

Queensland



**LOCAL GOVERNMENT
LEGISLATION
AMENDMENT ACT 1992**

Act No. 13 of 1992

Queensland



LOCAL GOVERNMENT LEGISLATION AMENDMENT ACT 1992

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Queensland



**Local Government Legislation Amendment
Act 1992**

Act No. 13 of 1992

An Act to amend the *City of Brisbane Act 1924* and the *Local Government Act 1936*, and to repeal an Act

[Assented to 13 May 1992]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Local Government Legislation Amendment Act 1992*.

Commencement

2. Section 17 commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF THE CITY OF BRISBANE ACT 1924

Amended Act

3. The *City of Brisbane Act 1924* is amended as set out in this Part.

Amendment of s.3 (Interpretation)

4. Section 3(1)—

insert—

“**Crown**” means the Crown in right of the State, the Commonwealth, another State or a Territory;

“**decision maker**”, in relation to the categorisation of land for the purposes of a differential general rate, has the meaning given by section 85(c)(i);

“**differential general rate**” has the meaning given by section 49(2);

“**general charge**” means a charge mentioned in section 59(1);

“**general rate**” has the meaning given by section 49(1);

“**Local Government Act**” means the *Local Government Act 1936*;

“**minimum general rate levy**” has the meaning given by section 50;

“**owner**” has the meaning given by section 3 of the Local Government Act;

“**pensioner**”, in Division 3 of Part 3, has the meaning given by section 74;

“**rate**” means any rate or charge mentioned in section 48, and includes any interest accrued, or premium owing, on such a rate or charge;

“**rateable land**” has the meaning given by section 47;

“**separate rate or charge**” has the meaning given by section 51;

“**utility charge**” has the meaning given by section 52;

“**valuation authority**” means the chief executive of the department that deals with matters arising under the *Valuation of Land Act 1944*.’.

Replacement of s.6 (Corporation)

5. Section 6—

omit, insert—

‘Council is body corporate etc.

‘6. 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’.

‘Powers of Council

‘6A.(1) The Council has such powers as are conferred on it under this or any other Act.

‘(2) Without limiting subsection (1), the Council has, for or in connection with the performance of its functions, all the powers of an individual, and may, for example—

- (a) enter into contracts with any party; and

- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint agents and attorneys; and
- (d) make charges, and fix terms and conditions, for services and information supplied by it to any party.

‘(3) In this section—

“party” includes—

- (a) the Crown; and
- (b) another local authority; and
- (c) a public authority of the Crown.’.

Replacement of ss.40 to 44B

6. Sections 40 to 44B—

omit, insert—

‘Division 12—Contracts and tendering

‘Formalities of making etc. of contracts

‘40.(1) For the purposes of the formalities of making, varying or discharging contracts, a delegate or other person acting with the authority of the Council may make, vary or discharge a contract in the name of, or on behalf of, the Council in the same way as if the contract were made, varied or discharged by an individual.

‘(2) The making, varying or discharging of a contract under subsection (1) is effective in law and binds the Council and other parties to the contract.

‘(3) This section does not prevent the Council from making, varying or discharging a contract under its seal.

‘(4) This section does not affect the operation of any law that requires—

- (a) a consent or sanction to be obtained; or
- (b) a procedure to be complied with in relation to the making, varying or discharging of a contract.

‘Limitation on entering into contracts under delegation

‘41. A delegate of the Council may make a contract on behalf of, or in the name of the Council, only if—

- (a) provision has been made for meeting the cost of the contract in the Council’s approved budget; or
- (b) the entering into of the contract has been approved by the Council in a case of emergency.

‘Requirements for tenders and quotations

‘42.(1) The Council must invite tenders before making a contract for the carrying out of work, or the supply of goods or services, involving expenditure of more than—

- (a) \$100 000; or
- (b) if a greater amount is prescribed for the purposes of this subsection—that amount.

‘(2) Tenders must be invited by notice, published at least 7 days before the entering into of the contract, in a newspaper circulating in the City.

‘(3) The Council must seek quotations before making a contract (other than a contract mentioned in subsection (1)) for the carrying out of work, or the supply of goods or services, involving expenditure of more than—

- (a) \$50 000; or
- (b) if a greater amount is prescribed for the purposes of this subsection—that amount.

‘(4) In seeking quotations, the Council must act in a way that will, in its opinion, ensure that it receives a reasonable number of competitive quotations.

‘(5) Subsections (1) and (3) do not apply to a contract if the Council resolves that it is of the opinion—

- (a) that, because of the unavailability of competitive or reliable tenderers or quoters, a satisfactory result would not be achieved by inviting tenders or seeking quotations; or
- (b) that a specification for inviting tenders or seeking quotations

cannot be written because of the nature of the proposed subject matter of the contract; or

- (c) that the making of the contract without inviting tenders or seeking quotations is in the public interest.

‘(6) A resolution made for the purposes of subsection (5)—

- (a) must specify reasons for the opinion mentioned in it; and
- (b) may relate to a particular contract or a class of contracts; and
- (c) in the case of a resolution relating to a class of contracts—expires 1 year after it is made.

‘(7) This section does not apply to the following contracts—

- (a) a contract made with—
 - (i) the Crown; or
 - (ii) another local authority; or
 - (iii) a public authority of the Crown;
- (b) a contract for purchase at public auction;
- (c) a contract for the purchase of goods or services under arrangements made by—
 - (i) the Crown; or
 - (ii) another local authority;
- (d) a contract for the engagement of professional services if—
 - (i) the services are to be performed by a professionally qualified person; and
 - (ii) a professionally recognised scale of fees applies to the services;
- (e) a contract made in an emergency.

‘Modification of tenders

‘43.(1) This section applies if—

- (a) the Council invites tenders in relation to a contract; and

(b) the notice inviting tenders states that this section applies to the making of the contract.

‘(2) Before making a decision on the tenders, the Council may invite all the persons who have submitted a tender to modify their tender.

‘(3) If the Council decides not to accept any tender, it may invite any person who submitted a tender to modify the tender.

‘(4) If the Council invites a person under subsection (3) to modify a tender, it must give a copy of its reasons for inviting that person to modify the tender to all persons who submitted a tender.

‘(5) This section applies despite section 42.

‘Short-listing after calling for expressions of interest

‘44.(1) This section applies to a contract mentioned in section 42(1) if the Council resolves that it is of the opinion that the making of the contract under this section is in the public interest.

‘(2) The Council must invite expressions of interest for the making of a contract to which this section applies.

‘(3) The expressions of interest must be invited by notice in a newspaper circulating in the City.

‘(4) The Council may prepare a short list of persons from the persons who submit expressions of interest.

‘(5) If—

(a) the Council prepares the short list; and

(b) invites tenders from all the persons on the short list;

section 42 does not apply to the making of the contract.

‘(6) A resolution under subsection (1)—

(a) must specify reasons for the opinion expressed in it; and

(b) may relate to a particular contract or a class of contracts; and

(c) in the case of a resolution relating to a class of contracts—expires 1 year after it is made.

‘Acceptance of tender or quotation

‘45.(1) If the Council decides to accept a tender or quotation, it must accept the tender or quotation most advantageous to it.

‘(2) The tender or quotation accepted need not be the cheapest.

‘(3) The Council may decide not to accept any tender or quotation available to it.

‘Sale of goods etc.

‘46.(1) The Council must invite tenders, or sell by public auction, if it wishes to dispose of goods or land with an apparent value greater than—

(a) \$500; or

(b) if a greater amount is prescribed for the purposes of this section—that amount.

‘(2) This section does not apply to a disposal of goods or land if the Council resolves that it is of the opinion that it is in the public interest that the section should not apply.

‘(3) A resolution under subsection (2)—

(a) must specify reasons for the opinion expressed in it; and

(b) may relate to a particular disposal or a class of disposal; and

(c) in the case of a resolution relating to a class of disposals—expires 1 year after it is made.

‘(4) This section does not apply to the disposal of land to—

(a) the Crown; or

(b) another local authority; or

(c) a public authority of the Crown; or

(d) a person or body if the land is to be used for a purpose that would make the land exempt from rating.

‘(5) This section does not apply to a disposal of goods or land if—

(a) the goods or land are offered for sale by tender or public auction and not sold; and

- (b) the goods or land are sold within 1 year after being offered for sale at a price that is not less than the highest price offered by tender or at the public auction.

‘PART 3—RATES AND CHARGES

‘Division 1—General

‘What land is rateable?

‘47.(1) All land is rateable land other than—

- (a) vacant Crown land; or
- (b) land occupied by or on behalf of—
 - (i) the Crown; or
 - (ii) a Crown instrumentality; or
- (c) land exempt from rating by regulation; or
- (d) land used for public, religious, charitable or educational purposes that is exempt from rating under a resolution of the Council.

‘(2) Subject to subsection (3), land is not occupied on behalf of the Crown or a Crown instrumentality if—

- (a) it is ordinarily used for residential purposes, regardless of whether it is occupied at a particular time; or
- (b) it is ordinarily used for a commercial enterprise, regardless of whether it is used for a commercial purpose at a particular time.

‘(3) Land is occupied on behalf of the Crown or a Crown instrumentality if it is ordinarily used for residential purposes by a person—

- (a) holding an appointment under, or in the employment of, the Crown or a Crown instrumentality; and
- (b) who is required by the terms of appointment or employment to live on the land.

‘Power to make and levy rates and charges

‘48. The Council may, for a financial year, make and levy—

- (a) ~~differential~~ general rates; and
- (b) minimum general rate levies; and
- (c) separate rates and charges; and
- (d) utility charges.

‘Meaning of “general rate” and “differential general rate”

‘49.(1) A general rate is a rate (other than a separate rate) made and levied equally on the unimproved value of all rateable land in the City.

‘(2) A differential general rate is a rate (other than a separate rate) made and levied equally on the unimproved value of all rateable land in the City included in a category determined by the Council for the purpose of levying the rate.

‘Meaning of “minimum general rate levy”

‘50. A minimum general rate levy is an amount fixed as the minimum amount payable as a general rate or differential general rate in relation to all or any rateable land in the City.

‘Meaning of “separate rate or charge”

‘51. A separate rate or charge is a rate or charge made and levied on all or any rateable land in the City for or towards meeting the cost of any works, services, facilities or activities supplied or undertaken, or proposed to be supplied or undertaken, by or on behalf of the Council.

‘Meaning of “utility charge”

‘52.(1) A utility charge is a charge for the supply by the Council of water, sewerage or cleansing services to any land, building or structure in the City.

‘(2) In subsection (1)—

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

‘Making of rates and charges

‘53. A rate or charge mentioned in section 48 must be made for a financial year by resolution at the Council’s meeting at which its budget for the financial year is adopted.

