



# Local Government Act 2009

Reprinted as in force on 2 July 2011

Reprint No. 1E

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**Also see endnotes for information about—**

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Queensland

# Local Government Act 2009

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# Local Government Act 2009

[as amended by all amendments that commenced on or before 2 July 2011]

## An Act to provide a system of local government in Queensland, and for related purposes

### Chapter 1 Preliminary

#### 1 Short title

This Act may be cited as the *Local Government Act 2009*.

#### 2 Commencement

- (1) Amendments 20 and 21 of the *Local Government Act 1993* in schedule 1 commence on assent.
- (2) The following provisions commence immediately before the repeal of the *Local Government Act 1993* under section 289—
  - (a) section 284;
  - (b) the remaining amendments of the *Local Government Act 1993* in schedule 1;
  - (c) schedule 2.
- (3) Chapter 9, part 1 commences on 1 July 2009.
- (4) The remaining provisions of the Act commence on a day to be fixed by proclamation.

#### 3 Purpose of this Act

The purpose of this Act is to provide for—

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- (a) the way in which a local government is constituted and the nature and extent of its responsibilities and powers; and
- (b) a system of local government in Queensland that is accountable, effective, efficient and sustainable.

*Note—*

The system of local government consists of a number of local governments. See the *Constitution of Queensland 2001*, section 70 (System of local government).

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

- (1) To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires—
  - (a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and
  - (b) any action that is taken under this Act to be taken in a way that—
    - (i) is consistent with the local government principles; and
    - (ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.
- (2) The *local government principles* are—
  - (a) transparent and effective processes, and decision-making in the public interest; and
  - (b) sustainable development and management of assets and infrastructure, and delivery of effective services; and
  - (c) democratic representation, social inclusion and meaningful community engagement; and
  - (d) good governance of, and by, local government; and



- (e) ethical and legal behaviour of councillors and local government employees.

## **5 Relationship with City of Brisbane Act 2010**

- (1) Although the Brisbane City Council is a local government, the *City of Brisbane Act 2010*, rather than this Act, provides for—
  - (a) the way in which the Brisbane City Council is constituted and the nature and extent of its responsibilities and powers; and
  - (b) a system of local government in Brisbane.
- (2) This Act does not apply to the Brisbane City Council or its councillors, employees, agents or contractors or to corporate entities of the Brisbane City Council.

## **6 Definitions**

The dictionary in schedule 4 defines particular words used in this Act.

# **Chapter 2 Local governments**

## **Part 1 Local governments and their constitution, responsibilities and powers**

### **7 What this part is about**

This part explains—

- (a) what a local government is; and
- (b) what a local government area is; and

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- (c) who constitutes a local government; and
- (d) the responsibilities and powers of a local government, its councillors and its employees.

## 8 Local government's responsibility for local government areas

- (1) A *local government* is an elected body that is responsible for the good rule and local government of a part of Queensland.

*Note—*

This is provided for in the *Constitution of Queensland 2001*, section 71 (Requirements for a local government).

- (2) A part of Queensland that is governed by a local government is called a *local government area*.
- (3) A local government area may be divided into areas called *divisions*.
- (4) A regulation may—
- (a) describe the boundaries of a local government area; or
  - (b) describe the boundaries of any divisions; or
  - (c) fix the number of councillors for a local government and any divisions of the local government area; or
  - (d) name a local government area; or
  - (e) classify a local government area as a city, town, shire or region.

## 9 Powers of local governments generally

- (1) A local government has the power to do anything that is necessary or convenient for the good rule and local government of its local government area.

*Note—*

Also, see section 262 (Powers in support of responsibilities) for more information about powers.

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- (2) However, a local government can only do something that the State can validly do.
  - (3) When exercising a power, a local government may take account of Aboriginal tradition and Island custom.
  - (4) A local government may exercise its powers—
    - (a) inside the local government area; or
    - (b) outside the local government area (including outside Queensland)—
      - (i) with the written approval of the Minister; or
      - (ii) as provided in section 10(5).
  - (5) When a local government is exercising a power in a place that is outside its local government area, the local government has the same jurisdiction in the place as if the place were inside its local government area.

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

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

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*Example—*

Three local governments may create a joint local government entity to manage an aerodrome that services each of their local government areas, and may also enter into an agreement to sell water in bulk to 1 of the local governments.

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

*Note—*

See section 29 for more information about making local laws.

## **11 Who a local government is constituted by**

- (1) Usually, a local government is constituted by the councillors who are elected or appointed to the local government under this Act or the Local Government Electoral Act.
- (2) However—
  - (a) if all of the councillors have been dismissed under section 123 and an interim administrator is appointed—the local government is constituted by the interim administrator; or
  - (b) if there are no councillors for any other reason—the local government is constituted by its chief executive officer.

## **12 Responsibilities of councillors**

- (1) A councillor must represent the current and future interests of the residents of the local government area.
- (2) All councillors of a local government have the same responsibilities, but the mayor has some extra responsibilities.
- (3) All councillors have the following responsibilities—

- (a) ensuring the local government—
    - (i) discharges its responsibilities under this Act; and
    - (ii) achieves its corporate and community plans; and
    - (iii) complies with all laws that apply to local governments;
  - (b) providing high quality leadership to the local government and the community;
  - (c) participating in council meetings, policy development, and decision making, for the benefit of the local government area;
  - (d) being accountable to the community for the local government's performance.
- (4) The mayor has the following extra responsibilities—
- (a) leading and managing meetings of the local government at which the mayor is the chairperson, including managing the conduct of the participants at the meetings;
  - (b) proposing the adoption of the local government's budget;
  - (c) liaising with the chief executive officer on behalf of the other councillors;
  - (d) leading, managing, and providing strategic direction to, the chief executive officer in order to achieve the high quality administration of the local government;
  - (e) directing the chief executive officer, in accordance with the local government's policies;
  - (f) conducting a performance appraisal of the chief executive officer, at least annually, in the way that is decided by the local government (including as a member of a committee, for example);
  - (g) ensuring that the local government promptly provides the Minister with the information about the local

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- government area, or the local government, that is requested by the Minister;
- (h) being a member of each standing committee of the local government;
  - (i) representing the local government at ceremonial or civic functions.
- (5) A councillor who is not the mayor may perform the mayor's extra responsibilities only if the mayor delegates the responsibility to the councillor.
- (6) When performing a responsibility, a councillor must serve the overall public interest of the whole local government area.

### **13 Responsibilities of local government employees**

- (1) All employees of a local government have the same responsibilities, but the chief executive officer has some extra responsibilities.
- (2) All employees have the following responsibilities—
- (a) implementing the policies and priorities of the local government in a way that promotes—
    - (i) the effective, efficient and economical management of public resources; and
    - (ii) excellence in service delivery; and
    - (iii) continual improvement;
  - (b) carrying out their duties in a way that ensures the local government—
    - (i) discharges its responsibilities under this Act; and
    - (ii) complies with all laws that apply to local governments; and
    - (iii) achieves its corporate and community plans;
  - (c) providing sound and impartial advice to the local government;

- 
- (d) carrying out their duties impartially and with integrity;
  - (e) ensuring the employee's personal conduct does not reflect adversely on the reputation of the local government;
  - (f) improving all aspects of the employee's work performance;
  - (g) observing all laws relating to their employment;
  - (h) observing the ethics principles under the *Public Sector Ethics Act 1994*, section 4;
  - (i) complying with a code of conduct under the *Public Sector Ethics Act 1994*.
- (3) The chief executive officer has the following extra responsibilities—
- (a) managing the local government in a way that promotes—
    - (i) the effective, efficient and economical management of public resources; and
    - (ii) excellence in service delivery; and
    - (iii) continual improvement;
  - (b) managing the other local government employees through management practices that—
    - (i) promote equal employment opportunities; and
    - (ii) are responsive to the local government's policies and priorities;
  - (c) establishing and implementing goals and practices in accordance with the policies and priorities of the local government;
  - (d) establishing and implementing practices about access and equity to ensure that members of the community have access to—
    - (i) local government programs; and





- 
- (2) A *reasonable proportion of electors* is the number of electors that is worked out by dividing the total number of electors in the local government area (as nearly as can be found out) by the number of councillors (other than the mayor), plus or minus—
- (a) for a local government area with more than 10000 electors—10%; or
  - (b) for any other local government area—20%.

*Examples—*

- 1 If the total number of electors in the local government area is 15000, and the number of councillors (other than the mayor) is 5, the reasonable proportion of electors is 3000 (i.e. 15000 divided by 5) plus or minus 10%, i.e. between 2700 and 3300 electors.
  - 2 If the total number of electors in the local government area is 5000, and the number of councillors (other than the mayor) is 5, the reasonable proportion of electors is 1000 (i.e. 5000 divided by 5) plus or minus 20%, i.e. between 800 and 1200 electors.
- (3) When changing the divisions of a local government area, the reasonable proportion of electors must be worked out as near as practicable to the time when the change is to happen.

## 16 Review of divisions of local government areas

A local government must, no later than 1 March in the year before the year of the quadrennial elections—

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



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## Division 2                      The process for change

### 18      Who may start the change process

- (1) Only the Minister may apply to the change commission to assess whether to alter a local government change that was made under the 2007 reform process.
- (2) The *2007 reform process* is the reform process that was implemented under—
  - (a) the *Local Government Reform Implementation Act 2007*; or
  - (b) the *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Act 2007*.
- (3) For any other local government change—
  - (a) a local government; or
  - (b) the Minister; or
  - (c) the electoral commission;may apply to the change commission to assess whether the change should be made.

### 19      Assessment

- (1) The change commission is responsible for assessing whether a proposed local government change is in the public interest.
- (2) In doing so, the change commission must consider—
  - (a) whether the proposed local government change is consistent with a Local Government Act; and
  - (b) the views of the Minister about the proposed local government change; and
  - (c) any other matters prescribed under a regulation.

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- (3) The change commission may conduct its assessment in any way that it considers appropriate, including, for example, by—
  - (a) asking for submissions from any local government that would be affected by the proposed local government change; or
  - (b) holding a public hearing (in the way set out in chapter 7, part 1) to ask the public for its views about the proposed local government change.
- (4) However, the Minister may direct the change commission in writing to conduct its assessment of the proposed local government change in a particular way.
- (5) Despite subsection (3), the change commission must comply with the Minister's direction.
- (6) The change commission must let the public know the results of its assessment and the reasons for the results, by publishing notice of the results—
  - (a) in a newspaper that is circulating generally in the local government area; and
  - (b) in the gazette; and
  - (c) on the electoral commission's website.
- (7) The change commission must also give the results of its assessment to the Minister.
- (8) The change commission may recommend that the Governor in Council implement the change commission's assessment.

## **20 Implementation**

- (1) The Governor in Council may implement the change commission's recommendation under a regulation.
- (2) The regulation may provide for anything that is necessary or convenient to facilitate the implementation of the local government change.

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- (3) For example, the regulation may provide for—
    - (a) holding, postponing or cancelling a local government election; or
    - (b) the transfer of assets and liabilities from a local government to another local government.
  - (4) A local government is not liable to pay a State tax in relation to a transfer or other arrangement made to implement a local government change.
  - (5) A *State tax* is a tax, charge, fee or levy imposed under an Act, other than a duty under the *Duties Act 2001*.

## 21 Decisions under this division are not subject to appeal

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

*Note—*

See section 244 for more information.

## Division 3 The change commission

### 22 Change commission is established

- (1) The Local Government Change Commission (the *change commission*) is established.
- (2) The change commission is made up of—
  - (a) the electoral commissioner; or
  - (b) any combination of the following persons that the electoral commissioner nominates—
    - (i) the electoral commissioner;
    - (ii) the deputy electoral commissioner;
    - (iii) a casual commissioner.

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## **23 Casual commissioners**

- (1) The Governor in Council may appoint the number of casual commissioners that the Governor in Council considers appropriate.
- (2) The Governor in Council must appoint a qualified person to be a casual commissioner.
- (3) A person is qualified to be a casual commissioner if the person—
  - (a) has—
    - (i) extensive knowledge of and experience in local government, public administration, law, public finance or community affairs; or
    - (ii) other qualifications and experience that the Governor in Council considers appropriate; but
  - (b) is not—
    - (i) a member of an Australian Parliament; or
    - (ii) a nominee for election as a member of an Australian Parliament; or
    - (iii) a councillor; or
    - (iv) a nominee for election as a councillor; or
    - (v) a person who has accepted an appointment as a councillor; or
    - (vi) a member of a political party; or
    - (vii) a person who has a conviction for an indictable offence that is not an expired conviction.
- (4) A casual commissioner may be appointed for a term of not longer than 3 years.
- (5) A casual commissioner holds office on the conditions (including about fees and allowances, for example) that the Governor in Council decides.

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- (6) A casual commissioner may resign by a signed notice of resignation given to the Minister.

## **24 Conflict of interests**

- (1) This section applies if—
- (a) a person on the change commission has a direct or indirect financial interest in a matter being considered, or about to be considered, by the change commission; and
  - (b) the interest could conflict with the proper performance of the person's responsibilities for the matter.
- (2) The person must not take part, or take any further part, in the consideration of the matter.

Maximum penalty—35 penalty units.

- (3) As soon as practicable after the person becomes aware that this section applies to the matter, the person must—
- (a) if the person is the electoral commissioner—direct the deputy electoral commissioner to constitute the change commission in the electoral commissioner's place; or
  - (b) otherwise—inform the electoral commissioner.

Maximum penalty—35 penalty units.

- (4) If subsection (3)(b) applies, the electoral commissioner must take the person's place.

## **25 Annual report of change commission**

- (1) The electoral commissioner must prepare a report about the change commission's operations during each financial year.
- (2) The report must include details of the following directions given to the change commission by the Minister during the financial year for which the report is prepared—
- (a) a direction given under section 19(4);

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- (b) a direction given under the *City of Brisbane Act 2010*, section 21(4).
- (3) The electoral commissioner must give a copy of the report to the Minister, before the end of the first October after the financial year.
- (4) The electoral commissioner must include the report in the annual report of the electoral commission (that is prepared under the Electoral Act, section 19).
- (5) The electoral commissioner must ensure that the public can inspect copies of the report—
  - (a) at the electoral commission’s office in Brisbane; and
  - (b) on the electoral commission’s website.

## **Chapter 3      The business of local governments**

### **Part 1            Local laws**

#### **Division 1        Introduction**

##### **26      What this part is about**

- (1) This part is about local laws.
- (2) A **local law** is a law made by a local government.
- (3) Unless there is a contrary intention, a reference in this Act to a **local law** includes a reference to—
  - (a) an interim local law; and
  - (b) a subordinate local law; and



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- (c) a local law that is an adopted model local law.
  - (4) An *interim local law* is a local law that has effect for 6 months or less.
  - (5) A *subordinate local law* is a local law that—
    - (a) is made under a power contained in a local law; and
    - (b) provides for the detailed implementation of the broader principles contained in the local law.
  - (6) A subordinate local law is called that because it is subordinate to the local law under which it is made, so that if there is any inconsistency between the subordinate local law and the local law, the local law prevails to the extent of the inconsistency.
  - (7) The Minister may approve, by gazette notice, a local law as being suitable for adoption by all local governments.
  - (8) This type of local law is a *model local law*.

## 27 Interaction with State laws

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

## Division 2 Making, recording and reviewing local laws

### 28 Power to make a local law

- (1) A local government may make and enforce any local law that is necessary or convenient for the good rule and local government of its local government area.
- (2) However, a local government must not make a local law—
  - (a) that sets a penalty of more than 850 penalty units for each conviction of failing to comply with a local law,

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- including each conviction when there is more than 1 conviction for a continuing offence or repeat offence; or
- (b) that purports to stop a local law being amended or repealed in the future; or
  - (c) about a subject that is prohibited under division 3.

## **29 Local law making process**

- (1) Each local government may decide its own process for making a local law.
- (2) However, the process must be consistent with sections 29A and 29B.

*Note—*

See section 121 for the powers of the Minister for a local law that is not made under this section.

### **29A State interest check**

- (1) This section applies if a local government proposes to make a local law (other than a model local law or a subordinate local law).
- (2) Before making the proposed local law, the local government must—
  - (a) consult with relevant government entities about the overall State interest in the proposed local law; and
  - (b) give the Minister the following—
    - (i) a copy of the proposed local law;
    - (ii) a drafting certificate for the proposed local law;
    - (iii) information required by the Minister or under a regulation.
- (3) The local government may proceed further in making the proposed local law only if the local government satisfies the Minister that—

- (a) the overall State interest is satisfactorily dealt with by the proposed local law; and
  - (b) the proposed local law is drafted substantially in accordance with the drafting standards.
- (4) If the Minister considers the overall State interest would be satisfactorily dealt with by the proposed local law if the local government satisfied particular conditions—
- (a) the Minister may impose conditions on the local government that the Minister considers appropriate; and
  - (b) the local government may proceed further in making the proposed local law if it—
    - (i) satisfies any conditions about the content of the proposed local law; and
    - (ii) agrees to satisfy any other conditions.

## **29B Notice of new local law**

- (1) A local government must let the public know that a local law has been made by the local government, by publishing a notice of making the local law—
- (a) in a newspaper that is circulating generally in the local government area; and
  - (b) in the gazette; and
  - (c) on the local government's website.
- (2) The notice must be published within 1 month after the day when the local government made the resolution to make the local law.
- (3) The notice must state—
- (a) the name of the local government; and
  - (b) the date when the local government made the resolution to make the local law; and
  - (c) the name of the local law; and

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

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

- (1) This section applies if—
- (a) an interim local law amends or repeals a local law; and
  - (b) the interim local law expires; and

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

### **31 Local law register**

- (1) A local government must keep a register of its local laws, in the way that is required under a regulation.
- (2) The public may inspect the register at the local government's public office.

### **32 Consolidated versions of local laws**

- (1) A local government may prepare and adopt a consolidated version of a local law.
- (2) A *consolidated version* of a local law is a document that accurately combines a local government's local law, as it was originally made, with all the amendments made to the local law since the local law was originally made.
- (3) When the local government adopts the consolidated version of the local law, the consolidated version is taken to be the local law, in the absence of evidence to the contrary.

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- (4) Within 7 days after the local government adopts the consolidated version of the local law, the local government must give a copy of the consolidated version to the Minister.

### **33 Regular review of local laws**

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

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

### **34 What this division is about**

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

### **35 Network connections**

- (1) A local government must not make a local law that regulates network connections.
- (2) A *network connection* is an installation that has the sole purpose of connecting a home or other structure to an existing telecommunications network.
- (3) A local law, to the extent that it is contrary to this section, has no effect.

### **36 Election advertising**

- (1) A local government must not make a local law that—
  - (a) prohibits or regulates the distribution of how-to-vote cards; or
  - (b) prohibits the placement of election signs or posters.

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- (2) A *how-to-vote card* includes a how-to-vote card under the Electoral Act or Local Government Electoral Act.
  - (3) An *election sign or poster* is a sign or poster that is able, or is intended, to—
    - (a) influence a person about voting at any government election; or
    - (b) affect the result of any government election.
  - (4) A *government election* is an election for a local, State or Commonwealth government.
  - (5) A local law, to the extent that it is contrary to this section, has no effect.

### **37 Development processes**

- (1) A local government must not make a local law that establishes an alternative development process.
- (2) An *alternative development process* is a process that is similar to or duplicates all or part of a process in the Planning Act, chapter 6.
- (3) However, if a local law already contains a provision that establishes an alternative development process, the local government—
  - (a) may repeal the provision at any time; and
  - (b) may amend the provision until a new planning scheme comes into effect in the local government area.
- (4) This section does not apply to a local law about—
  - (a) advertising devices; or
  - (b) gates and grids; or
  - (c) levees; or
  - (d) roadside dining;until the local government decides, under the Planning Act, to prepare its next planning scheme.

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

### **38 Anti-competitive provisions**

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

### **38AA Swimming pool safety**

- (1) A local government must not make a local law that regulates—
  - (a) the construction or maintenance of barriers for a regulated pool; or
  - (b) a matter for ensuring the safety of persons using a regulated pool and prescribed under the Building Act, section 231D(1), definition *pool safety standard*, paragraph (b).
- (2) If a local law that is in force before the commencement of this section contains a provision that regulates a matter mentioned in subsection (1), the local government—
  - (a) must not amend the provision after the commencement; and
  - (b) must repeal the provision by 1 January 2017.
- (3) A local law, to the extent that it is contrary to this section, has no effect.
- (4) In this section—



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*barriers*, for a regulated pool, includes any of the following—

- (a) the fencing for the pool;
- (b) the walls of a building enclosing the pool;
- (c) another form of barrier mentioned or provided for in the pool safety standard under the Building Act.

## Part 2                      **Beneficial enterprises and business activities**

### Division 1                **Beneficial enterprises**

#### **39      What this division is about**

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

#### **40      Conducting beneficial enterprises**

- (1) This section applies if a local government wants to conduct a beneficial enterprise.
- (2) The local government must—

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- (a) consult with—
  - (i) all local government employees who may be directly affected by the beneficial enterprise; or
  - (ii) if nominated by the local government employees, an industrial association representing the employees; and
- (b) pass a resolution to conduct the beneficial enterprise.
- (3) An ***industrial association*** is an association of employees having as a principal purpose the protection and promotion of their interests in matters concerning their employment.
- (4) When conducting the beneficial enterprise, the local government must—
  - (a) apply sound financial principles; and
  - (b) comply with the Local Government Acts.
- (5) In order to conduct the beneficial enterprise, the local government may—
  - (a) commercially exploit the local government’s tangible or intangible property rights; or
  - (b) participate with an association, other than by—
    - (i) being an unlimited partner of a partnership; or
    - (ii) entering into an agreement that does not limit the liability of the local government, as between the parties, to the amount committed by the local government under the agreement; or
    - (iii) borrowing, or guaranteeing a borrowing.
- (6) An ***association*** is—
  - (a) a partnership; or
  - (b) a corporation limited by shares but is not listed on a stock exchange; or
  - (c) a corporation limited by guarantee but is not listed on a stock exchange; or

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

#### **41 Register of beneficial enterprises**

- (1) A local government must establish a register that includes a record, for each beneficial enterprise that it conducts, of—
  - (a) particulars of the purpose to be achieved by conducting the beneficial enterprise; and
  - (b) the identity of any entity with which the local government has conducted a beneficial enterprise; and
  - (c) the amount of money, or the market value of property, that the local government has committed to a beneficial enterprise, as at the date that the property was committed.
- (2) The public may inspect the register at the local government's public office.
- (3) The local government must give the department's chief executive and the auditor-general written notice of—

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

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

- (1) This section applies if a local government plans to invest in a beneficial enterprise that is to be conducted with the private sector.
- (2) The local government must identify the amount that is to be invested, as a capital expenditure, in the local government's budget.
- (3) If the local government does not commit that amount to the beneficial enterprise in the financial year of that budget, the amount may be carried forward to the next financial year for the beneficial enterprise.
- (4) Any amount that is carried forward must be held in a reserve established by the local government in its operating fund, until the amount is lawfully applied.
- (5) A regulation may prescribe the maximum number of years that an amount can be carried forward.
- (6) A local government must get the approval of the department's chief executive before the local government may—
  - (a) invest in a beneficial enterprise when the local government has not identified the amount of the investment as a capital expenditure in its budget; or
  - (b) invest in a beneficial enterprise an amount prescribed under a regulation.
- (7) If the department's chief executive does not give the local government written notice of his or her decision about the approval, within 30 days after the approval is sought, the department's chief executive is taken to have refused the approval on the 31st day after the approval was sought.

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- (8) If a local government fails to comply with this section, the department's chief executive may—
- (a) publish notice of the failure in a newspaper that is circulating generally in the local government area; or
  - (b) direct the local government to publish notice of the failure on the local government's website.

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

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

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

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(c) related to the provision of library services.

*Note—*

A building certifying activity or roads activity is dealt with under section 47.

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

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

#### **45 Identifying significant business activities**

A local government's annual report for each financial year must—

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

#### **46 Assessing public benefit**

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

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

#### **47 Code of competitive conduct**

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



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

#### **48 Competitive neutrality complaints**

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

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

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

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

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

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

Maximum penalty—200 penalty units.

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

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

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

Maximum penalty—100 penalty units.

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

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

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

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

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

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

Maximum penalty—100 penalty units.

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

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

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

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out of a wilful breach of duty in relation to the corporate entity (including a contravention of section 50, for example).

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

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

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

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

### **53 Prohibition on loans to directors**

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

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

### **54 Duty to prevent insolvent trading**

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

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

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

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

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

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



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- (7) If the court is satisfied that it is reasonable and appropriate for the person to be examined, the court may order the person to attend before the court at a time and place fixed by the court for examination.
- (8) The person must—
- (a) attend as required by the order, unless the person has a reasonable excuse; and
  - (b) continue to attend until excused by the court, unless the person has a reasonable excuse.
- Maximum penalty—200 penalty units or 2 years imprisonment.
- (9) The examination must be held in public, unless the court considers it is desirable to hold the examination in private because of special circumstances.
- (10) The court may give directions about—
- (a) the matters to be inquired into at the examination; and
  - (b) the procedures to be followed at the examination (including the persons who may be at the examination if the examination is to be held in private, for example).

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

- (1) This section applies to a person who has been ordered, under section 55, to attend an examination.
- (2) The person must not fail to take an oath or make an affirmation at the examination.
- Maximum penalty—200 penalty units or 2 years imprisonment.
- (3) The person must answer any question that the person is directed by the court to answer.
- Maximum penalty—200 penalty units or 2 years imprisonment.

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

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- (11) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.
  - (12) The person may, at the person's own expense, employ a lawyer, and the lawyer may put to the person questions that the court considers are just to enable the person to explain or qualify any answers given by the person.
  - (13) The court may adjourn the examination from time to time.
  - (14) The court may order the whole or any part of the costs that are incurred by the person to be paid by—
    - (a) if the application was made by the Attorney-General—the State; or
    - (b) if the application was made by a local government—the local government.

## 57 Relief from liability for malpractice

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

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the court may relieve the employee (in whole or part) from liability for the malpractice, on the terms that the court considers appropriate.

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

## **58 False or misleading information**

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

Maximum penalty—

- (a) if the offence was committed with an intent to defraud—500 penalty units or 5 years imprisonment; or
- (b) otherwise—100 penalty units.

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- (3) However, the employee does not commit an offence in relation to information in a document if, when the employee gives the document to the other person—
- (a) the employee tells the other person that the document is false or misleading, and in what respect the document is false or misleading; and
  - (b) if the employee has, or can reasonably obtain, the correct information—the employee gives the other person the correct information.

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

### **58A    Application of other Acts to a corporate entity**

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

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- (a) the making of a recommendation to the shareholder of a corporate entity; or
- (b) a decision about a corporate entity's commercial policy; or
- (c) a corporate entity for its activities carried on, on a commercial basis, in competition with a person.

### **58B State taxes**

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

## **Part 3 Roads and other infrastructure**

### **Division 1 Roads**

#### **59 What this division is about**

- (1) This division is about roads.
- (2) A *road* is—
  - (a) an area of land that is dedicated to public use as a road; or
  - (b) an area of land that—

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- (i) is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; and
  - (ii) is open to, or used by, the public; or
  - (c) a footpath or bicycle path; or
  - (d) a bridge, culvert, ford, tunnel or viaduct.
- (3) However, a **road** does not include—
- (a) a State-controlled road; or
  - (b) a public thoroughfare easement.

## 60 Control of roads

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

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- (f) make a local law to regulate the construction, maintenance and use of—
  - (i) public utilities along, in, over or under roads; and
  - (ii) ancillary works and encroachments along, in, over or under roads; and
- (g) realign a road in order to widen the road; and
- (h) acquire land for use as a road.

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

- (1) If a local government wants to acquire land in order to widen a road, the local government must give the owner of the land a notice of intention to acquire land.
- (2) A *notice of intention to acquire land* informs the owner in general terms of this section and section 62.
- (3) However, a local government can not, without the consent of the Planning and Environment Court, serve notice of intention to acquire land on an owner of land after the owner has applied to the court—
  - (a) for approval to subdivide the land; or
  - (b) for approval, consent or permission—
    - (i) to erect or use a structure on the land; or
    - (ii) to use the land for any other purpose.
- (4) The court may consent to the notice of intention to acquire land being served only if the court is satisfied that the purpose of the notice is to enable the local government to make, in good faith, a reasonable widening of the road.
- (5) After a local government gives an owner a notice of intention to acquire land, the owner must not erect, place, re-erect, replace or repair any structure, or part of a structure, on the land without the local government's permission.



- (6) The local government must lodge a copy of a notice of intention to acquire land with the registrar of titles for registration on the instrument of title to the land.
- (7) The registrar of titles may register the notice of intention to acquire land even if the instrument of title is not produced.

## **62 Compensation for a notice of intention to acquire land**

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

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- by the realignment of the road, and in which the claimant has an interest, must be taken into account;
- (c) the amount of compensation must not be increased because the land that is affected by the realignment of the road has, since the service of the notice of intention to acquire land, become or ceased to be separate from other land.
- (5) A claim for compensation must be made—
- (a) within 3 years after the entitlement to compensation arose; and
- (b) to the chief executive officer in the approved form.
- (6) The claim is taken to have been properly made when the claimant has given the local government all the information that the local government reasonably requires to decide the claim.
- (7) If, within 30 days after the claim is made, the local government has not given the claimant written notice of its decision on the claim, the local government is taken to have refused compensation on the 31st day after the claim is made.

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

- (1) A person who is aggrieved by the decision of a local government on a claim for compensation may appeal against the decision to the Planning and Environment Court.
- (2) The appeal must be started within 30 days after—
- (a) notice of the decision is given to the claimant; or
- (b) the decision is taken to have been made.
- (3) In order to award compensation, the Planning and Environment Court must be satisfied—
- (a) if the land has been sold—
- (i) the seller took reasonable steps to obtain a reasonable price for the land; and

- (ii) the seller sold the land in good faith; and
  - (iii) the sale price is less than the seller might reasonably have expected to receive had there been no notice of intention to acquire land; or
- (b) if a local government refused the owner permission to erect, place, re-erect, replace or repair any structure, or part of a structure, on the land—the permission was applied for in good faith.

#### **64 Acquisition of land instead of compensation**

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

#### **65 What is to happen if a realignment is not carried out**

- (1) This section applies if a local government decides not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land.
- (2) This section does not apply to a realignment of road that is necessary to comply with the requirements of a local government under a planning scheme in its application to particular developments in the local government area.

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- (3) The local government must serve notice of its decision not to proceed on all owners of land who were served with a notice of intention to acquire land in connection with that road or part of that road.
- (4) With regard to any of the notices of intention to acquire land that were lodged with the registrar of titles in connection with that road or part of that road, the local government must—
  - (a) for any notice of intention to acquire land that has not been registered—withdraw the notice of intention to acquire land; and
  - (b) for any notice of intention to acquire land that has been registered—lodge with the registrar of titles for registration a notice of its decision not to proceed with the realignment of the road, or part of the road.
- (5) The notice of the local government’s decision must inform the owners in general terms of this section and section 66.

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

- (1) This section applies if—
  - (a) a local government decides not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land; and
  - (b) the local government has made structural improvements on land that adjoins the road on the basis of the proposed realignment being effected.
- (2) The local government must pay the owner of the land reasonable compensation for the decrease in value of the land because of the decision.
- (3) The amount of compensation is the difference between the value of the land before and after the decision.
- (4) If the local government and the owner fail to agree on the amount of compensation, the amount is to be decided by the Land Court.

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- (5) The provisions of the *Acquisition of Land Act 1967* about the making, hearing and deciding of claims for compensation for land taken under that Act apply, with any necessary changes and any changes prescribed under a regulation, to claims for compensation under this section.
  - (6) The local government's decision not to proceed with the realignment of a road, or part of a road, does not give rise to an entitlement to compensation to, or a cause of action by, any owner or occupier of land or other person other than under this section.

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

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

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the structure, room or cellar that the local government considers necessary.

## **68 Notice to local government of opening or closing of roads**

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

## **69 Closing roads**

- (1) A local government may close a road (permanently or temporarily) to traffic or particular traffic, if there is another road or route reasonably available for use by the traffic.
- (2) Also, the local government may close a road to traffic—
  - (a) during a temporary obstruction to traffic; or

- (b) if it is in the interests of public safety; or
  - (c) if it is necessary or desirable to close the road for a temporary purpose (including a fair, for example).
- (3) The local government must publish notice of the closing of the road, in the way that the local government considers appropriate (including on its website, for example).
  - (4) The local government may do everything necessary to stop traffic using the road after it is closed.
  - (5) If a road is closed to traffic for a temporary purpose, the local government may permit the use of any part of the road (including for the erection of any structure, for example) on the conditions the local government considers appropriate.

## **70 Temporary roads**

- (1) This section applies if—
  - (a) a local government wants to remake or repair a road; and
  - (b) it is not reasonably practicable to temporarily close the road to traffic while the road works are conducted.
- (2) The local government may make a temporary road, through land that adjoins the road, to be used while the road is being remade or repaired.
- (3) However, a local government employee or contractor may enter the land only if—
  - (a) the owner or occupier of the land has agreed, in writing that the local government employee or contractor may enter the land; or
  - (b) the local government has given the owner or occupier of the land at least 3 days written notice that states—
    - (i) the nature of the road works that are to be conducted; and
    - (ii) the proposed route of the temporary road; and

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- (iii) an approximate period when the temporary road is expected to remain on the land.
- (4) Subsection (3) does not apply if the road works must be urgently conducted, but the local government must give the owner or occupier of the land oral notice of the matters mentioned in subsection (3)(b).
- (5) The owner of the land may give the chief executive officer a written notice that claims compensation for physical damage caused by the local government entering, occupying or using the land under this section.
- (6) Compensation is not payable unless the chief executive officer receives the claim—
  - (a) within 1 year after the occupation or use has ended; or
  - (b) at a later time allowed by the chief executive officer.
- (7) The compensation equals—
  - (a) the amount agreed between the person and local government; or
  - (b) if the person and local government can not agree, the amount that is decided by a court.
- (8) However, the compensation must not be more than the compensation that would have been awarded if the land had been acquired.

## **71 Road levels**

- (1) The owner or occupier of land that adjoins a road may give written notice to the local government requiring it to advise the owner or occupier of the permanent level that is fixed or to be fixed for the road.
- (2) If the local government has not, within 6 months after receiving the notice, given the owner or occupier written advice about the permanent level of the road, the local government is taken to have fixed the apparent level of the



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road when the notice was given as the permanent level of the road.

- (3) If—
- (a) after a local government has fixed the permanent level of a road, the local government changes the level of the road; and
  - (b) the owner or occupier of land that adjoins the road is injuriously affected by the change;

the local government must pay the owner or occupier, or their successor in title, compensation.

- (4) The compensation equals—
- (a) the amount that is agreed between the owner or occupier, or their successor in title, and the local government; or
  - (b) if the owner or occupier, or their successor in title, and the local government can not agree—the amount that is decided by the Planning and Environment Court.

