



# **City of Brisbane Act 2010**

**Reprinted as in force on 1 September 2011**

**Reprint No. 1F**

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- **when provisions commenced**
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Queensland

# City of Brisbane Act 2010

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# City of Brisbane Act 2010

[as amended by all amendments that commenced on or before 1 September 2011]

## An Act to provide a system of local government in the City of Brisbane

### Chapter 1 Preliminary

#### 1 Short title

This Act may be cited as the *City of Brisbane Act 2010*.

#### 2 Commencement

- (1) This Act, other than the following, commences on 1 July 2010—
  - (a) section 344;
  - (b) schedule 1, amendments of this Act.
- (2) Schedule 1, amendments of this Act, commences on 2 July 2010.

#### 3 Purpose of this Act

- (1) The purpose of this Act is to provide for—
  - (a) the way in which the Brisbane City Council is constituted and the unique nature and extent of its responsibilities and powers; and
  - (b) a system of local government in Brisbane that is accountable, effective, efficient and sustainable.

[s 4]

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- (2) Compared to other local governments in Queensland, the council is unique in its nature and the extent of its responsibilities and powers for the following reasons—
- (a) Brisbane is the capital city of Queensland;
  - (b) the council is the largest provider of local government services in Queensland;
  - (c) there are 26 councillors (other than the mayor) who each represent the interests of the residents of a ward;
  - (d) the mayor has unique responsibilities as the mayor of a capital city;
  - (e) the council has an Establishment and Coordination Committee that coordinates its business;
  - (f) the chairperson of the council presides at all of its meetings and is responsible for ensuring its rules of procedure are observed and enforced.

#### **4 Local government principles underpin this Act**

- (1) To ensure the system of local government in Brisbane is accountable, effective, efficient and sustainable, Parliament requires—
- (a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and
  - (b) any action that is taken under this Act to be taken in a way that—
    - (i) is consistent with the local government principles; and
    - (ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.
- (2) The *local government principles* are—



- (a) transparent and effective processes, and decision-making in the public interest; and
- (b) sustainable development and management of assets and infrastructure, and delivery of effective services; and
- (c) democratic representation, social inclusion and meaningful community engagement; and
- (d) good governance of, and by, local government; and
- (e) ethical and legal behaviour of councillors and council employees.

## **5 Relationship with Local Government Act**

- (1) Although the Brisbane City Council is a local government, this Act, rather than the Local Government Act, provides for—
  - (a) the way in which the Brisbane City Council is constituted and the nature and extent of its responsibilities and powers; and
  - (b) a system of local government in Brisbane.
- (2) The Local Government Act does not apply to the Brisbane City Council or its councillors, employees, agents or contractors or to corporate entities of the council.

## **6 Definitions**

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

## **Chapter 2 Brisbane City Council**

### **Part 1 City of Brisbane**

#### **7 City of Brisbane**

- (1) The area of Brisbane continues to be a city under the name ‘City of Brisbane’.
- (2) The boundaries of Brisbane are the boundaries of the city immediately before 1 July 2010 and as subsequently varied under this Act.
- (3) Brisbane is the capital city of Queensland.
- (4) A regulation may describe the boundaries of Brisbane.

### **Part 2 Council constitution, responsibilities and powers**

#### **8 What this part is about**

This part explains—

- (a) what the Brisbane City Council is; and
- (b) who constitutes the council; and
- (c) the responsibilities and powers of the council, its councillors and its employees.

#### **9 The Brisbane City Council’s responsibility for Brisbane**

The Brisbane City Council (the *council*) is the elected body that is responsible for the good rule and local government of Brisbane.

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## **10 Brisbane City Council is a body corporate**

The council—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued, and otherwise exercise its powers, under the name ‘Brisbane City Council’.

## **11 Powers of council generally**

- (1) The council has the power to do anything that is necessary or convenient for the good rule and local government of Brisbane.

*Note—*

Also, see section 242 for more information about powers.

- (2) However, the council can only do something that the State can validly do.
- (3) When exercising a power, the council may take account of Aboriginal tradition and Island custom.
- (4) The council may exercise its powers—
  - (a) inside Brisbane; or
  - (b) outside Brisbane (including outside Queensland)—
    - (i) with the written approval of the Minister; or
    - (ii) as provided under section 12(5).
- (5) When the council is exercising a power in a place that is outside Brisbane, the council has the same jurisdiction in the place as if the place were inside Brisbane.

## **12 Power includes power to conduct joint government activities**

- (1) The council may exercise its powers by cooperating with 1 or more other local, State or Commonwealth government to conduct a joint government activity.

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- (2) A **joint government activity** includes providing a service, or operating a facility, that involves the other governments.
- (3) The cooperation with another government may take any form, including for example—
  - (a) entering into an agreement; or
  - (b) creating a joint local government entity, or joint government entity, to oversee the joint government activity.
- (4) A joint government activity may be set up for more than 1 purpose.

*Example—*

Three local governments may create a joint local government entity to manage an aerodrome that services each of their local government areas, and may also enter into an agreement to sell water in bulk to one of the local governments.

- (5) The council may exercise a power in another government's area for the purposes of a joint government activity, in the way agreed by the governments.
- (6) However, if the power is to be exercised under a local law, the local law must expressly state that it applies to the other government's area.

*Note—*

See section 30 for more information about making local laws.

### **13 Who the council is constituted by**

- (1) Usually, the council is constituted by the mayor and 26 other councillors who are elected or appointed to the council under this Act or the *Local Government Electoral Act 2011*.
- (2) However, if there are no councillors for any reason, the council is constituted by its chief executive officer.

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## **14 Responsibilities of councillors**

- (1) A councillor must represent the current and future interests of the residents of Brisbane.
- (2) All councillors have the same responsibilities, but the mayor has some extra responsibilities.
- (3) All councillors have the following responsibilities—
  - (a) ensuring the council—
    - (i) discharges its responsibilities under this Act; and
    - (ii) achieves its corporate and community plans; and
    - (iii) complies with all laws that apply to the council;
  - (b) providing high quality leadership to the council and the community;
  - (c) participating, for the benefit of Brisbane, in—
    - (i) meetings of the council; and
    - (ii) policy development and decision making about matters being considered at a meeting of the council;
  - (d) being accountable to the community for the council's performance;
  - (e) complying with the BCC councillors code of conduct.
- (4) The mayor has the following extra responsibilities—
  - (a) implementing the policies adopted by the council;
  - (b) developing and implementing policies, other than policies that conflict with policies adopted by the council;
  - (c) leading and controlling the business of the council;
  - (d) preparing a budget to present to the council;
  - (e) leading, managing, and providing strategic direction to the chief executive officer in order to achieve high quality administration of the council;

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- (f) ensuring that the council promptly provides the Minister with the information about Brisbane, or the council, that is requested by the Minister;
  - (g) arranging representation of the council at ceremonial or civic functions;
  - (h) directing the chief executive officer and senior contract employees of the council.
- (5) When performing a responsibility, a councillor must serve the overall public interest of the whole of Brisbane.

## **15 Responsibilities of council employees**

- (1) All employees of the council have the following responsibilities—
- (a) implementing the policies and priorities of the council in a way that promotes—
    - (i) the effective, efficient and economical management of public resources; and
    - (ii) excellence in service delivery; and
    - (iii) continual improvement;
  - (b) carrying out their duties in a way that ensures the council—
    - (i) discharges its responsibilities under this Act; and
    - (ii) complies with all laws that apply to the council; and
    - (iii) achieves its corporate and community plans;
  - (c) providing sound and impartial advice to the council;
  - (d) carrying out their duties impartially and with integrity;
  - (e) ensuring their personal conduct does not reflect adversely on the reputation of the council;
  - (f) improving all aspects of their work performance;

- (g) observing all laws relating to their employment;
  - (h) observing the ethics principles under the *Public Sector Ethics Act 1994*, section 4;
  - (i) complying with a code of conduct under the *Public Sector Ethics Act 1994*.
- (2) The chief executive officer has the following extra responsibilities—
- (a) managing the council in a way that promotes—
    - (i) the effective, efficient and economical management of public resources; and
    - (ii) excellence in service delivery; and
    - (iii) continual improvement;
  - (b) managing the other council employees through management practices that—
    - (i) promote equal employment opportunities; and
    - (ii) are responsive to the council's policies and priorities;
  - (c) establishing and implementing goals and practices in accordance with the policies and priorities of the council;
  - (d) establishing and implementing practices about access and equity to ensure members of the community have access to—
    - (i) council programs; and
    - (ii) appropriate avenues for reviewing council decisions;
  - (e) the safe custody of—
    - (i) all records about the proceedings, accounts or transactions of the council or its committees; and
    - (ii) all documents owned or held by the council;

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- (f) complying with particular requests under section 171 from councillors.

## Part 3 Wards of Brisbane

### 16 What this part is about

This part is about the number of electors that are to be in each ward of Brisbane to ensure democratic representation.

### 17 Wards of Brisbane

- (1) Brisbane is divided into 26 areas called *wards*.
- (2) A regulation may describe the boundaries of any ward of Brisbane.
- (3) Each ward of Brisbane must have a reasonable proportion of electors.
- (4) A *reasonable proportion of electors* is the number of electors that is worked out by dividing the total number of electors in Brisbane (as nearly as can be found out) by the number of councillors (other than the mayor), plus or minus 10%.

*Example—*

If the total number of electors in Brisbane is 1500000, and the number of councillors (other than the mayor) is 5, the reasonable proportion of electors is 300000 (i.e. 1500000 divided by 5) plus or minus 10%, i.e. between 270000 and 330000 electors.

- (5) When changing the wards of Brisbane, the reasonable proportion of electors must be worked out as near as practicable to the time when the change is to happen.



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## 18 Review of wards of Brisbane

The council must, no later than 1 October in the year that is 2 years before the year of the quadrennial elections—

- (a) review whether each of the wards of Brisbane has a reasonable proportion of electors; and
- (b) give the electoral commissioner and the Minister written notice of the results of the review.

# Part 4 Changing Brisbane area or representation

## Division 1 Introduction

### 19 What this part is about

- (1) This part is about making a boundary change.
- (2) A ***boundary change*** is a change of the boundaries of Brisbane or any ward of Brisbane.
- (3) In summary, the process for making a boundary change is as follows—
  - *assessment*—the change commission assesses whether a proposed boundary change is in the public interest
  - *implementation*—the Governor in Council implements the boundary change under a regulation.
- (4) The ***change commission***, which conducts the assessment phase of the process, is an independent body created under the Local Government Act.

## **Division 2                    The process for change**

### **20            Who may start the change process**

For a boundary change—

- (a) the council; or
- (b) the Minister; or
- (c) the electoral commission;

may apply to the change commission to assess whether the change should be made.

### **21            Assessment**

- (1) The change commission is responsible for assessing whether a proposed boundary change is in the public interest.
- (2) In doing so, the change commission must consider—
  - (a) whether the proposed boundary change is consistent with a local government related law; and
  - (b) the views of the Minister about the proposed boundary change; and
  - (c) any other matters prescribed under a regulation.
- (3) The change commission may conduct its assessment in any way that it considers appropriate, including, for example, by—
  - (a) asking for submissions from any local government that would be affected by the proposed boundary change; or
  - (b) holding a public hearing (in the way set out in chapter 7, part 1) to ask the public for its views about the proposed boundary change.
- (4) However, the Minister may direct the change commission in writing to conduct its assessment of the proposed boundary change in a particular way.

- (5) Despite subsection (3), the change commission must comply with the Minister's direction.
- (6) The change commission must let the public know the results of its assessment and the reasons for the results, by publishing notice of the results—
  - (a) in a newspaper that is circulating generally in Brisbane; and
  - (b) in the gazette; and
  - (c) on the electoral commission's website.
- (7) The change commission must also give the results of its assessment to the Minister.
- (8) The change commission may recommend that the Governor in Council implement the change commission's assessment.

## **22 Implementation**

- (1) The Governor in Council may implement the change commission's recommendation under a regulation.
- (2) The regulation may provide for anything that is necessary or convenient to facilitate the implementation of the boundary change.
- (3) For example, the regulation may provide for—
  - (a) holding or postponing a council election; or
  - (b) the transfer of assets and liabilities between the council and another local government.
- (4) The council is not liable to pay a State tax in relation to a transfer or other arrangement made to implement a boundary change.
- (5) A *State tax* is a tax, charge, fee or levy imposed under an Act, other than a duty under the *Duties Act 2001*.

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## **23 Decisions under this division are not subject to appeal**

A decision of the change commission under this division is not subject to appeal.

*Note—*

See section 226 for more information.

# **Chapter 3 The business of the council**

## **Part 1 Statutory committees and council meetings**

### **Division 1 Statutory committees of the council**

#### **24 Establishment and Coordination Committee**

- (1) The standing committee of the council called the Establishment and Coordination Committee is continued as a statutory committee of the council.
- (2) The committee coordinates the business of the council.
- (3) The committee consists of the mayor and all committee chairpersons of the standing committees of the council.
- (4) Only a councillor may be a member of the committee.
- (5) The mayor is the chairperson of the committee.
- (6) The committee is collectively responsible to the council.

*Note—*

Under the *Right to Information Act 2009* (the **RTI Act**), schedule 3, section 4A, particular information relating to the committee is exempt information. Accordingly, access to that information may be refused—see section 47(3)(a) of the RTI Act. However, despite the

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council being able, under that section, to refuse access, the council may decide to give access—see section 48(3) of the RTI Act.

## **Division 2                      Meetings of the council or its committees**

### **25                      Chairperson of the council**

- (1) The council must, by resolution, appoint a chairperson of the council from its councillors (other than the mayor or deputy mayor) at the first meeting after the office of the chairperson becomes vacant.
- (2) The chairperson of the council presides at all meetings of the council and is responsible for ensuring its rules of procedure are observed and enforced.

*Note—*

The chairperson of the council also has powers under section 185 in relation to inappropriate conduct by councillors in meetings of the council.

- (3) However, the chairperson of the council does not preside at meetings of committees of the council.

*Note—*

A committee chairperson presides at meetings of a committee of the council.

- (4) The *rules of procedure* are, under a local law, the rules decided by council for the conduct of the participants at meetings of the council.

### **26                      Mayor as member of standing committees of the council**

- (1) The mayor is a member of all standing committees of the council.
- (2) The mayor may, at the mayor's discretion, attend, participate in or vote at any meeting of a standing committee of the council.

## Part 2 Local laws

### Division 1 Introduction

#### 27 What this part is about

- (1) This part is about local laws.
- (2) A *local law* is a law made by the council.
- (3) Unless there is a contrary intention, a reference in this Act to a *local law* includes a reference to—
  - (a) an interim local law; and
  - (b) a subordinate local law; and
  - (c) a local law that is an adopted model local law.
- (4) An *interim local law* is a local law that has effect for 6 months or less.
- (5) A *subordinate local law* is a local law that—
  - (a) is made under a power contained in a local law; and
  - (b) provides for the detailed implementation of the broader principles contained in the local law.
- (6) A subordinate local law is called that because it is subordinate to the local law under which it is made, so that if there is any inconsistency between the subordinate local law and the local law, the local law prevails to the extent of the inconsistency.
- (7) A *model local law* is a local law approved by the Minister under the Local Government Act, section 26(7), as being suitable for adoption by all local governments.

#### 28 Interaction with State laws

If there is any inconsistency between a local law and a law made by the State, the law made by the State prevails to the extent of the inconsistency.



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- (b) give the Minister the following—
  - (i) a copy of the proposed local law;
  - (ii) a drafting certificate for the proposed local law;
  - (iii) information required by the Minister or under a regulation.
- (3) The council may proceed further in making the proposed local law only if the council satisfies the Minister that—
  - (a) the overall State interest is satisfactorily dealt with by the proposed local law; and
  - (b) the proposed local law is drafted substantially in accordance with the drafting standards.
- (4) If the Minister considers the overall State interest would be satisfactorily dealt with by the proposed local law if the council satisfied particular conditions—
  - (a) the Minister may impose conditions on the council that the Minister considers appropriate; and
  - (b) the council may proceed further in making the proposed local law if it—
    - (i) satisfies any conditions about the content of the proposed local law; and
    - (ii) agrees to satisfy any other conditions.

## **32 Notice of new local law**

- (1) The council must let the public know that a local law has been made by the council, by publishing a notice of making the local law—
  - (a) in a newspaper that is circulating generally in Brisbane; and
  - (b) in the gazette; and
  - (c) on the council's website.



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- (2) The notice must be published within 1 month after the day when the council made the resolution to make the local law.
  - (3) The notice must state—
    - (a) that the notice is made by the council; and
    - (b) the date when the council made the resolution to make the local law; and
    - (c) the name of the local law; and
    - (d) the name of any existing local law that was amended or repealed by the new local law; and
    - (e) if the local law is an adopted model local law—that fact; and
    - (f) if the local law is an interim local law—that fact, and the date on which the interim local law expires; and
    - (g) if the local law is a subordinate local law—the name of the local law that authorises the subordinate local law to be made; and
    - (h) the purpose and general effect of the local law; and
    - (i) if the local law contains an anti-competitive provision—that fact; and
    - (j) that a copy of the local law may be—
      - (i) inspected and purchased at the council’s public office; and
      - (ii) inspected at the department’s State office.
  - (4) As soon as practicable after the notice is published in the gazette, the council must ensure a copy of the local law may be viewed and purchased by the public at the council’s public office.
  - (5) A copy of a local law must cost no more than the cost to the council of making the copy available for purchase.
  - (6) Within 7 days after the notice is published in the gazette, the council must give the Minister—

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- (a) a copy of the notice; and
- (b) a copy of the local law.

### **33 Expiry of interim local law revives previous law**

- (1) This section applies if—
  - (a) an interim local law amends or repeals a local law; and
  - (b) the interim local law expires; and
  - (c) the interim local law is not made (either with or without change) as a local law.
- (2) When the interim local law expires—
  - (a) the local law is revived in its previous form; and
  - (b) any subordinate local law or provision of a subordinate local law, that stopped having effect because the local law was amended or repealed, is revived in its previous form.
- (3) The *previous form* of a local law, subordinate local law, or provision of a subordinate local law is the form it was in immediately before the interim local law commenced.
- (4) This section does not affect anything that was done or suffered under the interim local law before it expired.
- (5) This section applies despite the *Acts Interpretation Act 1954*, section 19.

### **34 Local law register**

- (1) The council must keep a register of its local laws, in the way that is required under a regulation.
- (2) The council must ensure the public may view the register at its public office or on its website.

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### **35 Consolidated versions of local laws**

- (1) The council may prepare and adopt a consolidated version of a local law.
- (2) A *consolidated version* of a local law is a document that accurately combines the council's local law, as it was originally made, with all the amendments made to the local law since the local law was originally made.
- (3) When the council adopts the consolidated version of the local law, the consolidated version is taken to be the local law, in the absence of evidence to the contrary.
- (4) Within 7 days after the council adopts the consolidated version of the local law, the council must give a copy of the consolidated version to the Minister.

### **36 Regular review of local laws**

The council must regularly review the provisions of its local laws (including anti-competitive provisions, for example) with a view to ensuring the local laws are relevant to the public interest.

## **Division 3 Local laws that can not be made**

### **37 What this division is about**

This division specifies the subjects that the council must not make a local law about.

### **38 Network connections**

- (1) The council must not make a local law that regulates network connections.
- (2) A *network connection* is an installation that has the sole purpose of connecting a home or other structure to an existing telecommunications network.

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- (3) A local law, to the extent that it is contrary to this section, has no effect.

### **39 Election advertising**

- (1) The council must not make a local law that—
- (a) prohibits or regulates the distribution of how-to-vote cards; or
  - (b) prohibits the placement of election signs or posters.
- (2) A *how-to-vote card* includes a how-to-vote card under the Electoral Act.
- (3) An *election sign or poster* is a sign or poster that is able, or is intended, to—
- (a) influence a person about voting at any government election; or
  - (b) affect the result of any government election.
- (4) A *government election* is an election for a local, State or Commonwealth government.
- (5) A local law, to the extent that it is contrary to this section, has no effect.

### **40 Development processes**

- (1) The council must not make a local law that establishes an alternative development process.
- (2) An *alternative development process* is a process that is similar to or duplicates all or part of a process in the Planning Act, chapter 6.
- (3) However, if a local law already contains a provision that establishes an alternative development process, the council—
- (a) may repeal the provision at any time; and
  - (b) may amend the provision until a new planning scheme comes into effect in Brisbane.

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- (4) This section does not apply to a local law about—
- (a) advertising devices; or
  - (b) gates and grids; or
  - (c) levees; or
  - (d) roadside dining;
- until the council decides (under the Planning Act) to prepare its next planning scheme.
- (5) A local law, to the extent that it is contrary to this section, has no effect.

#### **41 Anti-competitive provisions**

- (1) The council must not make a local law that contains an anti-competitive provision unless the council has complied with the procedures prescribed under a regulation for the review of anti-competitive provisions.
- (2) A local law, to the extent that it is contrary to this section, has no effect.
- (3) This section does not apply to an interim local law.

#### **41A Swimming pool safety**

- (1) The council must not make a local law that regulates—
- (a) the construction or maintenance of barriers for a regulated pool; or
  - (b) a matter for ensuring the safety of persons using a regulated pool and prescribed under the Building Act, section 231D(1), definition *pool safety standard*, paragraph (b).
- (2) If a local law that is in force before the commencement of this section contains a provision that regulates a matter mentioned in subsection (1), the council—

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- (a) must not amend the provision after the commencement;  
and
- (b) must repeal the provision by 1 January 2017.
- (3) A local law, to the extent that it is contrary to this section, has no effect.
- (4) In this section—  
*barriers*, for a regulated pool, includes any of the following—
  - (a) the fencing for the pool;
  - (b) the walls of a building enclosing the pool;
  - (c) another form of barrier mentioned or provided for in the pool safety standard under the Building Act.

## **Division 4                      Action by the Minister about particular local laws**

### **42                      Suspending or revoking particular local laws**

- (1) This section applies if the Minister reasonably believes a local law is contrary to any other law or inconsistent with the local government principles.
- (2) The Minister, by gazette notice, may—
  - (a) suspend the local law, for a specified period or indefinitely; or
  - (b) revoke the local law.
- (3) The gazette notice must state—
  - (a) how the local law is contrary to another law or inconsistent with the local government principles; and
  - (b) if the local law has been suspended—how the local law may be amended so that it is no longer contrary to the other law or inconsistent with the local government principles.

- (4) If the Minister suspends a local law, the local law stops having effect for the period specified in the gazette notice.
- (5) If the Minister revokes the local law—
  - (a) the local law stops having effect on the day specified in the gazette notice; or
  - (b) if no day is specified in the gazette notice—the local law is taken to never have had effect.
- (6) The State is not liable for any loss or expense incurred by a person because a local law is suspended or revoked under this section.
- (7) A decision of the Minister under this section is not subject to appeal.

*Note—*

See section 226 for more information.

## **Part 3**                      **Beneficial enterprises and business activities**

### **Division 1**                **Beneficial enterprises**

#### **43**      **What this division is about**

- (1) This division is about beneficial enterprises that are conducted by the council.
- (2) This division does not apply to a business unit of the council.
- (3) A *beneficial enterprise* is an enterprise that the council considers is directed to benefiting, and can reasonably be expected to benefit, the whole or part of Brisbane.
- (4) The council is *conducting* a beneficial enterprise if the council is engaging in, or helping, the beneficial enterprise.

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#### **44 Conducting beneficial enterprises**

- (1) This section applies if the council wants to conduct a beneficial enterprise.
- (2) The council must—
  - (a) consult with—
    - (i) all council employees who may be directly affected by the beneficial enterprise; or
    - (ii) if nominated by the council employees, an industrial association representing the council employees; and
  - (b) pass a resolution to conduct the beneficial enterprise.
- (3) An *industrial association* is an association of employees having as a principal purpose the protection and promotion of their interests in matters concerning their employment.
- (4) When conducting the beneficial enterprise, the council must—
  - (a) apply sound financial principles; and
  - (b) comply with the local government related laws.
- (5) In order to conduct the beneficial enterprise, the council may—
  - (a) commercially exploit the council's tangible or intangible property rights; or
  - (b) participate with an association, other than by—
    - (i) being an unlimited partner of a partnership; or
    - (ii) entering into an agreement that does not limit the liability of the council, as between the parties, to the amount committed by the council under the agreement; or
    - (iii) borrowing, or guaranteeing a borrowing.
- (6) An *association* is—
  - (a) a partnership; or



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- (b) a corporation limited by shares but is not listed on a stock exchange; or
  - (c) a corporation limited by guarantee but is not listed on a stock exchange; or
  - (d) another association of persons that is not a corporation.
- (7) In order to conduct the beneficial enterprise, the council must not, either directly or by participating with an association, participate with an unlimited corporation.
- (8) An *unlimited corporation* means a corporation whose members have no limit placed on their liability.
- (9) The council *participates* with an association or unlimited corporation if the council—
- (a) forms, or takes part in forming, an association or unlimited corporation; or
  - (b) becomes a member of an association or unlimited corporation; or
  - (c) takes part in the management of an association or unlimited corporation; or
  - (d) acquires or disposes of shares, debentures or securities of an association or unlimited corporation.

#### **45 Register of beneficial enterprises**

- (1) The council must establish a register that includes a record, for each beneficial enterprise that it conducts, of—
- (a) particulars of the purpose to be achieved by conducting the beneficial enterprise; and
  - (b) the identity of any entity with which the council has conducted a beneficial enterprise; and
  - (c) the amount of money, or the market value of property, that the council has committed to a beneficial enterprise, as at the date that the property was committed.

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- (2) The council must ensure the public may view the register at its public office or on its website.
- (3) The council must give the department's chief executive and the auditor-general written notice of—
  - (a) the establishment of the register as soon as practicable after it is established; and
  - (b) the making of each entry in the register as soon as practicable after the entry is made.