‘General rate or differential general rates must be made each year

‘54. The Council must make a general rate or differential general rates for each financial year.

‘Differential general rates

‘55.(1) Before a differential general rate is made and levied, rateable land must be categorised into 2 or more categories under Division 4.

‘(2) A differential general rate made and levied in relation to rateable land in a category may be the same as or different to the differential general rate made and levied in relation to land in another category.

‘(3) If the Council makes and levies a differential general rate for rateable land for a financial year, the Council must not make and levy a general rate for the land for the year.

‘(4) A differential general rate may be made and levied in relation to a lot within the meaning of—

(a) the *Building Units and Group Titles Act 1980*; or

(b) section 7 of Schedule 7 to the *South Bank Corporation Act 1989*;

as if it were a parcel of rateable land.

‘Minimum general rate levies

‘56.(1) Rateable land may be identified for the purpose of making and levying a minimum general rate levy in whatever way the Council considers appropriate.

‘(2) If the Council makes and levies a differential general rate, the

Council may make and levy different minimum general rate levies in relation to rateable land in different categories.

‘Separate rates and charges

‘57.(1) A separate rate or charge must be made and levied on the rateable land in the City that, in the Council’s opinion, has benefited or will benefit from, or has or will have access to, the work, service, facility or activity because of which the rate or charge is made and levied.

‘(2) A separate rate or charge may be made and levied on such bases as the Council considers appropriate.

‘(3) The Council’s resolution making a separate rate or charge must identify the rateable land to which the rate or charge applies.

‘(4) Parcels of rateable land may be identified for the purpose of making and levying a separate rate or charge in whatever way the Council considers appropriate.

‘Utility charges

‘58.(1) Utility charges may be made and levied for supplying water or sewerage services to any land (whether vacant or occupied), building or structure.

‘(2) Utility charges may be made and levied during construction of facilities for the purpose of supplying water or sewerage services.

‘(3) Utility charges may be made and levied for supplying cleansing services (within the meaning of section 52) to any occupied land or any building or structure.

‘(4) Utility charges may be made and levied in relation to land that is not rateable land.

‘(5) Utility charges may be made and levied on such bases as the Council considers appropriate.

‘General charges

‘59.(1) The Council may, by ordinance or resolution, fix charges in relation to—

- (a) providing an entitlement, facility, service or thing; or
- (b) granting an approval, consent, licence, permission or registration; or
- (c) giving information; or
- (d) admitting a person to a building, structure or place; or
- (e) making to it of any application; or
- (f) recording a change of ownership

‘(2) A charge mentioned in subsection (1) is a general charge.

‘Division 2—Levy of rates

‘Levy of rates

‘60.(1) A rate must be levied by a rate notice given to—

- (a) in the case of a utility charge in relation to a structure or land that is not rateable land—the person at whose request the service is supplied; and
- (b) in any other case—the owner of the land in relation to which the rate is levied.

‘(2) A rate notice must specify the date of its issue.

‘(3) A rate must be levied—

- (a) in the case of a utility charge for supply of a water service based on the quantity of water supplied during a period as ascertained by measurement at intervals—in relation to any intervals the Council considers appropriate; and
- (b) in any other case—in relation to the whole, a half or a quarter of the financial year for which the rate is levied, as the Council considers appropriate.

‘(4) In this section—

“**person**” includes the Crown.

‘Rate may be levied or adjusted after end of financial year

‘61. The Council may, in a financial year, levy a rate, or adjust a rate levy, even though its resolution for making the rate was made in relation to an earlier financial year.

‘Person who is liable to pay rate

‘62.(1) Subject to subsection (2), the owner for the time being of land is liable to pay any rate levied by the Council that is applicable to the land.

‘(2) The person at whose request a utility service is supplied to land that is not rateable land, or to a structure, is liable to pay any rate levied by the Council for supplying the service.

‘(3) If there is more than 1 owner or other person liable to pay a rate, all the owners or other persons are jointly and severally liable.

‘(4) In this section—

“person” includes the Crown.

‘Liability to pay rate if change of ownership etc.

‘63.(1) The Council may recover the whole amount of a rate for which an owner of rateable land is liable from the owner for the time being of the land despite a change in ownership of the land during the period for which the rate is levied.

‘(2) If land ceases to be rateable land because of—

- (a) termination of the tenure of a holding; or
- (b) surrender or forfeiture of the land to the Crown; or
- (c) acquisition of the land by the Crown; or
- (d) exemption of the land from rating; or
- (e) the property description of the land ceasing to exist;

the owner of the land immediately before it ceased to be rateable land is taken to continue as the owner of the land, and the land is taken to continue to be rateable land, for the purpose of the levy and collection of a rate payable in relation to the land before it ceased to be rateable land.

‘Payment of rates

‘64.(1) A rate is payable at the Council’s office.

(2) Payment of a rate may be accepted at—

- (a) another place maintained by the Council for the purpose; or
- (b) a place of business of a person appointed by the Council for the purpose.

‘Time for payment of rates and recovery of rates

‘65.(1) A rate is payable to the Council within 30 days after the date of issue of the rate notice by which it is levied.

‘(2) After the end of the period for payment, the Council may recover as a debt from the owner for the time being of the land the amount of the rate that is unpaid.

‘(3) Section 27(11) of the Local Government Act applies, with all necessary modifications, to the recovery of unpaid rates.

‘Payment by instalments

‘66.(1) At the meeting at which its budget is adopted, the Council may resolve that a rate may be paid by instalments on the terms specified in the resolution.

‘(2) The terms may provide for payment of a premium.

‘(3) Section 67 does not apply to payment of the rate if the terms applicable to the payment of the rate are met.

‘(4) The terms may make provision in relation to—

- (a) the application of section 67 to the payment of the rate; and
- (b) the immediate payment of future instalments;

if the terms applicable to the payment of the rate are not met.

‘(5) Section 65(2) and (3) applies to the recovery of the rate if the terms applicable to the payment of the rate are not met.

‘Unpaid rate may bear interest

‘67.(1) If the full amount of a rate is not paid to the Council within 30 days after the date of issue of the rate notice by which the rate is levied, the unpaid amount bears interest at a rate determined by the Council.

‘(2) A rate of interest determined under subsection (1) must not exceed—

- (a) the prescribed rate; or
- (b) if there is no prescribed rate—15% per annum;

compounded and calculated on daily rests.

‘Discount for prompt payment

‘68.(1) If the full amount of a rate is paid to it within 30 days after the date of issue of the rate notice by which the rate is levied, the Council may allow a discount determined by it.

‘(2) The discount must be a percentage of the rate that does not exceed—

- (a) the prescribed rate; or
- (b) if there is no prescribed rate—15%.

‘(3) If it appears to the Council that payment of the full amount of the rate after the period mentioned in subsection (1) is due to circumstances beyond the control of the owner of the relevant land, the Council may apply subsection (1) as it considers appropriate, even though payment is not made within the period.

‘(4) If, when the full amount of the rate is paid to the Council, there are unpaid rates levied by it in relation to the same land, subsection (1) has no application, and cannot be applied under subsection (3), unless all rates levied by the Council in relation to the land are paid to it at the same time.

‘Other benefits for prompt payment

‘69. The Council may give, or join in provision of, benefits (other than discounts) as inducements for the prompt payment of rates.

‘Levy of rate on alteration in unimproved value etc.

‘70.(1) If the unimproved value of rateable land alters, the Council must adjust the amount of a rate levied by it by reference to the unimproved value so that the amount levied conforms to the altered unimproved value.

‘(2) If—

- (a) land becomes rateable land; or
- (b) land is included in a category of land because of section 93(b);

the Council must levy any rate applicable to the land.

‘(3) An adjustment under subsection (1) or a levy under subsection (2) has effect on the day on which the altered valuation or valuation of the relevant land is effective.

‘(4) If the description of rateable land ceases, the Council must refund to the owner for the time being of the relevant land the amount of any rate paid in relation to the land for the period after the description ceases.

‘(5) For the purposes of subsection (4), the owner of land immediately before it ceases to be rateable land is taken to continue as the owner of the land.

‘Adjustment of differential general rate on change in category

‘71. If, because of the determination of an objection or appeal under Division 4, rateable land that was included in a category for the purpose of levying a differential general rate is taken to be included in another category as at the date of issue of the rate notice by which the rate is levied, the rate must be adjusted having regard to the category in which the land is taken to be included.

‘Refund of excess rate and recovery of shortfall

‘72. If an amount of a rate levied or adjusted under section 70(1) or (2) or 71 has been paid, the Council—

- (a) must refund to the owner for the time being of the relevant land any amount paid in excess of the rate as adjusted; or
- (b) may recover from the owner for the time being of the relevant land any amount by which the amount paid falls short of the rate

as adjusted.

‘Refund of rate on termination of entitlement to occupy

‘73. If—

- (a) a rate levied in relation to land that is—
 - (i) a holding; or
 - (ii) occupied under a licence or permission to occupy granted by the Crown; and
- (b) the person who was owner of the land—
 - (i) ceases to occupy the land because of expiry, surrender or forfeiture of the relevant lease, licence or permission; and
 - (ii) has no other entitlement to occupy the land;

the Council must refund to the person the amount of any rate paid in relation to the land for the period after the person ceases to be the owner.

‘Division 3—Concessions

‘Meaning of “pensioner” in Division

‘74. In this Division—

“pensioner” means a person in receipt of a pension under a law of the Commonwealth or the State.

‘Remission, composition and settlement of rates

‘75.(1) The Council may—

- (a) remit a rate in whole or part; or
- (b) accept a composition or another arrangement relating to an unpaid rate.

‘(2) If land in relation to which a rate is levied is free of encumbrance, the Council may accept a transfer to it of the land in full or part settlement of an owner’s liability for rates.

‘(3) Section 67 does not apply to payment of a rate if the terms of any agreement made under this section in relation to the rate are met.

‘(4) The terms of any agreement made under this section may make provision in relation to—

- (a) the application of section 67 to the payment of a rate; and
- (b) the immediate payment of future instalments;

if the terms applicable to the payment of the rate are not met.

‘(5) Section 65(2) and (3) applies to the recovery of the rate if the terms application to the payment of the rate are not met.

‘Deferment of payment of liability

‘76.(1) The Council may enter into an arrangement to defer payment of a rate until a specified time.

‘(2) Deferment of liability may be for the lifetime of an owner of the relevant land if the owner is a pensioner.

‘(3) The arrangement may provide for payment of a premium because of deferment of payment of the rate.

‘(4) Section 67 does not apply to payment under the arrangement if the terms of the arrangement applicable to the payment of the rate are met.

‘(5) The terms of the arrangement may make provision in relation to—

- (a) the application of section 67 to the payment of the rate; and
- (b) the immediate payment of the rate;

if the terms of the arrangement applicable to the payment of the rate are not met.