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

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

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- (iii) a road being built under the Land Act, section 110.
- (2) The local government may require the entity that is conducting the activity to provide information, within a reasonable time, that will enable the local government to assess the impact of the activity on the road.
- (3) After assessing the impact of the activity on the road, the local government may decide to do 1 or more of the following—
  - (a) give the entity a direction about the use of the road to lessen the impact;
  - (b) require the entity—
    - (i) to carry out works to lessen the impact; or
    - (ii) to pay an amount as compensation for the impact.
- (4) The local government may require the works to be carried out or the amount to be paid before the impact commences or intensifies.
- (5) The amount of compensation is a debt payable to the local government and may be recovered in a court.
- (6) A regulation for this section—
  - (a) must contain a process under which the local government's decision may be reviewed; and
  - (b) may contain a process for enforcing the decision.

### **73 Categorisation of roads**

A local government must categorise the roads in its local government area according to the surface of the road.

### **74 Roads map and register**

- (1) A local government must prepare and keep up-to-date—
  - (a) a map of every road, including private roads, in its local government area; and
  - (b) a register of the roads that shows—

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

## 75 **Unauthorised works on roads**

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

Maximum penalty—200 penalty units.

- (3) **Works** do not include the maintenance of ancillary works and encroachments, or landscaping, that does not interfere with the road or its operation.
- (4) An approval may be subject to the conditions decided by the local government.

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- (5) A person must not contravene a condition that applies to a person under subsection (4).  
Maximum penalty—40 penalty units.
- (6) If a person carries out works in contravention of this section, the local government may—
  - (a) dismantle or alter the works; or
  - (b) fix any damage caused by the works.
- (7) If the local government dismantles or alters the works, or fixes any damage caused by the works, the person must pay the local government the reasonable costs incurred by the local government in doing so.

## **Division 2                      Stormwater drains**

### **76            What this division is about**

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

### **77            Connecting stormwater installation to stormwater drain**

- (1) A local government may, by written notice, require the owner of a property to connect a stormwater installation for the property to the local government's stormwater drain in the

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way, under the conditions and within the time stated in the notice.

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

Maximum penalty—165 penalty units.

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

Maximum penalty for subsection (5)—165 penalty units.

## **78 No connecting sewerage to stormwater drain**

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

Maximum penalty—165 penalty units.

- (2) A *sewerage installation* is any of the following—
  - (a) an on-site sewerage facility within the meaning given in the Plumbing and Drainage Act;

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- (b) a sewer for a property or building unit;
- (c) sanitary plumbing i.e. any apparatus, fittings, fixtures or pipes that carry sewage to a sanitary drain;
- (d) sanitary drainage i.e. any apparatus, fittings or pipes for collecting and carrying discharges—
  - (i) from fixtures (that are directly connected to a sanitary drain) to an on-site sewerage facility or a sewerage treatment system; or
  - (ii) from sanitary plumbing to an on-site sewerage facility or a sewerage treatment system.

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

- disconnector gullies
  - bends at the foot of stacks or below ground level
  - pipes above ground level that are installed using drainage principles
  - for an on-site sewerage facility—a pipe (other than a soil or waste pipe) used to carry sewage to or from the facility
- (3) The owner of a property who becomes aware that the sewerage installation for the property is connected to any part of—
- (a) the stormwater installation for the property; or
  - (b) the stormwater drain of the local government;
- must, as soon as reasonably practicable, take all necessary steps to disconnect the facility, drainage or sewer from the stormwater installation or drain.
- Maximum penalty—165 penalty units.
- (4) If the sewerage installation for property is connected to any part of—
- (a) the stormwater installation on the property; or
  - (b) the stormwater drain of the local government;

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the local government may, by written notice, require the owner of the property to perform the work stated in the notice, within the time stated in the notice.

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

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

## **79 No trade waste or prohibited substances in stormwater drain**

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

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

Maximum penalty—1000 penalty units.

- (4) A ***prohibited substance*** is—

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

*Examples for paragraph (a)—*

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

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

- (c) sewage, including human waste; or

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

- (i) inhibiting or interfering with the stormwater drain; or

- (ii) causing damage or a hazard to the stormwater drain; or

- (iii) causing a hazard for humans or animals; or

- (iv) creating a public nuisance; or

- (v) creating a hazard in waters; or

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



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*Example for paragraph (d)—*

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

- (e) a substance that has a temperature of more than—
  - (i) if the local government has approved a maximum temperature for the substance—the approved maximum temperature; or
  - (ii) otherwise—38°C.
- (5) If—
  - (a) a person puts a prohibited substance in a local government's stormwater drain; and
  - (b) the prohibited substance causes damage to the stormwater drain;

the local government may perform work to fix the damage, and may recover the reasonable costs for the work from the person who put the prohibited substance in the stormwater drain.
- (6) The costs for the work are in addition to any penalty imposed for the offence.

## **80 Interference with path of stormwater**

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

Maximum penalty—165 penalty units.
- (2) However, this section does not apply to water collected in a dam, wetland, tank or pond, if no offensive material is allowed to accumulate.

## **Division 3                      Other matters**

### **80A      Malls**

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

### **80B      Ferry services**

- (1) A local government has the exclusive right to provide a ferry service across a watercourse if the land that forms both banks of the watercourse is in its local government area.
- (2) A *watercourse* is a river, creek or channel where water flows naturally.
- (3) A local government may—

- (a) lease the right to provide a ferry service across a watercourse that it has the exclusive right to provide a ferry service across; and
  - (b) make local laws for managing and regulating the use of ferries operated or leased by it.
- (4) A regulation may—
- (a) declare another watercourse that a local government has the exclusive right to provide a ferry service across; and
  - (b) provide for any other matter connected with the provision of ferry services (including declaring the approaches to a ferry as being under the control of a local government, for example).

## **Part 4                      The business of indigenous regional councils**

### **Division 1                Introduction**

#### **81        What this part is about**

- (1) This part contains provisions that relate only to a local government that is an indigenous regional council.
- (2) An *indigenous regional council* is—
  - (a) the Northern Peninsula Area Regional Council; or
  - (b) the Torres Strait Island Regional Council; or
  - (c) an indigenous regional council prescribed under a regulation.

## **Division 2                      Managing trust land**

### **82            What this division is about**

- (1) This division contains provisions that apply to a trustee council.
- (2) A *trustee council* is an indigenous regional council that is a trustee of trust land.
- (3) *Trust land* is the land described in a deed of grant in trust that is issued under the Land Act.
- (4) The provisions of this division—
  - (a) do not affect the status that any land has under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*; and
  - (b) are additional to the provisions that apply to the land under the Land Act and any other law.

### **83            Trustee business must be conducted separately**

- (1) A trustee council must conduct its trustee business separately from its other local government business.
- (2) *Trustee business* is any business that relates to trust land.
- (3) So, the trustee council must—
  - (a) maintain separate accounts and records for trustee business; and
  - (b) in its capacity as trustee council, formally advise itself, in its capacity as indigenous regional council, of matters relating to trustee business; and
  - (c) hold separate meetings for trustee business from meetings for other local government business.

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**84 Meetings about trust land generally open to the public**

- (1) All meetings relating to trust land must be open to the public, unless the trustee council decides, by resolution, that the meeting be closed to the public.
- (2) The trustee council may do so only to allow the trustee council to discuss business for which public discussion would be likely to—
  - (a) prejudice the interests of the trustee council or someone else; or
  - (b) enable a person to gain a financial advantage.
- (3) For example, a meeting may be closed to the public to allow the trustee council to discuss—
  - (a) the appointment, discipline or dismissal of local government employees; or
  - (b) industrial matters affecting local government employees; or
  - (c) starting or defending legal proceedings; or
  - (d) that part of the budget that relates to the trust land; or
  - (e) contracts proposed to be made by the trustee council.
- (4) A resolution to close a meeting to the public must specify the general nature of the matters to be discussed while the meeting is closed to the public.
- (5) The trustee council must not make a resolution (other than a procedural resolution) in a meeting that is closed to the public.

**85 Community forum input on trust change proposals**

- (1) This section applies if—
  - (a) a trustee council wants to consider a trust change proposal; and
  - (b) a community forum has been established for the division of the local government where the trust land is located.

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- (2) A ***trust change proposal*** is a proposal to make a decision—
- (a) to put an improvement (including a structure, for example) on trust land; or
  - (b) to create an interest in trust land (including a lease or mortgage, for example); or
  - (c) that the trustee council has decided, by resolution, must be dealt with as a trust change proposal.
- (3) The trustee council must give the community forum an opportunity to give input about the trust change proposal.

*Note—*

See division 3 for more information about community forums.

- (4) The trustee council must give the community forum a written notice that gives the community forum—
- (a) reasonably sufficient information about the trust change proposal; and
  - (b) reasonably sufficient time;
- to allow the community forum to give input about the trust change proposal.
- (5) The trustee council must have regard to any input that is received from the community forum within the time specified in the written notice.
- (6) If the trustee council proposes to make a decision that is contrary to the community forum's input, the trustee council must give written notice of the reasons for the proposed decision to the community forum.
- (7) If the community forum advises the trustee council that it does not support the trustee council's proposed decision, the trustee council must take reasonable steps to let the community know.
- (8) If the trustee council proposes to make a decision that is contrary to the community forum's input, the decision has effect only if—

- (a) the decision is approved by a majority of the councillors (other than the mayor), regardless of how many councillors take part in any meeting about the decision; and
- (b) the councillor for the division of the local government area in which the trust land is situated does not vote against approving the decision.

## 86 Grouping of trust land not available

The chief executive under the Land Act must not approve the grouping of trust land under the Land Act, section 62, if any of the trust land is the subject of a community deed of grant in trust.

## Division 3 Community forums

### 87 Community forums

- (1) This section applies if the Minister decides to establish a community forum for—
  - (a) an indigenous regional council; or
  - (b) if an indigenous regional council is divided into divisions—any of those divisions.
- (2) A **community forum** is a body that is created under this Act to be responsible for meeting with the local community to discuss issues relating to—
  - (a) trust land; and
  - (b) planning; and
  - (c) the delivery of services; and
  - (d) culture.

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- (3) The *local community* is the community living in the local government area or division for which the community forum is established.
- (4) A community forum is made up of—
  - (a) a chairperson, who is the councillor for the division; and
  - (b) at least 3, but not more than 7, elected members.
- (5) The Minister must consult with the indigenous regional council before deciding—
  - (a) how many elected members the community forum is to have; or
  - (b) what to call a community forum.
- (6) The Minister must publish the following information in a newspaper that is circulating generally in the local government area—
  - (a) the name of the community forum;
  - (b) the names of the members of the community forum.
- (7) An indigenous regional council must decide all matters necessary for the operation of its community forums.
- (8) An indigenous regional council must not create any other body to carry out the responsibilities of a community forum.

## **88 Members of a community forum**

- (1) This section is about the members of a community forum.
- (2) An election for the elected members must be held at the same time as, or is as close as practicable to, the quadrennial elections for the indigenous regional council.
- (3) A person is not qualified to be elected as a member if the person is—
  - (a) if the members are being elected at the same time as the mayor of the indigenous regional council—a candidate for election as the mayor; or



- (b) the mayor of the indigenous regional council.
- (4) A person stops being a member if the person—
  - (a) for a member who is the chairperson—stops being a councillor; or
  - (b) for any other member—
    - (i) resigns by signed notice of resignation given to the Minister; or
    - (ii) completes a term of office but is not re-elected.
- (5) A regulation must set out—
  - (a) the process for the election of the members; and
  - (b) the qualifications that a person must have to be a member; and
  - (c) the process for filling a vacancy in the office of a member.

## **89 Payments to elected members of a community forum**

- (1) An elected member of a community forum is not entitled to be paid any remuneration.
- (2) However, an indigenous regional council may authorise—
  - (a) the payment of the expenses incurred, or to be incurred, by the elected members of a community forum; or
  - (b) the provision of facilities to the elected members of a community forum.

## **90 Convenors for a community forum**

- (1) Each community forum must have a convener.
- (2) A *convener* is a person who is responsible for—
  - (a) giving the local community notice of the time and date of the community forum's meetings; and

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- (b) ensuring, to the greatest extent practicable, that the community forum operates in an effective and efficient way; and
  - (c) providing advice to the indigenous regional council; and
  - (d) providing necessary administrative support to the community forum; and
  - (e) liaising between the community forum and the indigenous regional council; and
  - (f) any other responsibilities that the indigenous regional council decides, by resolution, to give to the convenor.
- (3) An indigenous regional council must appoint a qualified person to be the convenor for a community forum.
- (4) A person is qualified to be the convenor if the person—
- (a) has experience in the administration of land; but
  - (b) is not—
    - (i) a councillor of the indigenous regional council; or
    - (ii) a member of the community forum.
- (5) A person may be appointed to be the convenor for 2 or more community forums if the indigenous regional council is satisfied that the person can effectively exercise the responsibilities for the 2 or more community forums.
- (6) A convenor may be appointed on a full-time or part-time basis.
- (7) A convenor holds the position on the conditions that the indigenous regional council decides.
- (8) A convenor may not vote at meetings of the community forum.
- (9) A convenor may perform responsibilities for the indigenous regional council in addition to the convenor's responsibilities as a convenor.
- (10) A person stops being a convenor if the person—

- (a) resigns by signed notice of resignation given to the Minister; or
- (b) completes a term of office but is not reappointed.

## Chapter 4 Finances and accountability

### Part 1 Rates and charges

#### 91 What this part is about

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

#### 92 Types of rates and charges

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

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

*Example—*

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

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

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

*Examples—*

Special rates and charges could be levied—

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

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

- (a) waste management;
- (b) gas;
- (c) sewerage;

- (d) water.
- (5) *Separate rates and charges* are for any other service, facility or activity.

### **93 Land on which rates are levied**

- (1) Rates may be levied on rateable land.
- (2) *Rateable land* is any land or building unit, in the local government area, that is not exempted from rates.
- (3) The following land is exempted from rates—
  - (a) unallocated State land within the meaning of the Land Act;
  - (b) land that is occupied by the State or a government entity, unless—
    - (i) the government entity is a GOC or its subsidiary (within the meaning of the *Government Owned Corporations Act 1993*) and the government entity is not exempt from paying rates; or
    - (ii) the land is leased to the State or a government entity by someone who is not the State or a government entity;
  - (c) land in a state forest or timber reserve, other than land occupied under—
    - (i) an occupation permit or stock grazing permit under the Forestry Act; or
    - (ii) a lease under the Land Act;
  - (d) Aboriginal land under the *Aboriginal Land Act 1991*, or Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*, other than a part of the land that is used for commercial or residential purposes;
  - (e) the following land under the Transport Infrastructure Act—

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- (i) strategic port land that is occupied by a port authority, the State, or a government entity;
  - (ii) strategic port land that is occupied by a wholly owned subsidiary of a port authority, and is used in connection with the Cairns International Airport or Mackay Airport;
  - (iii) existing or new rail corridor land;
  - (iv) commercial corridor land that is not subject to a lease;
- (f) airport land, within the meaning of the *Airport Assets (Restructuring and Disposal) Act 2008*, that is used for a runway, taxiway, apron, road, vacant land, buffer zone or grass verge;
- (g) land that is owned or held by a local government unless the land is leased by the local government to someone other than another local government;
- (h) land that is—
- (i) primarily used for show grounds or horse racing; and
  - (ii) exempted from rating by resolution of a local government;
- (i) land that is exempted from rating, by resolution of a local government, for charitable purposes;
- (j) land that is exempted from rating under—
- (i) another Act; or
  - (ii) a regulation, for religious, charitable, educational or other public purposes.
- (4) The land mentioned in subsection (3)(f) stops being exempted land when either of the following events first happens—
- (a) a development permit or compliance permit under the Planning Act comes into force for the land for a use that is not mentioned in subsection (3)(f);

- (b) development within the meaning of the Planning Act (other than reconfiguring a lot) starts for a use that is not mentioned in subsection (3)(f).

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

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

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

- (1) This section applies if the owner of rateable land owes a local government for overdue rates and charges.
- (2) The overdue rates and charges are a charge on the land.
- (3) The local government may register the charge over the land by lodging the following documents with the registrar of titles—
  - (a) a request to register the charge over the land, in the appropriate form;
  - (b) a certificate signed by the chief executive officer that states there is a charge over the land for overdue rates and charges.
- (4) After the charge is registered over the land, the charge has priority over any other encumbrances over the land, other than encumbrances in favour of—

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

## 96 Regulations for rates and charges

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

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

## Part 2 Fees

### 97 Cost-recovery fees

- (1) A local government may, under a local law or a resolution, fix a cost-recovery fee.
- (2) A *cost-recovery fee* is a fee for—



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

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

- (1) A local government must keep a register of its cost-recovery fees.
- (2) The register must state the paragraph of section 97(2) under which the cost-recovery fee is fixed.
- (3) Also, the register must state—
  - (a) for a cost-recovery fee under section 97(2)(a)—the provision of the Local Government Act under which the licence, permit, registration or other approval is issued or renewed; or
  - (b) for a cost-recovery fee under section 97(2)(c)—the provision of the Local Government Act under which the information is kept; or
  - (c) for a cost-recovery fee under section 97(2)(d)—the provision of the Local Government Act under which the property or animals are seized; or
  - (d) for a cost-recovery fee under section 97(2)(e)—the provision of the Building Act or the Plumbing and Drainage Act under which the responsibility is imposed.
- (4) The public may inspect the register at the local government's public office.

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

- (1) This section applies to the occupier (other than the State or a government entity) of a structure that is on land that—
  - (a) is not rateable land, and therefore not subject to rates; and
  - (b) is in, or is adjoining, a local government area; and
  - (c) is below the high-water mark.
- (2) The *high-water mark* is the ordinary high-water mark at spring tides.

- (3) The local government for the local government area may, by resolution, levy a fee on the occupier of the structure for the use of the local government's roads and other infrastructure.
- (4) For subsection (3), *fee* includes a tax.

#### **100 Fees on residents of indigenous local government areas**

- (1) An indigenous local government may, by resolution, levy a fee on residents of its local government area.
- (2) The indigenous local government may exempt a resident from paying the fee, if another amount is payable to the indigenous local government in relation to the property in which the resident resides.

## **Part 3 Financial sustainability and accountability**

#### **101 Statutory Bodies Financial Arrangements Act applies to local governments**

- (1) A local government is a statutory body for the Statutory Bodies Financial Arrangements Act.
- (2) Part 2B of that Act sets out the way in which that Act affects a local government's powers.

#### **102 Financial sustainability criteria**

- (1) To ensure that local governments are financially sustainable, each local government must implement systems to meet the following financial sustainability criteria—
  - (a) financial risks are to be managed prudently;
  - (b) financial policies are to be formulated—

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- (i) to ensure a reasonable degree of equity, stability and predictability; and
  - (ii) so that current services, facilities and activities are financed by the current users of the services, facilities and activities; and
  - (iii) having regard to the effect of the policies on the future users of services, facilities and activities;
- (c) full, accurate and timely information about the local government's finances and infrastructure (including a report mentioned in section 104(7), for example) is to be made available to the public on the local government's website.
- (2) A local government is *financially sustainable* if the local government is able to maintain its financial capital and infrastructure capital over the long term.

### **103 Financial management systems**

- (1) Each local government must establish a system of financial management that complies with the requirements prescribed under a regulation.
- (2) The local government must regularly review the performance of its system of financial management.

### **104 Financial management, planning and accountability documents**

- (1) The following documents of a local government must comply with the requirements prescribed under a regulation—
  - (a) the financial management documents;
  - (b) the planning and accountability documents.
- (2) The *financial management documents* include the following documents—
  - (a) an annual budget;

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- (b) a general purpose financial statement;
  - (c) a long-term financial forecast;
  - (d) an asset register that records—
    - (i) capital expenditure; and
    - (ii) depreciation charges; and
    - (iii) revaluation increments and decrements;
  - (e) a revenue statement.
- (3) The ***planning and accountability documents*** include the following documents—
- (a) an annual report;
  - (b) a 5-year corporate plan;
  - (c) an annual operational plan;
  - (d) a long-term community plan;
  - (e) a financial plan;
  - (f) a long-term asset management plan;
  - (g) a report on the results of an annual review of the implementation of the annual operational plan, 5-year corporate plan and long-term community plan.
- (4) A ***long-term community plan*** is a document that—
- (a) outlines the local government’s goals, strategies and policies for implementing the local government’s vision for the future of the local government area, during the period covered by the plan; and
  - (b) covers a period of at least 10 years after the commencement of the plan.
- (5) A ***financial plan*** is a document that—
- (a) outlines the local government’s goals, strategies and policies for managing the local government’s finances, during the period covered by the plan, including the following policies—

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- (i) an investment policy;
    - (ii) a debt policy;
    - (iii) a revenue policy; and
  - (b) covers a period of at least 10 years after the commencement of the plan.
- (6) A ***long-term asset management plan*** is a document that—
- (a) outlines the local government’s policies and strategies for ensuring the sustainable management of the local government’s assets and infrastructure, during the period covered by the plan; and
  - (b) covers a period of at least 10 years after the commencement of the plan.
- (7) A local government must annually conduct, and report on the results of, a review of the implementation of the local government’s annual operational plan, 5-year corporate plan and long-term community plan.

## **105 Auditing, including internal auditing**

- (1) Each local government must establish an efficient and effective internal audit function.
- (2) Each large local government must also establish an audit committee.
- (3) A ***large local government*** is a local government that belongs to a class prescribed under a regulation.
- (4) An ***audit committee*** is a committee that—
  - (a) monitors and reviews—
    - (i) the integrity of financial documents; and
    - (ii) the internal audit function; and
    - (iii) the effectiveness and objectivity of the local government’s internal auditors; and

- (b) makes recommendations to the local government about any matters that the audit committee considers need action or improvement.
- (5) This section applies in addition to the requirements of the *Financial Accountability Act 2009*.

## **106 Sound contracting principles**

- (1) This section is about contracts for—
  - (a) the supply of goods or services; or
  - (b) the carrying out of work; or
  - (c) the disposal of assets.
- (2) When entering into a contract, a local government must have regard to the sound contracting principles.
- (3) The *sound contracting principles* are—
  - (a) value for money; and
  - (b) open and effective competition; and
  - (c) the development of competitive local business and industry; and
  - (d) environmental protection; and
  - (e) ethical behaviour and fair dealing.

## **107 Insurance**

- (1) A local government must maintain the following insurance—
  - (a) public liability insurance;
  - (b) professional indemnity insurance.
- (2) The insurance must be for at least the amount required under a regulation.
- (3) A local government may enter into a contract of insurance with WorkCover Queensland, or another insurer, to cover its councillors.





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- (i) is not provided for in the local government's budget for the financial year; and
    - (ii) is made without the approval of the local government by resolution.
  - (2) The local government must give the public notice of the disbursement in a newspaper that is circulating generally in the local government area, within 14 days after the disbursement is made.
  - (3) If the disbursement is not made for a genuine emergency or hardship, the councillors who knowingly agree to the disbursement are jointly and severally liable to pay the local government—
    - (a) the amount of the disbursement; and
    - (b) interest on the amount of the disbursement, at the rate at which interest accrues on overdue rates, calculated from the day of the disbursement to the day of repayment; and
    - (c) any fees, charges, penalties or other expenses incurred by the local government in relation to the disbursement.
  - (4) Those amounts may be recovered as a debt payable to the local government.

## **111 Councillor's liable for loans to individuals**

- (1) A local government must not, either directly or indirectly, make or guarantee a loan to an individual.
- (2) ***Guarantee a loan*** includes provide a security in connection with a loan.
- (3) The councillors who knowingly agree to loan the money are jointly and severally liable to pay the local government—
  - (a) the amount of the loan; and
  - (b) interest on the amount of the loan, at the rate at which interest accrues on overdue rates, calculated from the day of the borrowing to the day of repayment; and

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- (c) any fees, charges, penalties or other expenses incurred by the local government in relation to the loan.
- (4) Those amounts may be recovered as a debt payable to the local government.

## **112 Councillor's liable for improper borrowings**

- (1) This section applies if a local government borrows money—
  - (a) for a purpose that is not for the good rule and government of the local government area; or
  - (b) in contravention of this Act or the Statutory Bodies Financial Arrangements Act.
- (2) The councillors who knowingly agree to borrow the money are jointly and severally liable to pay the local government—
  - (a) the amount borrowed; and
  - (b) interest on the amount borrowed, at the rate at which interest accrues on overdue rates, calculated from the day of the borrowing to the day of repayment; and
  - (c) any fees, charges, penalties or other expenses incurred by the local government in relation to the borrowing.
- (3) Those amounts may be recovered as a debt payable to the local government.
- (4) This section applies despite—
  - (a) the fact that a security was issued for the borrowing; or
  - (b) the Statutory Bodies Financial Arrangements Act.

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## Chapter 5      Monitoring and enforcing the Local Government Acts

### Part 1            Local governments

#### Division 1        Introduction

#### 113    What this part is about

- (1) The purpose of this part is to allow the Minister, on behalf of the State—
  - (a) to gather information (including under a direction) to monitor and evaluate whether a local government or a councillor—
    - (i) is performing their responsibilities properly; or
    - (ii) is complying with the Local Government Acts; and
  - (b) if the information shows that the local government or councillor is not performing their responsibilities properly, or is not complying with the Local Government Acts—to take remedial action.
- (2) **Remedial action** is action to improve the local government's or councillor's performance or compliance.
- (3) Remedial action may include, for example, directing—
  - (a) the local government or councillor to take the action that is necessary to comply with a Local Government Act; or
  - (b) the local government to replace a resolution that is contrary to a Local Government Act with a resolution that complies with the Local Government Act; or
  - (c) the local government to amend a local law by removing a provision that is contrary to a Local Government Act.

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## **114 Decisions under this part are not subject to appeal**

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

*Note—*

See section 244 for more information.

## **Division 2 Monitoring and evaluation**

### **115 Gathering information**

- (1) To monitor and evaluate a local government's or councillor's performance and compliance, the department's chief executive may examine the information contained in the local government's records and operations.
- (2) For example, this may include an examination of—
  - (a) an activity or program of the local government; or
  - (b) the systems and practices of the local government.
- (3) The department's chief executive may conduct the examination in any way that the department's chief executive considers appropriate.
- (4) Also, the department's chief executive may request a local government or councillor to provide any other information.
- (5) The request must be made in writing, and specify a reasonable time within which the local government or councillor must provide the information.
- (6) The local government or councillor must cooperate fully with the department's chief executive under this section.

### **116 Acting on the information gathered**

- (1) This section applies if the information gathered by the department's chief executive shows that the local government or councillor—

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- (a) is not performing their responsibilities properly; or
  - (b) is not complying with the Local Government Acts.
- (2) The department's chief executive may—
- (a) give the information to the Minister; and
  - (b) make any recommendations to the Minister about what remedial action to take.
- (3) The Minister may take the remedial action that the Minister considers appropriate in the circumstances.
- (4) The Minister may publish the following information—
- (a) the way in which the local government or councillor—
    - (i) is not performing their responsibilities properly; or
    - (ii) is not complying with the Local Government Acts;
  - (b) the remedial action that the Minister has taken.
- (5) The Minister may—
- (a) publish the information in a newspaper that is circulating generally in the local government area; or
  - (b) direct the local government to publish the information on the local government's website.

## 117 **Advisors**

- (1) This section applies if the information gathered by the department's chief executive shows that the local government—
- (a) is not performing its responsibilities properly; or
  - (b) is not complying with the Local Government Acts.
- (2) The department's chief executive may, by gazette notice, appoint an advisor for the local government.
- (3) An *advisor* is responsible for—
- (a) helping the local government to build its capacity—

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- (i) to perform its responsibilities properly; or
    - (ii) to comply with the Local Government Acts; and
  - (b) performing other related duties as directed by the department's chief executive.
- (4) The local government must cooperate fully with the advisor.

### **118 Financial controllers**

- (1) This section applies if the information gathered by the department's chief executive shows that the local government—
- (a) is not performing its responsibilities properly; or
  - (b) is not complying with the Local Government Acts.
- (2) The department's chief executive may, by gazette notice, appoint a financial controller for the local government.
- (3) A *financial controller* is responsible for—
- (a) implementing financial controls as directed by the department's chief executive; and
  - (b) performing other related duties as directed by the department's chief executive.
- (4) The local government must cooperate fully with the financial controller.
- (5) If a financial controller is appointed, a payment from an account kept by the local government with a financial institution may be made only by—
- (a) a cheque countersigned by the financial controller; or
  - (b) an electronic funds transfer authorised by the financial controller.
- (6) If the financial controller reasonably believes a decision, resolution or order to make a payment is financially unsound, the financial controller must—
- (a) refuse to make a payment; and

- 
- (b) advise the department's chief executive about why the decision, resolution or order is financially unsound.
- (7) A decision, resolution or order is *financially unsound* if the decision, resolution or order—
- (a) may cause the local government to become insolvent; or
  - (b) will result in unlawful expenditure by the local government; or
  - (c) will result in a disbursement from a fund that is not provided for in the local government's budget; or
  - (d) will result in expenditure from grant moneys for a purpose other than the purpose for which the grant was given.

### **119 Costs and expenses of advisors and financial controllers**

- (1) The department's chief executive may direct a local government for which an advisor or financial controller is appointed to pay the Minister a stated amount for—
  - (a) the salary and allowances payable to the advisor or financial controller; and
  - (b) the costs and expenses of the advisor or financial controller.
- (2) The direction may state a time for payment.
- (3) The stated amount is a debt payable to the State.

## **Division 3 Action by the Minister**

### **120 Precondition to remedial action**

- (1) This section applies if the Minister proposes to exercise a power under this division.

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- (2) The Minister must give the local government or councillor in question a written notice of the proposal to exercise the power, before the power is exercised, unless—
  - (a) the local government or councillor asked the Minister to exercise the power; or
  - (b) if the Minister proposes to exercise a power under section 122 or 123—the tribunal has made a recommendation under section 180 to suspend or dismiss a councillor; or
  - (c) the Minister considers that giving notice—
    - (i) is likely to defeat the purpose of the exercise of the power; or
    - (ii) would serve no useful purpose.
- (3) The notice must state—
  - (a) the power that the Minister proposes to exercise; and
  - (b) the reasons for exercising the power; and
  - (c) any remedial action that the local government or councillor should take; and
  - (d) a reasonable time within which the local government or councillor may make submissions to the Minister about the proposal to exercise the power.
- (4) The reasons stated in the notice are the only reasons that can be relied on in support of the exercise of the power.
- (5) The Minister must have regard to all submissions that are made by the local government or councillor within the time specified in the notice.
- (6) If—
  - (a) the Minister receives no submissions from the local government or councillor within the time specified in the notice; or



- (b) the submissions from the local government or councillor do not contain reasonable grounds to persuade the Minister not to exercise the power;

the Minister may exercise the power without further notice to the local government or councillor.

## 121 Removing unsound decisions

- (1) This section applies if the Minister reasonably believes that a decision of the local government is contrary to any law or inconsistent with the local government principles.
- (2) A *decision* is—
  - (a) a local law; or
  - (b) a resolution; or
  - (c) an order to give effect to a resolution; or
  - (d) a planning scheme; or
  - (e) a part of a decision mentioned in paragraphs (a) to (d).
- (3) The Minister, by a gazette notice, may—
  - (a) suspend the decision, for a specified period or indefinitely; or
  - (b) revoke the decision.
- (4) The gazette notice must state—
  - (a) how the decision is contrary to a law or inconsistent with the local government principles; and
  - (b) if the decision has been suspended—how the decision may be amended so that it is no longer contrary to the law or inconsistent with the local government principles.
- (5) If the Minister suspends the decision, the decision stops having effect for the period specified in the gazette notice.
- (6) If the Minister revokes the decision—

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- (a) the decision stops having effect on the day specified in the gazette notice; or
  - (b) if no day is specified in the gazette notice—the decision is taken to never have had effect.
- (7) The State is not liable for any loss or expense incurred by a person because a local government’s decision is suspended or revoked under this section.

## **122 Removing a councillor**

- (1) This section applies if—
- (a) the tribunal recommends under section 180 that a councillor be suspended or dismissed; or
  - (b) the Minister reasonably believes that a councillor has seriously or continuously breached the local government principles; or
  - (c) the Minister reasonably believes that a councillor is incapable of performing their responsibilities.
- (2) The Minister may recommend that the Governor in Council—
- (a) if the tribunal recommends that a councillor be suspended or dismissed—suspend or dismiss the councillor; or
  - (b) if the proposal in the Minister’s notice under section 120 was to suspend the councillor for a stated period—suspend the councillor for a period that is no longer than the stated period; or
  - (c) if the proposal in the Minister’s notice under section 120 was to dismiss the councillor—suspend or dismiss the councillor.
- (3) The Governor in Council may give effect to the Minister’s recommendation under a regulation.

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## **123 Dissolving a local government**

- (1) This section applies if—
  - (a) the tribunal recommends under section 180 that every councillor be suspended or dismissed; or
  - (b) the Minister reasonably believes that a local government has seriously or continuously breached the local government principles; or
  - (c) the Minister reasonably believes that a local government is incapable of performing its responsibilities.
- (2) The Minister may recommend that the Governor in Council—
  - (a) dissolve the local government; and
  - (b) appoint an interim administrator to act in place of the councillors until the conclusion of a fresh election of councillors.
- (3) The Governor in Council may give effect to the Minister's recommendation under a regulation.
- (4) The regulation has effect in accordance with the requirements of the *Constitution of Queensland 2001*, chapter 7, part 2.
- (5) It is Parliament's intention that a fresh election of the councillors of the local government should be held as soon as practicable after the Legislative Assembly ratifies the dissolution of the local government.

## **124 Interim administrator acts for the councillors temporarily**

- (1) This section applies if an interim administrator is appointed to act in place of the councillors of a local government.
- (2) The interim administrator has all the responsibilities and powers of—
  - (a) the local government; and
  - (b) the mayor.

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- (3) However, a regulation may limit the responsibilities and powers of the interim administrator.
- (4) The interim administrator must exercise power under the name of 'interim administrator of the (name of the local government)'.
- (5) This Act and other Acts apply to the interim administrator, with all necessary changes, and any changes prescribed under a regulation, as if the interim administrator were the local government.
- (6) The Governor in Council may direct a local government for which an interim administrator is appointed to pay to the Minister an amount specified in the direction for the costs and expenses of the interim administrator.
- (7) The specified amount may include the salary and allowances payable to an officer of the public service who is appointed as interim administrator.
- (8) The direction may specify a time for payment.
- (9) The specified amount is a debt payable to the State.
- (10) The Minister may create an advisory committee to give the interim administrator advice about the performance of the local government's responsibilities.

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## Part 2                      The public

### Division 1                Powers of authorised persons

#### Subdivision 1        Introduction

##### 125    What this division is about

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

*Note—*

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

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

*Example—*

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

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

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

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

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

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

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

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

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

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

- (1) This section applies if an authorised person wants to enter a public place to ensure that the public place complies with the Local Government Acts.

