



Queensland

Local Government Electoral Act 2011

Reprinted as in force on 13 September 2011

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Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprint.**

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Queensland

Local Government Electoral Act 2011

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Local Government Electoral Act 2011

[as amended by all amendments that commenced on or before 13 September 2011]

An Act relating to local government elections

Part 1 Preliminary

1 Short title

This Act may be cited as the *Local Government Electoral Act 2011*.

2 Commencement

- (1) Part 12, division 4, other than sections 224, 228 and 236, commences on 1 September 2011.
- (2) The following provisions commence on a day to be fixed by proclamation—
 - part 12, divisions 2, 3, 11, 12, 14 and 16
 - sections 315 and 342.

Editor's note—

Section 2(2) has been updated to correct an administrative error in the cross-references—see section 208A.

3 Purpose of this Act

The purpose of this Act is to ensure the transparent conduct of elections of councillors of Queensland's local governments.

[s 4]

4 Definitions

The dictionary in the schedule defines particular words used in this Act.

5 Particular references in this Act

In a provision of this Act about an election—

- (a) a reference to the returning officer is a reference to the returning officer for the election; and
- (b) a reference to an assistant returning officer is a reference to an assistant returning officer for the election; and
- (c) a reference to an issuing officer is a reference to an issuing officer for the election; and
- (d) a reference to polling day is a reference to polling day for the election; and
- (e) a reference to the nomination day is a reference to the nomination day for the election; and
- (f) a reference to a ballot paper is a reference to a ballot paper for the election; and
- (g) a reference to a candidate is a reference to a candidate for the election; and
- (h) a reference to a nominee is a reference to a nominee for the election; and
- (i) a reference to the mayor or another councillor is a reference to the mayor or other councillor of the local government for which the election is held; and
- (j) a reference to a local government is a reference to the local government for which the election is held.

6 References to divisions includes wards

- (1) In a provision of this Act, a reference to a division of a local government area includes a reference to a ward of Brisbane.
- (2) In this section—

ward, of Brisbane, means one of 26 divisions of the local government area of the Brisbane City Council established for the election of councillors or a councillor.

7 Meaning of *conclusion* of local government election

The *conclusion* of the election of a councillor 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 at the office of the returning officer 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 at the office of the returning officer 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 at the office of the returning officer as required by this Act; or
 - (ii) no poll is conducted in the local government area—6p.m. on the day that a poll would otherwise have been required to be conducted under this Act.

Part 2 Administration

Division 1 Electoral commission

8 Additional functions and powers of electoral commission

For the purpose of this Act, the functions of the electoral commission include conducting quadrennial elections, by-elections or fresh elections for local governments.

Division 2 Electoral officers for local government elections

9 Returning officers

- (1) The returning officer is responsible for the proper conduct of an election.
- (2) The electoral commission may appoint a person as the returning officer for an election unless the person is—
 - (a) a minor; or
 - (b) a member of a political party; or
 - (c) the chief executive officer of the local government for which the election is to be held.
- (3) However, if the chief executive officer is the only person with experience conducting elections who is reasonably available to be appointed as the returning officer, the chief executive officer may be appointed as the returning officer if the officer is not a member of a political party.
- (4) A returning officer must comply with a direction given by the commission if it would be consistent with this Act to do so.

10 Assistant returning officers

- (1) An assistant returning officer is responsible for helping the returning officer in performing the returning officer's responsibilities under this Act.
- (2) The electoral commission may appoint a person as an assistant returning officer for an election unless the person is—
 - (a) a minor; or
 - (b) a member of a political party.
- (3) The electoral commission may appoint 1 or more assistant returning officers for an election.

11 Presiding officers

- (1) A presiding officer at a polling booth is responsible for the proper conduct of a poll at the polling booth and for carrying out the other duties for an election that are required by the returning officer.
- (2) 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 at which the returning officer is the presiding officer.
- (3) If a person can not 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 can not act.
- (4) An appointment under subsection (2) or (3) must be in the approved form.

12 Issuing officers

An *issuing officer* is a member of the electoral commission's staff who is responsible for—

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- (a) giving ballot papers and declaration envelopes to electors; and
- (b) performing the other duties for an election that are required by the returning officer.

13 Membership of a political party ends particular appointments

- (1) A person's appointment as a returning officer or assistant returning officer ends if the person becomes a member of a political party.
- (2) Subsection (1) does not limit the ways in which a person's appointment as a returning officer or assistant returning officer may end.

14 Obligation to notify of membership of a political party

A returning officer or assistant returning officer must immediately notify the electoral commission if the officer becomes a member of a political party, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

15 Returning officer may act through other officers

If—

- (a) the returning officer may, under this Act, do a thing; and
- (b) the returning officer authorises an assistant returning officer, presiding officer or issuing officer to do the thing; and
- (c) the assistant returning officer, presiding officer or issuing 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 95, and the assistant returning officer carries out the functions, the returning officer is taken to have carried out the functions.
- 3 Under section 72, 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.

16 Assistant returning officer may act through other officers

If—

- (a) an assistant returning officer may, under this Act, do a thing; and
- (b) the assistant returning officer authorises a presiding officer or an issuing officer to do the thing; and
- (c) the presiding officer or the issuing officer does the thing;

the thing is taken to have been done by the assistant returning officer.

Part 3 Voters rolls

17 Returning officer must compile voters roll

- (1) The returning officer must compile a roll of persons entitled to vote at an election (the *voters roll*).
- (2) The voters roll must consist of the persons enrolled on an electoral roll for an electoral district, or a part of an electoral district, included—

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- (a) for an election for all of a local government's area—in the area; or
 - (b) for an election for a division of a local government's area—in the division.
- (3) An electoral registrar under the *Electoral Act 1992* must give the returning officer the assistance the officer reasonably requires to compile a voters roll for an election.

18 Cut off day for compiling voters roll

- (1) A voters roll for a quadrennial election must be compiled at 31 January in the year of the election.
- (2) A voters roll for a by-election must be compiled at least 5 days, but not more than 7 days, after the publication in a newspaper, under section 24(3), of notice of the day of the by-election.

19 Requirements of voters roll

- (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.

20 Inspection of voters roll

- (1) The electoral commission must ensure the most recent version of all voters rolls is available for inspection by members of the public at the commission's public office.
- (2) The electoral commission may also make available, for inspection by any person, a copy of the most recent version of

a voters roll at any place that the commission considers appropriate.

21 Supply of voters roll to candidates

If a poll is to be conducted in an election, the returning officer must give a copy of the voters roll to each candidate as soon as practicable after the nomination day.

Part 4 Local government elections

Division 1 Local government elections

22 Types of elections

- (1) An election of the mayor of a local government is an election for all of the local government's area.
- (2) A quadrennial or fresh election for a councillor (other than the mayor) of a local government is—
 - (a) if the local government's area does not have divisions—an election for all 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 councillor (other than the mayor) of a local government is an election for its area, or the division of its area, for which the councillor was elected.

23 Date of quadrennial elections

- (1) A quadrennial election must be held in, and every fourth year after, 2012.
- (2) A quadrennial election must be held on the last Saturday in March.

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- (3) However, a regulation may fix a different day for a quadrennial election for a particular year.

24 Date of by-elections

- (1) A by-election to fill a vacancy in the office of a councillor is to be held on the day fixed by the returning officer.
- (2) The day fixed must be within 12 weeks after the vacancy happens.
- (3) 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 under section 18(2); and
 - (b) take the steps required by this Act for holding the by-election.

Division 2 Candidates for local government elections

Subdivision 1 Nominations of candidates

25 Calling for nominations

- (1) The returning officer must publish notice of an 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) state 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) state the nominations must be given to the returning officer; and
 - (d) invite nominations of candidates.
- (3) The place of nomination must be—
- (a) the office of the returning officer; or
 - (b) a place in the local government's area convenient generally to persons in the area.

26 Who may be nominated

- (1) A person may be nominated as a candidate, or for appointment, as a councillor only if the person is qualified to be a councillor under the—
- (a) for a councillor of the Brisbane City Council—*City of Brisbane Act 2010*, section 152; or
 - (b) for a councillor of another local government—*Local Government Act 2009*, section 152.
- (2) However, a person who is a candidate for election as a member of an Australian Parliament, can not be nominated for election or appointment as a councillor until—
- (a) for an election under the *Electoral Act 1992*—the day the electoral commission is notified, under section 131(1) of that Act, of the candidate elected for the electoral district for which the person is a candidate; or
 - (b) for an election under the *Commonwealth Electoral Act 1918* (Cwlth)—
 - (i) the day the result of the election and the candidates elected are declared under section 283 of that Act; or

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- (ii) the day the candidate elected for the division for which the person is a candidate is declared under section 284 of that Act.
- (3) To remove any doubt, it is declared that, a person is not disqualified from being nominated as a candidate, or for appointment, as a councillor only because the person is a member of the Legislative Assembly or a local government employee.

Example—

A person who is a member of the Legislative Assembly may nominate as a candidate for election as a councillor but must resign on becoming a candidate.

27 How and when nomination takes place

- (1) A person who wishes to be a candidate in an election may only be nominated by—
 - (a) the registered officer of a registered 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.
- (3) A nomination is of no effect if section 39 is not complied with for the nomination.

28 Grounds for deciding a person is not properly nominated

- (1) The returning officer may decide that a person who has changed his or her name is not properly nominated as a candidate in an election 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
 - (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.
- (2) The returning officer may also decide that a person who has changed his or her name is not properly nominated as a candidate in an election if the returning officer considers the name could cause confusion.

Example of subsection (2)—

If a person’s name is ‘Informal’, the returning officer may consider that the name could cause confusion to electors.

- (3) If the returning officer decides a person is not properly nominated as a candidate in 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.

Note—

For a person’s right to apply for an injunction, see section 200.

- (4) In this section—

nomination name means the name proposed by a candidate to be used on a ballot paper as the candidate’s name under section 55(2).

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

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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.

29 Effect of multiple nominations

- (1) A person can not, at the same time, be a candidate for election as—
 - (a) mayor of a local government and as another councillor of the same local government; or
 - (b) 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.

30 Withdrawal of consent to nomination

- (1) A person nominated as a candidate in an 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 a person acts under subsection (1)—
 - (a) the nomination is of no effect; and
 - (b) the person's deposit must be refunded to the person who paid the deposit.

31 Certification of nominations

- (1) If the returning officer is satisfied a person has been properly nominated for an election, the returning officer must—
 - (a) certify the nomination in the approved form; and
 - (b) give a copy of the certificate to the person.
- (2) The certificate must state the time, day and place proposed for a draw, if necessary, for the order of listing of candidates' names on the ballot paper.
- (3) For subsection (1), a person is properly nominated for election if—
 - (a) sections 27 and 39 have been complied with, or have been substantially complied with apart from a mere formal defect or error in the nomination; and
 - (b) section 29 does not apply to the person's nomination; and
 - (c) the nomination has not been withdrawn.
- (4) Also, 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 of a registered political party; or

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- (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.
- (5) 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.

32 Announcement of nominations

- (1) As soon as practicable after the returning officer has certified the nomination of a person for an election under section 31, the returning officer must display a copy of the nomination in a conspicuous position at the office of the returning officer.
- (2) The display of a copy of the nomination must—
 - (a) start as soon as practicable after noon on the nomination day; and
 - (b) continue until the conclusion of the election.

33 Death of candidate

If a person nominated as a candidate in an 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—
 - (i) if the deposit was paid by someone other than the person—the other person; or
 - (ii) otherwise—the person's personal representative.

34 Procedure if number of candidates not more than number required

- (1) If the number of candidates properly nominated for an election is only equal to 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 in 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 under subsection (2) 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) Persons appointed under subsection (2) are taken to have been properly elected as councillors of the local government for which they are appointed.

35 Procedure if number of candidates exceeds number required

- (1) If the number of candidates properly nominated for an 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) state—
- (i) the day the poll will be conducted; and

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- (ii) the names of all candidates properly nominated for election in the order decided under section 57; 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 8a.m. to 6p.m; and
 - (c) be displayed in a conspicuous position at the office of the returning officer; 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.

36 Procedure on death of candidate when poll to be conducted

- (1) If a poll is to be conducted and a candidate dies after noon on the nomination day but before the polling day for an election—
- (a) for a candidate for mayor—the proceedings for the election of the mayor must start again; and
 - (b) for a candidate for 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 for councillor (other than mayor) for a division of a 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—
- (a) if the deposit was paid by someone other than the candidate—the other person; or

-
- (b) otherwise—the candidate’s personal representative.
 - (3) The deposits of other candidates must be refunded to the persons who paid the deposits.
 - (4) If proceedings for an election are started again, the electoral commission must, by gazette notice, fix a new polling day for the election.

37 If successful candidate dies

If a candidate who is successful at an 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.

Note—

The effect of this section would be that a new vacancy exists in the office of the councillor.

38 Extension of times

- (1) This section applies if a returning officer publishes—
 - (a) notice of a nomination day under section 25; or
 - (b) notice of the day a poll will be conducted under section 35.
- (2) The electoral commission may, by gazette notice, fix a later day as the nomination day or polling day if the day is likely to be affected by an emergency.
- (3) If the electoral commission fixes a later day under subsection (2), the returning officer—
 - (a) may give any necessary directions to candidates, and to electors, about the procedures to be followed; and
 - (b) must publish a notice detailing the directions 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.

Subdivision 2 Deposits accompanying nomination

39 Deposit to accompany nomination

- (1) At the same time as a nomination is given to the returning officer under section 27, the nominee, or another person on behalf of the nominee, must deposit \$250 with the returning officer.
- (2) The deposit must be paid—
 - (a) in cash; or
 - (b) by a cheque drawn by a financial institution.

40 Disposal of deposits generally

- (1) As soon as practicable after the conclusion of an election, each candidate's deposit must be refunded to the person who paid the deposit if—
 - (a) the candidate is elected; or
 - (b) if the system of voting at the election is optional-preferential voting—the number of formal 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 formal votes received by the candidate is more than 4% of the total number of formal votes cast in the election.
- (2) However, a candidate's deposit must not be refunded until—
 - (a) if, under section 117(1), the candidate is required to give a return under the section for the candidate's disclosure period for the election—the candidate gives the return; or
 - (b) if, under section 117(3), the candidate is not required to give a return under the section for the candidate's

disclosure period for the election—the end of the disclosure period.

- (3) Also, if a deposit is to be refunded to a person, it may be refunded to someone else with the written authority of the person.
- (4) All other candidates' deposits become the property of the State when the outcome of the election is decided unless section 30, 33 or 36 applies.

Subdivision 3 Recording of membership and agents for group of candidates

41 Record of membership in group of candidates

- (1) This section applies to a group of candidates in an election.
- (2) The group must give a record of the membership of the group to the returning officer after the candidates in the group are nominated for the election but before noon on the last day for the receipt of nominations for candidates in the election.
- (3) The record must—
 - (a) be in the approved form; and
 - (b) state the names of the candidates who are the members of the group; and
 - (c) be signed by each of the candidates who are the members of the group.
- (4) As soon as practicable after the returning officer receives the record, the returning officer must ensure a copy of the record is displayed at the office of the returning officer.

42 Appointment of agent for group of candidates

- (1) A group of candidates in an election must appoint an adult as an agent for the group for the election.
- (2) The instrument appointing the agent must—

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- (a) be in the approved form; and
 - (b) state the name and address of the person appointed as agent; and
 - (c) be signed by each of the candidates who are the members of the group; and
 - (d) be signed by the person appointed as agent, and include or be accompanied by—
 - (i) the person's signed agreement to being appointed as the group's agent; and
 - (ii) the person's signed declaration that the person is eligible to be appointed as the group's agent.
- (3) A copy of the instrument appointing the agent must be given to the returning officer at the same time the record is given to the returning officer under section 41.

43 Register of group agents

- (1) The returning officer must keep a register (the *register of group agents*) that records the name and address of each person who is appointed as the agent for a group of candidates in an election.
- (2) The appointment of an agent for a group of candidates—
 - (a) is not effective under this Act until the appointment has been recorded in the register of group agents; and
 - (b) ceases to be effective when the person's name is removed from the register.
- (3) The name of a person may be removed from the register only if—
 - (a) the person gives the returning officer a written notice, signed by the person, stating that he or she has resigned the appointment as agent; or
 - (b) the group of candidates gives the returning officer a written notice, signed by all members of the group,

stating that the person has ceased to be the group's agent.

- (4) If the name of a person is removed from the register under subsection (3), the group of candidates may, under section 42, appoint another agent.
- (5) If no agent is currently recorded for a group of candidates in the register of group agents, all obligations under this Act applying to an agent (including liability for any offence) apply to each member of the group of candidates as if each candidate was the agent for the group.

Division 3 Arrangements for local government elections

Subdivision 1 Polls by ballots

44 Poll by ballot

A poll must be conducted by ballot taken under this part.

45 Direction that poll be conducted by postal ballot

- (1) A local government may apply to the Minister for a poll to be conducted by postal ballot if the local government's area includes a large rural sector, large remote areas or extensive island areas.
- (2) The Minister must decide to approve or not to approve the application.
- (3) The approval may be given for—
 - (a) all the local government's area; or
 - (b) 1 or more divisions of its area; or
 - (c) a part of its area marked on a map.
- (4) If the approval is given for a part of a local government's area, the local government must—

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- (a) ensure that the public may inspect the relevant map—
 - (i) at the local government’s public office; and
 - (ii) on the local government’s website; and
 - (b) publish details of the approval in a newspaper circulating generally in the part of the local government’s area.
- (5) Decisions of the Minister under subsection (2) are not subject to appeal.

Subdivision 2 Polling booths

46 Kinds of polling booths

- (1) There are 3 kinds of polling booths—
 - (a) ordinary polling booths; and
 - (b) mobile polling booths; and
 - (c) early polling booths.
- (2) An *ordinary polling booth* is a building or other structure, or a part of a building or other structure, that a returning officer arranges to be available on polling day for an election to enable electors in general to vote.
- (3) A *mobile polling booth* is—
 - (a) all or part of an institution made available as a mobile polling booth under section 49(1); or
 - (b) all or part of a place made available as a mobile polling booth under section 49(2).
- (4) An *early polling booth* means a place arranged under section 50 as a polling booth for electors to cast a pre-poll vote.

47 Polling booths—general

- (1) The returning officer for an election—

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- (a) may arrange for a polling booth within or outside the local government area, or division of the local government area, to be used for the 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.
- (2) A place on or from which liquor may lawfully be sold can not be used as a polling booth.
- (3) However, a civic or cultural centre, community hall or similar place under a local government's control, may be used as a polling booth if—
- (a) the floor area for taking the ballot is designated in the polling notice; and
 - (b) the local government ensures that no liquor will be sold or supplied in that area during the taking of the ballot.
- (4) The returning officer may arrange for all polling booths, or only particular polling booths, for an election to be used for any other election conducted at the same time for the one local government area.

48 Provision of ordinary polling booths

- (1) For taking a ballot in an 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;

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only if it is necessary because of circumstances beyond the returning officer's control.

- (3) If, after publication of the polling notice, the returning officer arranges for the use of an ordinary polling booth, the officer must also publish notice—
 - (a) of the location of the booth; and
 - (b) that the ordinary voting hours of the booth are from 8a.m. to 6p.m.
- (4) If the returning officer cancels arrangements for the use of an ordinary polling booth, the officer must also publish notice of the cancellation.
- (5) The notice under subsection (3) or (4) is to be given in the way the returning officer considers is the best way to inform electors generally.

49 Declaration of mobile polling booths

- (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 all 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, the returning officer may arrange for 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—
 - (a) fix the times, during the period starting 11 days before the polling day and ending at 6p.m. on the polling day, when the mobile polling booth may be used for voting; and

-
- (b) publish a notice, in the approved form, in a newspaper circulating generally in the relevant part of the local government area—
 - (i) declaring all or part of the institution or the place as a mobile polling booth for the election; and
 - (ii) stating the times at which votes may be cast at the booth.
 - (4) The returning officer also must give written notice to candidates of the declaration of the mobile polling booth and the times at which votes may be cast at the booth.
 - (5) On the declaration of a mobile polling booth, the electors resident in the institution or the electors resident in the part of the local government area in which the mobile polling booth is situated, may vote at the booth during the times stated for the booth in the notice published under subsection (3)(b).

50 Declaration of early polling booths

- (1) The returning officer must arrange at least 1 of the following places as a polling booth for an election to enable electors to cast a pre-poll vote—
 - (a) the public office, or a part of the public office, of the local government for which the election is to be held;
 - (b) another office used by the local government to receive rate payments;
 - (c) another convenient place in the local government's area.
- (2) Also, the returning officer must—
 - (a) fix the times, during the period starting 14 days before the polling day and ending at 6p.m. on the day immediately before polling day, when the polling booth may be used for voting; and
 - (b) publish a notice, in the approved form, in a newspaper circulating generally in the local government's area—

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- (i) declaring the place as a polling booth for the election to enable electors to cast a pre-poll vote; and
 - (ii) stating the times at which votes may be cast at the booth.
- (3) In addition, the returning officer must give written notice to candidates of the declaration of the polling booth and the times at which votes may be cast at the booth.

51 Duty of person in charge of institution

- (1) If the returning officer arranges for all or part of an institution to be used as an ordinary polling booth for an election, 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 all or part of an institution as a mobile polling booth for an election, 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.

52 Privacy for electors casting votes at polling booths

The returning officer must ensure that each polling booth for an election is provided with enough voting compartments, or other suitable facilities, to allow the casting of votes in private.

53 Adjournment of poll

- (1) A returning officer may adjourn the poll at a polling booth if the taking of the poll is, or is likely to be, interrupted by an emergency.
- (2) The presiding officer for a polling booth may adjourn the poll at the polling booth if the taking of the poll is, or is likely to be, interrupted by an emergency.

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- (3) If a poll is adjourned under subsection (1) or (2), the returning officer must fix a day (no later than 34 days after the day on which the poll is adjourned) for conducting the adjourned poll.
 - (4) The returning officer must publish 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.

Subdivision 3 Ballot boxes, ballot papers and other documents

54 Ballot boxes generally

- (1) A ballot box used in a poll must—
 - (a) have an opening of a size adequate to allow folded ballot papers and declaration envelopes to be put in the box; and
 - (b) be under the scrutiny and effective control of an issuing officer.
- (2) Issuing officers, candidates and scrutineers for the poll, may inspect a ballot box before the box is locked or sealed for receipt of ballot papers.

55 Requirements of ballot papers

- (1) A ballot paper must—
 - (a) be in the approved form; and
 - (b) be of material that, when folded, the vote recorded on it 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 as required by subsection (2); 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 27(1)(a)—contain, printed adjacent to the candidate’s name, the name of the political party; and
 - (g) if a candidate is a member of a group of candidates—contain, printed adjacent to the candidate’s name, the name of the group.
- (2) The name of a candidate must be shown on a ballot paper—
 - (a) only once by showing first the surname followed by the given name or names of the candidate; and
 - (b) in the order decided under section 57.
 - (3) A ballot paper must not contain the name of anyone who is not a candidate.

56 Ballot papers for separate polls

- (1) This section applies if a poll for election of mayor of a local government is to be conducted when a poll for election of another councillor of the local government is conducted.
- (2) The returning officer may decide to use separate ballot papers or a combined ballot paper for the polls.

57 Order of candidates' names on ballot papers

- (1) The order the names of candidates in an election are to be listed on ballot papers and polling notices 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 note the name of the candidate shown on the piece of paper in the envelope.
- (4) The order in which the names are noted is the order in which the names are to appear on the ballot paper and polling notice.
- (5) The returning officer must allow any candidate, or the representative of a candidate, to be present when the order of candidates' names is decided.

58 Distribution of ballot papers

- (1) The returning officer must ensure an adequate number of ballot papers is available at all polling booths for an election.
- (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 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 an issuing officer is available—the issuing officer; or
 - (b) if an issuing 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 person who made the countercheck.

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- (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 92.

Subdivision 4 Scrutineers

59 Candidates' entitlement to scrutineers

Each candidate in an 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.

60 Appointment of scrutineers

- (1) A candidate in an election may, in the approved form, appoint 1 or more adults as scrutineers for the candidate.
- (2) If a candidate acts under subsection (1), the candidate must give the approved form to the returning officer.

61 Proof of identification

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.

62 Powers of scrutineers

- (1) A scrutineer for a candidate in an election is entitled to be present—

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- (a) in a polling booth—
 - (i) to inspect ballot boxes before taking the ballot in the poll starts; and
 - (ii) when electors may vote in the booth; and
 - (b) 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 an election; and
 - (b) object to the acceptance or rejection of a ballot paper by the returning officer or a presiding officer; and
 - (c) record the identification details of a person who votes at the election at a polling booth that the person gives to an issuing officer at the polling booth; and
 - (d) remove from the polling booth the scrutineer’s record of identification details mentioned in paragraph (c).

Note—

A scrutineer may record the name and address, as given to an issuing officer, of a person voting at an election but may not record details of how the person voted at the election. See section 192(3).

Subdivision 5 Errors, omissions or delays

63 Correction of errors, omissions or delays

If there is an error, omission or delay in or relating to the preparation, issue, sending or return of any voters roll, ballot paper or other document relevant to the conduct of an election, it may be corrected by a gazette notice by the electoral commission setting out what is to be done.

Division 4 Who may vote

64 Who may vote

- (1) The following persons are the only persons entitled to vote at an election—
 - (a) persons enrolled on the voter roll for—
 - (i) for an election for all the local government's area—the area; or
 - (ii) for an election for a division of the local government's area—the division;
 - (b) persons whose names are not on the voter roll for the area or division because of official error.
- (2) A person is not entitled to vote—
 - (a) more than once at the same election; or
 - (b) at 2 or more divisions of the same local government area.
- (3) Also, a person who is serving a sentence of imprisonment is not entitled to vote at an election.

Division 5 How voting takes place

Subdivision 1 System of voting

65 System of voting

The system of voting at an election 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.

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66 Compulsory voting

Voting at an election is compulsory for electors.

Subdivision 2 Casting votes

67 Ways in which to cast votes

- (1) In an election, other than a postal ballot election, an elector may—
 - (a) cast their vote at an ordinary or mobile polling booth on polling day (an *ordinary vote*); or
 - (b) cast their vote at an early polling booth before polling day (a *pre-poll vote*); or
 - (c) cast their vote using posted voting papers (a *postal vote*).
- (2) In a postal ballot election, an elector must cast a postal vote.

68 Who may cast votes in particular ways

- (1) Any elector may cast an ordinary vote in an election, other than a postal ballot election.
- (2) Any elector may cast a pre-poll vote in an election, other than a postal ballot election.
- (3) Any elector may cast an absentee vote in an election, other than a postal ballot election, if the local government is divided into divisions.
- (4) An elector may only cast a postal vote in an election, other than a postal ballot election, if—
 - (a) the elector will not be within 8km, by the nearest practicable route, from a polling booth during ordinary voting hours on polling day; or
 - (b) the elector will be working or travelling under conditions that prevent voting at a polling booth during ordinary voting hours on polling day; or

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- (c) the elector will be prevented from voting at a polling booth because of illness, disability or advanced pregnancy; or
 - (d) the elector will be prevented from voting at a polling booth because the elector is caring for a person who is ill, has a disability or is pregnant; or
 - (e) the elector will be prevented from voting at a polling booth for all, or most, of the ordinary voting hours on polling day because of membership of a religious order or because of religious beliefs.
- (5) All electors must cast a postal vote in a postal ballot election.
- (6) In this section—

absentee vote means a vote cast by an elector at a polling booth in any division of a local government area other than the division of the local government area for which the elector is enrolled on the voters roll.

Note—

There is no provision under this Act for electors to cast their vote at a polling booth located in a different local government area to the one in which the elector is enrolled on the voters roll.

69 Who must complete a declaration envelope

- (1) An elector must complete a declaration envelope for an election if—
- (a) the elector is casting a postal vote; or
 - (b) the elector's name is not on the voters roll apparently because of an official error; or
 - (c) the elector appears, from a record apparently made in error, to have already voted in the election; or
 - (d) the elector is serving a sentence of imprisonment on the cut-off day for the election, but is not serving a sentence of imprisonment on the polling day for the election; or
 - (e) the elector's address has been omitted from a voters roll—

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- (i) because of the *Electoral Act 1992*, section 58; or
 - (ii) under an arrangement under the *Electoral Act 1992*, section 62 because of the *Commonwealth Electoral Act 1918* (Cwlth), section 104.
- (2) Also, an elector who an issuing officer informs must complete a declaration envelope because the issuing officer suspects, on reasonable grounds, that the elector is not entitled to vote at the election, must complete a declaration envelope.