#### **46 Planning for a beneficial enterprise with the private sector**

- (1) This section applies if the council plans to invest in a beneficial enterprise that is to be conducted with the private sector.
- (2) The council must identify the amount that is to be invested, as a capital expenditure, in the council's budget.
- (3) If the council does not commit that amount to the beneficial enterprise in the financial year of that budget, the amount may be carried forward to the next financial year for the beneficial enterprise.
- (4) Any amount that is carried forward must be held in a reserve established by the council in the council's operating fund, until the amount is lawfully applied.
- (5) A regulation may prescribe the maximum number of years that an amount can be carried forward.
- (6) The council must get the approval of the department's chief executive before the council may—
  - (a) invest in a beneficial enterprise when the council has not identified the amount of the investment as a capital expenditure in its budget; or
  - (b) invest in a beneficial enterprise an amount prescribed under a regulation.

- (7) If the department's chief executive does not give the council written notice of his or her decision about the approval, within 30 days after the approval is sought, the department's chief executive is taken to have refused the approval on the 31st day after the approval was sought.
- (8) If the council fails to comply with this section, the department's chief executive may—
  - (a) publish notice of the failure in a newspaper that is circulating generally in Brisbane; or
  - (b) direct the council to publish notice of the failure on the council's website.

## **Division 2                      Business reform, including    competitive neutrality**

### **47        What this division is about**

- (1) This division is about the application of the National Competition Policy Agreements in relation to the significant business activities of the council.
- (2) This includes the application of the competitive neutrality principle if, in the circumstances, the public benefit (in terms of service quality and cost) outweighs the costs of implementation.
- (3) Under the *competitive neutrality principle*, an entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is in the public sector.
- (4) A *significant business activity* is a business activity of the council that—
  - (a) is conducted in competition, or potential competition, with the private sector (including off-street parking, quarries, sporting facilities, for example); and
  - (b) meets the threshold prescribed under a regulation.

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- (5) However, a ***significant business activity*** does not include a business activity that is—
- (a) a building certifying activity; or
  - (b) a roads activity; or
  - (c) related to the provision of library services.

*Note—*

A building certifying activity or roads activity is dealt with under section 51.

#### **48 Ways to apply the competitive neutrality principle**

- (1) The competitive neutrality principle may be applied by—
- (a) commercialisation of a significant business activity; or
  - (b) corporatisation of a significant business activity; or
  - (c) full cost pricing of a significant business activity.
- (2) ***Commercialisation*** involves creating a new business unit, that is part of the council, to conduct the significant business activity on a commercial basis.
- (3) ***Corporatisation*** involves creating a new corporate entity, that is not part of the council but is directly or indirectly owned by the council, to conduct the significant business activity on a commercial basis.
- (4) ***Full cost pricing*** involves pricing the significant business activity on a commercial basis, but without creating a new business unit or new corporate entity.
- (5) A regulation may provide for—
- (a) matters relating to corporatisation, commercialisation or full cost pricing; or
  - (b) any other matter relating to the application of the competitive neutrality principle to the significant business activities of the council.

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## 49 Identifying significant business activities

The council's annual report for each financial year must—

- (a) contain a list of all the business activities that the council conducted during the financial year; and
- (b) identify the business activities that are significant business activities; and
- (c) state whether or not the competitive neutrality principle was applied to the significant business activities, and if the principle was not applied, the reason why it was not applied; and
- (d) state whether any of the significant business activities were not conducted in the preceding financial year, i.e. whether there are any new significant business activities.

## 50 Assessing public benefit

- (1) This section applies to a new significant business activity that is identified in the annual report of the council.
- (2) The council must conduct a public benefit assessment of the new significant business activity.
- (3) A ***public benefit assessment*** is an assessment of whether the benefit to the public (in terms of service quality and cost) of applying the competitive neutrality principle in relation to a significant business activity outweighs the costs of applying the competitive neutrality principle.
- (4) The council must conduct the public benefit assessment before the end of the financial year in which the significant business activity is first identified in the annual report.
- (5) The council must prepare a report on the public benefit assessment that contains its recommendations about the application of the competitive neutrality principle in relation to the significant business activity.
- (6) At a meeting of the council, the council must—

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- (a) consider the report; and
  - (b) decide, by resolution, whether or not to apply the competitive neutrality principle in relation to the significant business activity.
- (7) Any resolution that the competitive neutrality principle should not be applied must include a statement of the reasons why it should not be applied.
- (8) The council must give the Minister a copy of—
- (a) the report; and
  - (b) all resolutions made in relation to the report.
- (9) If the council decides not to apply the competitive neutrality principle in relation to the significant business activity, the council must, within 3 years after making the decision, repeat the process in this section.
- (10) Subsection (9) also applies to a decision that was made before the commencement of this section.

## 51 Code of competitive conduct

- (1) This section is about the code of competitive conduct.
- (2) The *code of competitive conduct* is the code of competitive conduct prescribed under a regulation under the Local Government Act.
- (3) The council must apply the code of competitive conduct to the conduct of the following business activities of the council—
  - (a) a building certifying activity;
  - (b) a roads activity, other than a roads activity for which business is conducted only through a sole supplier arrangement.
- (4) A *building certifying activity* is a business activity that—
  - (a) involves performing building certifying functions (within the meaning of the Building Act, section 8); and

- 
- (b) is prescribed under a regulation.
- (5) A **roads activity** is a business activity (other than a business activity prescribed under a regulation) that involves—
- (a) constructing or maintaining a State-controlled road, that the State put out to competitive tender; or
  - (b) submitting a competitive tender in relation to—
    - (i) constructing or maintaining a road in Brisbane, that the council put out to competitive tender; or
    - (ii) constructing or maintaining a road in another local government area, that the other local government put out to competitive tender.
- (6) The council must start to apply the code of competitive conduct—
- (a) for a building certifying activity—from the start of the financial year after the financial year in which the building certifying activity is first conducted; or
  - (b) for a roads activity—from when the roads activity is first conducted.
- (7) The council must decide each financial year, by resolution, whether or not to apply the code of competitive conduct to a business activity prescribed under a regulation.
- (8) If the council decides not to apply the code of competitive conduct to the business activity, the resolution must state reasons for not doing so.
- (9) Subsection (7) does not prevent the council from applying the code of competitive conduct to any other business activities.

## 52 Competitive neutrality complaints

- (1) The council must adopt a process for resolving competitive neutrality complaints.
- (2) A **competitive neutrality complaint** is a complaint that—

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- (a) relates to the failure of the council to conduct a business activity in accordance with the competitive neutrality principle; and
  - (b) is made by an affected person.
- (3) An *affected person* is—
- (a) a person who—
    - (i) competes with the council in relation to the business activity; and
    - (ii) claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by the council; or
  - (b) a person who—
    - (i) wants to compete with the council in relation to the business activity; and
    - (ii) claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed by the council.
- (4) A regulation may provide for the process for resolving competitive neutrality complaints.
- (5) The council does not have to resolve a competitive neutrality complaint relating to a business activity prescribed under a regulation.

## **Division 3                      Responsibilities and liabilities of employees of corporate entities**

### **53            Director's duty to disclose interest in a matter**

- (1) This section applies if a director on the board of directors of a corporate entity has a direct or indirect interest in a matter that is being considered, or about to be considered, by the board of directors.



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- (2) The director must immediately disclose the nature of the interest to a meeting of the board of directors.

Maximum penalty—200 penalty units.

- (3) The disclosure must be recorded in the minutes of the meeting of the board of directors.

- (4) If the director's interest is a material personal interest, the director must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution under subsection (5) in relation to the matter (a *related resolution*), whether in relation to the director or another director; or
- (c) be present while the matter, or a related resolution, is being considered by the board of directors; or
- (d) otherwise take part in any decision of the board of directors in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

- (5) Subsection (4) does not apply to a matter if the board of directors has, at any time, passed a resolution that—

- (a) states the director, the interest and the matter; and
- (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

- (6) There is a quorum at the meeting only if there are at least 2 directors present who are entitled to vote on any motion that may be moved in relation to the matter.

- (7) If there is no quorum, the corporate entity's shareholder may deal with the matter by signing a consent to a proposed resolution.

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## **54 Obligations of a corporate entity's employees**

- (1) This section applies to an employee of a corporate entity in the exercise of the powers, or discharge of the responsibilities, of an employee of the corporate entity.
- (2) The employee must exercise the degree of care and diligence that a reasonable person in a like position in another corporate entity would exercise in the circumstances.

Maximum penalty—100 penalty units.

- (3) When deciding the degree of care and diligence that a reasonable person in a like position in another corporate entity would exercise in the circumstances, regard must be had to—
  - (a) all relevant matters, including for example—
    - (i) the corporate entity's obligations; and
    - (ii) any directions or approvals given to the corporate entity by its shareholder; and
  - (b) any matter prescribed under a regulation.
- (4) This section—
  - (a) applies in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person's office in the corporate entity; and
  - (b) does not prevent civil proceedings being started for a breach of the duty or liability.

## **55 Corporate entity must not insure against certain liabilities of employees**

- (1) A corporate entity must not—
  - (a) enter into a liability insurance contract; or
  - (b) pay, or agree to pay, a premium in relation to a liability insurance contract.
- (2) A *liability insurance contract* is a contract to insure an employee of a corporate entity against any liability that arises

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out of a wilful breach of duty in relation to the corporate entity (including a contravention of section 54, for example).

- (3) However, a *liability insurance contract* does not include a contract to insure an employee of a corporate entity against any costs and expenses that the employee incurs in defending proceedings for a wilful breach of duty in relation to the corporate entity.
- (4) *Pay a premium* includes pay a premium indirectly through 1 or more interposed entities.
- (5) An *employee of a corporate entity* includes a person who was an employee of a corporate entity.
- (6) Any liability insurance contract that the corporate entity enters into is void.

## **56 When a corporate entity is not to indemnify employees**

- (1) This section applies to a person who is or was an employee of a corporate entity.
- (2) The corporate entity must not exempt the person from a liability incurred as an employee.
- (3) However, with the prior approval of the corporate entity's shareholder, the corporate entity may indemnify the person against—
  - (a) a civil liability, other than a civil liability—
    - (i) to the corporate entity or its subsidiary; or
    - (ii) that arises out of conduct involving a lack of good faith; or
  - (b) any costs and expenses incurred by the person—
    - (i) in successfully defending proceedings for the liability; or
    - (ii) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

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- (4) **Indemnify** includes indemnify indirectly through 1 or more interposed entities.
- (5) A contract is void so far as it exempts or indemnifies an employee of a corporate entity in contravention of this section.

## **57 Prohibition on loans to directors**

- (1) A corporate entity must not, either directly or indirectly, make or guarantee a loan to—
  - (a) a director; or
  - (b) a director's spouse; or
  - (c) a relative of a director or a director's spouse;unless the agreement for the loan or guarantee is entered into on the same terms as similar agreements are entered into by the corporate entity with members of the public.
- (2) **Guarantee a loan** includes provide a security in connection with the loan.
- (3) A director of the corporate entity who knowingly agrees to the loan or guarantee by the corporate entity in contravention of this section (whether or not in relation to the director) commits an offence.

Maximum penalty for subsection (3)—100 penalty units.

## **58 Duty to prevent insolvent trading**

- (1) This section applies if—
  - (a) immediately before a corporate entity incurs a debt, there are reasonable grounds to suspect—
    - (i) that the corporate entity will not be able to pay all its debts as and when they become payable; or

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- (ii) that, if the corporate entity incurs the debt, it will not be able to pay all its debts as and when they become payable; and
    - (b) the corporate entity is, or later becomes, unable to pay all its debts as and when they become payable.
  - (2) The following persons commit an offence—
    - (a) a person who is a director of the corporate entity's board of directors when the debt is incurred;
    - (b) a person who takes part in the corporate entity's management when the debt is incurred.

Maximum penalty—100 penalty units or 1 year's imprisonment.
  - (3) However, it is a defence for the person to prove—
    - (a) that the debt was incurred without the person's express or implied consent; or
    - (b) that, when the debt was incurred, the person did not have reasonable cause to suspect—
      - (i) that the corporate entity would not be able to pay all its debts as and when they became payable; or
      - (ii) that, if the corporate entity incurred the debt, it would not be able to pay all its debts as and when they became payable; or
    - (c) that the person took all reasonable steps to prevent the corporate entity from incurring the debt; or
    - (d) for a director—that the person did not take part in the corporate entity's management at the time because of illness or another good reason.
  - (4) If the person is found guilty of the offence, the Supreme Court or District Court may declare that the person is personally liable to pay a part of the corporate entity's debts that the court considers appropriate in the circumstances.
  - (5) Subsection (4)—

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- (a) applies in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in the corporate entity; and
  - (b) does not prevent proceedings being instituted for a breach of the duty or liability.
- (6) However, subsection (4) does not affect any rights of a person to indemnity, subrogation or contribution.

## **59 Order for examination of persons concerned with corporate entities**

- (1) This section applies if the council or the Attorney-General believes, on reasonable grounds, that—
- (a) a person may be able to give information about a corporate entity's management, administration or affairs; or
  - (b) a person who has been concerned, or taken part, in a corporate entity's management, administration or affairs has been, or may have been, guilty of fraud or malpractice in relation to the corporate entity.
- (2) **Malpractice** includes negligence, default, breach of trust or breach of duty.
- (3) The council or Attorney-General may apply to the Supreme Court or District Court for an order for the person to be examined by the court about the corporate entity's management, administration or affairs.
- (4) If the council makes an application, the council must advise the Attorney-General.
- (5) If the Attorney-General makes an application, the Attorney-General must advise the council.
- (6) If the court is satisfied that it is reasonable and appropriate for the person to be examined, the court may order the person to attend before the court at a time and place fixed by the court for examination.

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- (7) The person must—
- (a) attend as required by the order, unless the person has a reasonable excuse; and
  - (b) continue to attend until excused by the court, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (8) The examination must be held in public, unless the court considers it is desirable to hold the examination in private because of special circumstances.
- (9) The court may give directions about—
- (a) the matters to be inquired into at the examination; and
  - (b) the procedures to be followed at the examination (including the persons who may be at the examination if the examination is to be held in private, for example).

## **60 Examination of persons concerned with corporate entities**

- (1) This section applies to a person who has been ordered, under section 59, to attend an examination.
- (2) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) The person must answer any question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) The person is not excused from answering a question because the answer might tend to incriminate the person or make the person liable to a penalty.

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- (5) However, if the answer might in fact tend to incriminate the person or make the person liable to a penalty, the person's answer is not admissible in evidence against the person in proceedings for an offence or the imposition of a penalty, other than proceedings for an offence—
- (a) against this section; or
  - (b) in relation to the falsity of the person's answer.
- (6) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.
- Maximum penalty—500 penalty units or 5 years imprisonment.
- (7) The court may—
- (a) require the questions put to the person, and the answers given by the person, at the examination to be recorded in writing; and
  - (b) require the person to sign the record.
- (8) Subject to subsection (5), a written record of the examination that is signed by the person, or a transcript of the examination that is authenticated by the examiner's signature, may be used in evidence in proceedings against the person.
- (9) The person may be directed by the court (whether in the order or by a subsequent direction) to produce a document in the person's possession, or under the person's control, that is relevant to the matters about which the person is to be, or is being, examined.
- (10) The person must not contravene the direction, unless the person has a reasonable excuse.
- Maximum penalty—200 penalty units or 2 years imprisonment.
- (11) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.



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- (12) The person may, at the person's own expense, employ a lawyer, and the lawyer may put to the person questions that the court considers are just to enable the person to explain or qualify any answers given by the person.
  - (13) The court may adjourn the examination from time to time.
  - (14) The court may order the whole or any part of the costs that are incurred by the person to be paid by—
    - (a) if the application was made by the Attorney-General—the State; or
    - (b) if the application was made by the council—the council.

## 61 Relief from liability for malpractice

- (1) An employee of a corporate entity may apply to the Supreme Court or District Court for relief against any claim made against the employee for malpractice in relation to the corporate entity.
- (2) **Malpractice** includes negligence, default, breach of trust or breach of duty, but does not include fraud.
- (3) If the court considers—
  - (a) that the employee has, or may have, been guilty of the malpractice; but
  - (b) that the employee—
    - (i) acted honestly; and
    - (ii) should be excused for the malpractice, having regard to all the circumstances (including circumstances connected with the employee's appointment);

the court may relieve the employee (in whole or part) from liability for the malpractice, on the terms that the court considers appropriate.
- (4) If the court makes this decision in proceedings that are being tried with a jury, the court may—

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- (a) withdraw the case (in whole or part) from the jury; and
  - (b) direct that judgment be entered for the employee on the terms (as to costs or otherwise) that the court considers appropriate.
- (5) The court may make an order under this section even if proceedings have not yet been brought against the employee for malpractice.

## **62 False or misleading information**

- (1) This section applies to an employee of a corporate entity in the exercise of the powers, and the discharge of the responsibilities, of an employee of the corporate entity.
- (2) An employee of a corporate entity commits an offence if the employee gives information (either orally or in a document) about the corporate entity's affairs, that the employee knows is false or misleading in a material particular, to any of the following persons—
- (a) another employee of the corporate entity;
  - (b) the corporate entity's shareholder;
  - (c) the council;
  - (d) a councillor of the council.

Maximum penalty—

- (a) if the offence was committed with an intent to defraud—500 penalty units or 5 years imprisonment; or
  - (b) otherwise—100 penalty units.
- (3) However, the employee does not commit an offence in relation to information in a document if, when the employee gives the document to the other person—
- (a) the employee tells the other person that the document is false or misleading, and in what respect the document is false or misleading; and

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- (b) if the employee has, or can reasonably obtain, the correct information—the employee gives the other person the correct information.

## **Division 4                      Other matters relating to corporate entities**

### **63            Application of other Acts to a corporate entity**

- (1) A corporate entity is a unit of public administration under the Crime and Misconduct Act.
- (2) A corporate entity is a statutory body under the Statutory Bodies Financial Arrangements Act, and part 2B of that Act explains how that Act affects a corporate entity's powers.
- (3) The provisions of the *Auditor-General Act 2009* that apply to the council as a local government also apply to a corporate entity, with any necessary changes, as if—
  - (a) a reference to a controlled entity were a reference to the corporate entity; and
  - (b) a reference to the appropriate Minister were a reference to the council.
- (4) The *Judicial Review Act 1991* does not apply to a decision of a corporate entity made in carrying out its—
  - (a) commercial activities; or
  - (b) community service obligations.
- (5) The *Ombudsman Act 2001* does not apply to—
  - (a) the making of a recommendation to the shareholder of a corporate entity; or
  - (b) a decision about a corporate entity's commercial policy; or
  - (c) a corporate entity for its activities carried on, on a commercial basis, in competition with a person.

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## **64 State taxes**

- (1) State taxes are not payable for anything done to corporatise a significant business activity of a local government (including in relation to a legal instrument made, executed, lodged or given, for example).
- (2) A corporate entity is not liable to pay an amount of State taxes for a thing that is more than the amount of State taxes for the thing that a local government would have been liable to pay.
- (3) *State taxes* includes taxes imposed under an Act of another State, so far as the legislative power of Parliament permits.

# **Part 4 Roads and other infrastructure**

## **Division 1 Roads**

### **65 What this division is about**

- (1) This division is about roads.
- (2) A *road* is—
  - (a) an area of land that is dedicated to public use as a road; or
  - (b) an area of land that—
    - (i) is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; and
    - (ii) is open to, or used by, the public; or
  - (c) a footpath or bicycle path; or
  - (d) a bridge, culvert, ford, tunnel or viaduct.
- (3) However, a *road* does not include—
  - (a) a State-controlled road; or

- (b) a road, or that part of a road, within an airport site under the *Airports Act 1996* (Cwlth); or
- (c) a public thoroughfare easement.

## 66 Control of roads

- (1) The council has control of all roads in Brisbane.
- (2) This control includes being able to—
  - (a) survey and resurvey roads; and
  - (b) construct, maintain and improve roads; and
  - (c) approve the naming and numbering of private roads; and
  - (d) name and number other roads; and
  - (e) make a local law to regulate the use of roads, including—
    - (i) the movement of traffic on roads, subject to the *Transport Operations (Road Use Management) Act 1995*; and
    - (ii) the parking of vehicles on roads, subject to the *Transport Operations (Road Use Management) Act 1995* (including the maximum time that a vehicle may be parked in a designated rest area that adjoins a road, for example); and
    - (iii) by imposing obligations on the owner of land that adjoins a road (including an obligation to fence the land to prevent animals going on the road, for example); and
  - (f) make a local law to regulate the construction, maintenance and use of—
    - (i) public utilities along, in, over or under roads; and
    - (ii) ancillary works and encroachments along, in, over or under roads; and

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- (g) realign a road in order to widen the road; and
- (h) acquire land for use as a road.

## **67 Notice of intention to acquire land to widen a road**

- (1) If the council wants to acquire land in order to widen a road, the council must give the owner of the land a notice of intention to acquire land.
- (2) A *notice of intention to acquire land* informs the owner in general terms of this section and section 68.
- (3) However, the council can not, without the consent of the Planning and Environment Court, serve notice of intention to acquire land on an owner of land after the owner has applied to the court—
  - (a) for approval to subdivide the land; or
  - (b) for approval, consent or permission—
    - (i) to erect or use a structure on the land; or
    - (ii) to use the land for any other purpose.
- (4) The court may consent to the notice of intention to acquire land being served only if the court is satisfied that the purpose of the notice is to enable the council to make, in good faith, a reasonable widening of the road.
- (5) After the council gives an owner a notice of intention to acquire land, the owner must not erect, place, re-erect, replace or repair any structure, or part of a structure, on the land without the council's permission.
- (6) The council must lodge a copy of a notice of intention to acquire land with the registrar of titles for registration on the instrument of title to the land.
- (7) The registrar of titles may register the notice of intention to acquire land even if the instrument of title is not produced.

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**68 Compensation for a notice of intention to acquire land**

- (1) This section applies to a person who is served with a notice of intention to acquire land, if the person would be entitled to claim compensation for the acquisition of land.
- (2) The person is entitled to compensation from the council for injurious affection to the person's interest in the land because of the notice of intention to acquire land.
- (3) However, the compensation is not payable until—
  - (a) the land is sold for the first time after the notice of intention to acquire land was served; or
  - (b) after being served with the notice of intention to acquire land, the owner of the land offers the land for sale in good faith, but can not sell the land for a fair and reasonable price.
- (4) The compensation must be assessed in accordance with the following principles—
  - (a) the amount of compensation must represent the difference between—
    - (i) the market value of the interest in the land immediately after service of the notice of intention to acquire land; and
    - (ii) what would be the market value of the interest in the land, at that time, if the notice had not been served;
  - (b) any benefit that may accrue, because of the realignment of the road, to land adjacent to the land that is affected by the realignment of the road, and in which the claimant has an interest, must be taken into account;
  - (c) the amount of compensation must not be increased because the land that is affected by the realignment of the road has, since the service of the notice of intention to acquire land, become or ceased to be separate from other land.

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- (5) A claim for compensation must be made—
  - (a) within 3 years after the entitlement to compensation arose; and
  - (b) to the chief executive officer in the approved form.
- (6) The claim is taken to have been properly made when the claimant has given the council all the information that the council reasonably requires to decide the claim.
- (7) If, within 30 days after the claim is made, the council has not given the claimant written notice of its decision on the claim, the council is taken to have refused compensation on the 31st day after the claim is made.

## **69 Appeal on a claim for compensation**

- (1) A person who is aggrieved by the decision of the council on a claim for compensation may appeal against the decision to the Planning and Environment Court.
- (2) The appeal must be started within 30 days after—
  - (a) notice of the decision is given to the claimant; or
  - (b) the decision is taken to have been made.
- (3) In order to award compensation, the Planning and Environment Court must be satisfied—
  - (a) if the land has been sold—
    - (i) the seller took reasonable steps to obtain a reasonable price for the land; and
    - (ii) the seller sold the land in good faith; and
    - (iii) the sale price is less than the seller might reasonably have expected to receive had there been no notice of intention to acquire land; or
  - (b) if the council refused the owner permission to erect, place, re-erect, replace or repair any structure, or part of a structure, on the land—the permission was applied for in good faith.



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**70 Acquisition of land instead of compensation**

- (1) After a notice of intention to acquire land is served, but before the land is sold, the council may acquire the land instead of paying compensation for injurious affection.
- (2) If, after a notice of intention to acquire land is served, the land is cleared of all structures—
  - (a) the council may acquire the land; and
  - (b) if required by the owner of the land, the council must acquire the land.
- (3) The acquired land must be dedicated for public use as a road within 3 months after its acquisition.
- (4) Compensation for the acquisition of the land, if not agreed between the parties, must be assessed as at the date of the acquisition.

**71 What is to happen if a realignment is not carried out**

- (1) This section applies if the council decides not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land.
- (2) This section does not apply to a realignment of road that is necessary to comply with the requirements of the council under a planning scheme in its application to particular developments in Brisbane.
- (3) The council must serve notice of its decision not to proceed on all owners of land who were served with a notice of intention to acquire land in connection with that road or part of that road.
- (4) With regard to any of the notices of intention to acquire land that were lodged with the registrar of titles in connection with that road or part of that road, the council must—
  - (a) for any notice of intention to acquire land that has not been registered—withdraw the notice of intention to acquire land; and

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- (b) for any notice of intention to acquire land that has been registered—lodge with the registrar of titles for registration a notice of its decision not to proceed with the realignment of the road, or part of the road.
- (5) The notice of the council’s decision must inform the owners in general terms of this section and section 72.

## **72 Compensation if realignment not carried out**

- (1) This section applies if—
  - (a) the council decides not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land; and
  - (b) the council has made structural improvements on land that adjoins the road on the basis of the proposed realignment being effected.
- (2) The council must pay the owner of the land reasonable compensation for the decrease in value of the land because of the decision.
- (3) The amount of compensation is the difference between the value of the land before and after the decision.
- (4) If the council and the owner fail to agree on the amount of compensation, the amount is to be decided by the Land Court.
- (5) The provisions of the *Acquisition of Land Act 1967* about the making, hearing and deciding of claims for compensation for land taken under that Act apply, with any necessary changes and any changes prescribed under a regulation, to claims for compensation under this section.
- (6) The council’s decision not to proceed with the realignment of a road, or part of a road, does not give rise to an entitlement to compensation to, or a cause of action by, any owner or occupier of land or other person other than under this section.