‘(6) Section 65(2) and (3) applies to the recovery of the rate if the terms of the arrangement applicable to the payment of the rate are not met.

‘Resort to section 75 or 76 requires justification

‘77.(1) The Council may exercise a power under section 75 or 76 only if—

- (a) it resolves that the case justifies the exercise of the power; or

- (b) the case is of a kind that has been accepted, by resolution of the Council, as justifying the exercise of the power.

‘(2) Factors that may be accepted as justifying an exercise of power under section 75 or 76 include—

- (a) that the owner of the relevant land is—
 - (i) a pensioner; or
 - (ii) a body whose objects do not include the making of profit; or
- (b) that it appears to the Council that the financial circumstances of the owner of the relevant land are such that the owner would suffer hardship by payment of the rates; or
- (c) the assistance or encouragement of economic development of the whole or part of the City; or
- (d) the preservation, restoration or maintenance of buildings or places of cultural, environmental, historic, heritage or scientific significance to the City; or
- (e) another factor prescribed for the purposes of this section.

‘Remission for occupancy by pensioners

‘78.(1) The Council may remit, in whole or part, the payment of a rate if the land is occupied, but not owned, only by pensioners or by pensioners and other persons.

‘(2) If the land is occupied only by pensioners, the Council may exercise the power under subsection (1) only if the owner of the land has given a binding undertaking to the Council that the benefit of the remission will be extended to each pensioner.

‘(3) If land is occupied by pensioners and other persons, the Council may exercise the power under subsection (1) only—

- (a) in relation to the portion of the rate accepted by it to be fairly apportionable to the parts of the land in which a pensioner has rights to exclusive occupancy; and
- (b) if the owner of the land has given a binding undertaking to the Council that the benefit of the remission will be extended to each

pensioner.

‘Exercise of concession powers requires owner’s application

‘79. The Council may exercise a power under section 75, 76 or 78 only on the application of the owner of the relevant land made in the form and way approved by the Council.

‘Limitation of increase in rate levied

‘80.(1) When the Council resolves to make and levy a rate, it may also resolve that, in relation to all or specified classes of land, the amount levied will not be more than the amount of that rate levied for the previous financial year increased by a specified percentage.

‘(2) The resolution may specify different percentages in relation to—

- (a) different land or classes of land; or
- (b) different rates.

‘Division 4—Categorisation of land for differential rating

‘Establishing criteria and categories

‘81. Before the Council makes and levies a differential general rate for a financial year, it must, by resolution, determine—

- (a) the categories into which rateable land in the City is to be categorised; and
- (b) the criteria by which land is to be categorised.

‘Identification of categories for parcels of land

‘82.(1) After the categories and criteria have been determined under section 81, all rateable land in the City must be categorised by—

- (a) the Council identifying the category in which each parcel of rateable land is included; or
- (b) the valuation authority, at the request of the Council, identifying

the category in which each parcel of rateable land is included.

‘(2) If the valuation authority identifies the category in which a parcel of rateable land is included, the valuation authority must give written notice to the Council of the category of the parcel.

‘(3) If the valuation authority is unable to identify the category in which a parcel of rateable land is included, the valuation authority must give written notice to the Council.

‘(4) The category in which a parcel of rateable land is included may be identified in whatever way the valuation authority or the Council, as the case may be, considers appropriate.

‘Specification of categories for parcels of land

‘83.(1) If the Council resolves to make and levy a differential general rate, the resolution must specify the categories in which rateable land is to be included.

‘(2) Parcels of rateable land may be identified in whatever way the Council considers appropriate.

‘(3) The accidental omission from categorisation of parcels of rateable land does not prevent the making and levying of the differential general rate.

‘Entry on land to assist differential rating

‘84.(1) This section applies to—

- (a) a person authorised by the Council for the purposes of this section; and
- (b) the valuation authority; and
- (c) a person authorised by the valuation authority for the purposes of this section; and
- (d) a member of the Land Court; and
- (e) a person authorised by a member of the Land Court for the purposes of this section.

‘(2) For the purpose of—

- (a) determining the categories into which rateable land in the City is

- to be categorised or the criteria by which it is to be categorised; or
- (b) identifying the category in which a parcel of rateable land should be included; or
- (c) deciding an objection or appeal relating to the categorisation of land;

a person to whom this section applies may—

- (d) enter on land at any reasonable time; and
- (e) inspect the land and the uses made of the land; and
- (f) do anything reasonably necessary to exercise the powers under paragraphs (d) and (e).

‘(3) Before entering on the land, the person must—

- (a) obtain the consent of an owner of the land; or
- (b) give at least 14 days’ notice to the owner of the land of—
 - (i) the person’s intention to enter on the land; and
 - (ii) the proposed purpose in entering on the land; and
 - (iii) the day and time when the person proposes to enter the land.

‘(4) In exercising a power under this section, a person must take all reasonable steps to ensure that the person causes as little inconvenience, and does as little damage, as is practicable.

‘Notice to owner of categorisation

‘85. A rate notice given to the owner of rateable land by which a differential general rate is levied must contain, or be accompanied by, a statement that—

- (a) specifies the categories of rateable land in the City and the criteria by which land is categorised; and
- (b) specifies the category in which the rateable land is included; and
- (c) informs the owner—
 - (i) whether the category in which the land is included was identified by the Council or the valuation authority (the **“decision maker”**); and

- (ii) that the owner may object to the categorisation of the land by giving to the decision maker notice of objection, in the form approved by the decision maker, within 30 days after the date of issue of the rate notice or such further period as the decision maker allows; and
- (iii) that the sole ground on which the owner may object is that, having regard to the criteria determined by the Council for categorising rateable land, the land should have been included, as at the date of issue of the rate notice, in another of the categories specified in the statement; and
- (iv) that giving a notice of objection will not, in the meantime, affect the levy and recovery of the rates specified in the rate notice; and
- (v) that if, because of objection made, the owner's land is included, as at the date of issue of the rate notice, in another category an adjustment of rates will be made.

‘Owner’s objection to categorisation

‘86.(1) An owner of rateable land in relation to which a differential general rate is levied may object to the categorisation of the land on the sole ground that, having regard to the criteria determined by the Council for categorising rateable land, the land should have been included, as at the date of issue of the relevant rate notice, in another of the categories determined by the Council.

‘(2) The objection must be made by giving notice of the objection to the decision maker.

‘(3) The notice of the objection must—

- (a) be given within 30 days after the date of issue of the rate notice or such further period as the decision maker allows; and
- (b) be in a form approved by the decision maker; and
- (c) nominate the category determined by the Council for the differential general rate in which the owner claims the land should have been included; and
- (d) specify the facts and circumstances on which the claim is based.

‘Determination of owner’s objection

‘87.(1) If the owner of rateable land objects to the categorisation of the land, a person authorised by the decision maker for the purpose must—

- (a) consider the categorisation of land to which objection is made; and
- (b) consider the matters claimed by the objector.

‘(2) The person may—

- (a) allow the objection; or
- (b) disallow the objection; or
- (c) determine that the land should be included in another category determined by the Council for the differential general rate.

‘(3) The person must determine the objection, and give written notice to the owner of the determination, within 60 days after the end of the period within which the objection had to be made.

‘(4) The notice of determination of the objection must include the reasons for the determination.

‘Effect of determinations

‘88.(1) Unless it is set aside on appeal, the determination of an objection to the categorisation of land has effect as provided by this section.

‘(2) If the determination allows the objection, the land is taken to be included, for the period for which the relevant rate notice is issued, in the category nominated by the objector in the notice of objection.

‘(3) If the determination disallows the objection, the land continues to be included in the category specified in the relevant rate notice.

‘(4) If the determination is that the land should be in another category, the land is to be included in the category for the period for which the relevant rate notice is issued.

‘Appeal against determination

‘89.(1) If the owner of rateable land is aggrieved by—

- (a) the determination of an objection to the categorisation of the land; or
- (b) the refusal by the decision maker to allow a further period to give a notice of objection;

the owner may appeal to the Land Court against the determination or refusal.

‘(2) The appeal must be instituted by filing a notice of appeal in the Land Court registry.

‘(3) The notice of appeal must—

- (a) be filed within 30 days after the owner received notice of the determination of the objection or the refusal; and
- (b) be in a form approved by the Land Court.

‘(4) A copy of the notice of appeal must be given to the decision maker within 7 days after the notice of appeal is filed in the Land Court registry.

‘(5) Failure to comply with subsection (4) does not affect the making of the appeal or the jurisdiction of the Land Court to determine the appeal, but costs of any adjournment caused by the failure may be awarded against the owner of the land.

‘Constitution and procedure of Land Court

‘90.(1) When exercising jurisdiction in an appeal under this Division, the Land Court—

- (a) is constituted by 1 member; and
- (b) may sit in chambers; and
- (c) is not bound by rules of evidence.

‘(2) The appeal is to be conducted as directed by the Land Court with a view to its prompt disposal.

‘Determination of appeal by Land Court

‘91.(1) On the hearing of an appeal against the determination of an objection to the categorisation of land, the Land Court may—

- (a) set aside the determination and determine that the land should be included in a different category determined by the Council for the differential general rate; or
- (b) disallow the appeal.

‘(2) On the hearing of an appeal against a refusal to allow a further period to give a notice of objection, the Land Court may—

- (a) allow a further period to give the notice; or
- (b) disallow the appeal.

‘(3) If the Land Court sets aside the determination of the objection, the land is taken to be included in the category determined by the Land Court for the period for which the relevant rate notice is issued.

‘Levy and recovery of rate unaffected by objection or appeal

‘92. The making of an objection, or the instituting of an appeal, in relation to the categorisation of land does not affect the levy and recovery of rates in relation to the land.

‘Late categorisation

‘93. If rateable land in the City has been categorised and—

- (a) the decision maker is subsequently satisfied, having regard to the criteria determined by the Council for the categorisation of land, that land should be included in a different category to the category in which it is included; or
- (b) rateable land is not categorised by the decision maker because of accidental omission; or
- (c) land subsequently becomes rateable land; or
- (d) land that was included in 2 or more parcels of rateable land, either in the same category or different categories, is subsequently amalgamated into a single parcel;

the decision maker must determine that the land should be included in a specified category.

‘Time of effect of late categorisation

‘94. A determination under section 93 has effect—

- (a) if the determination is made because of section 93(a)—in relation to rates levied after the making of the determination; or
- (b) if the determination is made because of section 93(b)—from the start of the relevant financial year; or
- (c) if the determination is made because of section 93(c)—from when the land became rateable land; or
- (d) if the determination is made because of section 93(d)—in relation to rates levied after the amalgamation of the land.