70 Casting an ordinary vote

- (1) To cast an ordinary vote in an election, an elector must follow, in order, each of subsections (2) to (7) that applies to the elector.
- (2) The elector must attend a polling booth in the local government area during voting hours for the booth.
- (3) At the polling booth, the elector must give the elector's full name and address to an issuing officer at the booth.
- (4) The elector may be asked questions by the issuing officer in order for the issuing officer to decide the following—
 - (a) whether the elector is entitled to vote at the election;
 - (b) whether the elector must complete a declaration envelope.
- (5) If the elector has a declaration envelope for the election but is not required to complete a declaration envelope when casting their vote, the elector must give the declaration envelope to the issuing officer at the booth.
- (6) If the elector must complete a declaration envelope when casting their vote, the elector must sign the appropriate declaration on the declaration envelope before an issuing officer and have the officer sign the envelope as witness.
- (7) On being given the ballot paper and declaration envelope (if any), the elector must, without delay—
 - (a) go alone into an unoccupied voting compartment in the polling booth; and

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- (b) there, in private, record a vote on the ballot paper; and
 - (c) fold the ballot paper, concealing the vote, and—
 - (i) if the elector completed a declaration envelope—put the folded ballot paper in the envelope, seal the envelope and put the sealed envelope in the appropriate ballot box at the polling booth; or
 - (ii) otherwise—put the folded ballot paper in the appropriate ballot box at the polling booth; and
 - (d) leave the polling booth.

71 Casting a pre-poll vote

- (1) To cast a pre-poll vote in an election, an elector must follow, in order, each of subsections (2) to (7) that applies to the elector.
- (2) The elector must attend an early polling booth in the local government area during voting hours for the booth.
- (3) At the polling booth, the elector must give the elector's full name and address to an issuing officer at the booth.
- (4) The elector may be asked questions by the issuing officer in order for the issuing officer to decide the following—
 - (a) whether the elector is entitled to vote at the election;
 - (b) whether the elector must complete a declaration envelope.
- (5) If the elector has a declaration envelope for the election but is not required to complete a declaration envelope when casting their vote, the elector must give the declaration envelope to the issuing officer at the booth.
- (6) If the elector must complete a declaration envelope when casting their vote, the elector must sign the appropriate declaration on the declaration envelope before an issuing officer and have the officer sign the envelope as witness.

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- (7) On being given the ballot paper and declaration envelope (if any), the elector must, without delay—
 - (a) go alone into an unoccupied voting compartment in the polling booth; and
 - (b) there, in private, record a vote on the ballot paper; and
 - (c) fold the ballot paper, concealing the vote, and—
 - (i) if the elector completed a declaration envelope—put the folded ballot paper in the envelope, seal the envelope and put the sealed envelope in the appropriate ballot box at the polling booth; or
 - (ii) otherwise—put the folded ballot paper in the appropriate ballot box at the polling booth; and
 - (d) leave the polling booth.

72 Casting a postal vote

- (1) To cast a postal vote in an election, an elector must follow, in order, each of subsections (2) to (5) that applies to the elector.
- (2) The elector must apply to the returning officer for a declaration envelope and a ballot paper with which to cast a postal vote if—
 - (a) the election is not a postal ballot election; or

Note—
See section 79 for the relevant application.

 - (b) the election is a postal ballot election and the elector has not been given a ballot paper or declaration envelope.

Note—
See section 81 for the relevant application.
- (3) After being given a ballot paper and a declaration envelope, the elector must, before 6p.m. on polling day—
 - (a) record a vote on the ballot paper; and

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- (b) fold the ballot paper, put it in the declaration envelope and seal the envelope.
- (4) The elector must sign the declaration on the declaration envelope in the presence of an adult, and have the adult sign the envelope as witness.

Note—

For the duty of a witness in signing declaration envelopes, see section 194.

- (5) The elector must put the sealed declaration envelope in the reply paid post envelope that accompanied the declaration envelope and post or give the envelope to the returning officer.

Note—

The ballot paper must be received by the returning officer no later than 10 days after the polling day. See section 86(4) or 87(4).

73 Voting hours for polling booths

- (1) The voting hours for an ordinary polling booth are between 8a.m. and 6p.m. on polling day.
- (2) The voting hours for a mobile polling booth are the times fixed for the booth by the returning officer.
- (3) The voting hours for an early polling booth are the times, during the pre-polling period, notified by the returning officer under section 50(2).
- (4) If an elector is in a polling booth at the time of close of voting for the booth and for the purpose of casting a vote, the elector must be allowed to vote.
- (5) In this section—

pre-polling period, for an election, means the period—

- (a) starting no earlier than—
- (i) 14 days before polling day; or
- (ii) the longer period that the returning officer fixes and notifies in a newspaper circulating generally in

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the local government area, or division of the local government area; and

- (b) ending no later than the day before polling day.

74 Particular responsibilities of returning officer when electors cast postal votes

- (1) This section applies if the returning officer for an election receives a sealed envelope under section 72(5).
- (2) The returning officer must put the sealed envelope in the appropriate ballot box.

75 Particular responsibilities of issuing officers when electors cast ordinary or pre-poll votes

- (1) This section applies if an elector attends a polling booth, during voting hours for the booth, to cast an ordinary or pre-poll vote in an election.
- (2) An issuing officer at the polling booth must give the elector a ballot paper if—
- (a) the elector gives the issuing officer the elector's full name and address; and
- (b) the issuing officer is satisfied the elector is entitled to vote at the election.
- (3) The issuing officer may ask the elector questions to decide the following—
- (a) whether the elector is entitled to vote at the election;
- (b) whether the elector must complete a declaration envelope.
- (4) Subsection (5) applies if, because of the elector's answers to the questions under subsection (3)—
- (a) the issuing officer suspects, on reasonable grounds, that the elector is not entitled to vote at the election; or
- (b) the issuing officer is satisfied the elector must complete a declaration envelope.

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- (5) The issuing officer must—
 - (a) inform the elector that the elector must complete a declaration envelope; and
 - (b) give the elector the declaration envelope to complete.
 - (6) An issuing officer must—
 - (a) keep a record of the ballot papers and declaration envelopes given to electors under this section; and
 - (b) sign the record.

Subdivision 3 Special arrangements for particular voters

76 Arrangements for electors at hospitals etc.

- (1) If a polling booth is a hospital or part of a hospital, an issuing officer may visit patients and residents in the hospital to enable them to vote.
- (2) The electoral commission may direct that declaration envelopes be completed by electors voting under this section if, in the opinion of the electoral commission, the size of the voters roll for an election would be impracticable to be used in a portable way.
- (3) Before taking action under subsection (1), the issuing officer must inform the scrutineers present of the proposed action.
- (4) When visiting patients and residents in a hospital who are electors, the issuing officer must—
 - (a) take to the elector—
 - (i) a ballot paper and, if directed by the electoral commission, a declaration envelope; and
 - (ii) a ballot box; and
 - (iii) anything else necessary to enable the elector to vote; and

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- (b) be accompanied by any scrutineer who wishes to accompany the issuing officer.
- (5) The issuing officer must ensure that, as far as practicable—
- (a) if the electoral commission has directed that declaration envelopes be completed—the elector completes the declaration envelope when casting their vote, including signing the appropriate declaration on the declaration envelope before the issuing officer and having the officer sign the envelope as witness; and
 - (b) the elector, in private, records a vote on the ballot paper and folds the ballot paper, concealing the vote; and
 - (c) the elector puts the folded ballot paper—
 - (i) if the electoral commission has directed that declaration envelopes be completed—in the declaration envelope, seals the envelope and puts the sealed envelope in the ballot box; or
 - (ii) otherwise—in the ballot box.
- (6) In this section—
- hospital* includes any of the following—
- (a) a convalescent home;
 - (b) a nursing home;
 - (c) a home for the aged;
 - (d) a hostel for the aged or infirm.

77 Arrangements for electoral visitor voting

- (1) Each of the following electors is entitled to be an electoral visitor voter—
- (a) an elector who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;

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- (b) 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.
- (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 no later than 6p.m. on the Wednesday 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 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 6p.m. on polling day.
- (7) When visiting an elector, the issuing officer must—
- (a) take to the elector—
- (i) a ballot paper; and
- (ii) a ballot box; and
- (iii) anything else necessary to enable the elector to vote; and
- (b) be accompanied by any scrutineer who wishes to accompany the issuing officer.
- (8) The issuing officer must ensure that, as far as practicable—
- (a) the elector, in private, records a vote on the ballot paper and folds the ballot paper, concealing the vote; and
- (b) the elector puts the folded ballot paper in the ballot box.

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78 Help for electors voting

- (1) If an elector satisfies an issuing officer that the elector can not 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 subdivision 5 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 70(7)(a) and (b)
 - section 71(7)(a) and (b).

Subdivision 4 Distribution of ballot papers

79 Applications to cast postal votes in local government elections that are not postal ballot elections

- (1) This section applies to an application made by an elector to the returning officer to cast a postal vote in an election that is not a postal ballot election.

Note—

Only particular electors are entitled to cast a postal vote in an election. See section 68.

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- (2) The application—
- (a) must be in the approved form signed by the elector; and
- Note—*
- The signature of the elector on the application must match the signature on the declaration envelope completed by the elector when casting a postal vote. See section 86(3) and 87(3).
- (b) must state the address to which the ballot paper and declaration envelope for the elector is to be posted, delivered or sent; and
- (c) may be posted, faxed or given to the returning officer by any person; and
- (d) must be received by the returning officer for the election no later than 6p.m. on the Wednesday before polling day.
- (3) Subsection (4) applies if—
- (a) the application complies with subsection (2); and
- (b) the returning officer is satisfied the applicant is an elector who is entitled to cast a postal vote in the election.
- (4) The returning officer must, as soon as practicable after receiving the application, give the applicant—
- (a) a ballot paper and a declaration envelope; and
- (b) written instructions on how to cast a postal vote.
- (5) The things given to an elector under subsection (4) must be accompanied by an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(insert name of local government area)’.
- (6) However, the unsealed envelope need not be reply paid post if it is to be sent to an address outside of Australia.
- (7) The returning officer must keep a record of the ballot papers and declaration envelopes posted to electors under this section.

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80 Distribution of ballot papers to electors for postal ballot elections

- (1) For a postal ballot election, the returning officer must post the following things to each elector for the election as soon as practicable after the nomination day—
 - (a) a ballot paper;
 - (b) a declaration envelope;
 - (c) written instructions on how a vote may be cast.
- (2) The things given to an elector under subsection (1) must—
 - (a) be accompanied by an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(insert name of local government area)’; and
 - (b) be posted to the elector’s address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(3).
- (3) However, the unsealed envelope need not be reply paid post if it is to be sent to an address outside of Australia.
- (4) The returning officer must keep a record of the ballot papers and declaration envelopes posted to electors under this section.

81 Applications to cast postal votes in postal ballot elections

- (1) This section applies if a person believes they are entitled to vote in a postal ballot election but the person is not given a ballot paper and declaration envelope under section 80(1).
- (2) The person may apply to the returning officer to cast a postal vote in the postal ballot election.
- (3) The application—
 - (a) must be in the approved form signed by the person; and

Note—

The signature of the elector on the application must match the signature on the declaration envelope completed by the elector when casting a postal vote. See section 86(3) and 87(3).

- (b) must state the address to which the ballot paper and declaration envelope for the person is to be posted, delivered or sent; and
 - (c) may be posted, faxed or given to the returning officer by any person; and
 - (d) must be received by the returning officer for the election no later than 6p.m. on the Wednesday before polling day.
- (4) Subsection (5) applies if—
- (a) the application complies with subsection (3); and
 - (b) the returning officer is satisfied the person is an elector who is entitled to cast a postal vote in the election.
- (5) The returning officer must, as soon as practicable after receiving the application, give the person—
- (a) a ballot paper and a declaration envelope; and
 - (b) written instructions on how to cast a postal vote.
- (6) The things given to a person under subsection (5) must be accompanied by an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(*insert* name of local government area)’.
- (7) However, the unsealed envelope need not be reply paid post if it is to be sent to an address outside of Australia.
- (8) The returning officer must keep a record of the ballot papers and declaration envelopes posted to electors under subsection (5).

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82 Distribution of ballot papers to particular electors whose address has been omitted from a voters roll

- (1) As soon as practicable after the nomination day for an election, the returning officer must post the following things to an elector mentioned in section 69(1)(e)—
 - (a) a ballot paper;
 - (b) a declaration envelope;
 - (c) written instructions on how a vote may be cast;
 - (d) an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(*insert name of local government area*)’.
- (2) However, the unsealed envelope need not be reply paid post if it is to be posted to an address outside Australia.
- (3) The returning officer must keep a record of the ballot papers and declaration envelopes posted to electors under subsection (1).

Subdivision 5 Recording a vote on ballot papers

83 How electors must record a vote on a ballot paper—optional-preferential voting

- (1) This section applies if the system of voting at an election is optional-preferential voting.
- (2) An elector records a vote on a ballot paper by—
 - (a) to record a first-preference vote—writing on the ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of the candidate for whom the elector wishes to cast a first-preference vote; and
 - (b) to record a preference vote—writing 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 the other candidates.

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- (3) An elector is only required to record a first-preference vote on a ballot paper but may also record preference votes for 1 or more, but not necessarily all, of the candidates.

84 How electors must record a vote on a ballot paper—first-past-the-post voting

- (1) This section applies if the system of voting at an election is first-past-the-post voting.
- (2) For an election of a mayor, an elector records a vote on a ballot paper by writing on the 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) For an election of other councillors, an elector records a vote on a ballot paper by writing 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 numerals 2, 3 and so on in the squares opposite the names of the other candidates for whom the elector wishes to vote, up to the number of candidates to be elected.

85 Replacement ballot papers

- (1) If, while voting at a polling booth or voting under section 77, a ballot paper given to an elector is accidentally defaced or destroyed, an issuing officer must give the elector a replacement ballot paper for use in the poll.
- (2) However, before a replacement ballot paper can be given—

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- (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 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 92(9)(b).
- (3) If a ballot paper given to an elector under section 79, 80 or 82 is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6p.m. on polling day, give the elector a replacement ballot paper and a 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 (also 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

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- 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 92(9)(b).
- (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.

Division 6 Formal and informal votes

86 Formal and informal ballot papers—optional-preferential voting

- (1) This section applies to an election if the system of voting is optional-preferential voting.
- (2) A ballot paper has effect as recording a vote in the election only if the ballot paper—
 - (a) is completed under section 83; and
 - (b) does not contain any writing or mark (other than as permitted by this Act) by which the elector can, in the returning officer's opinion, be identified; and
 - (c) has been put into a ballot box as required by this Act.
- (3) Also, if the ballot paper is sealed in a declaration envelope, as required by this Act, the envelope must have been signed, and the signature witnessed, as required by section 72.

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- (4) Also, if the ballot paper is sealed in a declaration envelope as a postal vote—
 - (a) the ballot paper must be received by the returning officer no later than 10 days after polling day; and
 - (b) for an elector who made an application under section 79 or 81 to cast a postal vote in the election—the signature on the declaration envelope must match the elector’s signature on the application.
- (5) If a ballot paper shows 2 or more squares in which the same numeral is marked, those numerals and any higher numerals marked in other squares must be disregarded.
- (6) 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.
- (7) A ballot paper that has effect to record a vote under this section is a formal ballot paper.
- (8) A ballot paper that has no effect to record a vote under this section is an informal ballot paper.

87 Formal and informal ballot papers—first-past-the-post voting

- (1) This section applies to an election if the system of voting is first-past-the-post voting.
- (2) A ballot paper has effect as recording a vote in the election only if the ballot paper—
 - (a) is completed under section 84; and
 - (b) does not contain any writing or mark (other than as permitted by this Act) by which the elector can, in the returning officer’s opinion, be identified; and
 - (c) has been put into a ballot box as required by this Act.
- (3) Also, if the ballot paper is sealed in a declaration envelope, as required by this Act, the envelope must have been signed, and the signature witnessed, as required by section 72.

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- (4) Also, if the ballot paper is sealed in a declaration envelope as a postal vote—
 - (a) the ballot paper must be received by the returning officer no later than 10 days after polling day; and
 - (b) for an elector who made an application under section 79 or 81 to cast a postal vote in the election—the signature on the declaration envelope must match the elector’s signature on the application.
 - (5) A ballot paper that complies with section 84 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.
 - (6) A ballot paper that has effect to record a vote under this section is a formal ballot paper.
 - (7) A ballot paper that has no effect to record a vote under this section is an informal ballot paper.

88 Ballot paper partly formal and partly informal

- (1) This section applies if—
 - (a) an election for mayor of a local government 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
 - (b) the ballot paper, as completed for 1 of the elections, 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 7.

Division 7 Counting of votes

Subdivision 1 Processing declaration envelopes

89 Preliminary processing of declaration envelopes—general

- (1) This section applies to an election, other than a postal ballot election.
- (2) After 8a.m. on polling day, the returning officer may open all ballot boxes containing only sealed declaration envelopes and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.
- (3) As soon as practicable after 6p.m. on polling day, the returning officer may open all other ballot boxes containing sealed declaration envelopes and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.
- (4) As soon as practicable after receipt by the returning officer of a parcel of sealed declaration envelopes from a polling booth, the returning officer may open the parcel and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

90 Preliminary processing of declaration envelopes—postal ballot election

- (1) This section applies to a postal ballot election.
- (2) After 8a.m. on the day before polling day, the returning officer may open all ballot boxes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

91 Procedure for processing declaration envelopes

- (1) The returning officer must—

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- (a) inform all candidates for election of the times when, and the places where, declaration envelopes will be examined by the returning officer; and
 - (b) allow the candidates, or their scrutineers, to attend at the processing of declaration envelopes.
 - (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 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) and section 95.
 - (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 95.
 - (4) The returning officer must—
 - (a) put all ballot papers (not in declaration envelopes) that are in a ballot box opened under section 89(3) 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 aside in the officer’s custody for separate identification.

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- (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.

Subdivision 2 Preliminary counts

92 Preliminary counting of ordinary votes

- (1) The presiding officer of a polling booth must follow, in order, the procedures stated in subsections (3) to (11)—
 - (a) as soon as practicable after the end of ordinary voting hours for the polling booth; and
 - (b) at a place nominated by the officer; and
 - (c) in the presence of issuing officers and any candidates and scrutineers who wish to attend.
- (2) However, the presiding officer may do anything required under subsections (3) to (10) through an issuing officer authorised by the presiding officer for that purpose.
- (3) Open all ballot boxes used at the polling booth.
- (4) Identify, and keep in a separate parcel, all declaration envelopes.
- (5) Examine all ballot papers that are not in declaration envelopes, and—
 - (a) identify, and keep in a separate parcel, all informal ballot papers; and
 - (b) 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; and
 - (c) 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.

- (6) Prepare a written statement, in the approved form, that—
 - (a) states in words and numerals—
 - (i) if the system of voting is first-past-the-post voting—the number of votes for each candidate; or
 - (ii) if the system of voting is optional-preferential voting—the number of first-preference votes for each candidate; and
 - (b) states the number of declaration envelopes and informal ballot papers; and
 - (c) is signed by the presiding officer, and the issuing officer and any scrutineers who are present and wish to sign.
- (7) Seal up in separate parcels all formal and informal ballot papers, declaration envelopes and unused ballot papers.
- (8) 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.
- (9) Put the following into separate parcels and endorse on each parcel a description of its contents—
 - (a) the voters roll and all books and papers used by the presiding officer in the poll with 1 copy of the statement prepared under subsection (6);
 - (b) all ballot papers or remains of ballot papers set aside, under section 85(2)(e) or (4)(d), for separate identification.
- (10) Endorse the following on each parcel, and sign each endorsement—
 - (a) the name of the local government area, or division of the local government area, for which the election was held;
 - (b) the name of the polling booth from which the parcel has come.

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- (11) The presiding officer must, as soon as practicable, give each of the following things to the returning officer or a person nominated by the returning officer—
- (a) the parcels mentioned in subsections (3) to (10);
 - (b) a copy of the statement prepared under subsection (6), other than the copy mentioned in subsection (9)(a);
 - (c) a reconciliation statement, in the approved form, for all ballot papers given out at the polling booth and all votes put in ballot boxes at the booth.

93 Objections by scrutineers during preliminary count

- (1) If, while a presiding officer is complying with section 92(5), a candidate or scrutineer objects to the treatment of a particular 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.
- (2) If, while a presiding officer is complying with section 92(5), 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.

94 Receipt of things given to returning officer

- (1) This section applies if the returning officer or another person receives things from the presiding officer under section 92(11).
- (2) The returning officer, or other person, must give a receipt for the things to the presiding officer.

Subdivision 3 Official count

95 Official counting of votes

- (1) The returning officer must follow, in order, the procedures stated in subsection (2) to (6)—
 - (a) as soon as practicable after close of the poll in an election; and
 - (b) in the presence of the candidates or scrutineers who wish to attend.
- (2) The returning officer must work out from the statements of presiding officers under section 92(6)—
 - (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) The returning officer must—
 - (a) open all sealed parcels of ballot papers given to the returning officer under section 92(11) or sealed by the returning officer if the returning officer conducted the preliminary count under section 92; 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

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votes for each candidate on the formal ballot papers.

- (4) The returning officer must—
 - (a) open all other ballot boxes on hand; and
 - (b) open all accepted envelopes mentioned in section 91(2)(d) that have not yet been opened and remove the ballot papers; and
 - (c) identify, and keep in a separate parcel, all informal ballot papers; and
 - (d) 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) 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)(d)(i); or
 - (b) if the system of voting is optional-preferential voting—the number counted under subsections (3)(b)(ii) and (4)(d)(ii).
- (6) The returning officer must reapply subsections (4) and (5) as more declaration envelopes are received by the returning officer under section 72 after close of the poll.

96 Objections by scrutineers during official count

- (1) If, while the returning officer is complying with section 95, a candidate or scrutineer objects to the treatment of a particular 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.
- (2) If, while the returning officer is complying with section 95, 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.

Subdivision 4 Deciding results of local government elections

97 Counting of votes for optional-preferential system

- (1) This section applies for counting votes in an election in which the system of voting is optional-preferential voting.
- (2) If, after final counting under section 95, an absolute majority of formal first-preference votes are for 1 candidate, that candidate is elected.
- (3) Alternatively, if there is no absolute majority of the formal first-preference votes for 1 candidate, a further count assigning preference votes must be conducted and, if necessary, repeated until an absolute majority of the remaining votes are for 1 candidate.
- (4) For subsection (3), a further count assigning preference votes is conducted by—
 - (a) excluding the candidate with the fewest votes in a previous count; and
 - (b) excluding all ballot papers on which there is not recorded a preference vote for a candidate who has not been excluded for the count or a previous count; and

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- (c) assigning each preference vote recorded on the remaining ballot papers to the candidate who—
 - (i) is next in the order of an elector's preference on the ballot paper; and
 - (ii) has not been excluded; and
 - (d) counting the number of votes (first-preference votes for a candidate together with any preference votes assigned to the candidate) for each candidate who has not been excluded.
- (5) If, after final counting under subsection (4), an absolute majority of the votes remaining in the count are for 1 candidate, that candidate is elected.
- (6) If subsection (4)(a) can not be applied because 2 or more candidates (1 of whom must be excluded) have an equal number of votes, the candidate to be excluded is—
- (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; 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 (7).
- (7) For subsection (6)(b), the returning officer must, in the presence of any candidates, or their representative, who wish to attend—
- (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 can not be seen and choose a slip at random.
- (8) If, under subsection (6), the candidates who have an equal number of votes are the only candidates remaining in the

count, then, despite subsection (6), the candidate whose name is recorded under subsection (9)(g) is elected.

- (9) The returning officer must, in the presence of 2 witnesses—
- (a) prepare a list of the candidates; and
 - (b) assign a different number or colour to each candidate; and
 - (c) place only the marbles, balls or other similar things (*marbles*), complying with subsection (10), in an opaque container large enough to allow the marbles in it to move about freely when it is rotated; and
 - (d) rotate the container and permit another person present who wishes to do so to rotate it; and
 - (e) raise the container so that its contents can not be seen; and
 - (f) while the container is raised, take 1 of the marbles out of it or allow 1 of the marbles to come out of it; and
 - (g) record the name of the candidate assigned the numbered or coloured marble that, under paragraph (f), is taken or allowed to come out of the container.
- (10) For subsection (9)(c), the marbles must be—
- (a) the same size and weight; and
 - (b) the same colours or numbers as the colours or numbers assigned under subsection (9)(b) to the candidates.
- (11) The returning officer must allow each of the 2 candidates, or their representative, to be present for the process mentioned in subsection (9).
- (12) In this section—
- absolute majority* means more than 50% of votes.

98 Counting of votes for first-past-the-post system

- (1) This section applies for counting votes in an election in which the system of voting is first-past-the-post voting.

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- (2) If only 1 person is to be elected (as mayor or another councillor), the candidate who receives the majority of votes is elected.
- (3) If subsection (2) can not be applied because 2 or more candidates have an equal number of votes, the candidate whose name is recorded under subsection (7)(g) is elected.
- (4) If 2 or more persons are to be elected (as councillors)—the candidates elected are—
 - (a) the candidate who receives the majority of votes; and
 - (b) the candidates who receive the next highest number of votes, up to the number of persons to be elected.
- (5) If—
 - (a) subsection (4) can not be applied because 2 or more candidates (the *tied candidates*) have an equal number of votes; and
 - (b) the number of tied candidates, together with any candidates already elected under subsection (4), is more than the number of persons to be elected;the candidate whose name is recorded under subsection (7)(g) is elected.
- (6) To remove any doubt, it is declared that, if—
 - (a) subsection (4) can not be applied there are tied candidates; and
 - (b) the number of tied candidates, together with any candidates already elected under subsection (4), is not more than the number of persons to be elected;the tied candidates are elected.

Example for subsection (6)—

If three persons remain to be elected and the 2 candidates with the highest number of votes have an equal number of votes, the candidates are elected and then only 1 person would remain to be elected.

- (7) The returning officer must, in the presence of 2 witnesses—
 - (a) prepare a list of the candidates; and

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- (b) assign a different number or colour to each candidate; and
 - (c) place only the marbles, balls or other similar things (*marbles*), complying with subsection (8), in an opaque container large enough to allow the marbles in it to move about freely when it is rotated; and
 - (d) rotate the container and permit another person present who wishes to do so to rotate it; and
 - (e) raise the container so that its contents can not be seen; and
 - (f) while the container is raised, take 1 of the marbles out of it or allow 1 of the marbles to come out of it; and
 - (g) record the name of the candidate assigned the numbered or coloured marble that, under paragraph (f), is taken or allowed to come out of the container.
- (8) For subsection (7)(c), the marbles must be—
- (a) the same size and weight; and
 - (b) the same colours or numbers as the colours or numbers assigned under subsection (7)(b) to the candidates.
- (9) The returning officer must allow each of the candidates, or their representative, to be present for the process mentioned in subsection (7).

99 Returning officer's duty after counting votes

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

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- (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.

Division 8 Notifying the results of local government elections etc.

100 Notifying the results of an election

- (1) As soon as practicable after the result of a poll for an election is known, the electoral commission 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 electoral commission must—
 - (a) ensure the notice is displayed in a conspicuous place in the office of the returning officer; 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 ensure the notice is published on the website of the local government for which the election was held.
- (4) The electoral commission 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.

101 Notice of results of poll to candidates

The electoral commission 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.

102 Storage and disposal of material resulting from election

- (1) As soon as practicable after the electoral commission gives notice of the final result of a poll for an election under section 101, the returning officer for the election must—
 - (a) destroy all unused ballot papers; and
 - (b) seal up in packets all other parcels sealed up under section 99; and
 - (c) endorse the following on each packet and sign the endorsement—
 - (i) a description of its contents;
 - (ii) the name of the local government area, or division of a local government area, for which the election was held;
 - (iii) the polling day; and
 - (d) give each packet to the electoral commission.
- (2) The electoral commission must keep the packets in safe custody until the next quadrennial election.
- (3) At the end of the period under subsection (2), the electoral commission must—
 - (a) destroy all ballot papers contained in the packets; and
 - (b) dispose of the other contents of the packets in the way the commission considers appropriate.