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### **73 Acquiring land for use as a footpath**

- (1) The council may acquire land that adjoins a road for use as a footpath.
- (2) The acquisition of land may be subject to a reservation, in favour of the owner of the land, of any of the following rights that the council decides (at or before the acquisition) is appropriate—
  - (a) a right to the ownership, possession, occupation and use of any existing structure, room or cellar—
    - (i) at a specified height above the level of the new footpath; or
    - (ii) at a specified depth below the level of the new footpath;
  - (b) a right—
    - (i) to erect a structure (in accordance with law) at a specified height above the new footpath; and
    - (ii) to the ownership, possession, occupation and use of the structure;
  - (c) a right of support for a structure mentioned in paragraph (a) or (b).
- (3) The right mentioned in subsection (2)(a) is subject to the council's right to enter, and make structural alterations to, the structure, room or cellar that the council considers necessary.

### **74 Notice to the council of opening or closing of roads**

- (1) This section applies if an application is made under the Land Act for the opening or closing of a road in Brisbane by someone other than the council.
- (2) The Land Act Minister, or the applicant for the application, must give written notice of the application to the council.
- (3) The *Land Act Minister* is the Minister administering the Land Act.

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- (4) The notice must specify a date (no earlier than 1 month or later than 2 months after the council is given the notice) on or before which the council may object to the opening or closing of the road.
- (5) An objection must fully state the reasons for the objection.
- (6) The Land Act Minister must have regard to any objections properly made by the council.
- (7) If the Land Act Minister decides the road should be opened or closed, the Land Act Minister must give written notice to the council—
  - (a) of the decision; and
  - (b) if the decision is contrary to the council's objection, the reasons for the decision.

## **75 Closing roads**

- (1) The council may close a road (permanently or temporarily) to traffic or particular traffic, if there is another road or route reasonably available for use by the traffic.
- (2) Also, the council may close a road to traffic—
  - (a) during a temporary obstruction to traffic; or
  - (b) if it is in the interests of public safety; or
  - (c) if it is necessary or desirable to close the road for a temporary purpose (including a fair, for example).
- (3) The council must publish notice of the closing of the road, in the way that the council considers appropriate (including on its website, for example).
- (4) The council may do everything necessary to stop traffic using the road after it is closed.
- (5) If a road is closed to traffic for a temporary purpose, the council may permit the use of any part of the road (including for the erection of any structure, for example) on the conditions the council considers appropriate.

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## 76 Temporary roads

- (1) This section applies if—
  - (a) the council wants to remake or repair a road; and
  - (b) it is not reasonably practicable to temporarily close the road to traffic while the road works are conducted.
- (2) The council may make a temporary road, through land that adjoins the road, to be used while the road is being remade or repaired.
- (3) However, a council employee or contractor may enter the land only if—
  - (a) the owner or occupier of the land has agreed, in writing that the council employee or contractor may enter the land; or
  - (b) the council has given the owner or occupier of the land at least 3 days written notice that states—
    - (i) the nature of the road works that are to be conducted; and
    - (ii) the proposed route of the temporary road; and
    - (iii) an approximate period when the temporary road is expected to remain on the land.
- (4) Subsection (3) does not apply if the road works must be urgently conducted, but the council must give the owner or occupier of the land oral notice of the matters mentioned in subsection (3)(b).
- (5) The owner of the land may give the chief executive officer a written notice that claims compensation for physical damage caused by the council entering, occupying or using the land under this section.
- (6) Compensation is not payable unless the chief executive officer receives the claim—
  - (a) within 1 year after the occupation or use has ended; or
  - (b) at a later time allowed by the chief executive officer.

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- (7) The compensation equals—
  - (a) the amount agreed between the person and the council;  
or
  - (b) if the person and the council can not agree, the amount that is decided by a court.
- (8) However, the compensation must not be more than the compensation that would have been awarded if the land had been acquired.

## **77 The Brisbane River**

- (1) This section is about roads that are over, under, on or in the Brisbane River (*river crossings*).
- (2) For this section, the *Brisbane River* is any part of the Brisbane River that is not within the local government area of another local government.
- (3) The council may—
  - (a) survey and resurvey river crossings; and
  - (b) construct, maintain and improve river crossings; and
  - (c) name and number river crossings.
- (4) Subject to any restrictions prescribed under a regulation—
  - (a) local laws apply to a river crossing as if all of the crossing were within Brisbane; and
  - (b) all a river crossing is taken, for the purpose of any Act, to be a road within Brisbane.

## **78 Road levels**

- (1) The owner or occupier of land that adjoins a road may give written notice to the council requiring it to advise the owner or occupier of the permanent level that is fixed or to be fixed for the road.

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- (2) If the council has not, within 6 months after receiving the notice, given the owner or occupier written advice about the permanent level of the road, the council is taken to have fixed the apparent level of the road when the notice was given as the permanent level of the road.
- (3) If—
- (a) after the council has fixed the permanent level of a road, the council changes the level of the road; and
  - (b) the owner or occupier of land that adjoins the road is injuriously affected by the change;
- the council must pay the owner or occupier, or their successor in title, compensation.
- (4) The compensation equals—
- (a) the amount that is agreed between the owner or occupier, or their successor in title, and the council; or
  - (b) if the owner or occupier, or their successor in title, and the council can not agree—the amount that is decided by the Planning and Environment Court.

## **79 Assessment of impacts on roads from certain activities**

- (1) This section applies if—
- (a) a regulation prescribes an activity for this section; and
  - (b) the council considers that the conduct of the activity is having, or will have, a significant adverse impact on a road in Brisbane; and
  - (c) the activity is not for—
    - (i) a significant project under the *State Development and Public Works Organisation Act 1971*; or
    - (ii) development declared under the council's planning scheme to be assessable development or development requiring compliance assessment for

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which the council is the compliance assessor under the Planning Act; or

(iii) a road being built under the Land Act, section 110.

- (2) The council may require the entity that is conducting the activity to provide information, within a reasonable time, that will enable the council to assess the impact of the activity on the road.
- (3) After assessing the impact of the activity on the road, the council may decide to do 1 or more of the following—
  - (a) give the entity a direction about the use of the road to lessen the impact;
  - (b) require the entity—
    - (i) to carry out works to lessen the impact; or
    - (ii) to pay an amount as compensation for the impact.
- (4) The council may require the works to be carried out or the amount to be paid before the impact commences or intensifies.
- (5) The amount of compensation is a debt payable to the council and may be recovered in a court.
- (6) A regulation for this section—
  - (a) must contain a process under which the council's decision may be reviewed; and
  - (b) may contain a process for enforcing the decision.

## **80 Categorisation of roads**

The council must categorise the roads in Brisbane according to the surface of the road.

## **81 Roads map and register**

- (1) The council must prepare and keep up-to-date—



- (a) a map of every road, including private roads, in Brisbane; and
  - (b) a register of the roads that shows—
    - (i) the category of every road; and
    - (ii) the level of every road that has a fixed level; and
    - (iii) other particulars prescribed under a regulation.
- (2) The register of roads may also show other particulars that the council considers appropriate.
- (3) The council must ensure the public may view the map and register at its public office or on its website.
- (4) On application and payment of a reasonable fee fixed under a resolution or local law, a person may obtain—
- (a) a copy of a map or register of roads; or
  - (b) a certificate signed by an employee of the council who is authorised for the purpose—
    - (i) about the category, alignment and levels of roads in Brisbane; or
    - (ii) about the fact that the alignment or level of a road in Brisbane has not been fixed.

## **82 Unauthorised works on roads**

- (1) This section applies to a road in Brisbane.
- (2) A person must not, without lawful excuse (including under another Act, for example), or the written approval of the council—
- (a) carry out works on a road; or
  - (b) interfere with a road or its operation.
- Maximum penalty—200 penalty units.

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- (3) **Works** do not include the maintenance of ancillary works and encroachments, or landscaping, that does not interfere with the road or its operation.
- (4) An approval may be subject to the conditions decided by the council.
- (5) A person must not contravene a condition that applies to the person under subsection (4).  
Maximum penalty—40 penalty units.
- (6) If a person carries out works in contravention of this section, the council may—
  - (a) dismantle or alter the works; or
  - (b) fix any damage caused by the works.
- (7) If the council dismantles or alters the works, or fixes any damage caused by the works, the person must pay the council the reasonable costs incurred by the council in doing so.

## Division 2                      Stormwater drains

### 83            What this division is about

- (1) This division is about stormwater drains and stormwater installations.
- (2) A **stormwater drain** is a drain, channel, pipe, chamber, structure, outfall or other works used to receive, store, transport or treat stormwater.
- (3) A **stormwater installation** for a property—
  - (a) is any roof gutters, downpipes, subsoil drains or stormwater drain for the property; but
  - (b) does not include any part of a council stormwater drain.

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**84 Connecting stormwater installation to stormwater drain**

- (1) The council may, by written notice, require the owner of a property to connect a stormwater installation for the property to a council stormwater drain in the way, under the conditions and within the time stated in the notice.
- (2) The way, condition and time stated in the notice must be reasonable in the circumstances.
- (3) A person must not connect a stormwater installation for a property to a council stormwater drain unless—
  - (a) the council has required the owner of the property to do so by a written notice under subsection (1); or
  - (b) the council has given its approval for the connection.

Maximum penalty—165 penalty units.

- (4) The council may impose conditions on its approval for the connection, including conditions about the way the connection must be made.
- (5) If a person connects a stormwater installation under a requirement or approval of the council, the person must comply with the requirement or approval, unless the owner has a reasonable excuse.

Maximum penalty—165 penalty units.

- (6) This section does not apply to a stormwater installation for a property that is an airport site under the *Airports Act 1996* (Cwlth).

**85 No connecting sewerage to stormwater drain**

- (1) The owner of a property must not connect the sewerage installation for property, or allow the sewerage installation for the property to be connected, to any part of—
  - (a) the stormwater installation for the property; or
  - (b) a council stormwater drain.

Maximum penalty—165 penalty units.

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- (2) A *sewerage installation* is any of the following—
- (a) an on-site sewerage facility within the meaning given in the Plumbing and Drainage Act;
  - (b) a sewer for a property or building unit;
  - (c) sanitary plumbing i.e. any apparatus, fittings, fixtures or pipes that carry sewage to a sanitary drain;
  - (d) sanitary drainage i.e. any apparatus, fittings or pipes for collecting and carrying discharges—
    - (i) from fixtures (that are directly connected to a sanitary drain) to an on-site sewerage facility or a sewerage treatment system; or
    - (ii) from sanitary plumbing to an on-site sewerage facility or a sewerage treatment system.

*Examples of apparatus, fittings or pipes for sanitary drainage—*

- disconnector gullies
- bends at the foot of stacks or below ground level
- pipes above ground level that are installed using drainage principles
- for an on-site sewerage facility—a pipe (other than a soil or waste pipe) used to carry sewage to or from the facility

- (3) The owner of a property who becomes aware that the sewerage installation for the property is connected to any part of—

- (a) the stormwater installation for the property; or
- (b) a stormwater drain of the council;

must, as soon as reasonably practicable, take all necessary steps to disconnect the facility, drainage or sewer from the stormwater installation or drain.

Maximum penalty—165 penalty units.

- (4) If the sewerage installation for property is connected to any part of—
- (a) the stormwater installation on the property; or

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- (b) a stormwater drain of the council;
- the council may, by written notice, require the owner of the property to perform the work stated in the notice, within the time stated in the notice.
- (5) The time stated in the notice must—
- (a) be a time that is reasonable in the circumstances; and
  - (b) be at least 1 month after the notice is given to the owner.
- (6) However, the time stated in the notice may be less than 1 month but must not be less than 48 hours if the work stated in the notice—
- (a) is required to stop a serious health risk continuing; or
  - (b) relates to a connection that is causing damage to the council stormwater drain.
- (7) The work stated in the notice must be work that is reasonably necessary for fixing or otherwise dealing with the sewerage installation, including for example—
- (a) work to remedy a contravention of this Act; or
  - (b) work to disconnect something that was connected to a stormwater drain without the council's approval.
- (8) The owner must comply with the notice, unless the owner has a reasonable excuse.

Maximum penalty for subsection (8)—165 penalty units.

**86 No trade waste or prohibited substances in stormwater drain**

- (1) A person must not put trade waste into a stormwater drain.
- Maximum penalty—1000 penalty units.
- (2) *Trade waste* is waterborne waste from business, trade or manufacturing property, other than—
- (a) stormwater; and

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(b) a prohibited substance.

(3) A person must not put a prohibited substance into a stormwater drain.

Maximum penalty—1000 penalty units.

(4) A ***prohibited substance*** is—

(a) a solid or viscous substance in a quantity, or of a size, that can obstruct, or interfere with the operation of, a stormwater drain; or

*Examples for paragraph (a)—*

- ash, cinders, mud, sand, shavings and straw
- glass, metal and plastics
- cups, milk containers and paper and plastic dishes
- feathers, rags, tar and wood
- hair and entrails, paunch manure and whole blood
- grease and oil
- cement laden waste water including wash down from exposed aggregate concrete surfaces

(b) a flammable or explosive solid, liquid or gaseous substance; or

(c) sewage, including human waste; or

(d) a substance that, given its quantity, is capable alone, or by interaction with another substance put into a stormwater drain, of—

- (i) inhibiting or interfering with the stormwater drain; or
- (ii) causing damage or a hazard to the stormwater drain; or
- (iii) causing a hazard for humans or animals; or
- (iv) creating a public nuisance; or
- (v) creating a hazard in waters; or

- (vi) contaminating the environment in places where stormwater is discharged or reused; or

*Example for paragraph (d)—*

a substance with a pH lower than 6.0 or greater than 10.0, or having another corrosive property

- (e) a substance that has a temperature of more than—
  - (i) if the council has approved a maximum temperature for the substance—the approved maximum temperature; or
  - (ii) otherwise—38°C.

(5) If—

- (a) a person puts a prohibited substance in a council stormwater drain; and
- (b) the prohibited substance causes damage to the stormwater drain;

the council may perform work to fix the damage, and may recover the reasonable costs for the work from the person who put the prohibited substance in the stormwater drain.

(6) The costs for the work are in addition to any penalty imposed for the offence.

## **87 Interference with path of stormwater**

(1) A person must not restrict or redirect the flow of stormwater over land in a way that may cause the water to collect and become stagnant.

Maximum penalty—165 penalty units.

(2) However, this section does not apply to water collected in a dam, wetland, tank or pond, if no offensive material is allowed to accumulate.

## **Division 3                      Other infrastructure**

### **88            Malls**

- (1) The council may establish a mall in Brisbane.
- (2) The council must comply with the procedures prescribed under a regulation for establishing a mall.
- (3) The regulation may also provide for any other matter connected with managing, promoting or using a mall, including for example—
  - (a) the removal of vehicles from a mall; and
  - (b) review of a decision relating to the removal of a vehicle from a mall; and
  - (c) matters relating to an advisory committee for a mall.
- (4) A person is not entitled to compensation on account of injurious affection to any right or interest of a business, commercial or industrial nature because of the establishment, modification or closing of a mall by the council.
- (5) However, the council may, by resolution, decide to pay compensation to the person.
- (6) The Land Act, chapter 4, part 4 does not apply to a road in Brisbane that is a mall.

### **89            City Botanic Gardens**

- (1) This section is about the City Botanic Gardens.
- (2) The *City Botanic Gardens* consist of the reserve for botanic gardens and public park that was established by the council under the repealed City of Brisbane Act.
- (3) The council is the trustee of the reserve under the Land Act.
- (4) The council has the power to—



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- (a) do anything that is necessary or desirable for developing, managing, maintaining, promoting, or using the City Botanic Gardens; and
  - (b) permit the use of any part of the City Botanic Gardens, including the erection of any structure, on the conditions it considers appropriate; and
  - (c) do anything incidental to its powers under paragraph (a) or (b).

## 90 Resumption of prescribed land by council

- (1) This section applies if—
  - (a) a development application under the Planning Act is made for a material change of use other than for ‘television station purposes’; or
  - (b) prescribed land is sold or offered for sale and the council is satisfied the land is likely to be used for a purpose other than television station purposes or related purposes; or
  - (c) prescribed land is being used for a purpose other than television station purposes or related purposes.
- (2) **Prescribed land** is any scheduled land or trust land under the repealed *Land (Mt Coot-tha Television Stations) Sales Act 1986*.
- (3) The council may decide to acquire the prescribed land either by agreement under the *Acquisition of Land Act 1967* or compulsorily for a purpose specified in that Act, if the land is to be used for 1 or more of the following purposes—
  - (a) a park;
  - (b) a recreation ground;
  - (c) a road.
- (4) The power conferred on the council under this section is in addition to the powers conferred on the council as a

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constructing authority under the *Acquisition of Land Act 1967*.

- (5) A decision of the council under subsection (3) is not subject to appeal.

*Note—*

See section 226 for more information.

## 91 Ferry services

- (1) The council has the exclusive right to provide a ferry service across a watercourse if the land that forms both banks of the watercourse is in Brisbane.
- (2) A **watercourse** is a river, creek or channel where water flows naturally.
- (3) The council may—
- (a) lease the right to provide a ferry service across a watercourse that it has the exclusive right to provide a ferry service across; and
  - (b) make local laws for managing and regulating the use of ferries operated or leased by it.
- (4) A regulation may—
- (a) declare another watercourse that the council has the exclusive right to provide a ferry service across; and
  - (b) provide for any other matter connected with the provision of ferry services (including declaring the approaches to a ferry as being under the control of the council, for example).

## 92 Materials in infrastructure are council property

- (1) The materials in the following things are the property of the council—
- (a) a road constructed by or for the council;

*Example of a road constructed for the council—*

a road constructed by a developer because of a condition attached to a development approval under the Planning Act

- (b) any works relating to a road (including ducting, gutters, stormwater drains, kerbing and channelling, for example) that are constructed by or for the council;
  - (c) a floating pontoon, jetty, or wharf that is—
    - (i) constructed by the council; or
    - (ii) under the control of the council.
- (2) This section does not apply to the materials in—
- (a) an open drain, other than any lining of the drain; or
  - (b) the outcome of action taken in accordance with a remedial notice under section 130.

## **Part 5                                      Caretaker period arrangements**

### **92A      Caretaker period**

- (1) The *caretaker period* for the council is the period during an election for the council that—
  - (a) starts on the day when public notice of the holding of the election is given under the *Local Government Electoral Act 2011*, section 25(1); and
  - (b) ends at the conclusion of the election.
- (2) There is no caretaker period during a by-election or fresh election under the *Local Government Electoral Act 2011*.

### **92B      Prohibition on major policy decision in caretaker period**

- (1) The council must not make a major policy decision during a caretaker period for the council.

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- (2) However, if the council considers that, having regard to exceptional circumstances that apply, it is necessary to make the major policy decision in the public interest, the council may apply to the Minister for approval to make the decision.
- (3) The Minister may give the approval if the Minister is satisfied that, having regard to exceptional circumstances that apply, it is necessary for the council to make the major policy decision in the public interest.
- (4) The Minister's approval may be given on conditions with which the council must comply.

### **92C Invalidity of major policy decision in caretaker period without approval**

- (1) A major policy decision made by the council during a caretaker period for the council is invalid to the extent the council—
  - (a) does not have the Minister's approval under section 92B to make the decision; or
  - (b) does not comply with any conditions of the Minister's approval under section 92B(4).
- (2) A contract is void if it is the subject of a major policy decision that is invalid.
- (3) A person who acts in good faith in relation to a major policy decision of the council, or in relation to a contract that is the subject of a major policy decision, but who suffers loss or damage because of any invalidity of the decision under subsection (1) or because the contract is void under subsection (2), has a right to be compensated by the council for the loss or damage.
- (4) The person may bring a proceeding to recover the compensation in a court of competent jurisdiction.

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**92D Prohibition on election material in caretaker period**

- (1) The council must not, during a caretaker period for the council, publish or distribute election material.
- (2) *Election material* is anything able to, or intended to—
  - (a) influence an elector about voting at an election; or
  - (b) affect the result of an election.

## **Chapter 4 Finances and accountability**

### **Part 1 Rates and charges**

**93 What this part is about**

- (1) This part is about rates and charges.
- (2) *Rates and charges* are levies that the council imposes—
  - (a) on land; and
  - (b) for a service, facility or activity that is supplied or undertaken by—
    - (i) the council; or
    - (ii) someone on behalf of the council (including a garbage collection contractor, for example).

**94 Types of rates and charges**

- (1) There are 4 types of rates and charges—
  - (a) general rates (including differential rates); and
  - (b) special rates and charges; and
  - (c) utility charges; and

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(d) separate rates and charges.

- (2) **General rates** are for services, facilities and activities that are supplied or undertaken for the benefit of the community in general (rather than a particular person).

*Example—*

General rates contribute to the cost of roads and library services that benefit the community in general.

- (3) **Special rates and charges** are for services, facilities and activities that have a special association with particular land because—

- (a) the land or its occupier—
- (i) specially benefits from the service, facility or activity; or
  - (ii) has or will have special access to the service, facility or activity; or
- (b) the land is or will be used in a way that specially contributes to the need for the service, facility or activity; or
- (c) the occupier of the land specially contributes to the need for the service, facility or activity.

*Examples—*

Special rates and charges could be levied—

- for the cost of maintaining a road in an industrial area that is regularly used by heavy vehicles
- for the cost of replacing the drainage system in only part of Brisbane
- on land that is used only by businesses that would benefit from the promotion of tourism in Brisbane.

- (4) **Utility charges** are for a service, facility or activity for any of the following utilities—

- (a) waste management, including recycling;
- (b) gas;

- (c) another utility prescribed under a regulation.
- (5) ***Separate rates and charges*** are for any other service, facility or activity.

## 95 Land on which rates are levied

- (1) Rates may be levied on rateable land.
- (2) ***Rateable land*** is any land or building unit, in Brisbane, that is not exempted from rates.
- (3) The following land is exempted from rates—
  - (a) unallocated State land within the meaning of the Land Act;
  - (b) land that is occupied by the State or a government entity, unless—
    - (i) the government entity is a GOC or its subsidiary (within the meaning of the *Government Owned Corporations Act 1993*) and the government entity is not exempt from paying rates; or
    - (ii) the land is leased to the State or a government entity by someone who is not the State or a government entity;
  - (c) land in a State forest or timber reserve, other than land occupied under—
    - (i) an occupation permit or stock grazing permit under the Forestry Act; or
    - (ii) a lease under the Land Act;
  - (d) the following land under the Transport Infrastructure Act—
    - (i) strategic port land that is occupied by a port authority, the State, or a government entity;
    - (ii) existing or new rail corridor land;

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- (iii) commercial corridor land that is not subject to a lease;
- (e) airport land, within the meaning of the *Airport Assets (Restructuring and Disposal) Act 2008*, that is used for a runway, taxiway, apron, road, vacant land, buffer zone or grass verge;
- (f) land that is exempted from rating—
  - (i) under another Act or a regulation;
  - (ii) by resolution of the council, for religious, charitable, educational or other public purposes.

## **96 Power to levy rates and charges**

- (1) The council—
  - (a) must levy general rates on all rateable land within Brisbane; and
  - (b) may levy—
    - (i) special rates and charges; and
    - (ii) utility charges; and
    - (iii) separate rates and charges.
- (2) The council must decide, by resolution at the council budget meeting for a financial year, what rates and charges are to be levied for that financial year.

## **97 Overdue rates and charges are a charge over rateable land**

- (1) This section applies if the owner of rateable land owes the council for overdue rates and charges.
- (2) The overdue rates and charges are a charge on the land.
- (3) The council may register the charge over the land by lodging the following documents with the registrar of titles—



- (a) a request to register the charge over the land, in the appropriate form;
  - (b) a certificate signed by the chief executive officer that states there is a charge over the land for overdue rates and charges.
- (4) After the charge is registered over the land, the charge has priority over any other encumbrances over the land, other than encumbrances in favour of—
- (a) the State; or
  - (b) a government entity.
- (5) If the overdue rates and charges are paid, the council must lodge the following documents with the registrar of titles—
- (a) a request to release the charge over the land, in the appropriate form;
  - (b) a certificate signed by the chief executive officer that states the overdue rates and charges have been paid.
- (6) This section does not limit any other remedy that the council has to recover the overdue rates and charges (including selling the land, for example).

## **98 Regulations for rates and charges**

A regulation may provide for any matter connected with rates and charges, including for example—

- (a) concessions; and
- (b) the categorisation of land for rates and charges; and
- (c) the process for recovering overdue rates and charges including by the sale of the land to which the rates and charges relate.

## Part 2 Fees

### 99 Cost-recovery fees

- (1) The council may, under a local law or a resolution, fix a cost-recovery fee.
- (2) A *cost-recovery fee* is a fee for—
  - (a) an application for the issue or renewal of a licence, permit, registration or other approval under a local government related law (an *application fee*); or
  - (b) recording a change of ownership of land; or
  - (c) giving information kept under a local government related law; or
  - (d) seizing property or animals under a local government related law; or
  - (e) the performance of another responsibility imposed on the council under the Building Act or the Plumbing and Drainage Act.
- (3) A local law or resolution for subsection (2)(d) or (e) must state—
  - (a) the person liable to pay the cost-recovery fee; and
  - (b) the time within which the fee must be paid.
- (4) A cost-recovery fee must not be more than the cost to the council of taking the action for which the fee is charged.
- (5) However, an application fee may also include a tax—
  - (a) in the circumstances and for a purpose prescribed under a regulation; and
  - (b) if the council decides, by resolution, that the purpose of the tax benefits Brisbane.
- (6) The local law or resolution that fixes an application fee that includes a tax must state the amount, and the purpose, of the tax.

- (7) If an application fee that includes a tax is payable in relation to land, the tax applies only in relation to land that is rateable land.
- (8) The council may fix a cost-recovery fee by resolution even if the fee had previously been fixed by a local law.

