed a director, the person was a councillor or employee of the LGOC's local government; and
- (b) the person ceases to be a councillor or employee.

(3) A person also ceases to be a director of a corporatised corporation if the person ceases to be eligible for appointment as a director.

***Division 6—Additional provisions relating to chief executive officers*****Appointment of chief executive officer**

**458LQ.** A chief executive officer of a corporatised corporation is to be appointed by the corporation's board.

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<sup>171</sup> Section 458LA (Chairperson and deputy chairperson)



**Local government employees cannot be chief executive officers of corporatised corporations**

**458LR.** A person must not be both an employee of a local government and the chief executive officer of a corporatised corporation.

**Director may be chief executive officer**

**458LS.(1)** Nothing in this part prevents a person who is not a councillor or employee of the local government being both a director and the chief executive officer of a corporatised corporation.

**(2)** However, a director of a corporatised corporation who is its chief executive officer must abstain from voting at meetings of the corporation's board as a director on matters concerning the role, performance or employment conditions of the chief executive officer.

**Appointment of acting chief executive officer**

**458LT.** The board may appoint a person to act as chief executive officer—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chief executive officer is absent from duty or, for another reason, cannot perform the functions of the office.

**Terms of appointment not provided for under divs 1 to 4**

**458LU.** The chief executive officer of a corporatised corporation holds office on the terms not provided for under divisions 1 to 4 as are decided by the board of the corporation.

**Resignation**

**458LV.** The chief executive officer of a corporatised corporation may resign by signed notice given to the chairperson of the corporation's board.

**Termination of appointment**

**458LW.(1)** A corporatised corporation's board may, at any time, terminate the appointment of the chief executive officer of the corporation for any reason or none.

(2) The termination of the appointment of the chief executive officer under subsection (1) does not affect any rights to compensation to which the chief executive officer may be entitled under the terms of the chief executive officer's appointment.

## **CHAPTER 7B—CONDUCT OF COMPETITIVE BUSINESS ACTIVITIES**

### **PART 1—OBJECT AND APPLICATION**

**Object of ch 7B**

**458M.** The object of this chapter is to provide for—

- (a) the application of competitive neutrality principles to certain roads business activities of local governments; and
- (b) the identification of business activities of local governments to which competitive neutrality principles may apply; and
- (c) the application by local governments of competitive neutrality principles to those business activities.

**Competitive neutrality principles**

**458MA.** “**Competitive neutrality principles**” include—

- (a) the efficiency of overall resource use is promoted by ensuring markets are not unnecessarily distorted; and
- (b) wherever possible and appropriate, advantages and disadvantages

that arise because a business activity or roads business activity is part of a local government be removed.

### **Application to Brisbane City Council**

**458MB.** This chapter applies to the Brisbane City Council.

## **PART 2—DEFINITIONS**

### **Definitions for ch 7B**

**458MC.** In this chapter—

**“business activity”** see section 458MD.

**“code of competitive conduct”**, for a local government, means a code in force for this chapter under—

- (a) if the Local Government Finance Standards apply to the local government—the standards; or
- (b) for Brisbane City Council—a regulation under the *City of Brisbane Act 1924*, section 127.

**“roads business activity”**, of a local government, means—

- (a) the construction or maintenance of State-controlled roads for which the local government submits an offer to carry out work in response to a tender invitation other than through a sole supplier arrangement; or
- (b) submission of a competitive tender for construction or road maintenance works—
  - (i) on roads of the local government which the local government has put out to competitive tender; or
  - (ii) called for by another local government;

but does not include an activity, or part of an activity, prescribed under a regulation.

**Meaning of “business activity”**

**458MD.(1)** A “business activity”, of a local government, is—

- (a) trading in goods and services to clients such as off-street parking and cultural, sporting and recreational facilities and quarries if, in carrying on the activity, the local government engages in competition with the private sector; or
- (b) submission of a competitive tender in the local government’s own tendering process in competition with others for the provision of goods and services to itself.

**(2)** However, the following activities of a local government are not business activities—

- (a) a significant business activity under chapter 7A<sup>172</sup> if the local government has resolved to implement reforms under the chapter for the activity; or
- (b) a roads business activity; or
- (c) library services; or
- (d) an activity, or part of an activity, prescribed under a regulation.

**PART 3—CODE OF COMPETITIVE CONDUCT****Code must be applied to roads business activities**

**458ME.(1)** A local government must apply the code of competitive conduct in carrying on its roads business activities.

**(2)** Subsection (1) applies—

- (a) for an activity mentioned in the definition “roads business activity”, paragraph (a)—to offers submitted on or after 1 January 1998; and
- (b) for an activity mentioned in the definition “roads business

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<sup>172</sup> Chapter 7A (National competition reform of significant business activities)

activity”, paragraph (b)—to tenders submitted on or after 1 July 1998.

### **When code must be applied to other business activities**

**458MF.** If, under part 4, a local government resolves the code of competitive conduct is to apply to a business activity of the local government, the local government must apply the code in carrying on the business activity.

## **PART 4—ANNUAL REVIEW OF BUSINESS ACTIVITIES**

### **Annual review of business activities**

**458MG.** During each financial year (the “**relevant year**”) starting with the 1997–1998 financial year, a local government must identify its activities that are business activities.

### **Local government to resolve whether to apply code of competitive conduct to business activities**

**458MH.(1)** During each financial year starting with the 1997–1998 financial year, each local government must resolve whether the code of competitive conduct should or should not be applied to each of its business activities for the following financial year.

(2) A local government may resolve under subsection (1) that the resolution is to take effect on a stated day earlier than the following financial year.

(3) A local government may, at any time, resolve the code should no longer apply to a business activity.

(4) A resolution under subsection (1) or (3) to not apply, or to no longer apply, the code to a business activity must include a statement of the

reasons for not applying, or for no longer applying, the code to the business activity.

### **Application of code of competitive conduct to other activities**

**458MI.** Nothing in this chapter prevents a local government from applying the code of competitive conduct to another activity carried on by the local government.

### **Information to be included in annual report**

**458MJ.(1)** A local government's annual report must contain a list of its activities that were business activities during the financial year and a statement whether the code of competitive conduct was applied to each of the activities and, if not, the reason it was not applied.

**(2)** Subsection (1) first applies to the annual report for the 1998–1999 financial year.

**(3)** The annual report for the 1997–1998 financial year must also contain a list of its business activities under this chapter and a statement whether the local government intends to apply the code of competitive conduct for the 1998–1999 financial year to each of the activities and, if not, the reason it is intended not to be applied.

**(4)** Subsections (2) and (3) and this subsection expire on 1 July 2000.

## **CHAPTER 7C—REFORM OF CERTAIN WATER AND SEWERAGE SERVICES**

### **PART 1—OBJECT AND APPLICATION**

#### **Object of ch 7C**

**458N.** The object of this chapter is, in relation to relevant business activities that provide water and sewerage services, to achieve efficiency and sustainability in the use of water by—

- (a) requiring an assessment by local governments of the cost-effectiveness of introducing two-part tariffs for water services; and
- (b) requiring decisions by local governments whether two-part tariffs are to be applied for water services; and
- (c) if two-part tariffs are to be applied for water services—requiring implementation of the tariffs in accordance with the decision; and
- (d) requiring charges for water services to be based on consumption; and
- (e) requiring full cost recovery for water and sewerage services; and
- (f) requiring identification and disclosure of cross-subsidies and community service obligations in the provision of water and sewerage services; and
- (g) requiring disclosure of a class of consumers who are provided with water and sewerage services at an amount below full cost and the amount.

#### **Application to Brisbane City Council**

**458NA.** This chapter applies to the Brisbane City Council.

**Meaning of relevant business activity**

**458NB.** In this chapter—

**“relevant business activity”** means—

- (a) a significant business activity providing water or sewerage services; or
- (b) an activity of a corporatised corporation providing water or sewerage services that was a significant business activity.

**PART 2—DEFINITIONS****Definitions for ch 7C**

**458NC.** In this chapter—

**“consumer”**, of a service, means the person who is levied a utility charge for the service, whether an owner or the person at whose request the service is supplied.

**“corporatised corporation”** means a corporatised corporation under chapter 7A.<sup>173</sup>

**“new type 1 or 2 business activity”** means a new type 1 or 2 business activity under chapter 7A.

**“two-part tariff”** means a basis for a utility charge for water services consisting of access and consumption components with the objective of achieving efficiency and sustainability in the use of water.

**“two-part tariff report”** see section 458ND.

**“type 1 or 2 business activity”** means a type 1 or 2 business activity under chapter 7A.

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<sup>173</sup> Chapter 7A (National competition reform of significant business activities)



## **PART 3—ASSESSMENT OF COST EFFECTIVENESS OF TWO-PART TARIFFS FOR WATER SUPPLY**

### **Assessment of cost effectiveness of two-part tariffs to be carried out**

**458ND.(1)** A local government must ensure an assessment of the cost effectiveness of the application of a two-part tariff for a relevant business activity providing water services is carried out and a report (a “**two-part tariff report**”) prepared.

(2) A two-part tariff report must include—

- (a) a finding whether it is cost effective for the application of a two-part tariff for the service to an extent stated in the report; and
- (b) if the finding is that it is cost effective for application of a two-part tariff—
  - (i) a recommendation for application of a two-part tariff for the service to the extent stated in the report; and
  - (ii) if necessary, proposed strategies (including a timetable) that may be followed to apply a two-part tariff.

*Example to subsection (2)—*

A two-part tariff report could—

- (a) find that it is cost effective for a two-part tariff to be applied to part only of the local government’s area and, in that part, only for stated consumers; and
- (b) recommend a two-part tariff apply to the stated consumers in the part.

### **Local government to resolve on assessment and report process**

**458NE.** Subject to compliance with this chapter, the local government must decide—

- (a) how the assessment is to be conducted; and
- (b) the matters the report must deal with; and
- (c) when the report is to be presented to the local government.

*Example for paragraph (a)—*

The local government may decide the assessment is to include a public consultation process and be carried out by the local government or by external consultants or in cooperation with other local governments carrying out similar assessments or in conjunction with public benefit assessments under chapter 7A.

### **Timing for assessments and reports**

**458NF.(1)** The two-part tariff report must be completed in enough time to allow the local government to comply with sections 458NK, 458NL and 458NO.

(2) The report must be presented to a meeting of the local government as soon as practicable after the report is completed.

### **Fresh assessment within 3 years if recommendation on two-part tariffs not implemented**

**458NG.(1)** This section applies if—

- (a) a two-part tariff report recommends the application of a two-part tariff to any extent for a relevant business activity; and
- (b) the local government resolves that a two-part tariff not apply for the activity to the extent recommended.

(2) The local government must ensure a fresh assessment is carried out and a fresh two-part tariff report prepared for the activity within 3 years after the end of the financial year in which the report was presented to the local government.

(3) Section 458ND applies to the assessment and report as if the activity, to the extent that a two-part tariff has, contrary to the report mentioned in subsection (1), not been applied, were the relevant business activity.

### **Regulation about assessments and reports**

**458NH.** A regulation may prescribe requirements for assessments and reports under this part including different requirements for different classes of assessments and reports.

## **PART 4—DECISION ON TWO-PART TARIFF REPORTS**

### **Object of pt 4**

**458NI.** The object of this part is to require local governments to consider two-part tariff reports and decide the application or otherwise of two-part tariffs for relevant business activities that provide a water service.

### **Public access to two-part tariff reports**

**458NJ.** From presentation of the two-part tariff report for a relevant business activity to a meeting of a local government until the local government decides whether to apply a two-part tariff for the activity, the report must be open to inspection.

### **Local government to resolve whether to apply two-part tariff**

**458NK.(1)** As soon as practicable, and within 3 months after presentation of a two-part tariff report for a relevant business activity to a meeting of a local government, the local government must resolve whether a two-part tariff should be applied, and the extent of the application, for the activity.

**(2)** A resolution to apply a two-part tariff must—

- (a)** state the extent of application; and
- (b)** if necessary, approve strategies (including a timetable) for its application under section 458NP.

**(3)** A resolution under subsection (1) inconsistent with the recommendation in the report must include a statement of the reasons for the inconsistency.

**(4)** Subsection (2)(b) does not prevent a local government changing its strategies for the application of a two-part tariff so long as a two-part tariff is applied under the resolution under subsection (2)(a).

**Timing for resolution**

**458NL.** The local government must make a resolution under section 458NK—

- (a) for a relevant business activity that is or was a type 1 or 2 business activity—
  - (i) by 31 December 1998; or
  - (ii) a day (not later than 31 March 1999) approved by the Minister; or
- (b) for a relevant business activity that is or was a new type 1 or 2 business activity—
  - (i) by 31 December after the financial year for which the activity is first identified by the local government as a new type 1 or 2 business activity; or
  - (ii) a day (not later than the following 31 March) approved by the Minister.

**Notice to Minister of resolution**

**458NM.** As soon as practicable after making a resolution that a two-part tariff apply or not apply for a relevant business activity, the local government must give to the Minister—

- (a) a copy of the two-part tariff report for the activity; and
- (b) a copy of the resolution.

## **PART 5—IMPLEMENTATION OF CERTAIN CHARGING ARRANGEMENTS AND REPORTING PROCEDURES**

**Local governments to implement charging and operational arrangements for relevant business activities**

**458NN.** A local government must ensure that, for a relevant business

activity—

- (a) if it has resolved that a two-part tariff is to be applied for the activity—a two-part tariff is applied; and
- (b) consumption is the basis for utility charges for water services; and
- (c) full cost recovery is applied for water and sewerage services; and
- (d) cross-subsidies between classes of consumers and community service obligations in the provision of water and sewerage services are identified and disclosed; and
- (e) the classes of consumers who are provided with water and sewerage services at an amount below full cost and the amount are disclosed.

### **Start of work to apply two-part tariffs**

**458NO.** If a local government approves strategies for application of a two-part tariff for a relevant business activity, the local government must ensure work is started to apply a two-part tariff under a resolution made under section 458NK on or before the day stated in section 458NL before which the resolution must be made.

### **Timetable for implementing arrangements**

**458NP.(1)** This section applies to a local government required to act under section 458NN.

**(2)** Implementation must be completed on or before—

- (a) for a relevant business activity that is or was a type 1 or 2 business activity—1 July 2000; or
- (b) for a relevant business activity that is or was a new type 1 or 2 business activity—1 July of the year that is 2 years after the end of the financial year for which the activity was identified as being a new type 1 or 2 business activity.

**(3)** For a particular relevant business activity, the Minister may extend the time for implementation subject to the terms the Minister considers appropriate.

**Strategies for applying s 458NN(b) to (e)**

**458NQ.** A local government must approve and start implementing strategies for the application to its relevant business activities of the matters stated in section 458NN(b) to (e) by—

- (a) for a relevant business activity that is or was a type 1 or 2 business activity—31 December 1998; or
- (b) for a relevant business activity that is or was a new type 1 or 2 business activity—31 December after the financial year for which the activity is first identified by the local government as a new type 1 or 2 business activity.

## **CHAPTER 7D—COMPLAINTS ABOUT COMPETITIVE NEUTRALITY**

### **PART 1—PRELIMINARY**

**Object of ch 7D**

**458O.** The object of this chapter is to provide for—

- (a) the establishment by local governments of appropriate processes for dealing with complaints about the carrying on by local government business entities of activities in a way that does not comply with the competitive neutrality principles applying to the activities; and
- (b) decisions by local governments on recommendations by referees under the complaint processes; and
- (c) references to the Queensland Competition Authority about the outcomes of certain complaints; and
- (d) investigations and recommendations by the authority on references to it; and

- (e) decisions by local governments on recommendations by the authority in relation to references; and
- (f) accreditation by the authority of activities carried on by local government business entities applying competitive neutrality principles.

### **Application of ch 7D**

**458OA.** Subject to sections 458OD, 458P and 458Q and part 2, division 6, this chapter applies in relation to an activity carried on by a local government business entity if it—

- (a) is a corporatised corporation;<sup>174</sup> or
- (b) implements—
  - (i) full cost pricing under chapter 7A, part 4; or
  - (ii) commercialisation under chapter 7A, part 5; or
  - (iii) the code of competitive conduct under chapter 7B.<sup>175</sup>

### **Application to Brisbane City Council**

**458OB.** This chapter applies to the Brisbane City Council.

### **Definitions for ch 7D**

**458OC.** In this chapter—

**“affected person”** see section 458OE.

**“applicant”** means—

- (a) for parts 2 and 3—an affected person who makes a complaint under a local government’s complaint process; and

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<sup>174</sup> “Corporatised corporation” is defined in section 458OC (Definitions for ch 7D).

<sup>175</sup> Chapter 7A (National competition reform of significant business activities), part 4 (Full cost pricing for significant business activities) or part 5 (Commercialisation of significant business activities), or chapter 7B (Conduct of competitive business activities)

*Local Government Act 1993*

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- (b) for part 4—a local government business entity that makes application for accreditation under the part for an activity carried on by the entity.

**“competitive advantage”** means an advantage that, solely because of local government ownership, is—

- (a) a financial advantage; or
- (b) a regulatory advantage; or
- (c) a procedural advantage; or
- (d) another advantage.

*Example of financial advantage—*

An advantage enjoyed by a local government business entity carrying on an activity because of the entity being exempt from a local government charge that applies to a person making a complaint.

*Example of regulatory advantage—*

An advantage enjoyed by a local government business entity carrying on an activity because of the entity being exempt from an approval procedure that applies to a person making a complaint.

*Example of procedural advantage—*

An advantage enjoyed by a local government business entity carrying on an activity because of the entity not being obliged to supply the same level of information in local government procedures as a person making a complaint.

**“competitive neutrality principles”** means—

- (a) for an activity of a local government business entity to which full cost pricing under chapter 7A, part 4 applies—the principles and requirements (other than reporting requirements) of full cost pricing under the part; or
- (b) for an activity of a commercial business unit under chapter 7A, part 5—the following principles and requirements under part 5—
  - (i) the principles and requirements of full cost pricing (other than reporting requirements);
  - (ii) the requirements for treatment of community service obligations;
  - (iii) the requirements for removal, or taking account, of



- advantages and disadvantages accruing to a commercial business unit because it is a part of the local government; or
- (c) for an activity of a corporatised corporation—the following principles and requirements of corporatisation under chapter 7A, part 6—
    - (i) the requirements for treatment of community service obligations;
    - (ii) the requirements for the removal of advantages and disadvantages accruing to the corporatised corporation as a result of local government ownership; or
  - (d) for an activity of a local government business entity to which the code of competitive conduct under chapter 7B applies or is required to be applied—the requirements (other than reporting requirements) of the code.<sup>176</sup>

**“complaint”** means a complaint under a complaint process.

**“complaint process”**, for an activity of a local government business entity, means the complaint process established by the local government for dealing with complaints about the failure of the entity to carry on the activity in compliance with competitive neutrality principles applying to the activity.

**“corporatised corporation”** means a corporatised corporation under chapter 7A, part 6.<sup>177</sup>

**“investigation notice”** means—

- (a) for part 2—a notice given under section 458OM;
- (b) for part 3—a notice given under section 458OM as applied to the part by section 458PF;

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<sup>176</sup> Chapter 7A (National competition reform of significant business activities), part 4 (Full cost pricing for significant business activities) or part 5 (Commercialisation of significant business activities) or part 6 (Local government owned corporations) or chapter 7B (Conduct of competitive business activities). The *Local Government Finance Standard 1994* deals with the application of competitive neutrality principles and contains the code of competitive conduct for local governments to which the standard applies.

<sup>177</sup> Part 7A (National competition reform of significant business activities), part 6 (Local government owned corporations)

(c) for part 4—a notice given under section 458QC.

**“local government business entity”** means—

- (a) a local government to the extent it carries on an activity to which this chapter applies, including a commercial business unit of a local government; or
- (b) a corporatised corporation.

**“Queensland Competition Authority”** means the Queensland Competition Authority under the *Queensland Competition Authority Act 1997*.

**“referee”** means a person appointed by a local government to investigate a complaint.

**“reference”** means a reference to the Queensland Competition Authority under part 3.

## **PART 2—COMPLAINT PROCESS FOR LOCAL GOVERNMENT BUSINESS ENTITIES**

### *Division 1—Preliminary*

#### **Application of pt 2**

**458OD.** This part does not apply to an activity carried on by a local government business entity to the extent that, and for so long as, there is a current accreditation for the activity by the Queensland Competition Authority granted to the entity under part 4.

#### **Affected persons**

**458OE.(1)** In this part, an **“affected person”** is a person who—

- (a) is, or may be, adversely affected by the competitive advantage alleged by the person to be enjoyed by the local government business entity in carrying on an activity; and

- (b) in relation to the activity mentioned in paragraph (a)—satisfies a competition requirement.

(2) For subsection (1), a person satisfies a competition requirement in relation to an activity carried on by the entity if the person—

- (a) competes with the local government business entity in relation to the activity; or
- (b) seeks to compete with the local government business entity in relation to the activity but is being hindered from doing so by the competitive advantage alleged by the person to be enjoyed by the entity.

### *Division 2—Complaints about competitive neutrality*

#### **Local government to establish complaint process**

**458OF.(1)** Each local government must establish a process for resolving complaints by affected persons about failures of its local government business entities to carry on activities in a way that complies with the competitive neutrality principles applying to the activities.

(2) The process must be adopted by resolution of the local government.<sup>178</sup>

#### **Requirements for complaint process**

**458OG.(1)** The complaint process must include the following elements—

- (a) the process for selecting and appointing referees to investigate complaints;
- (b) preliminary procedures before an affected person makes a complaint—

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<sup>178</sup> Under division 6, a local government may resolve that the Queensland Competition Authority be the referee for its complaint process for certain activities. The division contains provisions about the application of this part, and certain provisions of the *Queensland Competition Authority Act 1997*, to the complaint process.

- (i) for affected persons to raise concerns about alleged failures of local government business entities to comply with the competitive neutrality principles applying to the entities' activities; and
- (ii) for clarifying and, if possible, resolving the concerns;
- (c) the way an affected person may make a complaint;
- (d) sending of complaints to, and their investigation by, the referee;
- (e) recording of all complaints and the referee's decisions and recommendations;
- (f) advice to the applicant of the complaint procedure;
- (g) giving the applicant an opportunity to give to the referee further details about the applicant's complaint;
- (h) times in which the referee must give reports to the local government;
- (i) any other matters the local government considers appropriate.

(2) Also, the process mentioned in subsection (1)(a) must require that the person appointed to be a referee to investigate a complaint must not be involved with the carrying on of the activity the subject of the complaint.

(3) The fee charged by a local government for making a complaint must not be more than the maximum fee prescribed under a regulation for making a complaint.

### **Grounds for complaints**

**458OH.** The grounds for a complaint must be the failure of a local government business entity to carry on an activity in a way that complies with the competitive neutrality principles applying to the activity.

### **Effect of complaint on activities**

**458OI.** A complaint about an activity of a local government business entity does not prevent the entity from continuing to carry on the activity pending a decision by the local government on the referee's report and recommendation on the complaint.

**Referee to act fairly**

**458OJ.** In investigating a complaint and making a report, the referee must act fairly and impartially.

**Matters to be considered by referee on complaint**

**458OK.(1)** In investigating a complaint, the referee must have regard to the following matters—

- (a) the need to ensure compliance with the relevant competitive neutrality principles;
- (b) the need for efficient resource allocation;
- (c) the need to promote competition;
- (d) any local government policies affecting the application of competitive neutrality principles, including—
  - (i) any directions about the application of competitive neutrality principles given to the local government business entity by the local government; and
  - (ii) any arrangements between the local government and the local government business entity about a competitive advantage gained or competitive disadvantage suffered by the entity because of the local government ownership of the entity; and
  - (iii) social welfare and equity considerations including community service obligations and the availability of goods and services to consumers; and
  - (iv) policies on economic and regional development issues, including employment and investment growth;
- (e) any law or local government policies relating to ecologically sustainable development;
- (f) any law or local government policies relating to occupational health and safety or industrial relations.

**(2)** In investigating a complaint, the referee may also have regard to the interests of consumers or any class of consumers.

(3) However, in deciding whether a complaint has been substantiated, the referee must not accept that any competitive advantage enjoyed by the local government business entity solely because of local government ownership of the entity is justified because of the existence of a competitive disadvantage suffered by the entity because of the local government ownership of the entity.

(4) Subsections (1) and (2) do not limit the matters the referee may have regard to in investigating a complaint.

### *Division 3—Investigation of complaints*

#### **Requirement of referee to investigate**

**458OL.(1)** The referee must investigate a complaint unless—

- (a) the referee reasonably believes the applicant is not, or could not be, in competition with the local government business entity carrying on the activity; or
- (b) the referee reasonably believes the applicant is not, or is unlikely to be, adversely affected by the failure alleged in the complaint of the local government business entity to carry on the activity in a way that complies with the competitive neutrality principles applying to the activity; or
- (c) the referee reasonably believes the applicant has not shown the applicant has made a genuine attempt to resolve the subject matter of the complaint through the preliminary procedure of the complaint process mentioned in section 458OG(1)(b);<sup>179</sup> or
- (d) the applicant has failed, without reasonable excuse, to give relevant information asked for by the referee within the reasonable time stated by the referee; or
- (e) the local government business entity carrying on the activity has a current accreditation for the activity granted by the Queensland Competition Authority under part 4; or
- (f) the referee reasonably believes the complaint is frivolous or

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<sup>179</sup> Section 458OG (Requirements for complaint process)

vexatious.

(2) In forming a belief for subsection (1)(a), the referee must have regard to the following—

- (a) laws governing competition applicable to the activities of the local government business entity;
- (b) whether the applicant is supplying, or could supply, goods or services similar to the goods or services the subject of the activity carried on by the local government business entity;
- (c) any other matter the referee considers appropriate.

(3) If the referee decides not to investigate a complaint, the referee must, within 14 days after making the decision, give a written notice stating the decision and the reasons for the decision to—

- (a) the applicant; and
- (b) the local government.

### **Investigation notice**

**458OM.(1)** Before starting an investigation under this division, the referee must give notice of the investigation.

(2) The notice must be given to—

- (a) the relevant local government; and
- (b) the applicant; and
- (c) if the local government business entity carrying on the activity is a corporatised corporation—the corporation; and
- (d) another person the referee considers appropriate.

(3) The notice must—

- (a) state the referee's intention to conduct the investigation; and
- (b) state the subject matter of the complaint or be accompanied by a copy of the complaint; and
- (c) invite the person to whom the notice is given to make written, or, if the referee approves, oral, submissions to the referee on the

- subject matter within a reasonable time stated in the notice; and
- (d) state the referee's address.

### **Effect of giving an investigation notice**

**458ON.** The referee must conduct the investigation and give a report under division 4 on the results of the investigation.

### **General procedures**

**458OO.(1)** In an investigation, the referee—

- (a) must act with as little formality as possible; and
- (b) is not bound by technicalities, legal forms or rules of evidence; and
- (c) may be informed on any matter relevant to the investigation in any way the referee considers appropriate; and
- (d) must comply with natural justice.

**(2)** For subsection (1)(c), the referee may consult with persons as the referee considers appropriate.

**(3)** The referee may—

- (a) require information or submissions to be presented in writing; and
- (b) decide the matters on which information or submissions may be presented orally.

### **Consideration of submissions**

**458OP.(1)** In an investigation, the referee must consider all submissions that—

- (a) are made in response to an investigation notice; and
- (b) are received by the referee in the time stated in the notice.

**(2)** Despite subsection (1), unless the referee, in an investigation notice,



approved the making of oral submissions, the referee is required to consider a submission only if it is in writing.

### **Handling of documents**

**458OQ.(1)** If a document is produced to the referee for an investigation, the referee may—

- (a) inspect the document; and
- (b) make copies of the document if it is relevant to the investigation.

**(2)** Also, the referee may take possession of the document, and keep it while it is necessary for the investigation.

**(3)** While keeping a document, the referee must allow a person otherwise entitled to possession of it to inspect or copy the document at a reasonable time and place the referee decides.

### **Confidential information**

**458OR.(1)** This section applies if a person believes—

- (a) stated information made available, or to be made available, in an investigation is confidential; and
- (b) the disclosure of the information is likely to damage the person's commercial activities.

**(2)** The person may—

- (a) inform the referee of the person's belief; and
- (b) ask the referee not to disclose the information to another person.

**(3)** The referee must take all reasonable steps to ensure the information is not, without the person's consent, disclosed to another person other than a person assisting the referee in carrying out the referee's duties who receives the information in the course of carrying out the duties.

**(4)** As soon as practicable after giving a report under division 4 on the investigation, the referee must return any document containing confidential information to the person who produced it to the referee.

(5) In this section—

“**commercial activities**” means activities conducted on a commercial basis.

#### *Division 4—Reports on complaints*

##### **Giving of reports**

**458OS.(1)** The referee must give a report (including recommendations) on the results of the referee’s investigation of a complaint about an activity of a local government business entity to—

- (a) the local government; and
- (b) if the entity is a corporatised corporation—the corporation.

(2) The referee also must give to other persons to whom an investigation notice has been given the following—

- (a) written notice of the giving of the report;
- (b) a copy of the recommendations in the report;
- (c) written notice that the report (including recommendations) is open to inspection at the local government’s public office.<sup>180</sup>

##### **Contents of reports**

**458OT.** The referee must, in a report—

- (a) state whether the referee considers the complaint has been substantiated; and
- (b) if the referee considers the complaint has been substantiated—include recommendations on how the local government business entity’s failure to carry on an activity in a way that complies with the competitive neutrality principles applying to the activity could be overcome; and
- (c) if the referee considers the local government business entity suffers a competitive disadvantage because of the local

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<sup>180</sup> Section 8 (Meaning of “open to inspection”)

government ownership of the entity—

- (i) include comments about the competitive disadvantage (including comments about the effect of the disadvantage on the local government business entity); and
  - (ii) include recommendations on how the disadvantage suffered by the local government business entity could be overcome; and
- (d) state reasons for its recommendations.

### **Reports open to inspection**

**458OU.(1)** As soon as practicable after the local government receives the report, the local government must ensure a copy of it is open to inspection.

**(2)** For section 8, the report is a document of the local government.<sup>181</sup>

### **Local government decisions on recommendations**

**458OV.(1)** The local government must decide, by resolution, whether to implement the recommendations in the report.

**(2)** The resolution must include reasons for the decision.

**(3)** The local government must make the resolution—

- (a) within 1 month after the local government receives the report from the referee on a complaint; or
- (b) if the local government does not meet within the month—at the first meeting of the local government after the month.

**(4)** Within 7 days after making a decision, the local government must give written notice of the resolution to—

- (a) the applicant; and
- (b) if the local government business entity concerned is a corporatised corporation—the corporation.

**(5)** If the decision is to implement the recommendations and the local

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<sup>181</sup> Section 8 (Meaning of “open to inspection”)

government business entity concerned is a corporatised corporation, the corporation must implement the recommendations as soon as practicable.

### *Division 5—General provisions about complaints process*

#### **Disposal of documents held by referee**

**458OW.(1)** As soon as practicable after giving a report on a complaint, the referee must give to the chief executive officer of the local government any document not returned to a person under section 458OR.

(2) While the documents are kept by the chief executive officer, they are to be treated as the local government's documents.

#### **Protection from liability of referee or person assisting referee**

**458OX.(1)** The referee, or person assisting the referee, is not civilly liable for an act done, or omission made, honestly and without negligence under this part.

(2) If subsection (1) prevents a civil liability attaching to the referee or other person, the liability attaches instead to the relevant local government.

(3) The protection from liability under this section applies only to a referee, or a person assisting the referee, who is an employee of the relevant local government.

#### **Protection from liability of person giving information to referee**

**458OY.** A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of information to the referee for this part.

#### **Secrecy**

**458OZ.(1)** A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person

protected information about another person or a local government business entity.

Maximum penalty—1 000 penalty units or 1 year’s imprisonment.

(2) However, subsection (1) does not apply if—

- (a) the record is made, or the information is divulged or communicated—
  - (i) under this part; or
  - (ii) in the performance of duties, as a person to whom this section applies, under this part; or
  - (iii) with the consent of the person or entity to whom the protected information relates; or
- (b) the protected information is otherwise publicly available.

(3) In this section—

**“person to whom this section applies”** means a person who is, or has been, a referee or a person assisting a referee.

**“protected information”** means information that—

- (a) is about a person or local government business entity; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person’s duties under this part.

### **Draft reports**

**458OZA.** In preparing a report under this Act, the referee may give a draft of the report to the persons the referee considers appropriate.