‘PART 4—FINANCE***‘Division 1—Funds and accounting*****‘Funds**

‘95.(1) The Council must maintain—

- (a) an operating fund to be called the City Fund; and
- (b) a trust fund.

‘(2) The Council must keep a bank account and separate accounting records for each fund.

‘Trust fund

‘96.(1) The following amounts must be credited to the trust fund—

- (a) amounts paid to the Council—
 - (i) by way of deposit; or
 - (ii) in trust for any person;
- (b) amounts required by an Act to be paid to the Council’s trust fund.

‘(2) An amount credited to the trust fund is to be applied—

- (a) in payment to or on behalf of the person entitled to the amount according to law; or
- (b) as prescribed by the Act under which the amount was paid to the trust fund.

‘(3) An amount credited to the trust fund may, with the Minister’s prior consent, be transferred to the City Fund if the purpose for which the amount was credited has ceased to exist.

‘Reserves

‘97.(1) The Council may establish specific reserves within the City Fund.

‘(2) The Council must keep separate accounting records for each reserve.

‘(3) Amounts held in a reserve that are no longer required may be applied for any purpose.

‘Sound accounting principles and procedures to be observed

‘98.(1) Fund transactions must be consistent with sound accounting principles and procedures.

‘(2) The Council must establish and observe—

- (a) systems for managing its finances; and
- (b) procedures for recording, and reporting on, its financial operations and position.

‘(3) The systems and procedures must be consistent with sound accounting principles and procedures.

‘(4) Nothing in this section prevents the Council from continuing to apply until 30 June 1996 systems and procedures that were being applied by the Council immediately before the commencement of this section.

‘Bank accounts

‘99.(1) The Council must appoint at least 1 bank for the purposes of this Division.

‘(2) All amounts received by the Council must be deposited to an account in the name of the Council kept with a bank appointed under subsection (1).

‘Basis of accounting

‘100. The Council must adopt an accrual accounting basis for its financial operations.

‘Accounting periods

‘101.(1) The Council may, by resolution, determine the parts of a financial year that are to be accounting periods.

‘(2) Unless the Council otherwise determines, each month is an accounting period.

‘Accounting records

‘102.(1) The Council must ensure that—

- (a) proper accounting records are kept for both funds; and
- (b) accurate and regular entries of financial transactions and affairs are made for both funds.

‘(2) The records must be sufficient to explain the Council’s financial operations and financial position.

‘Surpluses and deficits

‘103. All surpluses and deficits made by the Council in a financial year must accrue to the City Fund.

‘Accounting manual

‘104.(1) The Council must prepare an accounting manual specifying the principles, practices and procedures to be observed in the Council’s financial administration.

‘(2) The accounting manual must comply with this Act and any other

Act that applies to the Council's financial administration.

'Losses and ex gratia payments

'105.(1) Losses in relation to the Council's operations may be written off.

'(2) Ex gratia payments may be made from the Council's accounts.

'Parking receipts

'106.(1) Amounts received from the Council's regulated and off-street parking operations must be credited to the City Fund.

'(2) Subsection (1) has effect despite sections 49E and 49F of the Local Government Act.

'Division 2—Budget

'Presentation of budget

'107. In each June, the mayor must present to the Council a budget for the City Fund for the next financial year.

'Content of budget documents

'108.(1) Each budget presented to the Council by the mayor must—

- (a) be framed in a program format detailing financial and non-financial performance targets and strategies for the financial year; and
- (b) distinguish between capital and recurrent revenues and expenditures for each program; and
- (c) comprise—
 - (i) statements of individual program budgets prepared on an accrual accounting basis; and
 - (ii) a report on the Council's financial position, performance and outlook; and

- (d) include a statement of the Council's revenue policy for the financial year; and
- (e) be accompanied by a schedule specifying all expenditure items of a capital nature for general local authority works if the estimated expenditure for the item is greater than—
 - (i) \$50 000; or
 - (ii) if another amount is determined by the Council by resolution—that amount; and
- (f) be the basis on which the rates are to be made and levied by the Council for the financial year.

‘(2) The amount of any surplus or deficit that is estimated will exist at the end of the financial year in which the budget is presented must be taken into account—

- (a) in the budget; and
- (b) in making and levying rates; and
- (c) in fixing general charges.

‘Adoption of budget—the approved budget

‘109. The Council must consider the budget presented by the mayor and must, by resolution, adopt the budget with or without amendment.

‘(2) The Council must adopt a budget for each financial year before the start of the financial year.

‘(3) The budget adopted by the Council, as subsequently amended from time to time by resolution, is the Council's approved budget for the financial year.

‘(4) An estimate of program expenditure specified in the approved budget constitutes an authorisation to spend amounts from the City Fund for the program.

‘Budget reporting and monitoring

‘110.(1) As soon as practicable after the end of each accounting period, there must be prepared and tabled in the Council a financial statement in

relation to the approved budget for the period of the financial year to the end of the accounting period.

‘(2) A financial statement must—

- (a) be consistent with sound accounting principles and procedures; and
- (b) show both the budgeted and actual positions, with such explanations as will give a true indication of the progressive state of the approved budget.

‘(3) The last financial statement prepared before 1 May must include an estimate of the anticipated position of the approved budget at 30 June.

‘(4) Financial statements must be available for inspection and purchase at the Council’s office.

‘Members’ liability for unauthorised expenditure

‘111.(1) If, other than in an emergency, the Council approves expenditure that is not authorised by the approved budget, the aldermen of the Council who knowingly consented to the expenditure are jointly and severally liable to pay to the Council the amount expended.

‘(2) An amount for which aldermen of the Council are jointly and severally liable under subsection (1) may be recovered as a debt due and payable to the Council by—

- (a) the Council; or
- (b) a person appointed by the Minister for the purpose; or
- (c) an elector or ratepayer;

by action in a court having jurisdiction for the recovery of debts up to the amount concerned.

‘(3) An amount recovered by a person specified in subsection (2)(b) or (c) must be immediately paid to the Council.

‘Division 3—Investment and borrowing

‘Borrowing or raising money

‘112. The Council may enter into financial arrangements under section 22 of the *Statutory Bodies Financial Arrangements Act 1982*.

‘Investing money

‘113. The Council may invest money under section 48 of the *Statutory Bodies Financial Arrangements Act 1982*.

‘Application of Statutory Bodies Financial Arrangements Act

‘114.(1) As a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982*, the Council has, in relation to financial arrangements that are to be entered into, or have been made by it—

- (a) the powers conferred, and obligations imposed, on statutory bodies by that Act; and
- (b) the powers conferred, and obligations imposed, on the Council by order in council under that Act.

‘(2) A provision of the *Statutory Bodies Financial Arrangements Act 1982*, or of an order in council under that Act, that applies to financial arrangements made by all statutory bodies applies to financial arrangements made by the Council.

‘Members’ liability for unauthorised borrowings

‘115.(1) If the Council borrows money—

- (a) without authority conferred under the *Statutory Bodies Financial Arrangements Act 1982*; or
- (b) for a purpose that is not the proper exercise of its jurisdiction;

the aldermen of the Council who knowingly consented to the borrowing are jointly and severally liable to pay to the Council the amount borrowed and all interest, and other penalties incurred by the Council, in relation to the borrowing.

‘(2) An amount for which aldermen of the Council are jointly and severally liable under subsection (1) may be recovered as a debt due and

payable to the Council by—

- (a) the Council; or
- (b) a person appointed by the Minister for the purpose; or
- (c) an elector or ratepayer;

by action in a court having jurisdiction for the recovery of debts up to the amount concerned.

‘(3) An amount recovered by a person specified in subsection (2)(b) or (c) must be immediately paid to the Council.

‘(4) This section must be given effect despite—

- (a) the issue of a security in relation to the relevant borrowing by the Council; or
- (b) section 31(2) of the *Statutory Bodies Financial Arrangements Act 1982*.

Division 4—Annual statements and report

‘Preparation of annual financial statements

‘116.(1) As soon as practicable after the end of each financial year, but no later than 2 months after the end of the financial year or such further period as the Minister allows, the Council must prepare financial statements for the year.

‘(2) The annual financial statements must—

- (a) be prepared having regard to current standards relating to financial management; and
- (b) contain financial and other information useful for assessing the Council’s performance in relation to the management of its resources; and
- (c) must consist of—
 - (i) an operating statement; and
 - (ii) a statement of financial position; and
 - (iii) a cash flow statement; and

- (iv) a comparative statement in summary form comparing actual position against approved budget; and
- (v) proper and adequate notes to the statements; and
- (vi) such other information or particulars as are prescribed;
- (d) present fairly—
 - (i) the Council's operations for the year; and
 - (ii) the Council's financial position at the end of the year.

'(3) The Council must certify in the statements that—

- (a) the financial statements are in agreement with the Council's accounting records; and
- (b) in the Council's opinion—
 - (i) all requirements for establishing and keeping accounting records have been complied with in all material respects; and
 - (ii) the statements present fairly—
 - (A) the Council's operations for the year; and
 - (B) the Council's financial position at the end of the year.

'Financial statements to be submitted to Auditor-General and certified

'117.(1) As soon as practicable after the financial statements for a financial year have been prepared, the Council must submit them to the Auditor-General.

'(2) The Auditor-General must certify on the financial statements whether or not—

- (a) the Auditor-General received all the information and explanations that the Auditor-General required; and
- (b) the statements are in the form required by this Act and are in agreement with the accounting records; and
- (c) in the Auditor-General's opinion—
 - (i) all requirements for establishing and keeping accounting records have been complied with in all material respects; and

- (ii) the statements present fairly—
 - (A) the Council's operations for the year; and
 - (B) the Council's financial position at the end of the year.

‘(3) The Auditor-General must give the certified financial statements to the mayor.

‘Presentation, tabling etc. of annual financial statements

‘118. As soon as practicable after the annual financial statements for a financial year have been certified by the Auditor-General, the statements must be—

- (a) reproduced in the same form as certified by the Auditor-General; and
- (b) tabled in the Council; and
- (c) made available for inspection and purchase at the Council's office.

‘Annual report

‘119.(1) As soon as practicable after the end of each financial year, but no later than 4 months after the end of the year, the Council must prepare a written report on the Council's operations for the year.

‘(2) The annual report must include particulars in relation to the following matters—

- (a) the charter;
- (b) the Council's aims and objectives for the year, and the extent to which the aims and objectives were achieved during the year;
- (c) the Council's management and structure;
- (d) indications of program efficiency and effectiveness;
- (e) relevant changes to the law.

‘(3) The annual report must also contain—

- (a) a list of the registers kept by the Council and available for inspection; and

- (b) a list of all resolutions made under sections 42(5), 44(1) and 46(2) during the year; and
- (c) a summary of all concessions allowed by the Council in relation to rates; and
- (d) a comparison between the Council's actual performance and its projected performance proposed in its budget for the year; and
- (e) a summary of the salaries and allowances paid to Council members; and
- (f) particulars of such other matters as are relevant to making an informed assessment of the Council's operations and performance during the year.