### **100 Register of cost-recovery fees**

- (1) The council must keep a register of its cost-recovery fees.
- (2) The register must state the paragraph of section 99(2) under which the cost-recovery fee is fixed.
- (3) Also, the register must state—
  - (a) for a cost-recovery fee under section 99(2)(a)—the provision of the local government related law under which the licence, permit, registration or other approval is issued or renewed; or
  - (b) for a cost-recovery fee under section 99(2)(c)—the provision of the local government related law under which the information is kept; or
  - (c) for a cost-recovery fee under section 99(2)(d)—the provision of the local government related law under which the property or animals are seized; or
  - (d) for a cost-recovery fee under section 99(2)(e)—the provision of the Building Act or the Plumbing and Drainage Act under which the responsibility is imposed.
- (4) The council must ensure the public may view the register at its public office or on its website.

### **101 Fees on occupiers of land below the high-water mark**

- (1) This section applies to the occupier (other than the State or a government entity) of a structure that is on land that—
  - (a) is not rateable land, and therefore not subject to rates; and



- 
- (i) an annual budget;
  - (ii) an asset register;
  - (iii) a corporate plan;
  - (iv) a long-term community plan;
  - (v) a long-term financial forecast;
  - (vi) a financial plan;
  - (vii) a long-term asset management plan;
  - (viii) an efficient and effective internal audit function, in addition to the requirements of the *Financial Accountability Act 2009*.
- (2) The council is ***financially sustainable*** if the council is able to maintain its financial capital and infrastructure capital over the long term.
- (3) The ***sound contracting principles*** are—
- (a) value for money; and
  - (b) open and effective competition; and
  - (c) the development of competitive local business and industry; and
  - (d) environmental protection; and
  - (e) ethical behaviour and fair dealing.

#### **104 Approval of budget**

- (1) The council must consider the budget presented by the mayor and, by resolution, adopt the budget with or without amendment.
- (2) The council must adopt the budget before the start of the financial year to which the budget relates.

## **Part 4**                                    **Councillors' financial accountability**

### **105**     **What this part is about**

This part is about councillors' financial accountability.

### **106**     **Councillor's discretionary funds**

- (1) A councillor must ensure the councillor's discretionary funds are used in accordance with the requirements prescribed under a regulation.
- (2) *Discretionary funds* are funds in the council's operating fund that are budgeted for use by a councillor at the councillor's discretion.

### **107**     **Councillors liable for improper disbursements**

- (1) This section applies if—
  - (a) the council disburses council funds in a financial year; and
  - (b) the disbursement—
    - (i) is not provided for in the council's budget for the financial year; and
    - (ii) is made without the approval of the council by resolution.
- (2) The council must give the public notice of the disbursement in a newspaper that is circulating generally in Brisbane, within 14 days after the disbursement is made.
- (3) If the disbursement is not made for a genuine emergency or hardship, the councillors who knowingly agree to the disbursement are jointly and severally liable to pay the council—
  - (a) the amount of the disbursement; and

- 
- (b) interest on the amount of the disbursement, at the rate at which interest accrues on overdue rates, calculated from the day of the disbursement to the day of repayment; and
  - (c) any fees, charges, penalties or other expenses incurred by the council in relation to the disbursement.
- (4) Those amounts may be recovered as a debt payable to the council.

### **108 Councillors liable for loans to individuals**

- (1) The council must not, either directly or indirectly, make or guarantee a loan to an individual.
- (2) *Guarantee a loan* includes provide a security in connection with a loan.
- (3) The councillors who knowingly agree to loan the money are jointly and severally liable to pay the council—
  - (a) the amount of the loan; and
  - (b) interest on the amount of the loan, at the rate at which interest accrues on overdue rates, calculated from the day of the borrowing to the day of repayment; and
  - (c) any fees, charges, penalties or other expenses incurred by the council in relation to the loan.
- (4) Those amounts may be recovered as a debt payable to the council.

### **109 Councillors liable for improper borrowings**

- (1) This section applies if the council borrows money—
  - (a) for a purpose that is not for the good rule and government of Brisbane; or
  - (b) in contravention of this Act or the Statutory Bodies Financial Arrangements Act.

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- (2) The councillors who knowingly agree to borrow the money are jointly and severally liable to pay the council—
  - (a) the amount borrowed; and
  - (b) interest on the amount borrowed, at the rate at which interest accrues on overdue rates, calculated from the day of the borrowing to the day of repayment; and
  - (c) any fees, charges, penalties or other expenses incurred by the council in relation to the borrowing.
- (3) Those amounts may be recovered as a debt payable to the council.
- (4) This section applies despite—
  - (a) the fact that a security was issued for the borrowing; or
  - (b) the Statutory Bodies Financial Arrangements Act.

## **Chapter 5      Monitoring and enforcing the local government related laws**

### **Part 1            The council**

#### **110    What this part is about**

- (1) The purpose of this part is to allow the Minister, on behalf of the State—
  - (a) to gather information (including under a direction) to monitor and evaluate whether the council or a councillor—
    - (i) is performing their responsibilities properly; or



- 
- (ii) is complying with the local government related laws; and
  - (b) if the information shows the council or councillor is not performing their responsibilities properly, or is not complying with the local government related laws—to take remedial action.
- (2) **Remedial action** is action to improve the council’s or a councillor’s performance or compliance (including directing the council or councillor to take the action that is necessary to comply with a local government related law, for example).

## 111 Decisions under this part are not subject to appeal

A decision of the Minister under this part is not subject to appeal.

*Note—*

See section 226 for more information.

## 112 Gathering information

- (1) To monitor and evaluate the council’s or a councillor’s performance and compliance, the department’s chief executive may examine the information contained in the council’s records and operations.
- (2) For example, this may include an examination of—
  - (a) an activity or program of the council; or
  - (b) the systems and practices of the council.
- (3) The department’s chief executive may conduct the examination in any way that the department’s chief executive considers appropriate.
- (4) Also, the department’s chief executive may request the council or councillor to provide any other information.

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- (5) The request must be made in writing, and specify a reasonable time within which the council or councillor must provide the information.
- (6) The council or councillor must cooperate fully with the department's chief executive under this section.

### **113 Acting on the information gathered**

- (1) This section applies if the information gathered by the department's chief executive shows that the council or a councillor—
  - (a) is not performing their responsibilities properly; or
  - (b) is not complying with the local government related laws.
- (2) The department's chief executive may give the information to the Minister.
- (3) The Minister may direct the council or a councillor to take action to—
  - (a) improve the council's or councillor's performance; or
  - (b) correct the noncompliance with the local government related law.
- (4) If the council does not follow the direction to the satisfaction of the Minister, the Minister may publish the way in which the council or councillor—
  - (a) is not performing their responsibilities properly; or
  - (b) is not complying with the local government related laws.
- (5) The Minister may—
  - (a) publish the information in a newspaper that is circulating generally in Brisbane; or
  - (b) direct the council to publish the information on its website.

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## Part 2                      The public

### Division 1                Powers of authorised persons

#### Subdivision 1        Introduction

#### 114    What this division is about

- (1) This division is about the powers that may be used by an authorised person.
- (2) An **authorised person** is a person who is appointed under this Act to ensure members of the public comply with the local government related laws.

*Note—*

See chapter 6, part 5 for more information about the appointment of authorised persons.

- (3) The powers of an authorised person include the power, in certain circumstances—
  - (a) to ask a person for their name and address; and
  - (b) to enter a property, including private property.
- (4) **Private property** is a property that is not a public place.
- (5) A **public place** is a place, or that part of a place, that—
  - (a) is open to the public; or
  - (b) is used by the public; or
  - (c) the public is entitled to use;whether or not on payment of money.

*Example—*

A person uses a room at the front of their home as a business office. While the business office is open to the public it is a public place. However, the home is private property and not part of the public place.

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- (6) An *occupier* of a property includes a person who reasonably appears to be the occupier of, or in charge of, the property.
- (7) Force must not be used to enter a property under this division, other than when the property is entered under a warrant that authorises that use of force.

### **115 Producing authorised person's identity card**

- (1) An authorised person may exercise a power under this division, in relation to a person, only if the authorised person—
  - (a) first produces his or her identity card for the person to inspect; or
  - (b) has his or her identity card displayed so it is clearly visible to the person.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the person's inspection at the first reasonable opportunity.

## **Subdivision 2 Power to require a person's name and address**

### **116 Power to require a person's name and address**

- (1) This section applies if an authorised person—
  - (a) finds a person committing an infringement notice offence; or
  - (b) finds a person in circumstances that lead the authorised person to suspect, on reasonable grounds, that the person has just committed an infringement notice offence; or

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- (c) has information that leads the authorised person to suspect, on reasonable grounds, that a person has just committed an infringement notice offence.
- (2) An *infringement notice offence* is an offence prescribed under the *State Penalties Enforcement Act 1999* to be an infringement notice offence.
- (3) The authorised person may require the person to state the person's name and address.
- (4) If the authorised person does so, the authorised person must also warn the person that it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.
- (5) The authorised person may require the person to give evidence of the person's name or address if the authorised person suspects, on reasonable grounds, that the person has given a false name or address.
- (6) The person must comply with an authorised person's requirement under subsection (3) or (5), unless the person has a reasonable excuse.
- Maximum penalty—35 penalty units.
- (7) However, the person does not commit an offence under subsection (6), if the person is not proved to have committed the infringement notice offence.

### **Subdivision 3 Powers to enter property etc.**

#### **117 Entering a public place that is open without the need for permission**

- (1) This section applies if an authorised person wants to enter a public place to ensure the public place complies with the local government related laws.

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- (2) The authorised person may enter the public place, without the permission of the occupier of the place, if the place is not closed to the public (by a locked gate, for example).

### **118 Entering private property with, and in accordance with, the occupier's permission**

- (1) An authorised person may enter private property, that is not closed to entry by the public (by a locked gate, for example), in order to ask the occupier of the property for permission to stay on the property and exercise powers under a local government related law.
- (2) When asking the occupier for permission, the authorised person must inform the occupier—
  - (a) of the purpose of entering the property; and
  - (b) that any thing or information that the authorised person finds on the property may be used as evidence in court; and
  - (c) that the occupier is not obliged to give permission.
- (3) If the occupier gives permission, the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission.
- (4) The document must state—
  - (a) that the authorised person informed the occupier—
    - (i) of the purpose of entering the property; and
    - (ii) that any thing or information that the authorised person finds on the property may be used as evidence in court; and
    - (iii) that the occupier was not obliged to give the permission; and
  - (b) that the occupier gave the authorised person permission to enter the property and exercise powers under a local government related law; and

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- (c) the date and time when the occupier gave the permission.
- (5) If the occupier signs the document, the authorised person must immediately give a copy of the document to the occupier.
- (6) If, in any proceedings—
- (a) a question arises as to whether the occupier of a property gave permission to allow an authorised person to stay on the property under this Act; and
  - (b) a document that confirms the occupier gave permission is not produced in evidence;
- the court may assume that the occupier did not give the permission, unless the contrary is proved.
- (7) If the occupier gives permission, the authorised person may stay on the property and exercise the powers that the occupier has agreed to be exercised on the property.
- (8) However, the right to stay on the property—
- (a) is subject to any conditions that the occupier imposes (including about the times when the property may be entered, for example); and
  - (b) may be cancelled by the occupier at any time.

**119 Entering private property with, and in accordance with, a warrant**

- (1) An authorised person may enter private property with, and in accordance with, a warrant.
- (2) An authorised person must apply to a magistrate for a warrant.
- (3) The application for the warrant must—
- (a) be in the form approved by the department's chief executive; and
  - (b) be sworn; and

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- (c) state the grounds on which the warrant is sought.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information that the magistrate requires about the application, in the way that the magistrate requires.

*Example—*

The magistrate may require additional information in support of the application to be given by statutory declaration.

- (5) The magistrate may issue the warrant only if the magistrate is satisfied that there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity that may provide evidence of an offence against a local government related law (the *evidence*); and
  - (b) the evidence is at the place, or may be at the place within the next 7 days.
- (6) The warrant must state—
  - (a) the evidence for which the warrant is issued; and
  - (b) that the authorised person may, with necessary and reasonable help and force, enter the property and exercise an authorised person’s powers under this Act; and
  - (c) the hours of the day or night when the property may be entered; and
  - (d) the day (within 14 days after the warrant’s issue) when the warrant ends.
- (7) The magistrate must keep a record of the reasons for issuing the warrant.
- (8) A warrant is not invalidated by a defect in the warrant, or in compliance with section 120, unless the defect affects the substance of the warrant in a material particular.
- (9) As soon as an authorised person enters private property under a warrant, the authorised person must do, or make a reasonable attempt to do, the following things—



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- (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the warrant authorises the authorised person to enter the property without the permission of the occupier;
  - (b) give any occupier a reasonable opportunity to allow the authorised person to immediately enter the property without using force.
- (10) However, the authorised person does not need to comply with subsection (9) if the authorised person believes that immediate entry to the property is required to ensure the warrant is effectively executed.

## **120 Warrants—applications made electronically**

- (1) An authorised person may make an electronic application for a warrant if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) special circumstances (including the authorised person’s remote location, for example).
- (2) An *electronic application* is an application made by phone, fax, radio, email, videoconferencing or another form of electronic communication.
- (3) The authorised person must prepare an application for the warrant that states the grounds on which the warrant is sought, before applying for the warrant.
- (4) However, the authorised person may apply for the warrant before the application is sworn.
- (5) The magistrate may issue the warrant only if the magistrate is satisfied that—
  - (a) it was necessary to make the application electronically; and

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- (b) the way that the application was made was appropriate in the circumstances.
- (6) If the magistrate issues the warrant, and it is reasonably practicable to send a copy of the warrant to the authorised person (by fax or email, for example), the magistrate must immediately do so.
- (7) If it is not reasonably practicable to send a copy of the warrant to the authorised person—
  - (a) the magistrate must—
    - (i) inform the authorised person of the date and time when the magistrate signed the warrant; and
    - (ii) inform the authorised person of the terms of the warrant; and
  - (b) the authorised person must write on a warrant form—
    - (i) the magistrate's name; and
    - (ii) the date and time when the magistrate signed the warrant; and
    - (iii) the terms of the warrant.
- (8) The copy of the warrant sent to the authorised person, or the warrant form properly completed by the authorised person, authorises the authorised person to enter the property, and to exercise the powers, mentioned in the warrant that was signed by the magistrate.
- (9) The authorised person must, at the first reasonable opportunity, send the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.
- (10) When the magistrate receives those documents, the magistrate must attach them to the warrant that was signed by the magistrate, and give the warrant to the clerk of the court.

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- (11) Unless the contrary is proven, a court must presume that a power exercised by an authorised person was not authorised by a warrant issued under this section if—
- (a) a question arises, in any proceedings before the court, whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence.

## 121 Entering under an application, permit or notice

- (1) This section applies if an authorised person wants to enter a property—
- (a) to inspect the property in order to process an application made under any local government related law; or
  - (b) to inspect a record that is required to be kept for a budget accommodation building under the Building Act, chapter 7; or
  - (c) to find out whether the conditions on which a permit or notice was issued have been complied with; or
  - (d) to inspect work that was carried out under a permit or notice.
- (2) A *permit* is an approval, authorisation, consent, licence, permission, registration or other authority issued under any local government related law.
- (3) A *notice* is a notice issued under any local government related law.
- (4) The authorised person may enter the property without the permission of the occupier of the property—
- (a) at any reasonable time during the day; or
  - (b) at night, if—
    - (i) the occupier of the property asks the authorised person to enter the property at that time; or

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- (ii) the conditions of the permit allow the authorised person to enter the property at that time; or
  - (iii) the property is a public place and is not closed to the public.
- (5) However, the authorised person—
  - (a) must, as soon as the authorised person enters the property, inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and
  - (b) may enter a home that is on the property only if the occupier of the relevant part of the property accompanies the authorised person.

## **122 Entering property under an approved inspection program**

- (1) An authorised person may enter a property (other than a home on the property) without the permission of the occupier of the property, at any reasonable time of the day or night, under an approved inspection program.
- (2) An *approved inspection program* is a program, approved by the council, under which an authorised person may enter and inspect properties in Brisbane to ensure the local government related laws are being complied with.
- (3) The council must give, or must make a reasonable attempt to give, the occupier of the property a written notice that informs the occupier of the following—
  - (a) the council's intention to enter the property;
  - (b) the reason for entering the property;
  - (c) an estimation of when the property will be entered.

*Example—*

The council may give the written notice to an occupier of a property by dropping a flyer in the letterbox for the property.

- (4) The council must give, or make a reasonable attempt to give, the written notice to the occupier within a reasonable time before the property is to be entered.
- (5) The authorised person—
  - (a) must, as soon as the authorised person enters the property, inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and
  - (b) may enter a budget accommodation building on the property only to monitor compliance with the Building Act, chapter 7.

## 123 Approving an inspection program

- (1) The council may, by resolution, approve the following types of inspection programs—
  - (a) a systematic inspection program;
  - (b) a selective inspection program.
- (2) A ***systematic inspection program*** allows an authorised person to enter and inspect all properties, or all properties of a certain type, in Brisbane.
- (3) A ***selective inspection program*** allows an authorised person to enter and inspect those properties in Brisbane that have been selected in accordance with objective criteria specified in the resolution.
- (4) The resolution must state—
  - (a) the purpose of the program; and
  - (b) when the program starts; and

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- (c) for a systematic inspection program that allows a type of property to be entered and inspected—a description of the type of property; and
  - (d) for a selective inspection program—the objective criteria for selecting the properties to be entered and inspected; and
  - (e) the period (of not more than 3 months or another period prescribed under a regulation) over which the program is to be carried out.
- (5) The council must give the public notice of the approval of an inspection program, at least 14 days, but not more than 28 days, before the approved inspection program starts.
- (6) The notice must be published—
  - (a) in a newspaper that is circulating generally in Brisbane; and
  - (b) on the council’s website.
- (7) The notice must state the following—
  - (a) that the notice is made by the council;
  - (b) the purpose and scope of the program, in general terms;
  - (c) when the program starts;
  - (d) the period over which the program is to be carried out;
  - (e) that the public may view a copy of the resolution that approved the program at the council’s public office until the end of the program;
  - (f) that a copy of the resolution that approved the program may be purchased at the council’s public office until the end of the program;
  - (g) the price of a copy of the resolution that approved the program.
- (8) The price of a copy of the resolution that approved the program must be no more than the cost to the council of making the copy available for purchase.

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- (9) From the time when the notice is published in the newspaper until the end of the program—
- (a) the public may view a copy of the resolution that approved the program at the council’s public office; and
  - (b) copies of the resolution that approved the program must be available for purchase at the council’s public office at the price stated in the notice.

**123A Entry by authorised person, at reasonable times, to inspect regulated pools**

- (1) At all reasonable times, an authorised person may enter a property (other than a home on the property) without permission of the occupier of the property to inspect a regulated pool, and barriers or fencing for the pool, for compliance with—
- (a) if, under the Building Act, the owner of the pool must ensure the pool complies with the pool safety standard or a part of the standard—the pool safety standard or part; or
  - (b) if paragraph (a) does not apply—a provision of a law that regulates—
    - (i) the construction or maintenance of barriers or fencing for the pool; or
    - (ii) another matter relating to the safety of persons using the pool.
- (2) However, the authorised person must, as soon as the authorised person enters the property—
- (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and

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- (b) produce his or her identity card for the occupier of the property to inspect.
- (3) In this section—  
*pool safety standard* see the Building Act, section 231D.

## **124 General powers after entering a property**

- (1) This section explains the powers that an authorised person has after entering a property, other than entering a property—
  - (a) to ask the occupier of the property for permission to stay on the property; or
  - (b) under section 121, 122 or 123A.
- (2) The authorised person may—
  - (a) search any part of the property; or
  - (b) inspect, test, photograph or film anything that is in or on the property; or
  - (c) copy a document that is in or on the property; or
  - (d) take samples of or from anything that is in or on the property; or
  - (e) take into or onto the property any persons, equipment and materials that the authorised person reasonably requires for exercising the authorised person's powers; or
  - (f) require the occupier of the property, or a person in or on the property, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e).
- (3) An authorised person may exercise a power under subsection (2) only if exercising the power is necessary for the purpose related to the entry of the property.
- (4) If a person is required to give reasonable help under subsection (2)(f), the person must comply with the requirement, unless the person has a reasonable excuse.



Maximum penalty—8 penalty units.

- (5) If the requirement is to be complied with by the person giving information or producing a document, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might incriminate the person.

## 125 Authorised person to give notice of damage

- (1) This section applies if—
  - (a) something is damaged by—
    - (i) an authorised person, when the authorised person exercises a power under this division; or
    - (ii) a person who is authorised by an authorised person to take action under this division, when the person takes the action; or
  - (b) the authorised person considers, on reasonable grounds, that the damage is more than trivial damage.
- (2) The authorised person must immediately give written notice of the particulars of the damage to the person who appears to be the owner of the thing that was damaged.
- (3) However, if for any reason it is not practicable to do so, the authorised person must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the thing was damaged.
- (4) The *owner* of a thing includes a person in possession or control of the thing.
- (5) If the authorised person believes the damage was caused by a latent defect in the thing, or other circumstances beyond the authorised person's control, the authorised person may state that in the notice.

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## **126 Compensation for damage or loss caused after entry**

- (1) If a person incurs damage or loss because of the exercise, or purported exercise, of a power under this division, the council must pay the person compensation.
- (2) The compensation equals—
  - (a) the amount agreed between the person and the council; or
  - (b) if the person and the council can not agree, the amount that is decided by a court.
- (3) The person may claim the compensation in—
  - (a) any proceedings for compensation; or
  - (b) any proceedings brought against the person for an offence against any local government related law.
- (4) A court may order compensation to be paid only if the court is satisfied it is just to do so in all the circumstances.
- (5) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.
- (6) The court may make any order about costs that the court considers just.

## **Division 2 Powers of other persons**

### **127 What this division is about**

- (1) This division is about the powers that may be used—
  - (a) to enable the council to perform its responsibilities; or
  - (b) to ensure a person complies with this Act, and the other local government related laws, including by complying with a remedial notice.
- (2) A *remedial notice* is a notice—

- 
- (a) that the council gives to the owner of a property within Brisbane; and
  - (b) that requires action to be taken in relation to the property under a local government related law (including fencing a pool, for example).
- (3) This division explains the circumstances in which a person is authorised to enter a property under this division, namely—
- (a) in a potentially dangerous situation, to take urgent action; or
  - (b) to take action in relation to council facilities on the property (including water or sewerage pipes, for example); or
  - (c) with (and in accordance with) the permission of the occupier of the property; or
  - (d) with (and in accordance with) a court order; or
  - (e) with (and in accordance with) reasonable written notice.
- (4) **Reasonable written notice** is a written notice, given at least 7 days before a property is to be entered, that informs the owner and the occupier of the property of—
- (a) the council's intention to enter the property; and
  - (b) the reason for entering the property; and
  - (c) the days and times when the property is to be entered.
- (5) The following persons may enter a property under this division—
- (a) if the occupier of the property is not the owner of the property—the owner or the owner's employee;
  - (b) a council worker.
- (6) A **council worker** is an employee, or agent, of the council who is authorised by the council to act under this division.
- (7) However, the council may authorise an employee or agent to act under this division only if the employee or agent is

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appropriately qualified or trained to exercise a power or perform a responsibility under this division.

- (8) Force must not be used to enter a property under this division, unless the property is entered under a court order that specifically authorises the use of that force.

### **128 Identity card for council workers**

- (1) The council must give each council worker an identity card.
- (2) This section does not stop a single identity card being issued to a person for this Act and for another purpose.
- (3) A person who stops being a council worker must return the person's identity card to the council within 21 days after stopping being a council worker, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

### **129 Entry with, and in accordance with, permission of occupier**

- (1) Any person may enter a property with the permission of the occupier of the property.
- (2) However, the right to enter the property—
  - (a) is subject to any conditions that the occupier imposes (including about the times when the property may be entered, for example); and
  - (b) may be cancelled by the occupier at any time.

### **130 Entry by an owner, with reasonable written notice, under a remedial notice**

- (1) This section applies if—
  - (a) the council gives a remedial notice to the owner of a property; and

- 
- (b) the owner is not the occupier of the property.
  - (2) After the owner gives reasonable written notice to the occupier of the property, the owner or the owner's employee may—
    - (a) enter the property at any reasonable time; and
    - (b) take the action that is required under the remedial notice.
  - (3) If the occupier asks to inspect the remedial notice, the owner must allow the occupier to inspect the remedial notice.
  - (4) If the occupier refuses to allow the owner to enter the property and the owner informs the council of that, the owner is not liable for failing to comply with the remedial notice.
  - (5) This section does not affect any rights that the owner has apart from this section.

### **131 Occupier may discharge owner's obligations**

- (1) This section applies if—
  - (a) the owner of a property fails—
    - (i) to take the action in relation to the property that is required under a remedial notice; or
    - (ii) to pay money that is payable in relation to the property under a local government related law (including rates, for example); and
  - (b) the occupier of the property is not the owner of the property.
- (2) The occupier of the property may—
  - (a) take the action that is required, and recover the amount that the occupier properly and reasonably incurs in taking the action as a debt payable by the owner; or
  - (b) pay the money that is payable, and recover the money as a debt payable by the owner.

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- (3) For example, if the occupier is the owner's tenant, the occupier may deduct the money from any rent that the occupier owes the owner, without being in breach of the tenancy agreement.

**132 Entry by a council worker, with reasonable written notice, under a remedial notice**

- (1) This section applies if—
  - (a) the council gives a remedial notice to the owner of a property; and
  - (b) both the owner and the occupier of the property fail to take the action required under the remedial notice.
- (2) After giving reasonable written notice to the owner and the occupier of the property, a council worker may—
  - (a) enter the property (other than a home on the property) without the permission of the occupier; and
  - (b) take the action that is required under the remedial notice.
- (3) However, the council worker must, as soon as the council worker enters the property—
  - (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the council worker is authorised under this Act to enter the property without the permission of the occupier; and
  - (b) produce his or her identity card for the occupier of the property to inspect.
- (4) The council may recover the amount that the council properly and reasonably incurs in taking the action as a debt payable by the person who failed to take the action.