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

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

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



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

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

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

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

*Example—*

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

- (5) The magistrate may issue the warrant only if the magistrate is satisfied that there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity that may provide evidence of an offence against a Local Government Act (the *evidence*); and
  - (b) the evidence is at the place, or may be at the place within the next 7 days.
- (6) The warrant must state—
  - (a) the evidence for which the warrant is issued; and
  - (b) that the authorised person may, with necessary and reasonable help and force, enter the property and exercise an authorised person’s powers under this Act; and
  - (c) the hours of the day or night when the property may be entered; and
  - (d) the day (within 14 days after the warrant’s issue) when the warrant ends.
- (7) The magistrate must keep a record of the reasons for issuing the warrant.
- (8) A warrant is not invalidated by a defect in the warrant, or in compliance with section 131, unless the defect affects the substance of the warrant in a material particular.
- (9) As soon as an authorised person enters private property under a warrant, the authorised person must do, or make a reasonable attempt to do, the following things—

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

### **131 Warrants—applications made electronically**

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

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

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

### **132 Entering under an application, permit or notice**

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

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

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

- (1) An authorised person may enter a property (other than a home on the property) without the permission of the occupier of the property, at any reasonable time of the day or night, under an approved inspection program.
- (2) An ***approved inspection program*** is a program, approved by a local government, under which an authorised person may enter and inspect properties in the local government area to ensure the Local Government Acts are being complied with.

*Example of an approved inspection program—*

a program to ensure that swimming pools are fenced in accordance with a local law

- (3) The local government must give, or must make a reasonable attempt to give, the occupier of the property a written notice that informs the occupier of the following—
  - (a) the local government's intention to enter the property;
  - (b) the reason for entering the property;
  - (c) an estimation of when the property will be entered.

*Example—*

A local government may give the written notice to an occupier of a property by dropping a flyer in the letterbox for the property.

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

### **134 Approving an inspection program**

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

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- (c) for a systematic inspection program that allows a type of property to be entered and inspected—a description of the type of property; and
  - (d) for a selective inspection program—the objective criteria for selecting the properties to be entered and inspected; and
  - (e) the period (of not more than 3 months or another period prescribed under a regulation) over which the program is to be carried out.
- (5) The local government must give the public notice of the approval of an inspection program, at least 14 days, but not more than 28 days, before the approved inspection program starts.
- (6) The notice must be published—
  - (a) in a newspaper that is circulating generally in the local government area; and
  - (b) on the local government’s website.
- (7) The notice must state the following—
  - (a) the name of the local government;
  - (b) the purpose and scope of the program, in general terms;
  - (c) when the program starts;
  - (d) the period over which the program is to be carried out;
  - (e) that the public may inspect a copy of the resolution that approved the program at the local government’s public office until the end of the program;
  - (f) that a copy of the resolution that approved the program may be purchased at the local government’s public office until the end of the program;
  - (g) the price of a copy of the resolution that approved the program.



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- (8) The price of a copy of the resolution that approved the program must be no more than the cost to the local government of making the copy available for purchase.
  - (9) From the time when the notice is published in the newspaper until the end of the program—
    - (a) the public may inspect a copy of the resolution that approved the program at the local government’s public office; and
    - (b) copies of the resolution that approved the program must be available for purchase at the local government’s public office at the price stated in the notice.

**134A Entry by authorised person, at reasonable times, to inspect regulated pools**

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

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- (ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and
  - (b) produce his or her identity card for the occupier of the property to inspect.
- (3) In this section—
- pool safety standard* see the Building Act, section 231D.

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

- (1) This section explains the powers that an authorised person has after entering a property, other than entering a property—
- (a) to ask the occupier of the property for permission to stay on the property; or
  - (b) under section 132, 133 or 134A.
- (2) The authorised person may—
- (a) search any part of the property; or
  - (b) inspect, test, photograph or film anything that is in or on the property; or
  - (c) copy a document that is in or on the property; or
  - (d) take samples of or from anything that is in or on the property; or
  - (e) take into or onto the property any persons, equipment and materials that the authorised person reasonably requires for exercising the authorised person's powers; or
  - (f) require the occupier of the property, or a person in or on the property, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e).
- (3) An authorised person may exercise a power under subsection (2) only if exercising the power is necessary for the purpose related to the entry of the property.

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- (4) If a person is required to give reasonable help under subsection (2)(f), the person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—8 penalty units.

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

### 136 Authorised person to give notice of damage

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

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

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

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

### **138 What this division is about**

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

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

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- (7) However, the local government may authorise an employee or agent to act under this division only if the employee or agent is appropriately qualified or trained to exercise a power or perform a responsibility under this division.

### **138A Identity card for local government workers**

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

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

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

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

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

- (1) This section applies if—
  - (a) a local government gives a remedial notice to the owner of a property; and
  - (b) the owner is not the occupier of the property.

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

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

- (1) This section applies if—
  - (a) the owner of a property fails—
    - (i) to take the action in relation to the property that is required under a remedial notice; or
    - (ii) to pay money that is payable in relation to the property under a Local Government Act (including rates, for example); and
  - (b) the occupier of the property is not the owner of the property.
- (2) The occupier of the property may—
  - (a) take the action that is required, and recover the amount that the occupier properly and reasonably incurs in taking the action as a debt payable by the owner; or
  - (b) pay the money that is payable, and recover the money as a debt payable by the owner.
- (3) For example, if the occupier is the owner's tenant, the occupier may deduct the money from any rent that the

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occupier owes the owner, without being in breach of the tenancy agreement.

**142 Entry by a local government worker, with reasonable written notice, under a remedial notice**

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



- (6) The local government must give the person who failed to take the action written notice of the amount of the debt.
- (7) If the debt is not paid within 30 days after the date of the written notice, the local government may recover the debt as if the debt were overdue rates.
- (8) Interest is payable on the debt at the same rate that interest is payable on overdue rates levied by the local government.

**143 Entry by a local government worker, with reasonable written notice, to take materials**

- (1) This section applies if, in the circumstances, a local government has no other reasonably practicable way of obtaining materials other than by removing the materials from relevant land.
- (2) **Relevant land** means land, other than protected land, that is—
  - (a) within the local government area; or
  - (b) if the local government has the written approval of the Minister, under section 9(4)(b)(i), to exercise its powers outside its local government area—outside its local government area; or
  - (c) if the local government may exercise a power in another local government’s area for the purpose of a joint government activity—within the other local government’s area.
- (3) **Protected land** is land that is—
  - (a) the site of, or curtilage around, a home or other structure; or
  - (b) a court, lawn, park, planted walk or avenue or yard; or
  - (c) under cultivation (including a garden, nursery or plantation, for example); or
  - (d) a state forest or timber reserve under the Forestry Act; or

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- (e) a protected area under the *Nature Conservation Act 1992*; or
  - (f) the wet tropics area under the *Wet Tropics World Heritage Protection and Management Act 1993*.
- (4) After giving reasonable written notice to the owner and the occupier of the rateable land, a local government worker may—
- (a) enter the land without the permission of the occupier of the land; and
  - (b) search for materials that the local government requires to perform its responsibilities; and
  - (c) remove the materials from the land.

*Example—*

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

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

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**144 Entry by a local government worker, at reasonable times, to repair etc. facilities**

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

**145 Entry by a local government worker, at any time, for urgent action**

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

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*Example—*

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

- (2) However, the local government worker must, as soon as reasonably practicable after the local government worker enters the property—
  - (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the local government worker is authorised under this Act to enter the property without the permission of the occupier; and
  - (b) produce his or her identity card for the occupier of the property to inspect.

**146 Entry with, and in accordance with, a court order**

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

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magistrate requires about the application in the way that the magistrate requires.

*Example—*

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

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

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opportunity to allow the person to immediately enter the property without using force.

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

- (1) A local government worker who enters a property—
  - (a) must not cause, or contribute to, damage to any structure or works on the property; and
  - (b) must take all reasonable steps to ensure that the worker causes as little inconvenience, and does as little other damage, as is practicable in the circumstances.
- (2) If a person incurs damage or loss because of the exercise, or purported exercise, of a power under this division (including the loss of the value of materials removed from a property, or the reduction in the value of the property, for example), the local government must pay the person compensation.
- (3) The compensation equals—
  - (a) the amount agreed between the person and local government; or
  - (b) if the person and local government can not agree, the amount that is decided by a court.
- (4) The court may make any order about costs that the court considers just.

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

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

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## **Part 3                      Investigation of local    government records**

### **Division 1                Introduction**

#### **148A    What this part is about**

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

### **Division 2                Investigations by department**

#### **148B    Producing authorised officer's identity card**

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

#### **148C    Making of inquiries for department**

- (1) This section applies if the department's chief executive suspects or believes, on reasonable grounds, that information included in a register or record of a local government is incorrect because of an error or omission.
- (2) An authorised officer, if directed by the department's chief executive, may make all inquiries the chief executive

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considers to be reasonable to find out whether and to what extent the register or record is incorrect.

#### **148D Power to require information or document for department investigation**

- (1) This section applies if the department's chief executive suspects or believes, on reasonable grounds, that—
  - (a) either or both of the following apply—
    - (i) information included in a register or record of a local government is incorrect because of an error or omission;
    - (ii) an offence against this Act has been committed relating to a register or record; and
  - (b) a person—
    - (i) is able to give information about the error, omission or offence; or
    - (ii) holds a document relating to the error, omission or offence.
- (2) The department's chief executive or, if directed by the chief executive, an authorised officer may require the person to give the information or produce the document.
- (3) When making the requirement, the department's chief executive or authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (4) The person must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (5) If the person is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information or producing the document might tend to incriminate the person.



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- (6) It is a defence in a prosecution under subsection (4) that the information or document sought by the department's chief executive or authorised officer is not relevant to the error, omission or offence.
  - (7) If the person produces the document to the department's chief executive or authorised officer, the chief executive or officer—
    - (a) may keep the document to take an extract from it or make a copy of it; and
    - (b) must return the document to the person as soon as practicable after taking the extract or making the copy.

### **Division 3                      Investigations by local government**

#### **148E    Producing authorised person's identity card**

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

#### **148F    Making of inquiries for local government**

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

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out whether and to what extent the register or record is incorrect.

### **148G Power to require information or document for local government investigation**

- (1) This section applies if the chief executive officer suspects or believes, on reasonable grounds, that—
  - (a) either or both of the following apply—
    - (i) information included in a register or record of the local government is incorrect because of an error or omission;
    - (ii) an offence against this Act has been committed relating to a register or record; and
  - (b) a person—
    - (i) is able to give information about the error, omission or offence; or
    - (ii) holds a document relating to the error, omission or offence.
- (2) The chief executive officer or, if directed by the chief executive officer, an authorised person may require the person to give the information or produce the document.
- (3) When making the requirement, the chief executive officer or authorised person must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.
- (4) The person must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—40 penalty units.
- (5) If the person is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information or producing the document might tend to incriminate the person.

- (6) It is a defence in a prosecution under subsection (4) that the information or document sought by the chief executive officer or authorised person is not relevant to the error, omission or offence.
- (7) If the person produces the document to the chief executive officer or authorised person, the chief executive or authorised person—
  - (a) may keep the document to take an extract from it or make a copy of it; and
  - (b) must return the document to the person as soon as practicable after taking the extract or making the copy.

#### **148H Referral to department**

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

#### **148I Chief executive officer not subject to direction**

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



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**150 Impersonating authorised persons and authorised officers**

- (1) A person must not pretend to be an authorised person.  
Maximum penalty—50 penalty units.
- (2) A person must not pretend to be an authorised officer.  
Maximum penalty—50 penalty units.

**150A Duty to make documents available**

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

*Example—*

preventing the public from viewing a record under section 177(12)(a)

Maximum penalty—10 penalty units.

## **Chapter 6 Administration**

### **Part 1 Introduction**

**151 What this chapter is about**

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

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- (b) acting appointments; and
- (c) conditions of appointment; and
- (d) ending appointments.

## **Part 2                      Councillors**

### **Division 1                      Qualifications of councillors**

#### **152      Qualifications of councillors**

- (1) A person is qualified to be a councillor of a local government, other than the Torres Strait Island Regional Council, only if the person—
  - (a) is an Australian citizen; and
  - (b) resides in the local government’s area; and
  - (c) is not disqualified from being a councillor because of a section in this division.
- (2) A person is qualified to be the mayor of the Torres Strait Island Regional Council only if the person—
  - (a) is an Australian citizen; and
  - (b) is a Torres Strait Islander or an Aborigine; and
  - (c) on the nomination day for the election, has lived in the local government area for the 2 years immediately before the nomination day; and
  - (d) is not disqualified from being a councillor because of a section in this division.
- (3) A person is qualified to be another councillor of the Torres Strait Island Regional Council only if the person—
  - (a) is an Australian citizen; and

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- (b) is a Torres Strait Islander or an Aborigine; and
  - (c) on the nomination day for the election, has lived in the particular division for which the person is to be a candidate for the 2 years immediately before the nomination day; and
  - (d) is not disqualified from being a councillor because of a section in this division.

### 153 Disqualification for certain offences

- (1) A person can not be a councillor—
  - (a) after the person is convicted of a treason offence, unless the person is pardoned of the treason offence; or
  - (b) for 10 years after the person is convicted of an electoral offence; or
  - (c) for 7 years after the person is convicted of a bribery offence; or
  - (d) for 4 years after the person is convicted of an integrity offence; or
  - (e) for the remainder of the term before the next quadrennial elections, if the person has been dismissed as a councillor under section 122 or 123.
- (2) A *treason offence* is an offence of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth.
- (3) An *electoral offence* is—
  - (a) a disqualifying electoral offence under the Electoral Act; or
  - (b) an offence that would be a disqualifying electoral offence had the conviction been recorded after the commencement of the *Electoral and Other Acts Amendment Act 2002*.

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- (4) A *bribery offence* is an offence against—
  - (a) section 98C of the Criminal Code; or
  - (b) a corresponding law of another State or the Commonwealth; or
  - (c) another offence prescribed under a regulation.
- (5) An *integrity offence* is an offence against—
  - (a) section 171, 172, 173, 174(3), 234; or
  - (b) section 98B, 98E or 98G(a) or (b) of the Criminal Code; or
  - (c) another offence prescribed under a regulation.
- (6) A person automatically stops being a councillor when the person is convicted of—
  - (a) a treason offence; or
  - (b) an electoral offence; or
  - (c) a bribery offence; or
  - (d) an integrity offence.
- (7) A person is taken to have been convicted of an offence—
  - (a) if the person appeals the conviction—when the appeal is dismissed, struck out or discontinued; or
  - (b) if the person does not appeal the conviction—at the end of the time within which an appeal must by law be started.

## 154 Disqualification of prisoners

- (1) A person can not be a councillor while the person is a prisoner.
- (2) A *prisoner* is a person who—
  - (a) is serving a period of imprisonment; or



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

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

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

### **156 Disqualification during bankruptcy**

- (1) A person can not be a councillor while the person is a bankrupt.
- (2) A person is a *bankrupt* if, under a bankruptcy law—
  - (a) the person is an undischarged bankrupt; or
  - (b) the person has executed a deed of arrangement, and the terms of the deed have not been fully complied with; or
  - (c) the person's creditors have accepted a composition, and a final payment has not been made under the composition.
- (3) A *bankruptcy law* is—
  - (a) the *Bankruptcy Act 1966* (Cwlth); or

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- (b) a corresponding law of another jurisdiction, including a jurisdiction outside Australia.
- (4) A person automatically stops being a councillor when the person becomes a bankrupt.

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

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

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

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

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

Maximum penalty—85 penalty units.

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

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

A councillor's term starts on—

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

### **160 When a councillor's term ends**

A councillor's term ends—

- (a) if the councillor is elected at a quadrennial election or at a fresh election—at the conclusion of the next quadrennial election; or
- (b) if the councillor is elected at a fresh election and a declaration is also made under a regulation—at the conclusion of the quadrennial election after the next quadrennial election; or
- (c) if the councillor is elected or appointed to fill a vacancy in the office of another councillor—at the end of the other councillor's term; or
- (d) when the Legislative Assembly ratifies the dissolution of the local government under section 123; or
- (e) when the councillor's office becomes otherwise vacant.

*Note—*

See section 162 for an explanation of when this happens.

## **Division 3                      Vacancies in councillor's office**

### **161      What this division is about**

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

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- (b) ends on the day before the first anniversary of the last quadrennial elections.
- (4) The *middle* of the local government's term is the period of 18 months that—
  - (a) starts on the first anniversary of the last quadrennial elections; and
  - (b) ends on the day before the final part of the local government's term starts.
- (5) The *final part* of the local government's term is the period that—
  - (a) starts 30 months after the last quadrennial elections were held; and
  - (b) ends on the day before the next quadrennial elections are held.

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

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

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- (2) A *local government employee* does not include—
- (a) a person employed under a federally funded community development project for Aborigines or Torres Strait Islanders; or
  - (b) a person prescribed under a regulation.

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

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

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

- (1) This section applies if the local government is to fill a vacant office of a mayor.
- (2) The vacant office must be filled by a by-election.

### **165 Acting mayor**

- (1) The deputy mayor acts for the mayor during—
  - (a) the absence or temporary incapacity of the mayor; or
  - (b) a vacancy in the office of mayor.

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

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

- (1) This section applies if the local government is to fill a vacant office of a councillor (the *former councillor*) who is not the mayor.
- (2) If the office becomes vacant during the beginning of the local government's term, the local government must fill the vacant office by either—
- (a) a by-election; or
  - (b) appointing the runner-up in the last election.
- (3) The *runner-up* in the last election is the person who would have been elected if the former councillor had not won the last quadrennial election.

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

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

### **167      Councillors and local government jobs**

- (1) If a person becomes a councillor while the person is a local government employee, the person is taken to have resigned as a local government employee on the day before the person becomes a councillor.
- (2) A *local government employee* includes an employee of a type of entity prescribed under a regulation.
- (3) However, a *local government employee* does not include a person who—
  - (a) is employed under a federally funded community development project for Aborigines or Torres Strait Islanders; or
  - (b) is a member of a class of employees that is prescribed under a regulation.

### **168      Senior councillors and full-time government jobs**

- (1) A person can not be a senior councillor and have a full-time government job at the same time.
- (2) A *senior councillor* is—
  - (a) a councillor of a local government with a remuneration category of 5 or higher; or
  - (b) the mayor of a local government with a remuneration category of 3 or 4; or
  - (c) a councillor of another local government that is prescribed under a regulation.
- (3) A person has a *full-time government job* if—
  - (a) the person holds a full-time appointment with a government entity or the parliamentary service; and



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- (b) the person or someone else (including a family member, for example) is entitled to a reward because the person has the job.
- (4) However, subsection (1) does not apply if—
- (a) the senior councillor, before accepting the full-time government job—
    - (i) signs a waiver that irrevocably waives the entitlement to the reward; and
    - (ii) gives a copy of the waiver to the mayor or, if the senior councillor is the mayor, to the chief executive officer; or
  - (b) an Act expressly requires or allows the senior councillor to have the full-time government job (including by requiring the senior councillor to be a member of a board or tribunal, for example).
- (5) If a senior councillor purports to accept an appointment in contravention of subsection (1), the appointment is void.
- (6) If a person becomes a senior councillor while the person has a full-time government job, the person is taken to have resigned from the full-time government job on the day before the person became a senior councillor.
- (7) This section does not stop a senior councillor from—
- (a) having a part-time government job; or
  - (b) converting a full-time government job to a part-time government job, before the person becomes a senior councillor.
- (8) If a full-time government job is converted to a part-time government job by a senior councillor, the conversion does not—
- (a) prejudice the councillor's existing or accrued rights to superannuation or recreation, sick, long service or other leave; or
  - (b) interrupt continuity of the councillor's service; or

- (c) constitute a termination of employment, retrenchment or redundancy.

## **Division 5                      Obligations of councillors**

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

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

### **170      Giving directions to local government staff**

- (1) The mayor may give a direction to the chief executive officer.

*Note—*

See section 258 for the prohibition on the mayor delegating this power.

- (2) However, no other councillor may give a direction to the chief executive officer.
- (3) No councillor, including the mayor, may give a direction to any other local government employee.

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## 170A Requests by councillors for advice or information

- (1) A councillor may request a local government employee provide advice to help the councillor make a decision.
- (2) However, if the local government employee is not the chief executive officer, the request must comply with the advice guidelines.
- (3) The *advice guidelines* are guidelines, made by the chief executive officer, about the way in which a councillor is to ask a local government employee for advice to help the councillor make a decision.
- (4) If a councillor asks for help or advice from a local government employee other than under the advice guidelines, the employee must tell the chief executive officer about the request as soon as is practicable.
- (5) A councillor may, subject to any limits prescribed under a regulation, request the chief executive officer provide the councillor with information, that the local government has access to, relating to the local government area.

*Example of a limit prescribed under a regulation—*

A regulation may prescribe the maximum cost to a local government of providing information to a councillor.

- (6) Subsection (5) does not apply to information—
  - (a) that is a record of the regional conduct review panel; or
  - (b) if disclosure of the information to the councillor would be contrary to an order of a court or tribunal; or
  - (c) that would be privileged from production in a legal proceeding on the ground of legal professional privilege.
- (7) The advice guidelines are invalid to the extent the guidelines provides for a councillor or local government employee to decide, at the councillor or employee's discretion—
  - (a) when the guidelines apply; or
  - (b) the way in which a request complies with the guidelines.

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- (8) In this section a *local government employee* includes a person prescribed under a regulation.
- (9) The chief executive officer must make all reasonable endeavours to comply with a request made of the chief executive officer under this section.

Maximum penalty for subsection (9)—10 penalty units.

### **171 Use of information by councillors**

- (1) A person who is, or has been, a councillor must not use information that was acquired as a councillor to—
  - (a) gain, directly or indirectly, a financial advantage for the person or someone else; or
  - (b) cause detriment to the local government.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to information that is lawfully available to the public.
- (3) A councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government.

*Note—*

A contravention of subsection (3) is misconduct that is dealt with by the tribunal.

### **172 Councillor's material personal interest at a meeting**

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

*Note—*

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

- (2) A councillor has a ***material personal interest*** in the matter if any of the following persons stands to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of the consideration of the matter at the meeting—
- (a) the councillor;
  - (b) a spouse of the councillor;
  - (c) a parent, child or sibling of the councillor;
  - (d) a partner of the councillor;
  - (e) an employer (other than a government entity) of the councillor;
  - (f) an entity (other than a government entity) of which the councillor is a member;
  - (g) another person prescribed under a regulation.
- (3) The councillor must—
- (a) inform the meeting of the councillor's material personal interest in the matter; and
  - (b) leave the meeting room (including any area set aside for the public), and stay out of the meeting room while the matter is being discussed and voted on.

Maximum penalty—

- (a) if the councillor votes on the matter with an intention to gain a benefit, or avoid a loss, for the councillor or someone else—200 penalty units or 2 years imprisonment; or
  - (b) otherwise—85 penalty units.
- (4) However, a councillor does not contravene subsection (3) by taking part in the meeting, or being in the chamber where the meeting is being conducted, if—

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- (a) the councillor is a person to whom approval is given under subsection (5); and
  - (b) the councillor is complying with all conditions on which the approval is given.
- (5) The Minister may, by signed notice, approve a councillor taking part in the meeting, or being in the chamber where the meeting is being conducted, if—
- (a) because of the number of councillors subject to the obligation under this section, conduct of the meeting would be obstructed if the approval were not given; or
  - (b) it appears to the Minister to be in the interests of the local government area that the approval be given.
- (6) The Minister may give the approval subject to conditions stated in the notice.
- (7) The following information must be recorded in the minutes of the meeting, and on the local government’s website—
- (a) the name of the councillor who has the material personal interest, or possible material personal interest, in a matter;
  - (b) the nature of the material personal interest, or possible material personal interest, as described by the councillor;
  - (c) whether the councillor took part in the meeting, or was in the chamber during the meeting, under an approval under subsection (5).

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

- (1) This section applies if—
- (a) a matter is to be discussed at a meeting of a local government, or any of its committees; and
  - (b) a councillor has a conflict of interest, or could reasonably be taken to have a conflict of interest, in the matter.

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- (2) The councillor must inform the meeting about the councillor's interest in the matter.

Maximum penalty—100 penalty units.

- (3) A ***conflict of interest*** is a conflict between—
- (a) a councillor's personal interests (including personal interests arising from the councillor's relationships or club memberships, for example); and
  - (b) the public interest;
- that might lead to a decision that is contrary to the public interest.
- (4) If the other persons who are entitled to vote at the meeting are informed about a councillor's interest in a matter, by the councillor or someone else, the other persons must—
- (a) decide whether the councillor has a conflict of interest, or could reasonably be taken to have a conflict of interest, in the matter; and
  - (b) if the other persons decide that is the case—direct the councillor to leave the meeting room (including any area set aside for the public), and stay out of the meeting room while the matter is being discussed and voted on.
- (5) The councillor must comply with the decision, unless the councillor has a reasonable excuse.
- Maximum penalty—100 penalty units.
- (6) Subsections (4) and (5) do not apply if a majority of the councillors at a meeting inform the meeting under subsection (2).
- (7) The following must be recorded in the minutes of the meeting, and on the local government's website—
- (a) the name of the councillor who has a conflict of interest, or could reasonably be taken to have a conflict of interest;
  - (b) the nature of the interest, as described by the councillor;

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- (c) if the councillor voted on the matter—how the councillor voted on the matter;
- (d) how the majority of persons who were entitled to vote at the meeting voted on the matter.

**174 Duty to report another councillor’s material personal interest, conflict of interest or misconduct**

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

Maximum penalty—100 penalty units or 2 years imprisonment.



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## 175 Post-election meetings

- (1) A local government must hold a meeting within 14 days after—
  - (a) the conclusion of each quadrennial election; and
  - (b) the conclusion of a fresh election of its councillors.
- (2) The local government must, by resolution, appoint a deputy mayor from its councillors (other than the mayor)—
  - (a) at that meeting; and
  - (b) at the first meeting after the office of the councillor who is the deputy mayor becomes vacant.

## Division 6 Conduct and performance of councillors

### 176 What this division is about

- (1) This division is about dealing with complaints about the conduct and performance of councillors, to ensure that—
  - (a) appropriate standards of conduct and performance are maintained; and
  - (b) a councillor who engages in misconduct is disciplined.
- (2) A ***councillor*** includes a person who is no longer a councillor but who was a councillor when the misconduct is alleged to have happened.
- (3) ***Misconduct*** is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor—
  - (a) that adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor's responsibilities or exercise of the councillor's powers; or
  - (b) that is or involves—

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- (i) the performance of the councillor's responsibilities, or the exercise of the councillor's powers, in a way that is not honest or is not impartial; or
    - (ii) a breach of the trust placed in the councillor; or
    - (iii) a misuse of information or material acquired in or in connection with the performance of the councillor's responsibilities, whether the misuse is for the benefit of the councillor or someone else; or
  - (c) that breaches section 171(3) or 174(2); or
  - (d) that is referred to the department's chief executive as misconduct under section 181.
- (4) ***Inappropriate conduct*** is conduct that is not appropriate conduct for a representative of a local government, but is not misconduct, including for example—
- (a) a councillor failing to comply with the local government's procedures; or
  - (b) a councillor behaving in an offensive or disorderly way in a meeting of the local government or any of its committees.
- (5) It is irrelevant whether the conduct that constitutes misconduct was engaged in—
- (a) within Queensland or elsewhere; or
  - (b) when the councillor was not exercising the responsibilities of a councillor.
- (6) In summary, the process for reviewing complaints of misconduct by councillors is as follows—
- *assessing complaints*—the chief executive officer assesses each complaint of misconduct, and refers all complaints of misconduct that are not frivolous or vexatious to the department's chief executive

- *notifying councillor of the hearing of a complaint of misconduct*—the department’s chief executive notifies the councillor about the hearing of the complaint
- *hearing and deciding complaints*—the regional conduct review panel or tribunal hears the complaint and decides whether or not the councillor engaged in misconduct, and if so, what is the appropriate disciplinary action
- *taking disciplinary action*—disciplinary action is taken against a councillor who has engaged in misconduct, by the regional conduct review panel, the tribunal or the Minister, depending on the severity of the misconduct.

(7) A **regional conduct review panel** is a body, created under this Act, that is responsible for hearing and deciding a complaint of misconduct by a councillor.

*Note—*

See chapter 6, part 4 for more information about the creation of a regional conduct review panel.

(8) The **tribunal** is a body, created under this Act, that is responsible (amongst other things) for hearing and deciding the most serious complaints of misconduct by a councillor.

*Note—*

See chapter 6, part 3 for more information about the creation of the tribunal, and section 183 for the tribunal’s other responsibilities.

(9) To remove any doubt, a councillor may be dealt with for an act or omission that constitutes misconduct under this Act, and also dealt with for the same act or omission—

- (a) as the commission of an offence; or
- (b) under the Crime and Misconduct Act.

(10) A decision under this part by any of the following persons is not subject to appeal—

- (a) a regional conduct review panel;
- (b) the tribunal;
- (c) the chief executive officer;

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- (d) a mayor;
- (e) a deputy mayor;
- (f) the chairperson of a meeting.

*Note—*

See section 244 for more information.

### **177 Assessing complaints**

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

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

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

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- (b) the outcome of each written complaint, including any disciplinary action or other action that was taken in relation to the complaint.
- (12) The chief executive officer must ensure that the public may inspect the record—
  - (a) at the local government’s public office; or
  - (b) on the local government’s website.
- (13) However, subsection (12) does not apply to the record of a written complaint that—
  - (a) the chief executive officer has assessed as being about a frivolous matter or as having been made vexatiously; or
  - (b) is a public interest disclosure within the meaning of the *Public Interest Disclosure Act 2010*.
- (14) If the department’s chief executive receives a complaint about misconduct that is a breach of section 171(3), the department’s chief executive must refer the complaint to the tribunal.

**178 Notifying councillor of the hearing of a complaint of misconduct**

- (1) This section applies if the chief executive officer refers a complaint to the department’s chief executive.
- (2) The department’s chief executive must give the accused councillor a written notice that informs the councillor about the hearing of the complaint of misconduct.
- (3) The notice must state—
  - (a) the misconduct that is alleged to have been engaged in by the councillor; and
  - (b) the time and date when the hearing is to begin; and
  - (c) the place where the complaint is to be heard.
- (4) The notice must be given to the councillor at least 7 days before the hearing is to begin.

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- (5) If all reasonable attempts to give the notice to the councillor have failed, the department's chief executive may—
- (a) publish the notice, at least 7 days before the hearing is to begin—
    - (i) in a newspaper that is circulating in the local government area; and
    - (ii) on the department's website; or
  - (b) direct the local government to publish the notice on the local government's website at least 7 days before the hearing is to begin.

## **179 Hearing and deciding complaints**

- (1) This section is about the hearing of a complaint of misconduct by a regional conduct review panel or the tribunal.
- (2) A regional conduct review panel or the tribunal may hear complaints of misconduct by a number of councillors in the same hearing, unless the defence of any of the councillors may be prejudiced.
- (3) The hearing must be conducted in the way set out in chapter 7, part 1.
- (4) The regional conduct review panel or tribunal may decide all or part of the hearing from the documents brought before the regional conduct review panel or tribunal, without the parties or the witnesses appearing, if—
  - (a) the regional conduct review panel or tribunal considers it appropriate in all the circumstances; or
  - (b) the parties agree.
- (5) The standard of proof in the hearing is the balance of probabilities.
- (6) The regional conduct review panel or tribunal must keep a written record of the hearing, in which it records—
  - (a) the statements of the councillor and all witnesses; and

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- (b) any reports relating to the councillor that are tendered at the hearing.

## **180 Taking disciplinary action**

- (1) This section applies if, after hearing a complaint of misconduct, the regional conduct review panel or tribunal decides that the councillor engaged in misconduct.
- (2) The regional conduct review panel may make any 1 or more of the following orders or recommendations that it considers appropriate in view of the circumstances relating to the misconduct—
  - (a) an order that the councillor be counselled about the misconduct, and how not to repeat the misconduct;
  - (b) an order that the councillor make an admission of error or an apology;
  - (c) an order that the councillor participate in mediation with another person;
  - (d) a recommendation to the department's chief executive to monitor the councillor or the local government for compliance with the Local Government Acts.
- (3) However, if the regional conduct review panel considers that more serious disciplinary action should be taken, the regional conduct review panel must report the matter to the tribunal for the tribunal to take disciplinary action.
- (4) The tribunal may make any order or recommendation that it considers appropriate in view of the circumstances relating to the misconduct.
- (5) For example, the tribunal may make any 1 or more of the following orders or recommendations—
  - (a) an order that the councillor be counselled about the misconduct, and how not to repeat the misconduct;
  - (b) an order that the councillor make an admission of error or an apology;



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- (c) an order that the councillor participate in mediation with another person;
  - (d) a recommendation to the department's chief executive to monitor the councillor or the local government for compliance with the Local Government Acts;
  - (e) an order that the councillor forfeit an allowance, benefit, payment or privilege;
  - (f) an order that the councillor reimburse the local government;
  - (g) a recommendation to the Minister that the councillor be suspended for a specified period, either wholly or from performing particular functions;

*Examples of particular functions—*

- attending council meetings or offices
  - representing the council at public functions
- (h) a recommendation to the Minister that the councillor be dismissed;
  - (i) a recommendation to the Crime and Misconduct Commission or the Commissioner of Police that the councillor's conduct be further investigated.
- (6) A recommendation mentioned in subsection (5)(g) may include a recommendation about the details of the suspension.

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

that the suspension be with or without pay

- (7) When deciding what disciplinary action is appropriate in view of the circumstances relating to the misconduct, the regional conduct review panel or tribunal may consider—
  - (a) any misconduct of the councillor in the past; and
  - (b) any allegation made in the hearing that was admitted, or was not challenged.
- (8) However, the regional conduct review panel or tribunal may consider an allegation that was not admitted, or was

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challenged, only if the regional conduct review panel or tribunal is satisfied that the allegation is true.

- (9) The degree to which the regional conduct review panel or tribunal must be satisfied depends on the consequences, that are adverse to the councillor, of finding the allegation to be true.

### **181 Inappropriate conduct**

- (1) If the chief executive officer refers a complaint to the mayor, the mayor may make either or both of the following orders that the mayor considers appropriate in the circumstances—
- (a) an order reprimanding the councillor for the inappropriate conduct;
  - (b) an order that any repeat of the inappropriate conduct be referred to the department's chief executive as misconduct.
- (2) If inappropriate conduct happens in a meeting of the local government or its committees, the chairperson of the meeting may make any 1 or more of the following orders that the chairperson considers appropriate in the circumstances—
- (a) an order that the councillor's inappropriate conduct be noted in the minutes of the meeting;
  - (b) an order that the councillor leave the place where the meeting is being held (including any area set aside for the public), and stay out of the place for the rest of the meeting;
  - (c) an order that a councillor who fails to leave the place where the meeting is being held when ordered to do so, be removed from the place.

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**182 Department's chief executive is public official for CMC Act**

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

## **Part 3 The tribunal**

**183 Establishing the tribunal**

- (1) The Local Government Remuneration and Discipline Tribunal (the *tribunal*) is established.
- (2) As well as the responsibilities mentioned in section 176, the tribunal is responsible for—
  - (a) establishing the categories of local governments; and
  - (b) deciding which category each local government belongs to; and
  - (c) deciding the remuneration that is payable to the councillors in each of those categories; and
  - (d) any other functions that the Minister directs the tribunal to perform.