### *Division 6—Provisions for Queensland Competition Authority as referee*

### **Local government may resolve Queensland Competition Authority to be referee**

**458OZB.(1)** A local government may resolve the Queensland

Competition Authority is the referee for its complaint process for—

- (a) a significant business activity, under chapter 7A, carried on by a local government business entity; or
- (b) a roads business activity under chapter 7B.

(2) As soon as practicable after making the resolution, the local government must give written notice of the resolution to the authority.

(3) If the local government becomes aware a person proposes to make a complaint about the activity, the local government must—

- (a) tell the person the complaint must be made to the authority; and
- (b) give the person information to enable the person to make the complaint.

### **Application of complaints process**

**458OZC.** Section 458OG(1)(a), (c), (d), (f), (g), (h), and (i), (2) and (3) does not apply to the complaint process for the activity.

### **Making a complaint**

**458OZD.** A complaint must—

- (a) be made in writing to the Queensland Competition Authority; and
- (b) contain details of the alleged noncompliance by the local government business entity to carry on the activity in a way that complies with the competitive neutrality principles applying to the activity; and
- (c) include sufficient details to show—
  - (i) how the applicant is, or may be, adversely affected by the alleged noncompliance; and
  - (ii) the applicant is, or could be, in competition with the local government business entity carrying on the activity; and
  - (iii) the applicant has made a genuine attempt to resolve the subject matter of the complaint through the preliminary

procedure of the complaint process mentioned in section 458OG(1)(b).<sup>182</sup>

### **Further information to support complaint**

**458OZE.(1)** The Queensland Competition Authority may, by written notice given to an applicant, require the applicant to give the authority further information about the complaint within the reasonable time stated in the notice.

(2) A notice under subsection (1) must relate to information that is necessary and reasonable to help the authority decide whether or not to investigate the complaint.

### **Application of part and Queensland Competition Authority Act 1997**

**458OZF.(1)** Sections 458OO, 458OP, 458OQ, 458OR, 458OW, 458OX, 458OY, 458OZ and 458OZA do not apply to a complaint made in relation to the activity.<sup>183</sup>

(2) Also, the following provisions of the *Queensland Competition Authority Act 1997* (the “**provisions**”) apply, with all necessary changes and the changes prescribed in subsection (3), to a complaint made in relation to the activity—

- part 6 (Investigations by Authority)
- part 9 (Offences)
- section 236 (Responsibility for acts or omissions of representatives)
- section 237 (Protection from liability of member or employee)
- section 238 (Protection from liability of person giving information to authority)
- section 239 (Confidential information)

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<sup>182</sup> Section 458OG (Requirements for complaint process)

<sup>183</sup> Under section 458OZC, certain provisions in section 458OG do not apply if the Queensland Competition Authority is a referee.

- section 240 (Secrecy)
- section 241 (Draft reports)
- section 243 (Delegation).

(3) Unless a contrary intention appears, the provisions apply as if a reference in the provisions to—

- (a) a complaint were a reference to a complaint under this part; and
- (b) the complainant were a reference to the affected person who made the complaint under this part; and
- (c) a government agency were a reference to the local government business entity mentioned in the complaint; and
- (d) an investigation were a reference to an investigation under this part; and
- (e) the responsible Minister, or the Ministers, were a reference to the relevant local government.

### **Local government decisions on recommendations**

**458OZG.** Within 7 days after making a resolution under section 458OV,<sup>184</sup> the local government must give written notice to the Queensland Competition Authority of the resolution.

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<sup>184</sup> Under section 458OV the local government is required to give written notice of the resolution to the applicant and, if the local government business entity concerned is a corporatised corporation, the corporation.



## **PART 3—REFERENCES TO QUEENSLAND COMPETITION AUTHORITY**

### *Division 1—Application of part*

#### **Application of pt 3**

**458P.(1)** This part applies to—

- (a) a significant business activity, under chapter 7A, carried on by a local government business entity; and
- (b) a roads business activity, under chapter 7B.

**(2)** However, this part does not apply to—

- (a) a local government business entity applying the code of competitive conduct to a business activity under chapter 7B; or
- (b) an activity carried on by a local government business entity for which there is a current accreditation by the Queensland Competition Authority under part 4; or
- (c) an activity carried on by a local government business entity if the authority is the referee for a complaint for the activity.

### *Division 2—Institution of reference*

#### **Reference of outcome of complaint to Queensland Competition Authority**

**458PA.(1)** An applicant may, under this part, refer to the Queensland Competition Authority—

- (a) a referee's decision not to investigate a complaint by the applicant; or
- (b) a local government's decision on a recommendation by a referee in a report on a complaint by the applicant.

**(2)** The reference must be on 1 or more of the following grounds—

- (a) the complaint process for an activity of the local government business entity is not appropriate;
- (b) the referee's decision not to investigate a complaint is not in accordance with the relevant facts;
- (c) the referee's recommendation—
  - (i) is not in accordance with the relevant facts or the competitive neutrality principles; or
  - (ii) is deficient because the local government business entity did not give the referee relevant information about an activity requested by the referee;
- (d) the decision of the local government on the referee's recommendation is not in accordance with the competitive neutrality principles.

### **Making a reference**

**458PB.(1)** A reference must—

- (a) be in writing; and
- (b) contain details of the complaint; and
- (c) if the reference alleges the complaint process for an activity of the local government business entity is inappropriate—the reasons why the process is inappropriate.

**(2)** Also, a reference must include sufficient details to show—

- (a) how the applicant is, or may be, adversely affected by—
  - (i) the alleged failure to comply with the competitive neutrality principles; or
  - (ii) the alleged inappropriateness of the process; and
- (b) the applicant and local government business entity are, or could be, in competition.

### **Request for referee's documents**

**458PC.(1)** This section applies if the Queensland Competition

Authority, by written notice given to the chief executive officer of a local government, asks for the documents received by the chief executive officer from the referee under section 458OW concerning the complaint referred to the authority.

(2) As soon as practicable after receiving the request, the chief executive officer must give the documents held under the section to the authority.

### **Further information to support reference**

**458PD.(1)** The Queensland Competition Authority may, by written notice given to an applicant, require the applicant to give the authority further information about the reference within the reasonable time stated in the notice.

(2) A notice under subsection (1) must relate to information that is necessary and reasonable to help the authority decide whether or not to deal with the reference.

### **Matters to be considered by Queensland Competition Authority in considering reference**

**458PE.(1)** In considering a reference on a ground mentioned in section 458PA(2)(b), (c) or (d), the Queensland Competition Authority—

- (a) must have regard to the matters stated in section 458OK(1) and (3);<sup>185</sup> and
- (b) may have regard to the interests of consumers or any class of consumers.

(2) Subsection (1) does not limit the matters the authority may have regard to in considering a reference.

### **Procedures for dealing with references**

**458PF.(1)** Sections 458OI, 458OJ, 458OL, 458OM and 458ON apply, with all necessary changes, to the Queensland Competition Authority considering a reference as if a reference in the sections to—

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<sup>185</sup> Section 458OK (Matters to be considered by referee on complaint)

*Local Government Act 1993*

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- (a) a complaint were a reference to a reference under this part; and
- (b) the referee were a reference to the Queensland Competition Authority.

(2) Also, the following provisions of the *Queensland Competition Authority Act 1997* (the “**provisions**”) apply, with all necessary changes and the changes prescribed in subsection (3), to the consideration of a reference by the authority—

- part 6 (Investigations by authority)
- part 9 (Offences)
- section 236 (Responsibility for acts or omissions of representatives)
- section 237 (Protection from liability of member or employee)
- section 238 (Protection from liability of person giving information to authority)
- section 239 (Confidential information)
- section 240 (Secrecy)
- section 241 (Draft reports)
- section 243 (Delegation).

(3) Unless a contrary intention appears, the provisions apply as if a reference in the provisions to—

- (a) a complaint were a reference to the reference; and
- (b) the complainant were a reference to the applicant who made the reference; and
- (c) a government agency were a reference to the local government business entity mentioned in the reference; and
- (d) an investigation were a reference to an investigation under this part; and
- (e) the responsible Minister, or the Ministers, were a reference to the relevant local government.

***Division 3—Reports of Queensland Competition Authority about references***

**Giving of reports**

**458PG.(1)** If the Queensland Competition Authority gives an investigation notice to anyone, it must give a report on its consideration of a reference about an activity of a local government business entity to—

- (a) the local government; and
- (b) if the entity is a corporatised corporation—the corporation.

**(2)** The authority also must give to other persons to whom the authority has given an investigation notice the following—

- (a) written notice of the giving of the report;
- (b) a copy of the recommendations in the report;
- (c) written notice that the report (including recommendations) is open to inspection at the local government’s public office.

**Contents of reports**

**458PH.** The Queensland Competition Authority must, in a report—

- (a) if the reference alleges the complaint process for an activity of the local government business entity is not appropriate—comment on the appropriateness of the process; and
- (b) state whether it considers any relevant allegation has been substantiated; and
- (c) if the authority considers the reference has been substantiated—include its recommendations on how the local government business entity’s failure to carry on an activity in a way that complies with the competitive neutrality principles applying to the activities could be overcome; and
- (d) if the authority considers the local government business entity suffers a competitive disadvantage because of the local government ownership of the entity—
  - (i) include comments about the competitive disadvantage

(including comments about the effect of the disadvantage on the local government business entity); and

- (ii) include recommendations on how the disadvantage suffered by the local government business entity could be overcome; and

- (e) state its reasons for its recommendations.

### **Reports open to inspection**

**458PI.(1)** As soon as practicable after the local government receives the report, the local government must ensure a copy of it is open to inspection.

- (2) For section 8,<sup>186</sup> the report is a document of the local government.

### **Local government decisions about reports**

**458PJ.(1)** The local government must decide, by resolution, whether to implement the recommendations in the report.

- (2) The resolution must include reasons for the decision.

- (3) The local government must make the resolution—

- (a) within 1 month after the local government receives the report from the Queensland Competition Authority on a reference; and
- (b) if the local government does not meet within the month—at the first meeting of the local government after the month.

(4) Within 7 days after making a decision, the local government must give written notice of the resolution to—

- (a) the applicant; and
- (b) if the local government business entity concerned is a corporatised corporation—the corporation; and
- (c) the Queensland Competition Authority.

- (5) If the decision is to implement the recommendations and the local

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<sup>186</sup> Section 8 (Meaning of “open to inspection”)

government business entity concerned is a corporatised corporation, the corporation must implement the recommendations as soon as practicable.

## **PART 4—ACCREDITATION**

### **Application of pt 4**

**458Q.** This part applies to—

- (a) a significant business activity, under chapter 7A, carried on by a local government business entity; and
- (b) a business activity, or roads business activity, under chapter 7B.

### **Purpose of accreditation**

**458QA.** The purpose of accreditation under this part is to remove doubt for a local government business entity carrying on an activity about whether it carries on the activity in accordance with the relevant principles of competitive neutrality.

### **Application for accreditation**

**458QB.(1)** A local government business entity carrying on an activity may apply to the Queensland Competition Authority for an accreditation of the activity for the entity.

(2) An application must be made in the form approved by the authority.

(3) The authority may investigate an application to decide whether to accredit the applicant.

### **Investigation notice**

**458QC.(1)** Before starting an investigation under this part, the Queensland Competition Authority must give reasonable notice of the investigation to—

- (a) the applicant; and

- (b) if the applicant is a corporatised corporation—the local government: and
- (c) any other person the authority considers appropriate.

**(2)** The notice must—

- (a) state the authority's intention to conduct the investigation; and
- (b) invite the person to whom the notice is given to make written, or, if the authority approves, oral, submissions to the authority within a reasonable time stated in the notice; and
- (c) state the authority's address.

**Matters to be considered by authority for investigation**

**458QD.(1)** In conducting an investigation under this part, the Queensland Competition Authority must have regard to the following matters—

- (a) the need to ensure compliance with the relevant competitive neutrality principles;
- (b) the need for efficient resource allocation;
- (c) the need to promote competition;
- (d) any local government policies affecting the application of competitive neutrality principles, including—
  - (i) any directions about the application of competitive neutrality principles given to the local government business entity by the local government; and
  - (ii) any arrangements between the local government and the local government business entity about a competitive advantage gained or competitive disadvantage suffered by the entity because of the local government ownership of the entity; and
  - (iii) social welfare and equity considerations including community service obligations and the availability of goods and services to consumers; and
  - (iv) policies on economic and regional development issues,



including employment and investment growth;

- (e) any law or local government policies relating to ecologically sustainable development;
- (f) any law or local government policies relating to occupational health and safety or industrial relations.

(2) In conducting an investigation, the authority may also have regard to the interests of consumers or any class of consumers.

(3) However, in deciding whether an activity carried on by the local government business entity be accredited, the authority must not accept that any competitive advantage enjoyed by the entity solely because of local government ownership of the entity is justified because of the existence of a competitive disadvantage suffered by the entity because of the local government ownership of the entity.

(4) Subsections (1) and (2) do not limit the matters the authority may have regard to in conducting an investigation.

### **Procedures for investigations**

**458QE.(1)** The following provisions of the *Queensland Competition Authority Act 1997* (the “**provisions**”) apply, with all necessary changes and the changes prescribed in subsection (2), to an investigation under this part—

- part 6 (Investigations by authority)
- part 9 (Offences)
- section 236 (Responsibility for acts or omissions of representatives)
- section 237 (Protection from liability of member or employee)
- section 238 (Protection from liability of person giving information to authority)
- section 239 (Confidential information)
- section 240 (Secrecy)
- section 241 (Draft reports)
- section 243 (Delegation).

(2) Unless a contrary intention appears, the provisions apply as if a reference in the provisions to—

- (a) a government agency were a reference to the local government business entity mentioned in the application; and
- (b) an investigation were a reference to an investigation under this part; and
- (c) the responsible Minister or the Ministers were a reference to the relevant local government.

### **Decision on application**

**458QF.(1)** The Queensland Competition Authority must consider an application for accreditation received by it and either grant, or refuse to grant, the accreditation.

(2) In considering an application, the authority must have regard to the relevant competitive neutrality principles applying to the activity and—

- (a) if the authority is satisfied the applicant carries on the activity in accord with the principles—the authority must grant the accreditation; or
- (b) if the authority is not satisfied the applicant carries on the activity in accord with the principles—the authority must refuse to grant the accreditation.

(3) Also, the authority may refuse to grant the accreditation if—

- (a) under an investigation notice the authority has sought further information about the application; and
- (b) the applicant has failed, without reasonable excuse, to give the information to the authority within the time stated in the relevant notice.

### **Conditions on grant of accreditation**

**458QG.(1)** If the Queensland Competition Authority decides to grant an accreditation, the grant is subject to the following conditions—

- (a) a condition that the local government business entity must

continue to comply with the relevant competitive neutrality principles;

- (b) a condition that the local government business entity must inform the authority of any change in the entity's structure or operations that may affect the entity's continued compliance with the relevant competitive neutrality principles.

(2) The authority may impose any other conditions it considers are necessary and reasonable for ensuring compliance with the accreditation.

(3) Without limiting subsection (2), a condition may relate to requirements of the local government business entity to give relevant information to the authority that is necessary and reasonable to enable the authority to decide whether it is appropriate to maintain the accreditation.

(4) For a condition mentioned in subsection (3), the information may be required to be given to the authority either—

- (a) from time to time, at reasonable intervals; or
- (b) at stated reasonable times.

### **Notice of decision**

**458QH.(1)** If the Queensland Competition Authority decides to grant an accreditation, the authority must give a written notice to—

- (a) the applicant; and
- (b) if the applicant is a corporatised corporation—the local government.

(2) The notice must state—

- (a) the decision; and
- (b) the period of accreditation (not longer than 2 years); and
- (c) the conditions of the accreditation; and
- (d) for a condition imposed by the authority—the reasons for the condition.

(3) If the authority decides not to grant the accreditation, the authority must give the applicant a written notice stating the decision and the reasons for the decision.

**Publication of decision**

**458QI.** If the Queensland Competition Authority decides to grant an accreditation, the authority must publish in the gazette a notice of the grant.

**Period of effect of accreditation**

**458QJ.(1)** An accreditation remains in force until the end of the period stated in the authority's accreditation notice, unless it is sooner surrendered or cancelled.

(2) In this section—

**“authority's accreditation notice”** means a notice given to an applicant for an accreditation by the Queensland Competition Authority advising the applicant of the grant of the accreditation.

**Surrender of accreditation**

**458QK.(1)** A local government business entity that has been granted an accreditation may surrender the accreditation by written notice given to the Queensland Competition Authority.

(2) The surrender takes effect—

- (a) the day the notice is given to the authority; or
- (b) if a later day of effect is stated in the notice—the later day.

**Cancellation of accreditation**

**458QL.(1)** An accreditation may be cancelled on the ground the local government business entity concerned has contravened a condition of the accreditation.

(2) If the Queensland Competition Authority believes the ground exists to cancel an accreditation, the authority must give the local government business entity a written notice that—

- (a) states the authority proposes to cancel the accreditation; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the

grounds; and

- (d) invites the entity to show, in writing, within the show cause period why the proposed action should not be taken.

(3) If, after considering all written representations made within the show cause period, the authority still believes the grounds exist to cancel the accreditation, the authority may cancel the accreditation.

(4) The authority must give a written notice stating its decision and the reasons for the decision to—

- (a) the local government; and  
(b) if the entity is a corporatised corporation—the corporation.

(5) The decision takes effect—

- (a) the day the notice is given to the local government business entity;  
or  
(b) if a later day of effect is stated in the notice—the later day.

(6) In this section—

“**show cause period**”, for a notice given to a local government business entity under subsection (2), means the period ending not less than 14 days, and not more than 21 days, after the notice is given to the entity.

### **Lists of accreditations**

**458QM.** The Queensland Competition Authority must keep a list of all current accreditations granted under this part available for inspection by any person.

## **PART 5—MISCELLANEOUS**

### **Register of accreditations, complaints etc.**

**458R.** A local government must keep open to inspection a register of activities carried on by local government business entities to which

competitive neutrality principles apply containing the following particulars—

- (a) activities under chapter 7A, parts 4, 5 or 6 to which the local government has applied competitive neutrality principles and the date from which the competitive neutrality principles apply;
- (b) activities to which the code of competitive conduct currently applies under chapter 7B and the date on which the code first applied to each activity;
- (c) activities currently accredited under part 4;
- (d) activities for which the Queensland Competition Authority is the referee for the complaint process for the entity carrying on the activity;
- (e) a list of—
  - (i) current investigation notices for complaints and references received; and
  - (ii) the local government's decisions on—
    - (A) the referee's recommendations on the complaints; and
    - (B) the Queensland Competition Authority's recommendations on references of complaints.

### **Annual report to include summary of complaints and decisions by local government**

**458RA.** The local government must include in its annual report<sup>187</sup> for each financial year—

- (a) a summary of—
  - (i) investigation notices for complaints and references received by the local government in the year; and
  - (ii) the local government's decisions in the year on—

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<sup>187</sup> Under section 447, a local government is required to prepare an annual report. Also under the *City of Brisbane Act 1924*, section 119, the Brisbane City Council is required to prepare an annual report.

- (A) the referee's recommendations on the complaints; and
  - (B) the Queensland Competition Authority's recommendations on the references; and
- (b) a list of all activities of its local government business entities currently accredited under part 4.

## **CHAPTER 8—LOCAL LAWS AND LOCAL LAW POLICIES**

### **PART 1—PRELIMINARY**

#### *Division 1—Object and application*

#### **Object**

**459.(1)** A local government's jurisdiction to make laws is stated in chapter 2 (The local government system), part 1 (Local governments), division 3 (Jurisdiction of local governments).

**(2)** This chapter provides a common law-making process for all laws made by local governments.

**(3)** It also provides for local law policies to assist the detailed implementation of a local law's objects.

*Examples for subsections (2) and (3)—*

1. If a local law on libraries states that the local government may make a local law policy about the management and use of library resources, the local government has a general power to make a local law policy about a variety of issues, including, for example, the hours of operation of the library, use of its facilities and restrictions on borrowing books.

2. If a local law on libraries states that the local government may make a local law policy on a specific issue, for example, the restriction of borrowing rights or suspension of membership if a member retains borrowed items for substantially longer than permitted by the library rules, the local government cannot, without

specific authority in the local law, make a local law policy about other library matters, including, for example, the hours of operation of the library.

### **Application of chapter to Brisbane City Council**

**460.** This chapter applies to the Brisbane City Council.

### *Division 2—Local laws and related concepts*

#### **Meaning of “local law”**

**461.** A “**local law**” is a law made by a local government.

#### **Meaning of “model local law”**

**462.(1)** A “**model local law**” is a law about a matter within the jurisdiction of local government that is proposed by the Minister as suitable for adoption by local governments as a local law.

**(2)** A model local law must be gazetted.

#### **Meaning of “interim local law”**

**463.** An “**interim local law**” of a local government is a local law that the local government and Minister agree may be made using the process stated in part 2 (Making local laws and policies), division 2 (Making interim local laws) because of the nature of the law.

#### **Meaning of “local law policy”**

**464.** If—

- (a) a local law expressly states that a local government may make a policy about a matter; and
- (b) the local government makes a policy about the matter;

the policy is a “**local law policy**”.



## **PART 2—MAKING LOCAL LAWS AND LOCAL LAW POLICIES**

### *Division 1—Making model local laws*

#### **Application of division**

**464A.** This division applies subject to division 5.<sup>188</sup>

#### **Model local law process**

**465.(1)** The process stated in this division or division 3 (Making other local laws) must be used to make a model local law.

**(2)** If a local government purports to make a model local law in contravention of subsection (1), the purported law is of no effect.

#### **Step 1—make a law**

**466.(1)** A local government makes a model local law if, by resolution, it—

- (a) adopts a model local law about a matter; and
- (b) if there is an existing local law about the matter that is inconsistent with what is adopted—amends or repeals the existing local law so that there is no inconsistency.

**(2)** The local government's chief executive officer must certify the required number of copies of the local law to be the local law as made by the local government.

**(3)** For subsection (1)(a), the adoption of a model local law with changes about an anti-competitive provision consistent with a resolution of the local government made under section 489I in relation to the local law is the adoption of a model local law.

**(4)** A local government must not adopt a model local law with an

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<sup>188</sup> Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

anti-competitive provision (whether or not in an amended form) unless the local government has complied with division 5 in relation to the proposed model local law.

### **Step 2—give public notice of law**

**467.(1)** A notice of the making of the model local law must be published in the gazette stating the following—

- (a) the name of the local government making the local law;
- (b) the name of the local law;
- (c) the date of the local government's resolution making the local law;
- (d) the name of any existing local law amended or repealed by the new local law;
- (e) if a public interest test report under division 5 has identified an anti-competitive provision in the model local law and the provision is changed—the fact of the anti-competitive provision and the extent of change.

**(2)** The notice also may state the following—

- (a) that the local law is a model local law proposed by the Minister as suitable for adoption by local governments;
- (b) the purposes and general effect of the local law;
- (c) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office;
- (d) that a copy of the certified copy of the local law may be purchased at the local government's public office.

**(3)** If the local law is not notified within 1 year of the date of the local government's resolution making the local law (or a longer period decided by the Minister), the process stated in this division must be used again before the local law is notified in the gazette.

**(4)** On the day of notification (or as soon as practicable after the day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law; and
- (c) advice of any anti-competitive provisions included in the local law and reasons for their inclusion.

### *Division 2—Making interim local laws*

#### **Interim local law process**

**468.(1)** The process stated in this division must be used to make an interim local law.

**(2)** If a local government purports to make an interim local law in contravention of subsection (1), the purported law is of no effect.

#### **Step 1—propose a law**

**469.(1)** The local government must, by resolution, propose to—

- (a) make a law; and
- (b) get the Minister’s agreement to make the law as an interim local law.

**(2)** The proposed local law must include a sunset provision stating the law will expire—

- (a) 6 months after its commencement; or
- (b) at the end of a longer period gazetted by the Minister.

#### **Step 2—get Minister’s agreement to use interim local law process**

**470.(1)** The local government must—

- (a) advise the Minister of the proposed local law and state why it is necessary or desirable for the local law to be made on an interim basis; and
- (b) give the Minister information about the proposed local law required by the Minister or by regulation.

(2) If the Minister agrees the local law should be made on an interim basis, the Minister must advise the local government of this.

(3) The Minister's agreement may be subject to conditions the Minister considers appropriate.

(4) Before proceeding to step 3, the local government must—

- (a) get an advice under subsection (2); and
- (b) agree to satisfy any condition imposed by the Minister; and
- (c) agree to immediately begin the process stated in division 3 (Making other local laws) to make the proposed interim local law as a local law under that division.

(5) The local government must satisfy any agreed conditions and begin the process stated in division 3 to make the proposed interim local law as a local law under that division.

### **Step 3—make proposed law**

**471.(1)** The local government must, by resolution, make the proposed interim local law.

(2) The local government's chief executive officer must certify the required number of copies of the local law to be the local law as made by the local government.

### **Step 4—give public notice of law**

**472.(1)** A notice of the making of the interim local law must be published in the gazette stating the following—

- (a) the name of the local government making the local law;
- (b) the name of the local law;
- (c) the date of the local government's resolution making the local law;
- (d) the name of any existing local law amended or repealed by the new local law.

(2) The notice also may state the following—

- (a) that the local law is an interim local law;
- (b) the purposes and general effect of the local law;
- (c) the date the local law will expire and that the Minister may extend this date by gazette notice;
- (d) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office;
- (e) that a copy of the certified copy of the local law may be purchased at the local government's public office.

(3) The notice must be published as soon as practicable after the resolution making the local law is made.

(4) On the day of notification (or as soon as practicable after the day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law.

### *Division 3—Making other local laws*

#### **Application of division**

**472A.** This division applies subject to division 5.<sup>189</sup>

#### **Local law process**

**473.(1)** The process stated in this division must be used to make a local law (other than a model local law or interim local law).

(2) The process stated in this division also may be used to make a model local law.

(3) If a local government purports to make a local law in contravention of subsection (1), the purported law is of no effect.

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<sup>189</sup> Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

**Step 1—propose a law**

**474.** The local government must, by resolution, propose to make a law.

**Step 2—ensure proposed law satisfactorily deals with any State interest**

**475.(1)** The local government must—

- (a) advise the Minister of the proposed local law; and
- (b) give the Minister information about—
  - (i) any provision that, under division 5 is a possible anti-competitive provision of the proposed local law and actions taken or proposed to be taken by the local government under the division about the provision; and
  - (ii) the proposed local law required by the Minister or by regulation.

**(2)** If the Minister considers State interests are satisfactorily dealt with by the proposed local law, the Minister must advise the local government that it may proceed further in making the law.

**(3)** Alternatively, if the Minister considers State interests would be satisfactorily dealt with by the proposed local law if the local government satisfied particular conditions, the Minister—

- (a) may impose conditions on the local government that the Minister considers appropriate; and
- (b) must advise the local government that it may proceed further in making the law if it—
  - (i) satisfies any conditions about the content of the proposed local law; and
  - (ii) agrees to satisfy any other conditions.

**(4)** If the Minister considers that the proposed local law only makes a minor amendment of an existing law (including, for example, the correction of a minor error), the advice of the Minister also may state that the local government may proceed to step 8 without satisfying steps 3 to 7.

**(5)** Steps 3 to 7 do not apply if the Minister's advice to the local

government includes the statement mentioned in subsection (4).

(6) The advice of the Minister also may state that the local government may proceed without satisfying step 7 if the local government agrees to satisfy particular conditions.

(7) Before proceeding further in making a proposed local law, the local government must—

- (a) get an advice under subsection (2) or (3); and
- (b) satisfy any condition about the content of the proposed local law; and
- (c) agree to satisfy any other conditions.

### **Step 3—consult with public about proposed law**

**476.(1)** The local government must consult with the public about the proposed local law for at least 21 days (the “**consultation period**”).

(2) However, a longer consultation period may be—

- (a) fixed by a condition agreed by the Minister and the local government in step 2; or
- (b) prescribed by regulation.

(3) The consultation period begins on the day when the notice mentioned in subsection (4) is first published.

(4) A notice about the proposed local law must be—

- (a) published at least once in a newspaper circulating generally in the local government’s area; and
- (b) displayed in a conspicuous place in the local government’s public office from the first day of the consultation period until the end of the last day of the consultation period.

(5) The notice must state the following—

- (a) the name of the local government proposing to make the local law;
- (b) the name of the proposed local law;
- (c) the purposes and general effect of the proposed local law;

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- (d) the length of the consultation period and the first and last days of the period;
- (e) that a copy of the proposed local law is open to inspection at the local government's public office on or before the last day;
- (f) that a copy of the proposed local law may be purchased at the local government's public office on or before the last day at a stated price;
- (g) that written submissions by any person supporting or objecting to the proposed local law may be made and given to the local government on or before the last day stating—
  - (i) the grounds of the submission; and
  - (ii) the facts and circumstances relied on in support of the grounds.

(6) The price of a copy of the proposed local law must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

**Step 4—give public access to proposed law**

**477.** On the first day of the consultation period and until the end of the last day of the consultation period—

- (a) a copy of the proposed local law must be open to inspection at the local government's public office; and
- (b) copies of the proposed local law must be available for purchase at the local government's public office at the price stated in the notice about the proposed local law.

**Step 5—accept and consider all submissions**

**478.(1)** The local government must consider every submission properly made to it.

- (2) A submission is properly made to the local government if it—
  - (a) is the written submission of any person about the proposed local law; and



- (b) states—
  - (i) the grounds of the submission; and
  - (ii) the facts and circumstances relied on in support of the grounds; and
- (c) is given to the local government on or before the last day of the consultation period.

### **Step 6—decide whether to proceed with making proposed law**

**479.** After considering every submission properly made to it, the local government must, by resolution, decide whether to—

- (a) proceed with the making of the proposed local law as advertised (the “**advertised proposed law**”); or
- (b) proceed with the making of the proposed local law with amendments (the “**amended proposed law**”); or
- (c) not proceed with the making of the proposed local law.

### **Step 7—again ensure proposed law satisfactorily deals with any State interest**

**480.(1)** This step does not apply in the following cases—

- (a) if the local government got an advice under section 475(4) or (6) (Step 2—ensure proposed law satisfactorily deals with any State interest) and has satisfied any agreed conditions;
- (b) if the local government decides not to proceed with the proposed local law;
- (c) if a regulation states the step does not apply.

**(2)** The local government must—

- (a) advise the Minister of its decision under step 6; and
- (b) give the Minister information about the proposed local law required by the Minister or by regulation.

**(3)** If the Minister considers that State interests are satisfactorily dealt with by the proposed local law, the Minister must advise the local

government it may proceed to step 8.

(4) Alternatively, if the Minister considers that State interests would be satisfactorily dealt with by the proposed local law if the local government satisfied particular conditions, the Minister—

- (a) may impose conditions on the local government that the Minister considers appropriate; and
- (b) must advise the local government that it may proceed to step 8 if it—
  - (i) satisfies any conditions about the content of the proposed local law; and
  - (ii) agrees to satisfy any other conditions.

(5) Before proceeding further in making a proposed local law, the local government must—

- (a) get an advice under subsection (3) or (4); and
- (b) satisfy any condition about the content of the proposed local law; and
- (c) agree to satisfy any other conditions.

(6) A local government must not act under subsection (2) unless the local government has complied with division 5<sup>190</sup> in relation to the proposed local law.

### **Step 8—make proposed law**

**481.(1)** The local government must, by resolution, make—

- (a) the advertised proposed law; or
- (b) the amended proposed law; or
- (c) the proposed law for which the local government received advice from the Minister that it could proceed to this step without satisfying steps 3 to 7.

(2) The local government's chief executive officer must certify the

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<sup>190</sup> Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

required number of copies of the local law to be the local law as made by the local government.

### **Step 9—give public notice of law**

**482.(1)** A notice of the making of the local law must be published in the gazette stating the following—

- (a) the name of the local government making the local law;
- (b) the name of the local law;
- (c) the date of the local government's resolution making the local law;
- (d) the name of any existing local law amended or repealed by the new local law.

**(2)** The notice also may state the following—

- (a) the purposes and general effect of the local law;
- (b) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office;
- (c) that a copy of the certified copy of the local law may be purchased at the local government's public office.

**(3)** If the local law is not notified within 1 year of the date of the local government's resolution making the local law (or a longer period decided by the Minister), the process stated in this division must be used again before the local law is notified in the gazette.

**(4)** On the day of notification (or as soon as practicable after the day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law; and
- (c) advice of any anti-competitive provisions included in the local law and reasons for their inclusion.