- (5) If both the owner and the occupier failed to take the action, the owner and the occupier are jointly and severally liable for the debt.
- (6) The council must give the person who failed to take the action written notice of the amount of the debt.
- (7) If the debt is not paid within 30 days after the date of the written notice, the council may recover the debt as if the debt were overdue rates.
- (8) Interest is payable on the debt at the same rate that interest is payable on overdue rates levied by the council.

**133 Entry by a council worker, with reasonable written notice, to take materials**

- (1) This section applies if, in the circumstances, the council has no other reasonably practicable way of obtaining materials other than by removing the materials from relevant land.
- (2) **Relevant land** means land, other than protected land, that is—
  - (a) within Brisbane; or
  - (b) if the council has the written approval of the Minister, under section 11(4)(b)(i), to exercise its powers outside of Brisbane—outside of Brisbane; or
  - (c) if the council may exercise a power in another local government’s area for the purpose of a joint government activity—within the other local government’s area.
- (3) **Protected land** is land that is—
  - (a) the site of, or curtilage around, a home or other structure; or
  - (b) a court, lawn, park, planted walk or avenue or yard; or
  - (c) under cultivation (including a garden, nursery or plantation, for example); or
  - (d) a State forest or timber reserve under the Forestry Act; or

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- (e) a protected area under the *Nature Conservation Act 1992*.
- (4) After giving reasonable written notice to the owner and the occupier of the rateable land, a council worker may—
  - (a) enter the land without the permission of the occupier of the land; and
  - (b) search for materials that the council requires to perform its responsibilities; and
  - (c) remove the materials from the land.

*Example—*

The council may remove dirt from the land for use in mopping up an oil spill on a neighbouring road to prevent the oil entering a stormwater drain.

- (5) However, the council worker must, as soon as the council worker enters the property—
  - (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the council worker is authorised under this Act to enter the property without the permission of the occupier; and
  - (b) produce his or her identity card for the occupier of the property to inspect.
- (6) The council worker must not search for, or remove materials from, within 50m of any structure or works on the land (including a home, bridge, dam or wharf, for example).

### **134 Entry by a council worker, at reasonable times, to repair etc. facilities**

- (1) At all reasonable times, a council worker may enter a property (other than a home on the property) without the permission of the occupier of the property—



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- (a) to investigate the future installation of council facilities on, over or under the property; or
  - (b) to install council facilities on, over or under the property; or
  - (c) to inspect, maintain, operate, repair, replace or remove council facilities, that are on, over or under the property, for their routine operations.
- (2) **Council facilities** are facilities that are installed by the council (including sewerage pipes, for example).
- (3) However, the council worker must, as soon as the council worker enters the property—
- (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the council worker is authorised under this Act to enter the property without the permission of the occupier; and
  - (b) produce his or her identity card for the occupier of the property to inspect.

### **135 Entry by a council worker, at any time, for urgent action**

- (1) A council worker may enter a property (other than a home on the property), at any time without the permission of the occupier of the property, in a potentially dangerous situation to take urgent action for local government purposes.

*Example—*

A council worker may enter a property to cut down a tree that was blown over in a storm and is in danger of falling and injuring someone or damaging property.

- (2) However, the council worker must, as soon as reasonably practicable after the council worker enters the property—
- (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and

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- (ii) that the council worker is authorised under this Act to enter the property without the permission of the occupier; and
- (b) produce his or her identity card for the occupier of the property to inspect.

### **136 Entry with, and in accordance with, a court order**

- (1) A person may enter a property with, and in accordance with, a court order made under this section.
- (2) The person must apply to a magistrate for the court order.
- (3) The application must—
  - (a) be in the form approved by the department’s chief executive; and
  - (b) be sworn; and
  - (c) state the grounds on which the court order is sought.
- (4) The person must, as soon as practicable, give a copy of the application to—
  - (a) if the person is not the owner of the property—the owner of the property; and
  - (b) the occupier of the property.
- (5) The magistrate may refuse to consider the application until the person gives the magistrate all the information that the magistrate requires about the application in the way that the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

- (6) If the magistrate is satisfied that entry to the property is necessary to allow the person to take action under any of the local government related laws, the magistrate may make the court order.
- (7) The court order must—

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- (a) direct the occupier of the property to allow the person to enter the property and take all action that is necessary under any local government related law; and
  - (b) state the hours of the day or night when the property may be entered; and
  - (c) state the day (within 14 days after the court order is made) when the court order ends.
- (8) If the person who applied for the court order is a council worker, the court order may authorise the council worker to use necessary and reasonable help and force to enter the property.
- (9) The magistrate must record the reasons for making the court order.
- (10) As soon as the person enters the property under the court order, the person must do, or make a reasonable attempt to do, the following things—
- (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the person is authorised under the court order to enter the property without the permission of the occupier;
  - (b) if the court order authorises the person to use force to enter the property—give the occupier a reasonable opportunity to allow the person to immediately enter the property without using force.

### **137 Compensation for damage or loss caused**

- (1) A council worker who enters a property—
- (a) must not cause, or contribute to, damage to any structure or works on the property; and
  - (b) must take all reasonable steps to ensure the worker causes as little inconvenience, and does as little other damage, as is practicable in the circumstances.

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- (2) If a person incurs damage or loss because of the exercise, or purported exercise, of a power under this division (including the loss of the value of materials removed from a property, or the reduction in the value of the property, for example), the council must pay the person compensation.
- (3) The compensation equals—
  - (a) the amount agreed between the person and the council; or
  - (b) if the person and the council can not agree, the amount that is decided by a court.
- (4) The court may make any order about costs that the court considers just.

### **138 Limitation of time in absence of notice of work done**

- (1) This section applies if work is done on a property without an approval that is required under a local government related law.
- (2) For the purposes of any limitation of time for taking any proceedings or doing anything else about the work, the work is taken to have been done when a council worker first finds out about the work.

## **Part 3 Investigation of council records**

### **Division 1 Introduction**

#### **139 What this part is about**

This part is about investigations conducted by the department or the council into the accuracy of the council's registers or records that are required to be kept under this Act.

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## **Division 2                      Investigations by department**

### **140      Producing authorised officer's identity card**

- (1) This section applies if the department's chief executive directs an authorised officer to exercise a power under this division.
- (2) The authorised officer may exercise the power, in relation to a person, only if the officer—
  - (a) first produces his or her identity card for the person to inspect; or
  - (b) has his or her identity card displayed so it is clearly visible to the person.

### **141      Making of inquiries for department**

- (1) This section applies if the department's chief executive suspects or believes, on reasonable grounds, that information included in a register or record of the council is incorrect because of an error or omission.
- (2) An authorised officer, if directed by the department's chief executive, may make all inquiries the chief executive considers to be reasonable to find out whether and to what extent the register or record is incorrect.

### **142      Power to require information or document for department investigation**

- (1) This section applies if the department's chief executive suspects or believes, on reasonable grounds, that—
  - (a) either or both of the following apply—
    - (i) information included in a register or record of the council is incorrect because of an error or omission;
    - (ii) an offence against this Act has been committed relating to a register or record; and

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- (b) a person—
  - (i) is able to give information about the error, omission or offence; or
  - (ii) holds a document relating to the error, omission or offence.
- (2) The department's chief executive or, if directed by the department's chief executive, an authorised officer may require the person to give the information or produce the document.
- (3) When making the requirement, the department's chief executive or authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (4) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.
- (5) If the person is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information or producing the document might tend to incriminate the person.
- (6) It is a defence in a prosecution under subsection (4) that the information or document sought by the department's chief executive or authorised officer is not relevant to the error, omission or offence.
- (7) If the person produces the document to the department's chief executive or authorised officer, the chief executive or officer—
  - (a) may keep the document to take an extract from it or make a copy of it; and
  - (b) must return the document to the person as soon as practicable after taking the extract or making the copy.

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## **Division 3                      Investigations by council**

### **143      Producing authorised person's identity card**

- (1) This section applies if the chief executive officer directs an authorised person to exercise a power under this division.
- (2) The authorised person may exercise the power, in relation to another person, only if the authorised person—
  - (a) first produces his or her identity card for the other person to inspect; or
  - (b) has his or her identity card displayed so it is clearly visible to the other person.

### **144      Making of inquiries for council**

- (1) This section applies if the chief executive officer suspects or believes, on reasonable grounds, that information included in a register or record of the council is incorrect because of an error or omission.
- (2) The chief executive officer or, if directed by the chief executive officer, an authorised person may make all inquiries the chief executive officer considers to be reasonable to find out whether and to what extent the register or record is incorrect.

### **145      Power to require information or document for council investigation**

- (1) This section applies if the chief executive officer suspects or believes, on reasonable grounds, that—
  - (a) either or both of the following apply—
    - (i) information included in a register or record of the council is incorrect because of an error or omission;

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- (ii) an offence against this Act has been committed relating to a register or record; and
- (b) a person—
  - (i) is able to give information about the error, omission or offence; or
  - (ii) holds a document relating to the error, omission or offence.
- (2) The chief executive officer or, if directed by the chief executive officer, an authorised person may require the person to give the information or produce the document.
- (3) When making the requirement, the chief executive officer or authorised person must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (4) The person must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (5) If the person is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information or producing the document might tend to incriminate the person.
- (6) It is a defence in a prosecution under subsection (4) that the information or document sought by the chief executive officer or authorised person is not relevant to the error, omission or offence.
- (7) If the person produces the document to the chief executive officer or authorised person, the chief executive or authorised person—
  - (a) may keep the document to take an extract from it or make a copy of it; and
  - (b) must return the document to the person as soon as practicable after taking the extract or making the copy.



#### **146 Referral to department**

- (1) This section applies if, because of inquiries made under this division, the chief executive officer concludes on reasonable grounds that an offence has been committed under this Act relating to a register or record.
- (2) The chief executive officer must report the chief executive officer's conclusion, including the reasons for the conclusion, to the department's chief executive.
- (3) Subsection (2) does not limit any duty the chief executive officer may have under the Crime and Misconduct Act to notify the CMC of any complaint, information or matter that the chief executive officer suspects involves, or may involve, official misconduct under that Act.
- (4) The *CMC* means the Crime and Misconduct Commission established under the Crime and Misconduct Act.

#### **147 Chief executive officer not subject to direction**

The chief executive officer is not subject to direction by the mayor in acting under this division.

## **Part 4 Offences**

#### **148 Obstructing enforcement of this Act or local laws etc.**

- (1) A person must not obstruct an official in the exercise of a power under this Act or a local law, unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) An *official* is any of the following persons—
  - (a) the Minister;
  - (b) the department's chief executive;

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- (c) an authorised officer;
  - (d) an investigator;
  - (e) the chief executive officer;
  - (f) an authorised person.
- (3) A person must not obstruct a council worker in the exercise of a power under chapter 5, part 2, division 2, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) If a person has obstructed an official or council worker and the official or worker decides to proceed with the exercise of the power, the official or worker must warn the person that—
- (a) it is an offence to obstruct the official or worker, unless the person has a reasonable excuse; and
  - (b) the official or worker considers the person’s conduct an obstruction.
- (5) A person must not pull down, damage, deface or destroy a board or anything else that is displaying a local law, order, notice or other matter authorised by the council.

Maximum penalty for subsection (5)—35 penalty units.

#### **149 Impersonating an authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

#### **150 Duty to make documents available**

A person who has charge of a document owned or held by the council must not obstruct the viewing or copying of the document by another person who is authorised to view or copy the document under this Act.

*Examples—*

- preventing a councillor from copying a council record under section 172
- preventing the public from viewing a record under section 180(12)

Maximum penalty—10 penalty units.

## **Chapter 6 Administration**

### **Part 1 Introduction**

#### **151 What this chapter is about**

- (1) This chapter contains provisions about—
  - (a) persons who are elected or appointed to perform responsibilities under this Act; and
  - (b) bodies that perform responsibilities under this Act.
- (2) For example, this chapter contains provisions about—
  - (a) qualifications for election or appointment; and
  - (b) acting appointments; and
  - (c) conditions of appointment; and
  - (d) ending appointments.

## Part 2 Councillors

### Division 1 Qualifications of councillors

#### 152 Qualifications of councillors

A person is qualified to be a councillor of the council only if the person—

- (a) resides in Brisbane; and
- (b) is, under the Electoral Act, an enrolled elector for an electoral district in Brisbane; and
- (c) is not disqualified from being a councillor because of a section in this division.

#### 153 Disqualification for certain offences

- (1) A person can not be a councillor—
  - (a) after the person is convicted of a treason offence, unless the person is pardoned for the treason offence; or
  - (b) for 10 years after the person is convicted of an electoral offence; or
  - (c) for 7 years after the person is convicted of a bribery offence; or
  - (d) for 4 years after the person is convicted of an integrity offence.
- (2) A *treason offence* is an offence of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth.
- (3) An *electoral offence* is—
  - (a) a disqualifying electoral offence under the Electoral Act; or

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- (b) an offence that would be a disqualifying electoral offence had the conviction been recorded after the commencement of the *Electoral and Other Acts Amendment Act 2002*.
- (4) A ***bribery offence*** is an offence against—
- (a) section 98C of the Criminal Code; or
  - (b) a corresponding law of another State or the Commonwealth; or
  - (c) another offence prescribed under a regulation.
- (5) An ***integrity offence*** is an offence against—
- (a) section 173, 174, 176(3) or 215; or
  - (b) section 98B, 98E or 98G(a) or (b) of the Criminal Code; or
  - (c) another offence prescribed under a regulation.
- (6) A person automatically stops being a councillor when the person is convicted of—
- (a) a treason offence; or
  - (b) an electoral offence; or
  - (c) a bribery offence; or
  - (d) an integrity offence.
- (7) A person is taken to have been convicted of an offence—
- (a) if the person appeals the conviction—when the appeal is dismissed, struck out or discontinued; or
  - (b) if the person does not appeal the conviction—at the end of the time within which an appeal must by law be started.

## 154 Disqualification of prisoners

- (1) A person can not be a councillor while the person is a prisoner.

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- (2) A *prisoner* is a person who—
  - (a) is serving a period of imprisonment; or
  - (b) is liable to serve a period of imprisonment, even though the person has been released from imprisonment (on parole or leave of absence, for example).
- (3) A person automatically stops being a councillor when the person becomes a prisoner.

### **155 Disqualification because of other high office**

- (1) A person can not be a councillor while the person is a government member.
- (2) A *government member* is—
  - (a) a member of a Parliament of the Commonwealth or a State (including Queensland); or
  - (b) a councillor of a local government of another State.
- (3) A person automatically stops being a councillor when the person becomes—
  - (a) a government member; or
  - (b) a candidate for election as a member of the Legislative Assembly.

### **156 Disqualification during bankruptcy**

- (1) A person can not be a councillor while the person is a bankrupt.
- (2) A person is a *bankrupt* if, under a bankruptcy law—
  - (a) the person is an undischarged bankrupt; or
  - (b) the person has executed a deed of arrangement, and the terms of the deed have not been fully complied with; or
  - (c) the person's creditors have accepted a composition, and a final payment has not been made under the composition.

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- (3) A *bankruptcy law* is—
- (a) the *Bankruptcy Act 1966* (Cwlth); or
  - (b) a corresponding law of another jurisdiction, including a jurisdiction outside Australia.
- (4) A person automatically stops being a councillor when the person becomes a bankrupt.

### **157 Judicial review of qualifications**

- (1) Any person who is entitled to vote in a council election may apply for a judicial review of the eligibility, or continued eligibility, of a person to be a councillor on the basis that the person is disqualified under this division.
- (2) This section does not limit the Judicial Review Act.

### **158 Acting as councillor without authority**

A person must not act as a councillor if the person knows that—

- (a) the person is not qualified to be a councillor; or
- (b) the person's office as a councillor has been vacated.

Maximum penalty—85 penalty units.

## **Division 2 Councillor's term of office**

### **159 When a councillor's term starts**

A councillor's term starts on—

- (a) if the councillor is elected—the day after the conclusion of the councillor's election; or
- (b) if the councillor is appointed—the day on which the councillor is appointed.

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## 160 When a councillor's term ends

A councillor's term ends—

- (a) if the councillor is elected at quadrennial elections for the council or at a fresh election—at the conclusion of the next quadrennial elections; or
- (b) if the councillor is elected at a fresh election and a declaration is also made under a regulation—at the conclusion of the quadrennial elections after the next quadrennial elections; or
- (c) if the councillor is elected or appointed to fill a vacancy in the office of another councillor—at the end of the other councillor's term; or
- (d) when the councillor's office becomes otherwise vacant.

*Note—*

See section 162 for an explanation of when this happens.

## Division 3 Vacancies in councillor's office

### 161 What this division is about

- (1) This division is about when a councillor's office becomes vacant, and the way in which the vacancy is to be filled.
- (2) The way in which a vacancy is to be filled depends on—
  - (a) whether the vacancy is in the office of the mayor or of another councillor; and
  - (b) if the vacancy is in the office of another councillor—whether the office becomes vacant during the beginning, middle or end of the council's term.
- (3) The ***beginning*** of the council's term is the period of 12 months that—
  - (a) starts on the day when the last quadrennial elections were held; and



- (b) ends on the day before the first anniversary of the last quadrennial elections.
- (4) The *middle* of the council's term is the period of 24 months that—
  - (a) starts on the first anniversary of the last quadrennial elections; and
  - (b) ends on the day before the final part of the council's term starts.
- (5) The *final part* of the council's term is the period that—
  - (a) starts 36 months after the last quadrennial elections were held; and
  - (b) ends on the day before the next quadrennial elections are held.

## **162 When a councillor's office becomes vacant**

A councillor's office becomes vacant if the councillor—

- (a) ceases to be qualified to be a councillor under division 1; or
- (b) is found, on a judicial review, to be ineligible to continue to be a councillor; or
- (c) does not comply with section 169; or
- (d) is absent, without the council's leave, from 2 or more consecutive ordinary meetings of the council over at least 2 months; or
- (e) resigns as a councillor by signed notice of resignation given to the chief executive officer; or
- (f) dies; or
- (g) becomes a council employee.

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### **163 When a vacancy in an office must be filled**

- (1) This section explains when a vacant office of a councillor (including the mayor) must be filled.
- (2) If a councillor's office (other than the mayor's office) becomes vacant 12 months or more before quadrennial elections are required to be held, the council must fill the vacant office.
- (3) If the mayor's office becomes vacant before quadrennial elections are required to be held, the council must fill the vacant office.
- (4) The council must fill the vacant office within 2 months after the office becomes vacant.
- (5) If the council does not do so, the Governor in Council may appoint a qualified person to fill the vacant office.
- (6) If a councillor's office (other than the mayor's office) becomes vacant within 3 months of when quadrennial elections are required to be held, the council may decide not to fill the vacant office.

### **164 Filling a vacancy in the office of mayor**

- (1) This section applies if the council is to fill a vacant office of a mayor.
- (2) The vacant office must be filled by—
  - (a) if the mayor's office becomes vacant 12 months or less before quadrennial elections are required to be held—the council appointing, by resolution, another councillor to the office; or
  - (b) otherwise—a by-election.

### **165 Acting mayor**

- (1) The deputy mayor acts for the mayor during—
  - (a) the absence or temporary incapacity of the mayor; or

- 
- (b) a vacancy in the office of mayor.
- (2) If—
- (a) the office of mayor is vacant and the deputy mayor is prevented, by absence or temporary incapacity, from acting as the mayor; or
  - (b) the mayor and deputy mayor are both prevented, by absence or temporary incapacity, from performing the role of mayor; or
  - (c) the offices of both the mayor and deputy mayor are vacant;
- the council may, by resolution, appoint an acting mayor from its councillors.
- (3) The council may, by resolution, declare that the office of deputy mayor is vacant.
- (4) The resolution may be passed only if written notice of the resolution has been given to the councillors at least 14 days before the meeting.
- (5) If the council declares that the office of deputy mayor is vacant, it must immediately appoint another deputy mayor from its councillors.

## **166 Filling a vacancy in the office of another councillor**

- (1) This section applies if the council is to fill a vacant office of a councillor (the *former councillor*) who is not the mayor.
- (2) If the office becomes vacant during the beginning or middle of the council's term, the the vacant office must be filled by a by-election.
- (3) If the office becomes vacant during the final part of the council's term, the vacant office must be filled by the council appointing, by resolution, a person who is—
- (a) qualified to be a councillor; and

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- (b) if the former councillor was elected or appointed to office as a political party's nominee—the political party's nominee.
- (4) If the person who is to be appointed is to be the political party's nominee, the chief executive officer must request the political party to advise the full name and address of its nominee.
- (5) The request must be made by a written notice given to the political party's registered officer, within 14 days after the office becomes vacant.
- (6) If the person who is to be appointed need not be a political party's nominee, the chief executive officer must, within 14 days after the office becomes vacant, invite nominations from—
  - (a) any person who is qualified to be a councillor, by written notice published—
    - (i) in a newspaper that is circulating generally in Brisbane; and
    - (ii) on the council's website; and
  - (b) each person who was a candidate for the office of the former councillor at the last quadrennial elections for the council, by written notice.
- (7) If the chief executive officer receives any nominations from qualified persons or candidates, the council must fill the vacant office by appointing one of those persons or candidates.

## **Division 4                      Councillors with other jobs**

### **167      Councillors and council jobs**

If a person becomes a councillor while the person is a council employee, the person is taken to have resigned as a council employee on the day before the person becomes a councillor.

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**168 Councillors and full-time government jobs**

- (1) A person can not be a councillor and have a full-time government job at the same time.
- (2) A person has a *full-time government job* if—
  - (a) the person holds a full-time appointment with a government entity or the parliamentary service; and
  - (b) the person or someone else (including a family member, for example) is entitled to a reward because the person has the job.
- (3) Subsection (1) does not apply if—
  - (a) the councillor, before accepting the full-time government job—
    - (i) signs a waiver that irrevocably waives the entitlement to the reward; and
    - (ii) gives a copy of the waiver to the mayor or, if the councillor is the mayor, to the chief executive officer; or
  - (b) an Act expressly requires or allows the councillor to have the full-time government job (including by requiring the councillor to be a member of a board or tribunal, for example).
- (4) If a councillor purports to accept an appointment in contravention of subsection (1), the appointment is void.
- (5) If a person becomes a councillor while the person has a full-time government job, the person is taken to have resigned from the full-time government job on the day before the person became a councillor.
- (6) This section does not stop a councillor from—
  - (a) having a part-time government job; or
  - (b) converting a full-time government job to a part-time government job, before the person becomes a councillor.

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- (7) If a full-time government job is converted to a part-time government job by a councillor, the conversion does not—
  - (a) prejudice the councillor's existing or accrued rights to superannuation or recreation, sick, long service or other leave; or
  - (b) interrupt continuity of the councillor's service; or
  - (c) constitute a termination of employment, retrenchment or redundancy.

## **Division 5                      Obligations of councillors**

### **169      Obligations of councillors before acting in office**

- (1) A councillor must not act in office until the councillor makes the declaration of office.
- (2) The *declaration of office* is a declaration prescribed under a regulation.
- (3) The chief executive officer is authorised to take the declaration of office.
- (4) The chief executive officer must keep a record of the taking of the declaration of office.
- (5) A person ceases to be a councillor if the person does not comply with subsection (1) within—
  - (a) 1 month after being appointed or elected; or
  - (b) a longer period allowed by the Minister.

### **170      Giving directions to council staff**

- (1) The mayor may give a direction to the chief executive officer or senior contract employees.
- (2) No councillor, including the mayor, may give a direction to any other council employee.

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**171 Requests for help or advice**

- (1) A councillor may request a council employee provide advice to help the councillor make a decision.
- (2) The request must comply with—
  - (a) the acceptable requests guidelines; and
  - (b) if the request is made of a council employee, other than the chief executive officer—the advice guidelines.
- (3) A councillor may request the chief executive officer provide information, that the council has access to, relating to the ward the councillor represents.
- (4) The request must comply with the acceptable requests guidelines.
- (5) The *acceptable requests guidelines* are guidelines, adopted by the council, about reasonable limits on requests that a councillor may make.
- (6) The *advice guidelines* are guidelines, adopted by the council, about the way in which a councillor is to ask a council employee for advice to help the councillor to make a decision.

*Note—*

Section 244 provides requirements for the acceptable requests guidelines and advice guidelines.

- (7) The council must, by resolution, adopt acceptable requests guidelines and advice guidelines.
- (8) If a councillor requests a council employee provide advice other than under the advice guidelines, the employee must tell the chief executive officer about the request as soon as is practicable.
- (9) In this section a *council employee* includes a person prescribed by regulation.
- (10) Subsection (11) applies if—
  - (a) a councillor makes a request of the chief executive officer under subsection (1) or (3); and

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- (b) the request complies with the acceptable requests guidelines.
- (11) The chief executive officer must make all reasonable endeavours to comply with the request.

Maximum penalty for subsection (11)—10 penalty units.

## 172 Inspection of particular records by councillors

- (1) A councillor may view and make a copy of, or take an extract from, council records.

*Note—*

The *Right to Information Act 2009* also provides for access to information.

- (2) **Council records** include documents created by or kept by the council about its operations, whether or not the records must be available to be viewed by the public.
- (3) Subsection (1) does not apply to any of the following—
  - (a) a record of the BCC councillor conduct review panel;
  - (b) a record that would be privileged from production in a legal proceeding on the ground of legal professional privilege;
  - (c) for a councillor who is not a member of a statutory committee of the council—a record of the statutory committee of the council;
  - (d) another record if—
    - (i) disclosure of the record would be contrary to an order of a court or tribunal; or
    - (ii) release of the record could endanger the security of assets of the council or the public.



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### 173 Use of information by councillors

- (1) A person who is, or has been, a councillor must not use information that was acquired as a councillor to—
  - (a) gain, directly or indirectly, a financial advantage for the person or someone else; or
  - (b) cause detriment to the council.Maximum penalty—100 penalty units or 2 years imprisonment.
- (2) Subsection (1) does not apply to information that is lawfully available to the public.