**184 Members of tribunal**

- (1) The tribunal is made up of 3 qualified persons who are appointed by the Governor in Council.
- (2) A person is qualified to be a member only if the person—
  - (a) has extensive knowledge of, and experience in, 1 or more of the following—

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- (i) local government;
  - (ii) community affairs;
  - (iii) industrial relations;
  - (iv) investigations;
  - (v) law;
  - (vi) public administration;
  - (vii) public sector ethics;
  - (viii) public finance; or
- (b) has other knowledge and experience that the Governor in Council considers appropriate.
- (3) However, a person is not qualified to be a member of the tribunal if the person—
- (a) is a councillor of a local government; or
  - (b) is a nominee for election as a councillor; or
  - (c) accepts an appointment as a councillor; or
  - (d) is an employee of a local government; or
  - (e) is a contractor of a local government; or
  - (f) is a consultant engaged by a local government; or
  - (g) is a member of an Australian Parliament; or
  - (h) is a nominee for election as a member of an Australian Parliament; or
  - (i) is a member of a political party; or
  - (j) has a conviction for an indictable offence that is not an expired conviction; or
  - (k) is an insolvent under administration (within the meaning of the Corporations Act, section 9); or
  - (l) is a type of person prescribed under a regulation.
- (4) The Governor in Council must appoint 1 of the members to be the chairperson of the tribunal.

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- (5) A member may be appointed for a term of not longer than 4 years.
  - (6) However, a member may be reappointed.
  - (7) A person stops being a member if the person—
    - (a) completes a term of office but is not reappointed; or
    - (b) resigns by signed notice of resignation given to the Minister; or
    - (c) is removed as a member by the Governor in Council for misbehaviour or physical or mental incapacity; or
    - (d) is not qualified to be a member under subsection (3).

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

- (1) A member of the tribunal is entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A member of the tribunal holds office on the other conditions that the Governor in Council decides.
- (3) If a commissioner under the Industrial Relations Act is appointed as a member, the person is not entitled to any remuneration or allowances in addition to the person's salary or allowances as a commissioner.
- (4) However, the person is entitled to be paid any expenses reasonably incurred by the person in performing the responsibilities of a member.

#### **186 Costs of tribunal to be met by local government**

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

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### **187 Conflict of interests**

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

Maximum penalty—35 penalty units.

- (3) As soon as practicable after the member becomes aware that this section applies to the member, the member must inform the department's chief executive.

Maximum penalty—35 penalty units.

### **188 Assistance from departmental staff**

The department's chief executive must make available to the tribunal the staff assistance that the tribunal needs to effectively perform its responsibilities.

## **Part 4 Regional conduct review panels**

### **189 Appointing members of regional conduct review panels**

- (1) A regional conduct review panel is constituted by at least 3 members that the department's chief executive chooses from a pool of members for the region in which the councillor in question resides.
- (2) The department's chief executive must appoint a pool of members for a regional conduct review panel for the different regions of the State decided by the department's chief executive.

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- (3) A person is qualified to be a member of the pool of members only if the person—
- (a) has extensive knowledge of, and experience in, 1 or more of the following—
    - (i) local government;
    - (ii) community affairs;
    - (iii) investigations;
    - (iv) law;
    - (v) public administration;
    - (vi) public sector ethics;
    - (vii) public finance; or
  - (b) has the other qualifications and experience that the department’s chief executive considers appropriate.
- (4) However, a person is not qualified to be a member of the pool of members if the person—
- (a) is a councillor of a local government; or
  - (b) is a nominee for election as a councillor; or
  - (c) accepts an appointment as a councillor; or
  - (d) is an employee of a local government; or
  - (e) is a contractor of a local government; or
  - (f) is a consultant engaged by a local government; or
  - (g) is a member of an Australian Parliament; or
  - (h) is a nominee for election as a member of an Australian Parliament; or
  - (i) is a member of a political party; or
  - (j) has a conviction for an indictable offence that is not an expired conviction; or
  - (k) is an insolvent under administration (within the meaning of the Corporations Act, section 9); or

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- (l) is a type of person prescribed under a regulation.
- (5) A member may be appointed for a term of not longer than 4 years.
- (6) However, a member may be reappointed.
- (7) A person stops being a member if the person—
  - (a) completes a term of office but is not reappointed; or
  - (b) resigns by signed notice of resignation given to the department's chief executive; or
  - (c) is removed as a member by the department's chief executive for misbehaviour or physical or mental incapacity; or
  - (d) is not qualified to be a member under subsection (4).

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

- (1) A member of a regional conduct review panel is entitled to be paid the remuneration and allowances decided by the department's chief executive.
- (2) A member of a regional conduct review panel holds office on the other conditions that the department's chief executive decides.

### **191 Costs of regional conduct review panels to be met by local government**

The local government must pay the costs of a regional conduct review panel in relation to a complaint of misconduct of a councillor, including the remuneration, allowances and expenses paid to members of the regional conduct review panel.

### **192 Conflict of interests**

- (1) This section applies if a member of a regional conduct review panel has any interest that may conflict with a fair and



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impartial hearing of a complaint made against an accused councillor.

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

Maximum penalty—35 penalty units.

- (3) As soon as practicable after the member becomes aware that this section applies to the member, the member must inform the department's chief executive.

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

### **193 Assistance from departmental staff**

The department's chief executive must make available to the regional conduct review panel the staff assistance that the regional conduct review panel needs to effectively perform its responsibilities.

## **Part 5 Local government employees**

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

#### **194 Appointing a chief executive officer**

- (1) A local government must appoint a qualified person to be its chief executive officer.
- (2) A person is qualified to be the chief executive officer if the person has the ability, experience, knowledge and skills that the local government considers appropriate, having regard to the responsibilities of a chief executive officer.
- (3) A person who is appointed as the chief executive officer must enter into a written contract of employment with the local government.

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- (4) The contract of employment must provide for—
  - (a) the chief executive officer to meet performance standards set by the local government; and
  - (b) the chief executive officers's conditions of employment (including remuneration).

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

A local government may appoint a qualified person to act as the chief executive officer during—

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

## **Division 2 Other local government employees**

### **196 Appointing other local government employees**

- (1) A local government must, by resolution, adopt an organisational structure that is appropriate to the performance of the local government's responsibilities.
- (2) The local government may employ local government employees for the performance of the local government's responsibilities.
- (3) The chief executive officer must appoint the local government employees.
- (4) However, the chief executive officer must consult with the councillors before appointing a senior contract employee.
- (5) A *senior contract employee* is a local government employee who is employed—
  - (a) on a contractual basis; and

- (b) in a position that reports directly to the chief executive officer.
- (6) A local government employee is employed on—
  - (a) the conditions contained in any relevant industrial instrument; and
  - (b) any other conditions that the local government decides.

### **197 Disciplinary action against local government employees**

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

## **Division 3 Common provisions**

### **198 Concurrent employment of local government employees**

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

### **199 Improper conduct by local government employees**

- (1) This section applies to all local government employees, including the chief executive officer.
- (2) A *local government employee* includes—
  - (a) an employee of a corporate entity; and

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- (b) a contractor of the local government; and
  - (c) a type of person prescribed under a regulation.
- (3) A local government employee must not ask for, or accept, a fee or other benefit for doing something as a local government employee.
- Maximum penalty—
- (a) for an employee of a corporate entity—500 penalty units or 5 years imprisonment; or
  - (b) for any other local government employee—100 penalty units or 2 years imprisonment.
- (4) However, subsection (3) does not apply to—
- (a) remuneration paid by the local government; or
  - (b) a benefit that has only a nominal value.
- (5) A local government employee must not unlawfully destroy or damage property of the local government.
- Maximum penalty—100 penalty units or 2 years imprisonment.

## **200 Use of information by local government employees**

- (1) This section applies to all local government employees, including the chief executive officer.
- (2) A *local government employee* includes—
  - (a) an employee of a corporate entity; and
  - (b) a contractor of the local government; and
  - (c) a type of person prescribed under a regulation.
- (3) A person who is, or has been, a local government employee must not use information acquired as a local government employee to—
  - (a) gain (directly or indirectly) an advantage for the person or someone else; or

(b) cause detriment to the local government.

Maximum penalty—

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

(b) for any other local government employee—100 penalty units or 2 years imprisonment.

(4) A **local government** includes a corporate entity of the local government.

(5) Subsection (3) does not apply to information that is lawfully available to the public.

(6) If an employee of a corporate entity contravenes subsection (3), the corporate entity may recover from the employee, as a debt due to the corporate entity—

(a) if anyone made a profit because of the contravention—an amount equal to the profit; and

(b) if the corporate entity suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(7) The amount may be recovered from the employee whether or not the employee has been convicted of an offence in relation to the contravention.

(8) Subsection (6) applies in addition to, and does not limit, the *Criminal Proceeds Confiscation Act 2002*.

(9) A person who is, or has been, a local government employee must not release information that the person knows, or should reasonably know, is information that—

(a) is confidential to the local government; and

(b) the local government wishes to keep confidential.

Maximum penalty—

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

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- (b) for any other local government employee—100 penalty units or 2 years imprisonment.

## **201 Annual report must detail remuneration**

- (1) The annual report of a local government must state—
- (a) the total remuneration packages that are payable (in the year to which the annual report relates) to senior contract employees; and
  - (b) the number of senior contract employees who are being paid each of the total remuneration packages.
- (2) A *senior contract employee* is—
- (a) the chief executive officer; or
  - (b) any other local government employee who is employed—
    - (i) on a contractual basis; and
    - (ii) in a position that reports directly to the chief executive officer.

*Examples of the detail for the annual report—*

- 1 senior contract employee with a total remuneration package in the range of \$100000–\$119000
- 2 senior contract employees with a total remuneration package in the range of \$120000–\$149000
- 1 senior contract employee with a total remuneration package in the range of \$150000–\$175000

## **Division 4 Equality of employment opportunity**

### **201A Equality of employment opportunity obligations**

- (1) A regulation may provide for matters about equality of employment opportunity for local governments.

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- (2) If the chief executive reasonably believes a local government has not complied with a regulation made under subsection (1), or is not satisfied with a local government's reasons for not complying, the department's chief executive may—
- (a) report the matter to the Minister; or
  - (b) refer the matter, as provided under the QCAT Act, to QCAT to investigate and give a report.

### **201B QCAT's powers for an investigation**

- (1) When investigating a referral under section 201A(2)(b), QCAT may require the particular local government or its chief executive officer—
- (a) to answer a question; or
  - (b) to give QCAT information; or
  - (c) to produce to QCAT a document or other thing; or
  - (d) to give QCAT a copy of a document.
- (2) A requirement under subsection (1) must—
- (a) be in writing; and
  - (b) state or describe the information, document or thing required; and
  - (c) state a reasonable period for compliance.
- (3) An individual required to answer a question, give information, produce a document or give a copy of a document under this section must comply with the requirement, unless the individual has a reasonable excuse.
- (4) It is a reasonable excuse for the individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual.

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### **201C End of reference**

- (1) At the end of a referral, QCAT must give the following persons a report, with or without recommendations—
  - (a) the relevant chief executive officer of the local government;
  - (b) the department's chief executive.
- (2) The department's chief executive must give the Minister a copy of the report as soon as practicable after receiving it.

### **201D Local government to comply with recommendation**

A local government must comply with a recommendation given in a report under section 201C(1).

## **Part 6 Authorised persons**

### **202 Appointing authorised persons**

- (1) The chief executive officer may appoint a qualified person to be an authorised person.
- (2) A person is qualified to be an authorised person if the person—
  - (a) has the competencies—
    - (i) that the chief executive officer considers are necessary to perform the responsibilities that are required to be performed by the authorised person; or
    - (ii) prescribed under a regulation; and
  - (b) is either—
    - (i) an employee of the local government; or



- (ii) another type of person prescribed under a regulation.
- (3) The appointment of an authorised person must state the provisions of this Act for which the authorised person is appointed.
- (4) An authorised person's appointment is subject to the conditions stated in—
  - (a) the document that appoints the authorised person; or
  - (b) a written notice given to the authorised person by the chief executive officer; or
  - (c) a regulation.

### **203 End of appointment of authorised persons**

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

### **204 Identity card for authorised persons**

- (1) The chief executive officer must give each authorised person an identity card.

[s 204A]

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

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

#### **204A Authorised persons must disclose change in criminal history**

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

Maximum penalty—100 penalty units.

#### **204B Chief executive officer may obtain report from police commissioner**

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

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## **204C Use of criminal history information**

- (1) This section is about the use of criminal history information.
- (2) *Criminal history information* is information about the criminal history of an authorised person obtained under section 204A or 204B.
- (3) The department's chief executive may make guidelines for dealing with criminal history information to ensure—
  - (a) natural justice is afforded to the authorised persons about whom the criminal history information relates; and
  - (b) only relevant criminal history information is considered in assessing the suitability of an authorised person to exercise a power under a Local Government Act; and
  - (c) decisions based on criminal history information are made consistently.
- (4) The chief executive officer must comply with the guidelines.
- (5) A person who has, or will have, a duty to disclose under section 204A may request a copy of the guidelines from the department.
- (6) The chief executive officer must not use criminal history information for any purpose other than for assessing the suitability of an authorised person to exercise a power under a Local Government Act.

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

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## **Part 6A**                      **Authorised officers for the department**

### **204D Appointing authorised officers**

- (1) The department's chief executive may appoint a person as an authorised officer for the department if the person has the necessary expertise or experience to perform the functions of the office.
- (2) An authorised officer's appointment is subject to the conditions stated in—
  - (a) the document that appoints the officer; or
  - (b) a written notice given to the officer by the department's chief executive; or
  - (c) a regulation.

### **204E End of appointment of authorised officers**

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

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### **204F Identity card for authorised officers**

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

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

## **Part 7 Interim management**

### **205 Interim management committee**

- (1) When an interim administrator is appointed for a local government, the Minister may appoint a committee of persons to help the interim administrator to perform the interim administrator's responsibilities.
- (2) A person may be appointed as a member of a committee for a limited time or indefinitely.
- (3) The interim administrator is chairperson of the committee and must preside at every meeting of the committee at which the interim administrator is present.
- (4) If, because of absence or incapacity, the interim administrator can not perform the responsibilities of chairperson of the committee, the other members of the committee must appoint another member to act as chairperson.

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**206 Conditions of appointment as interim administrator or member of committee**

- (1) An interim administrator or a member of a committee is entitled to the fees, allowances and expenses decided by the Governor in Council.
- (2) An officer of the public service who is appointed as an interim administrator, or as a member of a committee, may hold the appointment as well as the public service office.

**207 End of appointment of interim management**

A person stops being an interim administrator, or a member of an interim management committee—

- (a) if the person resigns by signed notice of resignation given to the department's chief executive; or
- (b) if the Governor in Council, for any reason, cancels the person's appointment; or
- (c) at the conclusion of a fresh election of the councillors of the local government.

## **Part 8 The superannuation board**

**208 Superannuation board**

- (1) The Queensland Local Government Superannuation Board under the 1993 Act (the *super board*) continues in existence under this Act.
- (2) The super board—
  - (a) is a body corporate; and
  - (b) may sue and be sued in its corporate name.

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## 209 Board's responsibilities

- (1) The super board's primary responsibility is to act as the trustee of the LG super scheme.
- (2) The super board, with the Governor in Council's approval, has the following extra responsibilities—
  - (a) to manage another superannuation scheme for the scheme's trustee;
  - (b) to act as trustee of a related persons scheme;
  - (c) to establish, and act as trustee of, a related persons scheme.
- (3) A *related persons scheme* is a scheme providing superannuation, retirement or other similar benefits for persons (other than eligible members) who—
  - (a) work for, or provide a service to, a local government; or
  - (b) are prescribed under a regulation as a related person.
- (4) The super board may delegate its powers to an employee of the super board.

## 210 Board of directors

- (1) The super board has a board of directors.
- (2) The board of directors is responsible for how the super board performs its responsibilities.
- (3) The board of directors must ensure that the super board performs its responsibilities in a proper, effective and efficient way.
- (4) The board of directors is made up of—
  - (a) 3 directors appointed on the nomination of LGAQ Ltd. or its successor in law; and
  - (b) 1 director appointed on the nomination of Brisbane City Council; and

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- (c) 4 directors appointed on the nomination of members of the LG super scheme; and
  - (d) if the trust deed provides for the appointment of additional independent directors and the independent directors are appointed—the appointed independent directors.
- (5) The directors must be appointed under the rules established to comply with the Commonwealth Super Act.
- (6) A regulation may change the number of directors that are to be appointed under subsection (4)(a), (b) or (c).

### **211 Seal of the super board**

- (1) The super board has a seal.
- (2) Judicial notice must be taken of the seal on a document.
- (3) A document marked with the seal must be presumed to have been properly sealed, unless the contrary is proved.

## **Chapter 7 Other provisions**

### **Part 1 Way to hold a hearing**

#### **212 What this part is about**

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

#### **213 Procedures at hearing**

- (1) When conducting a hearing, the investigator must—



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

## **214 Witnesses at hearings**

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

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

Maximum penalty—35 penalty units.

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

## **215 Contempt at hearing**

A person must not—

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

Maximum penalty—50 penalty units.

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## Part 2 Superannuation

### 216 What this part is about

- (1) This part is about superannuation for certain persons who are connected to a local government.
- (2) This part has effect despite section 5(2).

### 216A Definitions for pt 2

In this part—

***accumulation benefit member*** means a person who is a member of the LG super scheme in a category, other than the defined benefit category, under the trust deed.

***defined benefit member*** means a person who is a member of the LG super scheme in a defined benefit category under the trust deed.

***local government*** includes the Brisbane City Council.

***local government entity*** means an entity, prescribed under a regulation, that—

- (a) under an Act, exercises a power similar to a power that may be exercised by a local government in performing the local government's responsibilities; or
- (b) under an Act, exclusively performs a responsibility in relation to the system of local government; or
- (c) exclusively exercises, for a local government, a power that may be exercised by the local government in performing the local government's responsibilities; or
- (d) helps a local government in the performance of the local government's responsibilities.

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## **217 LG super scheme**

- (1) The Local Government Superannuation Scheme under the 1993 Act (the *LG super scheme*) continues in existence under this Act.
- (2) The super board must make a trust deed that contains—
  - (a) the rules that govern the operation of the LG super scheme; and
  - (b) the matters that, under the Commonwealth Super Act, are required to be contained in the governing rules of regulated superannuation funds within the meaning of that Act.
- (3) In particular, the trust deed must provide for—
  - (a) the yearly contribution that a local government or local government entity must make for a permanent employee, based on the advice of an actuary; and
  - (b) the terms and conditions on which the super board must obtain advice from an actuary in relation to the funds that the super board administers.
- (4) An *actuary* is an accredited member, or a fellow, of the Institute of Actuaries of Australia.

## **218 Members of LG super scheme**

- (1) The following persons are automatically members of the LG super scheme (*automatic members*)—
  - (a) an employee of a local government (other than the Brisbane City Council) while their employment continues;
  - (b) an employee of the super board while their employment continues.
- (2) The following persons are eligible to become a member of the LG super scheme (*eligible members*)—

- 
- (a) a councillor of a local government (other than the Brisbane City Council);
  - (b) an employee of the Brisbane City Council;
  - (c) a contractor of a local government;
  - (d) an employee of a local government entity;
  - (e) a member of the governing body of a local government entity;
  - (f) a person for whom a local government or local government entity is required under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) to contribute to a superannuation scheme;
  - (g) a person for whom the super board is required under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) to contribute to a superannuation scheme;
  - (h) a person who is entitled, or conditionally entitled, to payment of an amount from the LG super scheme, in accordance with an agreement or court order made under the *Family Law Act 1975* (Cwlth);
  - (i) another type of person (including a person who is an employee of an entity that is an ‘Associated Employer’ under the trust deed) prescribed under a regulation;
  - (j) a person—
    - (i) who was, but is no longer, a member of the LG super scheme because the person was a type of person mentioned in paragraphs (a) to (g) or (i); and
    - (ii) whose benefit under the LG super scheme has not been fully paid out, withdrawn or transferred from the LG super scheme;
  - (k) a person—
    - (i) who was, but is no longer an automatic member; and

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- (ii) whose benefit under the LG super scheme has not been fully paid out, withdrawn or transferred from the LG super scheme;
  - (l) the spouse of an automatic member;
  - (m) the spouse of a person mentioned in paragraphs (a) to (h).
- (3) If a person mentioned in subsection (2)(g) becomes a member of the LG super scheme, this part applies to the super board—
- (a) with all necessary changes; and
  - (b) with any changes prescribed under a regulation.

## 219 Compulsory super contributions

- (1) If the Commonwealth Super Act requires either of the following to make superannuation contributions for a permanent employee, the superannuation contributions must be paid into the LG super scheme—
- (a) a local government (other than the Brisbane City Council);
  - (b) a local government entity.
- (2) An employee of a local government entity is a ***permanent employee*** if the local government entity declares the employee to be a permanent employee by a written notice given to the super board.
- (3) An employee of a local government (other than the Brisbane City Council) is a ***permanent employee*** if the employee has been continuously employed by the local government, or by the local government and other local governments or local government entities consecutively, for—
- (a) at least 1 year; or
  - (b) less than 1 year, but the employee has given the local government a membership notice.

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- (4) A *membership notice* is a written notice given to the local government and the super board by the employee electing to become a permanent employee for this part.
- (5) An employee is not *continuously employed* if the super board is satisfied that—
- (a) the employee's employment is broken by at least 60 consecutive days when the employee was not employed by a local government or local government entity, and the employee is not in a position to accept an offer of employment by a local government or local government entity; or
  - (b) the employee—
    - (i) is no longer employed by a local government or local government entity; and
    - (ii) has no intention of taking up employment with a local government or local government entity.
- (6) An employee is not a permanent employee if—
- (a) the employee is employed by a local government or local government entity only to carry out work on a particular job or project; and
  - (b) the employee's employment is dependent on the time taken to carry out the job or project.
- (7) Also, an employee is not a permanent employee if the employee is employed by a local government or local government entity under a federally funded community development project for Aborigines or Torres Strait Islanders.

## **220 Amount of yearly contributions—particular employers**

- (1) This section applies to the following (each an *employer*)—
- (a) a local government (other than the Brisbane City Council);
  - (b) a local government entity;

- (c) the Brisbane City Council.
- (2) However, subsections (3) and (4) do not apply to the Brisbane City Council.
- (3) The yearly contribution that an employer must make, to the LG super scheme, for a permanent employee who is an accumulation benefit member is the amount prescribed under a regulation.
- (4) The yearly contribution that an employer must make, to the LG super scheme, for a permanent employee who is a defined benefit member is the amount stated, from time to time, in the trust deed.
- (5) The yearly contribution that the Brisbane City Council must make, to the LG super scheme, as an employer for an employee who is an accumulation benefit member prescribed under a regulation is the amount prescribed under that regulation.
- (6) The yearly contribution that the Brisbane City Council must make, to the LG super scheme, as an employer for an employee who is a defined benefit member is the amount stated, from time to time, in the trust deed.
- (7) If an employer is required under an industrial instrument to make superannuation contributions for an employee, the superannuation contribution required under the industrial instrument is not in addition to the yearly contribution the employer is required to make under this section.
- (8) An employer need not pay an amount as a yearly contribution to the extent that the amount can not be accepted by a regulated superannuation fund under the Commonwealth Super Act.

*Note—*

See the *Superannuation Industry (Supervision) Regulations 1994* (Cwlth), regulation 7.04.

- (9) An employer must pay the yearly contribution within the time stated in the trust deed.



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**220A Amount of yearly contributions—permanent employees and prescribed employees**

- (1) This section applies to the following (each an *employee*)—
  - (a) a permanent employee of a local government (other than the Brisbane City Council);
  - (b) a permanent employee of a local government entity;
  - (c) a prescribed employee of the Brisbane City Council.
- (2) A *prescribed employee* of the Brisbane City Council is an employee who is—
  - (a) a member of the LG super scheme; and
  - (b) prescribed under a regulation.
- (3) An employee must make a yearly contribution to the LG super scheme of the amount prescribed under a regulation.
- (4) An employee need not make the yearly contribution under this section if a local government or local government entity for the employee makes the contribution, in accordance with the employee's remuneration agreement, as well as the yearly contribution that it is required to make under this Act.
- (5) The local government or local government entity for an employee may (despite the provisions of any other Act) deduct all or part of the employee's contributions from—
  - (a) the employee's salary; or
  - (b) any money that the employee owes to it.
- (6) If an employee is required under an industrial instrument to make superannuation contributions, the superannuation contribution required under the industrial instrument is not in addition to the yearly contribution the employee is required to make under this section.

**221 Extra super contributions**

- (1) Subject to section 226, a member, or a local government or local government entity for a member, may make extra

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contributions to the LG super scheme to obtain extra benefits under the trust deed.

- (2) However, the member, local government or local government entity can not make an extra contribution to the extent that the extra contribution can not, under the Commonwealth Super Act, be accepted by a regulated superannuation fund under that Act.

## **222 Adjusting super contributions when salary changed**

- (1) The super board may, by written notice, require each of the following to give the super board details of the salary of each of its permanent employees as at a stated day during the year after any change to the salary of any of the employees—
  - (a) a local government (other than the Brisbane City Council);
  - (b) a local government entity.
- (2) The local government or local government entity must comply with the notice.
- (3) If—
  - (a) a permanent employee's salary has decreased; and
  - (b) the employee gives the local government or local government entity written notice that the employee wants to pay contributions as if the employee's salary had not decreased;

the local government or local government entity must calculate the yearly contributions payable for the employee based on the employee's salary before it was decreased.

- (4) The employee must give the notice within the time stated in the trust deed.

## **223 Super contributions for non-contributory members**

- (1) This section applies if—

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- (a) a local government is required to pay superannuation contributions for a non-contributory member under—
    - (i) an Act of the State or Commonwealth; or
    - (ii) an industrial instrument; or
  - (b) a local government entity is required to pay superannuation contributions for a non-contributory member under an industrial instrument.
- (2) A *non-contributory member* is a member of the LG super scheme who is not required to make contributions for membership.
- (3) The local government or local government entity must pay the contributions to the LG super scheme.

#### **224 Interest is payable on unpaid super contributions**

- (1) This section applies if a local government or local government entity does not pay a contribution that is payable to the LG super scheme within the time stated in the trust deed.
- (2) The local government or local government entity must pay interest on the amount of the contribution to the LG super scheme.
- (3) However, the super board may waive the payment of interest.
- (4) Any interest that is payable—
  - (a) is to be paid at the rate prescribed under a regulation; and
  - (b) is to be calculated on a daily basis.

#### **225 Local governments must not establish employee superannuation schemes**

A local government (other than the Brisbane City Council) must not establish a superannuation scheme for its employees.

## **226 Super scheme for councillors**

- (1) A local government (other than the Brisbane City Council) may, for its councillors—
  - (a) establish and amend a superannuation scheme; or
  - (b) take part in a superannuation scheme.

*Note—*

For a similar power of the Brisbane City Council, see the *City of Brisbane Act 2010*, section 210.

- (2) If it does so, the local government may pay an amount from its operating fund to the superannuation scheme as a contribution for its councillors.
- (3) However, the local government must not make contributions to the superannuation scheme—
  - (a) of more than the proportion of a salary that is payable by the local government for its standard permanent employees under the LG super scheme; or
  - (b) for a person who is no longer a councillor.
- (4) A councillor of the local government may enter into an arrangement with the local government under which—
  - (a) the councillor agrees to forgo a percentage or amount of the remuneration that the councillor is entitled to as a councillor; and
  - (b) the local government agrees to contribute the percentage or amount to the superannuation scheme for the councillor.
- (5) A *superannuation scheme* is a superannuation scheme that complies with the Commonwealth Super Act.

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

- (1) This section applies if the super board acts as the trustee of a superannuation scheme.



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- (6) The Minister must not distribute to a local government an amount equal to notional GST if the local government has not paid the notional GST.
- (7) **Notional GST** is an amount that a local government may pay under the *GST and Related Matters Act 2000*, section 5.
- (8) The Minister must table the following in the Legislative Assembly—
  - (a) the grants commission's recommendations about the allocation of funding;
  - (b) a breakdown of how the funding was allocated between local governments.

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

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

*Note—*

See section 244 (Decisions not subject to appeal) for more information.

## **Division 2 The grants commission**

### **230 Grants commission is established**

- (1) The Local Government Grants Commission (the **grants commission**) is established.
- (2) The grants commission is made up of the following members—
  - (a) a chairperson;
  - (b) a deputy chairperson;
  - (c) 4 other members.

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## **231 Members of grants commission**

- (1) The Governor in Council must appoint the members of the grants commission.
- (2) The Governor in Council must ensure—
  - (a) the person who is appointed as the deputy chairperson is an officer of the department; and
  - (b) at least 1 member has knowledge of local government in relation to local government areas of indigenous regional councils and other indigenous local governments; and
  - (c) the other members have knowledge of local government.
- (3) A member may be appointed for a term of not longer than 3 years.
- (4) A member holds office on the conditions (including about fees and allowances, for example) that the Governor in Council decides.
- (5) The Governor in Council may pay members different rates.
- (6) A person may be a member of the grants commission at the same time as the person holds an office under another Act, even though the other Act—
  - (a) requires the holder of an office to devote all of the person's time to the duties of the office; or
  - (b) prohibits the holder of an office from engaging in employment outside the duties of the office.
- (7) A person stops being a member of the grants commission if—
  - (a) the member resigns by signed notice of resignation given to the Minister; or
  - (b) the member is convicted of an indictable offence; or
  - (c) if the member is the deputy chairperson—the member stops being an officer of the department; or
  - (d) the Governor in Council cancels the member's appointment.

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- (8) The Governor in Council may cancel a member's appointment if the member—
- (a) becomes incapable of performing duties because of physical or mental incapacity; or
  - (b) engages in misbehaviour; or
  - (c) is incompetent; or
  - (d) uses the office for party political purposes; or
  - (e) does anything else that the Governor in Council considers is a reasonable and sufficient justification for removal from office.
- (9) The Governor in Council may appoint a person to act for a member of the grants commission if the member is—
- (a) absent; or
  - (b) unable to carry out the member's responsibilities (including because of illness, for example).

## **232 Conflict of interests**

- (1) This section applies if—
- (a) a member of the grants commission has a direct or indirect financial interest in a matter being considered, or about to be considered, by the grants commission; and
  - (b) the interest could conflict with the proper performance of the member's responsibilities for the matter.
- (2) The person must not take part, or take further part, in any consideration of the matter.
- Maximum penalty—35 penalty units.
- (3) As soon as practicable after the member becomes aware that this section applies to the member, the member must inform the department's chief executive.
- Maximum penalty—35 penalty units.



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**233 Staff assistance to the grants commission**

The department's chief executive must make available to the grants commission the staff assistance that the grants commission needs to effectively perform its responsibilities.

**Part 4 Legal provisions**

**234 False or misleading information**

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

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

Maximum penalty—100 penalty units.

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

- (a) the person tells the other person that the document is false or misleading, and in what respect the document is false or misleading; and

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

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

- (1) A constituter of a local government is not civilly liable for an act done, or omission made, honestly and without negligence by the local government or the constituter, as a constituter of the local government—
  - (a) in the administration of this Act; or
  - (b) in the exercise, or intended exercise, of any of the local government’s powers under this Act.
- (2) A *constituter of a local government* is—
  - (a) the head of the local government, when constituting the local government; or
  - (b) a councillor, when constituting the local government.
- (3) A State administrator or local government administrator is not civilly liable for an act done under this Act, or omission made under this Act, honestly and without negligence.
- (4) A *State administrator* is—
  - (a) the Minister; or
  - (b) the department’s chief executive; or
  - (c) an authorised officer; or
  - (d) a member of the change commission; or
  - (e) a member of the grants commission; or
  - (f) a member of a regional conduct review panel; or
  - (g) a member of the tribunal; or
  - (h) a person acting under the direction of a person mentioned in paragraph (a), (b) or (c); or

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- (i) an advisor or financial controller.
- (5) A **local government administrator** is—
- (a) a councillor, when acting other than in the capacity of a constituter of a local government; or
  - (b) the chief executive officer, when acting other than in the capacity of a constituter of a local government; or
  - (c) an authorised person; or
  - (d) another local government employee.
- (6) If subsection (3) prevents civil liability attaching to a State administrator, liability attaches instead to the State.
- (7) If subsection (3) prevents civil liability attaching to a local government administrator, liability attaches instead to the local government.
- (8) The protection given under this section is in addition to any other protection given under another law or Act (including the *Public Interest Disclosure Act 2010*, for example).

### **236 Who is authorised to sign local government documents**

The following persons may sign a document on behalf of a local government—

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

*Note—*

See section 257 for the local government’s power to delegate.

### **237 Name in proceedings by or against a local government**

- (1) Any proceedings by a local government must be started in the name of the local government.

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- (2) Any proceedings against a local government must be started against the local government in its name.

### **238 Service of documents on local governments**

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

### **239 Substituted service**

- (1) If an owner of rateable land is known to be absent from the State, a local government may serve a document on the owner by serving the document on the owner's agent in the State.
- (2) Subsection (3) applies if—
  - (a) a local government must serve a document on a person who owns or occupies a property; but
  - (b) the local government does not know, or is uncertain about, the person's current address.
- (3) The local government may serve the document by—
  - (a) publishing a notice that contains a summary of the document in—
    - (i) a newspaper that is circulating generally throughout the State; and
    - (ii) in the gazette; and
  - (b) publishing a notice that contains a copy of the document on the local government's website.
- (4) The notice must be addressed to—
  - (a) if the local government knows the person's name—the person by name; or
  - (b) if the local government does not know the person's name—the 'owner' or 'occupier' at the property's address.

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**239A Local Government Acts requiring a statement of a law**

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

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

**240 Acting for a local government in legal proceedings**

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

**241 Attempt to commit offence**

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

**242 Types of offences under this Act**

- (1) An offence against this Act that has a penalty of more than 2 years imprisonment, is an indictable offence that is a misdemeanour.
- (2) Any other offence against this Act is a summary offence.

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- (3) A proceeding for an indictable offence may be taken, at the prosecution's election—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (4) A magistrate must not hear an indictable offence summarily if—
  - (a) at the start of the hearing, the defendant asks that the charge be prosecuted on indictment; or
  - (b) the magistrate considers that the charge should be prosecuted on indictment.
- (5) If subsection (4) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (4) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (6) The maximum penalty that may be summarily imposed for an indictable offence is 100 penalty units or 1 year's imprisonment.
- (7) A proceeding must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.

- (8) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

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

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

- (a) within 1 year after the offence was committed; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed.

### **244 Decisions not subject to appeal**

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

*Examples—*

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

- (2) A **decision** includes—

- (a) conduct related to making the decision; and

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- (b) a failure to make a decision.
- (3) A *court* includes a tribunal or another similar entity.