103 Notice to electors whose ballot papers are not accepted

- (1) This section applies if—

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- (a) in an election, a person casts a vote in the election and completes a declaration envelope for the vote; and
 - (b) the person's ballot paper is not accepted for counting under section 91 because the returning officer is not satisfied that the declarant on the declaration envelope is entitled to cast a vote in the election.
- (2) As soon as practicable after the election, the electoral commission must send a notice in the approved form to the person advising the person why the ballot paper was not accepted for counting.

104 Notice to electoral commission of error in electoral roll

As soon as practicable after an 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*.

Part 5 Fresh elections

105 Arrangements for fresh election

- (1) This section applies if—
- (a) under the *Local Government Act 2009*, section 123(3) a regulation directs that a fresh election of councillors of a local government be held; or

Note—

The direction under the *Local Government Act 2009*, section 123(3) may be given only after the ratification of the dissolution of the local government by the Legislative Assembly.

- (b) a regulation directs that a fresh election of councillors of a local government, or a division of a local government,

be held to implement a local government change under the *Local Government Act 2009*, chapter 2, part 3.

- (2) The day on which a fresh election is to be held must be a Saturday.
- (3) The provisions of part 4 apply, with all necessary changes and any changes prescribed by regulation, to the fresh election as if the election were a quadrennial election.

Part 6 Electoral funding and financial disclosure

Division 1 Preliminary

106 Definitions for pt 6

In this part—

candidate's disclosure period means the disclosure period applying to the candidate under division 2, subdivision 1.

gift see section 107(1) and (2).

gifts register see section 128(1).

group's disclosure period means the disclosure period for the group of candidates under section 116.

person acting on behalf of a candidate see section 111(1).

person acting on behalf of a group of candidates see section 111(2).

political activity means any of the following—

- (a) publication by any means (including radio or television) of election material;
- (b) public expression of views on an issue in an election;
- (c) a gift to a political party;

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- (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).

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, see section 109.

third party see section 123.

value, of a gift, see section 108.

107 Meaning of *gifts*

- (1) A *gift* is—
 - (a) the disposition of property or the provision of a service, without consideration or for a consideration that is less than the market value, but does not include—
 - (i) transmission of property under a will; or
 - (ii) provision of a service by volunteer labour; or
 - (b) payment for attendance at or participation in a fundraising activity.
- (2) However, the disposition of property or provision of a service to a candidate is not a gift if it is made in a private capacity, for the candidate's personal use, and the candidate does not use, and does not intend to use, it solely or substantially for a purpose related to any election.
- (3) In this section—

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including, for example—

- (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 the value of someone else's property.

108 Meaning of *value* of gifts

The *value*, of a gift, is—

- (a) if the gift is money—the amount of 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 decided—the value decided 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 decided—the amount decided under the principles; and
- (d) if the gift is a payment for attendance at, or participation in, a fundraising activity—the gross amount of the

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payment, regardless of the value of anything received in consideration for the payment.

109 Meaning of *relevant details* for gifts

The *relevant details*, for a gift, are 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 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; and
 - (iii) if the gift is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the gift—the name and residential or business address of the person; or
- (c) for a gift not mentioned in paragraph (a) or (b)—the name and residential or business address of the person who gave the gift.

110 References to candidates

A person who is a candidate in an election is taken, for this part, to remain a candidate for the entire period of the candidate's disclosure period for the election.

111 Agents and campaign committees

- (1) A *person acting on behalf of a candidate* includes a committee formed to help the candidate's election campaign in an election but does not include a committee that is recognised by a political party as forming part of the political party.
- (2) A *person acting on behalf of a group of candidates* includes a committee formed to help the election campaign of members of the group in an election.

112 Related corporations

For this part—

- (a) a body corporate and any other body corporate related to it are taken to be the 1 body corporate; and
- (b) whether a body corporate is related to another body corporate must be decided in the same way a body corporate is decided to be related to another body corporate under the Corporations Act.

Division 2 Disclosure periods

Subdivision 1 Disclosure period for candidates

113 Disclosure period for candidates who are councillors

- (1) This section applies to a candidate for an election if the candidate is a councillor of a local government when nominating as a candidate for the election.
- (2) The candidate's disclosure period for the election—
 - (a) starts the day the candidate was most recently elected or appointed a councillor; and
 - (b) ends 30 days after the conclusion of the election.

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Example—

If the conclusion of the election was 31 March, the disclosure period ends at the end of 30 April.

114 Disclosure period for candidates who were previously candidates in a local government election

- (1) This section applies to a candidate for an election (the *current election*) if, within 5 years before the polling day for the current election, the candidate was a candidate for another election (a *previous election*).
- (2) However, this section does not apply to the candidate if section 113 applies to the candidate.
- (3) The candidate's disclosure period for the current election—
 - (a) starts 30 days after the conclusion of the most recently held election for which the candidate was also a candidate; and

Example—

If the conclusion of the most recently held election was 15 March, the disclosure period would start at the beginning of 15 April.

- (b) ends 30 days after the conclusion of the current election.

Example—

If the conclusion of the current election was 31 March, the disclosure period ends at the end of 30 April.

115 Disclosure period for new candidates

- (1) This section applies to a candidate for an election if section 113 or 114 does not apply to the candidate.
- (2) The candidate's disclosure period for the election—
 - (a) starts the day the first of the following happens or, if they happen at the same time, when they happen—
 - (i) the person announces the person is to be a candidate in the election;

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- (ii) the person nominates as a candidate in the election;
and
 - (b) ends 30 days after the conclusion of the election.

Example—

If the conclusion of the election was 31 March, the disclosure period ends at the end of 30 April.

Subdivision 2 Disclosure period for groups of candidates

116 Disclosure period for groups of candidates

The disclosure period, for an election (the *current election*), for a group of candidates is the period—

- (a) starting 30 days after the conclusion of the most recent quadrennial elections to have been held before the current election; and

Example—

If the conclusion of the most recently held quadrennial election was 15 March, the disclosure period would start at the beginning of 15 April.

- (b) ending 30 days after the conclusion of the current election.

Example—

If the conclusion of the election was 31 March, the disclosure period ends at the end of 30 April.

Division 3 Disclosure by candidates

117 Gifts to candidates

- (1) A candidate for an election, other than a candidate who is a member of a group of candidates for the election, must, within 15 weeks after the conclusion of the election, give the electoral commission a return about gifts.

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- (2) The return under subsection (1) must be in the approved form and state—
 - (a) whether the candidate, or a person acting on behalf of the candidate, received any gifts during the candidate's disclosure period for the election; and
 - (b) if so—
 - (i) the total value of all 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 candidate's disclosure period is \$200 or more.
- (3) A candidate need not comply with subsection (1) if—
 - (a) the candidate—
 - (i) gives a return, in the approved form, to the electoral commission before making the declaration of office under the *Local Government Act 2009*, section 169 and the return states the candidate—
 - (A) does not expect to receive gifts in the candidate's disclosure period for the election after giving the return; and
 - (B) will give a return under this section if gifts are received during the candidate's disclosure period for the election after giving the return; and
 - (ii) does not receive gifts during the candidate's disclosure period for the election after giving the return; or
 - (b) the candidate is a member of a group of candidates to which section 118 applies and the group's agent has complied with that section.
- (4) If the electoral commission receives a return under subsection (1) from a candidate who is successful in an election, the

electoral commission must give a copy of the return to the chief executive officer of the local government for which the election was held.

118 Gifts to groups of candidates

- (1) This section applies if a member of a group of candidates, or a person acting on behalf of the group, receives a gift for the election during the group's disclosure period for the election.
- (2) The group's agent must, within 15 weeks after the conclusion of the election, give the electoral commission a return about the gifts.
- (3) The return under subsection (2) must be in the approved form and state—
 - (a) the names of the candidates forming the group; and
 - (b) the name, if any, of the group; and
 - (c) the total value of all of the gifts made to members of the group; and
 - (d) how many persons made the gifts; and
 - (e) the relevant details for each gift made by a person to the group if the total value of all gifts made by the person to the group during the group's disclosure period is \$200 or more.
- (4) The agent need not comply with subsection (2) if—
 - (a) each candidate who is a member of the group gives a return, in the approved form, to the electoral commission before making the declaration of office under the *Local Government Act 2009*, section 169 and the return states—
 - (i) the candidate does not expect the group to receive further gifts during the group's disclosure period for the election after giving the return; and
 - (ii) the group's agent will give a return under this section if further gifts are received during the

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group's disclosure period for the election after giving the return; and

- (b) the group does not receive further gifts during the group's disclosure period for the election after giving the return.
- (5) If the electoral commission receives a return under subsection (2) from the agent of a group of candidates, any of whom are successful in an election, the electoral commission must give a copy of the return to the chief executive officer of the local government for which the election was held.

119 Particular gifts not to be received

- (1) A candidate for an election, or a person acting on behalf of the candidate, must not, during the candidate's disclosure period for the election, receive a prescribed gift made to, or for the benefit of, the candidate 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 entity giving 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 correct relevant details for the gift.
- (2) A group of candidates for an election, or a person acting on behalf of the group, must not, during the group's disclosure period for the election, receive a prescribed gift made to, or for the benefit of, the group of candidates unless—
- (a) the relevant details for the gift are known to the group or person receiving the gift; or
 - (b) when the gift is made—
 - (i) the entity making the gift gives the group or person receiving the gift details of the gift; and

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- (ii) the group or person receiving the gift has no reasonable grounds to believe that the details given are not the correct relevant details for the gift.
- (3) If a person or group receives a gift in contravention of this section, an amount equal to the value of the gift—
 - (a) is payable by the person or group to the State; and
 - (b) may be recovered by the State as a debt owing to the local government.
 - (4) For this section, 2 or more gifts made by the same person to, or for the benefit of, a candidate or group of candidates, are taken to be 1 gift.
 - (5) In this section—
prescribed gift means a gift with a value of at least \$200.

120 Loans to candidates or groups of candidates

- (1) A candidate must, within 15 weeks after the conclusion of an election, give the electoral commission a return about all loans received by the candidate from a person, other than a financial institution, during the candidate's disclosure period for the election.
- (2) The agent for a group of candidates must, within 15 weeks after the conclusion of an election, give the electoral commission a return about all loans received by the group from a person, other than a financial institution, during the group's disclosure period for the election.
- (3) A return under subsection (1) or (2) must be in the approved form and state—
 - (a) the total value of the loans; and
 - (b) the number of persons who made the loans.
- (4) Also, the return must state the following for each loan with a value of \$200 or more—
 - (a) the date on which the loan was made;

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- (b) for a loan from 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;
- (c) for a loan purportedly made out of a trust fund or out of the funds 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; and
 - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the lender—the name and residential or business address of the person;
- (d) if neither paragraph (b) nor (c) apply to the loan—the name and residential or business address of the person who made the loan;
- (e) the terms of the loan.

121 Particular loans not to be received

- (1) A candidate for an election, or person acting on behalf of the candidate, must not receive a loan of \$200 or more from a person, other than a financial institution, during the candidate's disclosure period for the election unless the candidate or person keeps a record of the loan.
- (2) A group of candidates for an election, or person acting on behalf of the group of candidates, must not receive a loan of \$200 or more from a person, other than a financial institution, during the group's disclosure period for the election unless the group or person keeps a record of the loan.

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- (3) The record under subsection (1) or (2) must state the following—
- (a) the terms of the loan;
 - (b) if the loan was received from a registered industrial organisation other than a financial institution—
 - (i) the name of the organisation; and
 - (ii) the names and addresses of the members of the executive committee, however described, of the organisation;
 - (c) if the loan was received from an unincorporated association—
 - (i) the name of the association; 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;
 - (d) if the loan was paid out of a trust fund or out of the funds 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; and
 - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the lender—the name and residential or business address of the lender;
 - (e) if none of paragraphs (b), (c) and (d) applies—the name and residential or business address of the person.
- (4) If a candidate, group or person receives a loan in contravention of subsection (1) or (2), an amount equal to the amount or value of the loan—

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- (a) is payable by the candidate, group or person to the State; and
- (b) may be recovered by the State from the candidate, group or person as a debt.

122 Electoral commission to give reminder notice to candidates

- (1) The electoral commission must, within 10 weeks after the conclusion of an election, give written notice to a candidate or agent for a group of candidates if—
 - (a) the candidate has not given the return the candidate is required, under section 117(1), to give the electoral commission for the election; or
 - (b) the agent has not given the return the agent is required, under section 118(1), to give the electoral commission for the election.
- (2) The notice must state—
 - (a) the candidate is required to give the return within 15 weeks 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—
 - the *Local Government Act 2009*, section 153 and the *City of Brisbane Act 2010*, section 153
 - section 40(2)
 - section 117
 - section 118
 - section 120
 - section 195
 - section 197.
- (3) To remove any doubt, it is declared that—

- (a) this section does not apply because of subsection (1)(a) if, under section 117(3), the candidate is not required to give the return.
- (b) this section does not apply because of subsection (1)(b) if, under section 118(3), the agent is not required to give the return.

Division 4 Disclosure by third parties

123 Definition for div 4

In this division—

third party, for an election, means any entity other than—

- (a) a political party, an associated entity or a candidate; or
- (b) persons appointed to form a committee to help the election campaign of a candidate who has been nominated for election by the registered officer of a registered political party, if the committee is recognised by the political party as forming part of the political party; or
- (c) a person who is a member of a committee for the election of a candidate or members of a group of candidates for the election.

124 Third party expenditure for political activity

- (1) This section applies to a third party for an election if—
 - (a) the third party incurs expenditure for a political activity relating to the election during the disclosure period for the election; and
 - (b) the total amount of all the third party's expenditure for the political activities during the disclosure period is \$200 or more.

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- (2) The third party must, within 15 weeks after the conclusion of the election, give the electoral commission a return about the expenditure.
- (3) The return under subsection (2) must be in the approved form and state the following details about the expenditure—
 - (a) the total value of the expenditure;
 - (b) when the expenditure was incurred;
 - (c) the particular purpose of the expenditure.
- (4) For subsection (1), a third party that incurs expenditure for a political activity relating to 2 or more elections is taken to have incurred expenditure for a political activity relating to each election.
- (5) In this section—

disclosure period, for an election, means the period—

 - (a) starting on the day after the day the returning officer publishes notice of the election in a newspaper under section 25; and
 - (b) ending at 6p.m. on the polling day for the election.

125 Gifts received by third parties to enable expenditure for political activity

- (1) This section applies—
 - (a) to a gift—
 - (i) intended by the person who gives it to be used by the person who receives it (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
 - (ii) the value of which is \$1000 or more; and
 - (b) if a third party for an election—

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- (i) receives the gift during the disclosure period for the election; and
 - (ii) applies the gift, either wholly or in part, to a political activity relating to the election.
 - (2) The third party who receives the gift must, within 15 weeks after the conclusion of the election, give the electoral commission a return about the gift.
 - (3) The return under subsection (2) must be in the approved form and state the relevant details for all gifts received by the third party during the disclosure period for the election.
 - (4) For subsection (1)(a)(ii), 2 or more gifts made to a third party, during the disclosure period for an election, by the same person are taken to be 1 gift.
 - (5) In this section—

disclosure period, for an election (the *current election*), means the period—

- (a) starting 30 days after the polling day for the most recent quadrennial elections to have been held before the current election; and

Example—

If the polling day for the most recently held quadrennial election was 15 March, the disclosure period would start at the beginning of 15 April.

- (b) ending 30 days after the polling day for the current election.

Example—

If the polling day for the election was 31 March, the disclosure period would end at the end of 30 April.

Division 5 Operation of accounts

126 Requirement for candidate to operate dedicated account

- (1) This section applies to a candidate for an election.

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- (2) The candidate must operate an account with a financial institution if the candidate receives an amount mentioned in subsection (3) or pays an amount mentioned in subsection (4).
- (3) All amounts received by the candidate, or a person on behalf of the candidate, during the candidate's disclosure period for the election for the conduct of the candidate's election campaign, including all gifts received by the candidate for the election, and all amounts received as loans to the candidate, must be placed in the account.
- (4) All amounts paid by the candidate, or a person on behalf of the candidate, during the candidate's disclosure period for the election for the conduct of the candidate's election campaign must be paid out of the account.
- (5) The account must not be used other than for receiving and paying amounts under subsections (3) and (4).
- (6) The candidate must take all reasonable steps to ensure the requirements of subsections (2) to (5) are complied with.
Maximum penalty for subsection (6)—100 penalty units.
- (7) Amounts mentioned in subsections (3) and (4) do not include amounts received or paid out by a group of candidates for the election of which the candidate is a member.

127 Requirement for group of candidates to operate dedicated account

- (1) This section applies if a candidate is a member of a group of candidates for an election.
- (2) The group must operate an account with a financial institution if the group receives an amount mentioned in subsection (3) or pays an amount mentioned in subsection (4).
- (3) All amounts received by the group, or a person on behalf of the group, during the group's disclosure period for the election for the conduct of the group's election campaign, including all gifts received by the group for the election, and all amounts received as loans to the group, must be placed in the account.

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- (4) All amounts paid by the group, or a person on behalf of the group, during the group's disclosure period for the election for the conduct of the group's election campaign must be paid out of the account.
 - (5) The account must not be used other than for receiving and paying amounts under subsections (3) and (4).
 - (6) Each candidate who is a member of the group must take all reasonable steps to ensure the requirements of subsections (2) to (5) are complied with.

Maximum penalty for subsection (6)—100 penalty units.

Division 6 Gifts register

128 Register of gifts

- (1) The electoral commission must keep a register of gifts for an election (the *gifts register*).
- (2) The gifts register must include the following—
 - (a) all returns given to the electoral commission under this part;
 - (b) applications made to the electoral commission under section 132;
 - (c) copies of information given by the electoral commission under section 130(2);
 - (d) statutory declarations given to the electoral commission under section 130(5);
 - (e) copies of notices given by the electoral commission under section 131(2);
 - (f) particulars given to the electoral commission after a request made under section 131(2);
 - (g) notices given to the electoral commission under section 198(2).

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129 Access to gifts register

- (1) The electoral commission must ensure that the public may inspect the gifts register—
 - (a) at the commission’s public office; and
 - (b) on the commission’s website.
- (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.

130 Queries on contents of gifts register

- (1) A person who suspects or believes, on reasonable grounds, that a return given to the electoral commission under this part has an error or omission may, in writing, inform the electoral commission of the suspicion or belief.
- (2) The electoral commission must immediately, after being informed under subsection (1), take reasonable steps to inform, in writing, the person who gave the return about the suspicion or belief.
- (3) The person who gave the return must, within 30 days after being informed under subsection (2), 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, under section 132, to the electoral commission to amend the return to correct the error or omission.
- (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 electoral commission.

Division 7 Miscellaneous

131 Statement about returns

- (1) A person who gives a return under this part must state on the return whether it is complete as required by this part 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.
- (2) If a return under this part contains a statement mentioned in subsection (1)(c), the electoral commission must give a written notice to the person named in the statement asking the person to give the returning officer the particulars the person knows.

132 Amendment of returns

- (1) A person who has given a return under this part to the electoral commission may at any time apply to the electoral commission to amend the return to correct an error or omission.
- (2) The application under subsection (1) must—
 - (a) be signed by the applicant; and
 - (b) state the particulars of the amendment.
- (3) The electoral commission must—
 - (a) allow the applicant to amend the return as stated in the application; and

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- (b) record in the gifts register particulars of the date and time of the 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 195(2) committed before the amendment.

133 Things taken to be done by political party

- (1) This section applies to a political party that is not a body corporate.
- (2) For this part, things done by or with the authority of members or officers of the party on behalf of the party are done by or for the political party.

134 Noncompliance with part does not affect election

- (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), 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.

Note—

A conviction of an offence under this part may disqualify a person from being a councillor. See the *Local Government Act 2009*, section 153(3) and the *City of Brisbane Act 2010*, section 153(3).

Part 7 **Disputed results**

Division 1 **Disputing local government elections**

135 **Definitions for div 1**

In this division—

applicant means a person who files an application.

application means an application about disputing an election under section 138.

136 **Local government election may be disputed under this part**

- (1) The election of a person under this Act may be disputed by an application to the Court of Disputed Returns under this part.
- (2) The election may not be disputed in any other way.

137 **Who may dispute an election**

An election may be disputed by—

- (a) a candidate in the division, if any, of the local government for which the election is held; or
- (b) an elector in the division, if any, of the local government for which the election is held; or
- (c) the electoral commission; or
- (d) a person who the returning officer decided, under section 28, was not properly nominated for the election.

138 **Requirements for an application to be effective**

- (1) An application must—
 - (a) state the facts relied on to dispute the election; and

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- (b) state the order sought from the court; and
 - (c) be signed by—
 - (i) for an application by the electoral commission—the electoral commissioner; or
 - (ii) otherwise—the applicant before a witness; and
 - (d) if paragraph (c)(ii) applies—contain the signature, occupation and address of the witness.
- (2) The applicant must—
- (a) file the application with the Supreme Court registry in Brisbane within 7 days after the conclusion of the election to which the application relates; and
 - (b) when filing the application, deposit \$400 with the court.
- (3) Subsection (1) does not stop the amendment of an application.

139 Copies of application to be given to elected candidate and electoral commission

The registrar of the Supreme Court must give a copy of an application filed under section 138(2) to—

- (a) the successful candidate in the election to which the application relates; and
- (b) the electoral commission, unless the electoral commission filed the application.

140 Application to court for order relating to documents etc.

- (1) An applicant may apply to the Court of Disputed Returns for an order requiring the electoral commission or a returning officer to give the court stated documents or other things held by the electoral commission or a returning officer that relate to an election.
- (2) The court may make the order about an application it considers appropriate.

141 Parties to application

- (1) The parties to an application are the person who filed it and any respondent under this section.
- (2) The electoral commission is a respondent to any application filed by another person under this division.
- (3) The successful candidate in an election to which an application relates is a party to the application if the candidate, within 7 days after receiving a copy of the application under section 139, files a notice with the Supreme Court registry in Brisbane stating that the candidate wishes to be a respondent.

142 How application is to be dealt with by the court

- (1) The Court of Disputed Returns may conduct hearings and other proceedings for an application.
- (2) The court is not bound by technicalities, legal forms or rules of evidence.
- (3) The court must deal with an application as quickly as is reasonable in the circumstances.
- (4) In giving effect to subsection (3), the court must use its best efforts to ensure that—
 - (a) the proceeding begins within 28 days after the application is filed; and
 - (b) the court's final orders are given within 14 days after the end of the proceeding.
- (5) Despite subsections (3) and (4), the court must give all parties to the proceeding at least 10 days notice before it begins the proceeding.
- (6) The rules of court of the Supreme Court may include provision, not inconsistent with this division, about the practices and procedures of the Court of Disputed Returns.
- (7) Without limiting subsection (6), the rules of court may make provision about the withdrawal of applications, the

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consequences of the death of applicants and the substitution of applicants in these circumstances.

143 Application for dismissal of application disputing election

- (1) The electoral commission may apply to the Court of Disputed Returns for an order dismissing an application on the ground that there has been excessive delay by the applicant in relation to the application.
- (2) The court may make the order on the application under subsection (1) that the court considers appropriate.

144 Powers of the court

- (1) Subject to sections 145 and 146, the Court of Disputed Returns may make any order or exercise any power relating to an application that the court considers just and equitable.
- (2) The orders may include any of the following—
 - (a) an order to the effect that a candidate elected at an election is taken not to have been elected;
 - (b) an order to the effect that a new election must be held;
 - (c) an order to the effect that a candidate, other than the one elected at an election, is taken instead to have been elected;
 - (d) an order to dismiss or uphold an application in whole or part.
- (3) To remove doubt, it is declared that the court may order the opening of a sealed declaration envelope.
- (4) However, the court must ensure, as far as is reasonably practicable, the secrecy of a ballot is maintained.

145 Restrictions on particular orders

- (1) The Court of Disputed Returns must not make an order mentioned in section 144(2) because of a delay in—

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- (a) the announcement of nominations under section 32; or
 - (b) complying with the requirements of part 4, division 5, 6 or 7.
- (2) Also, the court must not make an order under section 144(2) (other than an order to dismiss the application)—
- (a) because of an absence or error of, or omission by, any member of the electoral commission's staff that appears unlikely to have had the effect that a candidate elected at an election would not have been elected; or
 - (b) because incorrect information an elector gives to an issuing officer is written on a declaration envelope the elector signed.
- (3) In deciding whether the requirements of subsection (2) are met, the court must not, if it finds that an elector was prevented from voting at an election by absence, error or omission, take into account any evidence of the way in which the elector had intended to vote.
- (4) The court must not make an order mentioned in section 144(2) because—
- (a) the names of candidates were not stated on a ballot paper in the order required by section 55(2); or
 - (b) a name or other word that was required by section 55(1)(f) to be printed on a ballot paper adjacent to a candidate's name was not so printed or was misspelt, inaccurate or incorrect; or
 - (c) a name or other word that was not authorised by section 55(1)(f) was printed on a ballot paper adjacent to a candidate's name.

146 Restriction on particular evidence and inquiries

- (1) In a proceeding for an application, the Court of Disputed Returns must not take into account evidence by any person that the person was not permitted to vote during voting hours for a polling booth, unless the court is satisfied that, so far as

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the person was permitted to do so, the person did everything required by this Act to enable the person to vote.

- (2) In a proceeding in relation to an application, the court—
 - (a) may inquire whether persons voting were enrolled on the voters roll for the local government or division of a local government area concerned and whether votes were correctly treated as formal or informal during the counting of votes; but
 - (b) must not inquire whether the voters roll, or any copy used at an election, was in accordance with this Act.

147 Copy of final court orders

The registrar of the Supreme Court must arrange for a copy of the Court of Disputed Returns's final orders to be sent to the Minister, the electoral commission and the local government to which the appeal relates as soon as practicable after they are made.

148 Costs

- (1) The Court of Disputed Returns may order an unsuccessful party to an application to pay the reasonable costs of the other parties to the application.
- (2) If costs are awarded against an applicant, the deposit filed with the application must be applied towards payment of the costs.
- (3) If not, the deposit must be returned to the applicant.

149 Decisions and orders to be final

A decision of, or order made by, the Court of Disputed Returns that relates to an application is not subject to appeal other than an appeal under division 3.

150 Right of electoral commission and returning officer to have access to documents

Unless the Court of Disputed Returns otherwise orders, the filing of an application does not deprive the electoral commission or a returning officer of any right to have access to a document for the purpose of performing the commission's or officer's functions.

Division 2 Appeals

151 Appeal to Court of Appeal on question of law

An appeal lies to the Court of Appeal from any decision of, or order made by, the Court of Disputed Returns only on a question of law.

152 Time for appealing

The notice of appeal starting the appeal must—

- (a) be filed within 7 days after the date of the decision or order appealed from; and
- (b) be served as soon as practicable on all other parties to the appeal.

153 Electoral commission is a party to appeal

The electoral commission is a party to the appeal, whether or not it is the appellant.

154 How appeal is dealt with by Court of Appeal

- (1) In deciding the appeal, the Court of Appeal—
 - (a) is not bound by technicalities, legal forms or rules of evidence; and

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- (b) may use the procedures, whether usual or otherwise, that it considers necessary to enable the appeal to be decided quickly and properly; and
 - (c) has all the powers given to it by the *Uniform Civil Procedure Rules 1999*.
- (2) The court must use its best efforts to ensure that the appeal is heard, and the court's final decision is made or order is given, as quickly as is reasonable in the circumstances.

155 Application for dismissal of appeal

- (1) A party, other than the appellant, may apply to the Court of Appeal for an order dismissing the appeal on the ground that there has been excessive delay by the appellant in relation to the appeal.
- (2) The court may make an order on the application it considers appropriate.

156 Copy of final court orders

The registrar of the Supreme Court must arrange for a copy of the Court of Appeal's final orders to be sent to the Minister, the electoral commission and the local government to which the appeal relates as soon as practicable after they are made.

157 Right of electoral commission and returning officer to have access to documents

Unless the Court of Appeal otherwise orders, the filing of the notice of appeal does not deprive the electoral commission or a returning officer of any right to have access to a document for the purpose of performing the commission's or officer's functions.

Part 8 Legal provisions

158 Decisions not subject to appeal

- (1) If a provision of this Act declares a decision to be not subject to appeal, the decision—
- (a) can not be appealed against, challenged, reviewed, quashed, set aside, or called into question in any way, including, for example, under the *Judicial Review Act 1991*; and
 - (b) is not subject to any writ or order of a court on any ground.