### 174 Councillor's material personal interest at a meeting

- (1) This section applies if—
  - (a) a matter is to be discussed at a meeting of the council, or any of its committees; and
  - (b) the matter is not an ordinary business matter; and
  - (c) a councillor has a material personal interest in the matter.

*Note—*

See the dictionary for the definition of an *ordinary business matter*.

- (2) A councillor has a ***material personal interest*** in the matter if any of the following persons stands to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of the consideration of the matter at the meeting—
  - (a) the councillor;
  - (b) a spouse of the councillor;
  - (c) a parent, child or sibling of the councillor;
  - (d) a partner of the councillor;
  - (e) an employer (other than a government entity) of the councillor;

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- (f) an entity (other than a government entity) of which the councillor is a member;
  - (g) another person prescribed under a regulation.
- (3) The councillor must—
- (a) inform the meeting of the councillor's material personal interest in the matter; and
  - (b) leave the meeting room (including any area set aside for the public), and stay out of the meeting room while the matter is being discussed and voted on.
- Maximum penalty—
- (a) if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or someone else—200 penalty units or 2 years imprisonment; or
  - (b) otherwise—85 penalty units.
- (4) However, a councillor does not contravene subsection (3) by taking part in the meeting, or being in the chamber where the meeting is being conducted, if—
- (a) the councillor is a person to whom approval is given under subsection (5); and
  - (b) the councillor is complying with all conditions on which the approval is given.
- (5) The Minister may, by signed notice, approve a councillor taking part in the meeting, or being in the chamber where the meeting is being conducted, if—
- (a) because of the number of councillors subject to the obligation under this section, conduct of the meeting would be obstructed if the approval were not given; or
  - (b) it appears to the Minister to be in the interests of Brisbane that the approval be given.
- (6) The Minister may give the approval subject to conditions stated in the notice.

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- (7) The following information must be recorded in the minutes of the meeting, and on the council's website—
- (a) the name of the councillor who has the material personal interest, or possible material personal interest, in a matter;
  - (b) the nature of the material personal interest, or possible material personal interest, as described by the councillor;
  - (c) whether the councillor took part in the meeting, or was in the chamber during the meeting, under an approval under subsection (5).

## 175 Councillor's conflict of interest at a meeting

- (1) This section applies if a matter is to be discussed at a meeting of the council, or any of its committees, and a councillor at the meeting—
- (a) has a conflict of interest in the matter (the *real conflict of interest*); or
  - (b) could reasonably be taken to have a conflict of interest in the matter (the *perceived conflict of interest*).
- (2) A *conflict of interest* is a conflict between—
- (a) a councillor's personal interests; and
  - (b) the public interest;
- that might lead to a decision that is contrary to the public interest.
- (3) The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.
- (4) Without limiting subsection (3), the councillor must inform the meeting of—
- (a) the councillor's personal interests in the matter; and

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- (b) if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.
- (5) Subsection (6) applies if a quorum at the meeting can not be formed because the councillor proposes to exclude himself or herself from the meeting to comply with subsection (3).
- (6) The councillor does not contravene subsection (3) by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the councillor, together with any other required number of councillors, forms a quorum for the meeting.
- (7) The following must be recorded in the minutes of the meeting, and on the council's website—
  - (a) the name of the councillor who has the real or perceived conflict of interest;
  - (b) the nature of the personal interests, as described by the councillor;
  - (c) how the councillor dealt with the real or perceived conflict of interest;
  - (d) if the councillor voted on the matter—how the councillor voted on the matter;
  - (e) how the majority of persons who were entitled to vote at the meeting voted on the matter.
- (8) For subsection (2), a councillor who is nominated by the council to be a member of a board of a corporation or other association does not have a personal interest merely because of the nomination or subsequent appointment as the member.
- (9) To remove any doubt, it is declared that nonparticipation in the meeting is not the only way the councillor may appropriately deal with the real or perceived conflict of interest in a transparent and accountable way.

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**176 Duty to report another councillor's material personal interest, conflict of interest or misconduct**

- (1) This section applies if a councillor knows, or suspects on reasonable grounds, that another councillor has—
  - (a) a material personal interest, or conflict of interest, in a matter before the council; or
  - (b) engaged in misconduct.
- (2) The councillor must, as soon as is practicable, report to—
  - (a) for a material personal interest or conflict of interest that arises at a meeting of the council, or any of its committees—the person who is presiding over the meeting; or
  - (b) otherwise—the chief executive officer.
- (3) A person commits an offence if the person—
  - (a) prejudices, or threatens to prejudice, the safety or career of another person because that other person or someone else complied with subsection (2); or
  - (b) intimidates or harasses, or threatens to intimidate or harass, another person because that other person or someone else complied with subsection (2); or
  - (c) takes any action that is, or is likely to be, detrimental to another person because that other person or someone else complied with subsection (2).

Maximum penalty for subsection (3)—100 penalty units or 2 years imprisonment.

**177 Post-election meetings**

- (1) The council must hold a meeting within 14 days after—
  - (a) the conclusion of each quadrennial election; and
  - (b) the conclusion of a fresh election of its councillors.

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- (2) The council must, by resolution, appoint a deputy mayor from its councillors (other than the mayor)—
  - (a) at that meeting; and
  - (b) at the first meeting after the office of the councillor who is the deputy mayor becomes vacant.

## Division 6                      **Conduct and performance of councillors**

### 178      **What this division is about**

- (1) This division is about dealing with complaints about the conduct and performance of councillors, to ensure—
  - (a) appropriate standards of conduct and performance are maintained; and
  - (b) a councillor who engages in misconduct is disciplined.
- (2) A **councillor** includes a person who is no longer a councillor but who was a councillor when the misconduct is alleged to have happened.
- (3) **Misconduct** is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor—
  - (a) that adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor's responsibilities or exercise of the councillor's powers; or
  - (b) that is or involves—
    - (i) the performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial; or
    - (ii) a breach of the trust placed in the councillor; or

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- (iii) a misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else; or
- (c) that contravenes section 175(3), 175(4) or 176(2).
- (4) ***Inappropriate conduct*** is conduct that is not appropriate conduct for a representative of the council, but is not misconduct, including, for example—
- (a) a councillor failing to comply with the council's procedures; or
- (b) a councillor behaving in an offensive or repeatedly disorderly way in a meeting of the council or any of its committees.
- (5) It is irrelevant whether the conduct that constitutes misconduct was engaged in—
- (a) within Queensland or elsewhere; or
- (b) when the councillor was not exercising the responsibilities of a councillor.
- (6) In summary, the process for reviewing complaints of misconduct or inappropriate conduct by councillors is as follows—
- assessing complaints—the chief executive officer assesses each complaint and refers the complaints to the relevant entity
  - notifying the councillor of the hearing of a complaint of misconduct—the entity hearing the complaint notifies the councillor about the hearing of the complaint
  - hearing and deciding complaints—the entity hearing the complaint decides whether or not the councillor engaged in the conduct complained of and, if so, what is the appropriate disciplinary action to be taken.
- (7) The ***BCC councillor conduct review panel*** is a body, created under this Act, that is responsible for hearing and deciding a

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complaint of inappropriate conduct or misconduct by a councillor.

- (8) The *tribunal* is a body created under the Local Government Act that, for the council, is responsible for hearing and deciding the most serious complaints of misconduct by a councillor.
- (9) To remove any doubt, a councillor may be dealt with for an act or omission that constitutes misconduct under this Act, and also be dealt with for the same act or omission—
  - (a) as the commission of an offence; or
  - (b) under the Crime and Misconduct Act
- (10) A decision under this division by any of the following persons is not subject to appeal—
  - (a) the BCC councillor conduct review panel;
  - (b) the tribunal;
  - (c) the chief executive officer;
  - (d) the chairperson of the council;
  - (e) a committee chairperson.

*Note—*

See section 226 for more information.

## **179 BCC councillors code of conduct**

- (1) This section is about the BCC councillors code of conduct.
- (2) The *BCC councillors code of conduct* is a code of conduct for councillors that, having regard to this Act, states examples of ethical and behavioural obligations for councillors.
- (3) The council may adopt a BCC councillors code of conduct that is approved by the Minister.
- (4) The Minister may approve a BCC councillors code of conduct only if the Minister is satisfied the code is consistent with this Act.



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- (5) If the council decides to adopt a BCC councillors code of conduct, the council must—
    - (a) adopt, by resolution, the code of conduct within 6 months after each quadrennial election for the council; and
    - (b) ensure a copy of the code of conduct may be—
      - (i) viewed by the public at its public office or on its website; and
      - (ii) purchased from the council’s public office.
  - (6) A BCC councillors code of conduct adopted under this section has effect until the next BCC councillors code of conduct is adopted by the council.

## **180 Assessing complaints**

- (1) This section applies if the council, or the department’s chief executive, makes or receives a complaint about the conduct or performance of a councillor.
- (2) The council or department’s chief executive must give written notice of the complaint to the chief executive officer.
- (3) The chief executive officer must assess each complaint to decide whether the complaint—
  - (a) is about a frivolous matter or was made vexatiously; or
  - (b) is about inappropriate conduct, misconduct, official misconduct or another matter (including a general complaint against the council, for example).
- (4) If the chief executive officer assesses that the complaint is about a frivolous matter or was made vexatiously, the chief executive officer may decide that no further action be taken in relation to the complaint.
- (5) If the chief executive officer assesses that the complaint is about inappropriate conduct, the chief executive officer must refer the complaint to the BCC councillor conduct review panel.

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- (6) If the chief executive officer assesses that the complaint is about misconduct, the chief executive officer must refer the complaint to the BCC councillor conduct review panel.
- (7) If the chief executive officer assesses that the complaint is about official misconduct under the Crime and Misconduct Act, the chief executive officer must deal with the complaint in accordance with that Act.
- (8) If the chief executive officer assesses that the complaint is about another matter, the chief executive officer must deal with the complaint in an appropriate way.
- (9) The chief executive officer must give the entity who made the complaint, and the accused councillor, a written notice that states—
  - (a) the type of complaint that the chief executive officer has assessed the complaint as; and
  - (b) the action (if any) that is proposed to be taken in relation to the complaint; and
  - (c) if the complaint was about a frivolous matter or was made vexatiously—that it is an offence under subsection (10) for a person to make a complaint that is substantially about a matter that the chief executive officer has assessed as being frivolous or vexatious.
- (10) A person must not make a complaint about the misconduct of a councillor if—
  - (a) the complaint is substantially the same as a complaint that the person has previously made; and
  - (b) the chief executive officer has given the person a notice that complies with subsection (9).

Maximum penalty—10 penalty units.
- (11) The chief executive officer must keep a record of—
  - (a) all written complaints received by the chief executive officer; and

- 
- (b) the outcome of each written complaint, including any disciplinary action or other action that was taken in relation to the complaint.
- (12) The chief executive officer must ensure the public may view the part of the record that relates to outcomes of written complaints—
- (a) at the council’s public office; or
- (b) on the council’s website.
- (13) However, subsection (12) does not apply to the record of a written complaint that—
- (a) the chief executive officer has assessed as being about a frivolous matter or as having been made vexatiously; or
- (b) is a public interest disclosure within the meaning of the *Public Interest Disclosure Act 2010*; or
- (c) is unsubstantiated.
- (14) The chief executive officer must publish annually on the council’s website the number and nature of written complaints that are unsubstantiated.

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

- (1) This section applies if the chief executive officer refers a complaint to the BCC councillor conduct review panel.
- (2) The BCC councillor conduct review panel may, without conducting a hearing of the complaint, order the complaint, or a part of the complaint, be dismissed or struck out if the panel considers the complaint or part is—
- (a) frivolous, vexatious or misconceived; or
- (b) lacking in substance; or
- (c) otherwise an abuse of process.
- (3) If the BCC councillor conduct review panel acts under subsection (2), the panel must give written notice of the order

to the chief executive officer, the accused councillor and the entity that made the complaint.

### **181 Notifying councillor of the hearing of a complaint**

- (1) At least 7 days before the hearing of a complaint by the BCC councillor conduct review panel, the panel must give the accused councillor a written notice about the hearing.
- (2) The notice must state—
  - (a) the misconduct or inappropriate conduct that is alleged to have been engaged in by the councillor; and
  - (b) the time and date when the hearing is to begin; and
  - (c) the place where the complaint is to be heard.
- (3) If all reasonable attempts to give the notice to the councillor have failed, the entity giving the notice may—
  - (a) publish the notice, at least 7 days before the hearing is to begin—
    - (i) in a newspaper that is circulating in Brisbane; and
    - (ii) on the department's website; or
  - (b) direct the council to publish the notice on its website at least 7 days before the hearing is to begin.

### **182 Hearing and deciding complaints**

- (1) This section is about—
  - (a) the hearing of a complaint of inappropriate conduct, or misconduct, by the BCC councillor conduct review panel; or
  - (b) the hearing of a complaint of misconduct by the tribunal.
- (2) The BCC councillor conduct review panel or tribunal may hear complaints about a number of councillors in the same

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hearing, unless the defence of any of the councillors may be prejudiced.

- (3) The hearing must be conducted in the way set out in chapter 7, part 1.
- (4) The BCC councillor conduct review panel or tribunal may decide all or part of the hearing from the documents brought before it, without the parties or the witnesses appearing, if—
  - (a) the panel or tribunal considers it appropriate in all the circumstances; or
  - (b) the parties agree.
- (5) The standard of proof in the hearing is the balance of probabilities.
- (6) The BCC councillor conduct review panel or tribunal must keep a written record of the hearing, in which it records—
  - (a) the statements of the councillor and all witnesses; and
  - (b) any reports relating to the councillor that are tendered at the hearing.

### **183 Taking disciplinary action—BCC councillor conduct review panel**

- (1) This section applies if—
  - (a) the BCC councillor conduct review panel decides, after hearing a complaint of inappropriate conduct, that a councillor engaged in inappropriate conduct; or
  - (b) the BCC councillor conduct review panel decides, after hearing a complaint of misconduct, that a councillor engaged in misconduct.
- (2) The BCC councillor conduct review panel may make any 1 or more of the following orders or recommendations that it considers appropriate in view of the circumstances relating to the inappropriate conduct or misconduct—

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- (a) an order that the councillor be counselled about the inappropriate conduct or misconduct, and how not to repeat the inappropriate conduct or misconduct;
  - (b) an order that the councillor make an admission of error or an apology;
  - (c) an order that the councillor participate in mediation with another person;
  - (d) a recommendation to the department's chief executive to monitor the councillor or the council for compliance with the local government related laws.
- (3) However, if, after hearing a complaint of misconduct, the BCC councillor conduct review panel considers that more serious disciplinary action should be taken, the panel must report the matter to the tribunal for the tribunal to take disciplinary action.
- (4) When deciding what disciplinary action is appropriate in view of the circumstances relating to the inappropriate conduct or misconduct, the BCC councillor conduct review panel may consider—
- (a) any inappropriate conduct or misconduct of the councillor in the past; and
  - (b) any allegation made in the hearing that was admitted, or was not challenged.
- (5) However, the BCC councillor conduct review panel may consider an allegation that was not admitted, or was challenged, only if it is satisfied that the allegation is true.
- (6) The degree to which the BCC councillor conduct review panel must be satisfied depends on the consequences, that are adverse to the councillor, of finding the allegation to be true.

### **183A Taking disciplinary action—tribunal**

- (1) This section applies if—

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- (a) after hearing a complaint of misconduct, the tribunal decides that a councillor engaged in misconduct; or
- (b) the BCC councillor conduct review panel has, after hearing a complaint of misconduct, reported the matter to the tribunal under section 183(3) for the tribunal to take disciplinary action.
- (2) The tribunal may make any order or recommendation that it considers appropriate in view of the circumstances relating to the misconduct.
- (3) For example, the tribunal may make any 1 or more of the following orders or recommendations—
- (a) an order that the councillor be counselled about the misconduct, and how not to repeat the misconduct;
- (b) an order that the councillor make an admission of error or an apology;
- (c) an order that the councillor participate in mediation with another person;
- (d) a recommendation to the department’s chief executive to monitor the councillor or the council for compliance with the local government related laws;
- (e) an order that the councillor reimburse the council;
- (f) a recommendation to the Minister that the councillor be suspended for a specified period, either wholly or from performing particular functions;
- Examples of particular functions—*
- attending council meetings or offices
  - representing the council at public functions
- (g) a recommendation to the Crime and Misconduct Commission or the Commissioner of Police that the councillor’s conduct be further investigated.
- (4) A recommendation mentioned in subsection (3)(f) may include a recommendation about the details of the suspension.

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*Example of a recommendation about the details of a suspension—*

that the suspension be with or without pay

- (5) When deciding what disciplinary action is appropriate in view of the circumstances relating to the misconduct, the tribunal may consider—
  - (a) any inappropriate conduct or misconduct of the councillor in the past; and
  - (b) any allegation made in the hearing that was admitted, or was not challenged.
- (6) However, the tribunal may consider an allegation that was not admitted, or was challenged, only if the tribunal is satisfied that the allegation is true.
- (7) The degree to which the tribunal must be satisfied depends on the consequences, that are adverse to the councillor, of finding the allegation to be true.

#### **184 Costs of tribunal to be paid by council**

The council must pay the costs of the tribunal in relation to a complaint of misconduct of a councillor, including the remuneration, allowances and expenses paid to members of the tribunal.

#### **185 Inappropriate conduct in meeting of council**

- (1) This section applies to the chairperson of the council or a committee chairperson in addition to any powers they may have under the council's rules of procedure.
- (2) If inappropriate conduct happens in a meeting of the council or its committees, the chairperson of the meeting may make any 1 or more of the following orders that the chairperson considers appropriate in the circumstances—
  - (a) an order that the councillor's inappropriate conduct be noted in the minutes of the meeting;



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- (b) an order that the councillor leave the place where the meeting is being held (including any area set aside for the public), and stay out of the place for the rest of the meeting;
  - (c) an order that a councillor who fails to leave the place where the meeting is being held when ordered to do so, be removed from the place.

### **186 Application of Crime and Misconduct Act**

- (1) The council is a unit of public administration for the Crime and Misconduct Act.
- (2) For any complaint of, or information or matter involving, misconduct by a councillor, a reference to a public official in the Crime and Misconduct Act, section 46(2), is taken to be a reference to—
  - (a) the department's chief executive; or
  - (b) the chief executive officer.

## **Part 3 BCC councillor conduct review panel**

### **187 Appointing members of the BCC councillor conduct review panel**

- (1) The BCC councillor conduct review panel is constituted by at least 3 members that the council chooses from a pool of members appointed, by resolution, by the council.
- (2) A person is qualified to be a member of the pool of members only if the person—
  - (a) has extensive knowledge of, and experience in, 1 or more of the following—

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- (i) local government;
  - (ii) community affairs;
  - (iii) investigations;
  - (iv) law;
  - (v) public administration;
  - (vi) public sector ethics;
  - (vii) public finance; or
- (b) has the other qualifications and experience that the council considers appropriate.
- (3) However, a person is not qualified to be a member of the pool of members if the person—
- (a) is a councillor of a local government; or
  - (b) is a nominee for election as a councillor; or
  - (c) accepts an appointment as a councillor; or
  - (d) is an employee of the council; or
  - (e) is a contractor of the council; or
  - (f) is a consultant engaged by the council; or
  - (g) is a member of an Australian Parliament; or
  - (h) is a nominee for election as a member of an Australian Parliament; or
  - (i) is a member of a political party; or
  - (j) has a conviction for an indictable offence that is not an expired conviction; or
  - (k) is an insolvent under administration (within the meaning of the Corporations Act, section 9); or
  - (l) is a type of person prescribed under a regulation.
- (4) A member may be appointed for a term of not longer than 4 years.
- (5) However, a member may be reappointed.

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- (6) A person stops being a member if the person—
- (a) completes a term of office but is not reappointed; or
  - (b) resigns by signed notice of resignation given to the council; or
  - (c) is removed as a member by the council for misbehaviour or physical or mental incapacity; or
  - (d) is not qualified to be a member under subsection (3).

### **188 Remuneration and appointment conditions of members**

- (1) A member of the BCC councillor conduct review panel is entitled to be paid the remuneration and allowances decided by the council.
- (2) A member of the BCC councillor conduct review panel holds office on the other conditions that the council decides.

### **189 Conflict of interests**

- (1) This section applies if a member of the BCC councillor conduct review panel has any interest that may conflict with a fair and impartial hearing of a complaint made against an accused councillor.
- (2) The member must not take part, or take further part, in any consideration of the matter.

Maximum penalty—35 penalty units.

- (3) As soon as practicable after the member becomes aware that this section applies to the member, the member must inform the council.

Maximum penalty for subsection (3)—35 penalty units.

## **Part 4 Council employees**

### **Division 1 Chief executive officer**

#### **190 Appointing a chief executive officer**

- (1) The council must appoint a qualified person to be the council's chief executive officer.
- (2) A person is qualified to be the chief executive officer if the person has the ability, experience, knowledge and skills that the council considers appropriate, having regard to the responsibilities of a chief executive officer.
- (3) A person who is appointed as the chief executive officer must enter into a written contract of employment with the council.
- (4) The contract of employment must provide for—
  - (a) the chief executive officer to meet performance standards set by the mayor; and
  - (b) the chief executive officer's conditions of employment (including remuneration).

#### **191 Appointing an acting chief executive officer**

The council may appoint a qualified person to act as the chief executive officer during—

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

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## **Division 2                      Other council employees**

### **192      Appointing senior contract employees**

- (1) The council must appoint qualified persons to be the council's senior contract employees.
- (2) A person is qualified to be a senior contract employee if the person has the ability, experience, knowledge and skills that the council considers appropriate, having regard to the responsibilities of the senior contract employee.
- (3) A person who is appointed as a senior contract employee must enter into a written contract of employment with the council.
- (4) The contract of employment must provide for—
  - (a) the senior contract employee to meet performance standards set by the mayor; and
  - (b) the senior contract employee's conditions of employment (including remuneration).

### **193      Appointing other council employees**

- (1) The council must adopt, by resolution, an organisational structure that is appropriate to the performance of the council's responsibilities.
- (2) The council may employ council employees for the performance of the council's responsibilities.
- (3) The chief executive officer must appoint the council employees, other than senior contract employees.
- (4) A council employee is employed on—
  - (a) the conditions contained in any relevant industrial instrument; and
  - (b) any other conditions that the council decides.

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### **194 Disciplinary action against council employees**

- (1) The chief executive officer is the only person who may take disciplinary action against a council employee.
- (2) A regulation may prescribe when the chief executive officer may take, and the types of, disciplinary action.
- (3) If the chief executive officer takes disciplinary action against a council employee, the council employee may appeal against the decision to the entity prescribed under a regulation.

## **Division 3 Common provisions**

### **195 Concurrent employment of council employees**

- (1) This section applies to all council employees, including the chief executive officer.
- (2) A council employee may be employed by more than 1 local government at the same time, if each of the local governments agree.

### **196 Improper conduct by council employees**

- (1) This section applies to all council employees, including the chief executive officer.
- (2) A *council employee* includes—
  - (a) an employee of a corporate entity; and
  - (b) a contractor of the council; and
  - (c) a type of person prescribed under a regulation.
- (3) A council employee must not ask for, or accept, a fee or other benefit for doing something as a council employee.

Maximum penalty—

- (a) for an employee of a corporate entity—500 penalty units or 5 years imprisonment; or

- (b) for any other council employee—100 penalty units or 2 years imprisonment.
- (4) However, subsection (3) does not apply to—
  - (a) remuneration paid by the council; or
  - (b) a benefit that has only a nominal value.
- (5) A council employee must not unlawfully destroy or damage property of the council.  
Maximum penalty for subsection (5)—100 penalty units or 2 years imprisonment.

## **197 Use of information by council employees**

- (1) This section applies to all council employees, including the chief executive officer.
- (2) A *council employee* includes—
  - (a) an employee of a corporate entity; and
  - (b) a contractor of the council; and
  - (c) a type of person prescribed under a regulation.
- (3) A person who is, or has been, a council employee must not use information acquired as a council employee to—
  - (a) gain (directly or indirectly) an advantage for the person or someone else; or
  - (b) cause detriment to the council.Maximum penalty—
  - (a) for an employee of a corporate entity—500 penalty units or 5 years imprisonment; or
  - (b) for any other council employee—100 penalty units or 2 years imprisonment.
- (4) The *council* includes a corporate entity of the council.
- (5) Subsection (3) does not apply to information that is lawfully available to the public.

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- (6) If an employee of a corporate entity contravenes subsection (3), the corporate entity may recover from the employee, as a debt due to the corporate entity—
- (a) if anyone made a profit because of the contravention—an amount equal to the profit; and
  - (b) if the corporate entity suffered loss or damage because of the contravention—an amount equal to the loss or damage.
- (7) The amount may be recovered from the employee whether or not the employee has been convicted of an offence in relation to the contravention.
- (8) Subsection (6) applies in addition to, and does not limit, the *Criminal Proceeds Confiscation Act 2002*.
- (9) A person who is, or has been, a council employee must not release information that the person knows, or should reasonably know, is information that—
- (a) is confidential to the council; and
  - (b) the council wishes to keep confidential.
- Maximum penalty for subsection (9)—
- (a) for an employee of a corporate entity—500 penalty units or 5 years imprisonment; or
  - (b) for any other council employee—100 penalty units or 2 years imprisonment.

## **198 Annual report must detail remuneration**

The annual report of the council must state—

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



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*Examples of the detail for the annual report—*

- 1 senior contract employee with a total remuneration package in the range of \$100000–\$199000
- 2 senior contract employees with a total remuneration package in the range of \$200000–\$299000
- 1 senior contract employee with a total remuneration package in the range of \$300000–\$500000

## **Part 5 Authorised persons**

### **199 Appointing authorised persons**

- (1) The chief executive officer may appoint a qualified person to be an authorised person.
- (2) A person is qualified to be an authorised person if the person—
  - (a) has the competencies—
    - (i) that the chief executive officer considers are necessary to perform the responsibilities that are required to be performed by the authorised person; or
    - (ii) prescribed under a regulation; and
  - (b) is either—
    - (i) an employee of the council; or
    - (ii) another type of person prescribed under a regulation.
- (3) The appointment of an authorised person must state the provisions of this Act for which the authorised person is appointed.
- (4) An authorised person’s appointment is subject to the conditions stated in—

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- (a) the document that appoints the authorised person; or
- (b) a written notice given to the authorised person by the chief executive officer; or
- (c) a regulation.