***Division 4—Making local law policies*****Application of division**

**482A.** This division applies subject to division 5.<sup>191</sup>

**Local law policy process**

**483.(1)** The process stated in this division must be used to make a local law policy.

**(2)** If a local government purports to make a local law policy in contravention of subsection (1), the purported policy is of no effect.

**Step 1—propose a policy**

**484.** The local government must, by resolution, propose to make a local law policy.

**Step 2—consult with public about proposed policy**

**485.(1)** The local government must consult with the public about the proposed local law policy for at least 21 days (the “**consultation period**”).

**(2)** However, a longer consultation period may be prescribed by regulation.

**(3)** The consultation period begins on the day when the notice mentioned in subsection (4) is first published.

**(4)** A notice about the proposed local law policy must be—

- (a)** published at least once in a newspaper circulating generally in the local government’s area; and
- (b)** displayed in a conspicuous place in the local government’s public office from the first day of the consultation period until the end of the last day of the consultation period.

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<sup>191</sup> Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

(5) The notice must state the following—

- (a) the name of the local government proposing to make the local law policy;
- (b) the name of the proposed local law policy;
- (c) the name of—
  - (i) the local law allowing the policy to be made; or
  - (ii) if this step is used under section 489A (Early commencement under local law policy making process)—the proposed authorising law;
- (d) the purposes and general effect of the proposed local law policy;
- (e) the length of the consultation period and the first and last days of the period;
- (f) that a copy of the proposed local law policy is open to inspection at the local government's public office on or before the last day;
- (g) that a copy of the proposed local law policy may be purchased at the local government's public office on or before the last day at a stated price;
- (h) that written submissions by any person supporting or objecting to the proposed local law policy may be made and given to the local government on or before the last day stating—
  - (i) the grounds of the submission; and
  - (ii) the facts and circumstances relied on in support of the grounds.

(6) The price of a copy of the proposed local law policy must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

### **Step 3—give public access to proposed policy**

**486.** On the first day of the consultation period and until the end of the last day of the consultation period—

- (a) a copy of the proposed local law policy must be open to inspection at the local government's public office; and

- (b) copies of the proposed local law policy must be available for purchase at the local government's public office at the price stated in the notice about the proposed local law policy.

#### **Step 4—accept and consider all submissions**

**487.(1)** The local government must consider every submission properly made to it.

(2) A submission is properly made to the local government if it—

- (a) is the written submission of any person about the proposed local law policy; and
- (b) states—
  - (i) the grounds of the submission; and
  - (ii) the facts and circumstances relied on in support of the grounds; and
- (c) is given to the local government on or before the last day of the consultation period.

#### **Step 5—make proposed policy**

**488.(1)** If, after considering every submission properly made to it, the local government decides to make the proposed local law policy (whether as advertised or with amendments), it must, by resolution, make the local law policy.

(2) However, the local government may substantially amend the proposed local law policy only if the local government again consults with the public under section 485 (Step 2—consult with public about proposed policy) and complies with steps 3 and 4.

(3) The local government's chief executive officer must certify the required number of copies of the local law policy to be the local law policy as made by the local government.

(4) For subsection (2), an amendment of a proposed local law policy with changes consistent with a resolution of the local government made under section 489I in relation to the local law policy is not a substantial amendment of the policy.

(5) A local government must not act under subsection (1) or (2) unless the local government has complied with division 5<sup>192</sup> in relation to the proposed local law policy.

### **Step 6—give public notice of policy**

**489.(1)** A notice of the making of the local law policy must be published in a newspaper circulating generally in the local government's area stating the following—

- (a) the name of the local government making the local law policy;
- (b) the name of the local law policy;
- (c) the date of the local government's resolution making the local law policy;
- (d) the name of any existing local law policy amended or repealed by the new local law policy.

**(2)** The notice also may state the following—

- (a) the name of the local law allowing the policy to be made;
- (b) the purposes and general effect of the local law policy;
- (c) that a certified copy of the local law policy is open to inspection at the local government's public office and at the department's State office;
- (d) that a copy of the certified copy of the local law policy may be purchased at the local government's public office.

**(3)** On the day of notification (or as soon as practicable after the day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law policy; and
- (c) advice of any anti-competitive provisions included in the local law policy and reasons for their inclusion.

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<sup>192</sup> Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

(4) The local law policy commences—

- (a) on the day on which it is notified; or
- (b) if a later day or time is fixed in the policy—on that day or at that time.

(5) If the local law policy is notified on a day after the day or time fixed by the policy for its commencement, the policy is valid, but commences on the day on which it is notified.

### **Early commencement under local law policy making process**

**489A.(1)** The purpose of this section is to permit a local government to start the process for making a local law policy (the “**policy**”) even though the process for making the local law on which the policy is to be based (the “**proposed authorising law**”) has not finished.

(2) A local government may use steps 1 to 5 of the process for making the policy (other than actually making the policy) before the proposed authorising local law is made if—

- (a) in making the proposed authorising law, the local government has to satisfy division 3 (Making other local laws), steps 3 to 7; and
- (b) the notice about the policy under section 485 (Step 2—consult with public about proposed policy) is published no earlier than the notice about the proposed authorising law under section 476 (Step 3—consult with public about proposed law) is published.

### ***Division 5—Anti-competitive provisions of proposed local laws and proposed local law policies***

#### **Application of division**

**489B.(1)** In this section—

“**cut-off day**” means—

- (a) for a local law or local law policy made before 31 December 1997—31 December 1997; or
- (b) for a local law made under division 3 after 31 December 1997



and, if in making the local law, the local government, before 31 December 1997, complied with section 480(2)—a later day stated under a regulation.

(2) Subject to subsections (3) and (4), this division applies to local laws and local law policies made after the commencement of this section.

(3) This division does not apply to local laws or local law policies made before the cut-off day if the local government, before 31 December 1997, decides to apply chapter 15, part 1, division 3A to the local law or local law policy as if the local law or local law policy were an existing local law or existing local law policy under that division.

(4) This division does not apply to interim local laws.

### **Definitions for div 5**

**489C.** In this division—

**“anti-competitive provision”**, of a proposed local law or proposed local law policy, means a provision that, under a regulation, is treated as creating barriers to entry to a market or barriers to competition within a market.

**“possible anti-competitive provision”** see section 489E.

**“proposed local law”** includes a local law proposed to be made under division 1.

**“public interest test”** means a review of a possible anti-competitive provision of a proposed local law or proposed local law policy under this division.

**“public interest test report”** means the report, including recommendations, on a public interest test.

### **Local laws and local law policies not to be made unless local government complies with division**

**489D.** A local government must not make a local law or a local law policy unless the local government complies with this division.

**Review of proposed local law or proposed local law policy to identify possible anti-competitive provisions**

**489E.** A local government must carry out a review of its proposed local law or proposed local law policy and identify any provision of the law or policy that it considers may be an anti-competitive provision (a “**possible anti-competitive provision**”).

**Public interest test of possible anti-competitive provisions**

**489F.(1)** Before making a local law or local law policy containing a possible anti-competitive provision, a local government must ensure a public interest test is carried out and a public interest test report prepared for each of the possible anti-competitive provisions.

**(2)** A public interest test report must, for each possible anti-competitive provision, recommend—

- (a) that the provision should be retained as it is not an anti-competitive provision; or
- (b) for a provision that the report identifies as being an anti-competitive provision—that the whole or part of the provision—
  - (i) in the public interest, should be retained (whether in its current or another form); or
  - (ii) should not be retained.

**(3)** For subsection (2), it is in the public interest for an anti-competitive provision to be retained (whether in its current or another form) if—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the proposed local law or proposed local law policy is by restricting competition in the way provided in the provision.

**Local government to decide on test and report process**

**489G.(1)** The local government must decide—

- (a) how the public interest test is to be conducted; and
- (b) the matters with which the public interest test report must deal.

(2) The decision must provide for a consultation process for the public interest test and state how the process is to be used in the test.

*Example—*

A local government may decide that the consultation process concerning possible anti-competitive provisions must include—

- (a) giving notice of the test and inviting submissions about the test; and
- (b) a period for submissions to be received; and
- (c) direct consultation with interested parties; and
- (d) consideration of the submissions received about the test.

The local government may also decide the process for the test may be carried out in conjunction with another process required for making the local law or local law policy such as step 3 in section 476 or step 2 in section 485.

(3) The decision is subject to a regulation under section 489K.

### **Public interest test report to be presented to local government meeting**

**489H.** As soon as practicable after a public interest test report is completed, it must be presented to a meeting of the local government.

### **Local government to resolve whether to implement recommendations of public interest test**

**489I.(1)** After a public interest test report has been presented to a meeting of a local government, the local government must resolve whether to implement the recommendations of the report.

(2) A local government may make a contrary resolution about an anti-competitive provision only if the local government is of the opinion and resolves that—

- (a) the benefits of the provision in the proposed local law or proposed local law policy to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the

proposed local law or proposed local law policy is by restricting competition in the way provided in the provision.

(3) A resolution under subsection (2) must include a statement of the reasons for finding that—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the proposed local law or proposed local law policy is by restricting competition in the way provided in the provision.

(4) In subsections (2) and (3)—

**“contrary resolution”** means a resolution by a local government to—

- (a) retain an anti-competitive provision of a proposed local law or proposed local law policy despite a recommendation in a public interest test report that the provision should not be retained; or
- (b) retain an anti-competitive provision of a proposed local law or proposed local law policy in a form not consistent with the form recommended in a public interest test report.

### **Public interest test reports are open to inspection**

**489J.** From the day the public interest test report is presented to a meeting of a local government the report must be open to inspection.

### **Regulation about public interest tests and public interest test reports**

**489K.** A regulation may be made about—

- (a) the procedures to be followed and criteria to be used to identify possible anti-competitive provisions of proposed local laws or proposed local law policies; and
- (b) requirements for public interest tests and public interest test reports; and
- (c) the giving of information by local governments to the Minister.

## **PART 3—PUBLIC ACCESS TO LOCAL LAWS AND LOCAL LAW POLICIES**

### **Laws and policies available for inspection and purchase**

**490.(1)** On and from the day of publication of a notice of the making of a local law or local law policy (or as soon as practicable after the day)—

- (a) a certified copy of the local law or local law policy must be open to inspection at the local government's public office and the department's State office; and
- (b) copies of the certified copy of the local law or local law policy must be available for purchase at the local government's public office.

**(2)** The price of a copy of a local law or a local law policy must be no more than the cost to the local government of having the copy available for purchase and, if the copy is posted to the purchaser, the postage cost.

### **Policy register**

**491.(1)** A local government must keep a register of its local law policies.

**(2)** The register must comply with the regulation.

**(3)** The register must be open to inspection at the local government's public office.

## **PART 4—STATUS OF LOCAL LAWS AND LOCAL LAW POLICIES**

### **Effect of local laws**

**492.** On commencement, a local law made by a local government has the force of law.

**Extent to which local law policy is binding**

**493.(1)** A local government's local law policy is binding on the local government.

**(2)** A local government's local law policy on a matter is, and it is declared always was, binding on anyone else to the extent stated in the local law stating the matter about which the local law policy may be made.

**Proof of local laws and local law policies**

**494.(1)** In a proceeding, a certified copy of a local law or local law policy is evidence of the content of the local law or local law policy.

**(2)** All courts, judges and persons acting judicially must take judicial notice of a certified copy of a local law or local law policy.

**(3)** In a proceeding, a copy of the gazette or newspaper containing a notice about the making of a local law or local law policy is—

- (a) evidence of the matters stated in the notice; and
- (b) evidence that the local law or local law policy has been properly made.

**Local law and local law policy presumed to be within jurisdiction**

**495.** In a proceeding, the competence of a local government to make a particular local law or local law policy is presumed unless the issue is raised.

## **CHAPTER 9—LOCAL GOVERNMENT INFRASTRUCTURE**

### **PART 1—EXTENDED APPLICATION OF CHAPTER**

#### **Application of chapter to Brisbane City Council**

**496.** This chapter applies to the Brisbane City Council.

### **PART 2—ROADS**

#### *Division 1—Control of roads*

#### **Local governments' control of roads**

**497.(1)** A local government has control of all roads in its area.

**(2)** Control of roads includes capacity to take all necessary steps for—

- (a) survey and resurvey of roads; and
- (b) construction, maintenance and improvement of roads; and
- (c) regulation of use of roads; and
- (d) regulation of movement of traffic and parking vehicles on roads.

**(3)** Subsection (2)(d) is subject to the *Traffic Act 1949*.

**(4)** Regulation of use of roads includes—

- (a) requiring, by local law, an owner of land adjoining a road to fence the land to prevent animals escaping from the land onto the road; and
- (b) specifying, by local law, the obligations of the owner of the land.

*Division 2—Realignment and widening of roads***Realignment of roads**

**498.(1)** A local government may realign a road to widen it.

**(2)** A road may be realigned—

- (a) by acquisition of land necessary for the purpose; or
- (b) if a structure or part of a structure is on land affected by the realignment between the existing and proposed alignments—under a notice of realignment.

**(3)** A local government must serve a notice (the “**notice of realignment**”) on the owner of land affected by a realignment.

**(4)** The notice must inform the owner in general terms of this section and section 500 (Compensation for realignment of road).

**(5)** The local government must lodge a copy of the notice of realignment with the registrar of titles for the registration on the instrument of title to the land.

**Effect of notice of realignment**

**499.(1)** The owner of land that is the subject of a notice of realignment must not erect, place, re-erect, replace or repair any structure or part of a structure on the land between the existing and proposed alignments of the road without the permission of the local government.

**(2)** Despite service of the notice, land between the existing and proposed alignments of a road does not form part of the road until it has been acquired by the local government and dedicated to public use as a road.

**(3)** The registrar of titles may register the notice despite the non-production of a relevant instrument of title.

**Compensation for realignment of road**

**500.(1)** A person who would be entitled to claim compensation on acquisition by a local government of land affected by a notice of realignment situated between the existing and proposed alignments of a



road is entitled to compensation from the local government for injurious affection to the person's interest in the land because of—

- (a) service of the notice; or
- (b) refusal by the local government of permission mentioned in section 499(1) (Effect of notice of realignment).

(2) However, compensation is not payable on service of the notice until—

- (a) the land is first sold after service of the notice; or
- (b) the owner of the land has, after service of the notice, offered the land for sale in good faith, but cannot sell the land for a fair and reasonable price.

### **Claims for compensation**

**501.(1)** A claim for compensation must—

- (a) be made to the chief executive officer of the local government in a form approved by the chief executive officer; and
- (b) be made within 3 years after the entitlement to compensation arose.

(2) The claim is taken to have been properly made when the claimant has given the local government all information reasonably required by it to decide the claim.

(3) If, within 40 days after the claim is made, the local government has not given to the claimant written notice of its decision on the claim, it is taken to have refused compensation to the claimant on the 41st day after the claim is made.

### **Appeals**

**502.(1)** A claimant aggrieved by the decision of a local government made on a claim for compensation may appeal against the decision to the Planning and Environment Court.

(2) The appeal must be started within 30 days after notice of the decision is given to the claimant or the decision is taken to have been made.

**Assessment of compensation**

**503.** Assessment of compensation for injurious affection of an interest in land because of a notice of realignment must be consistent with the following principles—

- (a) the amount of compensation must represent the difference between the market value of the interest immediately after service of the notice and what would be the market value of the interest at that time if the notice had not been served;
- (b) any benefit that may accrue, because of the realignment, to land adjacent to the land affected by the realignment, and in which the claimant has an interest, must be taken into account;
- (c) the amount of compensation must not be increased because the land affected by the realignment has, since the service of the notice, become or ceased to be separate from other land.

**Award of compensation**

**504.** Before awarding compensation for injurious affection, the Planning and Environment Court must be satisfied—

- (a) if the land has been sold—
  - (i) the sale price is less than the seller might reasonably have expected to receive had there been no notice of realignment; and
  - (ii) the seller sold the land in good faith; and
  - (iii) the seller took reasonable steps to obtain a reasonable price for the land; or
- (b) if a local government has refused permission mentioned in section 499(1) (Effect of notice of realignment)—the permission was applied for in good faith.

**Acquisition of land instead of compensation**

**505.(1)** Unless land between the existing and proposed alignments of a road has been sold, a local government may acquire the land instead of paying compensation for injurious affection.

(2) If, after a notice of realignment is served, land between the existing and proposed alignments of a road has been cleared of all structures, a local government may, and, if required by the owner of the land, must, acquire the land.

(3) Land acquired under subsection (1) or (2) must be dedicated for public use as a road within 3 months after its acquisition.

(4) Compensation for the compulsory acquisition of land under subsection (1) or (2), if not agreed between the parties, must be assessed as at the date of the acquisition.

### **Notice of realignment not effective in certain circumstances**

**506.(1)** A local government cannot, without the consent of the Planning and Environment Court, serve notice of realignment on an owner of land after the owner has applied to it—

- (a) for its approval of subdivision of the land; or
- (b) for its approval, consent or permission—
  - (i) to erect or use a structure on the land; or
  - (ii) to use the land for any purpose.

(2) The court may consent to service of the notice only if it is satisfied the purpose of the notice is to enable the local government to make, in good faith, a reasonable widening of the road.

### **Realignment not carried out**

**507.(1)** This section does not apply to a realignment of road necessary to comply with the requirements of a local government under a planning scheme approved by the Governor in Council in its application to particular developments in the local government's area.

(2) A local government may, before a realignment of a road has been carried out, decide not to proceed with the realignment or with a part of it.

(3) The local government must serve notice of its decision on—

- (a) all owners of land who were served with notice of the realignment; and

(b) all owners of land that, after the realignment has been carried out in part, adjoins the realigned boundary of the road.

(4) The notice must inform the owners in general terms of this section and section 508 (Compensation if realignment not carried out).

(5) The local government must—

(a) withdraw all notices of realignment, or, if the decision relates to part only of a realignment, all notices of realignment for the part, lodged with the registrar of titles but not registered; and

(b) lodge with the registrar of titles a notice of its decision on all instruments of title on which notice of realignment has been registered, or, if the decision relates to part only of a realignment, on which notice of realignment for the part has been registered.

### **Compensation if realignment not carried out**

**508.(1)** This section applies if—

(a) a local government decides not to proceed with a realignment, or part of a realignment, of a road; and

(b) structural improvements are made on land adjoining the road on the basis of the proposed realignment being effected.

(2) The local government must pay the owner of the land reasonable compensation for the decrease in value of the land because of the decision.

(3) The amount of compensation is the difference between the value of the land before and after the decision.

(4) If the local government and the owner fail to agree on the amount of compensation, the amount is to be decided by the Land Court.

(5) The provisions of the *Acquisition of Land Act 1967* about the making, hearing and deciding of claims for compensation for land taken under that Act apply, with any necessary changes and any changes prescribed by regulation, to claims for compensation under this section.

(6) A decision by a local government not to proceed with a realignment, or part of a realignment, of a road does not give rise to an entitlement to compensation or a cause of action in any owner or occupier of land or other person other than under this section.

**Acquisition of land for use as footpath**

**509.(1)** A local government may widen a road by acquiring from the owner of land adjoining the road land for use as a footpath.

**(2)** The acquisition of land may be subject to a reservation in favour of the owner of any of the following rights as the local government decides, at or before the acquisition, to be appropriate—

- (a) a right to ownership, possession, occupation and use of any existing structure, room or cellar at a specified height above or depth below the level of the new footpath, subject to the local government's right to enter, and make structural alterations to, the structure, room or cellar as it considers to be necessary;
- (b) a right to erect a structure, in accordance with law, at a specified height above and extending over the new footpath and to the ownership, possession, occupation and use of the structure;
- (c) a right of support for a structure mentioned in paragraph (a) or (b).

***Division 3—Opening and closure of roads*****Notice to local government of opening or closure of roads**

**510.(1)** If an application is made under the *Land Act 1994* for the opening or closure of a road in a local government's area by a person (other than the local government), the Minister administering that Act must give written notice of the application to the local government.

**(2)** The notice must specify a date (no earlier than 1 month or later than 2 months after the local government is given the notice) on or before which the local government may object to the opening or closure of the road.

**(3)** An objection must state fully the reasons for the objection.

**(4)** The Minister must have regard to any objections properly made by the local government.

**(5)** If the Minister decides the road should be opened or closed, the Minister must give written notice to the local government of the decision

and, if the decision is contrary to the local government's objection, the reasons for it.

### **Limited closure of roads by local government**

**511.(1)** A local government may, by public notice, close a road, or part of a road, permanently or temporarily, to particular traffic, if there is another road, or route, reasonably available for use by the traffic.

**(2)** A local government may, by public notice, close a road to all traffic or particular traffic—

- (a) during a temporary obstruction to traffic; or
- (b) if it is necessary or desirable to close the road for—
  - (i) a temporary purpose; or
  - (ii) in the interests of public safety.

**(3)** Notice under subsection (1) or (2) may be published in the way the local government considers appropriate in each particular case.

**(4)** If a road, or part of a road, in a local government's area is closed to traffic under subsection (1) or (2), the local government may do everything necessary to stop traffic using the road or the part of the road.

## ***Division 4—Miscellaneous***

### **Temporary roads**

**512.(1)** A local government may, to remake or repair part of a road, make a temporary road through land adjoining the road, to be used while the part is being remade or repaired.

**(2)** However, the temporary road may be made only if it is not reasonably practicable to temporarily close the part of the road to traffic while it is remade or repaired.

### **Fixing road levels**

**513.(1)** The owner or occupier of land adjoining a road may give written

notice to the local government requiring it to advise the owner or occupier of the permanent level fixed or to be fixed for the road.

(2) If the local government has not, within 6 months after receiving the notice, given to the owner or occupier written advice about the permanent level of the road, the local government is taken to have fixed the apparent level of the road when the notice was given as the permanent level of the road.

### **Compensation for change in road level**

**514.(1)** This section applies if—

- (a) after a local government has fixed the permanent level of a road, the local government changes the level of the road; and
- (b) the owner or occupier of land adjoining the road is injuriously affected by the change.

(2) The owner or occupier, or the person's successor in title, is entitled to the reasonable compensation because of the injurious affection that is agreed between the local government and the person or, failing agreement, decided by the Planning and Environment Court.

### **Ancillary works and encroachments on roads**

**515.(1)** In this section—

**“ancillary works and encroachments”** means—

- (a) gates or grids; or
- (b) private railways; or
- (c) tramways, including sugar cane tramways; or
- (d) viaducts; or
- (e) cellars.

(2) A local government may, by local law, regulate the construction, maintenance and operation of ancillary works and encroachments in, on, along, across, under or over roads in its area.

(3) However, a local government cannot make a local law about a

railway to which the *Transport Infrastructure Act 1994*, chapter 6<sup>193</sup> applies.

### **Categorisation of roads**

**516.** A local government must categorise roads in its area according to the surface of the road.

### **Roads map and register**

**517.(1)** A local government must prepare and keep up-to-date a map and a register of roads in its area.

(2) The map of roads must show every road in its area.

(3) The register of roads must show—

- (a) the category of every road in its area; and
- (b) the level of every road of which the level is fixed; and
- (c) other particulars prescribed by regulation.

(4) The register of roads also may show other particulars the local government considers appropriate.

(5) The map and register are open to inspection.

(6) On application and payment of a reasonable fee fixed by resolution or local law, a person may obtain—

- (a) a copy of, or an extract from, a map or register of roads; or
- (b) a certificate of an employee of the local government authorised for the purpose—
  - (i) about the category, alignment and levels of roads in its area; or
  - (ii) about the fact that the alignment or level of a road in its area has not been fixed.

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<sup>193</sup> Chapter 6 (Rail transport infrastructure)



## **PART 3—MALLS**

### **Purpose of part**

**518.** This part contains the provisions under which a mall may be established in a road.

### **Closure of roads to traffic**

**519.(1)** For the purpose of establishing a mall in a road, the Governor in Council may, by gazette notice, and a notice published in a newspaper circulating generally in the locality of the road, temporarily close a road to traffic for the proposed mall.

**(2)** The Governor in Council may, by gazette notice, amend or revoke the road closure.

**(3)** A notice of a road closure or amendment of a road closure must specify the day it becomes effective.

### **Provision of works for mall**

**520.(1)** A local government may undertake and provide the works necessary or desirable for establishing a mall in a road.

**(2)** The local government also may do everything incidental to undertaking or providing the works.

### **Establishment of mall**

**521.** The Governor in Council may, by gazette notice, nominate a day (the “**mall opening day**”) on which a road closed to traffic for a proposed mall is to reopen as a mall.

### **Closure of mall**

**522.** The Governor in Council may, by gazette notice, declare that a specified road ceases to be a mall on a specified day.

**Operation of mall**

**523.(1)** A local government may do everything necessary or desirable for the promotion, development, management, maintenance, cleaning, operation and use of a mall.

**(2)** A local government also may do everything incidental to its powers under subsection (1).

**(3)** The local government may permit the use of any part of the mall, including the erection of any structure, on the conditions it considers appropriate.

**(4)** The local government may exercise any of its powers in relation to the mall before the mall opening day if it is necessary or desirable for the mall's benefit immediately on its establishment.

**Control of vehicles and animals in malls**

**524.** A local government may, by local law, regulate the entry of vehicles and animals into, and the presence and use of vehicles and animals in, malls.

**No entitlement to compensation for mall**

**525.** A person has no entitlement at law to compensation for injurious affection to any right or interest of a business, commercial or industrial nature because of—

- (a) the existence of a mall; or
- (b) anything done under this part.

**PART 4—MARINE AND AQUATIC MATTERS****Ferry service in local government area**

**526.** A local government has the exclusive right to provide a ferry service

across a watercourse at a place where the land forming both banks of the watercourse is in its area.

### **Ferry service on boundary of local government areas**

**527.** If a watercourse is the boundary between 2 or more local government areas, the Governor in Council may, by regulation, declare that a specified local government has exclusive control of—

- (a) provision of a service by ferry across the watercourse at a place where it forms the boundary; and
- (b) all proper approaches to the ferry and the part of either bank of the watercourse that, in the Governor in Council's opinion, is necessary for the convenient construction and use of the ferry and the proper approaches to it.

### **Lease of ferries**

**528.** A local government may lease the right to operate a ferry, alone or with the land under its control that is required for the use of the ferry, for the period and on the terms it considers appropriate.

### **Local laws about ferries**

**529.** A local government may make local laws for managing and regulating the use of ferries operated or leased by it.

### **Harbours, jetties, breakwaters and ramps**

**530.(1)** A local government may construct, maintain, manage and regulate the use of—

- (a) harbours for small vessels in or over tidal waters; and
- (b) jetties, breakwaters and ramps in or over tidal waters.

**(2)** A local government may exercise powers under subsection (1) for a harbour or proposed harbour whether its waters are within or outside the limits of a port under the *Transport Infrastructure Act 1994*.

**(3)** A local government may occupy and use foreshore, tidal land or tidal

waters to undertake work in exercising the powers.

(4) While the local government occupies or uses foreshore, tidal land or tidal waters, the foreshore, land or waters are taken to be in its area.

(5) This section has effect subject to the *Land Act 1994*.

### **Management and regulation of bathing reserves**

**531.(1)** In this section—

“**seashore**” means—

- (a) foreshore; or
- (b) State land above high-water mark at ordinary spring tides that is ordinarily covered by sand or shingle;

“**State land**” does not include land that is subject to a licence, permit or other authority granted under an Act by the State.

(2) The Governor in Council may, by gazette notice, place under the control of a local government as a bathing reserve—

- (a) a part of the seashore; and
- (b) land under the sea adjacent to that part of the seashore and seawards for a distance not more than 1 km beyond low-water mark at ordinary spring tides; and
- (c) sea above that part of the seashore and land.

(3) The local government may—

- (a) manage and regulate the use of the bathing reserve; or
- (b) construct and maintain enclosures, structures and facilities in the bathing reserve; or
- (c) provide, or authorise someone else to provide, life-saving services for the bathing reserve.

(4) While the bathing reserve is under the local government’s control, the bathing reserve is taken to be in its area.

**Control of foreshore**

**532.(1)** The Governor in Council may, by gazette notice, place foreshore under the control of—

- (a) the local government of the local government area adjoining the foreshore; or
- (b) if there is no local government area adjoining the foreshore—the local government of a local government area convenient to the foreshore.

**(2)** The local government may manage and regulate the use of the foreshore.

**(3)** While the foreshore is under the local government's control, the foreshore is taken to be in its area.

## **PART 5—LOCAL GOVERNMENT CONTROL OVER LEVEE BANKS**

### *Division 1—Jurisdiction of local governments*

#### **Limited exclusion of jurisdiction of local government**

**533.** The jurisdiction of a local government under this part to prohibit or regulate the construction and maintenance of levee banks does not extend to a part of its area included in an approved plan within the meaning of the *Soil Conservation Act 1986*.

### *Division 2—Control of levee banks*

#### **Regulation of levee banks etc.**

**534.(1)** A local government may, by a local law—

- (a) prohibit construction of levee banks without the local government's permission; and

- (b) regulate the construction and maintenance of levee banks; and
- (c) require changes to levee banks constructed before or after the commencement of this part, although their construction may have complied with the requirements and approval of the local government.

(2) A local law prohibiting construction of levee banks without the local government's permission must provide for—

- (a) particulars to be supplied by an applicant for the local government's permission; and
- (b) public notice of applications for the local government's permission to be given by advertisement at least twice in a newspaper circulating generally in the local government's area; and
- (c) submissions supporting or objecting to applications and the requirements applying to the submissions; and
- (d) procedures of the local government in considering and deciding applications; and
- (e) all other issues the local government considers necessary for properly disposing of applications.

### **Decision on application for permission**

**535.(1)** If a local government decides to give permission for a levee bank construction, it may decide the permission is subject to conditions.

(2) The decision on an application must—

- (a) be given to the applicant by written notice; and
- (b) be given to each person who made a submission on the application; and
- (c) if the decision is to give permission, but the permission is to be subject to conditions—specify the conditions.

**Issue of permit**

**536.(1)** A permission has effect only if a permit is issued setting out the terms of the permission.

(2) A permit must not be issued before the end of 30 days after notice of the decision is given under section 535(2) (Decision on application for permission).

(3) However, if an appeal is started within the 30 days mentioned in subsection (2), a permit may be issued only if—

- (a) the decision on appeal confirms the giving of permission, with or without conditions, or changed conditions, applying to the permission; or
- (b) the appeal is struck out or is discontinued.

(4) An issued permit is subject only to the conditions stated in the permit.

**Application for permission for existing levee banks**

**537.(1)** If, when a local law mentioned in section 534 (Regulation of levee banks etc.) commences, there is on land to which the local law applies a levee bank that, in the local government's opinion, affects or is likely to affect natural drainage to an extent that it causes or may cause damage to land or a public work, service or undertaking, the local government may, by written notice, require the owner of the land to apply to it within a specified reasonable period for permission to keep the levee bank or part of the levee bank.

(2) This part applies to an application made in response to a requirement under subsection (1) as if the application were an application for permission to construct the levee bank or part concerned.

(3) A person must not keep on the person's land, or allow another person to keep on the person's land, a levee bank or part of a levee bank to which a requirement under subsection (1) applies—

- (a) after the end of the period allowed by the request for applying for the local government's permission to keep the levee bank or part of the levee bank, if the application has not been properly made; or

- (b) after the local government's permission has been refused; or
- (c) in breach of the conditions stated in a permit issued by the local government.

Maximum penalty—50 penalty units.

(4) If a person convicted of an offence against subsection (3) continues to commit the offence, the person commits a continuing offence.

Maximum penalty—1 penalty unit for each day on which the offence is continued.

### *Division 3—Appeals*

#### **Appeal against local government's decision**

**538.(1)** An appeal tribunal for hearing and deciding appeals against decisions of a local government on an application is formed by the chief executive of the department within which the *Water Resources Act 1989* is administered or that chief executive's delegate.

(2) A person aggrieved by a decision of a local government on an application may appeal to an appeal tribunal.

(3) The appeal must be started within 30 days after the person aggrieved is given written notice of the decision.

(4) The appeal is started by the person filing a notice of appeal with the chief executive mentioned in subsection (1) and giving a copy of the notice to the local government.

(5) As soon as practicable after the appeal is started, the chief executive officer of the local government must inform the chief executive mentioned in subsection (1) of the persons, other than the appellant, who made the application and who made submissions on the application.

(6) The person who is to form the appeal tribunal on the appeal must inform the appellant, the local government, and the persons mentioned in subsection (5) of the day, time and place for hearing of the appeal.