Examples—

- 1 A person may not bring any proceedings for an injunction to stop conduct that is authorised by the decision.
- 2 A person may not bring any proceedings for a declaration about the validity of conduct that is authorised by the decision.

(2) Subsection (1) does not limit section 149.

(3) In this section—

court includes a tribunal or another similar entity.

decision includes—

- (a) conduct related to making the decision; and
- (b) a failure to make a decision.

159 Postal vote presumed valid until contrary proved

If a declaration envelope and ballot paper to which section 72 applies is received by a returning officer by post, it must be presumed that section 72(3) to (5) has been complied with in relation to the declaration on the envelope until the contrary is proved.

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160 Evidentiary value of list under s 164

In a proceeding, a document purporting to be a list, or a copy of or extract from a list, made under section 164, and certified by the returning officer who made the list is evidence of the matters contained in the document.

161 Ballot papers as evidence

In a proceeding, a ballot paper apparently used at an election and identified by evidence as 1 of the ballot papers held by the electoral commission under section 102 is evidence of the vote or votes cast in the election as recorded on the ballot paper.

162 Allegations of false or misleading information or document

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state the information or document was, without specifying which, ‘false or misleading’.

163 Evidentiary provisions

In a proceeding for an offence against this Act, a certificate purporting to be signed by a member of the electoral commission 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 Act or the *Electoral Act 1992*, or a copy of it;
- (b) on a stated day, a stated person was given a stated notice, under this Act.

Part 9 Enforcement

Division 1 Failure to vote

164 List of electors failing to vote

- (1) The returning officer for an election must make a list of the names and addresses, and the numbers shown on the voters roll, of all—
 - (a) electors who have not been given ballot papers for the election; and
 - (b) postal voters who have not given their ballot papers to the returning officer.
- (2) The returning officer must certify the list by declaration in the approved form and give the certified list to the electoral commission.
- (3) The list is to be held by the electoral commission.

165 Notice about failure to vote

- (1) As soon as practicable after the conclusion of an election the electoral commission must—
 - (a) send a notice to each elector shown on the list made under section 164; and
 - (b) record on the list, against the elector's name, the fact that the notice has been given.
- (2) The notice under subsection (1)(a) must—
 - (a) be sent to the elector's address shown on the list; and
 - (b) show the elector's full name and address and number on the voters roll; and
 - (c) state that—
 - (i) the elector appears to have failed to vote at the election; and

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- (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 electoral commission by a stated day (the *appropriate day*) and, if the electoral commission receives the payment by the appropriate day, no further steps will be taken against the elector about the offence; and
- (d) 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 electoral commission 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 electoral commission so it is received by the appropriate day.

Note—

The elector must comply with the requirements of the notice. See section 168(1)(b).

- (3) 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.

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- (4) The appropriate day decided by the electoral commission must be at least 21 days after an elector receives a notice under subsection (1)(a).

166 Payments for failure to vote

- (1) If the electoral commission sends a person a notice under section 165 for an election and the person makes the payment mentioned in section 165(2)(c)(iii) to the electoral commission, the electoral commission 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 under the *State Penalties Enforcement Act 1999*.

167 Recording response to notice

The electoral commission must record against the name of an elector who is given a notice under section 165 on the list made under section 164 whether the elector—

- (a) has complied with the requirements of the notice under section 165(2)(d); and
- (b) had a valid and sufficient reason for failing to vote at the election.

168 Failure to vote

- (1) An elector for an election must not—
- (a) fail to vote at the election without valid and sufficient reason; or
 - (b) fail to comply with the requirements of a notice given to the elector under section 165; or

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- (c) when complying with the requirements of the notice, 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.

Division 2 Corrupt and improper practices affecting local government elections

169 False or misleading information

- (1) A person must not give information under this Act to a returning officer or the electoral commission, including information in a document, that the person knows is false or misleading in a material particular.

Maximum penalty—1 year imprisonment.

- (2) Subsection (1) does not apply to—
 - (a) a person giving a document if, when giving the document, the person—
 - (i) informs the returning officer or electoral commission, to the best of the person's ability, how it is false or misleading; and
 - (ii) if the person has, or can reasonably obtain, the correct information—gives the returning officer or electoral commission the correct information; or
 - (b) a return required to be given to the electoral commission under part 6.

170 Bribery

- (1) A person must not—

- (a) ask for or receive; or
- (b) offer, or agree, to ask for or receive;
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.

Maximum penalty—7 years imprisonment.

- (2) A person must not, in order to influence or affect another person's election conduct, give, or promise or offer to give, a benefit of any kind to anyone.

Maximum penalty—7 years imprisonment.

- (3) 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.

171 Assisting illegal payments

A person must not knowingly give an amount for—

- (a) a benefit to which section 170(1) or (2) applies; or
- (b) the purpose of replacing any amount that has been spent to give a benefit mentioned in paragraph (a).

Maximum penalty—2 years imprisonment.

172 Improperly influencing electoral officers

A person must not improperly influence an electoral officer in the performance of the officer's functions under this Act.

Maximum penalty—35 penalty units or 1 year's imprisonment.

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173 Obstructing electors

A person must not obstruct the free exercise or performance, by an elector, of a right or responsibility under this Act that relates to an election.

Maximum penalty—20 penalty units or 6 months imprisonment.

174 Obstructing electoral officers etc.

A person must not—

- (a) wilfully obstruct or disturb any proceeding at an election; or
- (b) prevent a scrutineer from entering or leaving a polling booth—
 - (i) during voting hours for the polling booth; or
 - (ii) while votes are being counted at the polling booth; or
- (c) obstruct, intimidate or wilfully mislead an electoral officer in the performance of a function under this Act.

Maximum penalty—10 penalty units.

175 Forged electoral papers

- (1) A person must not—
 - (a) forge an electoral paper; or
 - (b) use a forged electoral paper knowing it to be forged.Maximum penalty—10 years imprisonment.
- (2) A person must not make someone else's signature on an electoral paper.

Maximum penalty—10 years imprisonment.

176 Wilful neglect etc. of electoral officers

An electoral officer must not wilfully neglect or fail to perform the officer's functions under this Act.

Maximum penalty—20 penalty units.

Division 3 Offences relating to electoral advertising

177 Author of election material must be named

(1) A person must not, during the election period for an election—

- (a) print, publish, distribute or broadcast; or
- (b) allow or authorise another person to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing election material unless there appears, or is stated, at its end the advertisement authorisation.

Maximum penalty—

- (a) for an individual—20 penalty units; or
- (b) for a corporation—85 penalty units.

(2) 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.

(3) Also, subsection (1) does not apply to distributing, or allowing or authorising another person to distribute, a how-to-vote card.

(4) In this section—

advertisement authorisation, of an advertisement, handbill, pamphlet or notice, means the name and address, other than a

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post office box, of the person who authorised the advertisement, handbill, pamphlet or notice.

178 Distribution of how-to-vote cards

- (1) During the election period for an election, a person must not distribute, or allow or authorise another person to distribute, a how-to-vote card that does not comply with subsections (2) to (5).

Maximum penalty—

- (a) for an individual—20 penalty units; or
- (b) for a corporation—85 penalty units.
- (2) A how-to-vote card must state the name and address of the person who authorised the card.
- (3) A how-to-vote card must also state—
- (a) if the card is authorised for a political party or a candidate endorsed by a political party—the party's name; or

Example for paragraph (a)—

'Authorised P. Smith, 123 Main Street Brisbane for [*name of political party*]'

- (b) if paragraph (a) does not apply and the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates—the group's name; or

Example for paragraph (b)—

'Authorised M. Taylor, 99 King Street Port Douglas for [*name of group*]'

- (c) otherwise—the candidate's name and the word 'candidate'.

Example for paragraph (c)—

'Authorised R. Jones, 88 Queen Street Brisbane for R. Jones (candidate)'

- (4) For subsection (2)—

-
- (a) the address must not be a post office box; and
 - (b) if the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates, the authorising person must be a member of the group.
- (5) The particulars mentioned in subsections (2) and (3) must appear—
- (a) at the end of each side of the how-to-vote card that contains print; and
 - (b) in prominent and legible characters in print no smaller than—
 - (i) if the card is not larger than A6—10 point; or
 - (ii) if the card is larger than A6 but not larger than A3—14 point; or
 - (iii) if the card is larger than A3—20 point.
- (6) During the election period for an election, a person must not distribute, or allow or authorise another person to distribute, a how-to-vote card if the person knows, or ought reasonably to know, that the particulars, or any of the particulars, mentioned in subsections (2) and (3) on the card are false.

Maximum penalty—

- (a) for an individual—20 penalty units; or
- (b) for a corporation—85 penalty units.

179 Giving of how-to-vote cards to returning officer

- (1) The person who authorised a how-to-vote card for a political party, or for a candidate endorsed by a political party, for an election must, no later than 5p.m. on the Friday that is at least 7 days before the polling day for the election, give the returning officer for the election—
- (a) the required number of the how-to-vote cards; and
 - (b) a statutory declaration relating to any financial contribution received from another political party or another candidate, whether directly or from someone

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else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—

- (i) who the financial contribution was received from or on behalf of; and
 - (ii) the nature and amount of the financial contribution.
- (2) The person who authorised a how-to-vote card for a candidate or a group of candidates for an election, other than a candidate or group of candidates endorsed by a political party for the election, must, by 5p.m. on the Friday that is at least 7 days before the polling day for the election, give the returning officer for the election—
- (a) the required number of the how-to-vote cards; and
 - (b) a statutory declaration relating to any financial contribution received from a political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—
 - (i) who the financial contribution was received from or on behalf of; and
 - (ii) the nature and amount of the financial contribution.

Example for subsections (1) and (2)—

If polling day is Saturday, 25 March, the how-to-vote cards and statutory declaration must be lodged by 5p.m. on Friday, 17 March.

- (3) The returning officer must reject a how-to-vote card received under subsection (1) or (2) that does not comply with section 178.
- (4) Before polling day, the returning officer must ensure an accepted how-to-vote card is available for public inspection at—
 - (a) the place of nomination under section 25; and
 - (b) if the place of nomination is not also the public office of the local government for which the election is to be held—the local government’s public office.

(5) On polling day, the returning officer must, to the extent practicable, make an accepted how-to-vote card available for public inspection at each polling booth for which the how-to-vote card is relevant.

(6) An election is not invalid only because the returning officer does not comply with subsection (4) or (5).

(7) In this section—

financial contribution means a contribution in the form of money, property or other valuable consideration.

required number, of how-to-vote cards, means 12 more than the number of polling booths within the local government's area at which the cards are to be distributed.

180 Unauthorised how-to-vote cards

(1) A person must not distribute or authorise someone else to distribute, a how-to-vote card to which section 179(1) or (2) applies on polling day for an election unless section 179(1) or (2) has been complied with for the card.

Maximum penalty—20 penalty units.

(2) If, on polling day for an election, an electoral officer reasonably suspects a person is distributing a how-to-vote card to which section 179(1) or (2) applies and that section 179(1) or (2) has not been complied with for the card, the electoral officer may—

- (a) require the person to produce the how-to-vote card for inspection; and
- (b) confiscate any how-to-vote cards that have not been given as required under section 179(1) or (2).

(3) A person must not obstruct an electoral officer in the exercise of the power under subsection (2)(b), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

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181 Headline to electoral advertisements

The proprietor of a newspaper must not print in the newspaper any article, or a paragraph, containing information that relates to an election or a matter debated in the election if—

- (a) 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
- (b) 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—

- (a) for an individual—10 penalty units; or
- (b) for a corporation—40 penalty units.

182 Misleading voters

- (1) During an election period for an election, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the ways of voting at the election.

Maximum penalty—40 penalty units.

- (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.

Maximum penalty—40 penalty units.

- (3) During an election period for an election, 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 cast an informal vote.

Maximum penalty—40 penalty units.

- (4) In this section—

publish includes publish on the internet, even if the internet site on which the publication is made is located outside Queensland.

183 Offence for group of candidates to advertise or fundraise if particular requirements not complied with

- (1) This section applies to a candidate for an election who is a member of a group of candidates.
- (2) The candidate must not, during the candidate's disclosure period for the election, advertise or fundraise for the election unless sections 41 and 42 have been complied with for the group of candidates.

Maximum penalty—100 penalty units.

- (3) The candidate must ensure that, during the candidate's disclosure period for the election, a person does not advertise or fundraise for the election on behalf of the group unless sections 41 and 42 have been complied with for the group of candidates.

Maximum penalty—100 penalty units.

- (4) For subsections (2) and (3), a person advertises for an election if—
- (a) the person prints, publishes, distributes or broadcasts, or permits or authorises someone else to print, publish, distribute or broadcast, any advertisement, handbill, pamphlet or notice containing election material; and
 - (b) the election material promotes the election of 1 or more of the members of the group.
- (5) For subsections (2) and (3), a person fundraises for an election if the person conducts an activity directed at collecting amounts to be used for promoting the election of 1 or more members of the group.

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Examples of fundraising activities—

conducting a social function at which persons are charged for admission, or conducting an auction or a raffle

- (6) It is a defence to a prosecution for an offence against subsection (3) for the candidate to prove—
- (a) the candidate exercised reasonable diligence to ensure no person acted in a way that would cause the candidate to contravene the subsection; or
 - (b) the candidate did not know, and could not reasonably have been expected to know, about the fundraising or advertising done on behalf of the group.
- (7) In this section—
candidate's disclosure period see section 116.

Division 4 Offences relating to voting

184 Leave to vote

- (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, up to 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.

Maximum penalty—

- (a) for an individual—10 penalty units; or
- (b) for a corporation—40 penalty units.

- (3) The employer must not impose any penalty or disproportionate deduction of pay for the leave of absence.

Maximum penalty—

- (a) for an individual—10 penalty units; or
- (b) for a corporation—40 penalty units.

- (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.

185 Canvassing in or near polling booths

- (1) Subsection (3) applies to a person, during an election period for an election, at a place that is—

- (a) inside a polling booth; or
- (b) within 6m, or a shorter distance approved under subsection (2), of an entrance to a building if—
 - (i) the building is, or is part of, a polling booth; and
 - (ii) a ballot box is in the building for use in the election or a person is in the building to cast a vote in the election.

- (2) The returning officer may approve a shorter distance for an early polling booth for the period in which a pre-poll vote may be cast in the election.

- (3) The person must not—

- (a) canvass for votes; or
- (b) induce an elector not to—
 - (i) vote in a particular way; or
 - (ii) vote at all in the election; or
- (c) loiter.

Maximum penalty—10 penalty units.

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- (4) If the returning officer approves a shorter distance under subsection (2), the returning officer must display a notice at the early polling booth stating the shorter distance and mentioning the offence under subsection (3).

186 Influencing voting by violence or intimidation

A person must not, by violence or intimidation, influence a person's vote at an election.

Maximum penalty—2 years imprisonment.

187 Party badges not to be worn in polling booths

A person must not wear or display any badge or emblem of a political party in a polling booth.

Maximum penalty—1 penalty unit.

188 Displaying political statements around polling booths

- (1) A person must not display a political statement—
- (a) inside a polling booth; or
 - (b) within 6m of the entrance to a building that is, or is part of, a polling booth.

Maximum penalty—1 penalty unit.

- (2) In this section—

political statement means a statement or design that a reasonable person would associate with a political organisation, cause or belief.

189 Voting if not entitled

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 another person is not entitled to vote at the election—procure the other person to vote.

Maximum penalty—3 years imprisonment.

190 Offences about ballot papers

- (1) A person must not—
 - (a) wilfully fail to comply with section 70, 71 or 72; or
 - (b) take a ballot paper out of a polling booth other than in compliance with this Act; or
 - (c) place in a ballot box a ballot paper that has not been—
 - (i) given to an elector under this Act; or
 - (ii) marked by the elector.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (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 envelope that has been signed by anyone else.

Maximum penalty—20 penalty units or 6 months imprisonment.

191 Failure to post, fax or deliver documents for someone else

- (1) If a person is given, for delivery or posting to the returning officer, an application by another person to be cast a postal vote, the person must promptly deliver or post it to the returning officer.

Maximum penalty—20 penalty units or 6 months imprisonment.

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- (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, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units or 6 months imprisonment.

192 Secrecy of voting

- (1) A person must not examine a ballot paper used in an election to find out the candidates for whom an elector has voted unless required by a court or authorised under this Act to do so.

Maximum penalty—20 penalty units or 6 months imprisonment.

- (2) If, in performing a function for an election, a person has found out 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 6 months imprisonment.

- (3) An electoral officer, or scrutineer, must not make a mark, memorandum or note on a voters roll or any 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.

193 Breaking seals on parcels

A person must not wilfully open or break the seal of a parcel or packet sealed under this Act 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 6 months imprisonment.

194 Duty of witness in signing declaration envelopes

A person (the *witness*) must not sign a declaration envelope as witness under section 72 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 6 months imprisonment.

Division 5 Offences relating to electoral funding and financial disclosure

195 Offences about returns

- (1) A person must give a return the person is required to give under a provision of part 6 within the time required by the provision.

Maximum penalty—20 penalty units.

- (2) A person must not give a return the person is required to give under part 6 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;

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(b) otherwise—50 penalty units.

- (3) If a candidate is a member of a group of candidates and the group's agent is required under section 118(2) or 120(2) to give a return, the candidate must not allow the agent to give the return if it contains particulars that are, to the knowledge of the candidate, false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (4) A person (the *first person*) must not give to another person who is required to give a return under part 6 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.

- (5) 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.
- (6) 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 the period stated in the order.
- (7) 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 the period stated in the order, to the State 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.

196 Records to be kept

- (1) A person who makes or receives a relevant record for an election must keep the record for at least 5 years after the conclusion of the election unless the record, in the normal course of business or administration, is transferred to someone else.

Maximum penalty—20 penalty units.

- (2) In this section—

gift see section 107.

relevant record, for an election, is a document or other thing that is or includes a record about a matter the particulars of which—

- (a) are, or could be, required to be stated in a return under part 6 about the election; or
- (b) evidence that the giver of a gift intended the gift 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.

197 Obtaining information for returns

A person who is required to give a return under part 6 must—

- (a) take all reasonable steps to obtain the particulars required to complete the return; and
- (b) complete the return to the extent practicable with the particulars obtained.

Maximum penalty—20 penalty units.

198 Further information for incomplete returns

- (1) This section applies if—
 - (a) at any time within 5 years after the conclusion of an election, a person who has, under section 131, made a statement that a return about the election is not complete; and
 - (b) the person obtains information or particulars relevant to the return that the person was not able to obtain before completing the return.
- (2) The person must give to the returning officer to whom the return was given a written notice of the information or particulars obtained.

Maximum penalty—20 penalty units.

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Division 6 Attempts

199 Attempts to commit offences

- (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 applies to subsection (1).

Division 7 Injunctions

200 Injunctions

- (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 part.

- (2) The application may be made by—

(a) if the conduct or failure relates to an election—a candidate or nominee as a candidate in the election; or

(b) in any case—the commission.

- (3) The court may grant an interim injunction pending determination of the application.

- (4) If the electoral commission makes the application, the court must not require the commission 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.
- (6) The court may grant the injunction if the court is satisfied—
 - (a) 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) 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 the court is satisfied the 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 10 Miscellaneous

201 Designated election offences and application of Criminal Code

- (1) An offence (a *designated election offence*) against any of the following provisions is a crime—
 - section 170(1) or (2)
 - section 171
 - section 175(1) or (2)
 - section 186
 - section 189.
- (2) The Criminal Code, chapter 58A applies to a designated election offence.
- (3) Without limiting subsection (2), the chapter applies to a designated election offence as if the offence were an offence under chapter 14, chapter division 2 of the code.

202 Local governments responsible for expenditure for conducting local government elections

- (1) A local government must pay the costs incurred by the electoral commission for conducting an election in its local government area, including the remuneration, allowances and reasonable expenses paid to members or staff of the electoral commission.
- (2) However, local governments may be required to collectively contribute to the costs of the electoral commission for conducting an election in 2 or more local government areas using a shared and centrally administered service.

203 Leave to local government employee to contest local government election

- (1) A local government employee who nominates as a candidate for an election is entitled to a 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) A local government employee is not entitled to payment of salary or wages for any period of leave taken under subsection (1) other than any accrued leave with pay that the employee uses during the period.

204 Inspection of documents

- (1) This section applies if a person is authorised under this Act to inspect a document.
- (2) The person may—
 - (a) inspect the document; and
 - (b) make copies of, or take extracts from, the document; free of charge at any time when the office in which the document is held is open for business.
- (3) The entity (the *custodian*) that has custody of the document is not required to supply any facility or service to the person in making a copy of, or taking an extract from, the document.
- (4) If the custodian supplies a facility or service to the person for making a copy of, or taking an extract from, the document, the custodian may charge a fee for the facility or service.
- (5) However, the fee must be no more than the cost to the custodian of making the copy or extract for the person and, if posted to the person, the postage cost.

205 Persons serving a sentence of imprisonment

For this Act, a person is serving a sentence of imprisonment only if—

- (a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and
- (b) the detention is attributable to the sentence of imprisonment concerned.

206 Office of returning officer

- (1) A returning officer must keep premises for use as a public office for an election.
- (2) The electoral commission must publish notice of the address of the public office 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.

207 Approved forms

- (1) The electoral commission may approve forms for use under this Act.
- (2) A form may be approved for use under this Act that is combined with, or is to be used together with, an approved form under another Act.

208 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the principles under which the value of a gift that is property is to be decided under section 108.

208A Declaration about Act's assent

- (1) To remove any doubt, it is declared that the *Local Government Electoral Act 2011* is, and always has been, valid, and in particular that the assent purportedly given to the Act on 1 September 2011 is, and always has been, valid.

Note—

Section 2(2) of this Act as assented to differs from section 2(2) as passed. The Bill for this Act was amended during consideration in detail to insert additional provisions resulting in a consequential renumbering of provisions. However, there was an administrative error during the renumbering process in that the cross-references in section 2(2) to renumbered provisions were not updated.

- (2) To remove any doubt, it is also declared that the *Local Government Electoral Act 2011* has effect, and has always had effect, as if section 2(2) of the Act read—

‘The following provisions commence on a day to be fixed by proclamation—

- part 12, divisions 2, 3, 11, 12, 14 and 16
- sections 315 and 342.’

- (3) The Parliament authorises all publications of the Act in accordance with this section.
- (4) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.
- (5) This section expires on the day after it commences.

Part 11 Transitional provisions

209 Transitional regulation-making power

- (1) A transitional regulation may provide for a matter that—
- (a) it is necessary to provide for, to allow or facilitate the doing of anything to achieve the transition from the repealed election provisions to this Act; and

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- (b) this Act does not provide for or sufficiently provide for.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day on which this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 1 year after the day on which this section commences.
- (5) In this section—
 - repealed election provisions*** means—
 - (a) provisions of the repealed *Local Government Act 1993* relating to elections that were continued in force under the *Local Government Act 2009*, section 284; or
 - (b) provisions of the repealed *City of Brisbane Act 1924* relating to elections that were continued in force under the *City of Brisbane Act 2010*, section 263.

Part 12 **Amendments of Acts and a regulation**

Editor's note—

Divisions 2–3, 11–12, 14, 16 and sections 315 and 342 had not commenced on or before the reprint date.

Uncommenced provisions are italicised in this reprint.

Division 2 Amendment of Animal Management (Cats and Dogs) Act 2008

212 Act amended

This division amends the Animal Management (Cats and Dogs) Act 2008.

213 Amendment of s 103 (Cost of regulated dog enclosure—dividing fence)

(1) Section 103—

insert—

(2A) *However, if part of the fence forms part of a pool barrier, the liabilities and rights of adjoining owners relating to that part of the fence forming part of a pool barrier for the cost of building, altering, repairing, replacing or maintaining the fence must be worked out under the Building Act 1975, chapter 8, part 2A.’*

(2) Section 103(3), ‘for which a restricted dog permit is granted, or is to be granted’—

omit, insert—

‘that is, or is to be, the relevant place for a regulated dog’.

(3) Section 103—

insert—

(4) *In this section—*

pool barrier *means a pool barrier under the Building Act 1975, section 245XA.*

relevant place, *for a regulated dog, means—*

(a) *if the regulated dog is a declared dangerous dog or a declared menacing dog—the place stated in the registration notice as the address for it; or*

(b) *if the regulated dog is a restricted dog—the place for which a restricted dog permit has been issued.’*

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- (4) *Section 103(2A) to (4)—
renumber as section 103(3) to (5).*

Division 3 Amendments of Building Act 1975 relating to pool barriers

214 Act amended

This division amends the Building Act 1975.

215 Amendment of s 231B (What is a regulated pool)

Section 231B(3)—

omit, insert—

- ‘(3) *Despite subsection (1), other than in part 2A a **regulated pool** does not include a swimming pool situated on either of the following if an approved pool safety management plan is in force for the pool—*
- (a) *common property in a class 3 building, including a class 3 building that is to be constructed;*
 - (b) *land adjacent to land on which a class 3 building is, or is to be, constructed and that is—*
 - (i) *in the same ownership as the building; or*
 - (ii) *used in association with the building.*
- ‘(4) *Also, a **regulated pool** does not include a public pool.*
- ‘(5) *In this section—*
- public pool** *means a swimming pool open to the public, whether or not on payment of money, and operated by a local government or other statutory body under the Statutory Bodies Financial Arrangements Act 1982.’*

216 Replacement of s 245U (Apportioning cost of constructing etc. dividing fence)

Section 245U—

omit, insert—

‘245U Interference with barriers for regulated pools

‘(1) *A person must not wilfully interfere with a barrier for a regulated pool to which the pool safety standard applies in a way that renders the pool noncompliant with the standard.*

Maximum penalty—165 penalty units.

‘(2) *Subsection (1) does not apply to a person—*

(a) *carrying out fencing work under part 2A, division 3; or*

(b) *attaching a thing to the barrier if attaching the thing does not unreasonably and materially alter or damage the barrier; or*

(c) *altering a wall of a building along a common boundary.*

‘(3) *In this section—*

fencing work see the Neighbourhood Disputes Act, section 16’.

217 Renumbering of s 246 (When particular local law has no force or effect for regulated pool)

Section 246—

renumber as section 245W.

218 Insertion of new pt 2A

Chapter 8—

insert—

‘Part 2A Neighbours’ rights and responsibilities for particular dividing fences

‘Division 1 Introduction

‘245X Overview

‘(1) *A sufficient dividing fence is required between 2 parcels of adjoining land if an adjoining owner requests a dividing fence.*

Note—

For the responsibilities of neighbours for dividing fences generally, see the Neighbourhood Disputes Act, chapter 2.

‘(2) *This part—*

(a) *modifies the responsibilities of neighbours under the Neighbourhood Disputes Act in relation to a dividing fence, or a part of a dividing fence, forming part of a pool barrier; and*

(b) *provides for a pool owner to construct a pool barrier along the common boundary of adjoining lands.*

‘(3) *This part encourages neighbours to attempt to resolve a dividing fence issue informally.*

‘(4) *However, if neighbours can not resolve a dividing fence issue, the dispute may be taken to QCAT for resolution.*

‘Division 2 Interpretation

‘245XA Definitions for pt 2A

‘In this part—

adjoining land see the Neighbourhood Disputes Act, section 15(3).

adjoining owner see the *Neighbourhood Disputes Act*, section 15(1) and (2).

dividing fence see the *Neighbourhood Disputes Act*, section 12.

fence see the *Neighbourhood Disputes Act*, section 11.

fencing work see the *Neighbourhood Disputes Act*, section 16.

neighbouring pool, for an adjoining owner, means a regulated pool situated on the adjoining land.

notice of proposed fencing work means a notice under section 245XM.

owner, for land, see the *Neighbourhood Disputes Act*, section 14.

pool barrier means a barrier for a regulated pool.

Note—

For this part a regulated pool includes other particular swimming pools.
See section 231B(3).

pool owner means an owner of land on which there is, or is proposed to be, a regulated pool.

proposed regulated pool means a swimming pool, the construction of which has not been completed, and may not have been started, but for which the relevant person has a building development approval.

special purpose fence means a dividing fence constructed according to a specific design, or using specific materials or dimensions, for the purpose of being an acoustic barrier or complying with any of the following—

- (a) a development approval;
- (b) a condition of a licence granted by a statutory authority;
- (c) an order of a court or tribunal;
- (d) an obligation under an Act.