‘(4) The annual report must also contain—

- (a) the financial statements for the year as certified by the Auditor-General; and
- (b) the Auditor-General's certificate on the financial statements.

‘Annual report to be adopted by the Council

‘120. The annual report for a financial year must be adopted by the Council no later than the end of the following November or within such further period as the Minister approves.

‘Copies of annual report to be given to Minister and available for inspection and purchase

‘121.(1) As soon as practicable after the annual report is adopted, the Council must—

- (a) give a copy of the report to the Minister; and
- (b) give notice of the adoption of the report, and its availability for inspection and purchase, in a newspaper circulating in the City.

‘(2) The annual report must be available for inspection and purchase at the Council's office.

‘Auditor-General to conduct audits

‘122. Audits of the Council’s accounts and operations are to be conducted by the Auditor-General under the *Financial Administration and Audit Act 1977*.

‘Nature of audit

‘123. An audit of the accounts and operations of the Council must be a compliance audit to establish whether the Council is discharging its jurisdiction in accordance with—

- (a) law; and
- (b) sound accounting principles and procedures; and
- (c) its budget.

‘Frequency of audits

‘124. A compliance audit must be conducted for each financial year.

‘Auditor-General to audit accounts of superannuation schemes

‘125.(1) The accounts of the trustees of any scheme maintained under section 23 or 25E are to be audited by the Auditor-General.

‘(2) The Auditor-General must certify on the statements of account prepared by the trustees whether or not—

- (a) the Auditor-General received all the information and explanations that the Auditor-General required; and
- (b) the statements are in the form required by this Act and are in agreement with the trustee’s accounting records; and
- (c) in the Auditor-General’s opinion—
 - (i) all requirements for establishing and keeping accounting records have been complied with in all material respects; and
 - (ii) the statements present fairly—
 - (A) the trustees’ operations for the year; and
 - (B) the trustees’ financial position at the end of the year.

‘(3) The Auditor-General must—

- (a) give the certified financial statements to the mayor; and
- (b) give a copy of the certified financial statements to the trustees.

‘(4) The mayor must table a copy of the statements at the next meeting of the Council.

‘(5) The certified financial statements must be available for inspection and purchase at the Council’s office.

‘General reporting provisions

‘126.(1) The Auditor-General may prepare a report on any audit performed by the Auditor-General.

‘(2) A copy of the report must be given to—

- (a) if the report arose out of an audit of the Council—the mayor; or
- (b) if the report arose out of an audit of the accounts of the trustees of a scheme maintained under section 23 or 25E—the trustees and the mayor.

‘(3) The Auditor-General must also give a copy of the report to the Minister.

‘(4) The mayor must table a copy of the report at the next meeting of the Council.

‘Division 6—Standards

‘Financial management standards

‘127.(1) A regulation may prescribe financial management standards for the purposes of this Act.

‘(2) The Council, and trustees of any scheme maintained under section 23 or 25E, must comply with the standards.

‘Division 7—Sinking funds’.

Minor and consequential amendments

7. The Act is further amended as set out in the Schedule.

PART 3—AMENDMENT OF THE LOCAL GOVERNMENT ACT 1936

Amended Act

8. The *Local Government Act 1936* is amended as set out in this Part.

Amendment of s.3 (Interpretation and definitions)

9. Section 3(1)—

insert—

“**Commissioner**” means the Local Government Commissioner;

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

“**decision maker**”, in relation to the categorisation of land for the purposes of a differential general rate, has the meaning given by section 27(1A)(c)(i);

“**Deputy Commissioner**” means a Deputy Local Government Commissioner;

“**enterprise**”, in Part 11A, includes any business, undertaking or activity;

“**land registration authority**” means the official responsible for keeping registers in relation to dealings in land;

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

“**permissible company**”, in Part 11A, has the meaning given by section 52D(b)(i);

“**political party**” has the same meaning as in the *Electoral Act 1992*;

“**reviewable local government matter**” has the meaning given by section

4F;

“valuation authority” means the chief executive of the department that deals with matters arising under the *Valuation of Land Act 1944*;’.

Insertion of new Part 2A

10. After Part 2—

insert—

‘PART 2A—LOCAL GOVERNMENT COMMISSIONER

‘Division 1—General

‘Object of Part and its achievement

‘4E.(1) The object of this Part is to establish an independent process for ongoing review of—

- (a) local authority external boundaries; and
- (b) other local government matters.

‘(2) The object is primarily to be achieved by establishing the office of Local Government Commissioner with the functions set out in this Part.

‘Meaning of “reviewable local government matter”

‘4F.(1) The following matters are **“reviewable local government matters”**—

- (a) creating and naming new areas;
- (b) changing the external boundaries of an area by excluding part of the area and including the part in another area or other areas;
- (c) changing the name of an area;
- (d) including in an area a part of the State that is not part of an area;
- (e) abolishing an area and joining the area to another area or other areas;

- (f) dividing, redividing and abolishing divisions of an area;
- (g) changing the boundaries of divisions of an area by—
 - (i) excluding a part of a division and including the part in another division or other divisions of the area; or
 - (ii) creating a new division or divisions of the area;
- (h) assigning and reassigning members of a local authority to divisions of its area;
- (i) determining and changing the class of a local authority;
- (j) changing the composition of a local authority;
- (k) changing the system of voting for the local authority of an area.

‘(2) In subsection (1)—

“**division**”, in relation to the City of Brisbane, means ward;

“**local authority**” includes the Brisbane City Council.

‘Division 2—Local Government Commissioner

‘Local Government Commissioner

‘4G. There is to be a Local Government Commissioner.

‘Functions of Commissioner

‘4H.(1) The Commissioner must examine, and report and make recommendations to the Minister on, any reviewable local government matter, or any other matter relating to local government, that is referred to the Commissioner by the Minister.

‘(2) The Minister must cause a copy of each reference to the Commissioner—

- (a) to be laid before the Legislative Assembly within 7 sitting days after the giving of the reference; and
- (b) to be given each local authority mentioned in reference.

‘Request by Commissioner for reference

‘4I.(1) The Commissioner may request the Minister to refer a reviewable local government matter for examination and report.

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

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

(a) refer the matter to the Commissioner; or

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

‘(4) The Minister must cause a copy of the request, and the reference or advice, to be laid before the Legislative Assembly within 7 days after making the decision.

‘Division 3—Reports on local government matters**‘Report and recommendations to be obtained before reviewable local government matter changed**

‘4J.(1) A report and recommendation from the Commissioner is to be obtained before any action is taken for the purpose of implementing changes in relation to a reviewable local government matter.

‘(2) Subsection (1) does not apply to a change in relation to which notice has been given under section 5 before the commencement of this section.

‘Commissioner to have regard to principles and criteria

‘4K.(1) When considering a matter referred for examination and report, the Commissioner must have regard to any prescribed principles and criteria.

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

‘Assessment of proposed external boundary alterations

‘4L. If the Commissioner proposes to recommend to the Minister that the external boundaries of an area be changed, the Commissioner must

examine, and report and make recommendations to the Minister on—

- (a) the apportionment of assets and liabilities between the local authorities concerned; and
- (b) the application of existing by-laws; and
- (c) the preservation of—
 - (i) valuations of rateable land affected by the change; and
 - (ii) rates and charges levied in relation to rateable land affected by the change; and
 - (iii) any existing debentures issued by the local authorities; and
 - (iv) the application of any existing town planning scheme; and
- (d) the rationalisation of staff of the local authorities because of the change.

‘Reports by Commissioner to include reasons

‘4M. A report by the Commissioner on a reference must specify reasons for the recommendations and views contained in the report.

Division 4—Inquiries by Commissioner**‘Inquiries by Commissioner**

‘4N.(1) The Commissioner may hold an inquiry for the purpose of examining a reviewable local government matter.

‘(2) Before starting the inquiry, the Commissioner must publish a notice outlining the processes that will be followed in the inquiry in a newspaper circulating in the areas of the local authorities mentioned in the relevant reference.

‘Commissioner’s duties on inquiry

‘4O. When conducting an inquiry, the Commissioner—

- (a) must observe natural justice; and
- (b) must proceed expeditiously with as little formality and technicality as is consistent with a fair and proper consideration of the matter of the inquiry; and
- (c) is not bound by rules or practice about evidence and the Commissioner may inform himself or herself on any matter as the Commissioner considers appropriate.

‘Public entitled to attend

‘4P. The Commissioner must allow members of the public to attend an inquiry.

‘Commissioners powers on inquiry

‘4Q.(1) When conducting an inquiry, the Commissioner may—

- (a) proceed in the absence of a person who has been given reasonable notice of the proceeding; and
- (b) receive evidence on oath or by statutory declaration; and
- (c) adjourn the proceeding; and
- (d) permit amendment of a document; and

- (e) disregard any defect, error, omission or insufficiency in a document and;
- (f) permit or refuse to permit a person (including a legal practitioner enrolled in Queensland or elsewhere) to represent another person at the inquiry.

‘(2) The Commissioner may administer an oath to a person appearing as a witness at the inquiry.

‘Summons to witness

‘4R.(1) The Commissioner may, by written notice given to a person, require the person to attend at a proceeding before the Commissioner at a time and place specified in the notice for the purpose of giving evidence or producing a document specified in the notice.

‘(2) A person to whom a notice under subsection (1) is given must—

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

Maximum penalty—35 penalty units.

‘Duty of witness at inquiry

‘4S. A person who appears as a witness at an inquiry conducted by the Commissioner must not—

- (a) fail to take an oath or make an affirmation when required to do so for the purpose of the proceeding; or
- (b) fail, without reasonable excuse, to answer a question when required by the Commissioner to do so; or
- (c) fail, without reasonable excuse to produce a document that the person is required by a notice under this Part to produce.

Maximum penalty—35 penalty units.

‘Self-incrimination a reasonable excuse

‘4T. For the purposes of this Part—

- (a) it is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person; and
- (b) it is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.

‘Contempt of Commissioner

‘4U. A person must not—

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

Maximum penalty—50 penalty units.

‘Regulation of proceedings

‘4V. Subject to this Part and any regulation made for the purposes of this Part, the Commissioner may regulate proceedings on an inquiry as the Commissioner considers appropriate.

‘Division 5—Provisions relating to Commissioner and Deputy Commissioner

‘Meaning of “Commissioner” in Division

‘4W. In this Division—

“commissioner” means—

- (a) the Local Government Commissioner; or
- (b) a Deputy Local Government Commissioner.

‘Deputy Commissioner

‘4X.(1) There may be 1 or more Deputy Local Government Commissioners.