**Decision on appeal**

**539.(1)** An appeal tribunal may—

- (a) dismiss an appeal and confirm the decision of the local government; or
- (b) allow the appeal, set aside the decision of the local government and substitute the decision it considers should have been made on the application.

**(2)** The decision of an appeal tribunal is taken to be the decision of the local government on the application.

**(3)** Section 536 (Issue of permit) does not apply to the issue of a permit on the decision of an appeal tribunal.

**Duties of appeal tribunal**

**540.** In hearing an appeal, the appeal tribunal—

- (a) must observe natural justice; and
- (b) must act as quickly as possible, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

**Appeal tribunal may decide procedures**

**541.(1)** An appeal is by way of rehearing.

**(2)** The appeal tribunal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate; and
- (c) may decide the procedures to be followed in the appeal.

**(3)** However, the appeal tribunal must comply with this division and any procedural rules prescribed by regulation.

**Appeal tribunal's powers**

**542.(1)** In hearing an appeal, the appeal tribunal may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or by statutory declaration; and
- (c) adjourn the appeal; and
- (d) permit a document to be amended; and
- (e) disregard any defect, error, omission or insufficiency in a document.

(2) The appeal tribunal may administer an oath to a person appearing as a witness before the tribunal.

### **Representation before appeal tribunal**

**543.** A party to an appeal may be represented by counsel, a solicitor or an agent appointed in writing.

### **Prosecution of appeal**

**544.(1)** An appeal must be prosecuted diligently.

(2) An appeal tribunal may strike out an appeal if it considers the appellant is not prosecuting the appeal diligently.

(3) An appeal may be discontinued by the appellant by written notice given to the appeal tribunal and to the respondent.

### **Notice to witness**

**545.(1)** The person forming the appeal tribunal may, by written notice given to a person, require the person to attend an appeal at a specified time and place to give evidence or produce specified documents.

(2) A person who is given a notice must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the appeal tribunal until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to appear as a witness before an appeal is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the appeal tribunal.

### **Duty of witness at appeal**

**546.(1)** A person appearing as a witness at an appeal must not—

- (a) fail to take an oath or make an affirmation when required by the appeal tribunal; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the appeal tribunal; or
- (c) fail, without reasonable excuse, to produce a document that the person is required to produce by a notice under section 545(1) (Notice to witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

### **Contempt of appeal tribunal**

**547.** A person must not—

- (a) insult the person forming the appeal tribunal in an appeal; or
- (b) deliberately interrupt an appeal; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the appeal tribunal is conducting an appeal; or
- (d) do anything that would be a contempt of court if the person forming the appeal tribunal were a judge acting judicially.

Maximum penalty—50 penalty units.

**Change of person forming appeal tribunal**

**548.** An appeal is not affected by a change in the person forming the appeal tribunal.

**Costs of appeal**

**549.(1)** An appeal tribunal may make an order for payment of costs of an appeal as it considers just.

(2) Unless an appeal tribunal's order states otherwise, costs of proceedings on an appeal are on the scale applying to taxation of costs in the District Court.

**Recovery on orders of appeal tribunal**

**550.(1)** An order of an appeal tribunal for payment of costs must be in written form and a copy of the order must be given to—

- (a) the appellant or other person to whom an amount is ordered to be paid; and
- (b) the local government or other person by whom an amount is ordered to be paid.

(2) A document purporting to be a copy of an order of an appeal tribunal for payment of a stated amount of costs may be filed in the registry of a court having jurisdiction in an action for debt in the amount stated in the order, and enforced as an order of the court.

(3) If an order of an appeal tribunal for payment of costs does not state the amount to be paid, the costs payable may be recovered by action in a court of competent jurisdiction as a debt payable by the person by whom the costs are ordered to be paid to the person to whose benefit the order was made.

***Division 4—Effect of part*****Effect of part on legal rights and remedies**

**551.** A permission given on an application under this part does not affect

a right or remedy a person had about a levee bank the subject of the permission.

*Division 5—Expiry of part*

**Expiry of part**

**552.** This part expires on 31 March 1999.

**CHAPTER 10—RATES AND CHARGES**

**PART 1—GENERAL**

*Division 1—Rateable land*

**What land is rateable?**

**553.(1)** All land is rateable land other than—

- (a) vacant State land; and
- (b) land occupied by the State or a government entity (other than a non-exempt GOC), except under a lease from a private person; and
- (c) land in a State forest or timber reserve, other than land occupied under an occupation permit or stock grazing permit under the *Forestry Act 1959* or under a lease under the *Land Act 1994*; and
- (d) Aboriginal land under the *Aboriginal Land Act 1991* or Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*, other than land used for commercial or residential purposes; and
- (e) the following land under the *Transport Infrastructure Act 1994*—
  - (i) strategic port land occupied by a port authority, the State, or

- a government entity;
- (ii) existing or new rail corridor land;
- (iii) commercial corridor land that is not subject to a lease; and
- (f) land exempt from rating under an Act or a regulation made under this Act.

(2) A regulation under subsection (1)(f) may, for example, exempt from rating land used for religious, charitable, educational or public purposes.

(3) If part of a parcel of land mentioned in subsection (1)(d) is used for commercial or residential purposes and another part (the “**remainder**”) of the parcel is used for other purposes, the remainder is not rateable land, even though the other part of the parcel is rateable land.

(4) In this section—

“**non-exempt GOC**” means a GOC, or a subsidiary of a GOC, within the meaning of the *Government Owned Corporations Act 1993* other than a GOC or subsidiary that is exempt from rating under an Act in relation to the relevant land;

“**private person**” means a person other than the State or a government entity.

### *Division 2—Averaging of valuations*

#### **Application to Brisbane City Council**

554. This division applies to the Brisbane City Council.

#### **Local government may decide to average land values for rating purposes**

555.(1) A local government may decide by resolution that, for the purpose of making and levying rates for a financial year on rateable land in its area, the unimproved value of the land is to be its averaged value under this division.

(2) The resolution must specify whether the averaged value must be

calculated under section 556 (Averaging over 3 years) or section 557 (Averaging over 2 years).

### **Averaging over 3 years**

**556.(1)** If this section applies to a financial year, the averaged value of rateable land for the financial year is the lesser of—

- (a) the land's effective value for the financial year; or
- (b) the amount calculated as follows—
  - (i) if the land has effective values for the financial year and each of the previous 2 financial years—the average of the 3 effective values;
  - (ii) in any other case—an amount equal to the land's effective value for the financial year multiplied by the averaging factor.

**(2)** In subsection (1)—

**“averaging factor”**, for a financial year, means the number calculated, to 2 decimal places, using the formula—

$$\frac{T}{3V}$$

where—

**“T”** means the total of the effective values of all rateable land in the local government's area for the financial year and the previous 2 financial years;

**“V”** means the effective value of all rateable land in the local government's area for the financial year.

### **Averaging over 2 years**

**557.(1)** If this section applies to a financial year, the averaged value of rateable land for the financial year is the lesser of—

- (a) the land's effective value for the financial year; or
- (b) the amount calculated as follows—

- (i) if the land has effective values for the financial year and the previous financial year—the average of the 2 effective values;
- (ii) in any other case—an amount equal to the land’s effective value for the financial year multiplied by the averaging factor.

(2) In subsection (1)—

“**averaging factor**”, for a financial year, means the number calculated, to 2 decimal places, using the formula—

$$\frac{T}{2V}$$

where—

“**T**” means the total of the effective values of all rateable land in the local government’s area for the financial year and the previous financial year;

“**V**” means the effective value of all rateable land in the local government’s area for the financial year.

### **Information available to calculate “averaging factor”**

**558.** A local government may calculate the averaging factor using only the effective values of which it is aware at the time of making its resolution.

## **PART 2—MAKING AND LEVYING RATES AND CHARGES**

### **Power to make and levy rates and charges**

**559.(1)** A local government may, for a financial year, make and levy—

- (a) a general rate or differential general rates; and
- (b) minimum general rate levies; and



- (c) separate rates and charges; and
- (d) special rates and charges; and
- (e) utility charges.

(2) A local government also may fix general charges.

### **Making of rates and charges**

**560.** A rate or charge mentioned in section 559(1) (Power to make and levy rates and charges) may only be made for a financial year by resolution at the local government's budget meeting for the year.

### **General rate or differential general rates must be made each year**

**561.** A local government must make a general rate or differential general rates for each financial year.

### **Differential general rate**

**562.(1)** Before a differential general rate is made and levied, rateable land must be categorised into 2 or more categories under part 3 (Categorisation of land for differential rating).

(2) A differential general rate made and levied on rateable land in a category may be the same as or different to the differential general rate made and levied on land in another category.

(3) If a local government makes and levies a differential general rate for rateable land for a financial year, the local government must not make and levy a general rate for the land for the year.

(4) A differential general rate may be made and levied on a lot under a community titles Act as if it were a parcel of rateable land.

(5) To avoid doubt, it is declared that a differential general rate may be made and levied on a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997*.

**Minimum general rate levy**

**563.(1)** A local government may identify rateable land for the purpose of making and levying a minimum general rate levy in any way it considers appropriate.

(2) If a local government makes and levies a differential general rate, it may make and levy different minimum general rate levies on rateable land in different categories.

**Minimum general rate levy on time shared property**

**564.(1)** This section applies to a local government levying a minimum general rate levy on—

- (a) rateable land where there is a structure wholly or partially subject to a time share scheme; or
- (b) a lot within the meaning of a community titles Act, or a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997*, where there is a structure wholly or partially subject to a time share scheme.

(2) The local government may decide that the minimum general rate levy is to be worked out using the formula—

$$L \times RU$$

where—

“**L**” means the minimum general rate levy that would, apart from this section, be payable for the rateable land or the lot;

“**RU**” means the number of units of the structure that are subject to the time share scheme and are available at any time for separate exclusive occupation.

**Minimum general rate levy on mining tenements**

**565.(1)** A local government may decide that the minimum general rate levy on land mentioned in subsection (2) is different to the minimum general rate levy on other rateable land in its area.

(2) Subsection (1) applies to rateable land if the land is—

- (a) a mining claim; or
- (b) a mining lease granted for mining for minerals of not more than 2 ha; or
- (c) a mining lease granted for a purpose associated with mining for minerals of not more than 4 ha.

(3) A local government also may decide that different minimum general rate levies apply to—

- (a) a mining claim of not more than 900 m<sup>2</sup>; and
- (b) a mining claim of more than 900 m<sup>2</sup>; and
- (c) a mining lease mentioned in subsection (2).

### **Unimproved value of mining claims**

**566.** The unimproved value of a mining claim is—

- (a) for a mining claim of not more than 900 m<sup>2</sup>—\$150 or, if a greater amount is prescribed by regulation, the greater amount; or
- (b) for a mining claim of more than 900 m<sup>2</sup>—\$450 or, if a greater amount is prescribed by regulation, the greater amount.

### **Special rates and charges**

**567.(1)** A local government may make and levy a special rate or charge on rateable land if—

- (a) the rate or charge is for a service, facility or activity; and
- (b) in the local government's opinion, the land has or will specially benefit from, or has or will have special access to, the service, facility or activity.

(2) The special rate or charge may be made and levied on the bases the local government considers appropriate.

(3) Without limiting subsection (2), the amount of the special rate or charge may vary according to the extent to which, in the local government's opinion, the land has or will specially benefit from, or has or will have special access to, the service, facility or activity.

(4) The local government's resolution making the special rate or charge must identify the rateable land to which the rate or charge applies.

(5) The local government may identify parcels of rateable land to which the rate or charge applies in any way it considers appropriate.

(6) Subsection (1) is taken to have been complied with if the special rate or charge is made and levied on—

- (a) all rateable land that, at the time of making and levying the rate or charge, could reasonably be identified as land on which the rate or charge may be made and levied; or
- (b) all rateable land on which the rate or charge may be made and levied, other than land accidentally omitted.

(7) To remove any doubt, it is declared that a local government may make and levy a special rate or charge under subsection (1) for a service, facility or activity whether or not the service, facility or activity is supplied by the local government itself.

### **Separate rates and charges**

**568.(1)** A local government may make and levy a separate rate or charge for a service, facility or activity.

(2) To remove any doubt, it is declared that a local government may make and levy a separate rate or charge for a service, facility or activity whether or not the service, facility or activity is supplied by the local government itself.

### **Utility charges**

**569.(1)** A local government may make and levy a utility charge on—

- (a) any land, whether vacant or occupied, and whether or not it is rateable land; or
- (b) a structure.

(2) A utility charge may be for—

- (a) supplying water, gas or sewerage services; or
- (b) occupied land or a structure—supplying cleansing services.

*Local Government Act 1993*

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(3) A utility charge may be made and levied for supplying water or sewerage services while the facilities for supplying the services are being constructed.

(4) A utility charge may be made and levied on the bases a local government considers appropriate.

(5) Without limiting subsection (4), the amounts of utility charges may differ on the basis of—

- (a) the use made of particular land, or a particular structure or a class of land or structure; or
- (b) the unimproved value of particular land; or
- (c) any other circumstances peculiar to the supply of the relevant service to particular land, a particular structure or a class of land or structure.

(6) To remove any doubt, it is declared that a local government may make and levy a utility charge for a service whether or not the service is supplied by the local government itself.

(7) A local government may, and it is declared always could from the commencement of this section, do 1 or more of the following—

- (a) make and levy a utility charge for services supplied or to be supplied during part of the financial year and part of another financial year;
- (b) make and levy differing charges for services supplied or to be supplied during various periods in 1 or more financial years;
- (c) in making and levying differing charges under paragraph (b), decide the way the charges are to be apportioned.

*Examples of application of subsection (7)—*

1. For water used between 30 April 1998 and 31 July 1998, the local government may resolve to charge—

- (a) for water used (as measured) during the period 30 April 1998 to 31 July 1998 on the basis of the charge made at the budget meeting for the 1997-1998 financial year; or
- (b) for water used (as measured) during the period 30 April 1998 to 31 July 1998 on the basis of the charge made at the budget meeting for the 1998-1999 financial year; or

*Local Government Act 1993*

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- (c) for—
- (i) water used (as measured) during the period 30 April 1998 to 30 June 1998 on the basis of the charge made at the budget meeting for the 1997-1998 financial year; and
  - (ii) water used (as measured) during the period 1 July 1998 to 31 July 1998 on the basis of the charge made at the budget meeting for the 1998-1999 financial year; or
- (d) an apportioned charge for water used during the 2 periods (30 April 1998 to 30 June 1998 and 1 July 1998 to 31 July 1998) on the basis of—
- (i) the total amount of water used (as measured) during the period 30 April 1998 to 31 July 1998—93 days—being apportioned to each period according to the respective lengths of the periods—62 days and 31 days respectively; or
  - (ii) another basis set out in the resolution.

2. The local government may resolve to charge for water supplied between 1 July 1998 and 30 June 1999—

- (a) for the period 1 July 1998 to 28 February 1999—a flat charge of \$300 with an excess charge of \$1 per kL of water used greater than 350 kL; and
- (b) for the period 1 March 1999 to 30 June 1999—an amount based on the actual consumption of water during the period.

**(8)** Despite subsection (7) a local government must not for a financial year make and levy a utility charge for services supplied or to be supplied other than in that, the previous or the next financial year.

**(9)** Charges made and levied in accordance with a decision under subsection (7) are lawfully made and levied under this Act.

**(10)** Subsections (7) to (9) apply despite the reference in sections 559 and 560<sup>194</sup> to the making and levying of rates and charges for a financial year.

**(11)** If—

- (a) a meter or other measuring device is to be read on a particular day for working out the amount of a charge to be levied by a local government for a service; and

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<sup>194</sup> Section 559 (Power to make and levy rates and charges) and 560 (Making of rates and charges)

- (b) the local government resolves to apply this subsection to the reading of meters or other measuring devices;

it is taken to have been read on that day if it is read within a period of 2 weeks before or after that day.

*Example for subsection (11)—*

If a local government resolves to apply this subsection to the supply of water that is to be charged on the basis of usage for a period ended 30 April and a meter is read on 10 May, that reading is taken to be the reading at 30 April for the purposes of calculating the water usage during the period.

**(12)** Subsection (11) does not restrict a local government's power to make local laws relating to other aspects of the administration of metered consumption for a utility service.

*Example for subsection (12)—*

A local law may be made to provide for water consumption to be estimated on the basis of the best information reasonably available if a water meter is found to be malfunctioning or inoperative during any period of consumption.

## **General charges**

**570.(1)** A local government may, by local law or resolution, fix charges for services and facilities supplied by it, including for example—

- (a) supplying an entitlement, facility, service or thing; or
- (b) giving an approval, consent, licence, permission or registration; or
- (c) giving information; or
- (d) admitting a person to a structure or place; or
- (e) receiving an application; or
- (f) recording a change of ownership.

**(2)** A charge mentioned in subsection (1) is a general charge.

**(3)** A local government may fix a general charge by resolution despite the fact that a corresponding charge had previously been fixed by local law.

**Register of charges**

**571.(1)** A local government must keep a register of its general charges.

**(2)** The register is open to inspection.

**PART 3—CATEGORISATION OF LAND FOR  
DIFFERENTIAL RATING***Division 1—Categorisation of land***Land must be categorised for differential general rates**

**572.** A local government may make and levy a differential general rate for a financial year only if all the rateable land in its area has been categorised under this part.

**Establishing criteria and categories**

**573.** Before making and levying a differential general rate for a financial year, a local government must decide by resolution—

- (a) the categories into which rateable land in its area is to be categorised; and
- (b) the criteria by which land is to be categorised.

**Identification of categories for parcels of land**

**574.(1)** After the categories and criteria have been decided, all rateable land in the local government's area must be categorised by—

- (a) the local government identifying the category in which each parcel of rateable land is included; or
- (b) the valuation authority, at the local government's request, identifying the category in which each parcel of rateable land is included.



(2) If the valuation authority identifies the category in which a parcel of rateable land is included, the valuation authority must give written notice to the local government of the category of the parcel.

(3) If the valuation authority cannot identify the category in which a parcel of rateable land is included, the valuation authority must give written notice to the local government.

(4) The category in which a parcel of rateable land is included may be identified in any way the valuation authority or local government considers appropriate.

### **Specification of categories for parcels of land**

**575.(1)** If a local government resolves to make and levy a differential general rate, the resolution must specify the categories in which rateable land is to be included.

(2) The rateable land included in a category may be identified in any way the local government considers appropriate.

(3) The accidental omission from categorisation of parcels of rateable land does not prevent the making and levying of the differential general rate.

### ***Division 2—Entry on land for categorisation***

#### **Meaning of “authorised person” for division**

**576.** In this division—

“authorised person” means—

- (a) a person authorised by a local government for this division; or
- (b) the valuation authority; or
- (c) a person authorised by the valuation authority for this division; or
- (d) a member of the Land Court; or
- (e) a person authorised by a member of the Land Court for this division.

**Purposes for which powers may be exercised**

**577.** An authorised person may exercise the powers mentioned in section 578 (Power of entry) only for the purpose of—

- (a) deciding the categories into which rateable land in a local government area is to be categorised or the criteria by which it is to be categorised; or
- (b) identifying the category in which a parcel of rateable land should be included; or
- (c) deciding an objection or appeal about the categorisation of land.

**Power of entry**

**578.(1)** An authorised person may—

- (a) enter on land at any reasonable time; and
- (b) inspect the land and the uses made of the land; and
- (c) do anything reasonable and necessary to exercise powers under paragraphs (a) and (b).

**(2)** Before entering on the land, the authorised person must—

- (a) obtain the agreement of the occupier or, if there is no occupier, an owner of the land; or
- (b) give at least 14 days notice to the person mentioned in paragraph (a) of—
  - (i) the person's intention to enter on the land; and
  - (ii) the proposed purpose in entering on the land; and
  - (iii) the day and time when the person proposes to enter the land.

**(3)** In exercising a power under subsection (1), an authorised person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicable.

*Division 3—Notice of categorisation***Notice to owner of categorisation**

**579.(1)** If a local government resolves to make and levy a differential general rate on land, a rate notice given to the owner of the land must contain, or be accompanied by, a statement that complies with subsection (2).

**(2)** The statement must—

- (a) specify the categories of rateable land in its area (the “**rating categories**”) and the criteria by which land is categorised; and
- (b) specify the rating category in which the owner’s land is included; and
- (c) inform the owner—
  - (i) whether the rating category in which the land is included was identified by the local government or valuation authority (the “**decision maker**”); and
  - (ii) that the owner may object to the categorisation of the land by giving to the decision maker notice of objection, in the form approved by the decision maker, within 30 days after the date of issue of the rate notice or any further period the decision maker allows; and
  - (iii) that the sole ground on which the owner may object is that, having regard to the criteria decided by the local government by which rateable land is categorised, the land should have been included, as at the date of issue of the rate notice, in another of the rating categories; and
  - (iv) that giving a notice of objection will not, in the meantime, affect the levy and recovery of rates; and
  - (v) that, if the owner’s land is included in another rating category because of the objection, an adjustment of rates will be made.

***Division 4—Objections and appeals*****Owner's objection to categorisation**

**580.(1)** An owner of rateable land categorised under division 1 (Categorisation of land) may object to the categorisation of the land on the sole ground that, having regard to the criteria decided by the local government by which rateable land is categorised, the land should have been included, as at the date of issue of the relevant rate notice, in another rating category.

(2) The objection must be made by giving notice of the objection to the decision maker.

(3) The notice of the objection must—

- (a) be given within 30 days after the date of issue of the rate notice or any further period the decision maker allows; and
- (b) be in the form approved by the decision maker; and
- (c) nominate the rating category in which the owner claims the land should have been included; and
- (d) specify the facts and circumstances on which the claim is based.

**Decision on owner's objection**

**581.(1)** If the owner of rateable land objects to the categorisation of the land, a person authorised by the decision maker for the purpose must—

- (a) consider the categorisation of the land; and
- (b) consider the facts and circumstances on which the claim is based.

(2) The person may—

- (a) allow the objection; or
- (b) disallow the objection; or
- (c) decide that the land should be included in another rating category.

(3) The person must decide the objection, and give written notice of the decision to the owner, within 60 days after the end of the period within

which the objection had to be made.

- (4) The notice must include the reasons for the decision.

### **Effect of decision on objections**

**582.(1)** Unless it is set aside on appeal, the decision on an objection to the categorisation of land has effect under this section.

(2) If the decision allows the objection, the land is taken to be included, for the period for which the relevant rate notice is issued, in the category nominated by the objector in the notice of objection.

(3) If the decision disallows the objection, the land continues to be included in the category specified in the relevant rate notice.

(4) If the decision is that the land should be in another rating category, the land must be included in the category for the period for which the relevant rate notice is issued.

### **Right of appeal against decision**

**583.** If the owner of rateable land is aggrieved by—

- (a) the decision on an objection to the categorisation of the land; or
- (b) the failure by the decision maker to allow a further period to give a notice of objection;

the owner may appeal to the Land Court against the decision or failure.

### **Where and how to start appeal**

**584.(1)** The appeal must be started by filing a notice of appeal in the Land Court registry.

(2) The notice of appeal must—

- (a) be filed within 30 days after the owner received notice of the decision or failure; and
- (b) be in a form approved by the Land Court.

(3) The owner must give a copy of the notice of appeal to the decision maker within 7 days after the notice of appeal is filed in the Land Court

registry.

(4) Failure to comply with subsection (3) does not affect the making of the appeal or the jurisdiction of the Land Court to decide the appeal, but costs of any adjournment caused by the failure may be awarded against the owner of the land.

### **Constitution and procedure of Land Court**

**585.(1)** When exercising jurisdiction in an appeal under this division, the Land Court—

- (a) is constituted by 1 member; and
- (b) may sit in chambers; and
- (c) is not bound by rules of evidence.

(2) The appeal must be conducted as directed by the Land Court with a view to its prompt disposal.

### **Decision on appeal by Land Court**

**586.(1)** In deciding an appeal against a decision on an objection to the categorisation of land, the Land Court may—

- (a) set aside the decision and decide that the land should be included in a different rating category; or
- (b) disallow the appeal.

(2) In deciding an appeal against a failure to allow a further period to give a notice of objection, the Land Court may—

- (a) allow a further period to give the notice; or
- (b) disallow the appeal.

(3) If the Land Court sets aside the decision on the objection, the land is taken to be included in the category decided by the Land Court for the period for which the relevant rate notice is issued.

**Levy and recovery of rate unaffected by objection or appeal**

**587.** The making of an objection, or the starting of an appeal, about the categorisation of land does not affect the levy and recovery of rates on the land.

***Division 5—Late categorisation*****Late categorisation**

**588.** If rateable land in a local government area has been categorised and—

- (a) the decision maker is later satisfied, having regard to the criteria decided by the local government, that the land should be included in a different rating category; or
- (b) rateable land is not categorised by the decision maker because of accidental omission; or
- (c) land later becomes rateable land; or
- (d) land that was included in 2 or more parcels of rateable land, either in the same rating category or different rating categories, is later amalgamated into a single parcel;

the decision maker must decide that the land should be included in a specified rating category.

**Time of effect of late categorisation**

**589.** A decision under section 588 (Late categorisation) has effect—

- (a) if the decision is made because of section 588(a)—for rates levied after the decision is made; or
- (b) if the decision is made because of section 588(b)—from the start of the relevant financial year; or
- (c) if the decision is made because of section 588(c)—from when the land became rateable land; or
- (d) if the decision is made because of section 588(d)—from the day

of registration in the office of the registrar of titles of the survey plan of the amalgamation.

## **PART 4—LAND RECORD OF LOCAL GOVERNMENT**

### *Division 1—Land record*

#### **Land record to be kept**

**590.(1)** A local government must keep a record of every parcel of rateable land in its area.

(2) A land record must comply with the regulations.

#### **Land record open to inspection**

**591.(1)** A land record is open to inspection.

(2) A person may inspect particulars of land in a land record free of charge if the person is, or is the agent of a person who is—

- (a) an owner, lessee or occupier of the land; or
- (b) an owner, lessee or occupier of adjoining land.

(3) For the purposes of subsection (2), the appointment of an agent must be evidenced in writing.

(4) A person may otherwise inspect a land record on payment of the fee decided by the local government.

#### **Amendment of land record**

**592.(1)** The chief executive officer of a local government must ensure the particulars contained in its land record are amended whenever necessary to make the record comply with the regulations.

(2) If an amendment of a land record (other than an amendment made



because of a general valuation of all rateable land in a local government area by the valuation authority) changes a rate that is or may be levied on land, the chief executive officer of the local government must immediately give written notice of the amendment to the owner of the land.

### **Resolution to remove valueless land from land record**

**593.(1)** A reference to a particular parcel of rateable land in the land record of a local government may be removed, on the local government's resolution, if—

- (a) rates levied on the land by the local government for at least 3 years are overdue; and
- (b) the overdue rates total more than the unimproved value of the land; and
- (c) the land is considered to be—
  - (i) valueless; or
  - (ii) of so little value that, if offered for sale, it would not realise the overdue rates.

**(2)** If a local government resolves to remove a reference to rateable land from its land record, the local government must acquire the land under part 7 (Recovery of rates), division 4 (Acquisition by local government of valueless land).

**(3)** This section does not apply to an interest in land held on a tenure that prohibits a corporation from holding an interest in the land.

### **Restoration of valueless land to land record**

**594.** If—

- (a) a local government gives a notice of intention to acquire land under section 648(1) (Local government must first give notice); and
- (b) before the end of 6 months after the giving of the notice to the owner of the land, the overdue rates for the land are paid to the

local government;

the local government must restore reference to the land in the land record.

### *Division 2—Appeal against amendment of land record*

#### **Right of appeal**

**595.** A person aggrieved by an amendment of a land record, other than a removal of land under section 593 (Resolution to remove valueless land from land record), may appeal to a Magistrates Court against the amendment.

#### **Where and how to start appeal**

**596.(1)** An appeal must be made to the Magistrates Court nearest the relevant land.

**(2)** The appeal is started by—

- (a) filing a written notice of appeal with the clerk of the court of the Magistrates Court; and
- (b) giving a copy of the notice to the chief executive officer of the local government.

**(3)** The notice must state the grounds of the appeal.

#### **Hearing procedures**

**597.(1)** The power to make rules of court under the *Magistrates Courts Act 1921* includes power to make rules of court for appeals to Magistrates Courts under this division.

**(2)** The procedure for an appeal to a Magistrates Court under this division is to be—

- (a) in accordance with the rules made under the *Magistrates Courts Act 1921*; or
- (b) in the absence of relevant rules, as directed by a magistrate.

**(3)** In deciding the appeal, the Magistrates Court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice; and
- (c) may hear the appeal in court or in chambers.

### **Powers of Magistrates Courts on appeal**

**598.** In deciding the appeal, the Magistrates Court may—

- (a) confirm the amendment; or
- (b) set aside the amendment and order the particulars previously contained in the land record be restored.

### **Appeal to District Court on question of law only**

**599.** A party aggrieved by a decision of the Magistrates Court may appeal to a District Court, but only on a question of law.

## ***Division 3—Notices of change in ownership***

### **Notice of sale of land**

**600.(1)** In this section—

“**vendor**”, for land that has been sold, means the person who was the land’s owner immediately before its sale.

**(2)** If land is sold, the vendor must give the local government concerned written notice of the sale within 30 days after it happens.

**(3)** The vendor complies with subsection (2) if—

- (a) the notice is given by the vendor’s agent in the sale; or
- (b) the vendor (or the vendor’s agent in the sale)—
  - (i) properly completes a combined form for the sale; and
  - (ii) files the form, together with the instrument of transfer of the land, with the registrar of titles within 30 days after the sale.

**Notice of surrender or forfeiture to State**

**601.(1)** A person who surrenders land, or an entitlement to occupy or use land, to the State must give to the local government written notice of the surrender within 30 days after the instrument of surrender is signed.

**(2)** If land, or an entitlement to occupy or use land, is forfeited to the State, written notice of the forfeiture must be given to the local government, within 30 days after the forfeiture takes effect—

- (a) for a forfeiture by action of the State—by the State; or
- (b) in any other case—by the person who makes the forfeiture.

**(3)** A notice under subsection (1) or (2) must state the description of the land.

**Notice of change in ownership**

**602.(1)** In this section—

**“required person”**, for land whose ownership has changed, means the person who was the land’s owner immediately before the change.

**(2)** If ownership of any land in a local government area changes, except as mentioned in section 600 (Notice of sale of land) or 601 (Notice of surrender or forfeiture to State), the required person must give written notice of the change to the local government within 30 days after the change happens.

**(3)** The notice must specify—

- (a) the date of the change; and
- (b) the nature of the change; and
- (c) the description of the land; and
- (d) the full name and address of the land’s owner before the change; and
- (e) the full name and address of the land’s owner after the change.

**(4)** The required person complies with subsection (2) if the notice is given by the person’s agent in dealing with the land.

**Result of failure to give notice of change in ownership**

**603.** If written notice is not given as required by a section of this division (other than under section 601(2)(a) (Notice of surrender or forfeiture to State)), the person who was owner of the land immediately before the change in ownership—

- (a) is liable for payment of all rates levied on the land, and all interest accrued, before the notice is given to the local government, as if no change in ownership had happened; and
- (b) commits an offence.

Maximum penalty—5 penalty units.

**PART 5—LEVYING AND PAYMENT OF RATES***Division 1—Levying of rates***Levying rates**

**604.(1)** A rate may be levied only by a rate notice given to—

- (a) for a utility charge on a structure or land that is not rateable land—the person at whose request the service is supplied; and
- (b) in any other case—the owner of the land on which the rate is levied.

**(2)** A rate notice must specify the date of its issue.

**(3)** A rate must be levied—

- (a) for a utility charge for supply of a water or gas service based on the quantity of water or gas supplied during a period as calculated by measurement at intervals—at the intervals the local government considers appropriate; and
- (b) in any other case—for the whole, a half or a quarter of the relevant financial year, as the local government considers appropriate.

(4) Except for a charge mentioned in subsection (3)(a), rates must be levied on all persons liable to pay them for the same period of a financial year.

(5) In this section—

“**person**” includes—

- (a) for a utility charge under subsection (1)(a)—any of the following—
  - (i) the Commonwealth;
  - (ii) a Commonwealth instrumentality, agency, authority or entity;
  - (iii) a division, branch or other part of a Commonwealth instrumentality, agency, authority or entity; and
- (b) in all cases—the State and a government entity.

### **Rate may be levied or adjusted after end of financial year**

**605.** A local government may, in a financial year, levy a rate, or adjust a rate levy, even though its resolution for making the rate was made for an earlier financial year.