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Example—

An enclosure for a regulated dog under the Animal Management (Cats and Dogs) Act 2008.

sufficient dividing fence see the Neighbourhood Disputes Act, section 13.

‘Division 3 Rights and responsibilities of pool owners and their neighbours for particular dividing fences

‘245XB Right to construct pool barrier along common boundary

- ‘(1) *This section applies if—*
- (a) *there is no dividing fence between 2 parcels of adjoining land; and*
 - (b) *there is, or is proposed to be, a regulated pool on only 1 of the parcels that will have part of its pool barrier along the common boundary between the parcels.*
- ‘(2) *The pool owner may construct part of the pool barrier along the common boundary if—*
- (a) *the pool owner and adjoining owner have agreed about carrying out the fencing work; or*
 - (b) *QCAT has ordered that the fencing work be carried out.*
- ‘(3) *Also, the pool owner may construct part of the pool barrier along the common boundary without the adjoining owner having agreed to the carrying out of the fencing work if—*
- (a) *the pool barrier will, when complete, comply with the pool safety standard; and*
 - (b) *the part of the pool barrier along the common boundary will, when complete, be a sufficient dividing fence; and*
 - (c) *the pool owner gives the adjoining owner a notice of proposed fencing work at least 14 days before the proposed fencing work is carried out.*

‘245XC Walls on common boundary

- ‘(1) *This section applies if—*
- (a) *there is a wall of a building along the common boundary of 2 parcels of adjoining land; and*
 - (b) *there is, or is proposed to be, a regulated pool on the adjoining land without the building.*
- ‘(2) *A pool owner may use any part of the wall as part of a pool barrier that would, without alteration, comply with the pool safety standard.*

Note—

The pool owner would need to construct a separate barrier for any part of the wall that does not comply with the pool safety standard. For example, a window in the wall.

- ‘(3) *However, despite any right of a pool owner under this division, the wall may not be altered, demolished or replaced without the agreement of the owner of the adjoining land on which the building is located.*

‘245XD Right to alter or replace existing dividing fence for the purpose of a pool barrier

- ‘(1) *This section applies if—*
- (a) *there is a dividing fence (the **existing dividing fence**) between 2 parcels of adjoining land; and*
 - (b) *there is, or is proposed to be, a regulated pool on only 1 of the parcels that will use all or part of the dividing fence to form part of the barrier for the regulated pool.*
- ‘(2) *The pool owner may alter or replace all or part of the existing dividing fence if—*
- (a) *the pool owner and adjoining owner have agreed about carrying out the fencing work; or*
 - (b) *QCAT has ordered that the fencing work be carried out.*

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‘(3) *The pool owner may alter or replace all or part of the existing dividing fence without the adjoining owner having agreed about carrying out the fencing work if—*

(a) *the new fence will, when complete, form part of the barrier for the regulated pool that complies with the pool safety standard; and*

(b) *the new fence will, when complete, be a sufficient dividing fence; and*

(c) *the new fence is constructed using similar materials and colours to those of the existing dividing fence if the use of the materials would not prevent compliance with paragraph (a) and (b); and*

Note—

Some of the materials acceptable as constituting a sufficient dividing fence would not comply with the pool safety standard.

(d) *the pool owner gives the adjoining owner a notice of proposed fencing work at least 14 days before the proposed fencing work is carried out.*

‘(4) *Also if the existing dividing fence is a special purpose fence, the new fence must—*

(a) *continue to serve the particular purpose that the existing fence serves; and*

(b) *comply with all the requirements applying to the existing dividing fence, including, for example requirements about the design of the fence, the materials to be used in the fence or the dimensions of the fence.*

‘(5) *Also, if the existing dividing fence is more than 1.8m in height, the new fence must, despite subsection (3)(b), be the same height as the existing dividing fence but otherwise be a sufficient dividing fence.*

‘(6) *In this section—*

***new fence** means a fence that has been altered or is a replacement of an existing fence.*

‘245XE Right to construct part of the barrier for 2 neighbouring pools along the common boundary or alter or replace existing fence

- ‘(1) *This section applies if—*
- (a) *there is, or is proposed to be, a regulated pool on each of 2 parcels of adjoining land; and*
 - (b) *each regulated pool will use the same part, along the common boundary, of a barrier for a regulated pool.*
- ‘(2) *Either pool owner may—*
- (a) *construct, along the common boundary, the part of the barrier for the pools; or*
 - (b) *alter or replace an existing dividing fence to form part of the barrier for the pools; or*
 - (c) *attach a thing to the barrier that does not unreasonably and materially alter or damage the fence.*
- ‘(3) *However, a pool owner may act under subsection (2)(a) or (b) only if—*
- (a) *both pool owners have agreed about carrying out the fencing work; or*
 - (b) *QCAT has ordered that the fencing work be carried out.*
- ‘(4) *Before carrying out fencing work mentioned in subsection (2)(a) or (b), a pool owner must give the other pool owner a notice of proposed fencing work, unless QCAT has order that the fencing work be carried out.*
- ‘(5) *If, within 1 month after the notice is given, the pool owners have not agreed about the proposed fencing work to be carried out or their contributions to the proposed fencing work, either pool owner may, within 2 months after the notice is given, apply to QCAT for an order under section 245XQ.*

‘245XF Limited right of neighbour to alter or replace part of pool barrier along a common boundary

- ‘(1) *This section applies if—*

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- (a) *there is part of the barrier for a regulated pool along the common boundary between 2 parcels of adjoining land; and*
 - (b) *the part of the barrier is for a regulated pool on only 1 of the parcels.*
- ‘(2) *The neighbour, or another person on behalf of the neighbour, may alter or replace the part of the barrier only if—*
 - (a) *the adjoining owner and the pool owner have agreed about carrying out the fencing work; or*
 - (b) *QCAT has ordered that the fencing work be carried out.*
- ‘(3) *Also, the neighbour may attach a thing to the part of the barrier that does not unreasonably and materially alter or damage the barrier.*
- ‘(4) *Before carrying out fencing work mentioned in subsection (2), the neighbour must give the other pool owner a notice of proposed fencing work, unless QCAT has order that the fencing work be carried out.*
- ‘(5) *If, within 1 month after the notice is given, the neighbour and pool owner have not agreed about the proposed fencing work to be carried out or their contributions to the proposed fencing work, the neighbour or pool owner may, within 2 months after the notice is given, apply to QCAT for an order under section 245XQ.*
- ‘(6) *To remove any doubt, it is declared that subsection (2) or (3) does not alter or otherwise affect a pool owner’s obligation under section 232(1).*
- ‘(7) *In this section—*
***neighbour** means an owner or lessee of adjoining land on the opposite side of the common boundary from adjoining land with a regulated pool.*

‘245XG Right to enter adjoining land to carry out fencing work

- ‘(1) A person may enter land owned by another person (the **other owner**) if—
- (a) the person has agreed with the other owner to carry out fencing and allow access to the land; or
 - (b) QCAT has ordered that the fencing work be carried out by the person and that access be granted to the land.
- ‘(2) At least 14 days before entering the other owner’s land, the person must give the other owner, and any lessee of the land that the person is aware of, a notice of proposed fencing work.
- ‘(3) An employee or agent of the person may enter the land if the person complies with subsection (2).
- ‘(4) The person or the person’s employee or agent may enter the other person’s land only at a reasonable time and only to a reasonable extent needed to carry out the fencing work.
- ‘(5) This section does not authorise entry to a dwelling on the land.

‘245XH Apportioning cost of constructing etc. dividing fence forming part of a pool barrier

- ‘(1) This section applies to carrying out relevant fencing work in relation to a dividing fence forming part of a pool barrier along the common boundary between 2 parcels of adjoining land.
- ‘(2) If the dividing fence forms part of a barrier for a regulated pool on only 1 parcel of adjoining land—
- (a) to the extent the work is attributable to a pool owner complying with section 232(1), the cost of carrying out the work is to be borne solely by the pool owner; and
 - (b) to the extent the work is not attributable to pool owner complying with section 232(1), the cost of carrying out the work is to be borne equally by the pool owner and adjoining owner.

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‘(3) *However, the entire cost of a pool owner carrying out the following fencing work is to be borne solely by the pool owner—*

- (a) altering or replacing a special purpose fence; or*
- (b) altering or replacing a dividing fence to which section 245XD(5) applies.*

Note—

Section 245XD(5) applies to an existing fence more than 1.8m in height.

‘(4) *If the dividing fence forms part of a barrier for a regulated pool on each of the 2 parcels of adjoining land—*

- (a) to the extent the work is attributable to both pool owners complying with section 232(1), the cost of carrying out the work is to be borne equally by both pool owners; and*
- (b) to the extent the work is not attributable to both pool owners complying with section 232(1) but is attributable to 1 of the pool owners (the **remaining owner**) complying with section 232(1), the cost of carrying out the work is to be borne solely by the remaining owner; and*
- (c) to the extent the work is not attributable to either pool owner complying with section 232(1), the cost of carrying out the work is to be borne equally by both pool owners.*

‘(5) *Despite subsection (2) or (4), if the relevant fencing work is altering or maintaining only 1 side of the dividing fence, the cost of carrying out the work is to be borne solely by the owner of the land on that side of the dividing fence.*

‘(6) *Despite subsections (2) to (5), if the dividing fence is damaged or destroyed by an act or omission to which section 245XJ applies, the cost of restoring the dividing fencing is to be borne solely by the owner who, under that section, is responsible for the damage or destruction.*

‘(7) *In this section—*

relevant fencing work means any of the following—

- (a) *constructing a dividing fence forming part of a pool barrier;*
- (b) *altering or replacing a dividing fence along a common boundary to create a dividing fence forming part of a pool barrier;*
- (c) *maintaining a dividing fence forming part of a pool barrier.*

‘245XI Attaching things to a dividing fence forming part of a pool barrier

‘(1) An owner, or a person who has entered the owner’s land with the owner’s express consent, must not, without the consent of the adjoining owner, attach a thing to a dividing fence forming part of a pool barrier that unreasonably and materially alters or damages the fence.

Examples of an attachment—

carport, shade sails, lattice work, canvas, signs

‘(2) However, subsection (1) does not apply if the thing was attached to the fence to make the fence comply with the pool safety standard.

‘(3) If an owner does not comply with this section, the adjoining owner may—

- (a) *apply to QCAT for an order requiring the owner to remove the thing attached and restore the dividing fence to a reasonable standard, having regard to its state before the thing was attached; or*
- (b) *carry out urgent fencing work under section 245XK to restore the dividing fence to a reasonable standard, having regard to its state before the thing was attached.*

‘245XJ Negligent or deliberate act or omission

‘(1) This section applies if, whether before or after the commencement of this section, a dividing fence forming part

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of a pool barrier is damaged or destroyed by a negligent or deliberate act or omission of—

- (a) an owner of land; or*
 - (b) a person who has entered the owner's land with the owner's express consent, whether written or oral.*
- '(2) The owner must restore the dividing fence to a reasonable standard, having regard to its state before the damage or destruction.*

Note—

If the owner does not comply with subsection (2), the adjoining owner may give the owner a notice under section 245XM or carry out urgent fencing work under section 245XK.

'245XK Urgent fencing work

- '(1) This section applies if all or part of a dividing fence forming part of a pool barrier is damaged or destroyed and, in the circumstances, urgent fencing work is required.*
- '(2) If it is impracticable to give a notice under section 245XM, an owner may, without giving the notice, carry out the fencing work required to restore the dividing fence to a reasonable standard, having regard to its state before the damage or destruction.*

Note—

Contribution from an owner to the cost of the urgent fencing work may be obtained after giving a notice to the owner under section 245XN.

- '(3) The cause of the damage or destruction does not affect the operation of this section.*
- '(4) However, if the dividing fence is damaged or destroyed in a way that renders a regulated pool, that uses the fence to form part of its pool barrier, noncompliant with the pool safety standard—*
- (a) urgent fencing work is taken to be required; and*
 - (b) it is taken to be impracticable to give notice under section 245XM.*

**‘Division 4 Process for obtaining contribution
and resolving disputes**

‘Subdivision 1 Introduction

‘245XL Overview

- ‘(1) Adjoining owners are encouraged to attempt to resolve issues about fencing work to avoid a dispute arising.*
- ‘(2) If an owner wants an adjoining owner to contribute to fencing work under this part, the owner must give the adjoining owner a notice under subdivision 2.*
- ‘(3) QCAT resolves disputes between adjoining owners if the dispute arises about carrying out fencing work for a dividing fence forming part of a pool barrier.*

Note—

See division 5 for the process for dealing with unauthorised fencing work.

‘Subdivision 2 Notices

‘245XM Notice of proposed fencing work

- ‘(1) If an owner must give notice of proposed fencing work under division 3, the notice must be in the approved form and state the following—*
 - (a) a description of the fencing work proposed to be carried out, including the design, dimensions and materials to be used;*
 - (b) if the fencing work is to construct or replace a dividing fence, the line on which it is proposed to construct or replace the fence;*

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Note—

A dividing fence must ordinarily be constructed on the common boundary.

- (c) *if entry is needed to an adjoining owner's land—*
 - (i) *a description of the parts of the land to which entry is proposed;*
 - (ii) *the proposed times of entry.*

'(2) Subsections (3) and (4) apply if—

- (a) *an owner may, under this part, seek a contribution from another owner for carrying out fencing work; and*
- (b) *the owner proposes to seek the contribution from the other owner.*

'(3) The notice must also state the following—

- (a) *the estimated cost of the fencing work to be carried out including the cost of labour and materials;*
- (b) *the proposed proportions of contribution.*

Note—

An adjoining owner may contribute by a payment of an amount or provision of labour or materials.

'(4) The notice must be accompanied by a copy of at least 1 written quotation stating the estimated cost of the fencing work to be carried out.

'245XN Notice to contribute for urgent fencing work

'(1) This section applies if—

- (a) *an owner carried out urgent fencing work under section 245XK; and*
- (b) *an adjoining owner is responsible for all or some of the costs of carrying out the fencing work under section 245XH.*

'(2) The owner may require the adjoining owner to contribute the adjoining owner's share of any reasonable cost incurred for

the urgent fencing work by giving a notice to the adjoining owner.

- ‘(3) Reasonable costs incurred for urgent fencing work may include the cost of using a temporary fence as part of a pool barrier if use of the temporary fence was reasonable in the circumstances.*
- ‘(4) The notice must—*
- (a) be in the approved form; and*
 - (b) state the following—*
 - (i) a description of the fencing work carried out, including the design, dimensions and materials used;*
 - (ii) the reason urgent fencing work was required;*
 - (iii) if a temporary fence was used—the reason for using the temporary fence;*
 - (iv) any cost incurred for the fencing work;*
 - (v) the proposed contributions for the fencing work; and*
 - (c) include a receipt for the cost incurred for the fencing work.*
- ‘(5) If, within 1 month after the notice is given, the adjoining owners have not agreed about their contributions to carrying out the fencing work, either adjoining owner may, within 2 months after the notice is given, apply to QCAT for an order under section 245XQ.*

‘Subdivision 3 Resolving disputes

‘245XO Jurisdiction

- ‘(1) QCAT has jurisdiction to hear and decide any matter arising under this part.*

[s 218]

- ‘(2) *If there is more than 1 fence on the boundary of adjoining land, QCAT may decide which of the fences is the dividing fence for this part and order the removal of the other fence or fences.*
- ‘(3) *If there is a fence other than a dividing fence on adjoining land, QCAT may order that it be removed if QCAT considers its removal is necessary to allow fencing work for a dividing fence.*

‘245XP Representation

‘Without limiting the QCAT Act, section 43, in a proceeding under this part an adjoining owner may be represented by a real estate agent.

Note—

The QCAT Act, section 43 allows a person to be represented by someone else if the person has impaired capacity or the person has been given leave by QCAT.

‘245XQ Orders about carrying out fencing work

- ‘(1) *QCAT may, for an application about fencing work for a dividing fence forming part of a pool barrier, decide and order 1 or more of the following—*
- (a) the line on which the fencing work is to be carried out, whether or not that line is on the common boundary of the adjoining land;*
 - (b) the fencing work to be carried out, including the kind of dividing fence involved and any access to land for carrying out the fencing work;*
 - (c) the way in which contributions for the fencing work are to be apportioned or reapportioned or the amount that each adjoining owner is liable to pay for the fencing work if the order is consistent with section 245XH;*
 - (d) the part of the dividing fence to be constructed or repaired by either adjoining owner;*

-
- (e) *when the fencing work is to be carried out;*
 - (f) *any other work to be carried out that is necessary to carry out the fencing work ordered including work for a retaining wall;*
 - (g) *that a fence has been used, or could lawfully be used, as a dividing fence forming part of a pool barrier;*
 - (h) *the amount of compensation payable to an adjoining owner for damage or destruction to a dividing fence forming part of a pool barrier caused by the other adjoining owner or a person mentioned in section 245XJ(1)(b);*
 - (i) *that an adjoining owner remove a thing attached to a dividing fence and restore the fence;*
 - (j) *the amount of compensation payable to an adjoining owner for the removal of a fence under section 245XO(3);*
 - (k) *whether or not a dividing fence forming part of a pool barrier would comply with the pool safety standard;*
 - (l) *any other matter necessary for the administration of this part.*
- (2) *The occupation of land on either side of a dividing fence forming part of a pool barrier, as a result of an order that fencing work is to be carried out on a line other than on the common boundary of the adjoining land, does not affect the title to, or possession of, the land.*

'245XR Matters for QCAT consideration

'In deciding an application under this part QCAT may consider all the circumstances of the application, including the following—

- (a) *any existing or previously existing dividing fence;*
- (b) *the purposes for which the 2 parcels of adjoining land are used, or intended to be used;*

[s 218]

- (c) *the kind of dividing fence normally used in the area;*
- (d) *whether the dividing fence is capable of being maintained by the adjoining owners;*
- (e) *any policy adopted, or local law made, about dividing fences by a local government for the area where either parcel of land is situated;*
- (f) *any requirement for fencing work in a development approval for the land of either adjoining owner;*
- (g) *any written agreement made between the adjoining owners for the purposes of this part;*
- (h) *the pool safety standard.*

‘245XS Application for order in absence of adjoining owner

- ‘(1) An owner may apply to QCAT for an order, in the absence of the adjoining owner, authorising the carrying out of fencing work, including the way in which contributions for the work are to be apportioned.*
- ‘(2) An order may be made under subsection (1) only if QCAT is satisfied that the owner could not locate the adjoining owner after making all reasonable inquiries.*

Examples of reasonable inquiries—

- searching the electoral roll or telephone directory*
 - making inquiries with immediate neighbours, tenants, real estate agents and the local government about where the adjoining owner is*
- ‘(3) An owner who carries out fencing work authorised by an order under this section and who later locates the adjoining owner may—*
 - (a) give a copy of the order to the adjoining owner; and*
 - (b) after 1 month from the day of giving a copy of the order, recover from the adjoining owner the adjoining owner’s contribution as stated in the order.*

-
- (4) *The adjoining owner given a copy of an order under subsection (1) may, within 1 month after being given the copy, apply to QCAT for a variation of the order and QCAT may vary the order in any way it considers appropriate.*
- (5) *This section continues to apply to the owner or adjoining owner even if, after the order was made, the owner or the adjoining owner stopped owning the relevant parcel of land consisting of the adjoining land.*

‘Division 5 Process for dealing with unauthorised fencing work

‘245XT Unauthorised fencing work

‘An owner is taken to have carried out fencing work for a dividing fence forming part of a pool barrier without authorisation unless—

- (a) the adjoining owners have agreed under this part about the fencing work being carried out; or*
- (b) QCAT has ordered that the fencing work be carried out;
or*
- (c) the fencing work is carried out under division 3.*

‘245XU Application before unauthorised fencing work

- (1) *This section applies if an owner believes on reasonable grounds that an adjoining owner intends to carry out fencing work for a dividing fence forming part of a pool barrier without authorisation.*
- (2) *The owner may apply to QCAT for an order preventing the adjoining owner from carrying out the fencing work.*
- (3) *The owner must give the adjoining owner a copy of the application at least 1 day before the application is heard.*

[s 218]

Note—

Under the Acts Interpretation Act 1954, section 38(3), if the day before the application is heard falls on a day that is not a business day, the last day for giving a copy of the application is taken to be the next earlier business day.

- ‘(4) *On application under this section, QCAT may make an order preventing the adjoining owner from demolishing, or tampering with, the dividing fence.*

‘245XV Application after unauthorised fencing work

- ‘(1) *This section applies if an owner carried out fencing work for a dividing fence forming part of a pool barrier without authorisation.*
- ‘(2) *The adjoining owner, for whom the dividing fence forms part of a pool barrier, may apply to QCAT for an order requiring the owner to rectify the dividing fence.*
- ‘(3) *The adjoining owner must give the owner a copy of the application at least 3 days before the application is heard.*
- ‘(4) *On application under this section, QCAT may make an order requiring the owner to—*
- (a) rectify the fencing work; and*
 - (b) bear the costs of the rectification.*

‘Division 6 Process if common boundary not agreed

‘245XW Process if common boundary not agreed

- ‘(1) *This section applies if adjoining owners do not agree on the position of the common boundary for the purposes of carrying out fencing work under this part.*
- ‘(2) *An owner may give a notice to the adjoining owner, or the adjoining owner’s agent, of the owner’s intention to have the*

common boundary defined by a cadastral surveyor engaged by the owner.

- ‘(3) *If an adjoining owner is given a notice under subsection (2), the adjoining owner may, within 1 month after the notice is given—*
- (a) *have the common boundary defined by a cadastral surveyor engaged by the adjoining owner and give the owner written advice of the common boundary as defined by the cadastral surveyor; or*
 - (b) *give the owner written advice of the common boundary as defined by the adjoining owner if the adjoining owner is satisfied of the accurate position of the common boundary.*
- ‘(4) *Unless an owner who has given notice under subsection (2) receives advice under subsection (3)(a), the owner may have the common boundary defined by a cadastral surveyor engaged by the owner.*
- ‘(5) *If the common boundary defined by a cadastral surveyor engaged by the owner under subsection (4) is in about the same position as the position defined by the adjoining owner in an advice under subsection (3)(b), the adjoining owner is not liable for any of the reasonable cost of engaging the cadastral surveyor.*
- ‘(6) *If subsection (5) does not apply—*
- (a) *adjoining owners are each liable for half the reasonable cost of engaging a cadastral surveyor under this section to define the position of the common boundary; and*
 - (b) *if 1 adjoining owner pays the entire cost, the half payable by the other adjoining owner is recoverable as a debt by the first adjoining owner.*
- ‘(7) *In this section—*
- cadastral surveyor*** *means a person registered as a cadastral surveyor under the Surveyors Act 2003.*

‘Division 7 General

‘245XX Measurement of the height of a dividing fence or pool barrier

‘If a provision of this part relates to the height of a dividing fence or pool barrier, the height of the fence or barrier is to be measured using—

- (a) for a provision that relates to a regulated pool on only 1 of 2 parcels of adjoining land—the side of the fence or barrier on the adjoining land with the regulated pool; or*
- (b) for a provision that relates to a regulated pool on each of 2 parcels of adjoining land—the shorter side of the fence or barrier.*

‘245XY Substantial compliance is adequate

‘Substantial compliance with any agreement, notice or order mentioned in this part is adequate for this part.

‘245XZ Giving documents

‘(1) A document may be given to a person under this part in the following ways—

- (a) leaving it with someone who is apparently an adult living at the relevant address;*
- (b) if there is no-one at the relevant address—leaving it at the relevant address in a position where it is reasonably likely to come to the person’s attention;*
- (c) if the relevant address is within a building or area to which the person who gives the document has been denied access—leaving it at the building or area in a position where it is reasonably likely to come to the person’s attention;*
- (d) posting it to the relevant address.*

-
- (2) *In a proceeding relating to this part, evidence of giving a document may be given orally or by affidavit.*
- (3) *For this section, a justice may take and receive an affidavit whether or not any matter to which the affidavit relates is pending in any court or QCAT.*
- (4) *If there are 2 or more joint owners of land and a person can not locate every owner, the document is taken to have been given to all joint owners if the person gives the document to at least 1 of the joint owners under this section.*
- (5) *This section does not limit the operation of the Acts Interpretation Act 1954, part 10.*
- (6) *In this section—*

***document** means a notice or a copy of an order under this part.*

***relevant address**, for a person to be given a document, means the person's usual or last known place of residence or business and includes the person's address as provided by a local government from its records.*

'246 Descriptions in notice

'A description of land or a fence, line or boundary in a notice under this part is adequate if it allows no reasonable doubt about which land, fence, line or boundary is stated or if it is shown that the person given the notice knew the relevant land, fence, line or boundary.'

219 Amendment of s 246AB (Nonconformity notice)

*Section 246AB(2)(e)(ii), 'safety pool inspector'—
omit, insert—
'pool safety inspector'.*

[s 220]

220 Amendment of s 246ATJ (Requirement to obtain pool safety certificate for regulated pool that is not a shared pool)

Section 246ATJ(2)—

omit, insert—

‘(2) The person must ensure there is a pool safety certificate in effect for the pool within—

*(a) generally—90 days after the day of settlement (the **usual period**); or*

(b) if, during the usual period, the person becomes a party to a proceeding before QCAT relating to the barrier for the pool—the usual period plus a further period equal to the number of days the person was a party to the proceeding.

Maximum penalty—165 penalty units.’.

221 Amendment of s 246ATK (Requirement to obtain pool safety certificate for regulated pool that is a shared pool)

(1) Section 246ATK(2)—

omit, insert—

‘(2) The owner must ensure there is a pool safety certificate in effect for the pool within—

*(a) generally—90 days after the day of settlement under the contract of sale for the premises (the **usual period**); or*

(b) if, during the usual period, the owner becomes a party to a proceeding before QCAT relating to the barrier for the pool—the usual period plus a further period equal to the number of days the owner was a party to the proceeding.

Maximum penalty—165 penalty units.’.

(2) Section 246ATK(4)—

omit, insert—

- (4) *The owner must ensure there is a pool safety certificate in effect for the pool within—*
- (a) *generally—90 days after the day the accommodation agreement is entered into (the **usual period**); or*
 - (b) *if, during the usual period, the owner becomes a party to a proceeding before QCAT relating to the barrier for the pool—the usual period plus a further period equal to the number of days the owner was a party to the proceeding.*

Maximum penalty—165 penalty units.

222 Amendment of sch 2 (Dictionary)

- (1) *Schedule 2, definition regulated pool—*
omit.

- (2) *Schedule 2—*
insert—

'adjoining land see section 245XA.

adjoining owner, for chapter 8, part 2A, see section 245XA.

dividing fence, for chapter 8, part 2A, see section 245XA.

fence, for chapter 8, part 2A, see section 245XA.

fencing work see section 245XA.

Neighbourhood Disputes Act means the Neighbourhood Disputes Resolution Act 2011.

neighbouring pool see section 245XA.

notice of proposed fencing work see section 245XA.

owner, for land, for chapter 8, part 2A, see section 245XA.

pool barrier see section 245XA.

pool owner see section 245XA.

proposed regulated pool, for chapter 8, part 2A, see section 245XA.

[s 291]

special purpose fence, for chapter 8, part 2A, see section 245XA.

sufficient dividing fence, for chapter 8, part 2A, see section 245XA.’.

Division 11 Amendment of Mixed Use Development Act 1993

291 Act amended

This division amends the Mixed Use Development Act 1993.

292 Amendment of s 3 (Definitions)

(1) *Section 3, definitions ordinary resolution, precinct and site—
omit.*

(2) *Section 3—
insert—*

*‘associate, of a person, means someone else with whom the
person is associated under section 214E.*

body corporate—

(a) *for part 9, see section 166; or*

(b) *for schedule 1, see schedule 1, section 1.*

*body corporate manager, for a community body corporate or
precinct body corporate, means a person appointed by the
body corporate under section 192.*

candidate, for schedule 1, see schedule 1, section 1.

caretaking service contractor see section 201R.

code contravention notice, for part 9A, see section 201Z(1).

code of conduct means—

- (a) for a voting member of the executive committee of a community body corporate or precinct body corporate—the code in schedule 2; or
- (b) for a body corporate manager or caretaking service contractor—the code in schedule 3; or
- (c) for a letting agent—the code in schedule 4.

community development control by-laws see section 202(1).

corporation, for part 9, see section 166.

eligibility category, for schedule 1, see schedule 1, section 1.

executive committee, for schedule 1, see schedule 1, section 1.

executive member, for schedule 1, see schedule 1, section 1.

financial year, for a community body corporate or precinct body corporate, means a period in relation to which the body corporate is required under section 177(1)(f) to prepare a statement of accounts.

financier, for part 9A, see section 201S.

letting agent see section 201T(1).

letting agent authorisation, for part 9A, see section 201R.

letting agent business see section 201T(2).

majority resolution, for a properly convened general meeting of a community body corporate or precinct body corporate, means a resolution on a motion—

- (a) for which only 1 written vote may be exercised, other than by proxy, for each lot mentioned in the body corporate roll; and
- (b) that is passed only if the votes counted for the motion are more than 50% of the lots for which persons are entitled to vote on the motion.

management rights, for part 9A, see section 201R.