## **200 End of appointment of authorised persons**

- (1) A person stops being an authorised person—
  - (a) at the end of the term of appointment stated in the document that appointed the authorised person; or
  - (b) if the authorised person gives the council a signed notice of resignation; or
  - (c) if it is a condition of the authorised person's appointment that the authorised person hold another position at the same time—if the authorised person stops holding the other position.
- (2) If it is a condition of the authorised person's appointment that the authorised person hold another position at the same time, a notice of resignation acts as a notice of resignation for both positions.
- (3) This section does not limit the ways in which an authorised person's appointment ends.

## **201 Identity card for authorised persons**

- (1) The chief executive officer must give each authorised person an identity card.
- (2) This section does not stop a single identity card being issued to a person for this Act and for another purpose.
- (3) A person who stops being an authorised person must return the person's identity card to the chief executive officer, within 21 days after stopping being an authorised person, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

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**202 Authorised persons must disclose change in criminal history**

- (1) This section applies if there is a change in the criminal history of an authorised person (including acquiring a criminal history, for example).
- (2) The authorised person must, as soon as practicable after the change, disclose to the chief executive officer the details of the change, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

**203 Chief executive officer may obtain report from police commissioner**

- (1) The chief executive officer may ask the police commissioner to give the chief executive officer the following information about an authorised person—
  - (a) a written report about the person’s criminal history;
  - (b) a brief description of the circumstances of a conviction mentioned in the person’s criminal history.
- (2) The police commissioner must comply with the request.
- (3) However, the duty imposed on the police commissioner applies only to information in the commissioner’s possession or to which the commissioner has access.

**204 Use of criminal history information**

- (1) This section is about the use of criminal history information.
- (2) *Criminal history information* is information about the criminal history of an authorised person obtained under section 202 or 203.
- (3) The department’s chief executive may make guidelines for dealing with criminal history information to ensure—
  - (a) natural justice is afforded to the authorised persons to whom the criminal history information relates; and

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- (b) only relevant criminal history information is considered in assessing the suitability of an authorised person to exercise a power under a local government related law; and
  - (c) decisions based on criminal history information are made consistently.
- (4) The chief executive officer must comply with the guidelines.
  - (5) A person who has, or will have, a duty to disclose under section 202 may request a copy of the guidelines from the department.
  - (6) The chief executive officer must not use criminal history information for any purpose other than for assessing the suitability of an authorised person to exercise a power under a local government related law.

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

## Chapter 7 Other provisions

### Part 1 Way to hold a hearing

#### 205 What this part is about

- (1) This part sets out the way to hold a hearing under this Act.
- (2) The person or other entity that is conducting the hearing is called the *investigator* in this part.

#### 206 Procedures at hearing

- (1) When conducting a hearing, the investigator must—
  - (a) observe natural justice; but

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- (b) act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing.
- (2) For example, the investigator may—
    - (a) act in the absence of a person who has been given reasonable notice of the hearing; or
    - (b) receive evidence by statutory declaration; or
    - (c) refuse to allow a person to be represented by a legal practitioner; or
    - (d) disregard the rules of evidence; or
    - (e) disregard any defect, error, omission or insufficiency in a document; or
    - (f) allow a document to be amended; or
    - (g) adjourn a hearing.
  - (3) However, the investigator must comply with any procedural rules prescribed under a regulation.
  - (4) A hearing is not affected by a change of the members of an entity that is the investigator.

## **207 Witnesses at hearings**

- (1) The investigator may require a person, by giving them a written notice, to attend a hearing as a witness in order to—
  - (a) give evidence; or
  - (b) produce specified documents.
- (2) The person must—
  - (a) attend at the time and place specified in the notice; and
  - (b) continue to attend until excused by the investigator; and
  - (c) take an oath or make an affirmation if required by the investigator; and

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- (d) answer a question that the person is required to answer by the investigator, unless the person has a reasonable excuse; and
- (e) produce a document that the person is required to produce by the investigator, unless the person has a reasonable excuse.

Maximum penalty—35 penalty units.

- (3) A person has a reasonable excuse for failing to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.
- (4) A person who attends as a witness is entitled to—
  - (a) the witness fees that are prescribed under a regulation; or
  - (b) if no witness fees are prescribed, the reasonable witness fees decided by the investigator.

## **208 Contempt at hearing**

A person must not—

- (a) insult the investigator in a hearing; or
- (b) deliberately interrupt a hearing; or
- (c) take part in a disturbance in or near a place where the investigator is conducting a hearing; or
- (d) do anything that would be a contempt of court if the investigator were a court.

Maximum penalty—50 penalty units.

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## Part 2 Superannuation

### 209 What this part is about

This part is about superannuation for certain persons who are connected to the council.

### 210 Super scheme for councillors

- (1) The council may, for its councillors—
  - (a) establish and amend a superannuation scheme; or
  - (b) take part in a superannuation scheme.
- (2) If it does so, the council may pay an amount from its operating fund to the superannuation scheme as a contribution for the councillors.
- (3) However, the council must not make contributions to the superannuation scheme for a person who is no longer a councillor.
- (4) A councillor may enter into an arrangement with the council under which—
  - (a) the councillor agrees to forgo a percentage or amount of the remuneration that the councillor is entitled to as a councillor; and
  - (b) the council agrees to contribute the percentage or amount to the superannuation scheme for the councillor.
- (5) A *superannuation scheme* is a superannuation scheme that complies with the Commonwealth Super Act.

### 211 Superannuation scheme for council employees and associated persons

- (1) The council may, for council employees and associated persons—
  - (a) establish and amend a superannuation scheme; or

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- (b) take part in a superannuation scheme.
- (2) If it does so, the council may pay an amount from the operating fund to the superannuation scheme as a contribution for the council employees and associated persons.
- (3) An *associated person* is the spouse of a council employee, or another person prescribed under a regulation.
- (4) A *superannuation scheme* is a superannuation scheme that complies with the Commonwealth Super Act.
- (5) Despite section 5(2), the Local Government Act applies to the following to the extent of their participation in the LG super scheme—
  - (a) the Brisbane City Council;
  - (b) an employee of Brisbane City Council;
  - (c) an associated person.
- (6) The *LG super scheme* is the Local Government Superannuation Scheme continued in existence under the Local Government Act, section 217(1).

## **212 Super schemes to be audited by auditor-general**

- (1) This section applies to a superannuation scheme established or amended by the council under section 210(1)(a) or 211(1)(a).
- (2) The audit of the superannuation scheme that is required under the Commonwealth Super Act must be carried out by the auditor-general.



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## Part 3 **Allocating Commonwealth funding to council**

### **213 Allocating Commonwealth funding**

- (1) The *grants commission* is a body that is created under the Local Government Act to perform the responsibilities of a Local Government Grants Commission under the Local Government (Financial Assistance) Act.

*Note—*

Under section 228(2) of the Local Government Act, the grants commission and the Minister must comply with the Local Government (Financial Assistance) Act.

- (2) The Minister must not distribute to the council an amount equal to notional GST if the council has not paid the notional GST.
- (3) *Notional GST* is an amount that a local government may pay under the *GST and Related Matters Act 2000*, section 5.
- (4) The Minister must table in the Legislative Assembly the grants commission's recommendations about the allocation of funding to the council.

### **214 Decisions under this division are not subject to appeal**

A decision of the grants commission or the Minister is not subject to appeal.

*Note—*

See section 226 for more information.

## **Part 4                      Legal provisions**

### **215      False or misleading information**

(1) A person commits an offence if the person gives information for this Act (either orally or in a document), that the person knows is false or misleading in a material particular, to any of the following persons—

- (a) the Minister;
- (b) the department's chief executive;
- (c) the chief executive officer;
- (d) an authorised person;
- (e) the change commission;
- (f) the BCC councillor conduct review panel;
- (g) the tribunal;
- (h) the grants commission.

Maximum penalty—100 penalty units.

(2) However, the person does not commit an offence in relation to information in a document if, when the person gives the document to the other person—

- (a) the person tells the other person that the document is false or misleading, and in what respect the document is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—the person gives the other person the correct information.

### **216      Administrators who act honestly and without negligence are protected from liability**

(1) A constituter of the council is not civilly liable for an act done, or omission made, honestly and without negligence by the council or the constituter, as a constituter of the council—

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- (a) in the administration of this Act; or
  - (b) in the exercise, or intended exercise, of any of the council's powers under this Act.
- (2) A **constituter of the council** is—
- (a) the head of the council, when constituting the council; or
  - (b) a councillor, when constituting the council.
- (3) A State administrator or council administrator is not civilly liable for an act done under this Act, or omission made under this Act, honestly and without negligence.
- (4) A **State administrator** is—
- (a) the Minister; or
  - (b) the department's chief executive; or
  - (c) an authorised officer; or
  - (d) a member of the change commission; or
  - (e) a member of the grants commission; or
  - (f) a member of the BCC councillor conduct review panel; or
  - (g) a member of the tribunal; or
  - (h) a person acting under the direction of a person mentioned in paragraph (a), (b) or (c).
- (5) A **council administrator** is—
- (a) a councillor, when acting other than in the capacity of a constituter of the council; or
  - (b) the chief executive officer, when acting other than in the capacity of a constituter of the council; or
  - (c) an authorised person; or
  - (d) another council employee.
- (6) If subsection (3) prevents civil liability attaching to a State administrator, liability attaches instead to the State.

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- (7) If subsection (3) prevents civil liability attaching to a council administrator, liability attaches instead to the council.
- (8) The protection given under this section is in addition to any other protection given under another law or Act (including the *Public Interest Disclosure Act 2010*, for example).

### **217 Who is authorised to sign council documents**

The following persons may sign a document on behalf of the council—

- (a) the head of the council;
- (b) a delegate of the council;
- (c) a councillor or council employee who is authorised by the head of the council, in writing, to sign documents.

*Note—*

See section 238 for the council's power to delegate.

### **218 Name in proceedings by or against council**

- (1) Any proceedings by the council must be started in the name of the council.
- (2) Any proceedings against the council must be started against the council in its name.

### **219 Service of documents on council**

A document is properly served on the council if it is given to the chief executive officer in a way that is authorised by law.

### **220 Substituted service**

- (1) If an owner of rateable land is known to be absent from the State, the council may serve a document on the owner by serving the document on the owner's agent in the State.
- (2) Subsection (3) applies if—

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- (a) the council must serve a document on a person who owns or occupies a property; but
  - (b) the council does not know, or is uncertain about, the person's current address.
- (3) The council may serve the document by—
- (a) publishing a notice that contains a summary of the document in—
    - (i) a newspaper that is circulating generally throughout the State; and
    - (ii) the gazette; and
  - (b) publishing a notice that contains a copy of the document on the council's website.
- (4) The notice must be addressed to—
- (a) if the council knows the person's name—the person by name; or
  - (b) if the council does not know the person's name—the 'owner' or 'occupier' at the property's address.

**221 Local government related laws requiring a statement of a law**

A provision of a local government related law, that requires a document to contain a statement of a relevant provision of law, is taken to be complied with if the document states that particulars of the relevant provision may be—

- (a) obtained, free of charge, on application to the council; or
- (b) viewed at an identified website.

**222 Acting for council in legal proceedings**

- (1) In any proceedings, the chief executive officer, or another employee authorised in writing by the council—

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- (a) may give instructions and act as the authorised agent for the council; and
  - (b) may sign all documents for the council.
- (2) The council must pay the costs incurred by the chief executive officer or other employee in any proceedings.
- (3) If the Attorney-General could take proceedings on behalf of the council to ensure compliance with a local government related law, the council may take the proceeding in its own name.

## **223 Attempt to commit offence**

A person who attempts to commit an offence against this Act commits an offence and, on conviction, is liable to the same penalties as if the person had committed the offence.

## **224 Types of offences under this Act**

- (1) An offence against this Act that has a penalty of more than 2 years imprisonment, is an indictable offence that is a misdemeanour.
- (2) Any other offence against this Act is a summary offence.
- (3) A proceeding for an indictable offence may be taken, at the prosecution's election—
- (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (4) A magistrate must not hear an indictable offence summarily if—
- (a) at the start of the hearing, the defendant asks that the charge be prosecuted on indictment; or
  - (b) the magistrate considers that the charge should be prosecuted on indictment.

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- (5) If subsection (4) applies—
- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (4) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (6) The maximum penalty that may be summarily imposed for an indictable offence is 100 penalty units or 1 year's imprisonment.
- (7) A proceeding must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (8) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

## **225 Time to start proceedings in a summary way**

Proceedings for an offence against this Act that are to be heard in a summary way under the *Justices Act 1886* must be started—

- (a) within 1 year after the offence was committed; or

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- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed.

## 226 Decisions not subject to appeal

- (1) If a provision of this Act declares a decision to be not subject to appeal, that means the decision—
  - (a) can not be appealed against, challenged, reviewed, quashed, set aside, or called into question in any way (including under the Judicial Review Act, for example); 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) A **decision** includes—
    - (a) conduct related to making the decision; and
    - (b) a failure to make a decision.
  - (3) A **court** includes a tribunal or another similar entity.

## 227 Judges and other office holders not disqualified from adjudicating

A judge, magistrate, justice or presiding member of a tribunal is not disqualified from adjudicating in any proceedings to which the council is a party only because the person is, or is liable to be, a ratepayer of the council.



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## **228 Where fines are to be paid to**

- (1) This section applies if, in proceedings brought by the council for an offence against a local government related law, the court imposes a fine.
- (2) The fine must be paid to the council's operating fund, unless the court ordered the fine to be paid to a person.

## **229 Evidence of local laws**

- (1) In any proceedings, a certified copy of a local law or consolidated version of a local law is evidence of the content of the local law or consolidated version of the local law.
- (2) A *certified copy* of a local law or consolidated version of a local law is a copy that has been certified by the chief executive officer to be the local law or consolidated version as made by the council.
- (3) In any proceedings, a copy of the gazette that contains a notice of making a local law is—
  - (a) evidence of the content of the notice; and
  - (b) evidence that the local law has been properly made.
- (4) In any proceedings, the competence of the council to make a particular local law is presumed unless the matter is raised.

## **230 Evidence of proceedings of council**

- (1) This section applies to a document that—
  - (a) purports to be a copy of an entry in a record of the proceedings of—
    - (i) the council; or
    - (ii) a committee of the council; and
  - (b) purports to have been signed at the time when the entry was made by—
    - (i) the mayor; or

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- (ii) the chairperson of the council; or
    - (iii) for a committee of the council—the committee chairperson; and
  - (c) is certified by the chief executive officer to be a true copy of the document.
- (2) The document is evidence—
- (a) of the proceedings; and
  - (b) that the proceedings were properly held.

### **231 Evidentiary value of copies**

- (1) This section applies to a copy of a document that—
- (a) purports to be made under the authority of the council or mayor; and
  - (b) purports to be verified by the mayor or an employee who is authorised by the council.
- (2) The copy of the document is evidence in any proceedings as if the copy were the original of the document.

### **232 Evidentiary value of certificates**

- (1) This section applies to a certificate that—
- (a) purports to be about the state of, or a fact in, a record of the council; and
  - (b) purports to be signed by the chief executive officer.
- (2) The certificate is evidence of the matters contained in the certificate.

### **233 Evidence of directions given to council**

- (1) This section applies to a document that—

- (a) purports to be a direction that the Minister, or the department's chief executive, gave to the council under this Act; and
  - (b) purports to be certified by or for the Minister, or the department's chief executive, to be a true copy of the direction.
- (2) The document is evidence of—
- (a) the giving of the direction; and
  - (b) the matters contained in the direction.

#### **234 Evidence of complainant's knowledge of matter**

In a complaint starting proceedings, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

#### **235 Constitution and limits of council need not be proved**

It is not necessary for the plaintiff in any proceedings started by, for or against the council to prove—

- (a) the council's constitution; or
- (b) the boundaries of Brisbane; or
- (c) the boundaries of a ward of Brisbane.

## **Part 5 Delegation of powers**

#### **236 Delegation of Minister's powers**

- (1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified person.
- (2) However, the Minister must not delegate a power under section 42.

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### **237 Delegation of department's chief executive's powers**

The department's chief executive may delegate the chief executive's powers under this Act, or a local law, to an appropriately qualified person.

### **238 Delegation of council powers**

- (1) The council may, by resolution, delegate a power under this Act or another Act to—
  - (a) the mayor; or
  - (b) the chief executive officer; or
  - (c) a standing committee or joint standing committee; or
  - (d) another local government, for the purposes of a joint government activity; or
  - (e) a councillor, for the purpose of exercising a power as a shareholder in relation to a corporate entity.
- (2) However, the council must not delegate a power that an Act states must be exercised by resolution.
- (3) A *joint standing committee* is a committee consisting of councillors of the council and other local governments.

### **239 Delegation of chief executive officer's powers**

- (1) A chief executive officer may delegate the chief executive officer's powers to an appropriately qualified employee or contractor of the council.
- (2) However, the chief executive officer must not delegate the following powers—
  - (a) a power delegated by the council, if the council has directed the chief executive officer not to further delegate the power;
  - (b) a power to keep a register of interests;
  - (c) the power to sign a drafting certificate for a local law.

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**240 Council delegations register**

- (1) The chief executive officer must establish a register of delegations that contains the particulars prescribed under a regulation.
- (2) The chief executive officer must record all delegations by the council, mayor or the chief executive officer in the register of delegations.
- (3) The chief executive officer must ensure the public may view the register at the council's public office or on the council's website.

## **Part 6 Other provisions**

**241 Public office of the council**

- (1) The council must keep premises for use as a public office.
- (2) The public office must be in Brisbane.

**242 Powers in support of responsibilities**

- (1) This section applies if the council is required or empowered to perform a responsibility under a local government related law.
- (2) The council has the power to do anything that is necessary or convenient for performing the responsibilities.
- (3) The powers include all the powers that an individual may exercise, including for example—
  - (a) power to enter into contracts; and
  - (b) power to acquire, hold, deal with and dispose of property; and

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- (c) power to charge for a service or facility, other than a service or facility for which a cost-recovery fee may be fixed.

### **243 Validity of council proceedings**

The proceedings of the council or any of its committees, or the actions of a person acting as a councillor or member of a committee, are not invalid merely because of—

- (a) vacancies in the membership of the council or committee; or
- (b) a defect or irregularity in the election or appointment of any councillor or committee member; or
- (c) the disqualification of a councillor or committee member from acting as a councillor or committee member.

### **244 Requirements for particular guidelines**

- (1) The section applies to the following guidelines—
  - (a) the acceptable requests guidelines;
  - (b) the advice guidelines.
- (2) The guidelines—
  - (a) must apply to all councillors equally; and
  - (b) must state all relevant considerations; and
  - (c) must include a requirement that, if a request is refused under the guidelines, the person who made the refusal must give written notice stating the reasons for the refusal to the councillor who made the request; and
  - (d) can not provide for any relevant considerations to be discretionary.
- (3) *Relevant considerations* are—

- 
- (a) the criteria for deciding whether to grant or refuse a request; or
  - (b) the matters to be considered under the guidelines when deciding to grant or refuse a request.
- (4) **Request** means a request made by a councillor under section 171(1) or (3).

#### **245 Insurance to cover councillors**

- (1) The council may enter into a contract of insurance with WorkCover Queensland, or another insurer, to cover its councillors.
- (2) For that purpose, a councillor's role includes attending—
  - (a) meetings of the council or its committees that the councillor is entitled or asked to attend; and
  - (b) meetings for a resident of Brisbane; and
  - (c) conferences, deputations, inspections and meetings at which the councillor's attendance is permitted by the council; and
  - (d) official functions organised for the council.

#### **246 Special entertainment precincts**

- (1) This section is about establishing a special entertainment precinct in Brisbane.
- (2) A **special entertainment precinct** is an area in which noise from amplified music that is played at licensed premises in the area is regulated by a local law.
- (3) A **licensed premises** is a licensed premises under the *Liquor Act 1992*.
- (4) The effect of establishing a special entertainment precinct is that—

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- (a) noise from amplified music played at licensed premises in the precinct is regulated by a local law instead of the *Liquor Act 1992*; and
  - (b) requirements imposed under a planning scheme or development approval made or given under the Planning Act about noise abatement apply in relation to particular kinds of development in the precinct.
- (5) To establish a special entertainment precinct, the council must—
- (a) amend the council's planning scheme to identify the special entertainment precinct; and
  - (b) make a local law to regulate noise from amplified music from premises in the special entertainment precinct, in accordance with a permit that is issued for the premises.
- (6) However, a local law under this section does not apply to—
- (a) a major sports facility under the *Major Sports Facilities Act 2001*; or
  - (b) an activity that—
    - (i) is for a motor racing event under the *Motor Racing Events Act 1990*; and
    - (ii) is being carried on by, or with the permission of, the promoter of the motor racing event.

## **247 Land registry searches free of charge**

- (1) This section applies to any of the following persons—
- (a) the chief executive officer;
  - (b) an employee of the council who is authorised by the chief executive officer;
  - (c) a lawyer or other agent acting for the council;
  - (d) an employee of a lawyer or agent mentioned in paragraph (c) who is authorised by the lawyer or agent.



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- (2) The person may conduct searches of registers or documents about land in the land registry in accordance with the practice of the registry without payment of a fee.

#### **248 Approved forms**

The department's chief executive may approve forms for use under this Act.

#### **249 Review of this Act**

The Minister must, within 4 years after the commencement of this Act, carry out a review of the operation and effectiveness of this Act.

#### **250 Process for administrative action complaints**

- (1) The council must adopt a process for resolving administrative action complaints.
- (2) An *administrative action complaint* is a complaint that—
- (a) is about an administrative action of the council, including the following, for example—
    - (i) a decision, or a failure to make a decision, including a failure to provide a written statement of reasons for a decision;
    - (ii) an act, or a failure to do an act;
    - (iii) the formulation of a proposal or intention;
    - (iv) the making of a recommendation; and
  - (b) is made by an affected person.
- (3) An *affected person* is a person who is apparently directly affected by an administrative action of the council.
- (4) A regulation may provide for the process for resolving complaints about administrative actions of the council by affected persons.

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## **251 Information for the Minister**

- (1) The Minister may, by written notice, require the council to give the Minister information about—
  - (a) Brisbane; or
  - (b) the council.
- (2) The council must comply with the notice.

## **252 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) For example, a regulation may be made about—
  - (a) the processes of the council in deciding the remuneration that is payable to councillors (including the remuneration schedule, for example); or
  - (b) corporate entities; or
  - (c) appeals against decisions made under this Act; or
  - (d) a register of interests of the following—
    - (i) councillors;
    - (ii) other persons who are given responsibilities to perform under this Act;
    - (iii) persons who are related to a councillor or a person mentioned in subparagraph (ii); or
  - (e) the recording of conflicts of interest arising from the performance of a responsibility under this Act; or
  - (f) the regulation and management of council assets and infrastructure; or
  - (g) matters relating to a statutory committee of the council; or
  - (h) a process for the scrutiny of the council's budget; or
  - (i) meetings of the council or its committees; or

- (j) the financial sustainability and accountability of the council, including the systems of financial management.

## **Chapter 8            Repeal, transitional and savings provisions**

### **Part 1                Repeals**

#### **253    Repeal**

The following Acts are repealed—

- Australian Estates Company Limited, Hastings Street, New Farm, Viaduct Authorization Act 1962
- Brisbane City Council Business and Procedure Act 1939, 3 Geo 6 No. 30
- City of Brisbane Act 1924, 15 Geo 5 No. 32
- Local Government (Chinatown and The Valley Malls) Act 1984, No. 104
- Local Government (Queen Street Mall) Act 1981, No. 104.

## **Part 2**                      **Transitional and savings provisions**

### **254**    **What this part is about**

This part is about the transition from the following to this Act (including the transition of rights, liabilities and interests, for example)—

- (a) the repealed City of Brisbane Act;
- (b) the repealed Business and Procedure Act;
- (c) the repealed *Local Government Act 1993*;
- (d) a repealed mall Act.

### **255**    **Brisbane City Council continued**

The Brisbane City Council under the repealed City of Brisbane Act continues in existence as the council under this Act.

### **256**    **Local laws**

(1) A local law that was—

- (a) made by the council under the repealed City of Brisbane Act, the repealed *Local Government Act 1993* or a repealed mall Act; and
- (b) was in force immediately before the commencement of this section;

continues in force as a local law made under this Act.

(2) A *local law* includes—

- (a) an interim local law, model local law, and subordinate local law; and
- (b) a by-law or ordinance.

- (3) Subsection (4) applies if, before the commencement, the council started, but did not complete, the relevant process for adopting a model local law or making another local law.

*Note—*

Under the repealed *Local Government Act 1993* the council started the process for adopting a model local law by passing a resolution to propose to adopt the model local law and the council started a process for making a local law (other than a model local law) by passing a resolution to propose to make the local law.

- (4) The council may proceed further in adopting or making the local law in accordance with the relevant process as if the repealed *Local Government Act 1993* had not been repealed.
- (5) The **relevant process** is the process under the repealed *Local Government Act 1993*, chapter 12, part 2 that applied to adopting a model local law or making another local law.
- (6) A local law adopted or made under subsection (4) is taken to be a local law validly made under this Act.

## 257 Decisions under repealed Acts

- (1) A decision under the following repealed Acts, that was in force immediately before the commencement of this section, continues in force as if the decision were made under this Act, made at the same time as it was made under the repealed Act—
- (a) the repealed City of Brisbane Act;
  - (b) the repealed Business and Procedure Act;
  - (c) the repealed *Local Government Act 1993*;
  - (d) a repealed mall Act.
- (2) A **decision** includes an agreement, appointment, approval, authorisation, certificate, charge, consent, declaration, delegation, determination, direction, dismissal, exemption, immunity, instruction, licence, memorandum of understanding, order, permit, plan, policy, protocol, rates,

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release, resolution, restriction, settlement, suspension and warrant.