### *Division 2—Payment of rates*

#### **Person who is liable to pay rate**

**606.(1)** The owner for the time being of land is liable to pay a rate levied by a local government on the land.

(2) The person at whose request a service is supplied to a structure or land that is not rateable land is liable to pay a rate levied by a local government for supplying the service.

(3) If there is more than 1 owner or other person liable to pay a rate, all the owners or other persons are jointly and severally liable.

(4) In this section—

“**person**” has the same meaning as in section 604 (Levying rates).

**Liability to pay rate if change of ownership**

**607.** A local government may recover the whole amount of a rate payable for rateable land from the owner for the time being of the land.

**Continuing responsibility for rates on land that ceases to be rateable land**

**608.(1)** This section applies to land that ceases to be rateable land because of—

- (a) termination of the tenure of a holding; or
- (b) surrender or forfeiture of the land to the State; or
- (c) acquisition of the land by the State or the Commonwealth; or
- (d) exemption of the land from rating; or
- (e) the property description of the land ceasing to exist.

**(2)** The owner of the land immediately before it ceased to be rateable land is taken to continue as the owner of the land, and the land is taken to continue to be rateable land, for the levy, collection or refund of a rate on the land for any period before it ceased to be rateable land.

**Where rates can be paid**

**609.(1)** A rate is payable at the local government's public office.

**(2)** Payment of a rate may be accepted at—

- (a) another place used by the local government to receive rate payments; or
- (b) a place of business of a person appointed by the local government to receive rate payments.

**Time within which rates must be paid**

**610.(1)** A local government must specify on a rate notice whether the rate must be paid within 30 days or 60 days after the day the notice is issued.

(2) A person liable to pay a rate must pay the rate within the specified time.

### **Payment by instalments**

**611.(1)** At its budget meeting, a local government may resolve that a rate may be paid by instalments on the terms specified in the resolution.

(2) The terms may provide for payment of a premium.

(3) The terms may provide, if an instalment is not paid by the last day of the period identified in the resolution as the period within which the amount of the instalment is payable, for 1 or more of the following—

(a) on the default day, for division 3<sup>195</sup>—

(i) the unpaid instalment becomes an overdue rate; or

(ii) the unpaid instalment and all remaining instalments become an overdue rate;

(b) the unpaid instalment, or the unpaid instalment and all remaining instalments, may bear interest as an overdue rate from the default day or a later day decided by the local government under section 614.<sup>196</sup>

(3A) For subsection (3)—

“**default day**” means the day after the last day of the period identified in the resolution as the period within which the amount of the instalment is payable.

### ***Division 3—Overdue rates***

#### **Meaning of “overdue rate”**

**612.** An “**overdue rate**” is the amount of a rate payable to a local government that remains unpaid at the end of the period specified in the rate notice as the period within which the amount of the rate is payable,

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<sup>195</sup> Division 3 (Overdue rates)

<sup>196</sup> Section 614 (Overdue rates may bear interest)



(including any amount of interest on the rate under section 614 (Overdue rates may bear interest)), but does not include the amount of a rate (other than amounts that, by terms under section 611, 627 or 628, become an overdue rate) if the amount is being paid under—

- (a) the terms specified in a resolution under section 611 (Payment by instalments); or
- (b) the terms of an arrangement under section 627 (Remission, composition and settlement of rates); or
- (c) the terms of an arrangement under section 628 (Deferral of liability to pay rates).

### **Recovery of overdue rates**

**613.** A local government may recover an overdue rate as a debt payable by the person liable under this part to pay the rate.

### **Overdue rates may bear interest**

**614.(1)** An overdue rate bears interest—

- (a) at the percentage decided by the local government; and
- (b) after it becomes an overdue rate, from the day decided by the local government.

**(2)** The amount of interest is calculated—

- (a) on daily rests, applying the interest as compound interest; or
- (b) if an equal or lower amount will be obtained—in the way decided by the local government.

**(3)** The rate of interest must not be more than—

- (a) the percentage prescribed by regulation; or
- (b) if no percentage is prescribed—15% a year.

**(4)** A decision of the local government about the rate of interest, and the date from which an overdue rate bears interest, must apply equally to all overdue rates.

***Division 4—Discounts and other benefits for prompt payment of rates*****Discount for payment within 30 days**

**615.(1)** If the full amount of a rate is paid within 30 days after the date of issue of the relevant rate notice, a local government may allow a discount.

**(2)** The discount must be a percentage of the rate that is not more than—

- (a) the percentage prescribed by regulation; or
- (b) if no percentage is prescribed—15%.

**Discount for payment within 60 days**

**616.(1)** If the full amount of a rate is paid after 30 days, but within 60 days, after the date of issue of the relevant rate notice, a local government may allow a discount.

**(2)** The discount must not be more than 50% of the discount it has decided to allow for payment within the 30 days.

**Discount when special circumstances prevent prompt payment**

**617.** A local government may allow a discount on a rate under section 615 (Discount for payment within 30 days) or 616 (Discount for payment within 60 days) if the local government is satisfied that the person liable to pay the rate was prevented, by circumstances beyond the person's control, from paying the rate within the period required by the section.

**No discount if other rates are overdue**

**618.** A discount is not allowable for a rate levied on land if there are other overdue rates for the land.

**Other benefits for prompt payment**

**619.(1)** A local government may give, or join in giving, benefits (other than discounts) as inducements for the prompt payment of rates.

**(2)** In subsection (1)—

“**benefits**” include chances of winning a prize in a lottery conducted by the local government.

(3) For a lottery conducted by a local government solely to provide a benefit for this section—

- (a) the *Art Unions and Public Amusements Act 1992* does not apply; and
- (b) the local government must—
  - (i) by resolution make rules for the conduct of the lottery; and
  - (ii) conduct the lottery in accordance with the rules.

(4) Subsections (2), (3) and this subsection expire on 30 June 1998.

### *Division 5—Changes to land that affect rates*

#### *Subdivision 1—General*

#### **Different period starts on day of change**

**620.** For this division, the period after a change is taken to start on the day the change happens.

#### **Basis on which a rate is levied**

**621.(1)** Despite subdivision 2 (Changes affecting rates), a local government may levy a rate on rateable land on the basis of the relevant information of which it has been notified on or before the day it levies the rate.

(2) However, if a change mentioned in subdivision 2 happens, section 622 (Rate levied for a period in which a change takes effect) applies.

#### **Rate levied for a period in which a change takes effect**

**622.(1)** This section applies if—

- (a) a local government becomes aware that a change has happened to which a section of subdivision 2 applies; and

- (b) a rate has already been levied on the relevant land for the period in which the change takes effect.

(2) The local government must adjust the rate in accordance with the section.

(3) If the owner or occupier has already paid the rate at the time it is adjusted, the local government—

- (a) if the amount of the rate has decreased—must refund the overpaid amount; or
- (b) if the amount of the rate has increased—may recover the underpaid amount.

### *Subdivision 2—Changes affecting rates*

#### **Change in unimproved value of land**

**623.(1)** This section applies if the unimproved value of rateable land changes.

(2) A rate levied on the land after the change must be calculated on the basis of—

- (a) for the period before the change—the previous unimproved value; and
- (b) for the period after the change—the new unimproved value.

#### **Land becomes or ceases to be rateable land**

**624.(1)** This section applies if land becomes or ceases to be rateable land.

(2) A rate levied on the land after the change must be calculated only on the proportion of the relevant period for which the land was rateable land.

#### **Land included in a new rating category**

**625.(1)** This section applies if land is included in a rating category under any of the following sections—

- section 582 (Effect of decision on objections)

- section 586 (Decision on appeal by Land Court)
- section 588 (Late categorisation).

(2) A rate levied on the land after its inclusion must be calculated on the basis of—

- (a) for the period before the inclusion—any previous categorisation that applied to the land; and
- (b) for the period after the inclusion—the new rating category.

### **Entitlement to occupy land is ended**

**626.(1)** This section applies if—

- (a) a person is entitled to occupy land—
  - (i) that is a holding; or
  - (ii) under a licence or permission given by the State; and
- (b) the person loses the entitlement because of expiry, surrender or forfeiture of the relevant lease, licence or permission, or for some other reason.

(2) A rate levied on the land must be calculated only on the proportion of the relevant period for which the person was entitled to occupy the land.

## **PART 6—CONCESSIONS**

### **Remission, composition and settlement of rates**

**627.(1)** A local government may—

- (a) remit the whole or a part of unpaid rates; or
- (b) accept a composition or another arrangement for unpaid rates.

(2) If land for which unpaid rates are owing is free of encumbrance, the local government may accept a transfer to it of the land in full or part settlement of an owner's liability for the rates.

(3) The terms of an arrangement may provide for 1 or more of the following, if an amount identified in the arrangement is not paid by the last day of the period specified in the arrangement as the period within which the amount is payable—

- (a) on the default day, for division 3<sup>197</sup>—
  - (i) the unpaid amount becomes an overdue rate; or
  - (ii) the unpaid amount and all other amounts (the “**remaining amounts**”) payment of which is provided for under the arrangement and which have not been paid become an overdue rate;
- (b) the unpaid amount, or the unpaid amount and all remaining amounts, may bear interest as an overdue rate from the default day, or a later day decided by the local government, under section 614.<sup>198</sup>

(3A) For subsection (3)—

“**default day**” means the day after the last day of the period specified in the arrangement as the period within which the amount is payable.

(4) This section is subject to the following sections—

- section 629 (Resort to remission, composition, settlement or deferral requires justification)
- section 631 (Conditions on exercise of concession powers).

### **Deferral of liability to pay rates**

**628.(1)** A local government may enter into an arrangement to defer payment of a rate until a specified time.

(2) The deferment may be for the lifetime of an owner of the land if the owner is a pensioner.

(3) The arrangement may provide for payment of a premium because of deferment.

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<sup>197</sup> Division 3 (Overdue rates)

<sup>198</sup> Section 614 (Overdue rates may bear interest)

(4) The terms of an arrangement may provide for 1 or more of the following, if an amount identified in the arrangement is not paid by the last day of the period specified in the arrangement as the period within which the amount is payable—

- (a) on the default day, for division 3<sup>199</sup>—
  - (i) the unpaid amount becomes an overdue rate; or
  - (ii) the unpaid amount and all other amounts (the “**remaining amounts**”) payment of which is provided for under the arrangement and which have not been paid become an overdue rate;
- (b) the unpaid amount, or the unpaid amount and all remaining amounts, may bear interest as an overdue rate from the default day, or a later day decided by the local government, under section 614.<sup>200</sup>

(4A) For subsection (4)—

“**default day**” means the day after the last day of the period specified in the arrangement as the period within which the amount is payable.

(5) This section is subject to the following sections—

- section 629 (Resort to remission, composition, settlement or deferral requires justification)
- section 631 (Conditions on exercise of concession powers).

### **Resort to remission, composition, settlement or deferral requires justification**

**629.(1)** A local government may exercise a power under section 627 (Remission, composition and settlement of rates) or 628 (Deferral of liability to pay rates) only if—

- (a) it resolves that the case justifies the exercise of the power; or
- (b) the case is of a kind that has been accepted, by resolution of the

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<sup>199</sup> Division 3 (Overdue rates)

<sup>200</sup> Section 614 (Overdue rates may bear interest)

local government, as justifying the exercise of the power.

(2) However, the only circumstances or factors justifying the exercise of the power are—

- (a) that an owner of the land concerned is—
  - (i) a pensioner; or
  - (ii) an entity whose objects do not include the making of profit; or
  - (iii) an entity that provides assistance or encouragement for the arts or cultural development; or
- (b) that payment of the rate would cause the owner of land hardship; or
- (c) the assistance or encouragement of economic development of the whole or part of the area; or
- (d) the preservation, restoration or maintenance of structures or places of cultural, environmental, historic, heritage or scientific significance to the local government's area; or
- (e) circumstances and factors prescribed by regulation.

### **Remission for occupancy by pensioners**

**630.(1)** A local government may remit, wholly or partially, the payment of a rate if the land is occupied, but not owned, only by pensioners or by pensioners and other persons.

(2) If the land is occupied only by pensioners, the local government may remit the payment of a rate only if the owner of the land has given a binding undertaking to the local government that the benefit of the remission will be extended to each pensioner.

(3) If land is occupied by pensioners and other persons, the local government may remit the payment of a rate only—

- (a) for the part of the rate that, in its opinion, is fairly attributable to the parts of the land where a pensioner has rights to exclusive occupancy; and
- (b) if the owner of the land has given a binding undertaking to the



local government that the benefit of the remission will be extended to each pensioner.

(4) This section is subject to section 631 (Conditions on exercise of concession powers).

### **Conditions on exercise of concession powers**

**631.(1)** This section applies to a power under any of the following sections—

- section 627 (Remission, composition and settlement of rates)
- section 628 (Deferral of liability to pay rates)
- section 630 (Remission for occupancy by pensioners).

(2) A local government may exercise the power—

- (a) only on application of the owner of the land concerned, made in the form and way approved by the local government; and
- (b) for—
  - (i) a period resolved by the local government; or
  - (ii) without limit of time while the owner continues to be eligible for the benefit conferred by the exercise of the power.

### **Limitation of increase in rate levied**

**632.(1)** When a local government resolves to make and levy a rate, it also may resolve that, for all or stated classes of land, the amount levied will not be more than—

- (a) the amount of the rate levied for the previous financial year; or
- (b) the amount of the rate levied for the previous financial year increased by a specified percentage.

(2) The resolution may specify different percentages for—

- (a) different land or classes of land; or
- (b) different rates.

## **PART 7—RECOVERY OF RATES**

### *Division 1—Extended application of part*

#### **Application of part to Brisbane City Council**

**633.** This part applies to the Brisbane City Council.

### *Division 2—Recovery of overdue rates*

#### **Recovery by court action**

**634.(1)** Overdue rates may be recovered—

- (a) by a proceeding in a Magistrates Court on the complaint of a person authorised by the local government for the purpose; or
- (b) by a proceeding for debt brought in a court of competent jurisdiction by the local government.

(2) A person against whom an order for payment of an amount is made in a proceeding under subsection (1) is not liable to imprisonment on default.

(3) An unsatisfied order or judgment made in a proceeding by or for a local government for recovery of an amount from a person is not a bar to recovery of the amount from any other person who is liable to pay the amount.

### *Division 3—Sale of land for overdue rates*

#### **Application of division**

**635.** This division applies if an overdue rate has remained unpaid for 3 years or, for a mining claim, 3 months.

**Power of sale**

**636.(1)** The local government may, under this division, sell the land on which the rate was levied.

(2) However, the local government may not sell land if the liability of the owner of the land to pay the overdue rate is the subject of a proceeding pending in a court.

(3) A decision to sell the land may only be made by resolution.

(4) This section is also subject to section 652 (Restrictions on local government dealing with land).

**Local government must first give notice**

**637.(1)** As soon as practicable after a local government decides to sell land under this division, it must give the information mentioned in subsection (2), in writing, to—

- (a) the owner of the land; and
- (b) each encumbrancee, lessee or trustee who has given written notice to the local government of the person's interest in the land.

(2) The information is—

- (a) notice of intention to sell the land; and
- (b) the provisions, or a general outline of the provisions of, the following sections—
  - section 638 (Starting and ending of sale procedures)
  - section 639 (Procedures for sale)
  - section 640 (Reserve price at auction)
  - section 641 (Sale by agreement after auction)
  - section 642 (Unsold land acquired by local government)
  - section 643 (Application of proceeds of sale).

(3) The notice of intention to sell must comply with a regulation that may be made for this section.

**Starting and ending of sale procedures**

**638.(1)** The local government must start the procedures for selling the land within the required period after giving the notice of intention to sell, unless the amount of all overdue rates levied on the land has been paid to it.

(2) The required period is from 3 to 6 months after giving the notice or, for a mining claim, 1 to 6 months after giving the notice.

(3) The local government may only end, and must end, procedures for selling the land if the amount of all overdue rates levied on the land, and all expenses incurred by it for the intended sale, are paid to it.

**Procedures for sale**

**639.(1)** Land intended for sale under this division must first be offered for sale by auction.

(2) The local government must prepare a notice containing—

- (a) the time and place of the proposed auction; and
- (b) a full description of the land.

(3) At least 14 days but not more than 21 days before the day of the proposed auction, the local government must—

- (a) advertise the notice in a newspaper circulating generally in its area; and
- (b) attach a copy of the notice to a conspicuous part of the land; and
- (c) give a copy of the notice to—
  - (i) the owner of the land; and
  - (ii) each encumbrancee, lessee and trustee who has given written notice to the local government of the person's interest in the land.

(4) On the day it complies with subsection (3)(a), the local government must place a copy of the notice on display in a conspicuous place at its public office.

(5) The notice must be kept on display until the day of the auction.

(6) If the land is a lot under a community titles Act the copy mentioned

in subsection (3)(b) may be attached to a conspicuous part of the common property for the lot if it is not practicable to attach it to a conspicuous part of the lot.

(7) If, under the *Body Corporate and Community Management Act 1997*, the land is a lot included in a community titles scheme (“**scheme A**”), the copy mentioned in subsection (3)(b) may, if it is not practicable for the copy to be attached to a conspicuous part of the lot, be attached to a conspicuous part of—

- (a) the common property for scheme A; or
- (b) the common property for a scheme for which scheme A is a subsidiary scheme under that Act.

### **Reserve price at auction**

**640.(1)** A local government that offers land for auction under this division must place a reserve price on the land.

(2) The reserve price must be at least—

- (a) the amount of all overdue rates levied on the land; or
- (b) the unimproved value of the land;

whichever is greater.

### **Sale by agreement after auction**

**641.(1)** If the reserve price is not reached at the auction, the local government may enter into negotiations with the highest bidder at the auction to sell the land by agreement.

(2) A sale of the land by agreement must be at a price greater than the highest bid for the land at the auction.

### **Unsold land acquired by local government**

**642.(1)** If land offered for auction under this division is not sold at auction and—

- (a) the local government does not enter into negotiations under section 641 (Sale by agreement after auction) with the highest

bidder at the auction; or

- (b) the negotiations are unsuccessful;

the land is taken to have been sold at the auction to the local government at the reserve price, unless it is held on a tenure that the local government is not competent to hold.

(2) This section applies subject to section 652 (Restrictions on local government dealing with land).

### **Application of proceeds of sale**

**643.(1)** The local government must apply the proceeds of sale of land under this division, in priority to all encumbrances, as follows—

- (a) first, in payment of the expenses of the sale;
- (b) second, in payment of the overdue rate for the land;
- (c) third, in payment of other rates that may be payable to the local government by the person (the “**former owner**”) who was the owner of the land immediately before its sale;
- (d) fourth, in payment of other amounts that may be payable to the local government by the former owner.

(2) After application of the proceeds of sale under subsection (1), any remainder must be paid to the person who was entitled to the rents and profits of the land immediately before its sale.

(3) Any part of the proceeds of sale that remains unclaimed for 2 years must be paid to the Public Trustee as unclaimed money.

(4) Subsection (1) is subject to section 653 (Priority of State debts preserved).

### **Sale operates as a discharge**

**644.** After a sale of land under this division (including a sale taken to be to the local government under section 642 (Unsold land acquired by local government)), a proceeding for the recovery of rates for any period before the sale may not be started or continued.

**Issue of title**

**645.(1)** On a sale of land under this division, other than a sale taken to be to the local government under section 642 (Unsold land acquired by local government), a local government must give to the registrar of titles a notice specifying—

- (a) that the land has been sold under this division; and
- (b) the full description of the land; and
- (c) the full name and address of the purchaser; and
- (d) the purchase price of the land.

**(2)** The notice must comply with the regulations that may be made for this section.

**(3)** On receiving the notice, the registrar of titles must register the purchaser for the interest held in the land by the owner of the land immediately before the sale, free of all encumbrances.

**(4)** The registrar of titles may comply with subsection (3) despite non-production of a relevant instrument of title.

**(5)** This section is subject to section 652 (Restrictions on local government dealing with land).

**Acquisition by local government of title to land**

**646.(1)** If land offered for sale under this division is taken to have been sold to it under section 642 (Unsold land acquired by local government), a local government must apply to the registrar of titles to be registered for the interest held by the owner of the land immediately before the sale, free of all encumbrances.

**(2)** The application must comply with the regulations.

**(3)** On receiving the application, the registrar of titles must register the local government for the interest held by the owner of the land immediately before the land was sold, free of all encumbrances.

**(4)** The registrar of titles may comply with subsection (3) despite non-production of a relevant instrument of title.

(5) This section is subject to section 652 (Restrictions on local government dealing with land).

#### ***Division 4—Acquisition by local government of valueless land***

##### **Purpose of this division**

**647.(1)** This division states how a local government acquires land it has resolved to remove from its land record under section 593 (Resolution to remove valueless land from land record).

(2) This division applies subject to section 653 (Priority of State debts preserved).

##### **Local government must first give notice**

**648.(1)** As soon as practicable after the local government resolves to remove the land from its land record, it must give a written notice of its intention to acquire the land to—

- (a) the owner of the land; and
- (b) each encumbrancee, lessee or trustee who has given written notice to the local government of the person's interest in the land.

(2) The notice of intention to acquire must comply with a regulation that may be made for this section.

##### **Application to be registered as owner**

**649.(1)** If, at the end of 6 months after the day, or the last day, that the notice of intention to acquire is given, there is any overdue rate for the land, the local government may apply to the registrar of titles to be registered for the interest of the owner of the land, free of all encumbrances.

(2) If a local government makes an application under subsection (1), it must discharge all rates payable for the land.

(3) The application must comply with the regulations.

(4) On receiving the application, the registrar of titles must—



(a) register the local government for the interest of the owner of the land, free of all encumbrances; and

(b) give the local government an instrument of title to the land.

(5) The registrar of titles may comply with subsection (4) despite non-production of a relevant instrument of title.

### *Division 5—Provisions about dealing with land under this part*

#### **One instrument of title for conterminous land**

**650.** The registrar of titles may issue 1 instrument of title for 2 or more parcels of land acquired under this part if—

(a) the local government asks; and

(b) the parcels are conterminous.

#### **Sale of land and title valid despite irregularities**

**651.(1)** A dealing by a local government with land under this part is valid, and effective to confer a paramount title to the land on a purchaser or on the local government, despite a failure to comply with a provision of this part.

(2) The purchaser of land dealt with under this part or the registrar of titles—

(a) need not inquire whether this part has been fully complied with for a sale of land or an application for registration of title to land; and

(b) is not affected by notice, actual or constructive, of a failure to comply with a provision of this part for the sale or application.

(3) A claim may not be made against a fund administered by the State about—

(a) a dealing with land under this part; or

(b) a registration of title by the registrar of titles purporting to give effect to a provision of this part.

(4) This section does not protect—

- (a) a person who commits fraud or wilful default; or
- (b) a local government that does not comply with a provision of this part;

from liability for loss caused by the fraud, default or noncompliance.

### **Restrictions on local government dealing with land**

**652.(1)** This section applies to land held on a tenure that—

- (a) requires the holder to have particular qualifications; or
- (b) requires the agreement or permission of a particular government entity before a person can lawfully hold an interest in the land.

(2) A local government may sell an interest in the land under this part only to a person who has the required qualifications or has obtained the required agreement or permission.

(3) A local government may not acquire an interest in land held on a tenure that prohibits a corporation from holding an interest in the land.

### **Priority of State debts preserved**

**653.(1)** This section applies if—

- (a) a local government intends to deal with land under this part; and
- (b) the land is subject to an encumbrance that confers rights on the State or a government entity.

(2) The local government must give written notice of its intention to deal with the land, to the State or government entity, before dealing with the land.

(3) The local government may sell, or acquire, the land only—

- (a) subject to the encumbrance; or
- (b) free of the encumbrance to the extent, and subject to any conditions, agreed by the State or government entity.

**Satisfaction of rates and charges on termination of tenure**

**654.(1)** If the tenure of a holding is terminated for the whole or part of the land, an amount received by the State from an incoming holder of the whole or part of the land may, after deduction of any amount payable to the State, be applied by the State towards satisfaction of a liability for rates payable to a local government for the land.

**(2)** If an amount is applied under subsection (1), only the remainder of the amount received by the State is payable to the former holder of the land.

**CHAPTER 11—PROVISIONS AIDING LOCAL GOVERNMENT****PART 1—EXTENDED APPLICATION OF CHAPTER****Application of chapter to Brisbane City Council**

**655.** This chapter (other than sections 706 (Proof of voters roll) and 707 (Proof of proceedings of local government)) applies to the Brisbane City Council.

**PART 2—POWERS UNDER THIS CHAPTER****Powers of entry**

**655A.(1)** A power given under this chapter to enter a place may not be exercised using force.

**(2)** Subsection (1) does not apply if the entry is made under—

- (a) an order made under section 658 (Order on occupier who refuses entry), if the order authorises the use of necessary and reasonable help and force; or

- (b) a warrant issued under part 5 (Enforcement of local government Acts).

## **PART 3—RIGHT TO TAKE MATERIALS**

### **Taking materials from land**

**656.(1)** A local government may authorise its employees or agents—

- (a) to enter rateable land, other than—
  - (i) a protected area under the *Nature Conservation Act 1992*; or
  - (ii) the Wet Tropics Area within the meaning of the *Wet Tropics World Heritage Protection and Management Act 1993*; or
  - (iii) a State forest or timber reserve under the *Forestry Act 1959*; or
  - (iv) improved land; and
- (b) to search for, dig, raise and gather on the land and remove from the land any materials necessary for the exercise of the local government's jurisdiction.

**(2)** A power under subsection (1) may—

- (a) be exercised on land in the local government's area or, with the Minister's approval, land outside its area; and
- (b) be exercised only—
  - (i) with the agreement of the owner and occupier of the land; or
  - (ii) if the local government has given at least 7 days written notice to the owner and occupier.

**(3)** The notice must inform the owner and occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

(4) In exercising a power under subsection (1), the authorised employee or agent must take all reasonable steps to ensure the employee or agent causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

(5) Subsection (1) does not authorise—

- (a) causing, or contributing to, damage to any structure or works; or
- (b) searching for, digging, raising or gathering materials, or removing materials from, within 50 m of a dwelling house, bridge, dam, wharf, jetty or other structure or works.

(6) If a person incurs loss or damage because of the exercise of a power under subsection (1), the person is entitled to be paid by the local government the reasonable compensation because of the loss or damage that is agreed between the local government and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(7) The court may make the order about costs it considers just.

(8) In this section—

“loss” includes the value of materials taken.

## **PART 4—EXECUTION OF LOCAL GOVERNMENT ACTS**

### *Division 1—Compliance with requirements of local government Acts*

#### **Owner’s right of entry to comply with notice or order**

**657.(1)** If an owner of land occupied by someone else is given a notice or order under a local government Act requiring work to be performed on the land or a structure on the land (the “order”), the owner and the owner’s employees and agents may, at reasonable times—

- (a) enter the land and, if necessary, the structure to comply with the order; and

(b) perform work necessary to comply with the order.

(2) However, before entering the land or structure, the owner must—

(a) give at least 7 days written notice to the occupier of—

(i) the intention to enter the land or structure; and

(ii) the purpose of the entry; and

(iii) the days and times when the entry is to be made; and

(b) produce a copy of the order for inspection by the occupier.

(3) This section does not affect any rights the owner has apart from this section.

### **Order on occupier who refuses entry**

**658.(1)** If an occupier of land or a structure refuses to permit a person who is seeking—

(a) to exercise the jurisdiction of local government; or

(b) to exercise a power under a local government Act;

from entering the land or structure and performing work necessary for the purpose for which entry is sought, the person may make written application to a magistrate for an order under this section.

(2) The applicant must give written notice of the application to—

(a) the occupier of the land or structure; or

(b) if the applicant is not the owner—the owner and the occupier of the land or structure.

(3) The application must—

(a) be in the form approved by the chief executive; and

(b) be sworn; and

(c) state the grounds on which the order is sought.

(4) The magistrate may refuse to consider the application until the person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(5) If the magistrate is satisfied the entry sought is reasonable and necessary for the purpose, the magistrate may make an order under this section.

(6) The order must—

- (a) direct the occupier to permit the person to enter the land or structure and perform all work necessary for the purpose; and
- (b) state the hours of the day or night when entry may be made; and
- (c) state the day (within 14 days after the order is made) when the order ends.

(7) If the person is an employee or agent of a local government, the order may also authorise the person to use necessary and reasonable help and force to enter the land or structure.

(8) The magistrate must record the reasons for making the order.

(9) The occupier must comply with the order.

Maximum penalty for subsection (9)—50 penalty units.

**Protection of owner against occupier's obstruction**

**659.** An owner of land who fails to perform work in contravention of a local government Act because of an occupier's refusal to permit entry is not liable for the failure if the owner takes reasonable steps to enter the land to perform the work.

**Discharge of obligations by occupier on failure of owner**

**660.(1)** If the owner of land occupied by someone else fails to perform work or pay an amount the owner is required under a local government Act to perform or pay, the occupier may perform the work or pay the amount.

(2) If the occupier performs the work or pays the amount, the amount incurred by the occupier in performing the work, or the amount paid by the occupier, is a debt payable to the occupier by the owner.

(3) If the occupier is a tenant of the owner, the occupier may deduct, from rent payable to the owner by the occupier, the amount payable to the occupier by the owner under subsection (2).

(4) The owner cannot terminate the tenancy of the occupier because of a deduction made from rent under subsection (3).

### **Performing work for owner or occupier**

**661.(1)** If the owner or occupier of land or a structure fails, or both the owner and occupier fail, to perform work required to be performed under a local government Act, a local government may, by its employees or agents, enter the land or structure and perform the work.

(2) The powers under subsection (1) may be exercised only if—

- (a) both the owner and occupier agree to the entry; or
- (b) the entry is under an order made under section 658 (Order on occupier who refuses entry); or
- (c) urgent action is necessary for local government purposes, including, for example, the interests of public health or safety; or
- (d) reasonable notice has been given to the owner and occupier of the local government's intention to enter the land or structure and perform the work.

*Example for subsection (2)(d)—*

Entry to, and clearing of, an overgrown allotment because of the allotment owner's failure under a local law to clear the allotment.

(3) Subsections (2)(c) and (d) do not apply to the entry of a structure, or the part of a structure, used for residential purposes.

(4) The amount properly and reasonably incurred by the local government in performing the work is a debt payable to the local government by the person who failed to perform the work.

(5) If both the owner and occupier failed to perform the work, the amount incurred is payable by the owner and occupier jointly and severally.



**Cost of work recoverable as a rate**

**662.(1)** The local government may recover the amount payable by the owner of land for the work performed by it as if the amount (together with interest on the amount under subsection (2))—

- (a) were an overdue rate properly levied by the local government for the land; and
- (b) became payable to the local government at the end of 30 days after the local government gave to the owner written notice of the amount payable by the owner for the work performed.

**(2)** The amount payable to the local government bears interest as if it were an amount of overdue rate payable to the local government.

**Cost of work a charge over land**

**663.(1)** This section applies if an amount (including any interest on the amount) (the “**unpaid amount**”) is payable by the owner of land for work performed by a local government under section 661 (Performing work for owner or occupier).

**(2)** The unpaid amount is a charge on the land.

**(3)** The local government may lodge a request to register the charge in the appropriate form over the land with the registrar of titles.

**(4)** The request must be accompanied by a certificate signed by the local government’s chief executive officer stating there is a charge over the land under this section.

**(5)** A registered charge has priority over all encumbrances over the land other than—

- (a) encumbrances in favour of the State or a government entity; and
- (b) rates payable to the local government.

**(6)** The charge is in addition to any other remedy the local government has for recovery of the unpaid amount.

**Limitation of time in absence of notice of work done**

**664.** If work on land or a structure is performed without an approval that is required under a local government Act, then, for any limitation of time for taking a proceeding or doing anything else about the work, the work is taken to have been performed when an employee or agent of the local government first finds out about the work.

***Division 2—Entry on land*****Entry on land for local government purposes**

**665.(1)** An employee or agent of a local government may enter land or a structure, at all reasonable times, if the entry is necessary for the exercise of the local government's jurisdiction, including for example—

- (a) to carry facilities into, through, across or under the land; or
- (b) to perform work on the land or structure; or
- (c) to inspect, operate, change, maintain, remove, repair or replace the local government's facilities on the land or structure.

**(2)** The powers under subsection (1) may be exercised only if—

- (a) the entry is made—
  - (i) to inspect, operate, change, maintain, remove, repair or replace the local government's facilities on the land or structure for its routine operations; or
  - (ii) to investigate the future placement, removal, repair or replacement of facilities on the land or structure; or
- (b) the owner and occupier of the land or structure agree to the entry; or
- (c) urgent action is necessary for local government purposes, including, for example, the interests of public health or safety; or
- (d) the entry is under an order made under section 658 (Order on occupier who refuses entry).