‘(2) A Deputy Commissioner is to hold such inquiries, and perform such other duties, to assist the Commissioner as the Commissioner directs.

‘(3) The Deputy Commissioner, or, if there are 2 or more Deputy Commissioners, the Deputy Commissioner who is directed to do so by the Minister, is to act as the Commissioner—

- (a) during all or any vacancies in the office of the Commissioner; or
- (b) during all or any periods when the Commissioner is absent from duty or Australia or is, for another reason, unable to perform the functions of the office; or
- (c) in relation to a matter in which the Commissioner has a potential conflict of interest or is otherwise disqualified from performing duties.

‘(4) While a Deputy Commissioner is acting as the Commissioner—

- (a) the Deputy Commissioner has all the powers and functions of the Commissioner; and
- (b) this Act and other Acts apply to the Deputy Commissioner as if the Deputy Commissioner were the Commissioner.

‘(5) Division 4 applies to a Deputy Commissioner who is assisting the Commissioner as if the Deputy Commissioner were the Commissioner.

‘(6) Anything done by or in relation to the Deputy Commissioner while the Deputy Commissioner is purporting to act as Commissioner is not invalid merely because the occasion for the Deputy Commissioner to act had not arisen or had ceased.

‘Terms and conditions of appointment etc.

‘4Y.(1) A commissioner is to be appointed by the Governor in Council.

‘(2) A person must not be appointed as a commissioner unless the Governor in Council is satisfied that the person has had appropriate experience in local government or other relevant experience.

‘(3) A person who is a member of a political party is not to be appointed as a commissioner.

‘(4) The Local Government Commissioner is to be appointed on a full-time basis and a Deputy Local Government Commissioner is to be appointed on a full-time or part-time basis.

‘(5) A commissioner holds office, subject to this Part, for such term (not longer than 5 years) as is specified in the commissioner’s instrument of appointment.

‘(6) The *Public Service Management and Employment Act 1988* does not apply to the appointment of a commissioner.

‘(7) If an officer of the public service is appointed as a commissioner on a full-time basis, the person retains and is entitled to all rights that have accrued to the person because of employment as an officer of the public service, or that would accrue in the future because of that employment, as if service as a commissioner were a continuation of service as an officer of the public service.

‘(8) A commissioner holds office on such terms, relating to remuneration and other matters not provided for by this Act, as are determined by the Governor in Council.

‘(9) The appointment of a person as a commissioner is not invalid merely because of a defect or irregularity in relation to the appointment.

‘Leave of absence

‘4Z. The Minister may grant leave of absence to a commissioner on such terms as the Minister determines.

‘Resignation

‘4ZA. A commissioner may resign office by signed notice given to the Governor.

‘Conflict of interests

‘4ZB.(1) A commissioner must not perform duties in relation to a matter in which—

- (a) the commissioner has a direct or indirect pecuniary interest; or
- (b) the commissioner could reasonably be otherwise regarded as having a conflict of interest.

‘(2) A commissioner must inform the Minister of each matter to which subsection (1) applies as soon as possible after the relevant facts come to the notice of the commissioner.

‘Termination of appointment

‘4ZC.(1) The Governor in Council may terminate the appointment of a commissioner for misbehaviour or physical or mental incapacity.

‘(2) The Governor in Council must terminate a commissioner’s appointment if the commissioner—

- (a) accepts nomination for election to an Australian Parliament; or
- (b) becomes a member of a political party; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (d) in the case of a commissioner appointed on a full-time basis—is absent, without the Minister’s leave and without reasonable excuse for—
 - (i) 14 consecutive days; or
 - (ii) 28 days in any year; or
- (e) contravenes section 4ZB (Conflict of interests) without reasonable excuse; or
- (f) in the case of a commissioner appointed on a full-time basis—engages in paid employment outside the duties of the office without the Minister’s approval.

‘Change of commissioner

‘4ZD. If a person who is commissioner replaces another person who is a commissioner during the examination of a matter, the first person may continue with the examination (including any inquiry being held before the other person) as if the examination had been started by the first person.

‘Acting Deputy Commissioner

‘4ZE. The Governor in Council may appoint a person to act as a Deputy Commissioner during any period, or all periods, when a Deputy Commissioner is absent from duty or Australia, is acting as the Commissioner or is, for another reason, unable to perform the functions of the office.

‘Notice of appointment

‘4ZF. Notice of the appointment of a person as, or to act as, a commissioner must be published in the Gazette.

‘Division 6—Miscellaneous**‘Staff and administrative support**

‘4ZG.(1) The Commissioner is attached to the Electoral Commission of Queensland for the purpose of ensuring that the Commissioner is given the staff and administrative support services that the Commissioner requires to carry out the Commissioner’s functions effectively and efficiently.

‘(2) The Electoral Commission must ensure that the purpose mentioned in subsection (1) is fulfilled.

‘Annual report

‘4ZH. As soon as practicable, but no later than 4 months, after the end of each financial year, the Commissioner must give to the Minister a report of the Commissioner’s operations during that year.

‘Reports to be tabled etc.

‘4ZI.(1) The Minister must cause a copy of each report given to the Minister to be laid before the Legislative Assembly within 7 sitting days after the Minister receives the report.

‘(2) The Minister must cause copies of each report of the Boundaries Commissioner to be available for inspection and purchase at—

- (a) offices of the department; and
- (b) in the case of a report on a reference—the office of each local authority that would be directly affected by the implementation of the report.’.

Amendment of s.19 (Contracts)

11.(1) Section 19(1)(iv)(c) and (2)(d)(i)—

omit.

(2) Section 19(2)(d)—

omit ‘(ii) in the case of a Local Authority other than Brisbane City Council’,

insert ‘in relation to a local authority’.

(3) Section 19(4B)(e)(ii)—

omit.

(4) Section 19(6)(d)(ii)—

omit ‘, or under the Town Plan or ordinances of Brisbane City Council if that adjoining land is situated in the City of Brisbane.’.

(5) Section 19(6)(d)(iii)—

omit ‘, in the case of the Local Authority by by-law or in the case of Brisbane City Council by ordinance’,

insert ‘,by by-law,’.

(6) Section 19(7)—

omit, insert—

‘(7) Subsection (4) does not apply to a contract for the purchase of goods

or services under arrangements made by—

- (a) the Crown in right of the State, the Commonwealth, another State or Territory; or
- (b) another local authority.’.

Amendment of s.21 (Rates and charges)

12.(1) Section 21 (2nd sentence)—

omit—

‘(4) Separate rates and/or charges for particular functions;’,

insert—

‘(4) Separate rates and charges;’.

(2) Heading before section 21(4) and section 21(4)—

omit, insert—

‘SEPARATE RATES AND CHARGES

‘(4) A separate rate or charge is a rate or charge made and levied on all or any rateable land in a local authority’s area for or towards meeting the cost of any works, services, facilities or activities supplied or undertaken, or proposed to be supplied or undertaken, by or on behalf of the local authority.

‘(4A) A separate rate or charge must be made and levied on the rateable land in the local authority’s area that, in the local authority’s opinion, has or will benefit from, or have access to, the work, service, facility or activity because of which the rate is made and levied.

‘(4B) A separate rate or charge may be made and levied on such bases as the local authority considers appropriate.

‘(4C) A local authority’s resolution making a separate rate or charge must identify the rateable land to which the rate or charge applies.

‘(4D) Parcels of rateable land may be identified for the purpose of making or levying a separate rate or charge in whatever way the local authority considers appropriate.

‘(4E) Despite subsection (5), a separate rate or charge may be used for the purpose of defraying interest and redemption charges incurred by the local authority in relation to the works, services, facilities or activities because of which the separate rate or charge is made and levied.’.

(3) Section 21(11)—

omit, insert—

‘Differential general rates—general

‘(11) A local authority may, in any year—

(a) categorise rateable land in—

(i) its area; or

(ii) if the area is divided into divisions—in each division;
into 2 or more categories; and

(b) make and levy a differential general rate on the rateable value of rateable land in each category that is at the same or a different level to that made and levied on rateable land in each of the remaining categories in the area or division.

‘(12) The local authority must determine criteria for the purpose of categorising the rateable land in its area.

‘(13) If a local authority makes and levies a differential general rate for rateable land for a financial year, the local authority must not make and levy another general rate for the land for the year.

‘(14) A differential rate may be made and levied in relation to a lot within the meaning of the *Building Units and Group Titles Act 1980* as if it were a parcel of rateable land.

‘Identification of categories for parcels of land

‘(15) After the categories and criteria have been determined under this section, all rateable land in the area must be categorised by—

(a) the local authority, by resolution, identifying the category in which each parcel of rateable land is included; or

(b) the valuation authority, at the request of the local authority, identifying the category in which each parcel of rateable land is

included.

‘(16) If the valuation authority identifies the category in which a parcel of rateable land is included, the valuation authority must give written notice to the local authority of the category of the parcel.

‘(17) If the valuation authority is unable to identify the category in which a parcel of rateable land is included, the valuation authority must give written notice to the local authority.

‘(18) The category in which a parcel of rateable land is included may be identified in whatever way the valuation authority or the local authority, as the case may be, considers appropriate.

‘Specification of categories for parcels of land

‘(19) If the local authority resolves to make and levy a differential general rate, the resolution must—

- (a) detail the circumstances justifying the making of the rates; and
- (b) specify the categories in which rateable land is to be included.

‘(20) Parcels of rateable land may be identified in whatever way the local authority considers appropriate.

‘(21) The accidental omission from categorisation of parcels of rateable land does not prevent the making and levying of the differential general rate.

‘Entry on land to assist differential general rating

‘(22) Subsection (23) applies to—

- (a) a person authorised by the local authority for the purposes of that subsection; and
- (b) the valuation authority; and
- (c) a person authorised by the valuation authority for the purposes of that subsection; and
- (d) a member of the Land Court; and
- (e) a person authorised by a member of the Land Court for the purposes of that subsection.

‘(23) For the purpose of—

- (a) determining the categories into which rateable land in the area of the local authority is to be categorised or the criteria by which it is to be categorised; or
- (b) identifying the category in which a parcel of rateable land should be included; or
- (c) deciding an objection or appeal relating to the categorisation of land;

a person to whom this subsection applies may—

- (d) enter on land at any reasonable time; and
- (e) inspect the land and the uses made of the land; and
- (f) do anything reasonably necessary to exercise the powers under paragraphs (d) and (e).

‘(24) Before entering on the land, the person must—

- (a) obtain the consent of an owner of the land; or
- (b) give at least 14 days’ notice to the owner of the land of—
 - (i) the person’s intention to enter on the land; and
 - (ii) the proposed purpose in entering on the land; and
 - (iii) the day and time when the person proposes to enter the land.