**245 Judges and other office holders not disqualified from adjudicating**

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

**246 Where fines are to be paid to**

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

**247 Local government references in this Act**

- (1) In a provision of this Act about a local government—
  - (a) a reference to the mayor or another councillor is a reference to the mayor or another councillor of the local government; and
  - (b) a reference to the chief executive officer or another employee is a reference to the chief executive officer or another employee of the local government; and
  - (c) a reference to an authorised person is a reference to an authorised person appointed by the local government; and
  - (d) a reference to a local government area is a reference to the local government area of the local government.
- (2) In a provision of this Act, a reference to a local government is a reference to the local government that—



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- (a) in a provision about the mayor or another councillor—the mayor or other councillor was elected or appointed to; and
  - (b) in a provision about the chief executive officer or another employee—employs the chief executive officer or another employee; and
  - (c) in a provision about an authorised person—appointed the authorised person; and
  - (d) in a provision about a local government area—has jurisdiction over the local government area.

#### **248 Evidence of local laws**

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

#### **249 Evidence of proceedings of local government**

- (1) This section applies to a document that—
  - (a) purports to be a copy of an entry in a record of the proceedings of—
    - (i) the local government; or

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- (ii) a committee of a local government; and
  - (b) purports to have been signed at the time when the entry was made by—
    - (i) the mayor; or
    - (ii) the chairperson of the committee; and
  - (c) is certified by the chief executive officer to be a true copy of the document.
- (2) The document is evidence—
- (a) of the proceedings; and
  - (b) that the proceedings were properly held.

## **250 Evidentiary value of copies**

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

## **251 Evidentiary value of certificates**

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

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**252 Evidence of directions given to local government**

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

**253 Evidence of complainant's knowledge of matter**

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

**254 Constitution and limits of local government need not be proved**

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

- (a) the local government's constitution; or
- (b) the boundaries of the local government area; or
- (c) the boundaries of a division of the local government area.

## **Part 5 Delegation of powers**

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

- (1) The Minister may delegate the Minister's powers under this Act, or another Local Government Act, to an appropriately qualified person.
- (2) However, the Minister must not delegate a power under section 121, 122 or 123.

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

The department's chief executive may delegate the chief executive's powers under this Act, or another Local Government Act, to an appropriately qualified person.

### **257 Delegation of local government powers**

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

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- (3) A *joint standing committee*, of the local government, is a committee consisting of councillors of 2 or more of the local governments.

## **258 Delegation of mayor's powers**

- (1) A mayor may delegate the mayor's powers to another councillor of the local government.
- (2) However, the mayor must not delegate the power to give directions to the chief executive officer.

## **259 Delegation of chief executive officer powers**

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

## **260 Local government delegations register**

- (1) The chief executive officer must establish a register of delegations that contains the particulars prescribed under a regulation.
- (2) The chief executive officer must record all delegations by the local government, mayor or the chief executive officer in the register of delegations.
- (3) The public may inspect the register of delegations.

## **Part 6                      Other provisions**

### **261      Public office of a local government**

- (1) A local government must keep premises for use as a public office.
- (2) The public office must be in, or as near as practicable to, the local government area.

### **262      Powers in support of responsibilities**

- (1) This section applies if a local government is required or empowered to perform a responsibility under a Local Government Act.
- (2) The local government has the power to do anything that is necessary or convenient for performing the responsibilities.
- (3) The powers include all the powers that an individual may exercise, including for example—
  - (a) power to enter into contracts; and
  - (b) power to acquire, hold, deal with and dispose of property; and
  - (c) power to charge for a service or facility, other than a service or facility for which a cost-recovery fee may be fixed.

### **263      Validity of local government proceedings**

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

- (a) vacancies in the membership of the local government or committee; or
- (b) a defect or irregularity in the election or appointment of any councillor or committee member; or

- (c) the disqualification of a councillor or committee member from acting as a councillor or committee member.

## **264 Special entertainment precincts**

- (1) This section is about establishing a special entertainment precinct.
- (2) A *special entertainment precinct* is an area in which—
  - (a) amplified music that is played at premises in the area is regulated by a local law, and not by the *Liquor Act 1992*; and
  - (b) the requirements about noise attenuation under the Planning Act apply to certain types of development in the area.
- (3) If a local government wants to establish a special entertainment precinct in its local government area, the local government must—
  - (a) amend the local government's planning scheme to identify the special entertainment precinct; and
  - (b) make a local law to regulate noise from amplified music from premises in the special entertainment precinct, in accordance with a permit that is issued for the premises.
- (4) However, a local law under this section does not apply to—
  - (a) a major sports facility under the *Major Sports Facilities Act 2001*; or
  - (b) an activity that—
    - (i) is for a motor racing event under the *Motor Racing Events Act 1990*; and
    - (ii) is being carried on by, or with the permission of, the promoter of the motor racing event.

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## **265 Materials in infrastructure are local government property**

- (1) The materials in the following things are the property of a local government—
  - (a) a road constructed by or for the local government;  
*Example of a road constructed for the local government—*  
a road constructed by a developer because of a condition attached to a development approval under the Planning Act
  - (b) any works relating to a road (including gutters, stormwater drains, kerbing and channelling, for example) that are constructed by or for the local government;
  - (c) a floating pontoon, jetty, or wharf that is—
    - (i) constructed by the local government; or
    - (ii) under the control of the local government.
- (2) This section does not apply to the materials in—
  - (a) an open drain, other than any lining of the drain; or
  - (b) the outcome of action taken in accordance with a remedial notice under section 140.

## **265A Land registry searches free of charge**

- (1) This section applies to any of the following persons—
  - (a) a chief executive officer;
  - (b) an employee of a local government who is authorised by a chief executive officer;
  - (c) a lawyer or other agent acting for a local government;
  - (d) an employee of a lawyer or agent mentioned in paragraph (c) who is authorised by the lawyer or agent.
- (2) The person may conduct searches of registers or documents about land in the land registry in accordance with the practice of the registry without payment of a fee.



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**266 Approved forms**

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

**267 Review of this Act**

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

**268 Process for administrative action complaints**

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

**269 Information for the Minister**

- (1) The Minister may, by written notice, require a local government to give the Minister information about—

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- (a) the local government area; or
  - (b) the local government.
- (2) The local government must comply with the notice.

## **270 Regulation-making power**

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

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## Chapter 8      Transitionals, savings and repeals for Act No. 17 of 2009 and Act No. 23 of 2010

### 271      What this chapter is about

- (1) This chapter is about the transition from the repealed LG Acts to this Act (including the transition of rights, liabilities and interests, for example).
- (2) The *repealed LG Acts* are—
  - the *Local Government Act 1993*
  - the *Local Government (Community Government Areas) Act 2004*.

### 272      Local governments, including joint local governments

- (1) A local government under the repealed LG Acts continues in existence as a local government under this Act.
- (2) The following joint local governments continue in existence under this Act—
  - (a) the Esk–Gatton–Laidley Water Board;
  - (b) the Nogoia River Flood Plain Board.
- (3) The joint local governments have—
  - (a) the same responsibilities that the joint local governments had immediately before the commencement of this section; and
  - (b) all powers of a local government under this Act, other than the power to levy rates on land.
- (4) If the context permits—
  - (a) a reference in an Act or document to a local government includes a reference to the joint local governments; and

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- (b) a reference in an Act or document to a local government area includes a reference to the joint local government areas; and
  - (c) a reference in an Act or document to a councillor of a local government includes a reference to a member of the joint local governments.
- (5) A reference in an Act or document to a joint local government may, if the context permits, be taken to be a reference to a local government.

### **273 Community governments**

- (1) A community government under the repealed *Local Government (Community Government Areas) Act 2004* continues in existence as a local government under this Act.
- (2) Anything done by a community government has effect, on the commencement of this section, as if it had been done by a local government.
- (3) A reference in an Act or document to a community government may, if the context permits, be taken to be a reference to a local government.

### **274 Local service committees**

- (1) The local service committee of the Yarrabah Shire Council continues in existence as if the *Local Government (Community Government Areas) Act 2004* was not repealed.
- (2) On the commencement of this section—
  - (a) all other local service committees are dissolved; and
  - (b) the members of all other local service committees go out of office.
- (3) No compensation is payable to a member because of subsection (2).

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**275 Local government owned corporation**

The local government owned corporation known as the Wide Bay Water Corporation continues in existence as a corporate entity under this Act.

**276 Local laws**

- (1) A local law under a repealed LG Act, that was in force immediately before the commencement of this section, continues in force as a local law made under this Act.
- (2) A *local law* includes an interim local law, model local law, and subordinate local law.
- (3) Subsection (4) applies if, before the commencement, a local government started, but did not complete, the relevant process for adopting a model local law or making another local law.

*Note—*

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

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

**277 Decisions**

- (1) A decision under a repealed LG Act, that was in force immediately before the commencement of this section, continues in force as if the decision were made under this Act.

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- (2) A *decision* includes an agreement, appointment, approval, authorisation, certificate, charge, consent, declaration, delegation, direction, dismissal, exemption, immunity, instruction, licence, memorandum of understanding, order, permit, plan, policy, protocol, rates, release, resolution, restriction, settlement, suspension and warrant, for example.

## **278 Proceedings and evidence**

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

## **279 Super trust deed**

A trust deed made by the board of directors of the super board, that was in force immediately before the commencement of this section, continues in force as a trust deed made by the board of directors of the super board under this Act.

## **280 Registers**

- (1) A register under a repealed LG Act continues as if it were made under this Act.
- (2) A *register* includes—
- (a) a register of delegations; and
  - (b) a register relating to enterprises; and
  - (c) a register of interests; and

- (d) a register of regulatory fees; and
- (e) a register of assets and gifts.

## 281 Remuneration schedule

The remuneration schedule for councillors, that was in force immediately before the commencement of this section, continues in force as the remuneration schedule for councillors under this Act until the tribunal prepares a remuneration schedule.

## 282 References to repealed LG Act

A reference in an Act or document to a repealed LG Act may, if the context permits, be taken to be a reference to this Act.

## 282A Continuation of implementation of reform

- (1) The *former commission* is a Local Government Electoral and Boundaries Review Commission established under the 1993 Act, section 66.
- (2) Subsection (3) applies if, before the commencement—
  - (a) a local government applied, under the 1993 Act, section 80, to the former commission for determination of a limited reviewable local government matter; and
  - (b) the former commission had not yet made a determination about the matter.
- (3) The change commission must—
  - (a) determine the application; and
  - (b) comply with any requirements relating to the determination;under the 1993 Act as if the 1993 Act had not been repealed.
- (4) If the determination under subsection (3)(a) is to implement the matter, the Governor in Council must implement the matter under this Act.

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- (5) Subsections (6) and (7) apply if, before the commencement, the former commission—
  - (a) determined, under the 1993 Act, that a reviewable local government matter or limited reviewable local government matter be implemented; and
  - (b) had not yet complied with a requirement, under the 1993 Act, relating to the determination.
- (6) The former commission must comply with the requirement as if the 1993 Act had not been repealed.
- (7) The Governor in Council must implement the matter under this Act.
- (8) To remove any doubt, it is declared that any change to a local government under this section is not a local government change for chapter 2, part 3.

### **283 Continuation of instruments to implement reform**

- (1) The following instruments are continued in force as if chapter 3, part 1B of the 1993 Act had not been repealed—
  - (a) the *Local Government Reform Implementation (Transferring Areas) Regulation 2007*;
  - (b) the *Local Government Reform Implementation Regulation 2008*;
  - (c) the *Local Government (Workforce Transition Code of Practice) Notice 2007*.
- (2) The instruments expire—
  - (a) at the end of 31 December 2011; or
  - (b) at an earlier time fixed under a regulation.

### **284 Continuation of electoral and related provisions**

- (1) Schedule 2 contains provisions of the 1993 Act about local government elections.



- (2) The *Local Government (Community Forums) Regulation 2008* continues in force.
- (3) This section and schedule 2 expire on 31 December 2011.

## **286 Administration of sinking fund for liquidation of current borrowings**

- (1) The corporation continued in existence by the 1993 Act, under the name ‘Trustees of the Local Governments Debt Redemption Fund’ (the *Trustees*) is continued in existence.
- (2) The Trustees are responsible for administering the sinking funds for the liquidation of amounts borrowed by local governments before this section commences.
- (3) The 1936 Act, section 28(15) continues to apply to the Trustees with any necessary changes, and any changes prescribed under a regulation.
- (4) The Trustees are a statutory body for the Statutory Bodies Financial Arrangements Act.
- (5) Part 2B of that Act sets out the way in which that Act affects the Trustees’ powers.

## **287 Local Government Association**

- (1) On and from 1 July 2010—
  - (a) the Local Government Association of Queensland (Incorporated) (*LGAQ Inc.*) established under the 1993 Act stops being a public authority (however called) for the purposes of an Act (including the *Ombudsman Act 2001* and *Public Records Act 2002*, for example); and
  - (b) all rights, liabilities and interests of LGAQ Inc., that are in existence immediately before 1 July 2010, are taken to be the rights, liabilities and interests of LGAQ Ltd.
- (2) The *LGAQ Ltd.* is the corporation prescribed under a regulation for this section.
- (3) For example—

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- (a) an agreement with the LGAQ Inc. becomes an agreement with LGAQ Ltd.; and
  - (b) an interest in real or personal property of LGAQ Inc. becomes an interest of LGAQ Ltd.; and
  - (c) a proceeding that could be started or continued by or against LGAQ Inc. may be started or continued by or against LGAQ Ltd.; and
  - (d) a person who was employed by LGAQ Inc. is taken to be employed by LGAQ Ltd.
- (4) This change of employer does not—
- (a) affect an employee’s employment conditions, benefits, entitlements or remuneration; or
  - (b) prejudice an employee’s existing or accruing rights to—
    - (i) recreation, sick, long service or other leave; or
    - (ii) superannuation; or
  - (c) entitle a person to a payment or other benefit merely because the person is no longer employed by LGAQ Inc.; or
  - (d) interrupt a person’s continuity of service; or
  - (e) constitute a retrenchment or redundancy.
- (5) A reference in an Act or document to the LGAQ Inc. may, if the context permits, be taken to be a reference to LGAQ Ltd.

## **288 Continuing casual commissioners**

- (1) A person appointed as a review commissioner under the 1993 Act immediately before the commencement of this section is, on the commencement, taken to be appointed as a casual commissioner under section 23.
- (2) The person—
  - (a) is appointed for a term that is the remainder of the term for which the person was appointed under the 1993 Act; and

- 
- (b) holds office on the conditions applying to the person under the 1993 Act.

## **289 Appeals against disciplinary action**

- (1) This section applies to a disciplinary appeal started by a local government employee under the 1993 Act, section 1158, but not decided before the commencement.
- (2) A *disciplinary appeal* was, under the 1993 Act, an appeal to the appeal tribunal in relation to disciplinary action taken against a local government employee.
- (3) Chapter 16, part 6 of the 1993 Act continues to apply to the appeal as if the provisions had not been repealed.

## **290 Superannuation for local government employees transferred to new water entities**

- (1) This section applies if employees of a local government are, or have been, transferred to a new water entity under—
  - (a) a transfer notice under the *South East Queensland Water (Restructuring) Act 2007*; or
  - (b) a transition document under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.
- (2) Chapter 7, part 2 applies to the new water entity and the transferred employees.
- (3) For applying chapter 7, part 2 to the new water entity and the transferred employees—
  - (a) the new water entity is taken to be a local government entity, but only in relation to its employment of the transferred employees; and
  - (b) a transferred employee is taken to be an eligible member; and
  - (c) despite section 219(2), a transferred employee continues to be a permanent employee if the transferred employee

[s 291]

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was a permanent employee immediately before the transfer.

(4) In this section—

***new water entity*** means—

- (a) an entity, other than the SEQ Water Grid Manager, established under the *South East Queensland Water (Restructuring) Act 2007*, section 6(1); or
- (b) a distributor-retailer under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

***transferred employee*** means an employee mentioned in subsection (1).

## 291 Repeal

The following Acts are repealed—

- the Local Government Act 1993, No. 70
- the Local Government (Community Government Areas) Act 2004, No. 37.

# Chapter 9 Transitional provision for Revenue and Other Legislation Amendment Act 2011

## 292 References to City Super etc. in industrial instruments

A reference, in an industrial instrument, to City Super or the Brisbane City Council Superannuation Plan may, if the context permits, be taken to be a reference to the LG super scheme.

## **Chapter 10 Transitional provision for Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011**

### **293 Continuation of implementation of matters under s 282A**

- (1) This section continues the implementation of the following limited reviewable local government matters implemented under section 282A—
  - (a) a change to the external boundaries of Ipswich City Council and Scenic Rim Regional Council gazetted on 11 June 2010;
  - (b) a change to the external boundaries of Cook Shire Council and Wujal Wujal Aboriginal Shire Council gazetted on 16 July 2010.
- (2) To remove any doubt, it is declared that an action started by a former local government is taken to have been started by a current local government.
- (3) To remove any doubt, it is declared that the assets and public works on a relevant lot belong to the current local government.

*Example—*

Any material associated with a road or bridge is an asset.

- (4) An existing planning scheme applies after 17 September 2010 until the current local government makes or amends a planning scheme to include the relevant lot.
- (5) The existing planning scheme must be implemented, administered and enforced by the current local government to the extent it relates to the relevant lot as if the existing scheme were part of a planning scheme for its local government area.

(6) A reference in a document about a relevant lot to a former local government may, as appropriate, be taken to be a reference to the current local government.

(7) In this section—

***action*** means the performance of a function, or the exercise of a power, including the following—

- (a) an application about land;
- (b) the amount of rate for land on a relevant lot;
- (c) a demand for payment of an amount of rate;
- (d) any requirement under an Act.

***current local government*** means the local government for a relevant lot immediately after 17 September 2010.

***existing planning scheme*** means a planning scheme for a relevant lot made by the former local government before 17 September 2010.

***former local government*** means the local government for a relevant lot immediately before 17 September 2010.

***relevant lot*** means a lot, shown on a map showing the boundaries of a local government area, that was transferred from the former local government to the current local government on 17 September 2010.

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## Schedule 2      Local government elections

section 284

### 1      Definitions

In this schedule—

*area* means a local government area.

*code of conduct* see section 441B.

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

*conclusion*, of a local government election, has the meaning given by section 5.

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

*cut off day*, for the voters roll for an election, means the day to which the voters roll for the election must be compiled under section 277.

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

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

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

*declaration voter* means a person mentioned in section 343, 344, or 345.

*distribute* a how-to-vote card—

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

*Examples—*

- 1 A person *distributes* how-to-vote cards if the person hands the cards to other persons or leaves them at a place for other persons to take away.
- 2 A person does not *distribute* how-to-vote cards if the person attaches the cards to walls and other structures, merely for display.

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

***elect*** includes re-elect.

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

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

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

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

- (a) starting on the day when public notice of the holding of the election is given under section 301(1); and
- (b) ending on the close of the poll in the election.

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

***electoral commission*** means the Electoral Commission of Queensland under the *Electoral Act 1992*.

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

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

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

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

***fresh election*** means an election under chapter 5, part 7.



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***how-to-vote card*** means—

- (a) a card, handbill or pamphlet, relating to an election for which optional-preferential voting applies, that—
  - (i) is or includes—
    - (A) a representation of a ballot paper or part of a ballot paper; or
    - (B) something apparently intended to represent a ballot paper or part of a ballot paper; or
  - (ii) lists the names of any or all of the candidates for the election with a number indicating an order of voting preference against the names of any or all of the candidates; or
  - (iii) otherwise directs or encourages the casting of preference votes, other than first preference votes, in a particular way; or
- (b) a card, handbill or pamphlet, relating to an election for which first-past-the-post voting applies, that—
  - (i) is or includes—
    - (A) a representation of a ballot paper or part of a ballot paper; or
    - (B) something apparently intended to represent a ballot paper or part of a ballot paper; or
  - (ii) directs or encourages the casting of a vote for a number of particular candidates equal to the number of candidates to be elected.

***infringement notice***, for an infringement notice offence, means an infringement notice under the *State Penalties Enforcement Act 1999*.

***infringement notice offence*** means an offence prescribed under the *State Penalties Enforcement Act 1999* to be an infringement notice offence.

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

- (a) a hospital;

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

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

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

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

- (a) in a notice under section 301; or
- (b) in a gazette notice under section 316.

**open to inspection** has the meaning given by section 7.

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

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

**place** includes a vehicle.

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

**polling booth** means—

- (a) an ordinary polling booth; or
- (b) a mobile polling booth; or
- (c) the place declared as a polling booth to enable an elector to cast a declaration vote under section 352.

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

- (a) specified in a notice under section 311; or

- (b) fixed by notice under section 313; or
- (c) fixed by a notice under section 316; or
- (d) fixed by a notice under section 342.

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

**returning officer** means—

- (a) the chief executive officer; or
- (b) a person appointed under a regulation as a returning officer.

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

**voting hours**, for voting at a mobile polling booth or declaration voting at a place under section 352, means the hours when electors may enter the booth or place to vote at an election.

## 5 Meaning of **conclusion** of local government election

The **conclusion** of the election of a councillor is—

- (a) if the councillor is elected at an election of all councillors of the local government—the day on which the last declaration of a poll conducted in the election is displayed in the local government’s public office as required by this Act; or
- (b) if the councillor is elected at a by-election and—
  - (i) a poll is conducted—the day on which the declaration of the poll is displayed in the local government’s public office as required by this Act; or
  - (ii) a poll is not conducted—the day after the nomination day for the by-election; or

- (c) if, because the number of candidates nominated for election is the same or less than the number of councillors to be elected, the councillor is elected (other than at a by-election) and—
  - (i) 1 or more polls are conducted in the local government area—the day on which the last declaration of a poll conducted in the local government area is displayed in the local government’s public office as required by this Act; or
  - (ii) no poll is conducted in the local government area—6p.m. on the day that a poll would otherwise have been required under this Act to be conducted.

## **7 Meaning of *open to inspection***

- (1) If a document is *open to inspection*—
  - (b) if it is a document of a local government—it must be held in the local government’s public office; and
  - (c) if it is a document relating to an electoral and boundaries review commission’s examination or determination of a reviewable local government matter—
    - (i) it must be held in the electoral commission’s office at Brisbane and the public office of each local government concerned (the *prescribed offices*); and
    - (ii) it may also be held at another office under arrangements made by the commission; and
  - (d) if it is a document of another entity—it must be held in an office of the entity that is open to the public.
- (2) If a person is authorised under this Act to inspect the document, the person may, free of charge and at any time when the office in which the document is held is open for business—
  - (a) inspect the document; and

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- (b) make copies of, or take extracts from, the document.
  - (3) The following persons are authorised to inspect the document—
    - (a) if this Act specifies a description of person who may inspect the document—the person and the person’s agents;
    - (b) in another case—all persons.
  - (4) The person (the *custodian*) who has the custody of the document is not required to supply any facility or service to a person in making a copy of, or taking an extract from, the document.
  - (5) However, if the custodian supplies a facility or service to a person in making a copy or extract, the custodian may charge a reasonable fee for the facility or service.

## Chapter 5 Local government elections

### Part 1 General

#### 266 Quadrennial elections

Councillors of a local government are to be elected once every 4 years.

#### 267 Types of elections

- (1) A quadrennial or fresh election of the mayor of a local government is an election for the whole of the local government’s area.
- (2) A quadrennial or fresh election for another councillor of a local government is—
  - (a) if the local government’s area does not have divisions—an election for the whole of the area; or

- (b) if the local government's area has divisions—an election for each division of the area.
- (3) A by-election to fill a vacancy in the office of a local government councillor is an election for its area, or the division of its area, for which the councillor was elected.

**268 Elections to be held on a Saturday**

Every local government election must be held on a Saturday.

**269 Date of quadrennial elections**

- (1) A quadrennial election must be held in, and every fourth year after, 2000.
- (2) A quadrennial election must be held on the last Saturday in March.
- (3) However, a regulation may fix a different date for a particular year.

**270 Date of by-elections**

- (1) A by-election to fill a vacancy in the office of a local government councillor is to be held on the date fixed by the returning officer for the election.
- (2) The date fixed must be within 10 weeks after the vacancy happens.

**271 Local governments responsible for expenditure for conducting elections**

A local government is responsible for expenditure incurred for the conduct of an election in its local government area.

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## Part 2                      Returning officers

### 272    **Chief executive officer is returning officer**

- (1) The chief executive officer of a local government is the returning officer for every election of a councillor of the local government.
- (2) This section is subject to section 273.

### 273    **Appointment of returning officer in place of the chief executive officer**

- (1) If the chief executive officer considers on reasonable grounds that it is appropriate to appoint another individual as returning officer for an election, the chief executive officer may make the appointment in the approved form.
- (2) An individual who is not a current employee of the local government can not be appointed as returning officer for an election unless the chief executive officer—
  - (a) has to the extent practicable, by public notice in a newspaper circulating generally in the local government area and in any other newspaper the chief executive officer considers appropriate, invited expressions of interest from individuals who are suitably qualified to conduct elections; and
  - (b) if the chief executive officer considers it appropriate—has invited submissions for appointment as returning officer from any individual the chief executive officer considers may be suitably qualified to conduct elections; and
  - (c) has taken into account—
    - (i) the individual's qualifications to be a returning officer; and
    - (ii) information supplied by the individual and any referees; and

- (iii) the cost of the individual providing the services required.
- (3) Subsections (4) to (6) apply if a returning officer appointed by the chief executive officer is, for any reason, unable to perform the duties of the returning officer.
- (4) If possible, the returning officer must immediately inform the chief executive officer.
- (5) The chief executive officer may become the returning officer or appoint another individual to be the returning officer for the election.
- (6) To the extent practicable, subsection (2) applies to the appointment of a returning officer under subsection (5) who is not a current employee of the local government.
- (7) If the chief executive officer believes he or she can not properly perform the duties of returning officer for an election because of a possible conflict of interest, the chief executive officer must ask the Minister to appoint another individual as returning officer for the election.
- (8) The Minister may appoint another individual as returning officer for the election.

## **274 Returning officer's duty for by-election**

As soon as practicable after fixing the day for holding a by-election, the returning officer must—

- (a) publish, in a newspaper circulating generally in the local government area and in the other ways that the officer may consider appropriate, notice of—
  - (i) the day fixed; and
  - (ii) the cut off day for the voters roll for the by-election; and
- (b) take the steps required by this Act for holding the by-election.



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## Part 3                      Voters roll

### 275      **Returning officer must compile voters roll**

The returning officer for a local government election must compile the roll of persons entitled to vote at the election (the *voters roll*).

### 276      **Qualification for enrolment on voters roll**

A person is entitled to vote at a local government election if the person is an elector under the *Electoral Act 1992* for an electoral district, or a part of an electoral district, included—

- (a) for an election for the whole of the local government's area—in the area; or
- (b) for an election for a division of the local government's area—in the division.

### 277      **Cut off day for voters roll**

A voters roll must be compiled to 1 of the following dates—

- (a) for a quadrennial election—31 January in the year of the election;
- (b) for a by-election to fill a vacancy in the office of a local government councillor—at least 5 days, and not more than 7 days, after the publication in a newspaper, under section 274, of notice of the day of the by-election.

### 278      **Use of electoral roll when practicable**

- (1) The voters roll for an election for a local government must consist of the persons enrolled on an electoral roll for an electoral district, or a part of an electoral district, included—
  - (a) for an election for the whole of the local government's area—in the area; or
  - (b) for an election for a division of the local government's area—in the division.

- (2) However, the returning officer may make the changes to the electoral roll, compiled to the cut off day for the voters roll, that are necessary because the boundaries of the area or its divisions are not identical with the boundaries of the electoral district.

### **279 Requirements of voters roll**

- (1) A voters roll for an election must—
  - (a) show the names of all persons entitled to vote at the election; and
  - (b) be in the form of the electoral roll used for elections of the Legislative Assembly.
- (2) The returning officer must not include in a voters roll an elector's address that, under the *Electoral Act 1992*, is excluded from the publicly available part of an electoral roll.

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

- (1) A voters roll for an election is open to inspection.
- (2) Copies of the voters roll must be available for purchase at the local government's public office.
- (3) The price of a copy of the voters roll must be no more than the cost to the local government of having the copy available for purchase and, if the copy is posted to the purchaser, the postage cost.

### **281 Electoral registrars to help returning officers**

An electoral registrar under the *Electoral Act 1992* must give a returning officer the assistance that the returning officer reasonably requires to compile a voters roll for a local government election.

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## **Part 4                      Voting**

### **282      Compulsory voting**

Voting at an election for a local government is compulsory and each elector is entitled to 1 vote only.

### **283      System of voting**

The system of voting at an election for a councillor is—

- (a) for a local government area divided into single-member divisions—optional-preferential voting; and
- (b) in any other case—first-past-the-post voting.

## **Part 6                      Conduct of elections**

### **Division 1                  Preliminary**

#### **289      Conduct of elections**

An election must be conducted under this part.

### **Division 2                  Electoral officers**

#### **290      Returning officer**

The returning officer for an election is responsible for its proper conduct.

#### **291      Assistant returning officers**

- (1) The returning officer for an election may appoint 1 or more assistant returning officers for the election.

- (2) An appointment under subsection (1) must be in the approved form.

## **292 Presiding officers**

- (1) The returning officer—
  - (a) may be presiding officer at a polling booth; and
  - (b) must appoint an adult as presiding officer at each polling booth other than the booth where the returning officer is the presiding officer.
- (2) A presiding officer at a polling booth is responsible for the proper conduct of the poll at the booth and for carrying out the other duties for the election that are required by the returning officer.
- (3) If a person is unable to act as presiding officer at a polling booth, the returning officer, or someone else with the returning officer's approval, may appoint an adult as presiding officer at the booth while the person is unable to act.
- (4) An appointment under subsection (1) or (3) must be in the approved form.

## **293 Issuing officers**

- (1) The returning officer, or a presiding officer with the returning officer's approval, may appoint adults (*issuing officers*) to—
  - (a) give ballot papers, declaration envelopes and declaration forms to electors; and
  - (b) perform the other duties for the election that are required by the presiding officer.
- (2) The appointment must be in the approved form.
- (3) Anything done by an issuing officer under subsection (1)(b) is taken to be done by the returning officer or the presiding officer.

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**294 Declaration by issuing officers**

An issuing officer must make a declaration in the approved form before acting as an issuing officer.

**295 Returning officer may act through other officers**

If—

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

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

*Examples—*

- 1 For an election, if the returning officer authorises an assistant returning officer to conduct the election in a division, and the assistant returning officer does so, the returning officer is taken to have conducted the election in the division.
- 2 For an election, if the returning officer authorises an assistant returning officer to carry out the functions of the returning officer under section 366, the returning officer is taken to have carried out those functions.
- 3 Under section 351, declaration envelopes are to be posted or given to the returning officer. For an election, the returning officer could authorise an issuing officer to receive declaration envelopes, to remove the declaration envelopes containing the ballot papers from the return address envelopes and place the declaration envelopes in a ballot box.

**296 Assistant returning officer may act through certain authorised officers**

If—

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

- (c) the presiding officer or issuing officer does the thing; the thing is taken to have been done by the assistant returning officer.

### **297 Supply and use of voters rolls**

- (1) The returning officer must give to the presiding officer at each polling booth enough copies of the voters roll certified in the approved form by the returning officer.
- (2) An issuing officer must use a certified copy of the voters roll for taking the ballot in the election.

## **Division 3 Candidates for election or appointment**

### **298 Qualification for nomination**

- (1) Subject to subsection (3), a person who is qualified under sections 152 to 156 of the Act, to become a councillor of a local government may nominate for election or appointment to the local government.
- (2) A person is not disqualified from nominating because the person is a member of the Legislative Assembly or a local government employee.
- (3) A person who is a candidate for election as a member of an Australian Parliament, is not qualified to be nominated for election or appointed as a councillor of a local government until—
  - (a) for an election under the *Electoral Act 1992*—the day the Electoral Commission is notified, under section 122(1) of that Act, of the candidate elected for the electoral district for which the person is a candidate; or
  - (b) for an election under the *Commonwealth Electoral Act 1918* (Cwlth)—

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- (i) the day the result of the election and the candidates elected are declared under section 283 of that Act; or
  - (ii) the day the candidate elected for the division for which the person is a candidate is declared under section 284 of that Act.

### **299 Prohibition of dual candidature**

- (1) A person can not, at the same time, be a candidate—
  - (a) for election as mayor of a local government and as another councillor of the local government; or
  - (b) for election as a councillor of a local government for more than 1 division of the local government's area.
- (2) If, at noon on the nomination day, a person is nominated as a candidate in contravention of subsection (1), each of the nominations is of no effect.

### **300 Leave to local government employee to contest election**

- (1) A local government employee who nominates as a candidate for election as a local government councillor is entitled to leave of absence for a period of not more than 2 months to contest the election.
- (2) A local government employee may use any entitlement to accrued leave with pay as leave to which the employee is entitled under subsection (1).
- (3) Unless leave is taken under subsection (2), the local government employee is not entitled to payment of salary or wages for any period of leave taken under subsection (1).

## **Division 4                      Nominations of candidates for election**

### **301      Calling for nominations**

- (1) The returning officer must publish notice of the election in a newspaper circulating generally in the local government area, or division of the local government area, for which the election is to be held.
- (2) The notice must—
  - (a) be in the approved form; and
  - (b) specify a day as the nomination day—
    - (i) not less than 10, or more than 21, days after the day of publication of the notice; and
    - (ii) not less than 21, or more than 42, days before the day on which the election is to be held; and
  - (c) specify a place of nomination; and
  - (d) invite nominations of candidates for the election.
- (3) The place of nomination must be—
  - (a) the local government's public office; or
  - (b) a place in its area convenient generally to persons in its area.

### **302      Who may nominate**

A candidate for election as a councillor of a local government must be a person who is qualified under section 298 to nominate for the election.

### **303      How and when nomination is given**

- (1) A person who wishes to be a candidate for election must be nominated by—



- 
- (a) the registered officer under the *Electoral Act 1992* of a political party that has endorsed the person as a candidate for the election; or
  - (b) at least 6 electors for the local government area, or division of the local government area, for which the election is to be held.
- (2) A nomination must be—
- (a) in the approved form; and
  - (b) given to the returning officer after the nominations are invited for the election but before noon on the nomination day.

### **304 Deposit to accompany nomination**

- (1) Before noon on the nomination day, the person nominating as a candidate, or another person on behalf of the person nominating as a candidate, must deposit, in cash or by a cheque drawn by a financial institution, with the returning officer—
- (a) \$150; or
  - (b) if another amount is prescribed by regulation—the amount.
- (2) The deposit must be held in the trust fund of the local government until it is refunded, or becomes the property of the local government, under this part.

### **305 Special grounds for deciding a person is not properly nominated**

- (1) In this section—

*nomination name* means the name proposed by a candidate to be used on the ballot paper as the candidate's name under section 325(3).

*parliamentary party* means an organisation—

- (a) whose object or activity, or 1 of whose objects or activities, is the promotion of the election to an

Australian parliament of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part; and

- (b) of which at least 1 member is a member of an Australian parliament.

**party name** means the name, or an abbreviation or acronym of the name of—

- (a) a parliamentary party; or
- (b) a political party; or
- (c) an organisation or group whose object or activity, or 1 of whose objects or activities, is the promotion of the election of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part to—
  - (i) an Australian parliament; or
  - (ii) an office of councillor of a local government.