*Example for subsection (2)(c)—*

Entry to take urgent action under a local law about the safety and convenience of

the public to remove a tree likely to fall and cause injury or damage.

(3) Subsection (2)(a) does not apply to the entry of a structure, or the part of a structure, used for residential purposes.

### **Compensation for loss or damage**

**666.(1)** This section applies if a person incurs loss or damage because of the exercise by a local government of a power under section 665 (Entry on land for local government purposes).

(2) The person is entitled to be paid by the local government the reasonable compensation because of the loss or damage that is agreed between the local government and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(3) The court may make the order about costs it considers just.

### ***Division 3—General***

#### **Obstructing execution of local government Act etc.**

**667.(1)** A person must not obstruct or hinder, or attempt to obstruct or hinder, a local government or any person in taking any action the local government or person is required or authorised to take under a local government Act.

Maximum penalty—50 penalty units.

(2) An occupier of land or a structure who obstructs a person as mentioned in section 658 (Order on occupier who refuses entry) may be proceeded against under that section or under this section, but cannot be proceeded against under both sections.

(3) A person must not destroy, pull down, damage or deface a board or anything else on which a local law, order, notice or other matter is displayed under authority of a local government.

Maximum penalty—35 penalty units.

(4) An occupier of land or a structure, when required by or for a local government to disclose the name of the owner of the premises, must not—

- (a) without reasonable excuse, fail to disclose the owner's name; or
- (b) knowingly state a false name.

Maximum penalty—35 penalty units.

### **Police officer may require name and address**

**668.(1)** A police officer may require a person to state the person's name and address if the officer—

- (a) finds the person committing an offence against a local government Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the officer to suspect on reasonable grounds that the person has just committed an offence against a local government Act.

**(2)** When making the requirement, the police officer must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

**(3)** The police officer may require the person to give evidence of the correctness of the person's name or address if the officer suspects, on reasonable grounds, that the name or address given is false.

**(4)** A person must comply with a police officer's requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with the requirement.

Maximum penalty—35 penalty units.

**(5)** The person does not commit an offence against this section if—

- (a) the police officer required the person to state the person's name and address on suspicion of the person having committed an offence against a local government Act; and
- (b) the person is not proved to have committed the offence.

### **Direction power of police officers about malls**

**669.(1)** A police officer may give a person who is in a mall a direction to do or stop doing something if the police officer believes, on reasonable

grounds, that it is necessary to give the direction to protect—

- (a) public safety or order; or
- (b) the rights of members of the public to enjoy the mall; or
- (c) the rights of persons to carry on lawful business in or in association with the mall.

(2) When giving the direction, the police officer must warn the person it is an offence not to comply with the direction.

(3) The person must comply with the direction, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—35 penalty units.

(4) This section has effect subject to the *Peaceful Assembly Act 1992*.

### **Power to arrest persons**

**670.(1)** This section applies to an offence against either of the following sections—

- section 668 (Police officer may require name and address)
- section 669 (Direction power of police officers about malls).

(2) A police officer may arrest a person if—

- (a) the officer—
  - (i) finds the person committing an offence to which this section applies; or
  - (ii) finds the person in circumstances that lead, or has information that leads, the officer to suspect on reasonable grounds that the person has just committed an offence to which this section applies; and
- (b) the officer believes on reasonable grounds that a proceeding by way of complaint and summons against the person would be ineffective.

**Fines**

**671.(1)** If a proceeding for an offence against a local government Act about a local government matter is taken and a court imposes a fine for the offence, the fine must be paid to the operating fund of the local government.

**(2)** If a person other than the local government prosecutes the offence, subsection (1) does not apply to any part of the fine the court orders be paid to the person.

**Indictable and summary offences**

**672.(1)** An offence against chapter 7A, part 6 for which the maximum penalty of imprisonment is 2 years or more is an indictable offence.

**(2)** Any other offence against this Act is a summary offence.

**Proceedings for indictable offences**

**672A.(1)** A proceeding for an indictable offence against this Act may be taken, at the prosecution's election—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

**(2)** A magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers that the charge should be prosecuted on indictment.

**(3)** If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence;

and

- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

(4) The maximum penalty that may be summarily imposed for an indictable offence is 100 penalty units or 1 year's imprisonment.

### **Limitation on who may summarily hear indictable offence proceedings**

**672B.(1)** A proceeding must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **Limitation on time for starting summary proceedings**

**672C.** A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **Attempt to commit offence**

**673.** A person who attempts to commit an offence against this Act commits an offence and, on conviction, is liable to the same penalties as if the person had committed the offence.

## **PART 5—ENFORCEMENT OF LOCAL GOVERNMENT ACTS**

### *Division 1—Interpretation*

#### **Definitions**

**674.** In this part—

**“authorised person”** means a person who is—

- (a) appointed under this part as an authorised person; and
- (b) other than in division 2—an authorised person for the provision in which the expression is used.

**“authorisation”** means an approval, consent, licence, permission, registration or other authority issued under a local government Act.

**“notice”** means a notice or direction issued under a local government Act.

**“occupier”** of a place includes a person who reasonably appears to be the occupier of, or in charge of, the place.

**“public place”** means any place that the public is entitled to use, is open to the public, or used by the public, whether or not on payment of money.

**“warrant”** means a warrant issued under this part.

#### **References to “local government” and “authorised person”**

**675.** In a provision of this part about—

- (a) a local government, a reference to an authorised person is a reference to an authorised person appointed by the local government; and
- (b) an authorised person, a reference to a local government is a reference to the local government that appointed the authorised person.



***Division 2—Authorised persons*****Appointment**

**676.(1)** A local government may appoint any of the following persons as authorised persons under this part—

- (a) employees of the local government;
- (b) other persons prescribed under the regulations.

**(2)** An appointment of a person as an authorised person under this part must state the provisions of this part for which the person is appointed as an authorised person.

**(3)** A local government may appoint a person as an authorised person under this part only if—

- (a) the local government considers the person has the necessary expertise or experience for the appointment; or
- (b) the person has satisfactorily finished training approved by the local government for the appointment.

**Limitation on authorised person's powers**

**677.** An authorised person's powers may be limited in the person's instrument of appointment.

**Authorised person's appointment conditions**

**678.(1)** An authorised person holds office on the conditions stated in the instrument of appointment.

**(2)** An authorised person—

- (a) if the instrument provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice of resignation given to the local government; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in

the appointment conditions (the “**main office**”).

(3) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) under subsection (2)(b) if a term of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.

### **Authorised person’s identity card**

**679.(1)** A local government must give each authorised person an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person for the local government; and
- (d) include an expiry date.

(3) A person who ceases to be an authorised person must return the person’s identity card to the local government within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this part and for other provisions, Acts or purposes.

### **Production of identity card**

**680.(1)** An authorised person may exercise a power in relation to someone else (the “**other person**”) only if the authorised person—

- (a) first produces his or her identity card for the other person’s inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with

subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

## **Offences**

**681.** A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

### *Division 3—Infringement notice offences*

#### **Power to require name and address**

**682.(1)** An authorised person may require a person (the “**other person**”) to state the other person's name and address if the authorised person—

- (a) finds the other person committing an infringement notice offence; or
- (b) finds the other person in circumstances that lead, or has information that leads, the authorised person to suspect on reasonable grounds the other person has just committed an infringement notice offence.

(2) When making the requirement, the authorised person must warn the other person it is an offence to fail to state the other person's name and address, unless the other person has a reasonable excuse.

(3) The authorised person may require the other person to give evidence of the correctness of the other person's name or address if the authorised person suspects, on reasonable grounds, that the name or address given is false.

(4) The other person must comply with the authorised person's requirement under subsection (1) or (3), unless the other person has a reasonable excuse.

Maximum penalty—35 penalty units.

- (5) The other person does not commit an offence against this section if—
- (a) the authorised person required the other person to state the other

person's name and address on suspicion of the other person having committed an infringement notice offence; and

- (b) the other person is not proved to have committed the infringement notice offence.

#### ***Division 4—Investigations about offences***

##### **Entry to places**

**683.(1)** An authorised person may enter a place under this division if—

- (a) its occupier agrees to the entry; or
- (b) the entry is permitted by a warrant.

**(2)** An authorised person, without the occupier's agreement or a warrant, may—

- (a) enter a public place when the place is open to the public; or
- (b) enter land to ask for the occupier's agreement to the authorised person entering the land or a building or structure on the land.

##### **Agreement to entry**

**684.(1)** This section applies if an authorised person seeks the agreement of an occupier of a place to an authorised person entering the place under this division.

**(2)** In seeking the agreement, the authorised person must inform the occupier—

- (a) of the purpose of the entry; and
- (b) that things or information obtained by the authorised person may be used in evidence in court; and
- (c) that the occupier is not required to agree to the entry.

**(3)** If the agreement is given, the authorised person may ask the occupier to sign an acknowledgment of the occupier's agreement.

**(4)** The acknowledgment must—

- (a) state the occupier was informed—
  - (i) of the purpose of the entry; and
  - (ii) that things or information obtained by the authorised person may be used in evidence in court; and
  - (iii) that the occupier was not required to agree to the entry; and
- (b) state the occupier agreed to the authorised person entering the place and exercising powers under this division; and
- (c) state the time and date the agreement was given.

(5) If the occupier signs an acknowledgment of agreement, the authorised person must immediately give a copy to the occupier.

### **Evidence of agreement**

**685.(1)** This section applies to a proceeding if—

- (a) a question arises whether an occupier of a place agreed to the entry of the place by an authorised person under this division; and
- (b) an acknowledgment of the occupier's agreement is not produced in evidence.

(2) In a proceeding to which this section applies, the court may assume the occupier did not agree to the entry, unless the contrary is proved.

### ***Division 5—Warrants***

#### **Warrants for entry**

**686.(1)** An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must—

- (a) be in the form approved by the chief executive; and
- (b) be sworn; and
- (c) state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the

authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue the warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against a local government Act; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

(5) The warrant must state—

- (a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours of the day or night when entry may be made; and
- (d) the day (within 14 days after the warrant’s issue) when the warrant ends.

(6) The magistrate must record the reasons for issuing the warrant.

### **Warrants—applications made otherwise than in person**

**687.(1)** An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person’s remote location.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a

copy to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—

- (a) the magistrate must—
  - (i) record on the warrant the reasons for issuing the warrant; and
  - (ii) tell the authorised person the date and time the warrant was signed; and
  - (iii) tell the authorised person the warrant's terms; and
- (b) the authorised person must write on a form of warrant (the “**warrant form**”)—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate signed the warrant; and
  - (iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the magistrate.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if a warrant form was completed by the authorised person—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Unless the contrary is proven, a court must presume that a power exercised by an authorised person was not authorised by a warrant issued under this section if—

- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
- (b) the warrant is not produced in evidence.

***Division 6—Monitoring authorisations and notices and processing applications***

**Monitoring authorisations and processing applications**

**688.(1)** An authorised person may enter a place at any reasonable time (other than at night)—

- (a) to inspect the place to process an application made under a local government Act; or
- (b) to find out whether the conditions on which an authorisation or notice was issued have been or are being complied with; or
- (c) to inspect work carried out under an authorisation or notice.

**(2)** In addition, an authorised person may enter a place at night for a purpose mentioned in subsection (1) if—

- (a) the place is a public place that is open to the public at the time of the entry; or
- (b) the entry is at a time asked by the occupier; or
- (c) the entry is in accordance with the times provided for in a lawfully imposed condition of an authorisation.

**Limitation on entry to residence**

**689.(1)** This section limits an authorised person's powers of entry under this division.

**(2)** An authorised person may enter a building or other structure, or the part of a building or other structure, used for residential purposes only if the authorised person is accompanied by the occupier.

**(3)** Subsection (2) does not apply if the occupier has been given reasonable notice of the authorised person's intention to enter, and—

- (a) the occupier is unavailable or unwilling to accompany the authorised person; or
- (b) the authorised person is unable for another reason to comply with the subsection.



***Division 7—Approved inspection programs*****Approval of inspection program**

**690.(1)** A local government may by resolution approve a program (an “**approved inspection program**”) under which authorised persons may enter places to monitor compliance with a local government Act or an aspect of a local government Act.

*Examples of approved inspection programs—*

1. Monitoring compliance with requirements for swimming pool fencing under the *Building Act 1975*.

2. Monitoring compliance with limits provided under a local law about the number of dogs that may be kept at a place.

**(2)** An approved inspection program must be a selective inspection program or systematic inspection program.

**(3)** A selective inspection program provides for the selection, in accordance with the resolution, of places in the local government’s area, or a particular part of the area, to be entered and inspected.

**(4)** A systematic inspection program provides for all places, or all places of a particular type, in the local government’s area, or a particular part of the area, to be entered and inspected.

**(5)** An approved inspection program must state the following—

- (a) the purpose of the program;
- (b) when the program starts;
- (c) for a selective inspection program—
  - (i) objective criteria for selecting places to be entered and inspected; and
  - (ii) if the places are to be selected from a part of the local government’s area—a description of the part;
- (d) for a systematic inspection program—
  - (i) if places in a part of the local government’s area are to be entered and inspected—a description of the part; and
  - (ii) if a type of place is to be entered and inspected—a

description of the type;

- (e) the period (not more than 3 months or another period prescribed under the regulations) over which the program is to be carried out.

### **Notice of proposed inspection program**

**691.(1)** At least 14 days, but not more than 28 days, before an approved inspection program starts, the local government must give notice of the program.

**(2)** The notice must be published in a newspaper circulating generally in the local government's area.

**(3)** The notice must state the following—

- (a) the name of the local government;
- (b) in general terms, the purpose and scope of the program;
- (c) when the program starts;
- (d) the period over which the program is to be carried out;
- (e) that a copy of the program is open to inspection at the local government's public office until the end of the program;
- (f) that a copy of the program may be purchased at the local government's public office until the end of the program;
- (g) the price of a copy of the program.

**(4)** The price of a copy of the program must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

### **Access to program**

**692.** From the publication of the notice about an approved inspection program until the end of the program—

- (a) a copy of the program must be open to inspection at the local government's public office; and

- (b) copies of the program must be available for purchase at the local government's public office at the price stated in the notice.

### **Power of entry under approved inspection program**

**693.(1)** An authorised person may enter a place under an approved inspection program at any reasonable time of the day or night.

(2) Subsection (1) does not apply to a building or other structure, or the part of a building or other structure, used for residential purposes.

### *Division 8—Powers on entry*

#### **General powers after entering places**

**694.(1)** This section applies to an authorised person who enters a place under 1 of the following divisions—

- division 4 (Investigations about offences)
- division 6 (Monitoring authorisations and notices and processing applications)
- division 7 (Approved inspection programs).

(2) The authorised person may—

- (a) if the entry is under division 4—search any part of the place; or
- (b) inspect, test, photograph or film anything in or on the place; or
- (c) copy a document in or on the place; or
- (d) take samples of or from anything in or on the place; or
- (e) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this division; or
- (f) require the occupier of the place, or a person in or on the place, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e).

(3) A person required to give reasonable help under subsection (2)(f) must comply with the requirement, unless the person has a reasonable

excuse.

Maximum penalty—8 penalty units.

(4) If the requirement is to be complied with by the person giving information or producing a document, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might incriminate the person.

(5) This section does not apply to an authorised person who enters a place under section 683(2)(b) (Entry to places) to get the occupier's agreement unless the agreement is given or the entry is otherwise authorised.

### *Division 9—Other enforcement matters*

#### **Authorised person to give notice of damage**

**695.(1)** This section applies if—

- (a) an authorised person damages anything in the exercise of a power under this part; or
- (b) a person who is authorised by an authorised person to take action under this part damages anything in taking the action.

(2) The authorised person must promptly give written notice of the particulars of the damage to the person who appears to be the thing's owner.

(3) However, if for any reason it is not practicable to comply with subsection (2), the authorised person must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the damage happened.

(4) In this section—

“**owner**” of a thing includes the person in possession or control of the thing.

(5) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the authorised person's control, the authorised person may state this in the notice.

(6) This section does not apply to damage the authorised person believes, on reasonable grounds, is trivial.

### **Compensation**

**696.(1)** A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this part, including, for example, in complying with a requirement made of the person under this part.

(2) Compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against a local government Act brought against the person making the claim for compensation.

(3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### ***Division 10—Special provision for local laws about dogs***

#### **Local laws about dogs**

**697.(1)** A local law about dogs, or to the extent that it is about dogs, may give an authorised person power to enter a place (including a building or other structure, or the part of a building or other structure, used for residential purposes) at the time, with the help and using the force that is necessary and reasonable in the circumstances.

(2) However, the entry may only be for seizing a dangerous dog within the meaning of the local law.

(3) The other provisions of this chapter do not limit subsections (1) and (2).

(4) Division 9 (Other enforcement matters) applies to the exercise of a power of entry under a local law made under subsection (1), or any other

power exercised under a local law because of the entry, as if the power were exercised under this part.

## **PART 6—LEGAL PROCESSES INVOLVING LOCAL GOVERNMENTS**

### **Authentication of documents made by local governments**

**698.** A document made by a local government—

- (a) is sufficiently authenticated if it is signed for the local government by—
  - (i) the local government’s mayor or chief executive officer; or
  - (ii) an employee of the local government authorised by the mayor or chief executive officer for the purpose; and
- (b) is not sufficiently authenticated if the only signature purporting to be for the local government is that of a person other than a person mentioned in paragraph (a).

### **Service of documents on local governments**

**699.** A document required or permitted to be served on a local government is properly served if it is given in a way authorised by law to the local government’s chief executive officer.

### **Substituted service**

**700.(1)** If an owner of rateable land is known to be absent from the State, a local government may serve a document on the owner by serving it on the owner’s agent in the State.

**(2)** If a local government does not know, or is uncertain about, the current address of the place of residence or business of a person, a document may be served on the person—

- (a) if the identity of the person is known—by addressing the

document to the person and publishing notice of its substance once in the gazette and once in a newspaper circulating generally throughout the State; or

- (b) if the identity of the person is not known—by addressing the document to the ‘owner’ or ‘occupier’ of the land or premises identified in the address and publishing notice of its substance once in the gazette and once in a newspaper circulating generally throughout the State.

### **Exemption from stating law in the case of substituted service**

**701.(1)** A provision of a local government Act requiring a document given to any person to contain or be accompanied by a statement of any relevant provision of law is taken to be complied with despite the absence of the statement if—

- (a) the document is served in a way permitted by section 700 (Substituted service); and
- (b) subsection (2) is complied with.

**(2)** A document served in circumstances mentioned in subsection (1) must contain a statement to the effect that particulars of the relevant provision of law may be obtained, free of charge, on application to the local government.

### **Service on time share owners**

**702.** A document is taken to be properly served under a local government Act on the owners of a structure subject to a time share scheme if it is addressed to the ‘owners’ of the land or structure identified in the address and served in a way authorised by law—

- (a) on the person named in the notice given to the local government under section 715 (Notice of time share scheme to local government) as the person responsible for administration of the scheme as between the participants in the scheme; and
- (b) at the address for service specified in the notice.

**Acting for local government in legal proceedings**

**703.(1)** In a legal proceeding, the chief executive officer of a local government or other employee authorised in writing by the local government—

- (a) may give instructions and act as authorised agent for the local government; and
- (b) may sign all documents for the local government.

**(2)** A local government must pay the costs incurred by the chief executive officer or other employee of the local government in a legal proceeding.

**(3)** If the Attorney-General could take a proceeding on the relation of a local government to secure compliance with an Act, the local government is taken to sufficiently represent the public interest and may take the proceeding in its own name.

**Judiciary not disqualified from adjudicating**

**704.** A judge, magistrate or justice is not disqualified from adjudicating in a proceeding to which a local government is a party merely because the judge, magistrate or justice is, or is liable to be, a ratepayer of the local government.

**PART 7—EVIDENTIARY MATTERS****Constitution and limits of local government need not be proved**

**705.** It is not necessary for the plaintiff in a legal proceeding started by, for or against a local government to prove—

- (a) the local government's constitution; or
- (b) the limits of the local government's area; or
- (c) the limits of a division of the local government's area.



**Proof of voters roll**

**706.** In a proceeding, a document purporting to be a copy of the voters roll for a local government's area or a division of a local government's area, and to be certified by the chief executive officer of the local government, is evidence of the roll and of the matters contained in the roll.

**Proof of proceedings of local government**

**707.** In a proceeding—

- (a) an entry in a record kept by the chief executive officer of a local government purporting to record the proceedings of the local government, or of any of its committees, and to be signed by the mayor of the local government or chairperson of the committee, at the time the entry was made; or
- (b) a document purporting to be a copy of, or an extract from, the entry, under the local government's seal, and to be certified by the local government's current chief executive officer;

is evidence of the proceedings recorded by the entry and that the meeting at which the recorded proceedings happened was properly held.

**Evidentiary value of land record**

**708.** In a proceeding in which the liability for rates is relevant, an entry in the land record kept by a local government under this Act, or a document purporting to be a copy of or an extract from the entry, under the local government's seal and to be certified by the local government's chief executive officer is evidence—

- (a) of the matters contained in the entry; and
- (b) that the valuation and rate recorded in the entry were properly made; and
- (c) that the person recorded in the entry as owner of the land mentioned in the entry is liable for payment of the rates levied for the land.

**Evidentiary value of copies and certificates**

**709.(1)** A copy of a document purporting to be made under authority of a local government or its mayor and purporting to be verified by the mayor or an employee authorised by it, is taken to be, or to evidence, a document made under the local government’s authority or its mayor in the absence of evidence to the contrary.

**(2)** The copy of the document is evidence in a proceeding as if it were the original of the document.

**(3)** A certificate purporting to be signed by the chief executive officer of a local government about the state of, or a fact appearing from, a record of the local government is evidence in a proceeding of the matters contained in the certificate.

**Proof of matters about roads**

**710.(1)** In this section—

**“appropriate officer”** of a local government means an employee of the local government responsible for a road register kept by the local government under this Act.

**(2)** In a proceeding—

- (a)** a road register kept by a local government under this Act or a document purporting to be certified by the appropriate officer to be a copy of, or an extract from, an entry in the register is evidence of the categorisation and levels of a road in the local government’s area; and
- (b)** a certificate purporting to be that of the appropriate officer that the alignment or level of a road in the local government’s area has not been fixed is evidence of the matters contained in the certificate.

**Proof of directions given to local government**

**711.** In a proceeding, a document purporting to be certified by or for the Minister as a true copy of a direction given to a local government by the Governor in Council or the Minister under this Act is evidence of the giving of the direction and of the matters contained in the direction.

**Proof of orders for costs**

**712.** In a proceeding, a document purporting to be certified by the person who constitutes an appeal tribunal or a responsible person associated with the conduct of an appeal tribunal as a true copy of an order for payment of costs made by the appeal tribunal under this Act is evidence of the making of the order and of the matters contained in the order.

**Proof of complainant's knowledge of matter**

**712A.** In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

**PART 8—GENERAL ADMINISTRATIVE MATTERS****Ownership of things in local government's control**

**713.(1)** In this section—

**“roadway”** means the part of a road used by vehicles, bicycles or pedestrians, and includes—

- (a) a bridge, culvert, ferry, ford, tunnel or viaduct; and
- (b) works associated with the road, including, for example, gutters, stormwater drains, kerbing and channelling.

**(2)** The materials in wharves, jetties and other structures or works under the control of a local government, and in improvements to them, are the local government's property.

**(3)** If a local government, in exercise of the jurisdiction of local government, constructs a roadway or other structure or performs any works on someone else's land, the materials in the roadway, structure or works are the local government's property.

**(4)** Subsection (3) does not apply to the materials in—

- (a) an open drain other than any lining of the drain; or

- (b) a house drain or soil pipe within the meaning of the Standard Sewerage Law.
- (c) anything that is the outcome of work performed under section 661 (Performing work for owner or occupier).

### **Insurance against liability**

**714.** A local government must insure itself by way of—

- (a) public liability insurance; and
- (b) professional indemnity insurance;

in relation to its exercise of local government jurisdiction to a minimum amount prescribed by regulation.

### **Notice of time share scheme to local government**

**715.(1)** If a time share scheme is implemented for a structure on land, the owner of the land must, within 30 days after the implementation, give to the local government written notice of the implementation.

**(2)** The notice must—

- (a) include information about the number of parts of the structure that may at any time be occupied for residential purposes by a person to the exclusion of other occupants of the structure; and
- (b) specify the name and address for service of notices of the person responsible for administration (including maintenance of the structure and other property) of the scheme as between the participants in the scheme; and
- (c) be signed by or for the owner and person mentioned in paragraph (b).

**(3)** A time share scheme is taken to be implemented when any person becomes or agrees to become a participant in the scheme.

### **Changes affecting time share schemes**

**716.(1)** If the address for service of a person (the “**previous nominated person**”) whose name and address for service are notified to a local

government under section 715 (Notice of time share scheme to local government) changes, the person must immediately give to the local government written notice of the new address for service.

(2) If at any time after a notice has been given to a local government under section 715 another person becomes responsible for administration of the time share scheme as between the participants in the scheme, the previous nominated person and the person (the “**new nominated person**”) who has become responsible for the administration must immediately give to the local government notice of the name and address for service of notices of the new nominated person.

### **Land registry searches free of charge**

**717.(1)** This section applies to any of the following persons—

- (a) the chief executive officer of a local government;
- (b) an employee of a local government who is authorised by the chief executive officer;
- (c) a solicitor or other agent acting for a local government;
- (d) an employee of a solicitor or agent mentioned in paragraph (c) who is authorised by the solicitor or agent.

(2) The person may conduct searches of registers or documents about land in the land registry in accordance with the practice of the registry without payment of a fee.

## **CHAPTER 12—LOCAL GOVERNMENT STAFF**

### **PART 1—CORPORATE STRUCTURE AND STAFF RESOURCES**

#### **Corporate structure**

**718.(1)** A local government must have a corporate structure appropriate

for the conduct of its affairs.

(2) The corporate structure must be approved by the local government by resolution.

### **Resources for staff**

**719.** A local government must, by resolution, decide the resources to be allocated to the employment of staff.

## **PART 2—EMPLOYMENT OF STAFF AND PERSONNEL PRACTICES**

### **Employment of staff**

**720.(1)** A local government—

- (a) must appoint and employ an individual as its chief executive officer; and
- (b) may employ other employees for the exercise of its jurisdiction of local government.

(2) The chief executive officer is to appoint the other employees of the local government.

(3) However, the local government may decide that it, rather than the chief executive officer, is to appoint employees to fill particular senior executive positions.

(4) In appointing employees, the chief executive officer must act consistently with—

- (a) the corporate structure approved by the local government; and
- (b) the resources the local government has decided to allocate to the employment of staff.

(5) The terms of employment of a local government's employees are to be decided by it.

(6) However, subsection (5) has effect subject to any relevant industrial award or agreement.

### **Personnel practices**

**721.(1)** A local government must comply with the following principles in its personnel practices—

- (a) processes for appointing persons to positions are to be directed towards ensuring proper assessment of merit of each applicant;
- (b) employees are to be treated fairly and equitably without resort to arbitrary action, irrelevant personal preference or coercion;
- (c) employees are to be given, as far as practicable, effective education, training and development directed to better organisational and individual performance.

**(2)** A regulation may—

- (a) require each local government to adopt and implement a plan for equal opportunity in employment; and
- (b) state criteria the Minister must consider before granting an exemption to a local government from complying with a requirement under paragraph (a).

**(3)** A regulation under subsection (2)(a) does not apply to a local government if—

- (a) the Minister, after considering the criteria set out in the regulation, exempts the local government from complying with the regulation; and
- (b) the local government complies with any conditions of the exemption.

## **PART 3—CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES**

### **Role of chief executive officer**

**722.(1)** The chief executive officer of a local government has the role of implementing the local government's policies and decisions.

**(2)** On a day-to-day basis, the chief executive officer's role includes managing the local government's affairs.

**(3)** The chief executive officer alone is responsible for—

- (a)** organising the presentation of reports and reporting to the local government; and
- (b)** conducting correspondence between the local government and other persons; and
- (c)** managing and overseeing the administration of the local government and its corporate plan; and
- (d)** coordinating the activities of all employees of the local government.

**(4)** The chief executive officer has—

- (a)** all the powers necessary for performing the chief executive officer's role; and
- (b)** the powers the local government specifically delegates to the chief executive officer.

### **Delegation by chief executive officer**

**723.(1)** The chief executive officer of a local government may delegate the chief executive officer's powers (including powers delegated to the chief executive officer by the local government) to another employee of the local government.

**(2)** However, the chief executive officer may not delegate—

- (a)** a power delegated by the local government if the local government has directed the chief executive officer not to further



delegate the power; or

- (b) a power under section 195 (Registers of interests) or 730 (Registers of interests).

(3) All delegations made by the chief executive officer must be recorded in a register of delegations kept by the chief executive officer.

(4) The register must contain the particulars prescribed by regulation.

(5) The register is open to inspection.

(6) In this section—

“**employee**” of a local government includes—

- (a) a person who contracts with it to provide services to it; and
- (b) a person prescribed by regulation.

### **Selection of chief executive officer**

**724.(1)** In selecting a person to be its chief executive officer, a local government must have regard to—

- (a) the role of the chief executive officer; and
- (b) the extent of its resources and jurisdiction of local government.

(2) A local government must appoint as its chief executive officer a person with enough ability, experience, knowledge and skills to effectively perform the chief executive officer’s role.

### **Acting chief executive officer**

**725.** A local government may appoint a person to act as its chief executive officer during—

- (a) any vacancy, or all vacancies, in the position; or
- (b) any period, or all periods, when the chief executive officer is absent from duty or cannot, for another reason, perform the position’s duties.

**Requests to employees for help or advice**

**726.(1)** A local government councillor may ask for help or advice from—

- (a) the chief executive officer; or
- (b) if the request is made under guidelines made by the chief executive officer—another employee of the local government.

**(2)** If a councillor asks for help or advice from another employee of the local government other than under guidelines made by the chief executive officer, the employee must tell the chief executive officer about the request as soon as is practicable.

**(3)** However, the mayor of the local government may ask for reasonable help or advice from any employee.

**(4)** In this section—

“**employee**” of a local government includes—

- (a) a person who contracts with the local government to provide services to it; and
- (b) a person prescribed by regulation.

**Role of other local government employees**

**727.** The employees of a local government, under the chief executive officer’s direction, help the chief executive officer to implement the local government’s policies and decisions.

**Concurrent employment of local government employees**

**728.(1)** An employee of a local government, other than its chief executive officer—

- (a) may hold more than 1 position under the local government; and
- (b) may, with the agreement of each of the local governments concerned, be employed by more than 1 local government.

**(2)** The chief executive officer of a local government may not—

- (a) hold more than 1 position under the local government; or

(b) be employed by another local government.

(3) However, the chief executive officer of a component local government also may hold a position under the joint local government.

## **PART 4—OBLIGATIONS OF LOCAL GOVERNMENT EMPLOYEES**

### **Integrity of local government employees**

**729.** An employee of a local government must—

- (a) act with integrity in the position held by the employee; and
- (b) act in a way that shows a proper concern for the public interest.

### **Registers of interests**

**730.(1)** The mayor of the local government must keep—

- (a) a register of interests of the chief executive officer; and
- (b) a register of interests of the persons who, under a regulation, are related to the chief executive officer.

**(2)** The chief executive officer must keep—

- (a) a register of interests of each senior executive officer; and
- (b) a register of interests of other employees of the local government decided by the local government; and
- (c) a register of interests of the persons who, under a regulation, are related to the persons mentioned in paragraphs (a) and (b).

**(3)** A register—

- (a) must relate to only 1 person; and
- (b) must contain the financial and non-financial particulars prescribed by regulation.

**(4)** If the chief executive officer knows—

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- (a) of an interest that the mayor must record in a register of interests kept under subsection (1) in relation to the chief executive officer or a person who, under a regulation, is related to the chief executive officer (a “**related person**”); or
- (b) that particulars of an interest recorded in a register kept under subsection (1) about the chief executive officer or a related person are no longer correct;

the chief executive officer must tell the mayor of the interest, or the correct particulars, in accordance with the regulations.

Maximum penalty—85 penalty units.