‘(25) In exercising a power under subsection (23), a person must take all reasonable steps to ensure that the person causes as little inconvenience, and does as little damage, as is practicable.’.

Amendment of s.23 (Funds)

13.(1) Section 23(1)(i)(c)—

omit, insert—

- ‘(c)** A separate fund in relation to each separate rate or charge made and levied that is for a different work, service, facility or activity.’.

(2) After section 23(1)(iii)—

insert—

‘(iv) A local authority may, by resolution, authorise the temporary allocation of amounts in a reserve fund for expenditure on any function of local government.

The resolution must specify—

- (a) the function for which the amount is authorised to be spent; and
- (b) the conditions of repayment to the reserve fund.’.

(3) Section 23(4)(i) and (ii)—

omit, insert—

‘(i) A separate fund consists of all receipts in relation to the work, service, facility or activity for which the fund was established.

(ii) A separate fund is to be applied to expenditure necessarily incurred in relation to the work, service, facility or activity for which the fund was established.’.

Amendment of s.24 (Rules of valuation—rateable land)

14. Section 24(1)(ii)—

omit.

Insertion of new s.26A

15. After section 26—

insert—

‘Notice of sale of land

‘26A.(1) If—

- (a) a person or agent sells rateable land; and
- (b) a properly completed combined form is lodged with the land registration authority with the instrument of transfer of the land before the end of the period allowed under section 26(6);

the person or agent is taken to have complied with the subsection.

‘(2) In subsection (1)—

“combined form” means a form that provides information required

under—

- (a) section 26(6); and
- (b) the *Foreign Ownership of Land Register Act 1988*; and
- (c) the *Land Tax Act 1915*; and
- (d) the *Stamp Act 1894*; and
- (e) the *Valuation of Land Act 1944*.’.

Amendment of s.27 (Levy and recovery of rates etc.)

16.(1) Section 27(1A) to (1J)—

omit, insert—

‘Notice to owner of categorisation

‘(1A) A rate notice given to the owner of rateable land by which a differential general rate is levied must contain, or be accompanied by, a statement that—

- (a) specifies the categories of rateable land in the area of the local authority and the criteria by which land is categorised; and
- (b) specifies the category in which the rateable land is included; and
- (c) informs the owner—
 - (i) whether the category in which the land is included was identified by the local authority or the valuation authority (the **“decision maker”**); and
 - (ii) that the owner may object to the categorisation of the land by giving to the decision maker notice of objection, in the form approved by the decision maker, within 30 days after the date of issue of the rate notice or such further period as the decision maker allows; and
 - (iii) that the sole ground on which the owner may object is that, having regard to the criteria determined by the local authority for categorising rateable land, the land should have been included, as at the date of issue of the rate choice, in another of the categories specified in the statement; and
 - (iv) that giving a notice of objection will not, in the meantime,

affect the levy and recovery of the rates specified in the rate notice; and

- (v) that if, because of objection made, the owner's land is included, as at the date of issue of the rate notice, in another category an adjustment of rates will be made.

‘Owner’s objection to categorisation

‘(1B) An owner of rateable land in relation to which a differential general rate is levied may object to the categorisation of the land on the sole ground that, having regard to the criteria determined by the local authority for categorising rateable land, the land should have been included, as at the date of issue of the relevant rate notice, in another of the categories determined by the local authority.

‘(1C) The objection must be made by giving notice of the objection to the decision maker.

‘(1D) The notice of the objection must—

- (a) be given within 30 days after the date of issue of the rate notice or such further period as the decision maker allows; and
- (b) be in a form approved by the decision maker; and
- (c) nominate the category determined by the local authority for the differential general rate in which the owner claims the land should have been included; and
- (d) specify the facts and circumstances on which the claim is based.

‘Determination of owner’s objection

‘(1E) If the owner of rateable land objects to the categorisation of the land, a person authorised by the decision maker for the purpose must—

- (a) consider the categorisation of land to which objection is made; and
- (b) consider the matters claimed by the objector.

‘(1F) The person may—

- (a) allow the objection; or

- (b) disallow the objection; or
- (c) determine that the land should be included in another category determined by the local authority for the differential general rate.

‘(1G) The person must determine the objection, and give written notice to the owner of the determination, within 60 days after the end of the period within which the objection had to be made.

‘(1H) The notice of determination of the objection must include the reasons for the determination.

‘Effect of determinations

‘(1I) Unless it is set aside on appeal, the determination of an objection to the categorisation of land has effect as provided by subsections (1J) to (1L).

‘(1J) If the determination allows the objection, the land is taken to be included, for the period for which the relevant rate notice is issued, in the category nominated by the objector in the notice of objection.

‘(1K) If the determination disallows the objection, the land continues to be included in the category specified in the relevant rate notice.

‘(1L) If the determination is that the land should be in another category, the land is to be included in the category for the period for which the relevant rate notice is issued.

‘Appeal against determination

‘(1M) If the owner of rateable land is aggrieved—

- (a) by the determination of an objection to the categorisation of the land; or
- (b) the refusal by the decision maker to allow a further period to give a notice of objection;

the owner may appeal to the Land Court against the determination or refusal.

‘(1N) The appeal must be instituted by filing a notice of appeal in the Land Court registry.

‘(1O) The notice of appeal must—

- (a) be filed within 30 days after the owner received notice of the determination of the objection or the refusal; and
- (b) be in a form approved by the Land Court.

‘(1P) A copy of the notice of appeal must be given to the decision maker within 7 days after the notice of appeal is filed in the Land Court registry.

‘(1Q) Failure to comply with subsection (1P) does not affect the making of the appeal or the jurisdiction of the Land Court to determine the appeal, but costs of any adjournment caused by the failure may be awarded against the owner of the land.

‘Constitution and procedure of Land Court

‘(1R) When exercising jurisdiction in an appeal under this section, the Land Court—

- (a) is constituted by 1 member; and
- (b) may sit in chambers; and
- (c) is not bound by rules of evidence.

‘(1S) The appeal is to be conducted as directed by the Land Court with a view to its prompt disposal.

‘Determination of appeal by Land Court

‘(1T) On the hearing of an appeal against the determination of an objection to the categorisation of land, the Land Court may—

- (a) set aside the determination that the land should be included in a different category determined by the Council for the differential general rate; or
- (b) disallow the appeal.

‘(1U) On the hearing of an appeal against a refusal to allow a further period to give a notice of objection, the Land Court may—

- (a) allow a further period to give the notice; or
- (b) disallow the appeal.

‘(1V) If the Land Court sets aside the determination of the objection, the

land is taken to be included in the category determined by the Land Court for the period for which the relevant rate notice is issued.

‘Levy and recovery of rate unaffected by objection or appeal

‘(1W) The making of an objection, or the instituting of an appeal, in relation to the categorisation of land does not affect the levy and recovery of rates in relation to the land.

‘Late categorisation

‘(1X) If rateable land in the area of the local authority has been categorised and—

- (a) the decision maker is subsequently satisfied, having regard to the criteria determined by the local authority for the categorisation of land, that land should be included in a different category to the category in which it is included; or
- (b) rateable land is not categorised by the decision maker because of accidental omission; or
- (c) land subsequently becomes rateable land other than because of the subdivision of rateable land; or
- (d) land that was included in 2 or more parcels of rateable land, either in the same category or different categories, is subsequently amalgamated into a single parcel;

the decision maker must determine that the land should be included in a specified category.

‘(1Y) The categorisation of rateable land does not change during a financial year merely because the land is subdivided.

‘Time of effect of late categorisation

‘(1Z) A determination under subsection (1X) has effect—

- (a) if the determination is made because of subsection (1X)(a)—in relation to rates levied after the making of the determination; or
- (b) if the determination is made because of subsection

- (1X)(b)—from the start of the relevant financial year; or
 - (c) if the determination is made because of subsection (1X)(c)—from when the land became rateable land; or
 - (d) if the determination is made because of subsection (1X)(d)—in relation to rates levied after the amalgamation of the land.’.
- (2) Section 27(3B)—
omit ‘subsection (1B)’ and ‘subsection (1D)’, insert ‘this section’.

Insertion of new Part 11A—

17. After Part 11

insert—

‘PART 11A—ENTERPRISES FOR LOCAL GOVERNMENT

‘Matters relevant to good rule and government

‘52B.(1) A matter that, in a local authority’s opinion, is directed to benefiting, and can reasonably be expected to benefit, its area, or a part of its area, is taken to be—

- (a) conducive to the good rule and government of the area and the wellbeing of its inhabitants; and
- (b) if the local authority is the Brisbane City Council—relevant to the government of the City.

‘(2) Without limiting the matters that may be of benefit to an area, those matters include the following—

- (a) promoting or contributing to economic development of any part of the area;
- (b) promoting or attracting commerce, industry or tourism in or to any part of the area;
- (c) promoting or providing opportunities for employment in any part of the area;
- (d) promoting or assisting supply of services to any part of the area;

- (e) assisting the finances of the local authority of the area;
- (f) assisting the performance of functions of local government in the area.

‘Engagement in or assistance of enterprises

‘52C.(1) A local authority may engage in or assist an enterprise in relation to any matter that, in its opinion, is directed to benefiting, and can reasonably be expected to benefit, its area or any part of its area.

‘(2) A local authority may exercise the power under subsection (1) either alone or together with another person, body or association.

‘(3) A local authority may do all things necessary or convenient to be done in connection with the exercise of power under subsection (1).

‘(4) A local authority may exercise power under this section within or outside the boundaries of its area.

‘Specific powers for purposes of s.52C

‘52D. For the purposes of section 52C, a local authority may—

- (a) enter into contracts or arrangements with a person, body or association; or
- (b) form or participate in forming—
 - (i) a company limited by shares that are not listed on a stock exchange (a **“permissible company”**); or
 - (ii) a partnership; or
 - (iii) another association of persons; or
- (c) be a member of a permissible company, acquire and dispose of shares, debentures and securities of a permissible company and participate in management of a permissible company; or
- (d) be a member of a partnership or other association of persons and participate in management of the business of a partnership or association of persons; or
- (e) commercially exploit its property rights (whether tangible or intangible).

‘Requirements concerning exercise of powers under s.52C

‘52E.(1) A local authority may exercise power under section 52C only by resolution.

‘(2) In exercising, or with a view to exercising, power under section 52C, a local authority must consult with, and have proper regard to the advice of, persons who, in its opinion, possess relevant competence concerning—

- (a) the end to which the exercise of power is, or would be, directed; and
- (b) the ways of achieving that end.

‘(3) A member of a local authority who contravenes—

- (a) section 14(4) of this Act; or
- (b) section 25A(1) of the *City of Brisbane Act 1924*;

in relation to a proposal that the local authority exercise power under section 52C commits an offence.