## **258 Established malls**

- (1) A mall established under a repealed mall Act continues as a mall under this Act.
- (2) The council may do anything in relation to a mall mentioned in subsection (1) that the council may do under this Act (including closing the mall, for example).
- (3) On 1 July 2010, an advisory committee, established under a repealed mall Act, is dissolved and the members of the advisory committee go out of office.
- (4) No compensation is payable to a member because of subsection (3).

## **259 Proceedings and evidence**

- (1) If, immediately before the commencement of this section, proceedings for an appeal, a complaint or an offence could legally have been started under the repealed City of Brisbane Act or a repealed mall Act the proceedings may be started under this Act.
- (2) Proceedings for an appeal, a complaint or an offence under any of the Acts may be continued under that Act, as if this Act had not commenced.
- (3) Any document that was given evidentiary effect under any of the Acts continues to have the evidentiary effect as if that Act had not been repealed.

## **260 Super trust deed**

A trust deed for a superannuation scheme established by the Brisbane City Council under the repealed City of Brisbane Act, that was in force immediately before the commencement

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of this section, continues in force as a trust deed under this Act.

## **261 Registers**

A register maintained under the repealed City of Brisbane Act continues as if it were made under this Act.

## **262 References to repealed Acts**

A reference in an Act or document to any of the following may, if the context permits, be taken to be a reference to this Act—

- (a) the repealed City of Brisbane Act;
- (b) the repealed Business and Procedure Act;
- (c) a repealed mall Act.

# **Part 4 Transitional provision for Revenue and Other Legislation Amendment Act 2011**

## **266 Continued superannuation scheme for council employees**

- (1) This section applies to the superannuation scheme for council employees continued in existence under section 211 of this Act as in force before the commencement of this section.
- (2) On the commencement of this section—
  - (a) the superannuation scheme ceases to continue in existence under this Act; and
  - (b) the trust deed for the superannuation scheme ceases to continue in force as a trust deed under this Act.

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- (3) If an audit of the superannuation scheme is required under the Commonwealth Super Act because of subsection (2), the audit must be carried out by the auditor-general.



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# Schedule Dictionary

## section 6

***acceptable requests guidelines*** see section 171(5).

***adopt***, by the council, means adopt by resolution of the council.

***advice guidelines*** see section 171(6).

***ancillary works and encroachments*** means—

- (a) cellars; or
- (b) gates; or
- (c) temporary rock anchors for building support; or
- (d) ancillary works and encroachments under the Transport Infrastructure Act.

***anti-competitive provision*** means a provision that a regulation identifies as creating barriers to—

- (a) entry to a market; or
- (b) competition within a market.

***appropriately qualified***, for a delegated power, includes having the qualifications, experience or standing to exercise the power.

*Example of standing—*

a person's classification level in the public service

***approved form*** means a form approved 248.

***approved inspection program*** see section 122(2)

***auditor-general*** means the Queensland Auditor-General under the *Auditor-General Act 2009*.

***authorised officer*** means a person who holds office under the Local Government Act, section 204D.

***authorised person*** means a person who holds office under section 199.

**BCC councillor conduct review panel** see section 178(7).

**BCC councillors code of conduct** see section 179(2).

**beginning**, of the council's term, see section 161(3).

**beneficial enterprise** see section 43(3).

**boundary change** see section 19(2).

**Brisbane** means the City of Brisbane.

**Building Act** means the *Building Act 1975*.

**building certifying activity** see section 51(4).

**building unit** means a lot under—

- (a) the *Body Corporate and Community Management Act 1997*; or
- (b) the *Building Units and Group Titles Act 1980*; or
- (c) the *Integrated Resort Development Act 1987*; or
- (d) the *Mixed Use Development Act 1993*; or
- (e) another Act prescribed under a regulation.

**business activity**, of the council, means trading in goods and services by the council.

**business unit**, of the council, means a part of the council that conducts a business activity of the council.

**caretaker period**, for the council, see section 92A(1).

**cause detriment to the council**—

1 To *cause detriment to the council* includes—

- (a) to sabotage a lawful process of the council (including adopting a budget or conducting a tender process, for example); or
- (b) to cause the council to suffer a loss in its lawful performance of a function or commercial activity (including the loss of a future contractual arrangement, for example).

2 To *cause detriment to the council* does not include—

- (a) merely embarrassing the council; or
- (b) merely causing disagreement between councillors.

***chairperson of the council*** means the councillor appointed by the council under section 25(1).

***change commission*** means the change commission established under the Local Government Act.

***charges*** includes any interest accrued, or premium owing, on the charges.

***chief executive officer*** means the person who holds an appointment under section 190.

***code of competitive conduct*** see section 51(2).

***commercialisation***, of a significant business activity, see section 48(2).

***committee chairperson***, for a committee of the council, means the councillor appointed by members of the committee as chairperson of the committee.

***Commonwealth Super Act*** means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

***competitive neutrality principle*** see section 47(3).

***conclusion***, of the election of a councillor, means the day—

- (a) for quadrennial elections for the election of the councillor—when the names of all elected candidates are published in the gazette; or
- (b) for a by-election (whether or not a poll is conducted)—when the name of the elected candidate is published in the gazette.

***conflict of interest*** see section 175(3).

***consolidated version***, of a local law, see section 35(2).

***contractor***, of the council, means—

- (a) a person who provides services under a contract with the council; or
- (b) a person prescribed under a regulation.

**conviction** includes a finding of guilt, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

**corporate entity** means an entity that has been corporatised under this Act and to which the Corporations Act does not apply.

**corporatisation**, of a significant business activity, see section 48(3).

**cost-recovery fee** see section 99(2).

**council** see section 9.

**council employee** means any of the following of or relating to the council—

- (a) the chief executive officer;
- (b) a senior contract employee;
- (c) a person holding an appointment under section 193.

**councillor**, for the council, includes the mayor.

**council worker** see section 127(6).

**court** means a court of competent jurisdiction.

**Crime and Misconduct Act** means the *Crime and Misconduct Act 2001*.

**criminal history**, of a person, means all convictions, other than spent convictions, recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this Act.

**department's chief executive** means the chief executive of the department.

**distribution**, of a how-to-vote card—

- (a) includes make the card available to other persons; but
- (b) does not include merely display 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.

***drafting certificate***, for a local law, means a certificate signed by the chief executive officer stating the local law was drafted in accordance with the drafting standards.

***drafting standards***, for local laws, means the standards, for drafting local laws, prescribed under a regulation.

***elected*** includes re-elected.

***elector*** means a person entitled to vote in an election of councillors.

***Electoral Act*** means the *Electoral Act 1992*.

***electoral commission*** means the Electoral Commission of Queensland under the Electoral Act.

***electoral commissioner*** means the electoral commissioner under the Electoral Act.

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

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

but does not include an easement.

***establish***, a superannuation scheme, includes join in establishing a superannuation scheme.

***Establishment and Coordination Committee*** means the council's Establishment and Coordination Committee continued under section 24.

***final part***, of the council's term, see section 161(5).

***Forestry Act*** means the *Forestry Act 1959*.

***fresh election*** means an election of all the councillors of the council that is not a quadrennial election.

**full cost pricing**, of a significant business activity, see section 48(4).

**full-time government job** see section 168(2).

**general rates** see section 94(2).

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

**grants commission** means the grants commission established under the Local Government Act.

**head of the council** means—

- (a) if the council is constituted by its councillors—the mayor; or
- (b) if the council is constituted by its chief executive officer—the chief executive officer.

**home** includes—

- (a) a room in a boarding house; and
- (b) a caravan; and
- (c) a manufactured home within the meaning of the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

**Housing Act contract** means a contract of sale—

- (a) that was entered into under—
  - (i) the *State Housing Act 1945*, section 24, before the repeal of that Act; or
  - (ii) the *Housing Act 2003*, section 113; or
- (b) under which—
  - (i) the purchase price, other than the deposit, is payable in 2 or more instalments; or
  - (ii) the sale is of a share in a house and land.

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***how-to-vote card*** see the *Local Government Electoral Act 2011*, schedule.

***identity card***, of a person, means a card that—

- (a) identifies the person as an authorised person, council worker or authorised officer; and
- (b) contains a recent photo of the person; and
- (c) contains a copy of the person's signature; and
- (d) states the expiry date for the identity card.

***inappropriate conduct*** see section 178(4).

***industrial instrument*** means an industrial instrument under the Industrial Relations Act.

***Industrial Relations Act*** means the *Industrial Relations Act 1999*.

***interim local law*** see section 27(4).

***investigator*** see section 195(2).

***joint government activity*** see section 12(2).

***judicial review*** means a review under the Judicial Review Act.

***Judicial Review Act*** means the *Judicial Review Act 1991*.

***land*** includes—

- (a) freehold land; and
- (b) land held from the State for a leasehold interest; and
- (c) a mining claim.

***Land Act*** means the *Land Act 1994*.

***Land Title Act*** means the *Land Title Act 1994*.

***Local Government Act*** means the *Local Government Act 2009*.

***local government area*** see the Local Government Act, section 8(2).

***Local Government (Financial Assistance) Act*** means the *Local Government (Financial Assistance) Act 1995* (Cwlth).

**local government principles** see section 4(2).

**local government related law** means a law under which the council performs the council's responsibilities, including, for example—

- (a) this Act; and
- (b) the Local Government Act; and
- (c) a local law; and
- (d) the Planning Act; and
- (e) a planning scheme, under the Planning Act; and
- (f) the Plumbing and Drainage Act; and
- (g) the *Water Act 2000*; and
- (h) the *Water Supply (Safety and Reliability) Act 2008*.

**local law** see section 27(2).

**major policy decision**, of the council, means a decision—

- (a) about the appointment of a chief executive officer; or
- (b) about the remuneration of the chief executive officer; or
- (c) to terminate the employment of the chief executive officer; or
- (d) to enter into a contract the total value of which is more than the greater of the following—
  - (i) \$150000;
  - (ii) 1% of the council's net rate and utility charges as stated in the council's audited financial statements included in the council's most recently adopted annual report.

**material personal interest** see section 174(2).

**middle**, of the council's term, see section 161(4).

**mining claim** means a mining claim under the *Mineral Resources Act 1989*.

**misconduct** see section 178(3).

**model local law** see section 27(7).



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***National Competition Policy Agreements*** means the following agreements (made between the Commonwealth and the States on 11 April 1995), as in force for the time being—

- (a) the Conduct Code Agreement;
- (b) the Competition Principles Agreement;
- (c) the Agreement to Implement National Competition Policy and Related Reforms.

***notice of intention to acquire land*** see section 67(2).

***occupier***, of property, see section 114(6).

***ordinary business matter*** means—

- (a) the remuneration of councillors or members of a council committee; or
- (b) the provision of superannuation entitlements or accident insurance for councillors or council employees; or
- (c) the terms on which goods, services or facilities are to be offered by the council for use or enjoyment of the public in Brisbane; or
- (d) the making or levying of rates and charges, or the fixing of a cost-recovery fee, by the council; or
- (e) a planning scheme of general application in Brisbane; or
- (f) a resolution required for the adoption of a budget for the council; or
- (g) a matter that is of interest to a person merely as—
  - (i) an employee of the State or a government entity; or
  - (ii) an elector, ratepayer or resident of Brisbane; or
  - (iii) a beneficiary under a policy of accident insurance, public liability or professional indemnity insurance held, or to be held, by the council; or
  - (iv) a user of goods, services or facilities supplied, or to be supplied, by the council (whether under a contract or otherwise) as a member of the public in common with other members of the public; or

- (v) a candidate for election or appointment as a mayor, deputy mayor or member of a committee of the council; or
- (vi) a member of a non-profit, charitable or religious organisation involving no personal financial gain or loss to the person.

***overall State interest*** is—

- (a) an interest that the Minister considers affects the economic, environmental or social interest of all or part of the State; or
- (b) an interest that the Minister considers affects the interest of ensuring there is an accountable, effective and efficient system of local government; or
- (c) an interest prescribed under a regulation.

***owner*** of land—

1 An *owner* of land is—

- (a) a registered proprietor of freehold land; or
- (b) a purchaser of freehold land from the State under an Act; or
- (c) a purchaser of land under a Housing Act contract; or
- (d) a person who has a share in land that the person bought under a Housing Act contract; or
- (e) a lessee of land held from the State, and a manager, overseer or superintendent of the lessee who lives on the land; or
- (f) the holder of a mining claim or lease; or
- (g) the holder of land mentioned in the *Mineral Resources Act 1989*, schedule, definition *owner*; or
- (h) a lessee under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; or

- 
- (i) a lessee of land held from a government entity or the council; or
  - (j) the holder of an occupation permit or stock grazing permit under the Forestry Act or of a permit prescribed under a regulation; or
  - (k) the holder of a permission to occupy from the chief executive of the department responsible for the administration of the Forestry Act; or
  - (l) the holder of a permit to occupy under the Land Act; or
  - (m) a licensee under the Land Act; or
  - (n) for land on which there is a structure subject to a timeshare scheme—the person notified to the council as the person responsible for the administration of the scheme as between the participants in the scheme; or
  - (o) another person who is entitled to receive rent for the land; or
  - (p) another person who would be entitled to receive rent for the land if it were leased at a full commercial rent.
- 2 However, an *owner* of land does not include the State, or a government entity, except as far as the State or government entity is liable under an Act to pay rates.

***Planning Act*** means the *Sustainable Planning Act 2009*.

***Planning and Environment Court*** see the Planning Act.

***planning scheme*** see the Planning Act, section 82.

***Plumbing and Drainage Act*** means the *Plumbing and Drainage Act 2002*.

***police commissioner*** means the commissioner of the police service under the *Police Service Administration Act 1990*.

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

***private property*** see section 114(4).

***private sector*** means an entity that is not—

- (a) the Commonwealth or a State; or
- (b) a State authority; or
- (c) a local government.

***property*** means land, any structure on the land, and a vehicle.

***public office***, of the council, see section 241.

***public place*** see section 114(5).

***public thoroughfare easement*** is an easement created under—

- (a) the Land Act, chapter 6, part 4, division 8; or
- (b) the Land Title Act, part 6, division 4.

***public utilities*** means—

- (a) works for the supply of drainage, electricity, gas, sewerage, telecommunications or water; or
- (b) works for an infrastructure corridor under the *State Development and Public Works Organisation Act 1971*, section 82; or
- (c) works for a purpose mentioned in the *State Development and Public Works Organisation Act 1971*, section 125; or
- (d) other works declared under a regulation to be a public utility.

***quadrennial elections*** means the elections for local governments that are held in 2012, and every fourth year after 2012.

***rateable land*** see section 95(2).

***rates*** includes any interest accrued, or premium owing, on the rates.

***rates and charges*** see section 93(2).

***reasonable proportion of electors*** see section 17(4).

***reasonable written notice*** see section 127(4).

**registered officer**, of a political party, means the registered officer of the political party under the Electoral Act.

**registrar of titles** means the public authority responsible for registering title to land and dealings affecting land.

**regulated pool** see the Building Act, section 231B.

**remedial notice** see section 127(2).

**repealed Business and Procedure Act** means the repealed *Brisbane City Council Business and Procedure Act 1939*.

**repealed City of Brisbane Act** means the repealed *City of Brisbane Act 1924*.

**repealed mall Act** means—

- (a) the repealed *Local Government (Chinatown and The Valley Malls) Act 1984*; or
- (b) the repealed *Local Government (Queen Street Mall) Act 1981*.

**resolution**, of the council, means the formal decision of the council at a council meeting.

**responsibility** includes a function.

**reward** does not include—

- (a) a councillor's remuneration as a councillor; or
- (b) an amount decided under the deed under the *Superannuation (State Public Sector) Act 1990* in relation to a transferring member within the meaning of section 32A of that Act; or
- (c) reasonable expenses actually incurred for any 1 or more of the following—
  - (i) accommodation;
  - (ii) meals;
  - (iii) domestic air travel;
  - (iv) taxi fares or public transport charges;
  - (v) motor vehicle hire; or

- (d) an amount paid as a pension or otherwise for past service in a full-time government job.

**road** see section 65(2).

**roads activity** see section 51(5).

**rules of procedure** see section 25(4).

**sanitary drain**—

- (a) means a drain that is immediately connected to, and used to carry discharges from, a soil or waste pipe; but
- (b) does not include a pipe that is a part of a drain for carrying off effluent from a property after treatment in an on-site sewerage facility.

**senior contract employee** means a council employee who is—

- (a) employed on a contractual basis; and
- (b) is classified by the council as ‘senior executive service’.

**separate rates and charges** see section 94(5).

**sewerage treatment system** means the infrastructure used to receive, transport and treat sewage or effluent (including sewers, access chambers, machinery, outfalls, pumps, structures and vents, for example).

**sign**, a thing, includes the making of a mark on the thing in front of someone else who signs the thing as witness.

**significant business activity** see section 47(4).

**special rates and charges** see section 94(3).

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and
- (b) that is not revived as prescribed by section 11 of that Act.

**standing committee**, of the council, means a committee of its councillors that meets to discuss the topics decided by the council when establishing the committee.

***State-controlled road*** see the Transport Infrastructure Act, schedule 6.

***State office***, of the department, means the office of the department at the address prescribed under a regulation.

***Statutory Bodies Financial Arrangements Act*** means the *Statutory Bodies Financial Arrangements Act 1982*.

***statutory committee***, of the council, means a committee of the council that is required under this Act and may not be dissolved by the council.

***stormwater drain*** see section 83(2).

***stormwater installation*** see section 83(3).

***structure*** means anything that is built or constructed, whether or not it is attached to land.

***subordinate local law*** see section 27(5).

***sustainable development*** is development that is designed to meet present needs while also taking into account future costs (including costs to the environment and the depletion of natural resources, for example).

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

***Transport Infrastructure Act*** means the *Transport Infrastructure Act 1994*.

***tribunal*** see the Local Government Act, section 183.

***utility charges*** see section 94(4).

***ward***, of Brisbane, see section 17(1).

## 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 1 September 2011. Future amendments of the City of Brisbane Act 2010 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	none	17 June 2010	ss 1–2, 344 commenced
0B	none	1 July 2010	majority of provs commenced
1	2010 Act No. 23	2 July 2010	
1A	2010 Act No. 35	1 December 2010	
1B	2010 Act No. 38	1 January 2011	
1C	2011 Act No. 8	8 April 2011	
1D	2011 Act No. 8	1 July 2011	
1E	—	2 July 2011	prov exp 1 July 2011
1F	2011 Act No. 27	1 September 2011	

## 5 List of legislation

### **City of Brisbane Act 2010 No. 23**

date of assent 17 June 2010

ss 1–2, 344 commenced on date of assent (see s 2(1)(a))

sch 1 (to the extent it amds this Act) commenced 2 July 2010 (see s 2(2))

remaining provisions commenced 1 July 2010 (see s 2(1))

amending legislation—

### **City of Brisbane Act 2010 No. 23 ss 1, 2(1)(b), (2), 352 sch 1**

date of assent 17 June 2010

ss 1–2 commenced on date of assent

s 352 commenced 1 July 2010 (see s 2(1))

remaining provisions commenced 2 July 2010 (see s 2(2))

### **Building and Other Legislation Amendment Act (No. 2) 2010 No. 35 pts 1, 5**

date of assent 20 September 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2010 (2010 SL No. 308)

### **Public Interest Disclosure Act 2010 No. 38 ss 1–2, 78 sch 3**

date of assent 20 September 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2011 (2010 SL No. 305)

### **Personal Property Securities (Ancillary Provisions) Act 2010 No. 44 ss 1–2, ch 4 pt 40**

date of assent 14 October 2010

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

### **Revenue and Other Legislation Amendment Act 2011 No. 8 ss 1, 2(2)(a), pt 3**

date of assent 8 April 2011

ss 1–2 commenced on date of assent

ss 11–14 commenced 1 July 2011 (2011 SL No. 90)

remaining provisions commenced on date of assent

### **Local Government Electoral Act 2011 No. 27 s 1, pt 12 div 6**

date of assent 1 September 2011

commenced on date of assent

## 6 List of annotations

**Long title** amd 2010 No. 23 s 352 sch 1

### **Definitions**

**s 6** amd 2010 No. 23 s 352 sch 1

**Who the council is constituted by**

**s 13** amd 2011 No. 27 s 244

**Assessment**

s 21            amd 2011 No. 8 s 7

**Election advertising**

s 39            amd 2011 No. 27 s 245

**Swimming pool safety**

s 41A          ins 2010 No. 35 s 34

**PART 5—CARETAKER PERIOD ARRANGEMENTS**

pt 5 (ss 92A–92D) ins 2011 No. 27 s 246

**Entry by authorised person, at reasonable times, to inspect regulated pools**

s 123A        ins 2010 No. 35 s 35

**General powers after entering a property**

s 124          amd 2010 No. 35 s 36

**Disqualification for certain offences**

s 153          amd 2011 No. 27 s 247

**Filling a vacancy in the office of mayor**

s 164          amd 2011 No. 27 s 248

**Filling a vacancy in the office of another councillor**

s 166          amd 2011 No. 27 s 249

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

s 175          sub 2011 No. 27 s 250

**What this division is about**

s 178          amd 2011 No. 27 s 251

**Assessing complaints**

s 180          amd 2010 No. 38 s 78 sch 3; 2011 No. 27 s 252

**Preliminary dealings with complaints before hearing**

s 180A        ins 2011 No. 27 s 253

**Notifying councillor of the hearing of a complaint**

s 181          amd 2011 No. 8 s 8; 2011 No. 27 s 254

**Hearing and deciding complaints**

s 182          amd 2011 No. 8 s 9

**Taking disciplinary action—BCC councillor conduct review panel**

s 183          sub 2011 No. 8 s 10

**Taking disciplinary action—tribunal**

s 183A        ins 2011 No. 8 s 10

**Superannuation scheme for council employees and associated persons**

s 211          amd 2011 No. 8 s 11

**Super schemes to be audited by auditor-general**

s 212          amd 2011 No. 8 s 12

**Administrators who act honestly and without negligence are protected from liability**  
s 216 amd 2010 No. 38 s 78 sch 3

**Transitional provisions for elections**  
s 263 om 2011 No. 27 s 255

**Transitional regulation-making power**  
s 264 exp 1 July 2011 (see s 264(4))

**Act amended**  
s 265 om R0B (see RA ss 7(1)(k) and 40)

**PART 4—TRANSITIONAL PROVISION FOR REVENUE AND OTHER  
LEGISLATION AMENDMENT ACT 2011**  
pt hdg ins 2011 No. 8 s 13

**Continued superannuation scheme for council employees**  
s 266 prev s 266 om R0B (see RA ss 7(1)(k) and 40)  
pres s 266 ins 2011 No. 8 s 13

**CHAPTER 9—AMENDMENT OF ACTS**  
ch hdg om R1 (see RA s 7(1)(k))

**PART 1—AMENDMENT OF ELECTRICAL SAFETY ACT 2002**  
pt hdg om R0B (see RA ss 7(1)(k) and 40)

**PART 2—AMENDMENT OF INFORMATION PRIVACY ACT 2009**  
pt 2 (ss 267–268) om R0B (see RA ss 7(1)(k) and 40)

**PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 2009**  
pt hdg om R0B (see RA s 7(1)(k))  
ss 269–343 om R0B (see RA s 40)  
s 344 om R0A (see RA s 40)  
ss 345–346 om R0B (see RA s 40)

**PART 4—AMENDMENT OF RIGHT TO INFORMATION ACT 2009**  
pt 4 (ss 347–349) om R0B (see RA ss 7(1)(k) and 40)

**PART 5—AMENDMENT OF WORKPLACE HEALTH AND SAFETY ACT 1995**  
pt 5 (ss 350–351) om R0B (see RA ss 7(1)(k) and 40)

**PART 6—AMENDMENT OF OTHER ACTS**  
pt 6 (s 352) om R1 (see RA ss 7(1)(k) and 40)

**SCHEDULE—DICTIONARY**  
(prev sch 2) renum 2010 No. 23 s 352 sch 1  
def “**caretaker period**” ins 2011 No. 27 s 256(2)  
def “**how-to-vote card**” sub 2011 No. 27 s 256(1)  
def “**major policy decision**” ins 2011 No. 27 s 256(2)  
def “**regulated pool**” ins 2010 No. 35 s 37  
def “**super board**” om 2011 No. 8 s 14  
def “**trust deed**” om 2011 No. 8 s 14

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**SCHEDULE 1—MINOR AND CONSEQUENTIAL AMENDMENTS**

amd R0B (see RA s 40)

om R1 (see RA s 40)

**7 List of forms notified or published in the  
gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form 1 Version 2—Application – Warrant to enter**

pubd gaz 13 August 2010 p 1359

**Form 2 Version 2—Application – Court order to enter**

pubd gaz 13 August 2010 p 1359

**Form 3 Version 1—Application – Approval to invest in a beneficial enterprise with  
the private sector**

pubd gaz 25 June 2010 p 820

**Form 4 Version 1—Councillor statement of interests**

pubd gaz 25 June 2010 p 820

**Form 5 Version 1—Councillor’s related persons statement of interests**

pubd gaz 25 June 2010 p 820

**Form 6 Version 1—Notice of correct particulars for a statement of interests of a  
councillor or councillor’s related persons**

pubd gaz 25 June 2010 p 820

**Form 7 Version 1—Chief executive officer or senior contract employee statement of  
interests**

pubd gaz 25 June 2010 p 820

**Form 8 Version 1—Chief executive officer’s or senior contract employee’s related  
persons statement of interests**

pubd gaz 25 June 2010 p 820

**Form 9 Version 1—Notice of correct particulars for a statement of interests of a chief  
executive officer or senior contract employee or chief executive officer’s or  
senior contract employee’s related persons**

pubd gaz 25 June 2010 p 820