(5) If another local government employee knows—

- (a) of an interest that the chief executive officer must record in a register of interests kept under subsection (1) in relation to the employee or a person who, under a regulation, is related to the employee (a “**related person**”); or
- (b) that particulars of an interest recorded in a register kept under subsection (1) about the employee or a related person are no longer correct;

the employee must tell the chief executive officer of the interest, or the correct particulars, in accordance with the regulations.

Maximum penalty—85 penalty units.

(6) In this section—

“**employee**” of a local government includes—

- (a) a person who contracts with the local government to provide services to it; and
- (b) a person prescribed by regulation.

### **Access to register of interests**

**731.(1)** A register kept by the mayor or chief executive officer (the “**keeper of the register**”) of a local government is not open to inspection other than by—

- (a) a councillor of the local government; or

- (b) the chief executive officer; or
- (c) a person permitted by law to have access to information in the register, or the person's agent.

(2) A person seeking access to a register must apply in writing to the keeper of the register.

(3) The keeper of the register must record—

- (a) the name and home or business address of each person given access to the register; and
- (b) the day the access is given.

(4) The keeper of the register must advise—

- (a) if the keeper of the register is the mayor—the chief executive officer of any access given to the chief executive officer's register and any register of a person who, under a regulation, is related to the chief executive officer; and
- (b) if the keeper of the register is the chief executive officer—an employee of any access given to the employee's register and any register of a person who, under a regulation, is related to the employee.

(5) A person must not knowingly disclose information obtained from a register to a person other than a person mentioned in subsection (1)(a), (b) or (c).

Maximum penalty—85 penalty units.

### **Queries on content of register**

**732.(1)** A person who suspects on reasonable grounds that a register does not contain particulars that should be in the register may inform the keeper of the register.

(2) The keeper of the register must immediately inform the employee concerned.

(3) The employee must, within 30 days of being informed—

- (a) if the register needs to be amended—give the keeper of the register the appropriate particulars in writing; or

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- (b) if the register does not need to be amended—
  - (i) complete a statutory declaration to the effect that the particulars in the register are a true record of fact; and
  - (ii) give the statutory declaration to the keeper of the register.

Maximum penalty—85 penalty units.

(4) In this section—

“**employee**” of a local government includes—

- (a) a person who contracts with the local government to provide services to it; and
- (b) a person prescribed by regulation.

### **Disclosure of employee’s interest in particular issues**

**733.(1)** An employee of a local government who has a material personal interest in an issue to be, or being, dealt with by the employee in the course of the employee’s duties—

- (a) must immediately inform the chief executive officer, in writing, of the interest; and
- (b) must not deal with, or further deal with, the issue except under the chief executive officer’s written directions.

Maximum penalty—35 penalty units.

(2) If the employee mentioned in subsection (1) is the chief executive officer, the references in paragraphs (a) and (b) to the chief executive officer are taken to be references to the mayor.

(3) In this section—

“**employee**” of a local government includes—

- (a) a person who provides services to the local government under a contract; and
- (b) a person prescribed by regulation.

**Improper conduct by local government employees**

**734.(1)** A local government employee must not ask for or accept a fee or another benefit (other than remuneration paid by the local government) for doing something as a local government employee.

Maximum penalty—35 penalty units.

**(2)** A person who is or has been a local government employee must not make improper use of information acquired as a local government employee—

- (a) to gain, directly or indirectly, an advantage for the person or someone else; or
- (b) to cause harm to the local government.

Maximum penalty—35 penalty units.

**(3)** A local government employee must not wilfully destroy or damage property or records of the local government.

Maximum penalty—35 penalty units.

**(4)** A person who is or has been a local government employee must not release information the person knows, or should reasonably know, is information that—

- (a) is confidential to the local government; and
- (b) the local government wishes to keep confidential.

Maximum penalty—35 penalty units.

**(5)** In this section—

**“employee”** of a local government includes—

- (a) a person who provides services to the local government under a contract; and
- (b) a person prescribed by regulation.

**Indemnity for local government employees**

**735.(1)** A local government employee does not incur civil liability for an act or omission done honestly and without negligence under this Act.

(2) A liability that would, apart from this section, attach to a local government employee attaches instead to the local government.

## **PART 5—DISCIPLINARY ACTION**

### **Limitations on who may take disciplinary action**

**736.** Disciplinary action against an employee of a local government may be taken only by the appointer of the employee.

### **When disciplinary action may be taken**

**737.** The appointer of a local government employee may take disciplinary action against the employee if the appointer is satisfied the employee—

- (a) has engaged in misconduct; or
- (b) has been incompetent or neglected the employee's duty.

### **Types of disciplinary action**

**738.(1)** Disciplinary action against an employee of a local government may be—

- (a) dismissal; or
- (b) demotion; or
- (c) a deduction from salary or wages of an amount of not more than 2 penalty units; or
- (d) a written reprimand.

(2) Not later than 2 years after a local government takes disciplinary action against an employee, it must destroy any record it has of the disciplinary action taken.



**Deductions from salary or wages**

**739.** If disciplinary action taken against a local government employee consists of a deduction from the salary or wages of the employee, the local government may make the deduction—

- (a) if no appeal is brought against the disciplinary action—once the period for starting an appeal against the disciplinary action has ended; or
- (b) if an appeal is brought against the disciplinary action and the decision on the appeal confirms the deduction or changes the amount of the deduction—once notice of the decision is given to the employee; or
- (c) if an appeal is brought against the disciplinary action and the decision on appeal changes the disciplinary action to a deduction from the salary or wages of the employee—once notice of the decision is given to the employee; or
- (d) if an appeal is brought against the disciplinary action and the appeal is discontinued or struck out—once the appeal is discontinued or struck out.

**Suspension of employees**

**740.(1)** If it appears on reasonable grounds to the appointer of a local government employee that the employee is liable to disciplinary action under section 737 (When disciplinary action may be taken), the appointer may suspend the employee from duty.

**(2)** If disciplinary action is not taken against an employee who is suspended from duty within 14 days after the suspension happens, the suspension stops.

**(3)** Suspension of an employee from duty does not affect—

- (a) the continuity of the employee's service in employment with the local government; and
- (b) the entitlements previously accrued to the employee from employment with the local government; or
- (c) the accrual of entitlements to the employee during the period of

suspension.

(4) A suspended employee must be paid the employee's full remuneration as at the start of the suspension for the period of suspension if—

- (a) the disciplinary action taken against the employee is other than dismissal; or
- (b) if the disciplinary action taken against the employee is dismissal—on an appeal under any Act, an order is made for the employee's reinstatement or re-employment; or
- (c) no disciplinary action is taken against the employee.

(5) A suspended employee must not be paid remuneration while the suspension is in force.

### **Employee to be given notice of grounds for disciplinary action**

**741.(1)** A local government employee against whom disciplinary action is taken must, when the employee is given notice of the disciplinary action taken, be given written notice of—

- (a) the grounds on which the action is taken; and
- (b) the particulars of conduct claimed to support the grounds.

(2) The grounds and particulars are taken to be the only grounds and particulars for the disciplinary action taken, and no other ground or particular of conduct can be advanced in any proceeding to support the disciplinary action.

## **PART 6—APPEALS ABOUT DISCIPLINARY ACTION**

### **Appeal against disciplinary action**

**742.(1)** A local government employee who is dissatisfied with disciplinary action taken against the employee may appeal to an appeal tribunal.

(2) However, an employee may not appeal to an appeal tribunal if the disciplinary action taken against the employee is dismissal.

(3) This section does not prevent an employee from seeking relief against a dismissal under the *Industrial Relations Act 1990*.

### **Formation of appeal tribunal**

**743.** An appeal tribunal for this part is formed by a person, appointed by the Minister, who is independent of the local government and the employee.

### **Secretary of appeal tribunals**

**744.(1)** The chief executive of the department is the secretary of each appeal tribunal formed under this part.

(2) A regulation may provide for—

- (a) how the chief executive is to help appeal tribunals to operate; and
- (b) how the chief executive is to advise parties of the results of appeals; and
- (c) certification by the chief executive of amounts payable by persons under this part; and
- (d) the use of the certificates in proceedings for the recovery of the amounts.

### **Expenses of tribunal**

**745.(1)** A person forming an appeal tribunal is entitled to be paid the salary, fees and allowances decided by the Governor in Council.

(2) A local government whose employee appeals under this part to an appeal tribunal must meet—

- (a) all expenses properly incurred by the appeal tribunal (including salaries, fees and allowances payable to the person forming the appeal tribunal); and
- (b) the cost to the department of providing the services of a secretary and other necessary administrative services to the appeal tribunal.

**Grounds of appeal**

**746.** An appeal to an appeal tribunal may be brought on 1 or more of the following grounds—

- (a) there has been a failure to comply with procedures required by law for taking disciplinary action against the appellant;
- (b) the appellant is innocent of the matter claimed as grounds for the disciplinary action;
- (c) the grounds for the disciplinary action are unreasonable or insufficient;
- (d) the disciplinary action taken is excessive.

**Decisions open to appeal tribunal**

**747.(1)** On an appeal the appeal tribunal may—

- (a) if the appeal is against demotion—allow the appeal and order reinstatement of the appellant in the position held by the appellant immediately before demotion, without loss of service; or
- (b) allow the appeal, set aside the disciplinary action taken and order the taking of the disciplinary action that, in the tribunal's opinion, should be taken against the appellant; or
- (c) if the appeal is against disciplinary action other than demotion—allow the appeal and set aside the disciplinary action taken; or
- (d) dismiss the appeal and confirm the disciplinary action taken.

**(2)** If an appeal tribunal is satisfied that an appellant was not given written notice under section 741 (Employee to be given notice of grounds for disciplinary action), the tribunal must allow the appeal and order that the appellant be restored, in all respects, to a position no less favourable than the appellant would have been in if the disciplinary action had not been taken.

**(3)** In assessing whether disciplinary action is excessive, an appeal tribunal may have regard to the appellant's employment record.

**Duties of appeal tribunal**

**748.** In hearing an appeal, the appeal tribunal—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

**How to start an appeal**

**749.(1)** An appeal is started by—

- (a) filing a written notice of appeal with the chief executive of the department; and
- (b) giving a copy of the notice to the local government.

**(2)** The notice of appeal must be filed within 1 month after the employee is given notice of the disciplinary action taken.

**(3)** However, if an appeal is filed late—

- (a) the Minister still must appoint a person to form an appeal tribunal for the appeal; and
- (b) whether or not the appeal is heard is in the discretion of the appeal tribunal.

**(4)** The notice of appeal must state the grounds of appeal.

**Appeal tribunal may decide procedures**

**750.(1)** The appeal tribunal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate; and
- (c) may decide the procedures to be followed before the appeal starts, and in the appeal.

**(2)** However, the appeal tribunal must comply with this part and any procedural rules prescribed by regulation.

**Preliminary hearing of appeals**

**751.(1)** Without limiting section 750(1)(c) (Appeal tribunal may decide procedures), the appeal tribunal may conduct a preliminary hearing of an appeal to decide interlocutory and other preliminary matters.

**(2)** In a preliminary hearing, the appeal tribunal may—

- (a) make orders for the conduct of the appeal; or
- (b) require parties to make discovery or permit inspection of evidentiary material; or
- (c) require parties to file pleadings; or
- (d) give a party leave to be represented by counsel or a solicitor; or
- (e) strike out the appeal because it is frivolous or vexatious.

**Appeal tribunal's powers**

**752.** In hearing an appeal, the appeal tribunal may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or by statutory declaration; and
- (c) adjourn the appeal; and
- (d) permit a document to be amended; and
- (e) disregard any defect, error, omission or insufficiency in a document; and
- (f) give a party leave to be represented by counsel or a solicitor.

**Prosecution of appeal**

**753.(1)** An appeal must be prosecuted diligently.

**(2)** An appeal tribunal may strike out an appeal if it considers the appellant is not prosecuting the appeal diligently.

**(3)** An appeal may be discontinued by the appellant by written notice given to the appeal tribunal and to the respondent.

**Notice to witness**

**754.(1)** The person forming the appeal tribunal may, by written notice given to a person, require the person to attend an appeal at a specified time and place to give evidence or produce specified documents.

**(2)** A person required to appear as a witness before an appeal tribunal is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the appeal tribunal.

**(3)** Fees to which a witness is entitled under subsection (2) must be paid to the witness—

- (a) if the witness is called by the appellant to give evidence—by the appellant; and
- (b) if the witness is not called by the appellant—by the local government.

**Duty of witness at appeal**

**755.(1)** A person appearing as a witness at an appeal must not—

- (a) fail to take an oath or make an affirmation when required by the appeal tribunal; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the appeal tribunal; or
- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under section 754(1) (Notice to witness).

Maximum penalty—35 penalty units.

**(2)** It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

**Leave for attending an appeal**

**756.(1)** A local government must give leave of absence on full pay to an employee who—

- (a) gives evidence at an appeal; or

(b) is the agent of the appellant at an appeal.

(2) The leave of absence must be for the period reasonably necessary for attending the appeal.

### **Contempt of appeal tribunal**

**757.** A person must not—

- (a) insult the person forming the appeal tribunal in an appeal; or
- (b) deliberately interrupt an appeal; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the appeal tribunal is conducting an appeal; or
- (d) do anything that would be a contempt of court if the person forming the appeal tribunal were a judge acting judicially.

Maximum penalty—50 penalty units.

### **Change of person forming appeal tribunal**

**758.** An appeal is not affected by a change in the person forming the appeal tribunal.

### **Costs of appeal**

**759.(1)** An appeal tribunal may make an order for payment of costs of an appeal as it considers just.

(2) Unless an appeal tribunal's order states otherwise, costs of a proceeding on an appeal are on the scale that applies to taxation of costs in the District Court.

(3) In making an order for payment of costs, an appeal tribunal may order—

- (a) the local government to reimburse the appellant for some or all of the amounts payable by the appellant under section 754(3) (Notice to witness); or
- (b) the appellant to reimburse the local government concerned for



some or all of the amounts payable by the local government under—

- (i) section 754(3); or
- (ii) if the appeal tribunal, having heard the evidence in the appeal, considers that the appeal was vexatious or frivolous—section 745(2) (Expenses of tribunal).

### **Recovery on orders of appeal tribunal**

**760.(1)** An order of an appeal tribunal for payment of costs must be in written form and a copy of the order must be given to—

- (a) the appellant; and
- (b) the local government.

**(2)** A document purporting to be a copy of an order of an appeal tribunal for payment of a stated amount of costs may be filed in the registry of a court having jurisdiction in an action for debt in the amount stated in the order, and enforced as an order of the court.

**(3)** If an order of an appeal tribunal for payment of costs does not state the amount to be paid, the costs payable may be recovered by action in a court of competent jurisdiction as a debt payable by the person by whom the costs are ordered to be paid, to the person to whose benefit the order was made.

## **CHAPTER 13—SUPERANNUATION**

### **PART 1—INTERPRETATION**

#### **Definitions**

**761.** In this chapter—

“**approved scheme**” see section 781.

“**audit**”, of a superannuation scheme, means an audit required under the

Commonwealth Superannuation Act.

“**board**” means the Queensland Local Government Superannuation Board.

“**Commonwealth Superannuation Act**” means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

“**contributory member**”, of the scheme, means a member who is required to make contributions for membership of the scheme.

“**election notice**”, for an employee of a local government, means a written notice given to the local government and board by the employee electing to become a permanent employee for this chapter.

“**eligible member**” see section 772(1).

“**employees’ scheme**” means the Local Government Employees’ Superannuation Scheme under the repealed Act.

“**local government**” includes a local government entity.

“**local government entity**” means an entity—

(a) that—

- (i) under an Act, exercises a power similar to a local government power; or
- (ii) under an Act, exclusively performs a function in relation to the system of local government; or
- (iii) exclusively exercises a local government power for a local government; and

(b) that is prescribed under the regulations to be a local government entity for this chapter.

“**local government power**” means a power that may be exercised by a local government in exercising its jurisdiction of local government.

“**member**” means a member of the scheme.

“**non-contributory member**”, of the scheme, means a member who is not required to make contributions for membership of the scheme.

“**permanent employee**”, of a local government, see section 762.

“**prescribed number**”, of directors, see section 769(1).

“**relevant person**” means a person (other than an eligible member) who—

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- (a) works for, or provides a service to, a local government; and
- (b) is prescribed under the regulations as a relevant person.

**“relevant persons scheme”** means a superannuation scheme providing superannuation, retirement or other similar benefits for relevant persons.

**“repealed Act”** means the *Local Government Superannuation Act 1985*.

**“salary”**, of an employee, means the employee’s salary under the trust deed.

**“scheme”** means the Local Government Superannuation Scheme.

**“special permanent employee”**, of a local government, means a permanent employee who, immediately before the commencement, was required under the repealed Act to make contributions for membership of the employees’ scheme at the rate of 5% of the employee’s salary.

**“standard permanent employee”**, of a local government, means a permanent employee who—

- (a) immediately before the commencement, was required under the repealed Act to make contributions for membership of the employees’ scheme at the rate of 6% of the employee’s salary; or
- (b) starts employment after the commencement.

**“trust deed”** see section 771(2).

### **Meaning of “permanent employee”**

**762.(1)** A **“permanent employee”** of a local government (other than a local government entity) is an employee of the local government who—

- (a) has been continuously employed by the local government, or the local government and other local governments consecutively, for at least 1 year; or
- (b) has—
  - (i) been continuously employed by the local government, or the local government and other local governments consecutively, for less than 1 year; and

(ii) given an election notice to the local government and board.

(2) However, if an employee is solely employed by a local government to carry out work on a particular job or project and the employee's employment is dependent on the time taken to carry out the job or project, the employee is not a permanent employee.

(3) For subsection (1), an employee is not continuously employed if—

- (a) the employee's employment is broken by at least 60 consecutive days when the employee was not employed, and is not in a position to accept an offer of employment, by a local government; or
- (b) the board is satisfied the employee is no longer employed by a local government and has no intention of taking up employment with a local government.

(4) An employee of a local government entity is also a permanent employee if the entity declares the employee to be a permanent employee for this chapter by written notice given to the board.

## **PART 2—QUEENSLAND LOCAL GOVERNMENT SUPERANNUATION BOARD**

### *Division 1—Establishment, functions and powers of board*

#### **Establishment of board**

**763.** The board established under the repealed Act is continued in existence under the name, Queensland Local Government Superannuation Board.

#### **Legal status of board**

**764.(1)** The board—

- (a) is a body corporate; and

- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

(2) Judicial notice must be taken of the imprint of the board's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is established.

### **Board's functions**

**765.** The board's functions are—

- (a) to act as trustee of the scheme; and
- (b) to manage approved schemes; and
- (c) to act as trustee of, and establish and act as trustee of, relevant persons schemes.

### **Board's powers**

**766.(1)** The board may do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), the board—

- (a) has the powers given to it by this chapter; and
- (b) has, in the performance of its functions, all the powers of an individual.

(3) It may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property.

## *Division 2—Board of directors*

### **Board of directors**

**767.** There is a board of directors of the board.

**Role of the board of directors**

**768.(1)** The board of directors is responsible for how the board performs its functions and exercises its powers.

**(2)** Without limiting subsection (1), it is the role of the board of directors to ensure the board performs its functions in a proper, effective and efficient way.

**Composition of board of directors**

**769.(1)** In this section—

**“prescribed number”** of directors means 3 or, if another number is prescribed under the regulations, the other number.

**(2)** The board of directors is to consist of—

- (a) the prescribed number of directors appointed on the nomination of the Local Government Association; and
- (b) the prescribed number of directors appointed on the nomination of members of the scheme; and
- (c) if the trust deed provides for the appointment of an additional independent director and an independent director is appointed—the appointed independent director.

**(3)** The directors must be appointed under rules established to comply with the Commonwealth Superannuation Act.<sup>201</sup>

***Division 3—General*****Delegation of board’s powers**

**770.** The board may delegate its powers to an employee of the board.

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<sup>201</sup> See sections 107 (Duty of trustee of employer-sponsored fund to establish procedure for appointing member representatives) and 108 (Duty of trustee of employer-sponsored fund to establish procedure for appointing independent trustee or independent member of board of directors of corporate trustee).

## **PART 3—LOCAL GOVERNMENT SUPERANNUATION SCHEME**

### *Division 1—Continuation and membership of scheme*

#### **Scheme continued**

**771.(1)** The Local Government Employees' Superannuation Scheme established under the repealed Act is continued in existence under the name, Local Government Superannuation Scheme.

**(2)** Rules governing the operation of the scheme must be set out in a trust deed made by the board (the **“trust deed”**).

**(3)** Without limiting subsection (2), the trust deed must contain provision about matters that, under the Commonwealth Superannuation Act, must be contained in the governing rules of regulated funds within the meaning of that Act.

#### **Membership of scheme**

**772.(1)** The following persons are eligible to be members of the scheme (**“eligible members”**)—

- (a) a councillor of a local government;
- (b) an employee of a local government or the board;
- (c) a contractor of a local government;
- (d) a member of the governing body of a local government entity;
- (e) another person for whom a local government or the board is required under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) to contribute to a superannuation scheme;
- (f) another person prescribed under the regulations.

**(2)** An employee of a local government (other than a local government entity) or the board must be a member of the scheme.

***Division 2—Contributions for permanent employees*****Local governments' liability for permanent employees**

**773.(1)** A local government that employs a permanent employee must pay to the scheme yearly contributions for the employee within the time stated in the trust deed.

**(2)** The yearly contributions for the employee are calculated at the following rates—

- (a) if the employee is a special permanent employee—
  - (i) for the year starting 1 July 1995—15% of the employee's salary; or
  - (ii) for the year starting 1 July 1996—15.5% of the employee's salary; or
  - (iii) for each later year—16% of the employee's salary;
- (b) if the employee is a standard permanent employee—
  - (i) for the year starting 1 July 1995—17% of the employee's salary; or
  - (ii) for the year starting 1 July 1996—17.5% of the employee's salary; or
  - (iii) for each later year—18% of the employee's salary.

**(3)** The yearly contributions include contributions required to be paid to the scheme for the member under an industrial agreement or award.

**Permanent employees' liability for contributions**

**774.(1)** A permanent employee of a local government for whom the local government is required to pay yearly contributions to the scheme must pay to the local government yearly contributions calculated at the following rate—

- (a) if the employee is a special permanent employee—5% of the employee's salary;
- (b) if the employee is a standard permanent employee—6% of the



employee's salary.

(2) Subsection (1) does not apply if, under the employee's remuneration agreement with the local government, a contribution equivalent to the contribution mentioned in subsection (1) is made by the local government in addition to any contribution the local government is required to make under this Act.

### **Additional contributions to scheme**

**775.(1)** A member, or local government for a member, may make additional contributions to the scheme to secure additional benefits under the trust deed.

(2) Subsection (1) has effect subject to section 186.<sup>202</sup>

### **Contributions may be deducted from employees' salaries**

**776.(1)** A local government may deduct the amount of an employee's contributions or any part of them from the employee's salary or other amount owing to it by the employee.

(2) Subsection (1) applies despite any other Act.

### **Adjustment of contributions because of change in salary**

**777.(1)** The board may, by written notice given to a local government, require the local government to give the board the salary details for each of the local government's permanent employees as at 1 January or 1 July in a stated year.

(2) The local government must comply with the notice.

(3) If a permanent employee's salary has changed, the board must—

- (a) calculate the yearly contributions payable for the employee based on the employee's new salary; and
- (b) give written notice of the amount of contributions payable for the employee to the local government.

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<sup>202</sup> Section 186 (Superannuation benefits for councillors)

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(4) The contributions stated in the notice become payable for the employee from the time stated in the notice.

(5) However, if the employee's salary has decreased and the employee gives written notice to the board that the employee wants to pay contributions as if the employee's salary had not decreased, the board must calculate the yearly contributions payable for the employee based on the employee's former salary.

(6) The employee's notice must be given within the time stated in the trust deed.

*Division 3—Contributions for non-contributory members***Local governments' liability for non-contributory members**

**778.(1)** A local government that employs a non-contributory member must pay to the scheme all superannuation contributions required to be paid to the scheme for the member under an industrial agreement or award.

(2) A local government (other than a local government entity) that employs a non-contributory member must pay to the scheme all superannuation contributions required to be paid for the member under an Act of the State or Commonwealth.

*Division 4—General***Interest payable on outstanding contributions**

**779.(1)** If a local government does not pay an amount to the scheme within the time stated under the trust deed, interest is payable on the amount by the local government to the scheme.

(2) Interest is payable at the rate prescribed under the regulations and calculated on a daily basis.

(3) However, the board may waive the payment of interest.

## **PART 4—MISCELLANEOUS**

### **Prohibition on local governments establishing certain superannuation schemes**

**780.(1)** A local government must not establish or join in establishing a superannuation scheme for the benefit of its employees.<sup>203</sup>

(2) Subsection (1) does not apply to a local government entity.

### **Management of other superannuation schemes**

**781.** With the Governor in Council’s approval, the board may manage another superannuation scheme (an “**approved scheme**”) for the scheme’s trustee.

### **Relevant persons superannuation schemes**

**782.** With the Governor in Council’s approval, the board may—

- (a) act as trustee of a relevant persons scheme; or
- (b) establish, and act as trustee of, a relevant persons scheme.

### **Auditor-General’s role**

**783.** An audit of a superannuation scheme for which the board acts as trustee must be carried out by the Auditor-General.

### **Application of chapter to board’s employees**

**784.** For eligible members who are board employees, this chapter applies to the board with all necessary changes and any changes prescribed under the regulations.

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<sup>203</sup> For superannuation schemes for councillors, see section 186 (Superannuation benefits for councillors).

## CHAPTER 14—GENERAL

### PART 1—LOCAL GOVERNMENT ASSOCIATION

#### Establishment of corporation

**785.(1)** The Local Government Association of Queensland (Incorporated) is established under this Act.

**(2)** The Local Government Association—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its name.

**(3)** The Local Government Association has, in the performance of its objects and functions, all the powers of an individual.

**(4)** It may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property.

**(5)** Judicial notice must be taken of the imprint of the Local Government Association's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is established.

#### Rules

**786.(1)** The Local Government Association may, by resolution, make rules with respect to—

- (a) all matters necessary or convenient for the management of the Association; and
- (b) payment to the Association by each local government that is a member of annual subscriptions and of levies fixed by an entity specified under the rule.

**(2)** A rule is not subordinate legislation.

**(3)** A rule has effect only if approved by the Governor in Council.

(4) If the Local Government Association makes a rule, it must give to the Minister a copy of its resolution making the rule and a statement of the reasons for the rule.

(5) If the Governor in Council approves the rule, notice of the approval and of the rule must be published in the gazette.

### **Litigation of common interest**

**787.(1)** A local government may contribute to the Local Government Association amounts towards expenses of litigation for matters of common interest to local governments.

(2) The Local Government Association may pay amounts towards expenses of litigation for matters of common interest to local governments.

### **When payments by local governments are payable**

**788.(1)** An amount payable for any purpose to the Local Government Association by a local government is payable within 30 days after a written notice signed by the executive director of the Association specifying the amount payable is given to the chief executive officer of the local government.

(2) An unpaid amount is a debt payable by the local government to the Local Government Association.

### **Accounts**

**789.** The Local Government Association must keep—

- (a) full and accurate accounts of all amounts received or paid by it; and
- (b) an accurate record of the purposes for which the amounts have been received or paid.

### **Annual balance and audit**

**790.(1)** In each financial year, the Local Government Association must prepare an annual account as at the date fixed under its rules.

(2) The annual account must—

- (a) be prepared as soon as practicable after the date mentioned in subsection (1); and
- (b) show a true statement of the Local Government Association's receipts and payments during the previous year; and
- (c) show the balance of the account.

## **PART 2—MISCELLANEOUS**

### **Delegation by Minister**

**791.** The Minister may delegate the Minister's powers under this Act or another local government Act to an officer of the department.

### **Delegation by chief executive of department**

**792.** The chief executive of the department may delegate the chief executive's powers under this Act or another local government Act to an officer of the department.

### **Approval of forms**

**792A.** The chief executive may approve forms for use under this Act.

### **Regulation making power**

**793.** The Governor in Council may make regulations under this Act.

### **Declaration of existing electoral wards of City of Brisbane**

**793A.(1)** On or before 1 March 1997, a regulation must be made declaring the existing names and boundaries of the electoral wards of the City of Brisbane.

(2) In this section—

**“existing names and boundaries”** means the names and boundaries in force immediately before the commencement of this section.

### **Application of Freedom of Information Act and Judicial Review Act**

**793B.(1)** This section applies to the Brisbane City Council.

(2) The *Freedom of Information Act 1992* does not apply to a document received or brought into existence by a corporatised corporation in carrying out its excluded activities.

(3) The *Judicial Review Act 1991* does not apply to a decision of a corporatised corporation made in carrying out its excluded activities.

(4) A regulation may declare the activities of a corporatised corporation that are taken to be, or are taken not to be, activities conducted on a commercial basis.

(5) In this section—

**“commercial activities”** means activities conducted on a commercial basis.

**“community service obligations”** has the same meaning as in section 458I.

**“corporatised corporation”** has the same meaning as in chapter 7A, part 6.

**“excluded activities”** means—

- (a) commercial activities; or
- (b) community service obligations prescribed under a regulation.

### **Numbering and renumbering of Act**

**793C.(1)** At the Minister’s direction, in the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act may be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

(2) Notice of the direction must be published in the gazette.

## CHAPTER 15—TRANSITIONAL, VALIDATION AND SAVINGS PROVISIONS, REPEALS AND AMENDMENTS

### PART 1—TRANSITIONAL, VALIDATION AND SAVINGS PROVISIONS

#### *Division 1—Preliminary*

#### **Definitions**

**794.** In this part—

**“pre-existing law”** means—

- (a) a by-law or ordinance, made by a local government, as in force immediately before the commencement of chapter 8 (Local laws and local law policies); or
- (b) a by-law or ordinance made under section 800 (Status of proposed laws);

**“repealed Local Government Act”** means the *Local Government Act 1936* as in force immediately before it was repealed;

**“unamended City of Brisbane Act”** means the *City of Brisbane Act 1924* as in force immediately before it was amended by this Act.

#### **References to “commencement day”**

**795.** In this part, a reference in a provision to the **“commencement day”** is a reference to the day the provision commences.

#### **References to local authority etc.**

**796.(1)** A reference in an Act or document—

- (a) to a local authority is a reference to a local government; and
- (b) to the area of a local authority is a reference to the area of a local



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- government, and includes a reference to the joint local government area of a joint local government; and
- (c) to a joint local authority board, joint local authority or joint board is a reference to a joint local government; and
  - (d) to the area of a joint local authority board, joint local authority or joint board is a reference to the joint local government area of a joint local government; and
  - (e) to the chairman or chairperson of a local authority is a reference to the mayor of a local government, and includes a reference to the president of a joint local government; and
  - (f) to the deputy chairman or deputy chairperson of a local authority is a reference to the deputy mayor of a local government, and includes a reference to a deputy president of a joint local government; and
  - (g) to the president, chairman or chairperson of a joint local authority board, joint local authority or joint board is a reference to the president of a joint local government; and
  - (h) to the deputy president, deputy chairman or deputy chairperson of a joint local authority board, joint local authority or joint board is a reference to the deputy president of a joint local government; and
  - (i) to an alderman, councillor or member of a local authority is a reference to a councillor of a local government, and includes a reference to a member of a joint local government; and
  - (j) to the town clerk, shire clerk or clerk of a local authority (other than the Brisbane City Council) is a reference to the chief executive officer of a local government, and includes a reference to the chief executive officer of a joint local government; and
  - (k) to the clerk of a joint local authority board, joint local authority or joint board is a reference to the chief executive officer of a joint local government; and
  - (l) to a by-law or ordinance of a local government is a reference to a local law; and
  - (m) to any fund (other than the trust fund) of a local authority (other than the Brisbane City Council) is a reference to the operating

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fund of a local government; and

- (n) to the director of local government is a reference to the chief executive of the department; and
- (o) to the *Local Government Act 1936*, or the *Local Authorities Act 1902*, is taken to be a reference to this Act.

(2) Subsection (1) does not affect the application of the *Acts Interpretation Act 1954*, section 14H (References taken to be included in citation of law).

(3) The application of subsection (1) to a reference is not displaced, wholly or partly, merely because the reference is accompanied by a reference—

- (a) to the *Local Government Act 1936*, or a provision of that Act, as amended from time to time or as in force at a particular time; or
- (b) to a particular time.