**public body name** means the name, or an abbreviation or acronym of the name, of a prominent public body.

- (2) The returning officer may decide that a person whose name has been changed is not properly nominated because the nomination name—
  - (a) is a party name; or
  - (b) so nearly resembles a party name that it is likely to be confused with or mistaken for the party name; or
  - (c) includes the word ‘independent’; or
  - (d) is a public body name; or
  - (e) so nearly resembles a public body name that it is likely to be confused with or mistaken for the public body name; or
  - (f) is obscene or offensive.
- (3) The returning officer may also decide that a person whose name has been changed is not properly nominated if the returning officer considers the name could cause confusion.

*Example of subsection (3)—*

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

- (4) If the returning officer decides a person is not properly nominated under this section for an election, the returning officer must give the person a notice stating—
  - (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) the person's right to apply for an injunction.

*Editor's note—*

For a person's right to seek an injunction, see section 407 (Injunctions to restrain contravention of chapter).

**306 Certificate of returning officer**

- (1) If the returning officer is satisfied a person has been properly nominated for election, the returning officer must—
  - (a) certify the nomination, in the approved form; and
  - (b) give a copy of the certificate to the candidate.
- (2) The certificate must specify the time, day and place proposed for a draw, if necessary, for the order of listing of candidates' names on the ballot paper.
- (3) A person is properly nominated for election if—
  - (a) sections 302 to 304 have been complied with, or have been substantially complied with apart from a mere formal defect or error in the nomination; and
  - (b) section 299 does not apply to the person's nomination; and
  - (c) the nomination has not been withdrawn.
- (4) The returning officer is not obliged to look beyond—
  - (a) the form of nomination and payment of the deposit; and
  - (b) the voters roll; and

- (c) documentary evidence produced by the nominee or nominator that at the time the voters roll is compiled for the election—
  - (i) the nominator is an elector for the election or the registered officer under the *Electoral Act 1992* of a political party; or
  - (ii) the nominee is, under the *Electoral Act 1992*, an elector for an electoral district, or part of an electoral district, included in the local government's area.
- (5) If a nomination is wrongly certified by the returning officer, the certification, or the issue of a copy of the certificate, does not validate the nomination.

### **307 Display of nominations**

As soon as practicable after receipt of a nomination, the returning officer must display a copy of the nomination in a conspicuous position at the place of nomination and, if that place is not the local government's public office, at the public office.

### **308 Termination of candidature before noon on nomination day**

- (1) A person nominated as a candidate for election may withdraw the person's agreement to the nomination by signed notice given to the returning officer before noon on the nomination day.
- (2) If this happens—
  - (a) the nomination is of no effect; and
  - (b) the person's deposit must be refunded to the person who paid the deposit.

### **309 Death of candidate**

If a person nominated as a candidate for election dies before noon on the nomination day—

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- (a) the nomination is of no effect; and
  - (b) the person's deposit must be refunded to—
    - (i) if the deposit was paid by someone other than the person—the other person; or
    - (ii) otherwise—the person's personal representative.

**310 Procedure if number of candidates not more than number required**

- (1) If the number of candidates properly nominated for election does not exceed the number required to be elected—
  - (a) the nominees are taken to have been elected; and
  - (b) the returning officer must, as soon as practicable after the nomination day, publish a notice in the approved form in a newspaper circulating generally in the local government area, or division of the local government area, for which the election was to be held, that the nominees are taken to have been elected.
- (2) If—
  - (a) no-one is nominated as a candidate for an election; or
  - (b) the number of candidates nominated is less than the number required to be elected;

the Governor in Council may, by gazette notice, appoint as councillors of the local government, the number of persons necessary to constitute fully the local government.
- (3) Each person appointed as a councillor must be qualified to be elected as a councillor of the local government for the local government area, or division of the local government area, for which the election was to be held.
- (4) The persons appointed are taken to have been properly elected as councillors of the local government.

**311 Procedure if number of candidates exceeds number required**

- (1) If the number of candidates properly nominated for election exceeds the number required to be elected, a poll must be conducted under this part.
- (2) The returning officer must give public notice that a poll will be conducted.
- (3) The notice must—
  - (a) be in the approved form; and
  - (b) specify—
    - (i) the day the poll will be conducted; and
    - (ii) the names of all candidates properly nominated for election in the order decided under section 327; and
    - (iii) the location of all ordinary polling booths to be used for taking the ballot in the poll; and
    - (iv) that the ordinary voting hours are from 8a.m. to 6p.m; and
  - (c) be displayed in a conspicuous position at the place of nomination and, if that place is not the local government's public office, displayed at the public office; and
  - (d) be published in a newspaper circulating generally in the local government area, or division of the local government area, for which the poll will be conducted.
- (4) Display of a notice under subsection (3)(c) must—
  - (a) start as soon as practicable after noon on the nomination day; and
  - (b) continue until the close of the poll.

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**312 Supply of voters roll**

- (1) If a poll is to be conducted in the election, the returning officer must give a copy of the voters roll to each candidate as soon as practicable after the nomination day.
- (2) The copy of the roll must be certified by the returning officer in the approved form.

**313 Procedure on death of candidate when poll to be conducted**

- (1) If a poll is to be conducted and a candidate dies after noon on the nomination day but before the polling day—
  - (a) for a candidate as mayor—the proceedings for the election of the mayor must start again; and
  - (b) for a candidate as councillor (other than mayor) if the local government's area is undivided—the proceedings for the election of the councillors must start again; and
  - (c) for a candidate as a councillor for a division of local government's area—the proceedings for the election of councillors for the division must start again.
- (2) The deceased candidate's deposit must be refunded to—
  - (a) if the deposit was paid by someone other than the candidate—the other person; or
  - (b) otherwise—the candidate's personal representative.
- (3) The deposits of other candidates must be refunded to the persons who paid the deposits.
- (4) Despite subsection (1), the Minister may, by gazette notice, direct that proceedings for holding an election of all councillors of the local government start again.
- (5) If proceedings are started again, the Minister must, by gazette notice, fix a new polling day for the election.

### **314 Disposal of deposits generally**

- (1) As soon as practicable after the conclusion of an election, each candidate's deposit must be refunded to the person who paid the deposit if—
  - (a) the candidate is elected; or
  - (b) if the system of voting at the election is optional-preferential voting—the number of first preference votes received by the candidate is more than 4% of the total number of formal first preference votes cast in the election; or
  - (c) if the system of voting at the election is first-past-the-post voting—the number of votes received by the candidate is more than 4% of the total number of formal votes cast in the election.
- (2) Despite subsection (1), a candidate's deposit must not be refunded until—
  - (a) if, under section 427, the candidate is required to give a return under the section for the candidate's disclosure period for the election—the candidate gives the return; or
  - (b) if, under section 427(3), the candidate is not required to give a return under the section for the candidate's disclosure period for the election—the end of the disclosure period.
- (3) All other candidates' deposits become the property of the local government and must be paid into its operating fund.

### **315 If successful candidate dies**

If a candidate who is successful at the election dies before the final result of the poll is declared, the candidate must be declared elected to the office for which the person was a candidate.

### **316 Extension of times**

- (1) This section applies if—



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- (a) a nomination day is specified under section 301 for the election; or
  - (b) a polling day is specified under section 311 for the election.
- (2) The Minister may, by gazette notice, fix a later day as the nomination or polling day.
  - (3) The returning officer must publish a notice in a newspaper circulating generally in the local government area, or division of the local government area, for which the election is to be held giving any necessary directions to candidates for election, and to electors, about the procedures to be followed.

### **316A Special provision about refunding deposits**

If under this division a deposit is to be refunded to a person (the *person entitled*), it may be refunded to someone else with the written authority of the person entitled.

## **Division 5                      Ballots**

### **317 Poll by ballot**

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

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

- (1) If the local government's area includes a large rural sector, large remote areas or extensive island areas, the Governor in Council may, by gazette notice, direct that a poll be conducted by postal ballot.
- (2) The direction may be given for—
  - (a) the whole of its area; or
  - (b) 1 or more divisions of its area; or
  - (c) a part of its area marked on a map.

- (3) The map is open to inspection at the public office of the local government.

## **Division 6                      Polling booths**

### **319      Polling booths—general**

- (1) A place on or from which liquor may lawfully be sold can not be used as a polling booth.
- (2) However, a civic or cultural centre, community hall or similar place under the local government's control, may be used as a polling booth if—
  - (a) the floor area for taking the ballot is designated in the notice of the conduct of the poll under section 311; and
  - (b) the local government ensures that no liquor will be sold or supplied in that area during the taking of the ballot.
- (3) The returning officer—
  - (a) may arrange for a polling booth within or outside the local government area, or division of the local government area, to be used in an election; and
  - (b) may arrange for 2 or more polling booths at any place if the number of electors likely to vote at the place is greater than could conveniently vote in 1 booth at the place; and
  - (c) must ensure that each polling booth is provided with enough ballot boxes, ballot papers and materials to enable electors to mark the ballot papers.
- (4) The returning officer may arrange for all polling booths or specified polling booths for an election in a division of the local government area to also be used for any other election conducted at the same time for, or for a division of, the local government area.

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**320 Provision of ordinary polling booths**

- (1) For the purpose of taking a ballot in the election, the returning officer must arrange for places, or parts of places, to be used on polling day as ordinary polling booths to enable electors in general to vote.
- (2) The returning officer may—
  - (a) less than 3 days before polling day, arrange for an ordinary polling booth to be used; or
  - (b) less than 6 days before polling day, cancel arrangements for the use of an ordinary polling booth;  
only if it is necessary because of circumstances beyond the returning officer's control.
- (3) If, after publication of the notice under section 311, the returning officer arranges for the use of an ordinary polling booth, the officer must give public notice—
  - (a) of the location of the booth; and
  - (b) that the ordinary voting hours of the booth are from 8a.m. to 6p.m.
- (4) If the returning officer cancels arrangements for the use of an ordinary polling booth, the officer must give public notice of the cancellation.
- (5) Notice under subsection (3) or (4) must be given in the way that the returning officer considers is the best way to inform electors generally.

**321 Declaration of mobile polling booths**

- (1) If the returning officer is satisfied residents in an institution should be able to vote at the institution in a poll, the returning officer may arrange for the whole or a part of the institution to be available as a mobile polling booth to enable residents in the institution to vote there in the poll.
- (2) If the returning officer is satisfied a part of the local government area or division of the local government area does not have enough electors to justify the use of an ordinary polling booth in the part, the returning officer may arrange for

the whole or part of any place in the part to be available as a mobile polling booth to enable electors in the part to vote in the poll.

- (3) If the returning officer acts under subsection (1) or (2), the officer must fix the times, during the period starting 11 days before the polling day and ending at 6p.m. on the polling day, when the mobile polling booth may be used for voting.
- (4) The returning officer must, by notice published in a newspaper circulating generally in the relevant part of the local government area—
  - (a) declare the whole or part of the relevant institution or place as a mobile polling booth for the election; and
  - (b) specify the times at which votes may be cast at the booth.
- (5) The notice must be in the approved form.
- (6) The returning officer also must give written notice to the candidates for election of the declaration of the mobile polling booth and the times at which votes may be cast at the booth.
- (7) On the declaration of a mobile polling booth for an election, the electors resident in the relevant institution or the electors resident in the part of the local government area in which the booth is situated, may vote in the election at the booth during the times specified for the booth in the notice published under subsection (4).

### **322 Duty of person in charge of institution**

- (1) If the returning officer arranges for the whole or part of an institution to be used as an ordinary polling booth, the person in charge of the institution must allow electors and issuing officers to have access to the booth whenever votes may be cast at the booth.
- (2) If the returning officer declares the whole or part of an institution as a mobile polling booth, the person in charge of the institution must allow residents in the institution and issuing officers to have access to the booth whenever votes may be cast at the booth.

**323 Privacy of voting**

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

**Division 7 Ballot boxes, papers and other documents****324 Ballot boxes generally**

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

**325 Requirements of ballot papers**

- (1) If a poll is to be conducted, the returning officer must arrange for the printing of all ballot papers to be used in taking the ballot in the poll.
- (2) A ballot paper must—
  - (a) be in the approved form; and
  - (b) be of material that, when folded, the vote cast by the elector on the paper is effectively concealed; and
  - (c) be attached to a butt that—
    - (i) is not part of the ballot paper; and
    - (ii) is perforated to allow the ballot paper to be easily detached from the butt; and

- (iii) is numbered in regular arithmetical sequence, starting with the numeral 1 and proceeding by intervals of one whole numeral, so that each butt for the local government area, or division of the local government area, for which the poll is conducted has a unique number; and
  - (d) show the name of each candidate for election as required by subsection (3); and
  - (e) if the names of 2 or more candidates are so similar as to be likely to cause confusion to electors—contain an appropriate description or addition, in the returning officer’s opinion, to distinguish the persons’ names; and
  - (f) if a candidate endorsed by a political party was nominated under section 303(1)(a)—contain, printed adjacent to the candidate’s name, the name of the political party as it would be required to be shown in a ballot paper under the *Electoral Act 1992*.
- (3) A ballot paper must—
  - (a) contain the name of each candidate once only by showing first the surname followed by the given name or names; and
  - (b) show the names of the candidates in the order decided under section 327.
- (4) A ballot paper must not contain anyone else’s name.

**326 Separate ballot papers for separate polls**

- (1) This section applies if a poll for election of mayor of the local government is to be conducted when a poll for election of another councillor of the local government is conducted.
- (2) Separate ballot papers must be used for the polls unless the returning officer decides to use a combined ballot paper.

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**327 Order of listing of candidates' names**

- (1) The order in which names of candidates for election are to be listed on ballot papers and notices under section 311 is to be decided under this section.
- (2) The order must be decided by the returning officer as soon as practicable after noon on the nomination day.
- (3) The returning officer must, in the presence of 2 witnesses—
  - (a) write the name of each candidate on a separate sheet of paper; and
  - (b) ensure that each piece of paper is of the same kind, shape, size and colour; and
  - (c) put each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same way to make each the same size and thickness; and
  - (d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and
  - (e) after each piece of paper has been placed in an envelope, seal the envelope; and
  - (f) put all the envelopes in a container and shuffle them; and
  - (g) draw out the envelopes, 1 at a time; and
  - (h) as each envelope is drawn out, open it and record the name of the candidate shown on the piece of paper in the envelope.
- (4) The order in which the names are recorded is the order in which the names are to appear on the ballot paper and notices under section 311.
- (5) The returning officer must allow each candidate, or the candidate's representative, to be present when the order of candidates' names is decided.

**328 Distribution of ballot papers**

- (1) The returning officer must ensure a sufficient number of ballot papers is available at all polling booths.
- (2) The returning officer must prepare a delivery note in the approved form in triplicate for each parcel of ballot papers supplied by the returning officer to presiding officers at polling booths.
- (3) The approved form must—
  - (a) show details of the number of ballot papers supplied; and
  - (b) show the range of numbers of the ballot papers; and
  - (c) include a form of acknowledgment of receipt of the ballot papers.
- (4) Two copies of the delivery note must be included in the parcel of ballot papers.
- (5) As soon as practicable after a presiding officer receives a parcel of ballot papers, the presiding officer must—
  - (a) check the contents against the details shown in the delivery note; and
  - (b) complete the particulars prescribed by the delivery note; and
  - (c) sign the form of acknowledgment included in the delivery note.
- (6) If there is a discrepancy between the details shown in the delivery note and the contents of the parcel, the presiding officer must cause a countercheck to be made by—
  - (a) if another presiding officer is available—the other presiding officer; or
  - (b) if another presiding officer is not available—a responsible person.
- (7) A discrepancy confirmed by a countercheck must be noted in the form of acknowledgment and the form must be signed by the presiding officer and the person who made the countercheck.



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- (8) The presiding officer must return 1 copy of the delivery note to the returning officer and retain the other copy of the delivery note until it is given to the returning officer with the sealed parcels of ballot papers under section 363.

**329 Correction of errors etc.**

Any error, omission or delay in respect of any voters roll, ballot papers or other document to be used in a poll may be corrected by procedures directed by the Minister, by gazette notice.

**Division 8 Scrutineers**

**330 Candidates' entitlement to scrutineers**

A candidate for election is entitled to have 1 scrutineer present for each issuing officer at a polling booth or at a place for examination of declaration envelopes or counting of votes—

- (a) before and at all times when electors may vote in the booth; and
- (b) at all times during the examination or counting.

**331 Appointment of scrutineers**

- (1) A candidate for election may, in the approved form, appoint adults as scrutineers for the candidate.
- (2) On appointment, a scrutineer must make a declaration in the approved form before the returning officer or a presiding officer.

**332 Proof of identification**

A scrutineer must—

- (a) carry evidence of identification and of the person's appointment as a scrutineer; and
- (b) on demand, produce the evidence to an issuing officer.

### **333 Powers of scrutineers**

- (1) A scrutineer for a candidate for election is entitled to be present—
  - (a) in a polling booth—before taking the ballot in the poll starts to inspect ballot boxes; and
  - (b) in a polling booth and any office of the presiding officer at the booth—when electors may vote in the booth; and
  - (c) in a polling booth or other place—to watch the examination of declaration envelopes and counting of votes.
- (2) A scrutineer may—
  - (a) object to an issuing officer's decision on a person's entitlement to vote at the election; and
  - (b) object to the acceptance or rejection of a ballot paper by the returning or presiding officer; and
  - (c) record details of persons who vote at the election at a polling booth and remove the record from the booth.

## **Division 9 Voting generally**

### **334 Who may vote**

Only electors may vote in a ballot taken in a poll.

### **335 When votes may be cast at an ordinary polling booth or mobile polling booth**

- (1) Voting at an ordinary polling booth must take place between 8a.m. and 6p.m. on polling day.
- (2) However, an elector who is in an ordinary polling booth at 6p.m. on polling day, for the purpose of voting in the poll, must be allowed to vote.
- (3) Voting at a mobile polling booth must take place during the times fixed for the booth by the returning officer.

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- (4) However, an elector who is in a mobile polling booth at the time of the close of voting at the booth, for the purpose of voting in the poll, must be allowed to vote.

### **336 Procedure for voting at a polling booth**

- (1) Subject to sections 338 and 340, an elector, other than a declaration voter, must vote at a polling booth under the procedures set out in this section.
- (2) The elector must enter a polling booth for the local government area, or division of the local government area, during voting hours at the booth.
- (3) In the polling booth, the elector must give the elector's full name and address to an issuing officer.
- (4) If the elector—
- (a) has a ballot paper and declaration envelope for the election; and
  - (b) does not intend to cast a declaration vote;
- the elector must return the ballot paper and declaration envelope to the issuing officer.
- (5) The issuing officer must give a ballot paper to a person asking for it if the issuing officer is satisfied the person is entitled to vote at the election.
- (6) The issuing officer may ask a person questions to decide whether the person is entitled to vote at the election.
- (7) If, because of the answers to the questions—
- (a) the issuing officer is satisfied the person is an elector mentioned in section 344(1)(a), (b), (c) or (d); or
  - (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;
- the person may only cast a declaration vote.
- (8) The issuing officer must place a mark, in ink, on the officer's copy of the voters roll against the name of each person given a ballot paper by the officer.

- (9) An issuing officer who gives a ballot paper to a person must, if asked by a scrutineer, keep a record of the objection by the scrutineer to the entitlement of the person to vote.
- (10) On being given the ballot paper, the elector must, without delay—
  - (a) go alone into an unoccupied voting compartment in the polling booth; and
  - (b) there, in private, mark a vote on the ballot paper in accordance with division 11; and
  - (c) fold the ballot paper, concealing the vote, and put it in the appropriate ballot box in the polling booth; and
  - (d) leave the polling booth.

### **337 Duties of issuing officer for returned papers**

- (1) An issuing officer must—
  - (a) record in the approved form the giving of a ballot paper to a person who has returned a ballot paper and declaration envelope to the officer under section 336(4); and
  - (b) attach to the form all ballot papers and declaration envelopes returned to the officer; and
  - (c) give the form and the attached documents to the presiding officer.
- (2) The presiding officer must set aside the form and attached documents in the officer's custody for separate identification under section 363(1)(g)(ii).

### **338 Arrangements for electors with disability**

- (1) This section applies if an elector can not enter a polling booth because of illness, disability or advanced pregnancy, but is able to come to a place (the *voting place*) close to the polling booth.

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- (2) The issuing officer may perform the issuing officer's functions, and the elector may vote at the voting place, as if it were the polling booth.
- (3) However, the issuing officer must—
- (a) before taking any action under subsection (2), inform the scrutineers present of the proposed action; and
  - (b) allow 1 scrutineer for each candidate to be present at the voting place; and
  - (c) ensure that after the ballot paper is marked, it is—
    - (i) folded to conceal the vote; and
    - (ii) put in an envelope or, if the vote is a declaration vote, a declaration envelope; and
  - (d) seal the envelope; and
  - (e) if—
    - (i) the vote is a declaration vote—put the sealed declaration envelope in the appropriate ballot box inside the polling booth; or
    - (ii) the vote is not a declaration vote—open the envelope inside the polling booth in the presence of any scrutineers, ensuring the ballot paper remains folded, and put the folded ballot paper in the appropriate ballot box.
- (4) The issuing officer must ensure that, as far as practicable—
- (a) for a declaration vote—section 348 is complied with when the elector votes; or
  - (b) for another vote—section 336 is complied with when the elector votes.
- (5) Subsections (2) and (3) apply to all types of voting under this division.

### **339 Arrangements for electors at institutions**

- (1) If a polling booth is an institution or part of an institution, an issuing officer may visit electors resident in the institution, or

part of the institution, for the purpose of enabling them to vote.

- (2) Before taking action under subsection (1), the issuing officer must inform the scrutineers present of the proposed action.
- (3) When visiting an elector in an institution, the issuing officer must—
  - (a) take to the elector—
    - (i) a ballot paper or a declaration form, ballot paper and declaration envelope; and
    - (ii) a ballot box; and
    - (iii) anything else necessary to enable the elector to vote; and
  - (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (4) The issuing officer must ensure that, as far as practicable—
  - (a) for a declaration vote—section 348 is complied with when the elector votes; or
  - (b) for another vote—section 336 is complied with when the elector votes.

### **340 Arrangements for electoral visitor voting**

- (1) The following electors are entitled to be electoral visitor voters—
  - (a) electors who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;
  - (b) electors who, because they are caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth.
- (2) An elector who is entitled to be an electoral visitor voter may apply to the returning officer to vote as an electoral visitor voter.
- (3) The application must be in the approved form.

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- (4) If the application is received not later than 6p.m. on the Thursday before polling day, the returning officer must direct an issuing officer to visit the elector to enable the elector to vote.
  - (5) As soon as practicable after the returning officer has directed an issuing officer to visit electors, the returning officer must inform each candidate for election of—
    - (a) the place from which the issuing officer proposes to start making visits; and
    - (b) the time or times on the day or days when the issuing officer proposes to start making visits.
  - (6) The issuing officer must visit an elector at a reasonable hour before 6p.m. on polling day.
  - (7) When visiting an elector, the issuing officer must—
    - (a) take to the elector—
      - (i) a ballot paper or a declaration form, ballot paper and declaration envelope; and
      - (ii) a ballot box; and
      - (iii) anything else necessary to enable the elector to vote; and
    - (b) if a scrutineer wishes—be accompanied by the scrutineer.
  - (8) The issuing officer must ensure that, as far as practicable—
    - (a) for a declaration vote—section 348 is complied with when the elector votes; or
    - (b) for another vote—section 336 is complied with when the elector votes.

### **341 Help for electors in voting**

- (1) If an elector satisfies an issuing officer that the elector can not vote without help, the elector may be accompanied into an unoccupied voting compartment in a polling booth, or be otherwise helped, by someone chosen by the elector.

- (2) The person may help the elector in any of the following ways—
  - (a) if asked by the elector—stating the names of candidates;
  - (b) acting as interpreter;
  - (c) explaining the ballot paper and the requirements of division 11 about its marking;
  - (d) marking, or helping to mark, the ballot paper in the way the elector wishes;
  - (e) folding the ballot paper and putting it into a ballot box or a declaration envelope;
  - (f) sealing a declaration envelope or putting it into a ballot box.
- (3) Subsections (1) and (2) apply to all types of voting.
- (4) This section applies despite any of the following provisions—
  - section 336(10)
  - section 348
  - section 351.

### **342 Adjournment of poll**

- (1) If the conduct of a poll is, or is likely to be, obstructed or interrupted from any cause, the returning officer may adjourn the conduct of the poll generally or at a particular polling booth.
- (2) If the conduct of a poll at a particular polling booth is, or is likely to be, obstructed or interrupted from any cause, the presiding officer at the booth may adjourn the conduct of the poll at the booth.
- (3) If a poll is adjourned under subsection (1) or (2), the returning officer must fix a day (not later than 34 days after the day on which the poll is adjourned) for conducting the adjourned poll.
- (4) The returning officer must give public notice of the day fixed—



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- (a) in a newspaper circulating generally in the relevant part of the local government area; and
  - (b) in other ways the returning officer considers appropriate.

## **Division 10            Declaration voting**

### **343    Who may cast a declaration vote**

The following electors may cast a declaration vote—

- (a) an elector who, during ordinary voting hours on polling day, will not be within 8km, by the nearest practicable route, from a polling booth;
- (b) an elector who, during ordinary voting hours on polling day, will be working or travelling under conditions that prevent voting at a polling booth;
- (c) an elector who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;
- (d) an elector who, because the elector is caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth;
- (e) an elector who, because of membership of a religious order or because of religious beliefs, will be prevented from voting at a polling booth for all, or most, of the ordinary voting hours on polling day;
- (g) an elector whose address has been omitted from a voters roll—
  - (i) because of the *Electoral Act 1992*, section 58; or
  - (ii) under an arrangement under the *Electoral Act 1992*, section 62 because of the *Commonwealth Electoral Act 1918* (Cwlth), section 104.

**344 Who must cast a declaration vote in ordinary elections**

- (1) In an election (other than a postal ballot election), the following persons must cast a declaration vote—
- (a) an elector whose name is not on the voters roll apparently because of an official error;
  - (b) an elector who is not enrolled on the voters roll, but is entitled to be enrolled, because of the *Electoral Act 1992*, section 64(1)(a)(ii);
  - (c) an elector who appears, from a record apparently made in error, to have already voted in the election;
  - (d) an elector who is serving a sentence of imprisonment on the cut off day for the election, but who is not serving a sentence of imprisonment on the polling day for the election;
  - (e) a person who is given a ballot paper and declaration envelope for voting because an issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election.
- (2) For subsection (1)(d), a person is serving a sentence of imprisonment only if—
- (a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and
  - (b) the detention is attributable to the sentence of imprisonment concerned.

**345 Declaration voting for postal ballot elections**

An elector in a postal ballot election must cast a declaration vote.

**346 How declaration vote is cast**

Subject to section 336, an elector who may or must make a declaration vote must cast the vote by—

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- (a) if the elector can not enter a polling booth because of illness, disability or advanced pregnancy—going to a place close to a polling booth and voting at that place; or
  - (b) going to a polling booth in the local government area, or division of the local government area, during voting hours at the booth and following the procedures set out in section 348; or
  - (c) going to the local government’s public office before polling day and following the procedures set out in section 352; or
  - (d) if the elector is an elector mentioned in section 343 or an elector for a postal ballot election—using the ballot paper and declaration envelope given to the elector by the returning officer, and following the procedures set out in section 351.

**346A Distribution of ballot papers to certain electors who may cast declaration vote**

- (1) This section applies to an elector mentioned in section 343(g).
- (2) As soon as practicable after the nomination day for an election, the returning officer for the election must give the following things to the elector—
  - (a) a ballot paper;
  - (b) the approved declaration envelope;
  - (c) written instructions in the approved form on how the vote may be cast;
  - (d) an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(insert Region, City, Town or Shire) of (insert name of local government area)’.
- (3) However, if the things mentioned in subsection (2) are posted to an address outside Australia, the envelope mentioned in subsection (2)(d) need not be reply paid.

**347 Distribution of ballot papers to other electors who may or must cast declaration vote**

- (1) An elector mentioned in section 343(a) to (e) may apply to the returning officer, or a presiding officer for the election, for a ballot paper and a declaration envelope.
- (2) The application must be in the approved form.
- (3) The returning officer or presiding officer must, as soon as practicable, give a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to the applicant if—
  - (a) the application is received by the officer not later than 6p.m. on the Thursday before polling day; and
  - (b) the officer is satisfied the applicant is entitled to vote and make the application.
- (4) If the returning officer or presiding officer is satisfied the applicant is an elector mentioned in section 344, the officer—
  - (a) must not give a ballot paper to the applicant; but
  - (b) must give to the applicant an approved declaration form.
- (5) If the returning officer or presiding officer is satisfied the applicant has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to the applicant.
- (6) The things given to an applicant under subsection (3) or (5) must be accompanied by an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(insert Region, City, Town or Shire) of (insert name of local government area)’.
- (7) The returning officer may give things to be given to an applicant under subsection (3) or (5) by posting the things to the applicant’s address stated in the voters roll, an electoral roll mentioned in the *Electoral Act 1992*, section 58(5), the application or the declaration form.

*Example of addresses—*

An applicant's address could be stated as a residential address, post office box number, mail service number or in another appropriate way.

*Editor's note—*

An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

- (8) If things mentioned in subsection (6) are posted to an address outside Australia, the envelope mentioned in subsection (6) need not be reply paid.

**348 How declaration vote may be cast at a polling booth**

- (1) An elector who must cast a declaration vote, other than an elector for a postal ballot election, may cast the vote by—
- (a) entering a polling booth in the local government area, or division of the local government area, during voting hours at the booth; and
  - (b) completing the declaration form given to the elector by an issuing officer.
- (2) If the issuing officer is satisfied the elector has properly completed the declaration form, the officer must give a ballot paper and the approved declaration envelope to the elector.
- (3) On being given the ballot paper and the declaration envelope, the elector must, without delay—
- (a) sign the appropriate declaration on the declaration envelope before the issuing officer and have the officer sign the envelope as witness; and
  - (b) go alone into an unoccupied voting compartment in the polling booth; and
  - (c) there, in private, mark a vote on the ballot paper in accordance with division 11; and
  - (d) fold the ballot paper, put it in the envelope and seal the envelope; and
  - (e) put the sealed envelope in the appropriate ballot box in

- the polling booth; and
- (f) leave the polling booth.

**349 Distribution of ballot papers to electors for postal ballot election**

- (1) For a postal ballot election, the returning officer must post a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to each elector for the postal ballot election as soon as practicable after the nomination day.
- (2) However, if—
- (a) the issuing officer is satisfied a person is an elector mentioned in section 344(1)(a), (b), (c) or (d); or
- (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;
- the officer—
- (c) must not give a ballot paper and declaration envelope to the elector; and
- (d) must give to the elector an approved declaration form.
- (3) If the returning officer is satisfied the elector has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper, the approved declaration envelope and written instructions in the approved form on how the vote may be cast to the elector.
- (4) The things posted to electors under subsection (1) or (3) must be accompanied by an unsealed reply paid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(insert Region, City, Town or Shire) of (insert name of local government area)’.
- (5) The returning officer may post the things to an elector under subsection (1), by posting them to the elector’s address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(5).

*Editor's note—*

An electoral roll mentioned in the *Electoral Act 1992*, section 58(5) may be in a form other than a printed form.

- (6) The returning officer may give the things to a person to whom subsection (2) applies by posting them to the elector's address stated in the voters roll or an electoral roll mentioned in the *Electoral Act 1992*, section 58(5), or to another address given by the person.
- (7) The returning officer may give the things to an elector under subsection (3), by posting them to the elector's address stated in the voters roll, an electoral roll mentioned in the *Electoral Act 1992*, section 58(5) or the declaration form.

*Example of addresses for subsections (6) and (7)—*

An address could be stated as a residential address, post office box number, mail service or in another appropriate way.

- (8) If things for an elector mentioned in subsection (4) are posted to an address outside Australia, the envelope mentioned in subsection (4) need not be reply paid.

**350 Record of ballot papers given to postal voters**

The issuing officer who gives a ballot paper and declaration envelope under section 346A, 347 or 349 must—

- (a) keep a record of the ballot paper and envelope given; and
- (b) sign the record.

**351 Casting a declaration vote by post**

- (1) An elector who has received a ballot paper and declaration envelope under section 346A, 347 or 349 must, before 6p.m. on polling day—
  - (a) sign the declaration on the declaration envelope in the presence of an adult, and have the adult sign the envelope as witness; and
  - (b) in private, mark a vote on the ballot paper in accordance with division 11; and

- (c) fold the ballot paper, put it in the declaration envelope and seal the envelope; and
  - (d) put the sealed declaration envelope containing the ballot paper in the reply paid post envelope mentioned in section 346A(2), 347(6) or 349(4) and post or give the envelope to the returning officer for the election.
- (2) On receipt of the sealed envelope, the returning officer must put it in the appropriate ballot box.

### **352 Declaration voting before polling day**

- (1) The returning officer must declare at least 1 of the following places as a polling booth to enable electors entitled to cast a declaration vote under section 343(a) to (e) to cast a vote at the election before polling day—
- (a) the local government’s public office, or a part of the public office;
  - (b) another office used by the local government to receive rate payments;
  - (c) another convenient place in the local government area.
- (2) An elector mentioned in subsection (1) may, at any time during the relevant election period when the declared place is open for the conduct of business, ask an issuing officer at the declared place for a ballot paper.
- (3) Subject to section 336(5) to (7), the issuing officer must comply with the request.
- (4) An elector who wishes to vote under subsection (1)—
- (a) must complete and sign the approved application form; and
  - (b) must comply with section 336; and
  - (c) need not complete a declaration envelope.
- (5) If an elector is an elector who must cast a declaration vote under section 344, the elector—
- (a) must complete and sign the approved application form and declaration form; and



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- (b) on being given a ballot paper and the approved declaration envelope, must comply with section 348(3) without delay.
- (6) In subsection (2)—
- relevant election period* means the period—
- (a) not earlier than—
- (i) 14 days before polling day; or
- (ii) the longer period that the returning officer fixes and notifies in a newspaper circulating in the local government area, or division of the local government area; and
- (b) not later than 6p.m. on the day before polling day.

**353 Distribution of declaration envelopes when separate ballot papers or polls on same day**

- (1) This section applies if, under section 326, separate ballot papers are used in polls for elections of the mayor and another councillor conducted on the same day.
- (2) In the conduct of the polls—
- (a) only 1 declaration envelope may be distributed to a declaration voter with the ballot papers for use in the polls; and
- (b) this part, other than this section, applies (with any necessary changes) as if the references to the distribution, marking and other dealing with a ballot paper were a reference to all or each of the ballot papers in the polls, as the case requires.

## **Division 11                      Marking of ballot papers**

### **354      Optional-preferential voting**

- (1) For an election of a councillor if the local government area is divided into single-member divisions, a vote is validly cast if the elector votes in accordance with subsection (2) or (3).
- (2) An elector may vote by marking on a ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of the candidate whom the elector prefers.
- (3) Instead of voting in accordance with subsection (2), an elector may vote by—
  - (a) marking on a ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of a candidate to record the elector's first preference for the candidate; and
  - (b) marking—
    - (i) the numeral 2 in another square; or
    - (ii) the numerals 2, 3, and so on (in regular arithmetical sequence by intervals of 1 whole numeral) in other squares;to record the order of the elector's preferences for 1 or more (but not necessarily all) of the other candidates.