[s 292]

nominee, of a member of a community body corporate or precinct body corporate, means a person appointed by the member under section 169(1).

ordinary member, for schedule 1, see schedule 1, section 1.

ordinary resolution means—

- (a) for a properly convened general meeting of a community body corporate or precinct body corporate—a resolution that is passed by the members of the body corporate whose voting entitlements total more than 50% of the total of all voting entitlements recorded in the body corporate roll; or
- (b) for a properly convened general meeting of a building management committee—a resolution that is passed by the members of the management committee whose voting entitlements total more than 50% of the total of all voting entitlements recorded in the management statement establishing the committee.

original owner, for part 9, see section 166.

precinct, of a mixed use scheme—

- (a) means generally a part of the site identified in the scheme as a precinct; and
- (b) for part 9A, see also section 201R.

precinct development control by-laws see section 208(1).

registered valuer means a valuer registered under the Valuers Registration Act 1992.

relevant body corporate debt means any of the following amounts owed by a person to a subsidiary body corporate—

- (a) a contribution or instalment of a contribution;
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

Examples of another amount—

- *an annual payment for parking under an exclusive use by-law made by the subsidiary body corporate*
- *an amount owing to the subsidiary body corporate for lawn mowing services arranged by the subsidiary body corporate on behalf of the person*

reviewable terms, for part 9A, see section 201R.

review advice, for part 9A, see section 201R.

service contract, for part 9A, see section 201R.

service contractor see section 201U.

site, of a mixed use scheme—

- (a) *means generally the site of the scheme; and*
- (b) *for part 9A, see also section 201R.*

subsidiary body corporate—

- (a) *of, or in relation to, a community body corporate, means—*
 - (i) *a precinct body corporate that is a member of the community body corporate; or*
 - (ii) *a body corporate created by the registration of a building units or group titles plan that is a member of the community body corporate; or*
- (b) *of, or in relation to, a precinct body corporate, means a body corporate created by the registration of a building units or group titles plan that is a member of the precinct body corporate.*

transfer notice, for part 9A, see section 201ZB(b)(ii).

voting member, of the executive committee of a community body corporate or precinct body corporate, see section 185A(1).’.

- (3) *Section 3, as amended by this Act, definitions—
relocate to schedule 5 as inserted by this Act.*
- (4) *Section 3, as amended by this Act, ‘In this Act—’—*

[s 293]

omit, insert—

‘The dictionary in schedule 5 defines particular words used in this Act.’

293 Insertion of new s 4A

Part 1—

insert—

‘4A References to standard module

‘(1) In this Act, the information included in square brackets after a section heading is a reference to a similar section of the Body Corporate and Community Management (Standard Module) Regulation 2008.

‘(2) The brackets and information do not form part of this Act.’

294 Amendment of s 166 (Definitions)

Section 166—

insert—

‘original owner, of a precinct development lot that has been subdivided by a building unit or group titles plan, means the person who was the proprietor of the lot immediately before it was subdivided by the plan.’

295 Amendment of s 169 (Members’ nominees)

(1) Section 169(4) and (5)—

omit.

(2) Section 169(3)—

renumber as section 169(4).

(3) Section 169—

insert—

-
- (3) *A nominee appointed by a subsidiary body corporate must be a member of the subsidiary body corporate.*
- (4) *Section 169—*
insert—
- (5) *A nominee appointed by a subsidiary body corporate must represent the subsidiary body corporate—*
(a) in the way the subsidiary body corporate directs; and
(b) subject to paragraph (a), in a way that is in the best interests of the subsidiary body corporate.
- (6) *An appointment of a nominee in relation to a body corporate ends when the first of the following happens—*
(a) the end of 1 year after the appointment;
(b) the secretary of the body corporate receives written notice of—
(i) the cancellation of the nominee’s appointment; or
(ii) the appointment of another nominee.
- (7) *A written notice under subsection (4) or (6)(b) must be signed—*
(a) for an appointment or cancellation made by a member of the body corporate that is a corporation—by the chairperson and secretary of the corporation; or
(b) otherwise—by the member.’.

296 Amendment of s 172 (Meetings of bodies corporate)

Section 172—

insert—

- (10A) *Also, the application of the Building Units and Group Titles Act 1980, schedule 2, part 2 is subject to schedule 1 and schedule 5, definition ordinary resolution.’.*

[s 297]

297 Amendment of s 177 (Duties of bodies corporate)

Section 177(1)(e)—

omit, insert—

‘(e) keep—

- (i) for at least 10 years after their creation or receipt by or for the body corporate—*
 - (A) minutes of its meetings, including particulars of motions passed at the meetings; and*
 - (B) proper books of account for amounts received or paid by the body corporate, showing the items for which the amounts were received or paid; and*
- (ii) for at least 2 years after their creation or receipt by or for the body corporate—voting tally sheets or other records showing votes for motions and election ballots related to its meetings; and’.*

298 Amendment of s 185 (Constitution of executive committee)

Section 185(7)—

omit, insert—

- ‘(7) The election of the chairperson, secretary, treasurer and any other members of the executive committee at a general meeting of the body corporate must be conducted under schedule 1.*
- ‘(7A) A person is eligible for election as chairperson, secretary or treasurer, or as another member of the executive committee, only if the person—*
 - (a) is an individual who is—*
 - (i) a member of the body corporate; or*
 - (ii) a nominee of a corporation that is a member of the body corporate; and*

- (b) *does not owe a relevant body corporate debt in relation to a lot or lots owned by the person.*'.

299 Insertion of new s 185A

After section 185—

insert—

'185A Code of conduct for voting members of executive committee

- (1) *The code of conduct in schedule 2 applies to each person (a voting member) who is—*
- (a) *a member of the executive committee of a body corporate; and*
 - (b) *entitled to vote at general meetings of the body corporate.*
- (2) *On becoming a voting member of the executive committee of a body corporate, the person is taken to have agreed to comply with the code of conduct.'*

300 Amendment of s 186 (Vacation of office of member of executive committee)

- (1) *Section 186(1)(i)—*

renumber as section 186(1)(j).

- (2) *Section 186(1)—*

insert—

- (i) *if the person is removed from office by ordinary resolution of the body corporate under division 8; or*'.

301 Insertion of new s 188A

After section 188—

insert—

[s 302]

**‘188A Conflict of interest of executive committee member
[SM, s 53]**

- ‘(1) A member of the executive committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member’s duties about the consideration of the issue.
- ‘(2) If a member required under subsection (1) to disclose an interest in an issue is a voting member of the committee, the member is not entitled to vote on a motion involving the issue.
- ‘(3) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the proxy holder’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the proxy holder’s duties about the consideration of the issue.
- ‘(4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.
- ‘(5) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the member’s direct or indirect interest in an issue being considered, or about to be considered, by the committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.
- ‘(6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.’

302 Insertion of new pt 9, divs 6–8 and pt 9A

After section 201—

insert—

**‘Division 6 Proxies for general meetings of
bodies corporate**

**‘Subdivision 1 Representing precinct bodies
corporate at meetings of community
bodies corporate**

‘201A Application of sdiv 1

‘This subdivision applies to the appointment and use of a proxy to represent a precinct body corporate at a general meeting of the community body corporate of which the precinct body corporate is a member.

‘201B Appointment [SM, s 107]

- ‘(1) Subject to subsections (2) to (4), the precinct body corporate may appoint a proxy to act for it at the general meeting.*
- ‘(2) The community body corporate may by a comprehensive resolution prohibit the use of proxies—*
 - (a) for particular things described in the resolution; or*
 - (b) altogether.*
- ‘(3) An appointment under subsection (1) has effect subject to the operation of a comprehensive resolution under subsection (2).*
- ‘(4) The appointment of the proxy is effective only if the precinct body corporate or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the community body corporate before—*
 - (a) the start of the meeting where the proxy is to be exercised; or*
 - (b) if the community body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.*

[s 302]

‘201C Use of proxy [SM, s 109]

- ‘(1) *If a member of the community body corporate is the proxy for the precinct body corporate, the member may vote both in the member’s own right and also as proxy of the precinct body corporate.*
- ‘(2) *A vote by proxy must not be exercised on behalf of the precinct body corporate at the general meeting—*
- (a) if the precinct body corporate’s nominee is personally present at the meeting, unless the nominee consents at the meeting; or*
 - (b) on a particular motion, if a written or electronic vote has been exercised on the motion on behalf of the precinct body corporate; or*
 - (c) on a ballot for the election of a member of the executive committee of the body corporate, or for otherwise choosing a member of the executive committee; or*
 - (d) for voting for a comprehensive resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or*
 - (e) for voting for a majority resolution; or*
 - (f) on a motion approving—*
 - (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or*
 - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or*
 - (g) on a motion decided by secret ballot.*

‘201D Special provisions about proxy use [SM, s 110]

- ‘(1) *The precinct body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make someone else the precinct body corporate’s proxy for voting at the general meeting.*

-
- (2) *A proxy can not be exercised for the precinct body corporate by—*
- (a) *the original owner of a precinct development lot; or*
 - (b) *a body corporate manager for—*
 - (i) *the community body corporate; or*
 - (ii) *the precinct body corporate; or*
 - (iii) *a subsidiary body corporate of the community body corporate or precinct body corporate; or*
 - (c) *an associate of a person mentioned in paragraph (a) or (b), unless the associate is one of the proprietors constituting a subsidiary body corporate of the precinct body corporate.*

‘201E Offence [SM, s 111]

‘A person must not exercise a proxy, or otherwise purport to vote on behalf of the precinct body corporate, at the general meeting knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the precinct body corporate.

Maximum penalty—100 penalty units.

‘Subdivision 2 Meetings of precinct bodies corporate

‘201F Application of sdiv 2

‘This subdivision applies to the appointment and use of a proxy to represent a member of a precinct body corporate at a general meeting of the precinct body corporate.

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‘201G Appointment [SM, s 107]

- ‘(1) *Subject to subsections (2) to (5), a person entitled to vote at the general meeting may appoint a proxy to act for the person at the general meeting.*
- ‘(2) *The precinct body corporate may by a comprehensive resolution prohibit the use of proxies—*
- (a) for particular things described in the resolution; or*
 - (b) altogether.*
- ‘(3) *An appointment under subsection (1) has effect subject to the operation of a comprehensive resolution under subsection (2).*
- ‘(4) *A person must not hold—*
- (a) if there are 20 or more lots for which there are voting entitlements for the meeting—proxies greater in number than 5% of the lots; or*
 - (b) if there are fewer than 20 lots for which there are voting entitlements for the meeting—more than 1 proxy.*
- ‘(5) *The appointment of the proxy is effective only if the person or the holder of the proxy gives, by hand, post or facsimile, a properly completed proxy form to the secretary of the precinct body corporate before—*
- (a) the start of the meeting where the proxy is to be exercised; or*
 - (b) if the precinct body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.*

‘201H Use of proxy [SM, s 109]

- ‘(1) *A member of the precinct body corporate (**member A**) who is the proxy for another member of the body corporate (**member B**) may vote both in member A’s own right and also as proxy of member B.*

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- ‘(2) If at least 1 co-owner of a lot is present at the general meeting, a proxy given by another co-owner of the lot is of no effect.*
- ‘(3) A vote by proxy must not be exercised at the general meeting—*
- (a) if the member who gave the proxy is personally present at the meeting, unless the member consents at the meeting; or*
 - (b) on a particular motion, if the person who gave the proxy has exercised a written or electronic vote on the motion; or*
 - (c) on a ballot for the election of a member of the executive committee of the body corporate, or for otherwise choosing a member of the executive committee; or*
 - (d) for voting for a comprehensive resolution prohibiting, wholly or partly, the use of proxies at executive committee meetings or general meetings; or*
 - (e) for voting for a majority resolution; or*
 - (f) on a motion approving—*
 - (i) the appointment, engagement or authorisation of a person as the body corporate manager, a service contractor or a letting agent; or*
 - (ii) the amendment or termination of an appointment, engagement or authorisation mentioned in subparagraph (i); or*
 - (g) on a motion decided by secret ballot.*

‘2011 Special provisions about proxy use [SM, s 110]

- ‘(1) A member of the precinct body corporate can not be prevented by contract from exercising a vote at the general meeting, and can not be required by contract to make someone else the member’s proxy for voting at the general meeting.*

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- ‘(2) A proxy can not be exercised for someone else by—*
- (a) the original owner of a precinct development lot; or*
 - (b) a body corporate manager for—*
 - (i) the community body corporate of which the precinct body corporate is a member; or*
 - (ii) the precinct body corporate; or*
 - (iii) a subsidiary body corporate of the community body corporate or precinct body corporate; or*
 - (c) an associate of a person mentioned in paragraph (a) or (b), unless the associate is one of the proprietors constituting a body corporate that is itself a member of the precinct body corporate.*

‘201J Offence [SM, s 111]

‘A person must not exercise a proxy, or otherwise purport to vote on behalf of another person, at the general meeting knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Maximum penalty—100 penalty units.

‘Subdivision 3 Matters applying to proxies for meetings of community and precinct bodies corporate

‘201K Form of proxy [SM, s 108]

‘A proxy given under this division to represent a person at a general meeting of a body corporate—

- (a) must be in the approved form; and*
- (b) must be in the English language; and*
- (c) can not be irrevocable; and*

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- (d) *can not be transferred by the holder of the proxy to a third person; and*
 - (e) *lapses at the end of the body corporate's financial year or at the end of a shorter period stated in the proxy; and*
 - (f) *may be given by any person who has the right to vote at the general meeting; and*
 - (g) *subject to the limitations contained in this division, may be given to any individual; and*
 - (h) *must appoint a named individual.*

'201L How proxy may be exercised [SM, s 109]

'A proxy may be exercised at a general meeting of a body corporate by—

- (a) *the proxy holder voting in a show of hands at the meeting; or*
- (b) *the proxy holder completing a written or electronic vote on a motion before the start of, or at, the meeting.*

'Division 7 Accounts and audit for precinct bodies corporate

'201M Application of div 7

'This division applies to a precinct body corporate for preparing a statement of accounts under section 177(1)(f).

'201N Accounts [SM, s 154]

- (1) *The statement of accounts may be prepared on a cash or accrual basis.*
- (2) *If the accounts are prepared on a cash basis, they must include disclosure of the following—*

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- (a) *the total amounts paid to the fund established under section 177(1)(i) and the account established under section 177(1)(k);*
 - (b) *total contributions under section 177(1)(h) and (l) and 193 in arrears;*
 - (c) *balances for all financial institution accounts and investments;*
 - (d) *all outstanding receipts and payments.*
- ‘(3) *If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the precinct body corporate at the end of the financial year for which the accounts are prepared.*
- ‘(4) *The statement of accounts must include—*
- (a) *the corresponding figures for the previous financial year; and*
 - (b) *disclosure of all remuneration, allowances or expenses paid to members of the executive committee, identifying the total amounts paid to each member during the financial year under the following categories—*
 - (i) *remuneration or allowances;*
 - (ii) *expenses, split up into travelling, accommodation, meal and other expenses.*
- ‘(5) *A copy of the statement of accounts must accompany the notice of the annual general meeting first happening after the end of the financial year for which the accounts are prepared.*

‘2010 Audit [SM, s 155]

- ‘(1) *The precinct body corporate must have its statement of accounts for each financial year of the body corporate audited by an auditor.*
- ‘(2) *The auditor to be appointed must be agreed to by ordinary resolution of the precinct body corporate.*
- ‘(3) *The motion for agreeing to the auditor to be appointed—*

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- (a) *must be included in the agenda for the general meeting where the motion is to be considered; and*
- (b) *must include the name of the auditor proposed to be appointed.*
- ‘(4) *Also, the precinct body corporate may, by ordinary resolution—*
- (a) *resolve to have its accounting records audited for a particular period or a particular project; and*
- (b) *appoint an auditor for the audit.*
- ‘(5) *A member of the executive committee, the body corporate manager, or an associate of a member of the executive committee or body corporate manager, can not be appointed to audit the accounting records or the statement of accounts of the precinct body corporate.*
- ‘(6) *On finishing an audit of the precinct body corporate’s statement of accounts for a financial year, the auditor must give a certificate—*
- (a) *stating whether the statement of accounts gives a true and fair view of the precinct body corporate’s financial affairs; and*
- (b) *if the statement of accounts does not give a true and fair view of the precinct body corporate’s financial affairs—identifying the deficiencies in the statement.*
- ‘(7) *A copy of the auditor’s certificate must accompany the notice of the next annual general meeting held after the certificate is given.*
- ‘(8) *In this section—*
- auditor** *means—*
- (a) *a person who is a registered company auditor; or*
- (b) *a person who—*
- (i) *is a member of—*
- (A) *CPA Australia and entitled to use the letters ‘CPA’ or ‘FCPA’; or*

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- (B) *the Institute of Chartered Accountants in Australia and entitled to use the letters 'CA' or 'FCA'; or*
 - (C) *the National Institute of Accountants and entitled to use the letters 'MNIA', 'FNIA', 'PNA' or 'FPNA'; and*
- (ii) *has a total of 2 years auditing experience, whether or not continuous.*

registered company auditor means a person registered as an auditor, or taken to be registered as an auditor, under the Corporations Act, part 9.2.

'Division 8 Removal from office of voting members of executive committee for breach of code of conduct

'201P Notice for breach of code of conduct [SM, s 34]

- (1) *If a body corporate believes a voting member of its executive committee has breached the code of conduct for the member, the body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—*
- (a) *that the body corporate believes the member has breached a stated provision of the code of conduct;*
 - (b) *details sufficient to identify the breach in not more than 600 words;*
 - (c) *that the member may give any other member of the body corporate, within the stated period of at least 21 days after the member is given the notice, a written response to the notice in not more than 600 words;*
 - (d) *that, if asked by the member, the body corporate will pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under paragraph (c) to any other member of the body corporate;*

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- (e) *that the body corporate is to consider a motion to remove the member from office for the breach at its next general meeting called after the period mentioned in paragraph (c) ends.*
- ‘(2) *If asked by the member, the body corporate must pay the member all postage charges and copying expenses reasonably incurred by the member in giving a written response under subsection (1)(c) to any other member of the body corporate.*

**‘201Q Removal of voting member at general meeting
[SM, s 35]**

- ‘(1) *This section applies if—*
- (a) *a body corporate gives a voting member of its executive committee a notice under section 201P(1); and*
- (b) *the period mentioned in section 201P(1)(c) for the notice has ended.*
- ‘(2) *The body corporate must—*
- (a) *include on the agenda of its next general meeting, called after the period mentioned in section 201P(1)(c) ends, a motion to remove the member from office for breaching the code of conduct; and*
- (b) *attach to the agenda a copy of—*
- (i) *the notice; and*
- (ii) *if the member has given another member of the body corporate a response under section 201P(1)(c)—the response.*
- ‘(3) *The member may be removed from office, by ordinary resolution of the body corporate, at the next general meeting.*

‘Part 9A **Conduct of body corporate
managers, service contractors
and letting agents**

‘Division 1 **Preliminary**

‘201R Definitions for pt 9A

‘In this part—

caretaking service contractor, for a site or precinct or part of a site or precinct, means a service contractor for the site or precinct or part who is also—

- (a) a letting agent for the site or precinct or part; or*
- (b) an associate of the letting agent.*

code contravention notice see section 201Z(1).

financier see section 201S.

letting agent see section 201T(1).

letting agent authorisation, for a letting agent, means—

- (a) an authorisation given by a community body corporate to the letting agent to conduct a letting agent business for a site; or*
- (b) an authorisation given by a precinct body corporate to the letting agent to conduct a letting agent business for a precinct.*

letting agent business see section 201T(2).

management rights, of a letting agent for a site or precinct, means—

- (a) the letting agent business for the site or precinct, including the letting agent’s authorisation; and*
- (b) the business conducted by the letting agent under a service contract for the site or precinct, including the service contract; and*

- (c) *the letting agent's interest in a lot used for conducting a business mentioned in paragraph (a) or (b); and*
- (d) *any right of the letting agent to use and occupy a part of the common property for a business mentioned in paragraph (a) or (b).*

precinct includes a part of a precinct.

reviewable terms, for a service contract, means the terms of the contract that provide for—

- (a) *the functions and powers of the relevant letting agent as a service contractor; or*
- (b) *the remuneration payable to the relevant letting agent as a service contractor.*

review advice, about a service contract, means written advice about whether the contract's reviewable terms—

- (a) *are currently fair and reasonable; and*
- (b) *if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.*

service contract means a contract entered into with a person for the engagement of the person as a service contractor for a site or precinct.

service contractor see section 201U.

site includes a part of the site.

transfer notice see section 201ZB(b)(ii).

'201S Meaning of financier for a letting agent's contract

- (1) A person is a ***financier*** for a contract under which a letting agent is authorised by a body corporate if the letting agent and the person give written notice signed by each of them to the body corporate that the person is a financier for the contract.

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- ‘(2) A person stops being a **financier** for the contract if the person gives the body corporate a written notice withdrawing the notice given under subsection (1).
- ‘(3) A notice under subsection (2) may be given without the letting agent’s agreement.
- ‘(4) However, a person is a **financier** for the contract only if—
- (a) the person is a financial institution; or
 - (b) the person, in the ordinary course of the person’s business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts as the whole or part of the person’s security for supplying the finance; or
 - (c) at the time the person supplied finance for a business acquisition using a charge over the contract as the whole or part of the person’s security, the person was a person to whom paragraph (b) would have applied.

‘201T Meaning of letting agent and letting agent business

- ‘(1) A person is a **letting agent** if—
- (a) a community body corporate authorises the person to conduct a letting agent business for a site; or
 - (b) a precinct body corporate authorises the person to conduct a letting agent business for a precinct.
- ‘(2) A person conducts a **letting agent business** for a site or precinct if—
- (a) the person conducts, subject to the Property Agents and Motor Dealers Act 2000, the business of acting as the agent of the owners of 1 or more lots included in the site or precinct; and
 - (b) the owners choose to use the person’s services for securing, negotiating or enforcing (including collecting rents or tariffs for) leases or other occupancies of lots included in the site or precinct.

(3) *It is not relevant to the identification of a person as a letting agent under this section that the person also conducts an ancillary business or other activity.*

Examples of ancillary businesses or activities—

video hire, linen hire, agency for tour operator

‘201U Meaning of service contractor for site or precinct

*‘A person is a **service contractor** for a site or precinct if—*

- (a) the person is engaged by the community body corporate for the site or precinct body corporate for the precinct to supply services to the body corporate for the benefit of the common property or lots included in the site or precinct; and*
- (b) the person is not an employee of the community body corporate or precinct body corporate; and*
- (c) the services do not include administrative services; and*
- (d) the term of the engagement is at least 1 year.*

Examples of services that might be provided by a service contractor—

caretaking services, pool cleaning services

‘Division 2 Codes of conduct

‘201V Code of conduct for body corporate manager and caretaking service contractor

(1) *The code of conduct in schedule 3 applies to—*

- (a) a body corporate manager appointed by a community body corporate or precinct body corporate in performing obligations under the person’s appointment; and*
- (b) a caretaking service contractor engaged by a community body corporate or precinct body corporate*

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in performing obligations for a site or precinct under the person's engagement.

- '(2) *Compliance with the provisions of the code is taken to be a condition of the instrument of appointment or the contract providing for the person's engagement.*
- '(3) *If there is an inconsistency between a provision of the code and a provision in the instrument of appointment or contract, the provision of the code prevails.*
- '(4) *In this section—*
instrument of appointment, *in relation to a person's appointment as a body corporate manager, includes a contract or other document relating to the appointment.*

'201W Code of conduct for letting agent

The code of conduct in schedule 4 applies to—

- (a) *a letting agent authorised by a community body corporate to conduct a letting agent business for a site; and*
- (b) *a letting agent authorised by a precinct body corporate to conduct a letting agent business for a precinct.*

'Division 3 Required transfer of management rights for contravention of code of conduct

'Subdivision 1 Preliminary

'201X Application of div 3

- '(1) *This division applies for transferring the management rights of a letting agent—*
- (a) *authorised by a community body corporate to conduct a letting agent business for a site; or*

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- (b) *authorised by a precinct body corporate to conduct a letting agent business for a precinct.*
- (2) *However, this division does not apply to a letting agent for conducting a letting agent business or a part of a letting agent business for a site or precinct for which a serviced strata arrangement or scheme under the Corporations Act is in operation.*

‘201Y Effect of div 3 on other provisions

‘The provisions of a letting agent authorisation or service contract providing for its transfer or termination are void to the extent the provisions are inconsistent with this division.

‘Subdivision 2 Transfer of management rights

‘201Z Code contravention notice

- (1) *The body corporate must, if required by an ordinary resolution decided by secret ballot, give the letting agent a signed notice under this section (a **code contravention notice**).*
- (2) *The code contravention notice must state—*
- (a) *that the body corporate believes the letting agent has contravened, or is contravening, a provision of—*
 - (i) *the code of conduct for letting agents; or*
 - (ii) *the code of conduct for body corporate managers and caretaking service contractors; and*
 - (b) *the provision the body corporate believes has been, or is being, contravened; and*
 - (c) *details sufficient to identify the contravention; and*
 - (d) *a reasonable period within which the letting agent must remedy the contravention; and*

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- (e) *that the body corporate may, without further notice, give the letting agent a transfer notice if—*
 - (i) *the letting agent does not comply with the code contravention notice; or*
 - (ii) *the body corporate reasonably believes the letting agent, after being given the code contravention notice, has contravened a provision of a code mentioned in paragraph (a).*

‘201ZA Grounds for requiring transfer

‘The body corporate may require the transfer of the letting agent’s management rights under this division only if the requirement is based on either of the following grounds—

- (a) *the letting agent failed to comply with a code contravention notice;*
- (b) *the body corporate reasonably believes the letting agent, after being given the notice, contravened a provision of—*
 - (i) *the code of conduct for letting agents; or*
 - (ii) *the code of conduct for body corporate managers and caretaking service contractors.*

‘201ZB Requirement for transfer

‘The letting agent must transfer the letting agent’s management rights for the site or precinct if—

- (a) *a ground under section 201ZA exists for the body corporate to require the transfer; and*
- (b) *the body corporate—*
 - (i) *by majority resolution, decided by secret ballot, requires the transfer; and*
 - (ii) *gives written notice of the requirement (the **transfer notice**) to the letting agent.*

‘201ZC Transfer—letting agent’s choice of transferee

- ‘(1) *The letting agent must transfer the management rights—*
- (a) *within the following period after the transfer notice is given to the letting agent—*
 - (i) *if section 201ZH does not apply—9 months;*
 - (ii) *if section 201ZH applies—11 months; and*
 - (b) *to a person, other than an associate of the letting agent, chosen by the letting agent and approved by the body corporate.*
- ‘(2) *For deciding whether to approve a person under subsection (1)(b), the body corporate—*
- (a) *must act reasonably and as quickly as practicable; and*
 - (b) *may have regard only to the person’s—*
 - (i) *character; and*
 - (ii) *financial standing; and*
 - (iii) *competence, qualifications and experience.*
- ‘(3) *However, the body corporate must not—*
- (a) *unreasonably withhold approval of the person; or*
 - (b) *require or receive a fee or other consideration for approving the person, other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to a request for the approval.*
- Maximum penalty—50 penalty units.*
- ‘(4) *If the letting agent transfers the management rights to a person who is not approved by the body corporate, the transfer is of no effect.*

‘201ZD Giving financier copy of transfer notice

‘When the body corporate gives the transfer notice to the letting agent, the body corporate must give a copy of it to each

person who is a financier for the contract under which the letting agent is authorised as the letting agent.