### ***Division 2—Financial operation and accountability***

#### **Administration of sinking fund for liquidation of current borrowings**

**797.(1)** The corporation continued in existence by the repealed Local Government Act, section 28(15) under the name ‘Trustees of the Local Authorities Debt Redemption Fund’ (the “**Trustees**”) is continued in existence under the name ‘Trustees of the Local Governments Debt Redemption Fund’.

(2) Its function is to administer sinking funds for the liquidation of amounts borrowed by local governments before the commencement day.

(3) The repealed Local Government Act, section 28(15) continues to apply to the Trustees with any necessary changes and any changes prescribed by regulation.

#### **Trustees are statutory bodies**

**797A.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, the Trustees of the Local Government’s Debt Redemption Fund are a

statutory body.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Trustees' powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### *Division 3—Local laws and local law policies*

#### **Application to Brisbane City Council**

**798.** This division applies to the Brisbane City Council.

#### **Status of pre-existing laws**

**799.** A by-law or ordinance, made by a local government, as in force immediately before the commencement of chapter 8 (Local laws and local law policies) is a local law (a “**pre-existing law**”).

#### **Status of proposed laws**

**800.(1)** If a notice under the repealed Local Government Act, section 31(27)(iii) has been published about a proposed by-law before the commencement of chapter 8 (Local laws and local law policies), the process stated in the repealed Local Government Act, section 31 may be used to make the by-law.

(2) If a notice under the unamended City of Brisbane Act, section 38(4) has been published about a proposed ordinance before the commencement of chapter 8, the process stated in the unamended City of Brisbane Act, section 38 may be used to make the ordinance.

(3) A by-law or ordinance made under this section is a local law (a “**pre-existing law**”).

#### **Review of pre-existing law**

**801.(1)** A local government must review its pre-existing laws to identify any provision of a pre-existing law that serves no useful purpose (a “**redundant provision**”).

(2) After reviewing a pre-existing law, the local government must, by resolution, decide whether the pre-existing law contains any redundant provisions.

(3) On the day of its decision (or as soon as practicable after that day), the local government must advise the Minister of its decision.

(4) If the local government decides the pre-existing law does not contain any redundant provisions, a notice about the review must be published in the gazette stating the following—

- (a) the name of the local government;
- (b) the name of the pre-existing law reviewed;
- (c) that the pre-existing law was reviewed by it to identify any provision that serves no useful purpose but no provision was identified;
- (d) the date of the local government's resolution about the review.

(5) If the local government decides the pre-existing law contains a redundant provision, it must, by resolution, make a local law repealing the identified provision.

(6) A notice of the making of the local law must be published in the gazette stating the following—

- (a) the name of the local government making the local law;
- (b) the name of the local law;
- (c) the date of the local government's resolution making the local law.

(7) The notice may also state the following—

- (a) the name of the pre-existing law reviewed;
- (b) that the pre-existing law was reviewed by it to identify any provision that serves no useful purpose;
- (c) what provision of the pre-existing law was identified and repealed;
- (d) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office.

(8) The local government's chief executive officer must certify the required number of copies of the local law to be the local law as made by the local government.

(9) On the day of notification about the review or the making of the law (or as soon as practicable after that day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) if a law is made—the required number of certified copies of the local law.

(10) Chapter 8 (Local laws and local law policies), part 2 (Making local laws and policies) does not apply to a local law made under this section.

### **Repeal if no review of pre-existing law**

**802.** A pre-existing law for which a notice is not published under section 801 before 1 July 1999 expires on 1 July 1999.

### **Expiry of division**

**803.** This division expires on 2 July 1999.

### *Division 3A—Anti-competitive provisions of existing local laws and existing local law policies*

#### *Subdivision 1—Preliminary*

### **Application to Brisbane City Council**

**803A.** This division applies to the Brisbane City Council.

### **Application of div**

**803B.(1)** In this section—

“**cut-off day**” means—

- (a) for a local law or local law policy made before 31 December 1997—31 December 1997; or
- (b) for a local law made under chapter 8, part 2, division 3 after 31 December 1997 and, in making the local law, the local government, before 31 December 1997, complied with section 480(2)—a later day stated under a regulation.

(2) This division applies to—

- (a) a local law or local law policy in force immediately before the commencement of this section; and
- (b) a local law or local law policy made after the commencement but before the cut-off day if, before 31 December 1997, the local government decided to apply this division to the local law or local law policy.

(3) This division does not apply to interim local laws.

(4) This division ceases to apply to a local law or local law policy on the local law or local law policy being repealed.

### **Definitions for div 3A**

**803C.** In this division—

**“anti-competitive provision”**, of an existing local law or existing local law policy, means a provision that, under a regulation, is treated as creating barriers to entry to a market or barriers to competition within a market.

**“existing local law”** means a local law to which, under section 803B, this division applies.

**“existing local law policy”** means a local law policy to which, under section 803B, this division applies.

**“likely anti-competitive provision”** see section 803D.

**“possible anti-competitive provision”** see section 803G.

**“public interest test”** means a review of a possible anti-competitive provision of an existing local law or existing local law policy under this division.

**“public interest test report”** means the report, including

recommendations, on a public interest test.

**“type 1 or 2 business activity”** means a type 1 or 2 business activity under chapter 7A.

*Subdivision 2—Anti-competitive provisions of existing local laws and existing local law policies*

**Preliminary review of existing local laws and existing local law policies to identify likely anti-competitive provisions**

**803D.(1)** A local government must carry out a preliminary review of its existing local laws and existing local law policies and identify any provision that it considers may be an anti-competitive provision (a **“likely anti-competitive provision”**).

**(2)** The local government must advise the Minister of the likely anti-competitive provisions.

**Timing of preliminary review and advice to Minister**

**803E.** A local government must comply with section 803D by—

- (a) for a local government that carries on a type 1 or 2 business activity<sup>204</sup>—
  - (i) for existing local laws or existing local law policies made before the commencement of this section—31 July 1997; or
  - (ii) for existing local laws or existing local law policies made after the commencement—31 December 1997; or
- (b) for other local governments—31 December 1997.

**Local government may decide likely anti-competitive provision is not an anti-competitive provision**

**803F.(1)** This section applies if a local government, at any time before 1 January 1998, decides that a likely anti-competitive provision is not an

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<sup>204</sup> Section 458AB defines type 1 business activity and type 2 business activity.

anti-competitive provision.

(2) The local government must, before 1 January 1998, advise the Minister that the likely anti-competitive provision is not an anti-competitive provision and the reasons why it is not an anti-competitive provision.

### **Public interest test of possible anti-competitive provisions**

**803G.(1)** In this section—

**“possible anti-competitive provision”** means, if a local government has carried out a preliminary review of an existing local law or an existing local law policy under section 803D, the likely anti-competitive provisions advised to the Minister under that section other than provisions the Minister has been advised under section 803F are not anti-competitive provisions.

(2) A local government must ensure a public interest test is carried out and a public interest test report prepared for each of its possible anti-competitive provisions.

(3) A public interest test report must, for each possible anti-competitive provision, recommend—

- (a) that the provision should be retained as it is not an anti-competitive provision; or
- (b) for a provision that the report identifies as being an anti-competitive provision—that the whole or part of the provision—
  - (i) in the public interest, should be retained (whether in its current or another form); or
  - (ii) should be repealed or amended to remove its anti-competitive effect.

(4) For subsection (3), it is in the public interest for an anti-competitive provision to be retained (whether in its current or another form) if—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the local



law or local law policy is by restricting competition in the way provided in the provision.

### **Local government to decide on test and report process**

**803H.(1)** The local government must decide—

- (a) how the public interest test is to be conducted; and
- (b) the matters with which the public interest test report must deal.

**(2)** The decision must provide for a consultation process for the public interest test and state how the process is to be used in the test.

*Example—*

A local government may decide that the consultation process concerning possible anti-competitive provisions must include—

- (a) giving notice of the test and inviting submissions about the test; and
- (b) a period for submissions to be received; and
- (c) direct consultation with interested parties; and
- (d) consideration of the submissions received about the test.

**(3)** The decision is subject to a regulation under section 803O.<sup>205</sup>

### **Public interest test report to be presented to local government meeting**

**803I.** As soon as practicable after a public interest test report is completed, it must be presented to a meeting of the local government.

### **Local government to resolve whether to implement recommendations of public interest test**

**803J.(1)** After a public interest test report has been presented to a meeting of a local government, the local government must resolve whether to implement the recommendations of the report.

**(2)** A local government may only make a contrary resolution if the local government resolves—

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<sup>205</sup> Section 803O (Transitional regulation making power about implementation of this division)

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the existing local law or existing local law policy is by restricting competition in the way provided in the provision.

(3) A resolution under subsection (2) must include a statement of the reasons for finding—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the existing local law or existing local law policy is by restricting competition in the way provided in the provision.

(4) As soon as practicable after making a resolution under this section, the local government must advise the Minister of its resolution.

(5) In this section—

“**contrary resolution**” means a resolution by a local government to—

- (a) retain an anti-competitive provision of an existing local law or existing local law policy despite a recommendation in a public interest test report that the provision should be repealed; or
- (b) amend an anti-competitive provision of an existing local law or existing local law policy contrary to a recommendation in a public interest test report.

### **Public interest test reports open to inspection**

**803K.** From the day the public interest test report is presented to a meeting of a local government, the report must be open to inspection.

### **Repeal or amendment of anti-competitive provision**

**803L.(1)** If a local government resolves to repeal or amend an anti-competitive provision of an existing local law under this division, it must, by resolution, make a local law repealing or amending the provision.

(2) If a local government resolves to repeal or amend an anti-competitive

provision of an existing local law policy under this division, it must, by resolution, make a local law policy repealing or amending the provision.

(3) A notice of the making of the local law or a local law policy must be published in the gazette stating the following—

- (a) the name of the local government making the local law or local law policy;
- (b) the name of the local law or local law policy;
- (c) the date of the local government's resolution making the local law or local law policy;
- (d) the name of the existing local law or existing local law policy;
- (e) that an anti-competitive provision of the existing local law or existing local law policy has been identified;
- (f) that the provision has been repealed or amended;
- (g) that a certified copy of the local law or local law policy is open to inspection at the local government's public office and at the department's state office.

(4) The local government's chief executive officer must certify the required number of copies of the local law or local law policy to be the local law or local law policy as made by the local government.

(5) As soon as practicable after the making of the local law or local law policy, the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law or local law policy.

(6) Chapter 8, part 2<sup>206</sup> does not apply to a local law or local law policy made under this section.

### **Timing for resolution and implementation**

**803M.** For an existing local law or existing local law policy, a local

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<sup>206</sup> Chapter 8 (Local laws and local law policies), part 2 (Making local laws and local law policies)

government must make a resolution under section 803J and, if necessary, implement the resolution under section 803L, before 1 July 1999.

### **Simultaneous action under division 3 and other provisions**

**803N.** Actions under this division may be carried out in conjunction with or as part of action carried out under division 3 or chapter 8, part 2, division 5.

### **Transitional regulation making power about implementation of this division**

**803O.** A regulation may prescribe—

- (a) the procedures to be followed and criteria to be used to identify possible anti-competitive provisions of existing local laws or existing local law policies; and
- (b) requirements for public interest tests and public interest test reports; and
- (c) the giving of information by local governments to the Minister.

### **Future identification and assessment of anti-competitive provisions**

**803P.(1)** This section applies to a local law or local law policy for which a local government has resolved, under this division or chapter 8, part 2, division 5, to retain an anti-competitive provision.

**(2)** Within 10 years after making the resolution, the local government must act under this division in relation to the local law or local law policy.

**(3)** In applying this division for subsection (2)—

- (a) references to an “**existing local law**” mean the local law to which the division is being applied under this section; and
- (b) references to an “**existing local law policy**” mean the local law policy to which the division is being applied under this section; and
- (c) despite sections 803E and 803F, all actions to be taken under this

division must be completed within 10 years after the making of the resolution.

***Division 5—Transitional and savings provisions for amendments under  
Local Government Legislation Amendment Act 1996***

**Local government commissioner reports**

**813.(1)** This section applies for the implementation of a reviewable local government matter referred to the local government commissioner for a report if the commissioner's report on the matter was tabled in the Legislative Assembly before the commencement.

(2) The matter may be implemented and for that purpose chapter 3, part 1, division 7,<sup>207</sup> as in force immediately before the commencement, applies.

(3) Terms used in this section have the meaning they had under this Act as in force immediately before the commencement.

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<sup>207</sup> Chapter 3 (Interaction with the State), part 1 (Reviewable local government matters), division 7 (Implementing reviewable local government matters)

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 January 1998. Future amendments of the Local Government Act 1993 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 1 of 1995	26 March 1994
2	to Act No. 77 of 1994	3 April 1995
3	to Act No. 32 of 1995	7 July 1995
3A	to Act No. 81 of 1996	7 April 1997
3B	to Act No. 42 of 1997	31 October 1997

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	3
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Obsolete and redundant provisions	2, 3

## **6 List of legislation**

### **Local Government Act 1993 No. 70**

date of assent 7 December 1993

ss 1–4, ch 4 pt 1, ch 5, ch 6 pt 2, s 689, ch 13 pt 2, ch 14 pt 1

(ss 764–5, div 5, s 800) commenced on date of assent

ch 13 pt 3 commenced 24 February 1994 (see s 2(1A) and 1994 No. 1)

s 395 commenced 1 July 1994 (see s 2(2))

remaining provisions commenced on 26 March 1994 (see s 2(5))

as amended by—

### **Local Government Legislation Amendment Act 1994 No. 1 pts 1, 3**

date of assent 24 February 1994

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–3 sch 2**

date of assent 10 May 1994

ss 1–2 commenced on date of assent

amds 4–8 commenced 26 March 1994 (see s 3 sch 2)

remaining provisions commenced on date of assent

### **Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 ss 1–2, 6 sch 2**

date of assent 14 September 1994

ss 1–2 commenced on date of assent

commenced 18 November 1994 (1994 SL No. 399)

### **Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

never proclaimed into force and rep 1995 No. 58 s 5(1) sch 7

### **Fire Service Legislation Amendment Act 1994 No. 71 pts 1, 3**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2)

### **Local Government Amendment Act 1994 No. 77**

date of assent 1 December 1994

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remaining provisions commenced 10 March 1995 (1995 SL No. 54)

### **Land Act 1994 No. 81 ss 1–2, 527 sch 5**

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### **Local Government Legislation Amendment Act 1995 No. 11 pts 1, 4**

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ss 1–2, 8–9, 11, 13, 15 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 2)



**Transport Infrastructure Amendment (Rail) Act 1995 No. 32 pt 1, s 23 sch**

date of assent 14 June 1995

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commenced on date of assent

**Local Government Amendment Act 1996 No. 6**

date of assent 9 May 1996

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**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

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date of assent 22 May 1997

ss 17(1), 39 (so far as it inserts chpts 7B–7C), 40–50 (so far as it inserts s 793C), 54 (so far as it inserts ss 803G–803N and 803P) commenced 24 October 1997 (see s 2 and 1997 SL No. 358)

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**Subdivision 2—Disclosure period for third parties for elections**

sdiv 2 (ss 355J–355K) ins 1996 No. 81 s 63A

**Subdivision 3—Transitional provisions for start of disclosure periods**

sdiv 3 (s 355L) ins 1996 No. 81 s 63A

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**Councillor's liability for unauthorised borrowings**

s 442 amd 1996 No. 54 s 9 sch

**PART 8—ANNUAL REPORT****Content of report about other issues of public interest**

s 450 amd 1997 No. 23 s 25; 1997 No. 76 s 8 sch

**Copies of report to be available for inspection and purchase**

s 451 amd 1994 No. 77 s 3 sch 2

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**PART 1—OBJECT AND APPLICATION**

pt hdg ins 1996 No. 81 s 64

**Object**

s 458A ins 1996 No. 81 s 64

**Application to Brisbane City Council**s 458AA (prev s 458B) ins 1996 No. 81 s 64  
renum as s 458AA 1997 No. 23 s 26**PART 2—DEFINITIONS**

pt hdg ins 1996 No. 81 s 64

**Definitions for ch 7A**

s 458AB (prev s 458C) ins 1996 No. 81 s 64  
renum as s 458AB 1997 No. 23 s 26  
def “**business activity**” ins 1997 No. 23 s 27(2)  
def “**Commonwealth tax**” ins 1997 No. 42 s 19 sch  
def “**Competition Policies Agreement**” om 1997 No. 23 s 27(1)  
def “**Competition Principles Agreement**” ins 1997 No. 23 s 27(2)  
def “**government tax**” ins 1997 No. 23 s 27(2)  
def “**new type 1 business activity**” ins 1997 No. 23 s 27(2)  
def “**new type 1 or 2 business activity**” ins 1997 No. 23 s 27(2)  
def “**new type 2 business activity**” ins 1997 No. 23 s 27(2)  
def “**significant business activity**” sub 1997 No. 23 s 27  
def “**significant business entity**” ins 1997 No. 23 s 27(2)  
def “**State tax**” ins 1997 No. 42 s 19 sch  
def “**tax**” ins 1997 No. 23 s 27(2)  
def “**threshold amount**” ins 1997 No. 23 s 27(2)  
def “**type 1 or 2 business activity**” ins 1997 No. 23 s 27(2)  
def “**type 2 business activity**” amd 1997 No. 42 s 19 sch

**PART 2A—IDENTIFICATION OF NEW TYPE 1 AND 2 BUSINESS ACTIVITIES**

pt hdg ins 1997 No. 23 s 28

**Minister to decide threshold amounts for identifying new type 1 or 2 business activities**s 458AC ins 1997 No. 23 s 28  
amd 1997 No. 42 s 19 sch

**Annual review of business activities****s 458AD** ins 1997 No. 23 s 28**Notice to Minister of new type 1 or 2 business activities****s 458AE** ins 1997 No. 23 s 28**PART 3—PUBLIC BENEFIT ASSESSMENT OF SIGNIFICANT BUSINESS ACTIVITIES****pt hdg** ins 1996 No. 81 s 64  
amd 1997 No. 23 s 29  
sub 1997 No. 42 s 19 sch**Division 1—Subject matter of public benefit assessments****div hdg** ins 1996 No. 81 s 64**Matters to be addressed by public benefit assessment for type 1 or new type 1 business activity****prov hdg** amd 1997 No. 23 s 30(1)  
**s 458B** (prev s 458D) ins 1996 No. 81 s 64  
renum as s 458B 1997 No. 23 s 26  
amd 1997 No. 23 s 30(2)–(3); 1997 No. 42 s 19 sch**Matters to be addressed by public benefit assessment for type 2 or new type 2 business activity****prov hdg** amd 1997 No. 23 s 31(1)  
**s 458BA** (prev s 458E) ins 1996 No. 81 s 64  
renum as s 458BA 1997 No. 23 s 26  
amd 1997 No. 23 s 31(2)–(3); 1997 No. 42 s 19 sch**What is corporatisation****s 458BB** (prev s 458F) ins 1996 No. 81 s 64  
renum as s 458BB 1997 No. 23 s 26  
amd 1997 No. 23 ss 32, 13 sch**What is commercialisation****s 458BC** (prev s 458G) ins 1996 No. 81 s 64  
renum as s 458BC 1997 No. 23 s 26  
amd 1997 No. 23 ss 33, 13 sch**What is full costing price****s 458BD** (prev s 458H) ins 1996 No. 81 s 64  
renum as s 458H 1997 No. 23 s 26  
amd 1997 No. 23 ss 34, 13 sch**Division 2—Content of public benefit assessment report****div hdg** ins 1996 No. 81 s 64**Matters to be addressed in public benefit assessment reports****s 458BE** (prev s 458I) ins 1996 No. 81 s 64  
renum as s 458BE 1997 No. 23 s 26  
amd 1997 No. 23 ss 35, 13 sch; 1997 No. 42 s 19 sch**Division 3—Local government to undertake assessments****div hdg** ins 1996 No. 81 s 64

**Public benefit assessments to be undertaken**

s 458BF (prev s 458J) ins 1996 No. 81 s 64  
renum as s 458BF 1997 No. 23 s 26  
amd 1997 No. 23 s 36

**Fresh public benefit assessment if reforms not implemented within 3 years**

s 458BG ins 1997 No. 23 s 37

**Local government to resolve on assessment and report process**

s 458BH (prev s 458K) ins 1996 No. 81 s 64  
renum as s 458BH 1997 No. 23 s 26  
amd 1997 No. 23 s 13 sch

**Timing for assessments and reports**

s 458BI (prev s 458L) ins 1996 No. 81 s 64  
renum as s 458BI 1997 No. 23 s 26  
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**Regulation about public benefit assessment and public benefit assessment reports**

s 458BJ (prev s 458M) ins 1996 No. 81 s 64  
renum as s 458BJ 1997 No. 23 s 26

**Division 4—Action to be taken on public benefit assessment reports**

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pt hdg ins 1997 No. 23 s 39

**Application of pt 4**

s 458C ins 1997 No. 23 s 39

**Meaning of “full cost pricing”**

s 458CA ins 1997 No. 23 s 39  
amd 1997 No. 42 s 19 sch; 1997 No. 76 s 8 sch

**Guarantees by State**

s 458CB ins 1997 No. 23 s 39  
amd 1997 No. 42 s 19 sch

**Local government to implement full cost pricing for significant business activities**

s 458CC ins 1997 No. 23 s 39

**PART 5—COMMERCIALISATION OF SIGNIFICANT BUSINESS ACTIVITIES**

pt hdg ins 1997 No. 23 s 39

**Division 1—Preliminary**

div 1 (s 458CD) ins 1997 No. 23 s 39

**Division 2—Background and objectives of part**

div 2 (ss 458CE–458CG) ins 1997 No. 23 s 39

**Division 3—Interpretation**

div hdg ins 1997 No. 23 s 39

**Meaning of “commercialisation”**

s 458CH ins 1997 No. 23 s 39  
amd 1997 No. 76 s 8 sch

**Meaning of “key principles of commercialisation”**

s 458CI ins 1997 No. 23 s 39

**Definitions for pt 5**

s 458CJ ins 1997 No. 23 s 39

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div 4 (s 458CK) ins 1997 No. 23 s 39

**Division 5—Operations of commercial business unit**

div 5 (ss 458CL–458CM) ins 1997 No. 23 s 39

**Division 6—Annual statement of operations on commercial business unit**

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s 458CN ins 1997 No. 23 s 39

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s 458CO ins 1997 No. 23 s 39

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s 458CP ins 1997 No. 23 s 39  
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**Subdivision 1—Application of part**

sdiv 1 (s 458D) ins 1997 No. 23 s 39

**Subdivision 2—Outline of part and its background and objectives**

sdiv 2 (ss 458DA–458DD) ins 1997 No. 23 s 39

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**Meaning of “corporatisation”**

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**Meaning of “key principles of corporatisation”**

s 458DF ins 1997 No. 23 s 39

**Meaning of “statement of corporate intent”**

s 458DG ins 1997 No. 23 s 39

**Definitions for pt 6**

s 458DH ins 1997 No. 23 s 39  
def “Commonwealth tax” om 1997 No. 42 s 19 sch

def “**share**” amd 1997 No. 42 s 19 sch  
 def “**State tax**” om 1997 No. 42 s 19 sch

**References to doing of act by corporatised corporation**

s 458DI ins 1997 No. 23 s 39

**References to local governments etc.**

s 458DJ ins 1997 No. 23 s 39

**Subdivision 4—Corporatised corporation not a local government**

sdiv 4 (s 458DK) ins 1997 No. 23 s 39

**Subdivision 5—Operation of part and application of laws**

sdiv hdg ins 1997 No. 23 s 39

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s 458DL ins 1997 No. 23 s 39

**Application of existing laws**

s 458DM ins 1997 No. 23 s 39

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 exp 1 July 1999 (see s 458DN(11))

**How Corporations Law is to be applied to corporatised corporations**

s 458DO ins 1997 No. 23 s 39

**Division 2—Mechanisms for creating LGOCs and subsidiaries**

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**Subdivision 1—Proposal for corporatisation**

sdiv 1 (ss 458E–458EA) ins 1997 No. 23 s 39

**Subdivision 2—Preparation of corporatisation charter—preliminary**

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**Subdivision 3—Preparation of corporatisation charter—establishment committee**

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sdiv hdg ins 1997 No. 23 s 39

**Approval of draft corporatisation charter**

s 458EJ ins 1997 No. 23 s 39  
 amd 1997 No. 42 s 19 sch

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s 458EK ins 1997 No. 23 s 39

**Corporatisation charter open to inspection**

s 458EL ins 1997 No. 23 s 39

**Deletion of commercially sensitive matters from corporatisation charter**

s 458EM ins 1997 No. 23 s 39  
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**Subdivision 6—Corporatisation charter—expiry of charter transitional part  
sdiv 6 (s 458EN) ins 1997 No. 23 s 39****Subdivision 7—Corporatisation facilitative mechanisms—significant business  
entities**

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**Purpose of subdivision**

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**Significant business entities**

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**Subdivision 8—Significant business entities—directors and employees**

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**Composition of boards including councillors and local government employees**

s 458FC ins 1997 No. 23 s 39  
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are councillors or employees of a local government**

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s 458FE ins 1997 No. 23 s 39  
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**Subdivision 9—Interim board**

sdiv hdg ins 1997 No. 23 s 39

**Interim board of directors for significant business entity**

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**Application of certain provisions about directors and executives to significant  
business entities**

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**Subdivision 10—Corporatisation facilitative mechanisms—general**

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s 458FI ins 1997 No. 23 s 39  
amd 1997 No. 42 s 19 sch

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**Division does not affect existing legal relationships**

prov hdg amd 1997 No. 76 s 8 sch

s 458FL ins 1997 No. 23 s 39  
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**Local government may deal with other matters**

s 458FM ins 1997 No. 23 s 39

**Subdivision 11—Acting chief executive officer of significant business entity on corporatisation**

sdiv 11 (s 458FN) ins 1997 No. 23 s 39

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sdiv 1 (ss 458G–458GD) ins 1997 No. 23 s 39

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sdiv 2 (ss 458GE–458GF) ins 1997 No. 23 s 39

**Subdivision 3—Shares of corporatised corporations**

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**Local governments to be shareholders of LGOCs**

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**Shareholders must act jointly**

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**Subdivision 4—Shareholders and councillors**

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**Appointment of councillors as shareholder's delegates**

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sdiv hdg ins 1997 No. 23 s 39

**Corporatised corporation to have board of directors**

s 458GN ins 1997 No. 23 s 39

**Role of board**

s 458GO ins 1997 No. 23 s 39

**Delegation by board**

s 458GP ins 1997 No. 23 s 39

**Additional provisions about board—div 5**

s 458GQ ins 1997 No. 23 s 39

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s 458GR ins 1997 No. 23 s 39  
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**First board of LGOC subsidiary**

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**Subdivision 6—Chief executive officer**

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s 458IF ins 1997 No. 23 s 39

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s 458IG ins 1997 No. 23 s 39  
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s 458IH ins 1997 No. 23 s 39

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**Disclosure of interests by directors**

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**Voting by interested director**

s 458IL ins 1997 No. 23 s 39

**Duty and liability of certain officers of corporatised corporation**

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s 458IQ ins 1997 No. 23 s 39

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s 458IR ins 1997 No. 23 s 39

**Examination of persons concerned with corporatised corporations**

s 458IS ins 1997 No. 23 s 39  
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**Power to grant relief**

s 458IT ins 1997 No. 23 s 39

**False or misleading information or documents**

s 458IU ins 1997 No. 23 s 39  
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s 458IV ins 1997 No. 23 s 39  
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**Subdivision 18—Legal capacity and powers**

sdiv 18 (ss 458J–458JF) ins 1997 No. 23 s 39

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**Division 5—Additional provisions relating to board of corporatised corporations**

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**Composition of board**

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**Subdivision 2—Meetings and other business of board**

sdiv hdg ins 1997 No. 23 s 39

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s 458LB ins 1997 No. 23 s 39

**Conduct of meetings and other business**

s 458LC ins 1997 No. 23 s 39

**Times and places of meetings**

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**Presiding at meetings**

s 458LE (prev s 459LE) ins 1997 No. 23 s 39  
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**Quorum and voting at meetings**

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s 458LK ins 1997 No. 23 s 39

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s 458LL ins 1997 No. 23 s 39  
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s 458LN ins 1997 No. 23 s 39

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s 458LO ins 1997 No. 23 s 39

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s 458LQ ins 1997 No. 23 s 39

**Local government employees cannot be chief executive officers of corporatised corporations**

s 458LR ins 1997 No. 23 s 39

**Director may be chief executive officer**

s 458LS ins 1997 No. 23 s 39

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s 458LT ins 1997 No. 23 s 39  
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**Terms of appointment not provided for under divs 1 to 4**

s 458LU ins 1997 No. 23 s 39

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s 458LV ins 1997 No. 23 s 39

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s 458LW ins 1997 No. 23 s 39

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s 458MA ins 1997 No. 23 s 39 (as amd 1997 No. 42 s 19 sch)

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s 458MB ins 1997 No. 23 s 39

**PART 2—DEFINITIONS****pt hdg** ins 1997 No. 23 s 39**Definitions for ch 7B****s 458MC** ins 1997 No. 23 s 39 (as amd 1997 No. 42 s 19 sch)**Meaning of “business activity”****s 458MD** ins 1997 No. 23 s 39**PART 3—CODE OF COMPETITIVE CONDUCT****pt 3 (ss 458ME–458MF)** ins 1997 No. 23 s 39**PART 4—ANNUAL REVIEW OF BUSINESS ACTIVITIES****pt hdg** ins 1997 No. 23 s 39**Annual review of business activities****s 458MG** ins 1997 No. 23 s 39**Local government to resolve whether to apply code of competitive conduct to business activities****s 458MH** ins 1997 No. 23 s 39 (as amd 1997 No. 42 s 19 sch)**Application of code of competitive conduct to other activities****s 458MI** ins 1997 No. 23 s 39**Information to be included in annual report****s 458MJ** ins 1997 No. 23 s 39(2)–(4) exp 1 July 2000 (see s 458MJ(4))**CHAPTER 7C—REFORM OF CERTAIN WATER AND SEWERAGE SERVICES****ch hdg** ins 1997 No. 23 s 39**PART 1—OBJECT AND APPLICATION****pt 1 (ss 458N–458NB)** ins 1997 No. 23 s 39**PART 2—DEFINITIONS****pt 2 (s 458NC)** ins 1997 No. 23 s 39**PART 3—ASSESSMENT OF COST EFFECTIVENESS OF TWO-PART TARIFFS FOR WATER SUPPLY****pt 3 (ss 458ND–458NH)** ins 1997 No. 23 s 39**PART 4—DECISION ON TWO-PART TARIFF REPORTS****pt 4 (ss 458NI–458NM)** ins 1997 No. 23 s 39**PART 5—IMPLEMENTATION OF CERTAIN CHARGING ARRANGEMENTS AND REPORTING PROCEDURES****pt hdg** ins 1997 No. 23 s 39**Local governments to implement charging and operational arrangements for relevant business activities****s 458NN** ins 1997 No. 23 s 39**Start of work to apply two-part tariffs****s 458NO** ins 1997 No. 23 s 39 (as amd 1997 No. 42 s 19 sch)

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**Strategies for applying s 458NN(b) to (e)**

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div 1 (ss 458OD–458OE) ins 1997 No. 76 s 11

**Division 2—Complaints about competitive neutrality**

div 2 (ss 458OF–458OK) ins 1997 No. 76 s 11

**Division 3—Investigation of complaints**

div 3 (ss 458OL–458OR) ins 1997 No. 76 s 11

**Division 4—Reports on complaints**

div 4 (ss 458OS–458OV) ins 1997 No. 76 s 11

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## **10 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated into this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Integrated Planning Act 1997 No. 69 s 6.3.1 sch 9 reads as follows—**

### **LOCAL GOVERNMENT ACT 1993**

#### **1. Section 4, definition “local government Act”, ‘Local Government (Planning and Environment) Act 1990’—**

*omit, insert—*

*‘Integrated Planning Act 1997’.*

#### **2. After section 464—**

*insert—*

##### **‘Local laws and local law policies about development**

**‘464A.(1)** A local law or a local law policy made on or after the commencement of the *Integrated Planning Act 1997*, chapter 3 must not establish a process about development, within the meaning of that Act, that is similar to or duplicates all or part of the processes detailed in chapter 3 of that Act.

**‘(2)** A local law or a local law policy, to the extent the law or policy is contrary to subsection (1), is of no effect.

**‘(3)** If a provision of a local law or a local law policy made before the commencement of the *Integrated Planning Act 1997*, chapter 3 deals with development, within the meaning of that Act, the provision may not be amended but may be repealed.’.