### **355      First-past-the-post voting**

- (1) For an election other than one mentioned in section 354, a vote is validly cast if the elector votes in accordance with this section.
- (2) For an election of mayor, the elector must mark on the ballot paper the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers.
- (3) For an election of other councillors, the elector must mark on the ballot paper—

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- (a) if 1 candidate is to be elected—the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers; or
  - (b) if 2 or more candidates are to be elected—
    - (i) the numeral 1, or a tick or a cross, in the square opposite the name of 1 candidate for whom the elector wishes to vote; and
    - (ii) the numeral 2, or the numerals 2, 3 and so on (in regular arithmetical sequence by intervals of 1 whole numeral), as the case may be, in the squares opposite the names of the other candidate or candidates for whom the elector wishes to vote, up to the number of candidates to be elected.

## Division 12                      Replacement ballot papers

### 356      Use of replacement ballot papers

- (1) If, while voting at a polling booth or voting under section 338 or 340, a ballot paper given to an elector is accidentally defaced or destroyed, an issuing officer must give to the elector a replacement ballot paper for use in the poll.
- (2) However, before a replacement ballot paper can be given—
  - (a) the ballot paper it replaces (the *replaced ballot paper*) must not have been already put in a ballot box in use in the poll; and
  - (b) the elector must declare, in the approved declaration form, before the issuing officer that—
    - (i) the replaced ballot paper has been accidentally defaced or destroyed; and
    - (ii) the elector has not voted in the election; and
  - (c) if the replaced ballot paper has been accidentally defaced—the elector must give the defaced ballot paper to the issuing officer; and

- (d) if the replaced ballot paper has been accidentally destroyed—the elector must give to the issuing officer, if practicable, the remains of the ballot paper; and
  - (e) the issuing officer must put the defaced ballot paper, or any remains of the destroyed ballot paper, in an envelope, seal the envelope and set it aside in the officer’s custody for separate identification under section 363(1)(g)(ii).
- (3) If a ballot paper given to an elector under section 346A, 347 or 349 is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6p.m. on polling day, give to the elector a replacement ballot paper and the approved declaration envelope for use in the election.
- (4) However, before a replacement ballot paper can be given—
- (a) the elector must declare, in the approved declaration form, before the issuing officer or an adult witness that—
    - (i) the ballot paper it replaces (the ***replaced ballot paper***) has not been received by the elector or has been accidentally defaced or destroyed; and
    - (ii) the elector has not voted in the election; and
  - (b) if the replaced ballot paper has been accidentally defaced—the elector must put the defaced ballot paper into the elector’s original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
  - (c) if the replaced ballot paper has been accidentally destroyed—the elector must, if practicable, put the remains of the destroyed ballot paper into the elector’s original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
  - (d) the issuing officer must set aside the elector’s declaration envelope in the officer’s custody for separate identification under section 363(1)(g)(ii).

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- (5) The returning officer must record, in the approved form, the name and place of residence of each person to whom a replacement ballot paper is given.
  - (6) If a replacement ballot paper is used for voting—
    - (a) the voting must take place under the appropriate provisions of division 9 or 10; and
    - (b) the vote cast must be dealt with under the appropriate provisions of division 14.

## **Division 13                      Effect of ballot papers**

### **357      Effect of ballot papers—optional-preferential voting**

- (1) This section applies to the election if the system of voting is optional-preferential voting.
- (2) For a ballot paper to have effect as recording a vote in the election—
  - (a) the ballot paper—
    - (i) must be completed in accordance with section 354; or
    - (ii) must contain writing or marking, other than marks mentioned in the section, indicating the elector's intended preference, or intended order of preferences; and
  - (b) the ballot paper must not contain any writing or mark (other than one permitted by this part) by which the elector can, in the returning officer's opinion, be identified; and
  - (c) the ballot paper must have been put into the appropriate ballot box as required by this part; and
  - (d) for a ballot paper put into a declaration envelope as required by section 351—
    - (i) section 351(1) must have been complied with; and

- (ii) if the elector is an elector mentioned in section 343(a) to (e) or 344, or an applicant who is given an approved declaration form under section 347(4) or an elector who is given an approved declaration form under section 349(2), and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 347, or the relevant elector under section 349; and
  - (iii) if the declaration envelope is posted to the returning officer—it must be received by the returning officer within 10 days after polling day.
- (3) If a ballot paper shows 2 or more squares in which the same numeral is marked, those numerals and any higher numerals marked in other squares must be disregarded.
- (4) If a ballot paper shows a break in the sequence of numerals marked in the squares on the ballot paper to indicate preferences, the numeral that breaks the sequence and any higher numerals marked in other squares must be disregarded.

**358 Effect of ballot papers—first-past-the-post voting**

- (1) This section applies to the election if the system of voting is first-past-the-post voting.
- (2) For a ballot paper to have effect as recording a vote in the election—
  - (a) the ballot paper—
    - (i) must be completed in accordance with section 355; or
    - (ii) must contain writing or marking indicating the elector’s intended preference, or intention to vote for any particular candidate or candidates; and
  - (b) the ballot paper must not contain any writing or mark (other than one authorised by this part) by which the elector can, in the returning officer’s opinion, be identified; and

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- (c) the ballot paper must have been put in the appropriate ballot box as required by this part; and
  - (d) for a ballot paper put into a declaration envelope as required by section 351—
    - (i) section 351(1) must have been complied with; and
    - (ii) if the elector is an elector mentioned in section 343(a) to (e) or 344 or an applicant who is given an approved declaration form under section 347(4) or an elector who is given an approved declaration form under section 349(2), and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the person making the declaration must correspond to the signature of the relevant applicant under section 347, or the relevant elector under section 349; and
    - (iii) if the declaration envelope is posted to the returning officer—it must be received by the returning officer within 10 days after polling day.
- (3) A ballot paper must not be rejected merely because it indicates the elector's intention to vote for a number of candidates greater than the number to be elected.

### **359 Posted vote presumed valid until contrary proved**

If a declaration envelope and ballot paper to which section 351 applies is received by a returning officer by post, it must be presumed the provisions of section 351(1) have been complied with in relation to the declaration on the envelope until the contrary is proved.

### **360 Formal and informal ballot papers**

- (1) A ballot paper that has effect to record a vote is a formal ballot paper.
- (2) A ballot paper that has no effect to record a vote is an informal ballot paper.

**361 Ballot paper partly formal and partly informal**

- (1) This section applies if—
  - (a) an election for mayor and an election for the other councillors of the local government are held at the same time and 1 ballot paper is used for both elections; and
  - (b) the ballot paper, as completed for an election, is informal but, as completed for the other election, is formal.
- (2) The informal part of the ballot paper must be rejected and the formal part of the ballot paper must be counted under division 14.

**Division 14 Counting of votes**

**362 Votes to be counted in accordance with this division**

Votes cast in an election are to be counted as required by this division.

**363 Preliminary counting by presiding officer**

- (1) As soon as practicable after the end of ordinary voting hours on polling day, the presiding officer for a polling booth, at a place nominated by the presiding officer, in the presence of another issuing officer and any candidates and scrutineers who wish to attend, must—
  - (a) open all ballot boxes used at the polling booth; and
  - (b) identify, and keep in a separate parcel, all declaration votes; and
  - (c) examine all ballot papers that are not in declaration envelopes, and—
    - (i) identify, and keep in a separate parcel, all informal ballot papers; and
    - (ii) if the system of voting is first-past-the-post voting—count the number of votes for each



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- candidate marked on all formal ballot papers, and keep the ballot papers in a separate parcel; and
- (iii) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel all formal ballot papers on which a first preference vote is recorded for the same candidate; and
- (d) prepare a written statement in duplicate in the approved form that—
    - (i) sets out, in words and numerals, the number of votes for each candidate if subsection (1)(c)(ii) applies, or the number of first preference votes for each candidate if subsection (1)(c)(iii) applies; and
    - (ii) sets out the number of declaration envelopes and informal ballot papers; and
    - (iii) is signed by the presiding officer, and the issuing officer and any scrutineers who are present and wish to sign; and
  - (e) seal up in separate parcels all formal and informal ballot papers, declaration envelopes and unused ballot papers; and
  - (f) endorse on each parcel a description of its contents, sign the endorsement and allow any scrutineers, who wish to do so, to countersign the endorsement; and
  - (g) put into separate parcels—
    - (i) the voters roll and all books and papers used by the presiding officer in the poll with 1 copy of the statement prepared under paragraph (d); and
    - (ii) all ballot papers or remains of ballot papers set aside, under section 337(2) or 356(2)(e) or (4)(d), for separate identification;and endorse on each parcel a description of its contents; and
  - (h) endorse on each parcel—

- (i) the name of the local government area, or division of the local government area, for which the election was held; and
  - (ii) the name of the polling booth from which the parcel has come; and
- (i) sign each endorsement.
- (2) The presiding officer must then, if the officer is not the returning officer, give to the returning officer, or to a person nominated by the returning officer, as soon as practicable—
  - (a) the parcels mentioned in subsection (1); and
  - (b) the copy of the statement prepared under subsection (1)(d) (other than the copy mentioned in subsection (1)(g)); and
  - (c) a reconciliation statement in the approved form for all ballot papers given out at the presiding officer's polling booth and all votes put in ballot boxes at the booth.
- (3) The returning officer or other person who receives things from the presiding officer under subsection (2) must give to the presiding officer a receipt for the things.
- (4) The presiding officer may do anything required under subsection (1) or (2) through an issuing officer authorised by the presiding officer for that purpose.

*Example for subsection (4)—*

An issuing officer could be authorised to sort and bundle ballot papers and prepare a reconciliation statement for the presiding officer.

### **363A Preliminary processing of declaration votes by returning officer—postal ballot election**

- (1) This section applies to an election for which a direction has been given under section 318(2)(a).
- (2) After 8a.m. on the day before polling day, the returning officer may open all ballot boxes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

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**364 Preliminary processing of declaration votes by returning officer—other elections**

- (1) This section applies to an election other than an election for which a direction has been given under section 318(2)(a).
- (2) After 8a.m. on polling day, the returning officer may open all ballot boxes containing only declaration votes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.
- (3) As soon as practicable after 6p.m. on polling day, the returning officer may open all other ballot boxes containing declaration votes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.
- (4) As soon as practicable after receipt by the returning officer of a parcel of declaration votes from a polling booth, the returning officer may open the parcel and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

**365 Procedure for processing declaration envelopes**

- (1) The returning officer must inform all candidates for election of the times when, and the places where, declaration envelopes will be examined by the returning officer and allow them, or their scrutineers, to attend at the processing of declaration votes.
- (2) On examining the declaration envelopes, if the returning officer is satisfied the declaration has been properly completed, the envelope is sealed and the declarant on the envelope is entitled to cast a declaration vote, the returning officer must—
  - (a) detach the elector's declaration from the envelope; and
  - (b) either—
    - (i) place a mark in ink against the declarant's name on the voters roll; or

- (ii) if the voters roll is kept in an electronic form—record in a way approved by the returning officer that the declarant has voted; and
  - (c) place the envelope containing the ballot paper (the *accepted envelope*) in a locked or sealed ballot box; and
  - (d) keep the accepted envelope in the ballot box until dealt with under subsection (3) or section 366.
- (3) The returning officer may take the accepted envelopes from the locked or sealed ballot box and remove the ballot papers from the envelopes, without unfolding them, or allowing anyone else to unfold them, and keep them in a locked or sealed ballot box until dealt with under section 366.
- (4) The returning officer must—
  - (a) put all ballot papers (not in declaration envelopes) that are in a ballot box opened under section 364(3) into a locked or sealed ballot box, without unfolding them, or allowing anyone else to unfold them; and
  - (b) keep them there until they are dealt with in the official counting of votes.
- (5) If a declaration envelope is rejected, the returning officer must set it aside in the officer's custody for separate identification.
- (6) The returning officer must seal up in separate parcels, and keep in the officer's custody for separate identification, all rejected declaration envelopes, accepted envelopes from which ballot papers have been removed and elector's declarations that have been removed from declaration envelopes.

### **366 Official counting of votes**

- (1) As soon as practicable after close of the poll in an election, the returning officer must follow the procedures set out in this section, in the presence of candidates for election, or scrutineers, who wish to attend.
- (2) First, the returning officer must ascertain from the presiding officers' statements under section 363(2)—

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- (a) if the system of voting is first-past-the-post voting—the number of votes cast for each candidate; or
  - (b) if the system of voting is optional-preferential voting—the number of first preference votes cast for each candidate.
- (3) Second, the returning officer must—
- (a) open all sealed parcels of ballot papers given to the returning officer under section 363(2); and
  - (b) examine all ballot papers that are not in declaration envelopes and—
    - (i) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on formal ballot papers, and keep the ballot papers in a separate parcel; or
    - (ii) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel the formal ballot papers on which a first preference vote is indicated for the same candidate, and count the number of first preference votes for each candidate on the formal ballot papers.
- (4) Third, the returning officer must—
- (a) open all other ballot boxes on hand; and
  - (b) open all accepted envelopes mentioned in section 365(2)(d) that have not yet been opened and remove the ballot papers; and
  - (c) identify, and keep in a separate parcel, all informal ballot papers; and
  - (d) examine all formal ballot papers and—
    - (i) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on the ballot papers, and keep the ballot papers in a separate parcel; or
    - (ii) if the system of voting is optional-preferential voting—arrange the ballot papers under the names

of the candidates by putting in a separate parcel the ballot papers on which a first preference vote is recorded for the same candidate, and count the number of first preference votes for each candidate on the ballot papers.

- (5) Fourth, the returning officer must add together—
  - (a) if the system of voting is first-past-the-post voting—the number counted under subsections (3)(b)(i) and (4)(d)(i); or
  - (b) if the system of voting is optional-preferential voting—the number counted under subsections (3)(b)(ii) and (4)(d)(ii).
- (6) Fifth, the returning officer must reapply subsections (4) and (5) as more declaration envelopes are received by the returning officer under section 351 after close of the poll.

### **367 Treatment of ballot paper to which objection is made**

- (1) If, while a presiding officer or returning officer is complying with section 363 or 366, a candidate or scrutineer objects to treatment of a ballot paper as informal, the officer must mark on the back of it ‘formal’ or ‘informal’ according to whether the officer’s decision is to treat it as formal or informal.
- (2) If, while a presiding officer or returning officer, is complying with section 363 or 366, a candidate or scrutineer objects to the counting of a vote for a particular candidate, the officer must mark on the back of the relevant ballot paper the name of the candidate for whom it is counted.

### **368 Counting of votes for optional-preferential system**

- (1) This section applies to the counting of votes in an election in which the system of voting is optional-preferential voting.
- (2) If, on final counting under section 366, a majority of the first preference votes is for 1 candidate, that candidate is elected.
- (3) If not, a second count must take place.
- (4) On the second count—

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- (a) the candidate who has the fewest first preference votes must be excluded; and
  - (b) each ballot paper that records a first preference vote for the excluded candidate, and is not an exhausted ballot paper, must be transferred to the candidate next in the order of the elector's preference; and
  - (c) the ballot paper must be counted as recording a vote for the candidate to whom it is transferred.
- (5) If, on the second count, a candidate has a majority of the votes remaining in the count, the candidate is elected.
- (6) If not, the process of—
- (a) excluding the candidate who has fewest votes; and
  - (b) transferring each ballot paper that records a vote for the excluded candidate, and is not an exhausted ballot paper, to the continuing candidate next in order of the elector's preference; and
  - (c) counting the ballot paper as recording a vote for the candidate to whom it is transferred;
- must be repeated until 1 candidate has a majority of the votes remaining in the count.
- (7) The candidate who under subsection (6) has a majority of the votes remaining in the count is elected.
- (8) If, 2 or more candidates have an equal number of votes and 1 of them must be excluded—
- (a) if there has been an earlier count—the candidate who had the fewest votes at the last count at which the candidates did not have an equal number of votes must be excluded; or
  - (b) if there has not been an earlier count or the candidates had an equal number of votes at all earlier counts—the candidate whose name is on a slip chosen under subsection (9) must be excluded.
- (9) For the purposes of subsection (8)(b), the returning officer must—

- (a) write the names of the candidates who have an equal number of votes on similar slips of paper; and
  - (b) fold the slips, concealing the names; and
  - (c) put the slips in an opaque container and shuffle them; and
  - (d) raise the container so that its contents can not be seen and choose a slip at random.
- (10) If, after a count at which the candidate with fewest votes must be excluded, 2 candidates have an equal number of votes and are the only candidates not excluded, the candidate whose name is recorded under subsection (11)(g) is elected.
- (11) The returning officer must, in the presence of 2 witnesses—
- (a) prepare a list of the candidates; and
  - (b) assign a different number or colour to each candidate; and
  - (c) place only the marbles, balls or other similar things (*marbles*), complying with subsection (12), in an opaque container large enough to allow the marbles in it to move about freely when it is rotated; and
  - (d) rotate the container and permit another person present who wishes to do so to rotate it; and
  - (e) raise the container so that its contents can not be seen; and
  - (f) while the container is raised, take 1 of the marbles out of it or allow 1 of the marbles to come out of it; and
  - (g) record the name of the candidate assigned the numbered or coloured marble that, under paragraph (f), is taken or allowed to come out of the container.
- (12) For subsection (11)(c), the marbles must be—
- (a) the same size and weight; and
  - (b) the same colours or numbers as the colours or numbers assigned under subsection (11)(b) to the candidates.



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- (13) The returning officer must allow each of the 2 candidates, or their representative, to be present for the process mentioned in subsection (11).

### **369 Counting of votes for first-past-the-post system**

- (1) This section applies to the counting of votes in an election in which the system of voting is first-past-the-post voting.
- (2) If the election is for mayor of the local government, the candidate who receives the greatest number of votes is elected.
- (3) If the election is for councillors (other than the mayor) of the local government—
- (a) if 1 person only is to be elected—the candidate who receives the greatest number of votes is elected; and
  - (b) if 2 or more persons are to be elected—the candidates elected are—
    - (i) the candidate who receives the greatest number of votes; and
    - (ii) the candidate who receives the next highest number of votes; and
    - (iii) the candidate who receives the next highest number of votes;
- and so on, up to the number of persons to be elected.
- (4) If 2 or more candidates receive the same number of votes so that subsection (2) or (3)(a) or (b) can not be applied, the candidate whose name is recorded under subsection (5)(g) is elected.
- (5) The returning officer must, in the presence of 2 witnesses—
- (a) prepare a list of the candidates; and
  - (b) assign a different number or colour to each candidate; and
  - (c) place only the marbles, balls or other similar things (*marbles*), complying with subsection (6), in an opaque

- container large enough to allow the marbles in it to move about freely when it is rotated; and
- (d) rotate the container and permit another person present who wishes to do so to rotate it; and
  - (e) raise the container so that its contents can not be seen; and
  - (f) while the container is raised, take 1 of the marbles out of it or allow 1 of the marbles to come out of it; and
  - (g) record the name of the candidate assigned the numbered or coloured marble that, under paragraph (f), is taken or allowed to come out of the container.
- (6) For subsection (5)(c), the marbles must be—
- (a) the same size and weight; and
  - (b) the same colours or numbers as the colours or numbers assigned under subsection (5)(b) to the candidates.
- (7) The returning officer must allow each of the candidates, or their representative, to be present for the process mentioned in subsection (5).

### **370 Returning officer's duty after counting votes**

- (1) When the result of the poll for the election is known, the returning officer must—
- (a) seal up all of the formal ballot papers, informal ballot papers, rejected declaration envelopes, accepted envelopes from which ballot papers have been removed, electors' declarations that have been removed from declaration envelopes, defaced ballot papers, remains of destroyed ballot papers, unused ballot papers, books and papers (other than the voters roll) of each presiding officer used in the poll; and
  - (b) endorse on each parcel a description of its contents and sign the endorsement; and

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- (c) allow any scrutineers, who wish to do so, to countersign the endorsement.
- (2) The returning officer must then—
- (a) examine the voters rolls used in the election and marked by issuing officers to ascertain whether any elector has voted more than once; and
  - (b) make a list in the approved form of the names and numbers on the voters roll of all electors who appear to have voted more than once in the election, enclose the original of the list with the voters rolls in a sealed up parcel, and give a copy of the list to each person who was a candidate in the election.

## **Division 15                      Actions following poll**

### **371      Declaration of poll**

- (1) As soon as practicable after the result of a poll for the election is known, the returning officer must, by notice in the approved form, declare—
  - (a) the result of the poll; and
  - (b) the names of each candidate who has been elected.
- (2) The returning officer must—
  - (a) display the notice in a conspicuous place in the local government's public office; and
  - (b) publish the notice in a newspaper circulating generally in the local government area, or the division of the local government area, for which the election was held.
- (3) The returning officer must not delay complying with subsection (1) or (2) merely because some ballot papers have not been received by the returning officer, if it is clear the votes recorded on the ballot papers could not affect the result of the election.

**372 Notice of final result of poll**

- (1) The returning officer must give notice of the final result of the poll to each candidate as soon as practicable after—
  - (a) all ballot papers used in the poll have been examined; and
  - (b) all votes cast in the poll on ballot papers that appear to be formal have been counted.
- (2) The notice must be in the approved form.

**373 Resolution about electors who fail to vote**

As soon as practicable after the conclusion of the election, the local government must make a resolution deciding whether to take action under section 375 about electors who failed to vote in the election.

**374 List of electors failing to vote**

- (1) This section applies only if the local government makes a resolution under section 373 deciding to take action under section 375 about electors who failed to vote in the election.
- (2) The returning officer must make a list of the names and addresses, and the numbers shown on the voters roll, of all electors who—
  - (a) have not been issued with ballot papers for the election; or
  - (b) in the case of electors mentioned in section 343 or electors for a postal ballot election—have not given their ballot papers to the returning officer.
- (3) The returning officer must—
  - (a) certify the list by declaration in the approved form; and
  - (b) deposit the list with the local government.
- (4) The list is to be held in the local government’s public office, in the chief executive officer’s custody.

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**375 Notice of failure to vote etc.**

- (1) Subject to subsection (2), the local government—
  - (a) must, as soon as practicable after a resolution by the local government to take action under this section, send a notice in the approved form to each elector shown on the list deposited under section 374 at the elector's address shown on the list; and
  - (b) must record on the list, against the elector's name, the fact that the notice has been given.
- (2) The notice must—
  - (a) show the elector's full name and address and number on the voters roll; and
  - (b) state that—
    - (i) the elector appears to have failed to vote at the election; and
    - (ii) it is an offence to fail, without a valid and sufficient reason, to vote at an election; and
    - (iii) the elector may, if the elector considers the elector has committed the offence, pay one-half of a penalty unit (the *penalty*) to the local government by a specified day, not earlier than 21 days after the elector receives the notice (the *appropriate day*), and, if the local government receives the payment by the appropriate day, no further steps will be taken against the elector about the offence; and
  - (c) require the elector—
    - (i) if the elector intends paying the penalty by the appropriate day—to sign the approved form about payment of the penalty included in or with the notice and post or give the form, together with the amount of the penalty, to the local government so it is received by the appropriate day; or
    - (ii) if the elector does not intend paying the penalty by the appropriate day—to state, in the approved form included in or with the notice, whether the elector

voted and, if not, the reason for failing to vote and to sign the form and post or give it to the local government so it is received by the appropriate day.

- (3) The elector must comply with the requirements of the notice.
- (4) If—
  - (a) the elector is absent, or unable, because of physical incapacity, to comply with the requirements of the notice; and
  - (b) another elector who has personal knowledge of the facts complies with the requirements and in doing so also has his or her signature on the form witnessed;the first elector is taken to have complied with the notice's requirements.

### **376 Payments for failure to vote**

- (1) If the local government sends an elector a notice under section 375(1) for an election and payment is made to the local government under section 375(2) to (4), the local government must—
  - (a) accept the payment; and
  - (b) give the person a receipt for the payment; and
  - (c) not take any proceeding against the elector for failing to vote at the election.
- (2) In this section—  
*proceeding* includes serving an infringement notice.

### **377 Recording response to notice**

The local government must record against the name of an elector who is given a notice under section 375 on the list made under section 374 whether the elector—

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- (a) has complied with the requirements of the notice under section 375(2)(c); and
  - (b) had a valid and sufficient reason for failing to vote at the election.

### **378 Evidentiary value of list under s 374**

In a proceeding, a document purporting to be a list, or a copy of or extract from a list, made under section 374, and to be certified by the local government's chief executive officer is evidence of the matters contained in the document.

### **379 Disposal of material resulting from election**

- (1) As soon as practicable after giving notice of the final result of the poll to candidates, the returning officer must—
  - (a) destroy all unused ballot papers; and
  - (b) seal up in packets all other parcels sealed up under section 370; and
  - (c) endorse on each packet—
    - (i) a description of its contents; and
    - (ii) the name of the local government area, or division of the local government area, for which the election was held; and
    - (iii) the polling day;and sign the endorsement; and
  - (d) if the returning officer is not the local government's chief executive officer—give each packet to the chief executive officer.
- (2) The chief executive officer must keep the packets in safe custody for 1 year.
- (3) At the end of the year, the chief executive officer must—
  - (a) destroy all ballot papers contained in the packets; and

- (b) dispose of the other contents of the packets in the way the officer considers appropriate.
- (4) Each councillor of the local government may attend during the destruction of ballot papers by, or at the direction of, its chief executive officer to ensure the papers are destroyed.

### **380 Ballot papers as evidence**

In a proceeding, a ballot paper apparently used at an election and identified by evidence as 1 of the ballot papers given to, or held by, the local government's chief executive officer under section 379 is evidence of the vote or votes cast in the election as recorded on the ballot paper.

### **381 Notice to electors whose ballot papers are not accepted**

- (1) Subsection (2) applies if—
  - (a) in an election, a person makes a declaration vote under section 344(1)(a); and
  - (b) the person's ballot paper is not accepted for counting under section 365 because the returning officer is not satisfied that the declarant on the declaration envelope is entitled to cast a declaration vote in the election.
- (2) As soon as practicable after an election, the local government must send a notice in the approved form to the person advising the person why the ballot paper was not accepted for counting.

### **382 Notice to electoral commission of certain declaration votes**

As soon as practicable after the election, the returning officer must give to the electoral commission notice of the names and addresses of all persons permitted to vote at the election whose names are not on the voters roll, apparently because of official error, if the error relates to the keeping of an electoral roll under the *Electoral Act 1992*.



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## Division 16            Enforcement

### Subdivision 1        Offences in general

#### 383    False or misleading information

- (1) A person must not give information under this chapter to a returning officer or to the chief executive officer of a local government, including information in a document, that the person knows is false or misleading in a material particular.

Maximum penalty—7 years imprisonment.

- (2) Subsection (1) does not apply to a person giving a document if, when giving the document to someone, the person—
- (a) informs the other person, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the other person the correct information.
- (3) It is enough for a charge against a person for an offence against subsection (1) to state the information, without specifying which part of the information, was 'false or misleading'.

#### 385    Bribery

- (1) In this section—
- election conduct* of a person means—
- (a) the way in which the person votes at an election; or
  - (b) the person's nominating as a candidate for an election; or
  - (c) the person's support of, or opposition to, a candidate or a political party at an election.
- (2) A person must not—
- (a) ask for or receive; or

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

property or a benefit of any kind (whether for the person or someone else) on the understanding that the person's election conduct will be influenced or affected.

Maximum penalty—7 years imprisonment.

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

Maximum penalty for subsection (3)—7 years imprisonment.

### **386 Providing money for illegal payments**

A person must not knowingly give money for—

(a) any payment that is contrary to law relating to elections;  
or

(b) replacing any money that has been spent in making a payment mentioned in paragraph (a).

Maximum penalty—2 years imprisonment.

### **387 Improperly influencing electoral officers**

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

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

### **388 Interfering with election right or duty**

A person must not hinder or interfere with the free exercise or performance, by another person, of another right or duty under this Act that relates to an election.

Maximum penalty—20 penalty units or 6 months imprisonment.

**389 Forging or uttering electoral papers**

- (1) A person must not—
- (a) forge an electoral paper; or
  - (b) utter a forged electoral paper knowing it to be forged.

Maximum penalty—10 years imprisonment.

- (2) A person must not make someone else's signature on an electoral paper.

Maximum penalty for subsection (2)—10 years imprisonment.

**390 Wilful neglect etc. of electoral officers**

An electoral officer must not wilfully neglect or fail to perform a duty under this Act.

Maximum penalty—20 penalty units.

**391 No record to be made of vote cast**

An electoral officer, or scrutineer, must not make a mark, memorandum or note on a voters roll or other list of voters or otherwise—

- (a) that indicates for whom a person has cast a vote; or
- (b) that would enable the officer or scrutineer to know or remember for whom a person has cast a vote.

Maximum penalty—10 penalty units.

**Subdivision 2 Offences about electoral advertising and information****392 Responsibility for election matter**

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

- (a) print, publish, distribute or broadcast; or

- (b) permit or authorise someone else to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing election matter unless there appears, or is stated, at its end the particulars required by subsection (2).

Maximum penalty—

- (a) for an individual—20 penalty units; or
  - (b) for a corporation—85 penalty units.
- (2) The particulars are the name and address, other than a post office box or facility, of the person who authorised the advertisement, handbill, pamphlet or notice.
  - (3) Subsection (1) does not apply to an advertisement that—
    - (a) is printed, published or distributed on a car sticker, T-shirt, lapel badge, pen, pencil or balloon; or
    - (b) is of a kind prescribed by regulation.
  - (4) Also, subsection (1) does not apply to distributing, or permitting or authorising someone else to distribute, a how-to-vote card.

### **392A Distribution of how-to-vote cards**

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

Maximum penalty—

- (a) for an individual—20 penalty units; or
  - (b) for a corporation—85 penalty units.
- (2) A how-to-vote card must state the name and address of the person who authorised the card.
  - (3) For subsection (2)—
    - (a) the address must not be a post office box; and

- 
- (b) if the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates, the authorising person must be a member of the group.
- (4) A how-to-vote card must also state—
- (a) if the card is authorised for a political party or a candidate endorsed by a political party—the party’s name; or
- (b) if paragraph (a) does not apply and the card is authorised for a group of candidates or for a candidate who is a member of a group of candidates—the group’s name; or
- (c) otherwise—the candidate’s name and the word ‘candidate’.

*Example for paragraph (a)—*

‘Authorised P. Smith, 100 Green Street Brisbane for [name of political party]’.

*Example for paragraph (c)—*

‘Authorised R. Jones, 1 Green Street Brisbane for R. Jones (candidate)’.

- (5) The particulars mentioned in subsections (2) and (4) must appear—
- (a) at the end of each printed face of the how-to-vote card; and
- (b) in prominent and legible characters in print no smaller than—
- (i) if the card is not larger than A6—10 point; or
- (ii) if the card is larger than A6 but not larger than A3—14 point; or
- (iii) if the card is larger than A3—20 point.
- (6) During the election period for an election, a person must not distribute, or permit or authorise someone else to distribute, a how-to-vote card if the person knows, or ought reasonably to know, that the particulars, or any of the particulars, mentioned in subsections (2) and (4) on the card are false.

Maximum penalty—

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

(7) In this section—

**group of candidates** means a group of candidates, within the meaning given by section 426, that has a name.

**name**, of a political party, means—

- (a) if the register includes an abbreviation of the party's name—the abbreviation; or
- (b) otherwise—the party's full name included in the register.

**register** means the register of political parties kept under the *Electoral Act 1992*.

### **392B Lodging of how-to-vote cards**

- (1) The person who authorised a how-to-vote card for a political party, or for a candidate endorsed by a political party, for an election must, not later than 5p.m. on the Friday that is 7 days before the polling day for the election, lodge with the returning officer for the election—
  - (a) the required number of the how-to-vote cards; and
  - (b) a statutory declaration relating to any financial contribution received from another political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—
    - (i) who the financial contribution was received from or on behalf of; and
    - (ii) the nature and amount of the financial contribution.
- (2) The person who authorised a how-to-vote card for a candidate or a group of candidates for an election, other than a candidate or group of candidates endorsed by a political party for the election, must, by 5p.m. on the Friday that is 7 days before the

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polling day for the election, lodge with the returning officer for the election—

- (a) the required number of the how-to-vote cards; and
- (b) a statutory declaration relating to any financial contribution received from a political party or another candidate, whether directly or from someone else on behalf of the party or candidate, in relation to the production of the how-to-vote card that states—
  - (i) who the financial contribution was received from or on behalf of; and
  - (ii) the nature and amount of the financial contribution.

*Example for subsections (1) and (2)—*

If polling day is Saturday, 15 January, the how-to-vote cards and statutory declaration must be lodged by 5p.m. on Friday, 7 January.

- (3) The returning officer must reject a how-to-vote card received under subsection (1) or (2) that does not comply with section 392A.
- (4) Before polling day, the returning officer must make a how-to-vote card that the returning officer has not rejected available for public inspection for free at—
  - (a) the place of nomination under section 301; and
  - (b) if the place of nomination is not also the public office of the local government to which the election relates—the local government’s public office.
- (5) On polling day, the returning officer must, to the extent that it is reasonably practicable to do so, make the how-to-vote card mentioned in subsection (4) available for public inspection for free at each polling booth for which the how-to-vote card is relevant.
- (6) An election is not invalid only because the returning officer does not comply with subsection (4) or (5).
- (7) A person must not distribute, or permit or authorise someone else to distribute, a how-to-vote card to which subsection (1) or (2) applies on polling day unless subsection (1) or (2) has been complied with for the card.

Maximum penalty—20 penalty units.

- (8) If, on polling day, an electoral officer reasonably suspects a person is distributing a how-to-vote card to which subsection (1) or (2) applies and that subsection (1) or (2) has not been complied with for the card, the electoral officer may—
- (a) require the person to produce the how-to-vote card for inspection; and
  - (b) confiscate any how-to-vote cards that have not been lodged as required by subsection (1) or (2).
- (9) A person must not obstruct an electoral officer in the exercise of the power under subsection (8)(b), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (10) In this section—

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

***obstruct*** includes hinder and attempt to obstruct.

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

### **393 Headline to electoral advertisements**

The proprietor of a newspaper commits an offence if—

- (a) an article, or a paragraph, containing matter about an election is printed in the newspaper; and
- (b) either—
  - (i) the insertion of the article or paragraph is, or is to be, paid for; or
  - (ii) any reward or compensation, or promise of reward or compensation, is, or is to be, made for the insertion of the article or paragraph; and



- (c) the proprietor does not cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

Maximum penalty—

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

### **394 Misleading voters**

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

Maximum penalty—40 penalty units.

- (2) A person must not, for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate.

Maximum penalty—40 penalty units.

- (3) During an election period, a person must not print, publish, distribute or broadcast by television anything that purports to be a representation of a ballot paper for use in the election, if it is likely to induce an elector to vote other than in accordance with this part.

Maximum penalty—40 penalty units.