‘201ZE Transfer—body corporate’s choice of transferee

- ‘(1) *If the letting agent does not transfer the management rights as required under section 201ZC, the letting agent must transfer the management rights—*
- (a) to a replacement letting agent chosen by the executive committee of the body corporate and named in a written notice given by the committee to the letting agent; and*
 - (b) at the price stated in the notice; and*
 - (c) within the period, of at least 2 months after the notice is given, stated in the notice.*
- ‘(2) *The price stated must be 1 of the following—*
- (a) the average of 2 valuations, obtained by the body corporate from 2 independent registered valuers, stating the value of the management rights;*
 - (b) the highest bid for the management rights, excluding a bid by the letting agent or an associate of the letting agent, made at an auction—*
 - (i) conducted at the request of the body corporate; and*
 - (ii) of which at least 60 days notice was given;*
 - (c) the highest amount tendered, excluding a tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts have been made by the body corporate to market the management rights for at least 60 days.*
- ‘(3) *The letting agent must pay the body corporate, from the proceeds of the sale, the reasonable costs incurred by the body corporate under subsection (2).*

Note—

If the letting agent does not transfer the management rights as required under this section, it is a ground for giving the letting agent a remedial action notice under section 201ZM.

‘201ZF Terms of service contract on transfer

- ‘(1) *This section applies to a service contract (the **transferred service contract**) transferred to a person (the **transferee**) under section 201ZC or 201ZE.*
- ‘(2) *Unless the body corporate and transferee agree otherwise, the terms of the transferred service contract are—*
 - (a) *the terms applying to the service contract under subsection (3); or*
 - (b) *if subsection (3) does not apply—the terms applying to the service contract immediately before the transfer (the **existing terms**).*
- ‘(3) *The terms of the transferred service contract are the existing terms as changed under a review advice about the contract if—*
 - (a) *the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and*
 - (b) *the body corporate gave the letting agent a copy of the review advice as required under section 201ZJ(1).*

‘Subdivision 3 Replacement of letting agent authorisation and service contract

‘201ZG Replacement of letting agent authorisation and service contract in particular circumstances

- ‘(1) *This section applies if the remainder of the term of the letting agent’s authorisation (the **transferred authorisation**), including any rights or options of extension or renewal, is less*

*than 7 years when transferred to a person (the **transferee**) under this division.*

Example—

A letting agent's authorisation is given for a term of 5 years with 4 rights of renewal of 5 years each and 5 years have expired. The remainder of the term is therefore 20 years and this section does not apply.

'(2) On the transfer—

*(a) the transferred authorisation and any service contract (the **transferred service contract**) forming part of the transferred management rights terminate; and*

(b) the body corporate must—

(i) authorise the transferee to conduct a letting agent business for the site or precinct to which the transferred authorisation related; and

(ii) if a service contract formed part of the transferred management rights—engage the transferee as a service contractor.

'(3) The authorisation and engagement must be given for a term of 9 years starting immediately after the transfer.

'(4) Subject to subsection (3)—

(a) the authorisation must be given on the terms applying to the transferred authorisation immediately before the transfer; and

(b) unless the body corporate and transferee agree otherwise, the engagement must be given on—

(i) the terms applying to the transferred service contract under subsection (5); or

*(ii) if subsection (5) does not apply—the terms applying to the transferred service contract immediately before the transfer (the **existing terms**).*

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- ‘(5) *The engagement must be given on the existing terms of the transferred service contract as changed under a review advice about the contract if—*
- (a) *the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and*
 - (b) *the body corporate gave the letting agent a copy of the review advice as required under section 201ZJ(1).*

‘Subdivision 4 Reviewing terms of letting agent’s service contract

‘201ZH Reviewing terms of service contract

- ‘(1) *This section applies if—*
- (a) *the letting agent’s management rights include a service contract; and*
 - (b) *when the body corporate passes the majority resolution mentioned in section 201ZB, the body corporate also passes, by ordinary resolution, a motion (a **review motion**) that a review advice about the service contract be obtained.*
- ‘(2) *Within 1 month after the review motion is passed, the body corporate must obtain the review advice from an independent appropriate person.*

Example of an independent appropriate person—

a person who, in the ordinary course of the person’s business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers

- ‘(3) *The review advice must be based on the review criteria stated in section 201ZI.*
- ‘(4) *This section applies to the contract even if the contract also provides for either or both of the following—*

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- (a) *the letting agent's engagement as a body corporate manager;*
- (b) *the letting agent's authorisation as a letting agent.*

'201ZI Review criteria

'(1) The review criteria are each of the following—

- (a) *the appropriateness of the reviewable terms for the service contract for achieving a fair and reasonable balance between the interests of the body corporate and service contractor;*
- (b) *whether the reviewable terms impose conditions that—*
 - (i) *are unreasonably difficult to comply with; or*
 - (ii) *are not necessary and reasonable for the protection of the legitimate interests of the body corporate or service contractor;*
- (c) *the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to the body corporate or service contractor;*
- (d) *whether the reviewable terms are appropriate for the site or precinct;*
- (e) *the term of the engagement as service contractor and the period of the term remaining.*

'(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the site or precinct.

'201ZJ Giving copy of review advice to letting agent and prospective buyer of management rights

'(1) Within 14 days after obtaining the review advice, the body corporate must give a copy of it to the letting agent.

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- (2) *If requested by a prospective buyer of the letting agent's management rights, the body corporate must give a copy of the review advice to the prospective buyer.*

'Subdivision 5 Disputes about transfer of management rights

'201ZK QCAT jurisdiction

'A party to a dispute about the transfer, under this division, of a letting agent's management rights may apply, as provided under the QCAT Act, for an order of QCAT exercising QCAT's original jurisdiction to resolve the dispute.

'Division 4 Disputes about contractual matters

'201ZL QCAT jurisdiction

- (1) *This section applies to a dispute about a claimed or anticipated contractual matter about—*
- (a) *the appointment or engagement of a person as a body corporate manager or caretaking service contractor for a site or precinct; or*
 - (b) *the authorisation of a person as a letting agent for a site or precinct.*
- (2) *A party to the dispute may apply, as provided under the QCAT Act, for an order of QCAT exercising QCAT's original jurisdiction to resolve the dispute.*
- (3) *In this section—*
- contractual matter***, *about the appointment, engagement or authorisation of a body corporate manager, service contractor or letting agent, means—*
- (a) *a contravention of the terms of the appointment, engagement or authorisation; or*

[s 302]

- (b) *the termination of the appointment, engagement or authorisation; or*
- (c) *the exercise of rights or powers under the terms of the appointment, engagement or authorisation; or*
- (d) *the performance of duties under the terms of the appointment, engagement or authorisation.*

‘Division 5 Termination of appointment, engagement or authorisation

‘201ZM Termination for failure to comply with remedial action notice [SM, s 131]

- ‘(1) A community body corporate or precinct body corporate may terminate a person’s appointment as a body corporate manager or engagement as a service contractor if the person or, if the person is a corporation, a director of the corporation—*
- (a) engages in misconduct, or is grossly negligent, in carrying out functions required under the appointment or engagement; or*
 - (b) fails to carry out duties under the appointment or engagement; or*
 - (c) contravenes—*
 - (i) for a body corporate manager—the code of conduct for body corporate managers and caretaking service contractors; or*
 - (ii) for a service contractor who is a caretaking service contractor—the code of conduct for body corporate managers and caretaking service contractors or the code of conduct for letting agents.*
- ‘(2) Also, the body corporate may terminate a person’s authorisation as a letting agent if—*

-
- (a) *the person or, if the person is a corporation, a director of the corporation—*
- (i) *engages in misconduct, or is grossly negligent, in carrying out obligations, if any, under the authorisation; or*
 - (ii) *fails to carry out duties under the authorisation; or*
 - (iii) *contravenes the code of conduct for letting agents or, for a caretaking service contractor, the code of conduct for body corporate managers and caretaking service contractors; or*
- (b) *the person—*
- (i) *has been given a transfer notice requiring transfer of the person's management rights; and*
 - (ii) *has not transferred the management rights as required under section 201ZE.*
- (3) *The body corporate may act under subsection (1) or (2) only if—*
- (a) *the body corporate has given the manager, contractor or agent a remedial action notice; and*
 - (b) *the manager, contractor or agent fails to comply with the remedial action notice within the period stated in the notice; and*
 - (c) *the termination is approved by ordinary resolution of the body corporate; and*
 - (d) *for the termination of a person's engagement as a caretaking service contractor or authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.*
- (4) *In this section—*
- remedial action notice** *means a written notice stating each of the following—*
- (a) *that the body corporate believes the person to whom the notice is given has acted—*

[s 303]

- (i) *for a body corporate manager or service contractor—in a way mentioned in subsection (1); or*
 - (ii) *for a letting agent—in a way mentioned in subsection (2);*
- (b) *details of the action sufficient to identify—*
 - (i) *the misconduct or gross negligence the body corporate believes has happened; or*
 - (ii) *the duties the body corporate believes have not been carried out; or*
 - (iii) *the provision of the code of conduct the body corporate believes has been contravened; or*
 - (iv) *if subsection (2)(b) applies, the contravention of the code contravention notice or the relevant provision of the code of conduct that was the ground for requiring the transfer of the person’s management rights under section 201ZA;*
- (c) *that the person must, within a reasonable period of at least 14 days stated in the notice—*
 - (i) *remedy the misconduct or gross negligence; or*
 - (ii) *carry out the duties; or*
 - (iii) *remedy the contravention;*
- (d) *that if the person does not comply with the notice in the stated period, the body corporate may terminate the person’s appointment, engagement or authorisation as a body corporate manager, service contractor or letting agent.’.*

303 Amendment of s 202 (Community development control by-laws)

- (1) *Section 202(1), ‘development control’—*
omit, insert—
‘community development control’.

(2) *Section 202(2) and (3), ‘development control’—
omit, insert—
‘community development control’.*

(3) *Section 202—
insert—*

*‘(4) However, a mechanism provided for in a community
development control by-law under subsection (3)(b) cannot
limit section 214B.’.*

**304 Amendment of s 204 (Application of community
development control by-laws and community activities
by-laws)**

(1) *Section 204(1), ‘Development’—
omit, insert—
‘Community development’.*

(2) *Section 204(2) and (3), ‘development’—
omit, insert—
‘community development’.*

**305 Amendment of s 205 (Minor noncompliance with
community development by-laws or community activities
by-laws)**

*Section 205, ‘a development’—
omit, insert—
‘a community development’.*

**306 Amendment of s 208 (Precinct development control
by-laws)**

(1) *Section 208(1), ‘development control’—
omit, insert—*

[s 307]

'precinct development control'.

(2) Section 208(2) and (3), 'development control'—

omit, insert—

'precinct development control'.

(3) Section 208—

insert—

'(4) However, a mechanism provided for in a precinct development control by-law under subsection (3)(b) cannot limit section 214C.'

307 Amendment of s 210 (Application of precinct development control and precinct activities by-laws)

(1) Section 210 heading, after 'control'—

insert—

'by-laws'.

(2) Section 210(1), 'Development'—

omit, insert—

'Precinct development'.

(3) Section 210(2) and (3), 'development'—

omit, insert—

'precinct development'.

308 Amendment of s 211 (Minor noncompliance with precinct development by-laws or precinct activities by-laws)

Section 211, 'a development'—

omit, insert—

'a precinct development'.

309 Insertion of new pt 11, div 1 hdg

*Part 11, after part heading—
insert—*

‘Division 1 Fire safety’.

310 Replacement of s 214A (Dealing with disputes)

*Section 214A—
omit, insert—*

‘Division 2 Resolution of particular disputes

**‘214A Dealing with particular disputes under Building
Units and Group Titles Act 1980**

- ‘(1) Subject to subsection (2), a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the Building Units and Group Titles Act 1980, part 5.*
- ‘(2) However, this section—*
- (a) does not apply to a dispute or matter mentioned in section 201ZK, 201ZL, 214B or 214C; and*
 - (b) is subject to section 214D.*

**‘214B Dealing with matter relating to community
development control by-law**

- ‘(1) QCAT may deal with a matter relating to—*
- (a) the application of a community development control by-law for a site to a person mentioned in subsection (2)(b), (c) or (d); or*
 - (b) a contravention or alleged contravention of a community development control by-law for a site.*

[s 310]

‘(2) *Each of the following persons may apply to QCAT to deal with a matter under subsection (1) if the person has standing to make the application—*

- (a) the community body corporate that made the by-law;*
- (b) a subsidiary body corporate of the community body corporate;*
- (c) a subsidiary body corporate of a precinct body corporate that is a member of the community body corporate;*
- (d) a proprietor or occupier of, or a person having an estate or interest in, a lot in the site.*

‘(3) *For subsection (2), a person has standing to make the application if the person is directly and materially affected by the matter to which the application relates.*

Example—

A proprietor of a lot in a precinct in a site alleges the amenity of the lot has been, or will be, adversely affected by development authorised under a community development control by-law in an adjoining precinct in the site.

‘(4) *This section is subject to section 214D.*

‘214C Dealing with matter relating to precinct development control by-law

‘(1) *QCAT may deal with a matter relating to—*

- (a) the application of a precinct development control by-law for a precinct to a person mentioned in subsection (2)(b) or (c); or*
- (b) a contravention or alleged contravention of a precinct development control by-law for a precinct.*

‘(2) *Each of the following persons may apply to QCAT to deal with a matter under subsection (1) if the person has standing to make the application—*

- (a) the precinct body corporate that made the by-law;*

-
- (b) *a subsidiary body corporate of the precinct body corporate;*
 - (c) *a proprietor or occupier of, or a person having an estate or interest in—*
 - (i) *a lot in the precinct or in another precinct in the site; or*
 - (ii) *a lot on a group titles plan or building units plan subdividing a community development lot on the site; or*
 - (iii) *a community stratum lot on the site; or*
 - (iv) *a lot on a building units plan subdividing a community stratum lot on the site.*
- ‘(3) *For subsection (2), a person has standing to make the application if the person is directly and materially affected by the matter to which the application relates.*
- ‘(4) *This section is subject to section 214D.*

‘214D Internal dispute resolution processes to be used before application

- ‘(1) *Subsection (2) applies to a referee for deciding an application for an order under the Building Units and Group Titles Act 1980, part 5 relating to a dispute about a matter mentioned in section 214A(1).*
- ‘(2) *The referee must not decide the application unless the referee is satisfied the applicant has made reasonable attempts to resolve the dispute by using internal dispute resolution processes.*
- ‘(3) *Subsection (4) applies to QCAT for deciding an application about a matter relating to—*
- (a) *a community development control by-law under section 214B(1); or*
 - (b) *a precinct development control by-law under section 214C(1).*

[s 310]

‘(4) *QCAT must not decide the application unless QCAT is satisfied the applicant has made reasonable attempts to resolve the matter by using—*

(a) *if the application relates to a dispute (a **design and development dispute**) mentioned in section 202(3)(b) or 208(3)(b) and the community or precinct development control by-law provides a mechanism for deciding the dispute—the mechanism provided under the by-law; or*

(b) *otherwise—internal dispute resolution processes.*

‘(5) *In this section—*

internal dispute resolution processes *includes the following—*

(a) *the parties to the dispute communicating with each other about the dispute;*

(b) *the applicant writing about the dispute to the executive committee for the community body corporate or precinct body corporate, as relevant;*

(c) *the applicant causing a motion relevant to deciding the dispute to be presented for consideration at a general meeting of the community body corporate or precinct body corporate, as relevant.*

‘Division 3 Other matters

‘214E Associates

‘(1) *For this Act, a person is associated with someone else if—*

(a) *a relationship of a type to which this section applies exists between them; or*

(b) *a series of relationships of a type to which this section applies can be traced between them through another person or other persons.*

‘(2) *This section applies to relationships of the following types—*

-
- (a) *marriage or de facto partnership;*
 - (b) *the relationship of ascendant and descendant (including the relationship of parent and child) or the relationship of persons who have a parent or grandparent in common;*
 - (c) *business partnership;*
 - (d) *the relationship of employer and employee;*
 - (e) *a fiduciary relationship;*
 - (f) *the relationship of persons, one of whom is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the other;*
 - (g) *the relationship of a corporation and executive officer of the corporation;*
 - (h) *the relationship of a corporation and a person who is in a position to control or substantially influence the corporation's conduct.*
- ‘(3) *Despite subsection (2)(e) and (f), the owner of a community development lot, precinct development lot or a lot on a building units or group titles plan and a letting agent are not associated merely because of their relationship as owner and letting agent.*
- ‘(4) *In this section—*
- executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.’*

311 Insertion of new pt 14 and schs 1–5

After section 223—

insert—

‘Part 14 **Transitional provisions for
Local Government Electoral
Act 2011**

‘Division 1 **Preliminary**

‘224 **Definitions for pt 14**

‘In this part—

commencement means commencement of this section.

effective day means the day that is 6 months after the commencement.

‘Division 2 **Bodies corporate**

‘225 **Deferred application of particular provisions**

‘The following provisions do not apply until the effective day—

(a) *section 185A and schedule 2;*

(b) *part 9, divisions 6 to 8.*

‘226 **Application of code of conduct for existing voting
members of executive committees**

‘(1) This section applies to a person who—

(a) *immediately before the effective day, is a voting member of the executive committee of the community body corporate or precinct body corporate; and*

(b) *on the effective day, continues to be a voting member of the executive committee.*

‘(2) The code of conduct for voting members of the executive committee applies to the person only in relation to acts done or omissions made on or after the effective day.

‘227 Auditing accounts for first annual general meeting after evaluation day

‘(1) This section applies if—

(a) before the effective day—

(i) a precinct body corporate authorised a person to prepare a statement of accounts of the body corporate under section 177(1)(f) for adoption at the body corporate’s next annual general meeting; and

(ii) the person started to prepare the statement of accounts; and

(b) the annual general meeting has not happened.

‘(2) Section 2010 does not apply for auditing the statement of accounts for the period to which the authorisation relates.

‘Division 3 Body corporate managers, service contractors and letting agents

‘228 Deferred application of particular provisions

‘The following provisions do not apply until the effective day—

(a) part 9A, divisions 2, 3, 4 and 5;

(b) schedules 3 and 4.

‘229 Application of code of conduct for existing body corporate managers and caretaking service contractors

‘(1) This section applies to a person who—

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- (a) *immediately before the effective day is—*
 - (i) *the body corporate manager of a community body corporate or precinct body corporate; or*
 - (ii) *a caretaking service contractor for a site or precinct or part of a site or precinct; and*
 - (b) *on the effective day, continues to be the body corporate manager of the body corporate or caretaking service contractor for the site or the precinct or the part of the site or precinct.*
- ‘(2) *The code of conduct for body corporate managers and caretaking service contractors applies to the person only in relation to acts done or omissions made on or after the effective day.*

‘230 Application of code of conduct for existing letting agents

- ‘(1) *This section applies to a person who—*
- (a) *immediately before the effective day, is a letting agent for a site or precinct or part of a site or precinct; and*
 - (b) *on the effective day, continues to be a letting agent for the site or precinct or the part of the site or precinct.*
- ‘(2) *The code of conduct for letting agents applies to the person only in relation to acts done or omissions made on or after the effective day.*

**‘Schedule 1 Election of executive
committee members of
bodies corporate**

section 185(7)

‘1 Definitions for sch 1

‘In this schedule—

***body corporate** means a community body corporate or precinct body corporate.*

***candidate** see section 4(3)(a).*

***chairperson** means the chairperson of the executive committee.*

***eligibility category**, for a candidate, means the category of person mentioned in section 185(7) to which the candidate belongs.*

***executive committee** means the executive committee of the body corporate.*

***executive member**, of an executive committee, means the chairperson, secretary or treasurer of the committee.*

***ordinary member**, of an executive committee, means a member, other than an executive member, of the committee.*

***required number**, of members of the executive committee, means the number of members of the executive committee required under section 185 of the Act.*

***secretary** means the secretary of the executive committee.*

***treasurer** means the treasurer of the executive committee.*

[s 311]

**‘2 Election of members of executive committee
[SM, s 15]**

‘(1) *Unless otherwise provided under this schedule, the election of a member of the executive committee of a body corporate must be by ballot.*

Note—

See, for example, section 7 (Election of ordinary members of executive committee).

‘(2) *A ballot for membership of the executive committee must be a secret ballot unless the body corporate decides by ordinary resolution that the election be held by open ballot.*

‘(3) *The value of any vote able to be cast for a lot included in a scheme, or a part of a scheme, for choosing a member of the executive committee is the same as the value of the vote able to be cast for each other lot included in the scheme or part of the scheme.*

**‘3 Nomination procedures for election of executive committee other than at first annual general meeting
[SM, s 16]**

‘(1) *This section states how individuals are nominated for election at the body corporate’s annual general meeting, other than the first annual general meeting, as a voting member of the executive committee of the body corporate.*

‘(2) *The secretary must serve a notice on each member of the body corporate—*

(a) *inviting nomination for the members of the executive committee; and*

(b) *stating that a nominated person is not eligible to be a voting member of the executive committee if, when the members of the executive committee are chosen, the person owes a relevant body corporate debt in relation to a lot or lots owned by the person.*

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- '(3) *The notice must be given at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate's financial year.*
 - '(4) *Nominations must comply with section 4 and must be given to the secretary by the end of the body corporate's financial year.*
 - '(5) *As soon as practicable after receiving a nomination under this section of a candidate for election, the secretary must forward written notice to the candidate acknowledging the nomination has been received.*

'4 Requirements for nominations [SM, s 18]

- '(1) *Each member of the body corporate may nominate 1 person for election as a voting member of the executive committee of the body corporate.*
- '(2) *A nomination must be made by written notice and—*
 - (a) *if the nomination is from a member of the body corporate who is an individual nominating himself or herself—must be signed and dated by the member; or*
 - (b) *if the nomination is from a member of the body corporate other than a member to whom paragraph (a) applies—*
 - (i) *must be signed and dated by the nominated person; and*
 - (ii) *must be countersigned by the appropriate authorising person.*
- '(3) *A nomination must contain each of the following details—*
 - (a) *the family name and either the first given name or other name or abbreviation by which the nominated person (the **candidate**) is generally known;*
 - (b) *the position or positions the candidate is nominated for;*
 - (c) *the eligibility category for the candidate;*

[s 311]

- (d) *if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 169 of this Act—*
- (i) *the candidate’s residential or business address; and*
 - (ii) *the name of the member who nominated the candidate;*
- (e) *details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of a member of the executive committee.*

Example of a payment—

payment of the candidate’s expenses for travelling to executive committee meetings

‘(4) *In this section—*

appropriate authorising person, for a nomination from a member of the body corporate, means—

- (a) *if the member is an individual—the member; or*
- (b) *if the member is a subsidiary body corporate—the person appointed by the member under section 169 of this Act; or*
- (c) *if the member is a corporation other than a subsidiary body corporate—a director, secretary or other person nominated by the corporation for this section.*

‘5 Conduct of elections for executive committee by secret ballot [SM, s 21]

- ‘(1) *This section states how a secret ballot required under this schedule must be held.*
- ‘(2) *After nominations close, the secretary must prepare ballot papers for each of the following for which a ballot is required—*
- (a) *chairperson;*

-
- (b) *secretary;*
 - (c) *treasurer;*
 - (d) *the ordinary members of the executive committee.*
- ‘(3) *Each ballot must be conducted separately.*
- ‘(4) *However, the separate ballots may, but need not, appear on the one document.*
- ‘(5) *For each ballot, the secretary must, if satisfied the nominations comply with section 4, state the names of the properly nominated candidates in alphabetical order of family name, showing—*
- (a) *after each name, a blank space for voting purposes; and*
 - (b) *the eligibility category for each candidate; and*
 - (c) *if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 169—*
 - (i) *the candidate’s residential or business address; and*
 - (ii) *the name of the member who nominated the candidate; and*
 - (d) *details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of an executive committee member.*
- ‘(6) *The secretary must forward, with the notices for the annual general meeting—*
- (a) *the ballot papers; and*
 - (b) *an envelope marked ‘ballot paper’; and*
 - (c) *either of the following—*
 - (i) *a separate particulars envelope;*
 - (ii) *a particulars tab that forms part of the ballot paper envelope but that a person may detach without*

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unsealing or otherwise opening the ballot paper envelope.

‘(7) To vote, a person must—

- (a) for a ballot for the position of chairperson, secretary or treasurer—place a mark in the space opposite the name of the candidate the person wishes to vote for; and*
- (b) for a ballot for the ordinary members’ positions—place a mark in each of the spaces opposite the names of however many candidates the person wishes to vote for; and*
- (c) place the ballot paper in the ballot paper envelope supplied by the secretary and seal it; and*
- (d) if a separate particulars envelope is supplied—place the sealed ballot paper envelope in the separate envelope and seal it; and*
- (e) complete the separate particulars envelope or particulars tab by signing and dating the envelope or tab, and inserting the following information on the envelope or tab—*
 - (i) the name of the member for whom the vote is exercised;*
 - (ii) the name of the person having the right to vote for the member;*
 - (iii) the basis for the person’s right to vote; and*
- (f) give the completed particulars envelope with the ballot paper envelope enclosed, or the ballot paper envelope with the completed particulars tab attached, to the secretary, or forward the envelope to the secretary so that the secretary receives it, before or at the annual general meeting.*

‘(8) When a ballot is held—

- (a) a voter who has not submitted a vote for the ballot may ask the secretary for a ballot paper, ballot paper*

envelope and particulars envelope or tab, and vote in the way this section provides; and

(b) a voter who wishes to withdraw a vote already made for the ballot and submit a replacement vote, may, if the particulars envelope, or the ballot paper envelope with particulars tab attached, for the vote already made can be readily identified and withdrawn, ask the secretary for a ballot paper, ballot paper envelope and particulars envelope or tab, and vote in the way this section provides.

‘(9) All completed ballot papers received before the annual general meeting ends are to be held in the custody of the secretary.

‘6 Conduct of elections for executive committee by open ballot [SM, s 22]

‘(1) This section states how an open ballot required under this schedule must be held.

‘(2) After nominations close, the secretary must prepare ballot papers for each of the following for which a ballot is required—

(a) chairperson;

(b) secretary;

(c) treasurer;

(d) the ordinary members of the executive committee.

‘(3) Each ballot must be conducted separately.

‘(4) However, the separate ballots mentioned in subsection (3) may, but need not, appear on the one document.