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

‘Restrictions on exercise of power under s.52C

‘52F. In exercising, or with a view to exercising, power under section 52C, a local authority must not—

- (a) engage in or assist enterprises in a financial year to an extent that requires the local authority to commit in the year an amount (established in accordance with section 52G) greater than a percentage of the local authority’s estimated own source revenue for the year as last declared in relation to the local authority under section 52G(2); or
- (b) borrow or provide a guarantee in relation to a borrowing; or
- (c) form, participate in forming, be a member of, or participate in management of, a company other than a permissible company; or
- (d) be a member of a partnership other than as a limited partner; or
- (e) enter into an agreement or arrangement that does not restrict the liability of the local authority, as between the parties, to the amount committed by the local authority under the agreement or

arrangement.

‘Establishing limit of commitment under s.52F

‘52G.(1) The amount of commitment to enterprises in a financial year to which a local authority is limited by section 52F is inclusive of the value of all property committed by the local authority to any enterprise.

‘(2) A regulation may prescribe for the purposes of this Part—

- (a) the components of a local authority’s own source revenue; and
- (b) the percentage of its own source revenue by reference to which the maximum amount of commitment to enterprises in a financial year to which a local authority is limited by section 52F(a) is to be established.

‘(3) If, in a financial year, a local authority does not commit to enterprises an amount provided for in its budget for the purpose, the uncommitted amount may, subject to subsection (4), be carried forward with a view to its being committed to enterprises in a later financial year.

‘(4) If a maximum number of years for which local authorities may carry forward uncommitted amounts under subsection (3) is prescribed, a local authority must not exercise power under that subsection in relation to a financial year beyond that maximum number until the local authority has lawfully applied the aggregate amount carried forward by it.

‘(5) An amount carried forward under subsection (3), an accumulation of amounts carried forward under that subsection, or assets to the value of such amount or accumulation, may be committed (in whole or part) to enterprises by the local authority in any financial year in addition to the amount of commitment permitted to the local authority in that year by section 52F(a).

‘(6) An amount carried forward under subsection (3) must be held—

- (a) in the case of Brisbane City Council—in a reserve established within the City Fund;
- (b) in the case of another local authority—in the General Reserve Fund;

until it is lawfully applied by the local authority.

‘Register of enterprises

‘52H.(1) A local authority that exercises power under section 52C must maintain a register in which are recorded—

- (a) a reference to each enterprise engaged in, or assisted by, the local authority; and
- (b) the identity of the entity (if any) with which the local authority has engaged in, or assisted, an enterprise as a joint venture; and
- (c) particulars of the purpose to be attained by the engagement or assistance of the local authority; and
- (d) the value of property from time to time committed by the local authority to each enterprise engaged in, or assisted by, the local authority; and
- (e) in relation to each enterprise, the identity of the persons of relevant competence with whom the local authority has consulted under section 52E(2).

‘(2) It is sufficient compliance with subsection (1)(d) if the value of property committed to an enterprise is shown as the market value of the property at the time it is committed.

‘(3) The register maintained under subsection (1) is open to inspection by all persons without payment of fee.

‘(4) A local authority must give to the Director and the Auditor-General written notice of—

- (a) the establishment of a register under subsection (1) as soon as practicable after it is established; and
- (b) each entry in the register as soon as practicable after it is made.

‘Audit of accounting records of enterprise

‘52I.(1) If, in exercising power under section 52C, a local authority has—

- (a) formed or participated in forming a company, partnership or other association of persons; or
- (b) become the holder of shares in a company; or

- (c) become a partner in a partnership or a member of an association of persons;

section 46I of the *Financial Administration and Audit Act 1977* (other than subsection (1) of that section) applies as if—

- (d) the local authority were a statutory body within the meaning of that Act; and
- (e) the company, partnership or association were a body associated, within the meaning of that Act, with the local authority; and
- (f) a reference to the Auditor-General were a reference to the person appointed to audit the accounting records of the local authority.

‘(2) For the purpose of applying section 46I of the *Financial Administration and Audit Act 1977* in accordance with subsection (1), the person appointed to audit the accounting records of the local authority is also auditor of the company, partnership or association.

‘(3) Section 29 applies to an audit of the accounting records of the company, partnership or association as if it were an audit of the accounting records of the local authority.

‘(4) A report on an audit of the accounting records of the company, partnership or association must—

- (a) be given to the local authority and the Auditor-General; and
- (b) be dealt with as a report on an audit of the accounting records of the local authority.

‘(5) The report under subsection (4) must be presented by the clerk at the first ordinary meeting of the local authority held after receipt of the report or at an adjournment of that meeting.

‘Effect of Part

‘52J.(1) Subject to subsection (2), this Part does not affect the exercise by a local authority of its powers under other provisions of this Act or the provisions of another Act.

‘(2) A local authority is not authorised to exercise a power under other provisions of this Act or the provisions of another Act in a joint venture with another person otherwise than under this Part unless—

- (a) to do so is expressly authorised by the provisions; or
- (b) the joint venture is by the local authority with—
 - (i) the Crown; or
 - (ii) a Crown instrumentality; or
 - (iii) another local authority.?

PART 3—REPEAL OF LOCAL GOVERNMENT (QUEEN STREET UNDERGROUND SHOPPING FACILITIES) ACT 1990

Repeal of Act

18. The *Local Government (Queen Street Underground Shopping Facilities) Act 1990* is repealed.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS OF CITY OF BRISBANE ACT 1924

section 7

1. Section 2—

omit.

2. Section 3(1) (definitions “**Electric Light and Power Act**”, “**Health Act**”, “**Instrument of subordinate legislation**”, “**Local Authorities Act**”, “**Mayor**”, “**Metropolitan Water Supply and Sewerage Act**”, “**Minister**”, “**Ordinances**”, “**Prescribed**”, “**This Act**”, “**Town Clerk**” and “**Valuer-General**”)—

omit.

3. Headings before section 4—

omit, insert—

‘PART 2—THE CITY CHARTER

‘Division 1—City of Brisbane’.

4. Heading before section 5—

omit, insert—

‘Division 2—Brisbane City Council’.

5. Section 5(1)—

omit ‘On and from the conclusion of the triennial election of the Mayor and other aldermen to be held in the year 1985 the’,

insert ‘The’.

6. Section 8—

omit ‘(2) Provided that nothing herein shall disqualify’,

insert ‘(3) Nothing in subsection (1) disqualifies’.

7. Section 8(3) (heading)—

omit.

8. Section 8(3)(a)—

renumber as section 8(4).

9. Section 8(3)(b)—

omit, insert—

‘(5) A person who is an officer or employee of the Council or another local authority is entitled to leave of absence for a period of not more than 2 months for the purpose of contesting an election under this Act.

‘(6) Unless the person is otherwise entitled to leave of absence with pay, the leave of absence is without pay.’.

10. Section 9(2)(b)—

omit ‘as hereinafter provided’.

11. Heading before section 13—

omit, insert—

‘Division 3—Elections for Council’.

12. Section 14—

omit.

13. Section 14A(6)—

omit.

14. Section 14A(7)—

omit ‘After the completion of the distribution under subsection (6) one’,

insert ‘One’.

15. Heading before section 14B—

omit, insert—

‘Division 4—Distribution and redistribution of wards

‘Subdivision A—First distribution’.

16. Section 14B(1)—

omit, insert

‘(1) For the purposes of the distribution, 3 electoral commissioners are to be appointed by the Governor in Council.’.

17. Section 14B(3) and (4)—

omit.

18. Heading before section 14F—

omit, insert—

‘Subdivision B—Subsequent redistributions’.

19. Heading before section 14L—

omit, insert—

‘Subdivision C—General provisions’.

20. Section 14P(6), (7) and (8)—
omit.

21. Heading before section 16—
omit, insert—

‘Division 5—Triennial elections and extraordinary vacancies’.

22. Section 17(1), (2), (4), (5) and (6) (headings)—
omit.

23. Section 17(7)—
omit.

24. Heading before section 21A—
omit, insert—

‘Division 6—Members of Council’.

25. Section 21A—
omit.

26. Section 23 (last sentence)—
omit.

27. Heading before section 23A—
omit.

28. Heading before section 24—
omit.

29. Heading before section 25—

omit, insert—

‘Division 7—Town Clerk and officers and employees of Council’.

30. Section 25A—

renumber and reposition as section 24B in Part 2, Division 6.

31. Section 25B(4) (heading)—

omit.

32. Section 25E(2) and (3)—

omit.

33. Section 25E(4)—

renumber as section 25E(2).

34. Heading before section 32—

omit, insert—

‘Division 8—Botanic Gardens’.

35. Section 32(4) to (7)—

omit.

36. Heading before section 36—

omit, insert—

‘Division 9—Powers and jurisdiction’.

37. Section 36(3) (last sentence, all words after ‘thing’)—

omit.

38. Section 36(6) (heading)—

omit.

39. Section 36A(4)—

omit ‘Local Authorities’, *insert* ‘Local Government’.

40. Heading before section 38—

omit, insert—

‘Division 10—Ordinances’.

41. Section 38(14)—

omit ‘\$5,000’, *insert* ‘100 penalty units’.

42. Section 38(15)—

omit ‘\$500’, *insert* ‘10 penalty units’.

43. Section 38(25)—

omit.

44. Heading before section 39A—

omit, insert—

‘Division 11—Administration’.

45. Section 39B—

omit, insert—

‘Delegation

‘39B. The Council may, by resolution, delegate its powers (other than a power that it is required to exercise by resolution) to—

- (a) the mayor; or
- (b) a committee of the Council; or
- (c) an officer or employee of the Council; or
- (d) a board or committee consisting of officers and employees of the Council.’.

46. Section 39C(1)(d)—

omit ‘of a power, function or duty’.

47. Heading before section 40—

omit.

48. Heading before section 45—

omit.

49. Section 45—

renumber as section 128.

50. Sections 46 to 47A—

omit.

51. Heading before section 49—

omit.

52. Sections 49 to 52—

omit.

53. Heading before section 53—

omit, insert—

‘PART 5—MISCELLANEOUS’.

54. Section 53—

renumber as section 129.

55. Heading before section 54—

omit.

56. Section 54—

omit, insert—

‘Penalties to be paid into City Fund

‘130.(1) Every fine or other penalty recovered for an offence against this Act is to be paid into the City Fund.

‘(2) Subsection (1) has effect despite any other Act.’.

57. Section 55 (first sentence, paragraphs (a) and (d))—

omit.

58. Section 55 (first sentence, paragraphs (b), (c) and (e))—

renumber as paragraphs (a), (b) and (c) respectively.

59. Section 55—

renumber as section 131.

60. Section 56—

renumber as section 132.

61. At the end of Part 5—

insert—

‘Regulations

‘133. The Governor in Council may make regulations for the purposes of this Act.’.