‘(5) For each ballot, the secretary must, if satisfied the nominations comply with section 4, list the names of the properly nominated candidates in alphabetical order of family name, showing—

(a) after each name, a blank space for voting purposes; and

[s 311]

- (b) *the eligibility category for each candidate; and*
 - (c) *if the candidate is not a member of the body corporate or a person appointed by a subsidiary body corporate under section 169—*
 - (i) *the candidate’s residential or business address; and*
 - (ii) *the name of the member who nominated the candidate; and*
 - (d) *details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of an executive committee member.*
- ‘(6) *The secretary must forward the ballot papers, and an envelope marked ‘ballot paper’ self-addressed to the secretary, with the notices for the annual general meeting.*
- ‘(7) *To vote, a person must—*
 - (a) *for a ballot for the position of chairperson, secretary or treasurer—place a mark in the space opposite the name of the candidate the person wishes to vote for; and*
 - (b) *for a ballot for the ordinary members’ positions—place a mark in each of the spaces opposite the names of however many candidates the person wishes to vote for; and*
 - (c) *sign each ballot paper the voter completes; and*
 - (d) *on each completed ballot paper, write the name of the member for whom the vote is exercised; and*
 - (e) *if the ballot paper is not completed at the annual general meeting—*
 - (i) *place the ballot paper in the ballot paper envelope supplied by the secretary; and*
 - (ii) *seal the envelope, and write on the back of the envelope the name mentioned in paragraph (d); and*

-
- (iii) *give the ballot paper envelope to the secretary, or forward it to the secretary so that the secretary receives it, before or at the annual general meeting; and*
- (f) *if the ballot paper is completed at the annual general meeting—give the ballot paper to the secretary before or at the meeting.*
- ‘(8) *When a ballot is held—*
- (a) *a voter who has not submitted a vote for the ballot may ask the secretary for a ballot paper, and vote in the way this section provides; and*
- (b) *a voter who wishes to withdraw a vote already made for the ballot and submit a replacement vote, may, if the vote already made can be readily identified and withdrawn, ask the secretary for a ballot paper and vote in the way this section provides.*
- ‘(9) *All completed ballot papers received before the annual general meeting ends are to be held in the custody of the secretary.*

‘7 Election of ordinary members of executive committee [SM, s 23]

- ‘(1) *A person nominated as an ordinary member of the executive committee becomes an ordinary member of the committee under section 11 on the basis of the nomination unless it is necessary to have a ballot.*
- ‘(2) *It is necessary to have a ballot for ordinary members of the executive committee if the number of persons nominated for ordinary member positions (other than a person who becomes an executive member of the executive committee), plus the number of executive members of the executive committee, is more than the required number of members for the executive committee.*

[s 311]

‘8 Conduct of ballot—general requirements [SM, s 24]

- ‘(1) *Any items of business about the election of members of the executive committee that are on the agenda for an annual general meeting must be conducted as the last items of business for the meeting.*
- ‘(2) *The election of members takes effect immediately after the close of the meeting at which they are elected.*
- ‘(3) *The ballots for the positions on the executive committee for which ballots are required must be conducted in the following order—*
- *chairperson*
 - *secretary*
 - *treasurer*
 - *ordinary members.*
- ‘(4) *Each ballot may proceed to the count only after the person chairing the meeting has allowed enough time for votes to be cast and announced the close of the ballot.*
- ‘(5) *Each candidate for a ballot, and any scrutineer appointed by the candidate for a ballot, may watch the count for the ballot.*
- ‘(6) *The secretary must pass any ballot papers, particulars envelopes and ballot paper envelopes for the ballot to the person chairing the meeting for counting.*

‘9 Conduct of ballot—scrutiny of votes [SM, s 25]

- ‘(1) *If a ballot for positions on the executive committee is an open ballot, the person chairing the meeting must—*
- (a) *confirm, by a scrutiny of the details on the back of each ballot paper envelope or each ballot paper itself, that the ballot paper is the vote of a person who has the right to vote in the election; and*
 - (b) *if a ballot paper is in a ballot paper envelope—take the ballot paper out of the envelope.*

-
- (2) *If a ballot for positions on the executive committee is a secret ballot, the person chairing the meeting must—*
- (a) *confirm, by a scrutiny of the details on each particulars envelope or particulars tab, that the ballot paper is the vote of a person who has the right to vote in the election; and*
 - (b) *take the ballot paper envelope out of the particulars envelope, or detach the particulars tab from the ballot paper envelope; and*
 - (c) *place the ballot paper envelope in a receptacle in open view of the meeting; and*
 - (d) *after paragraph (c) has been complied with for all ballot paper envelopes, randomly mix the envelopes; and*
 - (e) *take each ballot paper out of its envelope.*
- (3) *The person chairing the meeting must record the count of votes in each ballot in the minutes of the meeting.*
- (4) *The person chairing the meeting may delegate a function under subsection (1) or (2) in relation to a ballot for a position on the executive committee to a person attending the meeting who is not a candidate for the position and who the person chairing the meeting considers has sufficient independence.*

‘10 Conduct of ballot—deciding executive member positions [SM, s 26]

- (1) *If only 1 person is nominated for the position of chairperson, secretary or treasurer, the person chairing the meeting, if satisfied the nomination complies with this schedule, must declare the person to have been elected unopposed.*
- (2) *If, for the position of chairperson, secretary or treasurer, there has been no nomination, the person chairing the meeting—*
- (a) *must invite nominations for the position at the meeting; and*

[s 311]

- (b) must accept nominations that are made in either of the following ways—*
 - (i) by members of the body corporate who are personally present or represented at the meeting;*
 - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.*
- ‘(3) A member of the body corporate may nominate, under subsection (2), not more than 1 person for the position.*
- ‘(4) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for an ordinary member’s position on the executive committee.*
- ‘(5) If more than 1 person has nominated for a position, a ballot is conducted, and the person who receives the highest number of votes is declared elected.*
- ‘(6) If, on a counting of votes, 2 or more persons each receive an identical number of votes, and no other candidate receives a higher number of votes, the result must be decided between the 2 or more persons by chance in the way the meeting decides.*

‘11 Conduct of ballot—deciding ordinary member positions [SM, s 27]

- ‘(1) The positions of the ordinary members of the executive committee are decided only after the executive member positions on the executive committee are filled.*
- ‘(2) A person’s nomination for a position as an ordinary member has no effect if the person is elected as an executive member of the executive committee, even if the person’s name appears on a ballot for ordinary members forwarded before the meeting.*
- ‘(3) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is not more than the required number of members for the executive committee, the person chairing the*

meeting, if satisfied the nominations for the ordinary member positions comply with section 4, must declare the candidates to have been elected as ordinary members.

- (4) However, if the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is less than the required number of members for the executive committee, the person chairing the meeting must invite nominations at the meeting for the number of ordinary member positions necessary to bring the total number of all executive committee members to not more than the required number of members for the executive committee.*
- (5) The person chairing the meeting—*
- (a) must invite nominations for the position or positions at the meeting; and*
 - (b) must accept nominations that are made in either of the following ways—*
 - (i) by members of the body corporate who are personally present or represented at the meeting;*
 - (ii) in writing, by members of the body corporate not personally present or represented at the meeting.*
- (6) A member of the body corporate may nominate, under subsection (5), not more than 1 person for all ordinary member positions for which nominations are invited.*
- (7) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 3 for a position on the executive committee.*
- (8) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the executive committee, is more than the required number of members for the executive committee, the person chairing the meeting must proceed with the scrutiny of the ballot papers relating to the ordinary member positions.*

[s 311]

- ‘(9) *The persons who receive the highest numbers of votes, in descending order until the executive committee numbers the required number of members for the executive committee, must be declared elected as the ordinary members.*
- ‘(10) *If, on a counting of votes, 2 or more persons each receive an identical number of votes and the number of persons to be elected would be exceeded if the 2 or more persons were declared elected, the result of the ballot must be decided between the 2 or more persons by chance in the way the meeting decides.*
- ‘(11) *For the counting of votes for positions of ordinary members of the executive committee on ballot papers completed before the annual general meeting, a mark against the name of each person who has already been elected to an executive member position is void.*

‘12 **Conduct of ballot—declaration of voting results**
[SM, s 28]

- ‘(1) *The person chairing an annual general meeting must declare the result of an election.*
- ‘(2) *When declaring the result of an election, the person chairing the meeting must state the number of votes cast for each candidate.*
- ‘(3) *The number of votes cast for each candidate must be recorded in the minutes of the meeting.*
- ‘(4) *The voting tally sheet kept for the meeting must include, for each ballot that is an open ballot under section 6—*
- (a) *a list of the votes, identified by the names of the members on whose behalf the votes were cast, rejected as informal; and*
- (b) *for each vote rejected—the reason for the rejection; and*
- (c) *the total number of votes counted for each candidate.*
- ‘(5) *The voting tally sheet kept for the meeting must include, for each ballot that is a secret ballot under section 5—*

-
- (a) *a list of the votes, identified by the names of the members on whose behalf the votes were cast, rejected from the count before the enclosing ballot paper envelopes were opened; and*
 - (b) *a list of the votes taken out of ballot paper envelopes for counting, but rejected as informal; and*
 - (c) *for each vote rejected—the reason for the rejection; and*
 - (d) *the total number of votes counted for each candidate.*
- ‘(6) *The voting tally sheet may be inspected at the meeting by any of the following persons—*
- (a) *a person who is a voter for the meeting;*
 - (b) *a candidate;*
 - (c) *the returning officer, if any, appointed by the body corporate for the meeting;*
 - (d) *the person chairing the meeting;*
 - (e) *a scrutineer appointed by a candidate for the ballot.*

‘Schedule 2 Code of conduct for voting members of executive committees

section 185A(1) and schedule 5, definition code of conduct

‘1 Commitment to acquiring understanding of Act, including this code

‘A voting member of the executive committee of a community body corporate or precinct body corporate must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member’s role on the executive committee.

[s 311]

‘2 Honesty, fairness and confidentiality

- ‘(1) The voting member must act honestly and fairly in performing the member’s functions as a voting member.*
- ‘(2) The voting member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a lot, unless authorised or required by law to do so.*

‘3 Acting in best interests of body corporate and persons with estate or interest in lots

‘Unless it is unlawful to do so, the voting member must, in performing the member’s functions as a voting member, act in the best interests of—

- (a) the body corporate; and*
- (b) either—*
 - (i) for a voting member of the executive committee of a community body corporate for a site—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the site; or*
 - (ii) for a voting member of the executive committee of a precinct body corporate for a precinct—the proprietors and occupiers of, and other persons having an estate or interest in, the lots in the precinct.*

‘4 Complying with Act and this code

‘The voting member must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member’s functions as a voting member.

‘5 Conflict of interest

‘The voting member must disclose to the executive committee any conflict of interest the member may have in a matter before the executive committee.

‘Schedule 3 Code of conduct for body corporate managers and caretaking service contractors

section 201V(1) and schedule 5, definition code of conduct

‘1 Knowledge of Act, including code

‘A body corporate manager or caretaking service contractor appointed or engaged by a community body corporate or precinct body corporate for a site or precinct must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person’s functions under the person’s appointment or engagement.

‘2 Honesty, fairness and professionalism

‘(1) The body corporate manager or caretaking service contractor must act honestly, fairly and professionally in performing the person’s functions under the person’s appointment or engagement.

‘(2) The body corporate manager must not attempt to unfairly influence the outcome of an election for the executive committee of the body corporate.

[s 311]

‘3 Skill, care and diligence

‘The body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person’s functions under the person’s appointment or engagement.

‘4 Acting in body corporate’s best interests

‘The body corporate manager or caretaking service contractor must act in the best interests of the body corporate unless it is unlawful to do so.

‘5 Keeping body corporate informed of developments

‘The body corporate manager or caretaking service contractor must keep the body corporate informed of any significant development or issue about an activity performed for the body corporate.

‘6 Ensuring employees comply with Act and code

‘The body corporate manager or caretaking service contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person’s functions under the person’s appointment or engagement.

‘7 Fraudulent or misleading conduct

‘The body corporate manager or caretaking service contractor must not engage in fraudulent or misleading conduct in performing the person’s functions under the person’s appointment or engagement.

‘8 Unconscionable conduct

‘The body corporate manager or caretaking service contractor must not engage in unconscionable conduct in

performing the person's functions under the person's appointment or engagement.

Examples of unconscionable conduct—

- *taking unfair advantage of the person's superior knowledge relative to the body corporate*
- *requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary*
- *exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the site or precinct*

'9 Conflict of duty or interest

'The body corporate manager or caretaking service contractor for a site or precinct must not accept another appointment or engagement if doing so will place the person's functions or interests as the manager or contractor in conflict with the person's functions or interests for the other appointment or engagement.

Example of another appointment or engagement—

an appointment as the body corporate manager or an engagement as a caretaking service contractor for another site or precinct

'10 Goods and services to be supplied at competitive prices

'The body corporate manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

'11 Body corporate manager to demonstrate keeping of particular records

'If the body corporate or its executive committee gives the body corporate manager a written request to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

‘Schedule 4 Code of conduct for letting agents

section 201W and schedule 5, definition code of conduct

‘1 Honesty, fairness and professionalism

‘A letting agent must act honestly, fairly and professionally in conducting the letting agent business at a site or precinct under the letting agent’s authorisation.

‘2 Skill, care and diligence

‘The letting agent must exercise reasonable skill, care and diligence in conducting the letting agent business under the letting agent’s authorisation.

‘3 Acting in body corporate’s and individual lot owner’s best interests

‘Unless it is unlawful to do so, the letting agent must, as far as practicable, act in the best interests of—

(a) the community body corporate or precinct body corporate that has given the letting agent’s authorisation; and

(b) individual owners of lots in the site or precinct.

‘4 Ensuring employees comply with Act and code

‘The letting agent must take reasonable steps to ensure an employee of the letting agent complies with this Act, including this code, in conducting the letting agent business under the letting agent’s authorisation.

‘5 *Fraudulent or misleading conduct*

‘The letting agent must not engage in fraudulent or misleading conduct in conducting the letting agent business under the letting agent’s authorisation.

‘6 *Unconscionable conduct*

‘The letting agent must not engage in unconscionable conduct in conducting the letting agent business under the letting agent’s authorisation.

Examples of unconscionable conduct—

- *taking unfair advantage of the person’s position as letting agent relative to the body corporate or the owner of a lot in the site or precinct*
- *exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the site or precinct*

‘7 *Nuisance*

‘The letting agent must not—

- (a) *cause a nuisance or hazard at the site or precinct; or*
- (b) *interfere unreasonably with the use or enjoyment of a lot in the site or precinct; or*
- (c) *interfere unreasonably with the use or enjoyment of common property in the site or precinct by a person who is lawfully on the common property; or*
- (d) *otherwise behave in a way that unreasonably affects a person’s lawful use or enjoyment of a lot or common property in the site or precinct.*

‘8 *Goods and services to be supplied at competitive prices*

‘The letting agent must take reasonable steps to ensure goods and services the letting agent obtains for, or supplies to, the body corporate are obtained or supplied at competitive prices.

[s 312]

‘Schedule 5 Dictionary

section 3’.

Division 12 Amendment of Neighbourhood Disputes Resolution Act 2011

312 Act amended

This division amends the Neighbourhood Disputes Resolution Act 2011.

313 Amendment of s 9 (Non-application of provisions to barrier of regulated pool)

(1) *Section 9, ‘under the Building Act 1975’—*

omit.

(2) *Section 9, note, ‘section 231B’—*

omit, insert—

‘chapter 8, part 2A’.

(3) *Section 9—*

insert—

‘(2) In this section—

regulated pool means a regulated pool under the Building Act 1975 as if a reference to a regulated pool in this section were a reference to a regulated pool in chapter 8, part 2A of that Act.’.

Division 13 **Amendment of Public Trustee Act
1978**

314 Act amended

This division amends the *Public Trustee Act 1978*.

315 Amendment of s 17A (Priority etc. of fees and charges)

(1) Section 17A(4)—

renumber as section 17A(5).

(2) Section 17A—

insert—

‘(4) *The public trustee’s interest under subsection (1) or (3) in relation to personal property is declared to be a statutory interest to which section 73(2) of the Personal Property Securities Act 2009 (Cwlth) applies.*’.

(3) Section 17A—

insert—

‘(6) *In this section—*

‘personal property see the Personal Property Securities Act 2009 (Cwlth), section 10.’.

Division 14 **Amendment of Queensland Civil
and Administrative Tribunal Act
2009**

318 Act amended

This division amends the Queensland Civil and Administrative Tribunal Act 2009.

[s 319]

319 Amendment of s 12 (When jurisdiction for minor civil dispute exercised)

Section 12(4), definition relevant person—

insert—

‘(h) for a matter under the Building Act 1975, chapter 8, part 2A—a person who, under the Building Act 1975, chapter 8, part 2A may apply to the tribunal for a decision in relation to the matter.’

320 Amendment of s 13 (Deciding minor civil dispute generally)

(1) Section 13(2)—

insert—

‘(d) for a claim that is the subject of a dispute under the Building Act 1975, chapter 8, part 2A—a decision or order the tribunal may make in relation to the matter under the Building Act 1975, chapter 8, part 2A.’

(2) Section 13(4), after note—

insert—

‘(c) a claim that is the subject of a dispute under the Building Act 1975, chapter 8, part 2A.’

321 Amendment of sch 3 (Dictionary)

Schedule 3, definition minor civil dispute, item 1—

insert—

‘(g) a matter in relation to which a person may, under the Building Act 1975, chapter 8, part 2A apply to the tribunal for an order.

Note—

A matter mentioned in paragraph (g) would relate to part of a barrier for a swimming pool along a common boundary.’

Division 16 **Amendment of State Penalties
Enforcement Act 1999**

336 Act amended

This division amends the State Penalties Enforcement Act 1999.

337 Amendment of s 63 (Issue of enforcement warrant)

(1) *Section 63(8)—*

renumber as section 63(11).

(2) *Section 63—*

insert—

‘(8) A charge imposed on personal property under an enforcement warrant—

(a) is declared to be a statutory interest to which section 73(2) of the PPS Act applies; and

(b) has priority over all security interests in relation to the personal property other than those registered on the PPS register before the charge is mentioned on the register.

‘(9) Subsection (10) applies to the following fees, expenses and costs to the extent the fees, expenses and costs relate to personal property under an enforcement warrant—

(a) the enforcement officer’s fees and expenses mentioned in section 73J(2);

(b) other enforcement costs mentioned in section 73J(3)(a).

‘(10) The fees, expenses and costs mentioned in subsection (9)—

(a) are declared to be statutory interests to which section 73(2) of the PPS Act applies; and

(b) have priority over all security interests in relation to the personal property.’.

[s 338]

(3) *Section 63(11), as renumbered—*

insert—

‘personal property see the PPS Act, section 10.

PPS Act means the Personal Property Securities Act 2009 (Cwlth).

PPS register means the Personal Property Securities Register under the PPS Act.

security interest see the PPS Act, section 12.’

338 Amendment of s 73J (Accountability for, and distribution of, money received)

Section 73J(3) and (4)—

omit, insert—

‘(3) The registrar must apply the money received from the enforcement officer in the following order—

(a) in payment of any other enforcement costs incurred by SPER in seizing and selling, or attempting to seize and sell, the property;

(b) if there is an amount owing to an entity under a security interest registered for the property on the PPS register before the charge on the property is mentioned on the register—in payment of the amount owing under the security interest;

(c) in payment of the amount recoverable under the enforcement warrant other than costs;

(d) if there is an amount owing to an entity under a security interest registered for the property on the PPS register after the charge on the property is mentioned on the register—in payment of the amount owing under the security interest;

(e) in payment of any balance to the enforcement debtor.

‘(4) To remove any doubt, it is declared for subsection (3)(b) and (d) that, if there is an amount owing to more than 1 entity, the

priority between the entities is to be determined under the PPS Act.

(5) *In this section—*

charge means a charge mentioned in section 63(8).

PPS Act means the Personal Property Securities Act 2009 (Cwlth).

PPS register means the Personal Property Securities Register under the PPS Act.

security interest see the PPS Act, section 12.’

339 Insertion of new pt 10, div 7

Part 10—

insert—

‘Division 7 Transitional provision for Local Government Electoral Act 2011

‘183 Effect of regulation amendment

‘The amendment of the State Penalties Enforcement Regulation 2000 by the Local Government Electoral Act 2011 does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’

Division 17 Amendment of State Penalties Enforcement Regulation 2000

340 Regulation amended

This division amends the *State Penalties Enforcement Regulation 2000*.

[s 342]

342 *Amendment of sch 1 (Consumer related legislation)*

Schedule 1, entry for the Motor Vehicles and Boats Securities Act 1986—

omit.

Schedule Dictionary

section 4

agent, for a group of candidates, means the agent for the group recorded in a register of group agents under section 43.

applicant, for part 7, see section 135.

application, for part 7, see section 135.

approved form means a form approved by the electoral commission under section 207.

assistant returning officer, for an election, means a person appointed under section 10 as an assistant returning officer for the election.

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.

by-election means an election to replace a councillor after the councillor's office becomes vacant.

Note—

See the *Local Government Act 2009*, chapter 6, part 2, division 3 or the *City of Brisbane Act 2010*, chapter 6, part 2, division 3, for when a vacancy in the office of a councillor must be filled by a by-election.

candidate means a person whose nomination for election as a councillor has been certified by the returning officer under section 31(1)(a).

candidate's disclosure period, for part 6, see section 106.

conclusion, of an election, see section 7.

councillor, of a local government, includes the mayor.

Court of Disputed Returns see the *Electoral Act 1992*, section 139.

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 18.

declaration envelope means an envelope—

- (a) on which there is a form of declaration that is to be made by an elector; and
- (b) in which the elector's ballot paper is to be sealed.

deposit, in relation to a nomination, means the amount deposited under section 39 for the nomination.

distribute, a how-to-vote card—

- (a) includes make the card available to other persons; but
- (b) does not include merely displaying the card.

Examples—

- 1 A person *distributes* how-to-vote cards if the person hands the cards to other persons or leaves them at a place for other persons to take away.
- 2 A person does not *distribute* how-to-vote cards if the person attaches the cards to walls and other structures, merely for display.

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

early polling booth see section 46(4).

elect includes re-elect.

election means a local government election.

election material 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 25(1); and
- (b) ending on the close of the poll for the election.

elector means a person entitled to vote in an election.

electoral commission means the Electoral Commission of Queensland established under the *Electoral Act 1992*, section 7.

electoral district means an electoral district under the *Electoral Act 1992*.

electoral officer means the returning officer, an assistant returning officer or an issuing officer.

electoral paper means a ballot paper or declaration envelope.

electoral roll means an electoral roll kept under the *Electoral Act 1992*, section 58.

emergency means—

- (a) a storm, tempest, flood, fire or a similar happening; or
- (b) a riot or open violence.

first-preference vote, recorded on a ballot paper, means the number 1, or a tick or cross, written in a square opposite the name of a candidate on the ballot paper.

formal, in relation to a vote, means the vote is recorded on a formal ballot paper.

formal ballot paper means a ballot paper that is a formal ballot paper under—

- (a) for optional-preferential voting—section 86(7); or
- (b) for first-past-the-post voting—section 87(6).

fresh election means an election of all the councillors of a local government that is not a quadrennial election.

gift, for part 6, see section 107(1) and (2).

gifts register, for part 6, see section 106.

group of candidates—

1 A *group of candidates*, for an election, means a group of individuals, each of whom is a candidate for the election, if the group was formed—

- (a) to promote the election of the candidates; or

(b) to share in the benefits of fundraising to promote the election of the candidates.

2 However, a *group of candidates*, for an election, does not include a political party or an associated entity.

group's disclosure period, for part 6, see section 106.

how-to-vote card means—

- (a) a card, handbill or pamphlet, relating to an election for which optional-preferential voting applies, that—
- (i) is or includes—
 - (A) a representation of a ballot paper or part of a ballot paper; or
 - (B) something apparently intended to represent a ballot paper or part of a ballot paper; or
 - (ii) lists the names of any or all of the candidates for the election with a number indicating an order of voting preference against the names of any or all of the candidates; or
 - (iii) otherwise directs or encourages the casting of preference votes, other than first-preference votes, in a particular way; or
- (b) a card, handbill or pamphlet, relating to an election for which first-past-the-post voting applies, that—
- (i) is or includes—
 - (A) a representation of a ballot paper or part of a ballot paper; or
 - (B) something apparently intended to represent a ballot paper or part of a ballot paper; or
 - (ii) directs or encourages the casting of a vote for a number of particular candidates equal to the number of candidates to be elected.

informal, in relation to a vote, means the vote is recorded on an informal ballot paper.

informal ballot paper means a ballot paper that is an informal ballot paper under—

- (a) for optional-preferential voting—section 86(8); or
- (b) for first-past-the-post voting—section 87(7).

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) another place prescribed by regulation to be an institution.

issuing officer see section 12.

local government election means—

- (a) a quadrennial election; or
- (b) a by-election; or
- (c) a fresh election.

local government employee—

- (a) for the City of Brisbane—means a council employee under the *City of Brisbane Act 2010*, schedule; or
- (b) for another local government—means a local government employee under the *Local Government Act 2009*, schedule 4.

mobile polling booth see section 46(3).

name, of a political party, means—

- (a) if the register of political parties includes an abbreviation of the party's name—the abbreviation; or
- (b) otherwise—the party's full name included in the register.

nomination day, for an election, means the day stated as the nomination day for the election—

- (a) in a notice under section 25; or
- (b) in a gazette notice under section 38.

nominee, for an election, means a person who has nominated for election as a councillor at the election.

obstruct includes hinder and attempt to obstruct.

ordinary polling booth see section 46(2).

ordinary vote see section 67(1)(a).

ordinary voting hours means the hours between 8a.m. and 6p.m. on a day.

person acting on behalf of a candidate, for part 6, see section 106.

person acting on behalf of a group of candidates, for part 6, see section 106.

place includes a vehicle.

political activity, for part 6, see section 106.

political party means 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 an office of councillor of a local government.

polling booth means—

- (a) an ordinary polling booth; or
- (b) a mobile polling booth; or
- (c) an early polling booth.

polling day, for an election, means the day—

- (a) stated in a notice under section 35; or
- (b) fixed by notice under section 36; or
- (c) fixed by a notice under section 38; or
- (d) fixed by a notice under section 53.

polling notice means the public notice given by a returning officer, under section 35, that a poll will be conducted.

postal ballot election means an election for which the Minister has directed, under section 45, that the poll be conducted by postal ballot.

postal vote see section 67(1)(c).

postal voter means an elector who casts a postal vote in an election.

preference vote, recorded on a ballot paper, means the number 2, or a higher number, written in a square opposite the name of a candidate on the ballot paper.

pre-poll vote see section 67(1)(b).

presiding officer, for a polling booth, means the person who, under section 11, is the presiding officer at the polling booth.

properly nominated, for an election, see section 31(3).

public office, of a local government, see the *Local Government Act 2009*, schedule 4.

quadrennial election means the election of councillors for local governments that is held in 2012, and every fourth year after 2012.

register of political parties means the register of political parties kept under the *Electoral Act 1992*.

registered industrial organisation, for part 6, see section 106.

registered officer, of a registered political party, see the *Electoral Act 1992*, section 2.

registered political party see the *Electoral Act 1992*, section 2.

relevant details, for a gift, for part 6, see section 109.

returning officer, for an election, means a person appointed under section 9 as returning officer for the election.

third party, for part 6, see section 123.

value, of a gift, for part 6, see section 106.

voters roll, for an election, means the roll compiled by the returning officer of persons entitled to vote at the election.

voting hours, for a mobile polling booth, means the hours when electors may enter the booth to vote at an election.

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 13 September 2011. Future amendments of the Local Government Electoral Act 2011 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	2011 Act No. 27	1 September 2011	
0B	2011 Act No. 30	13 September 2011	

5 List of legislation

Local Government Electoral Act 2011 No. 27

date of assent 1 September 2011

ss 1–2, 224, 228, 236 commenced on date of assent (see s 2(1))

pt 12 divs 2–3, 11–12, 14, 16, ss 315, 342 not yet proclaimed into force (see s 2(2))

pt 12 div 4 (except ss 224, 228, 236) commenced 1 September 2011 (see s 2(1))

remaining provisions commenced on date of assent

amending legislation—

Local Government Electoral Act 2011 No. 27 s 1, pt 12 div 1

date of assent 1 September 2011

commenced on date of assent

Local Government Electoral (Declaration) Amendment Act 2011 No. 30

date of assent 13 September 2011

commenced on date of assent

6 List of annotations

Declaration about Act's assent

s 208A ins 2011 No. 30 s 3

exp 14 September 2011 (see s 208A(5))**Transitional regulation-making power**s 209 exp 1 September 2012 (see s 209(4))**PART 12—AMENDMENT OF ACTS AND A REGULATION****Division 1—Amendment of this Act**

div 1 (ss 210–211) om R0A (see RA ss 7(1)(k) and 40)

Division 4—Amendment of Building Act 1975 relating to residential care buildings

div 4 (ss 223–236) om R0A (see RA ss 7(1)(k) and 40)

Division 5—Amendment of Building Act 1975 relating to Pool Safety Council

div 5 (ss 237–242) om R0A (see RA ss 7(1)(k) and 40)

Division 6—Amendment of City of Brisbane Act 2010

div 6 (ss 243–256) om R0A (see RA ss 7(1)(k) and 40)

Division 7—Amendment of Criminal Code

div 7 (ss 257–259) om R0A (see RA ss 7(1)(k) and 40)

Division 8—Amendment of Electoral Act 1992

div 8 (ss 260–262) om R0A (see RA ss 7(1)(k) and 40)

Division 9—Amendment of the Information Privacy Act 2009

div 9 (ss 263–264) om R0A (see RA ss 7(1)(k) and 40)

Division 10—Amendment of Local Government Act 2009

div 10 (ss 265–290) om R0A (see RA ss 7(1)(k) and 40)

Division 13—Amendment of Public Trustee Act 1978

div 13 (ss 314–317) amd R0A (see RA s 40)

Division 15—Amendment of Sanctuary Cove Resort Act 1985

div 15 (ss 322–335) om R0A (see RA ss 7(1)(k) and 40)

Division 17—Amendment of State Penalties Enforcement Regulation 2000

div 17 (ss 340–343) amd R0A (see RA s 40)

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