- (4) In this section—

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

## **Subdivision 3 Offences about voting**

### **395 Failure to vote**

- (1) An elector must not—

- (a) fail to vote at an election without valid and sufficient reason; or
- (b) fail to comply with the requirements of a notice given to the elector under section 375; or
- (c) purport to comply with the requirements of a notice given to the elector under section 375, make a statement the elector knows to be false or misleading in a material particular.

Maximum penalty—1 penalty unit.

- (2) An elector's belief that it is part of the elector's religious duty not to vote at elections is valid and sufficient reason for the elector's failure to vote in a particular election.
- (3) A complaint against a person for a contravention of subsection (1)(c) is sufficient if it states that the statement was false or misleading to the person's knowledge.

### **396 Leave to vote**

- (1) This section applies if—
  - (a) an employee who is an elector asks his or her employer, before polling day for an election, for leave of absence to vote at the election; and
  - (b) the absence is necessary to enable the employee to vote at the election.
- (2) The employer must allow the employee leave of absence for a reasonable period (not more than 2 hours) to enable the employee to vote at the election, unless the absence is reasonably likely to cause danger or substantial loss to the employer in relation to the employment concerned.
- (3) The employer must not impose any penalty or disproportionate deduction of pay for the leave of absence.
- (4) An employee must not ask for leave of absence under subsection (1) to vote at an election unless the employee genuinely intends to vote at the election.

Maximum penalty—

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

### **397 Canvassing in or near polling booths**

- (1) During an election period, a person must not do any of the things mentioned in subsection (2)—
  - (a) inside a polling booth; or
  - (b) within 6m, or a shorter distance approved under subsection (3), of an entrance to a building if—
    - (i) the building is, or is part of, a polling booth; and
    - (ii) either a ballot box is in the building for use in the election, or a person is in the building for the purpose of casting a vote in the election.
- (2) The things are—
  - (a) canvassing for votes; or
  - (b) inducing an elector not to—
    - (i) vote in a particular way; or
    - (ii) vote at all in the election; or
  - (c) loitering; or
  - (d) obstructing the free passage of a person seeking to vote.Maximum penalty—10 penalty units.
- (3) The returning officer may approve a shorter distance for subsection (1)(b) only on the conditions mentioned in subsection (4).
- (4) For subsection (3), the conditions are—
  - (a) the shorter distance applies only in relation to canvassing for votes mentioned in subsection (2)(a); and
  - (b) the polling booth mentioned in subsection (1)(b)(i) must be a place declared as a polling booth under section 352(1); and

- (c) the shorter distance applies only in relation to the casting of declaration votes before polling day under section 352.

**398 Interrupting voting etc.**

A person must not—

- (a) enter or remain in a polling booth other than under this Act; or
- (b) wilfully interrupt, obstruct or disturb any proceeding at an election; or
- (c) enter a voting compartment other than under this Act; or
- (d) prevent a scrutineer from entering or leaving a polling place—
  - (i) during voting hours for the polling place; or
  - (ii) while votes are being counted at the polling place; or
- (e) obstruct or wilfully mislead an electoral officer in the performance of a duty.

Maximum penalty—10 penalty units.

**399 Influencing voting**

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

Maximum penalty—2 years imprisonment.

**400 Party badges not to be worn in polling booths**

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

Maximum penalty—1 penalty unit.

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**401 Voting if not entitled**

A person must not, at an election—

- (a) vote in someone else's name (including a dead or fictitious person); or
- (b) vote more than once; or
- (c) cast a vote that the person knows the person is not entitled to cast; or
- (d) if the person knows someone else is not entitled to vote at the election—procure the other person to vote.

Maximum penalty—3 years imprisonment.

**402 Offences relating to ballot papers**

(1) A person must not—

- (a) wilfully fail to comply with section 336 or 351; or
- (b) take a ballot paper out of a polling booth other than under this part; or
- (c) place in a ballot box a ballot paper that has not been—
  - (i) given to an elector under this part; or
  - (ii) marked by the elector.

(2) A person must not, without lawful excuse, obtain possession of or have in the person's possession—

- (a) a ballot paper that has been marked by anyone else; or
- (b) a declaration form or envelope that has been signed by anyone else.

Maximum penalty—20 penalty units or 6 months imprisonment.

**403 Failure to deliver or post documents for someone else**

(1) If a person is given, for delivery or posting to the returning officer—

- (a) an application by someone else to be treated as a declaration voter; or
  - (b) a declaration form that appears to be completed;
- the person must promptly deliver or post it to the returning officer.
- (2) If a person is given, for delivery or posting to the returning officer, a declaration envelope that appears to be completed, the person must give or post it to the returning officer before 6p.m. on polling day.
- Maximum penalty—20 penalty units or 6 months imprisonment.

#### **404 Breach of confidentiality of vote**

- (1) A person must not examine a ballot paper used in the election to ascertain the candidates for whom an elector has voted.
  - (2) Subsection (1) does not apply to a proceeding in a court or a person in the performance of functions under this Act.
  - (3) If, in performing a function for an election, a person has ascertained the candidates for whom an elector has cast a vote, the person must not disclose, or assist in disclosing, that fact, unless the person is required by law to make the disclosure.
- Maximum penalty—20 penalty units or 6 months imprisonment.

#### **405 Breaking seals on parcels**

A person must not wilfully open or break the seal of a parcel or packet sealed under this part unless the person is authorised under this Act or ordered by a court to open or break the seal.

Maximum penalty—20 penalty units or 6 months imprisonment.

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**406 Duty of witness to signing of declaration voting papers**

A person (the *witness*) must not sign a declaration envelope as witness under section 351 unless—

- (a) the witness is satisfied of the identity of the elector who signs the declaration before the witness; and
- (b) the witness has seen the elector sign the declaration; and
- (c) either—
  - (i) the witness knows that the declaration made by the elector is true; or
  - (ii) the witness is satisfied that the declaration is true because of inquiries of the elector or otherwise.

Maximum penalty—20 penalty units or 6 months imprisonment.

**Subdivision 4 Injunctions****407 Injunctions to restrain contravention of chapter**

- (1) An application may be made to the Supreme Court for an injunction if—
  - (a) either—
    - (i) a person (the *offending party*) has engaged, is engaging or proposes to engage in conduct; or
    - (ii) a person (also the *offending party*) has failed, is failing or proposes to fail to do anything; and
  - (b) the conduct or failure constituted, constitutes or would constitute a contravention of, or an offence against, this chapter.
- (2) Without limiting the operation of subsection (1), an application may also be made to the Supreme Court for an injunction if a returning officer for an election decides a person is not properly nominated for the election.
- (3) The application may be made by the returning officer or a candidate, or nominee as a candidate, for election.

- (4) The court may grant an interim injunction pending determination of the application.
- (5) If a returning officer makes the application, the court must not require the officer or anyone else to give an undertaking about damages as a condition of granting an interim injunction.
- (6) On consideration of the application, the court may—
  - (a) if subsection (1)(a)(i) applies—
    - (i) grant an injunction restraining the offending party from engaging in the conduct concerned; and
    - (ii) also require the offending party to do anything to prevent or remedy the contravention; or
  - (b) if subsection (1)(a)(ii) applies—grant an injunction requiring the offending party to do the thing in question; or
  - (c) if subsection (2) applies—grant an injunction requiring the returning officer to accept the person’s nomination for the election.
- (7) The court may grant the injunction—
  - (a) if the court is satisfied the offending party has engaged in the conduct, or failed to do the thing, mentioned in subsection (1)—whether or not it appears to the court that the offending party intends—
    - (i) to engage again or continue to engage in the conduct; or
    - (ii) to fail or continue to fail to do the thing; or
  - (b) if it appears to the court that, if the injunction is not granted, it is likely the offending party will engage in the conduct, or fail to do the thing, mentioned in subsection (1), whether or not—
    - (i) the offending party has previously engaged in the conduct or failed to do the thing; or
    - (ii) there is imminent danger of substantial damage to any person if the offending party engages in the conduct or fails to do the thing.



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- (8) The court may refuse to grant an injunction if it appears to the court that application was not made to the court at the earliest possible opportunity.
  - (9) The court may discharge or vary the injunction or an interim injunction.
  - (10) The powers conferred on the court by this section are in addition to, and do not limit, other powers of the court.

## **Part 7                      Fresh elections**

### **408      Requirements for fresh election**

- (1) A regulation may direct that a fresh election of councillors of a local government be held if the Legislative Assembly ratifies the dissolution of the local government under section 123 of the Act.
- (2) A regulation may direct that a fresh election of councillors of a local government, or a division of a local government, be held if action is taken to implement a local government change under chapter 2, part 3 of the Act.
- (4) A direction under subsection (1) may be given only after the ratification of the dissolution.
- (5) A direction under subsection (2) may be given at the time the action mentioned in that subsection is taken or at a later time.

### **409      Time for fresh election**

The day on which a fresh election is to be held is a Saturday fixed by regulation made under section 408.

### **410      Returning officer for fresh election**

The returning officer for a fresh election of councillors of a local government is the local government's chief executive

officer or, if there is no chief executive officer, a person appointed by the Minister.

**411 Voters roll for fresh election**

A voters roll for a fresh election must be compiled under the regulation directing the holding of the fresh election.

**412 Other provisions of chapter apply**

The provisions of this chapter (other than this part) apply, with all necessary changes and any changes prescribed by regulation, to a fresh election as if the election were a quadrennial election.

**413 Extension of term of councillors**

In directing a fresh election, a regulation may declare that the councillors elected at the fresh election are elected for a term ending at the conclusion of the quadrennial elections after the next quadrennial elections.

**Part 8 Disclosure of election gifts and loans and requirements for accounts**

**Division 1 Preliminary**

**413A Application of pt 8 to Brisbane City Council**

This part applies to Brisbane City Council.

**414 Definitions for pt 8**

In this part—

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***associated entity*** means an incorporated or unincorporated body, or the trustee of a trust, that—

- (a) is controlled by 1 or more political parties; or
- (b) operates wholly or mainly for the benefit of 1 or more political parties.

***disclosure period***—

- (a) for a candidate for an election—see division 2, subdivision 1; and
- (b) for sections 427A, 428(1A), 428B and 428C—see section 423A; and
- (c) for section 430—see section 424; and
- (d) for section 430A—see section 425.

***disposition of property*** means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, and includes—

- (a) the allotment of shares in a corporation; and
- (b) the creation of a trust in property; and
- (c) the grant or creation of a lease, mortgage, charge, servitude, licence, power, partnership or interest in property; and
- (d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in property; and
- (e) the exercise by a person of a general power of appointment of property in favour of someone else; and
- (f) a transaction by a person with intent to diminish, directly or indirectly, the value of the person's own property and to increase the value of someone else's property; and
- (g) payment for attendance at or participation in a fundraising activity.

*Example for paragraph (g)—*

a payment made for admission to a social function, as the highest bidder for an item at an auction or for buying a ticket in a raffle

**gift** means the disposition of property or the provision of a service, without consideration or for a consideration less than the full consideration, but does not include—

- (a) transmission of property under a will; or
- (b) provision of a service by volunteer labour.

**prescribed amount** means an amount prescribed under a regulation but, until a regulation is made, means—

- (a) in sections 427(2)(b)(iii), 427A(2)(e), 428(1), 428B(4), 428C(1), 430A(1)(b) and 431A(6)—\$200; or
- (b) in section 430(1)(b) and (6), definition *prescribed gift*, paragraph (c)—\$1000.

**prescribed period** means a period prescribed under a regulation but, until a regulation is made, means 30 days.

**register**, for a local government, see section 433(1).

**registered industrial organisation** means an organisation registered under a law of the State, another State or the Commonwealth about the registration of industrial organisations.

**relevant details**, for a gift, means the value of the gift and when the gift was made and—

- (a) for a gift purportedly made on behalf of the members of an unincorporated association—
  - (i) the association's name; and
  - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association; or
- (b) for a gift purportedly made out of a trust fund or out of the funds of a foundation—

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- (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
  - (ii) the title or other description of the trust fund or the name of the foundation; and
  - (iii) if the gift is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the giver of the gift—the name and residential or business address of the person; or
- (c) for a gift not mentioned in paragraph (a) or (b)—the name and residential or business address of the person who made the gift.

*value*, for a gift, means—

- (a) if the gift is money—the amount of the money; or
- (b) if the gift is property other than money—
  - (i) the market value of the property; or
  - (ii) if a regulation prescribes principles under which the value of the property is to be determined—the value determined under the principles; or
- (c) if the gift is the provision of a service—
  - (i) the amount that would reasonably be charged for providing the service if the service were provided on a commercial basis; or
  - (ii) if a regulation prescribes principles under which the amount that would reasonably be charged for providing the service is to be determined—the amount determined under the principles.

## 415 Candidates

For this part, a reference to a candidate for an election is a reference to a person who, at noon on the nomination day for the election, is properly nominated for the election.

**416 Things taken to be done by political party**

For this part, for a political party that is not a body corporate, things done by or with the authority of members or officers of the party on behalf of the party are done by or for a political party.

**417 Related corporations**

For this part—

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

**417A Adjustment of prescribed amount in relation to disclosure period**

- (1) This section applies if—
  - (a) during a disclosure period under this part, a regulation prescribes an amount (the *new amount*) as the prescribed amount for section 414, definition *prescribed amount*, for a provision of this part; and
  - (b) the new amount is still in force as the prescribed amount for the provision at the end of the disclosure period; and
  - (c) a person is required, under the provision, to give the chief executive officer of a local government a return that relates to the disclosure period.
- (2) For the completion of the return, the prescribed amount is taken always to have been, for the whole of the disclosure period, the new amount.

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**Division 2                      Disclosure periods****Subdivision 1                Disclosure periods for candidates  
for elections****418      Purpose of subdivision**

This subdivision defines the disclosure periods for candidates for elections.

**419      Disclosure period for candidates at previous elections**

- (1) This section applies if a candidate for an election (the *current election*) was a candidate for another election relating to any local government the conclusion of which was within the relevant period before the polling day for the current election.
- (2) The disclosure period for the candidate for the current election starts at the end of the prescribed period after the conclusion of the most recent election happening before the current election in which the candidate was a candidate.
- (3) The disclosure period ends at the end of the prescribed period after the conclusion of the current election.
- (4) In this section—  
*relevant period* means the period prescribed under a regulation but, until a regulation is made, means 5 years.

**420      Disclosure period for candidates at previous fresh  
elections**

- (1) This section applies if a person—
  - (a) was a candidate at a fresh election (the *previous election*) relating to a local government (the *first local government*); and
  - (b) is a candidate for a subsequent election relating to any local government (the *relevant election*) up to and

including the next quadrennial election relating to the first local government.

- (2) Despite section 419, the disclosure period for the candidate for the relevant election starts at the end of the prescribed period after the conclusion of whichever is the later of—
  - (a) the previous election; or
  - (b) a later election in which the candidate was a candidate before the relevant election.
- (3) The disclosure period ends at the end of the prescribed period after the conclusion of the relevant election.

#### **421 Disclosure period for new candidates**

- (1) This section applies if sections 419, 420 and 422 do not apply to a person who is a candidate for an election.
- (2) The disclosure period for the candidate for the election starts when the first of the following happens or, if they happen at the same time, when they happen—
  - (a) the person announces the person is to be a candidate in the election;
  - (b) the person nominates as a candidate in the election.
- (3) The disclosure period ends at the end of the prescribed period after the conclusion of the election.

#### **422 Disclosure period for certain candidates who are appointed councillors**

- (1) This section applies if a candidate for an election, when nominating as a candidate, is an appointed councillor of a local government to whom neither section 419 nor section 420 applies.
- (2) Despite section 421, the disclosure period for the candidate for the election starts when the candidate was appointed a councillor.
- (3) The disclosure period ends at the end of the prescribed period after the conclusion of the election.



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**Subdivision 2      Disclosure period for groups of candidates and third parties for elections****423      Purpose of subdivision**

This subdivision defines the disclosure period for sections 427A and 430 for an election.

**423A      Disclosure period for particular sections**

For sections 427A, 428(1A), 428B and 428C, the disclosure period for an election—

- (a) starts at the end of the prescribed period after the conclusion of the immediately preceding quadrennial elections for the relevant local government under the section; and
- (b) ends at the end of the prescribed period after the conclusion of the election.

**424      Disclosure period for s 430**

For section 430, the disclosure period for an election—

- (a) starts at the end of the prescribed period after the date of the immediately preceding quadrennial elections for the relevant local government under the section; and
- (b) ends at the end of the prescribed period after the polling day for the election.

**425      Disclosure period for s 430A**

For section 430A, the disclosure period for an election for a local government—

- (a) starts on the day after the day the returning officer publishes notice of the election in a newspaper under section 301; and
- (b) ends at 6p.m. on the polling day for the election.

## **Division 3                      Disclosure of gifts and loans and requirements for accounts**

### **Subdivision 1              Preliminary**

#### **426      Definitions for div 3**

In this division—

*agent*, for a group of candidates for an election, means the agent for the group recorded in a register of group agents under section 435E.

*candidate's campaign committee*, for a candidate for an election, means a committee formed to help the candidate's campaign in the election but does not include a committee that is recognised by a political party as being part of the political party.

*gifts received by a candidate for an election* includes gifts received by the candidate's campaign committee for or on behalf of the candidate.

*group of candidates*, for an election—

- 1      A *group of candidates*, for an election, means a group of individuals, each of whom is a candidate for the election, if the group was formed—
  - (a)    to promote the election of the candidates; or
  - (b)    to share in the benefits of fundraising for the purposes of promoting the election of the candidates; or
  - (c)    for both paragraphs (a) and (b).
- 2      However, a *group of candidates*, for an election, does not include a political party or an associated entity.

*group's campaign committee*, for a campaign committee of a group of candidates for an election, means a committee formed to help the election campaign of members of the group.

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## **Subdivision 1A Disclosure by candidates for elections**

### **427 Gifts to candidates**

- (1) This section applies to gifts received by a candidate for an election during the candidate's disclosure period for the election but not to a gift made in a private capacity to the candidate, for the candidate's personal use, that the candidate has not used, and does not intend to use, solely or substantially for a purpose related to any election.
- (2) Each candidate for the election must, within 15 weeks after the conclusion of the election, give to the chief executive officer of the local government to which the election relates a return, in the approved form, stating—
  - (a) whether the candidate received any gifts to which this section applies; and
  - (b) if so—
    - (i) the total value of all of the gifts; and
    - (ii) how many persons made the gifts; and
    - (iii) the relevant details for each gift made by a person to the candidate, if the total value of all gifts made by the person to the candidate during the disclosure period is the prescribed amount or more.
- (3) A candidate need not comply with subsection (2) if—
  - (a) the candidate gives a return, in the approved form, to the chief executive officer before making the declaration of office under section 169 of the Act, and the return states the candidate—
    - (i) does not expect to receive gifts in the disclosure period for the election after giving the return; and
    - (ii) will give a return under the section if gifts are received in the disclosure period for the election after giving the return; and

- (b) the candidate does not receive gifts in the disclosure period for the election after giving the return.

#### **427A Gifts to groups of candidates**

- (1) This section applies if—
  - (a) a candidate for an election is a member of a group of candidates; and
  - (b) the group, or the group's campaign committee for the election, receives gifts for the election during the disclosure period for this section for the election.
- (2) Within 15 weeks after the conclusion of the election, the group's agent must give to the chief executive officer of the local government to which the election relates a return, in the approved form, stating the following—
  - (a) the names of the candidates forming the group;
  - (b) the name, if any, of the group;
  - (c) the total value of all of the gifts;
  - (d) how many persons made the gifts;
  - (e) the relevant details for each gift made by a person to the group if the total value of all gifts made by the person to the group during the disclosure period is the prescribed amount or more.
- (3) The agent need not comply with subsection (2) if—
  - (a) each candidate who is a member of the group gives a return, in the approved form, to the chief executive officer before making the declaration of office under section 169 of the Act, and the return states—
    - (i) the candidate does not expect the group or the group's campaign committee for the election to receive further gifts in the disclosure period for the election after giving the return; and
    - (ii) the group's agent will give a return under this section if further gifts are received in the disclosure period for the election after giving the return; and

- (b) the group or the group's campaign committee for the election does not receive further gifts in the disclosure period for the election after giving the return.

#### **428 Certain gifts not to be received**

- (1) It is unlawful for a candidate for an election, or a person acting on behalf of a candidate for an election, to receive, during the disclosure period for the candidate for the election, a gift made to or for the benefit of the candidate the value of which is the prescribed amount or more unless—
  - (a) the relevant details for the gift are known to the person receiving the gift; or
  - (b) when the gift is made—
    - (i) the person making the gift gives to the person receiving the gift details of the gift; and
    - (ii) the person receiving the gift has no reasonable grounds to believe that the details given are not the relevant details for the gift.
- (1A) It is unlawful for a group of candidates for an election, or a person acting on behalf of a group of candidates for an election, to receive, during the disclosure period for the election, a gift made to or for the benefit of the group of candidates, the value of which is the prescribed amount or more unless—
  - (a) the relevant details for the gift are known to the group or person receiving the gift; or
  - (b) when the gift is made—
    - (i) the person making the gift gives the group or person receiving the gift details of the gift; and
    - (ii) the group or person receiving the gift has no reasonable grounds to believe that the details given are not the relevant details for the gift.
- (2) If a person or group receives a gift that, under subsection (1) or (1A), it is unlawful for the person or group to receive, an amount equal to the value of the gift—

- (a) is payable by the person or group to the local government to which the election relates; and
  - (b) may be recovered by the local government as a debt owing to the local government by action in a court of competent jurisdiction against the person or group.
- (3) For subsections (1) and (1A), a person who is a candidate in an election remains a candidate for the prescribed period after the conclusion of the election.
  - (4) For this section, 2 or more gifts made by the 1 person to or for the benefit of the one candidate or group of candidates, are to be treated as 1 gift.
  - (5) In this section—

*person acting on behalf of a candidate for an election* includes the candidate's campaign committee for the election.

*person acting on behalf of a group of candidates for an election* includes the group's campaign committee for the election.

*person making a gift* includes an unincorporated association on whose behalf a gift is made.

#### **428A Valuation of fundraising activity gifts**

For the application of section 427, 427A or 428 to a gift in the form of a payment for attendance at or participation in a fundraising activity, the value of the gift is taken to be the gross amount of the payment, regardless of the value of anything received in consideration for the payment.

#### **428B Loans to candidates or groups of candidates**

- (1) Each candidate for an election must, within 15 weeks after the conclusion of the election, give the chief executive officer of the local government to which the election relates a return, in the approved form, covering all loans received by the candidate from a person other than a financial institution during the disclosure period for the election.

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- (2) The agent for a group of candidates for an election must, within 15 weeks after the conclusion of the election, give the chief executive officer of the local government to which the election relates a return, in the approved form, covering all loans received by the group from a person other than a financial institution during the disclosure period for the election.
- (3) A return under subsection (1) or (2) must state—
- (a) the total value of the loans; and
  - (b) the number of persons who made loans.
- (4) The return must also state the following for each loan with a value of the prescribed amount or more—
- (a) the date on which the loan was made;
  - (b) for a loan from the members of an unincorporated association—
    - (i) the association's name; and
    - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association;
  - (c) for a loan purportedly made out of a trust fund or out of the funds of a foundation—
    - (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
    - (ii) the title or other description of the trust fund or the name of the foundation; and
    - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the lender—the name and residential or business address of the person;
  - (d) if neither of paragraphs (b) and (c) apply to the loan—the name and residential or business address of

- the person who made the loan;
- (e) the terms and conditions of the loan.

#### **428C Certain loans not to be received**

- (1) It is unlawful for a candidate for an election, a group of candidates for an election, or a person acting on behalf of a candidate or group of candidates for an election, to receive a loan of the prescribed amount or more from a person other than a financial institution during the disclosure period for the election unless the candidate, group or person keeps a record of the following—
- (a) the terms and conditions of the loan;
  - (b) if the loan was received from a registered industrial organisation other than a financial institution—
    - (i) the name of the organisation; and
    - (ii) the names and addresses of the members of the executive committee (however described) of the organisation;
  - (c) if the loan was received from an unincorporated association—
    - (i) the name of the association; and
    - (ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association;
  - (d) if the loan was paid out of a trust fund or out of the funds of a foundation—
    - (i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
    - (ii) the title or other description of the trust fund, or the name of the foundation; and
    - (iii) if the loan is made out of a trust account of a lawyer or accountant under the instructions of a



person who is in substance the lender—the name and residential or business address of the lender;

- (e) if none of paragraphs (b), (c) and (d) applies—the name and residential or business address of the person.
- (2) If a candidate, group or person receives a loan that, because of subsection (1), it is unlawful for the candidate, group or person to receive, an amount equal to the amount or value of the loan—
- (a) is payable by the candidate, group or person to the local government to which the election relates; and
  - (b) may be recovered by the local government from the candidate, group or person as a debt.
- (3) In this section—
- person acting on behalf of a candidate or group of candidates for an election* includes the candidate's or group's campaign committee for the election.

#### **429 Chief executive officer to give reminder notice to candidates**

- (1) This section applies if a candidate for election has not given the return the candidate is required, under section 427(2), to give for the election.
- (1A) To remove any doubt, it is declared that this section does not apply because of subsection (1) if, under section 427(3), the candidate is not required to give the return.
- (1B) This section also applies if the agent for a group of candidates for an election has not given the return the agent is required, under section 427A(2), to give for the election.
- (1C) To remove any doubt, it is declared that this section does not apply because of subsection (1B) if, under section 427A(3), the agent is not required to give the return.
- (2) Within 10 weeks after the conclusion of the election, the chief executive officer to whom the return must be given must give in writing the information mentioned in subsection (3) to the candidate or agent.

- (3) The information is—
- (a) a reminder that the candidate is required to give the return within 15 weeks after the conclusion of the election; and
  - (b) the following provisions, or a general outline of them, to the extent they may be relevant to the candidate—
    - section 153 of the Act
    - section 314(2)
    - section 427
    - section 427A
    - section 428B
    - section 436
    - section 438.

## **Subdivision 2      Disclosure by third parties for elections**

### **430      Gifts for third party expenditure for political purposes**

- (1) This section applies if, during the disclosure period for this section for an election (the *relevant election*) relating to a local government (the *relevant local government*)—
- (a) a person (other than a political party, an associated entity or a candidate for the election) incurs or has incurred expenditure for a political purpose about an election or elections relating to the relevant local government; and
  - (b) the total amount of all the expenditure mentioned in paragraph (a) is the prescribed amount or more; and
  - (c) the person receives a gift that is a prescribed gift in relation to the relevant local government.

*Editor's note—*

The disclosure period for this section is defined in section 424.

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- (2) The person must, within 15 weeks after the conclusion of the relevant election, give to the chief executive officer of the relevant local government a return, in the approved form, stating the relevant details for all gifts that—
- (a) are prescribed gifts in relation to the relevant local government; and
  - (b) are received by the person during the disclosure period.
- (3) For subsection (1), a person does not include persons appointed to form a committee to help the campaign in an election of a candidate who has been nominated for election by the registered officer of a political party if the campaign committee is recognised by the political party as being part of the political party.
- (3A) Also, for subsection (1), a person does not include a person who is a member of a candidate's campaign committee or a group's campaign committee for an election of the candidate or members of a group of candidates.
- (4) Expenditure for a political purpose relating to 2 or more local governments is taken to have been incurred for a political purpose about an election relating to each local government.
- (5) In this section, 2 or more gifts made, during the disclosure period for this section for an election, by the 1 person to another person are to be treated as 1 gift.
- (6) In this section—
- expenditure***, for a political purpose, means expenditure for 1 or more of the following—
- (a) publication by any means (including radio or television) of election matter;
  - (b) public expression of views on an issue in an election;
  - (c) a gift to a political party;
  - (d) a gift to a candidate in an election;
  - (e) a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in paragraph (a), (b), (c) or (d).

*prescribed gift*, in relation to a relevant local government, means a gift—

- (a) intended by the giver to be used by the receiver, either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose; and
- (b) used, either wholly or partly, for a political purpose about 1 or more elections relating to the relevant local government; and
- (c) the value of which is the prescribed amount or more.

#### **430A Third party expenditure for political purposes**

- (1) This section applies if, during the disclosure period for this section for an election (the *relevant election*) relating to a local government (the *relevant local government*)—
  - (a) a person (other than a political party, an associated entity or a candidate for the relevant election) incurs or has incurred expenditure for a political purpose in relation to the relevant election; and
  - (b) the total amount of all the expenditure mentioned in paragraph (a) is the prescribed amount or more.

*Note—*

The disclosure period for this section is defined in section 425.

- (2) The person must, within 15 weeks after the conclusion of the relevant election, give the chief executive officer of the relevant local government a return in the approved form stating the following details about the expenditure—
  - (a) the total value of the expenditure;
  - (b) when the expenditure was incurred;
  - (c) the particular purpose of the expenditure.
- (3) For subsection (1), a person does not include persons appointed to form a committee to help the campaign in an election of a candidate who has been nominated for election

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by the registered officer of a political party if the campaign committee is recognised by the political party as being part of the political party.

- (4) Also, for subsection (1), a person does not include a person who is a member of a candidate's campaign committee or a group's campaign committee for an election of the candidate or members of a group of candidates for the election.
- (5) Expenditure for a political purpose relating to 2 or more local governments is taken to have been incurred for a political purpose about an election relating to each local government.
- (6) In this section—

*expenditure*, for a political purpose, means expenditure for 1 or more of the following—

- (a) publication by any means (including radio or television) of election matter;
- (b) public expression of views on an issue in an election;
- (c) a gift to a political party;
- (d) a gift to a candidate in an election;
- (e) a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in paragraph (a), (b), (c) or (d).

#### **431 No requirement to give return if no further gifts to disclose**

- (1) This section applies to a person if—
  - (a) the person gives a return relating to an election disclosing gifts under section 430 to a chief executive officer of a local government; and
  - (b) apart from this section, because of a later election, the person would be required to give another return under section 430 to the chief executive officer of the same local government; and

- (c) the other return, if given, would disclose no other gifts.
- (2) The person is not required to give the other return.

### **Subdivision 3      Amendment of returns**

#### **432      Amendment of returns**

- (1) A person who has given a return under this part to the chief executive officer of a local government may at any time apply to amend the return to correct an error or omission.
- (2) An application under subsection (1) must—
  - (a) be signed by the applicant; and
  - (b) state particulars of the amendment; and
  - (c) be given to the chief executive officer of the local government.
- (3) The chief executive officer must—
  - (a) permit the applicant to amend the return in accordance with the application; and
  - (b) record in the register particulars of the date and time of the amendment.
- (4) The amendment of a return under this section does not affect the liability of a person to be convicted of an offence under section 436(2) committed before the amendment.

### **Subdivision 4      Operation of accounts**

#### **432A      Requirement for candidate to operate dedicated account**

- (1) This section applies to a candidate for an election.
- (2) The candidate must operate an account with a financial institution if the candidate receives an amount mentioned in subsection (3) or pays an amount mentioned in subsection (4).

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

**432B Requirement for group of candidates to operate dedicated account**

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

- (5) The account must not be used other than for receiving and paying amounts under subsections (3) and (4).
- (6) Each candidate who is a member of the group must take all reasonable steps to ensure the requirements of subsections (2) to (5) are complied with.

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

## **Division 4                      Registers**

### **433      Registers of electoral gifts**

- (1) The chief executive officer of a local government must keep, for the local government, a register of electoral gifts (the *register*).
- (2) The register must include the following—
  - (a) all returns given to the chief executive officer under this part;
  - (b) applications made to the chief executive officer under section 432;
  - (c) copies of information given by the chief executive officer under section 435(2);
  - (d) statutory declarations given to the chief executive officer under section 435(5);
  - (e) copies of notices given by the chief executive officer under section 438(3);
  - (f) particulars given to the chief executive officer after a request made under section 438(3);
  - (g) notices given to the chief executive officer under section 438(5).

### **434      Access to registers**

- (1) A local government's register is open to inspection.



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- (2) A person must not knowingly disclose information obtained from the register if it is not a true copy, or a fair summary, of particulars in the register.

Maximum penalty for subsection (2)—20 penalty units.

### **435 Queries on contents of register**

- (1) A person who suspects, or believes, on reasonable grounds that a return given to the chief executive officer of a local government under this part has an error or omission, may inform the chief executive officer.
- (2) The chief executive officer must immediately take reasonable steps to inform the person who gave the return about the suspicion or belief.
- (3) The person who gave the return must, within 30 days of being informed, establish whether the return should be amended to make it a true record of fact.
- (4) If the person establishes that the return should be amended, the person must apply to the chief executive officer to amend the return to correct the error or omission.

*Editor's note—*

Section 432 (Amendment of returns) provides for applications to amend returns.

- (5) If the person establishes the return does not need to be amended, the person must—
- (a) complete a statutory declaration to the effect that the particulars in the return are a true record of fact; and
  - (b) give the statutory declaration to the chief executive officer.

## **Division 4A                      Recording of group's membership and group's agent**

### **435A    Definitions for div 4A**

In this division—

*group of candidates* means a group of candidates mentioned in division 3.

*nomination entity*, for a candidate's nomination, means the returning officer for the election.

*nomination requirements* means—

- (a) the record of group membership requirement stated in this division; and
- (b) the group agent nomination requirement stated in this division.

*relevant period*, for a candidate for an election, means the period—

- (a) starting at noon on the last day for the receipt of the candidate's nomination for the election; and
- (b) ending at 6p.m. on the day that is, under the *Electoral Act 1992* or this Act, the polling day for the election.

### **435B    Offence to advertise or fundraise for group if nomination requirements not complied with**

- (1) A candidate for an election who is a member of a group of candidates for the election must not, during the relevant period for the candidate for the election, advertise or fundraise for the election unless the nomination requirements have been complied with.

Maximum penalty—100 penalty units.

- (2) For subsection (1), the candidate advertises for the election if—
  - (a) a person, whether or not a member of the group, but acting for the purposes of the group, prints, publishes,

distributes or broadcasts, or permits or authorises someone else to print, publish, distribute or broadcast, any advertisement, handbill, pamphlet or notice containing election matter; and

- (b) the election matter promotes the election of 1 or more of the members of the group.
- (3) For subsection (1), the candidate fundraises for the election if a person, whether or not a member of the group, but acting for the purposes of the group, conducts an activity directed at collecting money to be used for promoting the election of 1 or more members of the group.

*Examples of fundraising activities—*

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

- (4) It is a defence in a prosecution under subsection (1) for the candidate to prove the candidate exercised reasonable diligence to ensure no person acted in a way that would cause the candidate to contravene the subsection.

### **435C Record of group membership requirement**

- (1) This section states the record of group membership requirement.
- (2) The record of group membership requirement is a requirement that, after the candidate was nominated for the election, but before the commencement of the relevant period for the candidate for the election, there was given to the nomination entity for the candidate's nomination a record of the membership of the group complying with subsection (3).
- (3) The record of the membership of the group must—
- (a) be in the approved form; and
  - (b) state the names of the candidates who are the members of the group; and
  - (c) be signed by each of the candidates who are the members of the group.

- (4) As soon as practicable after the nomination entity receives the record of the membership of the group, the nomination entity must ensure a copy of the record is displayed—
  - (a) at the place of nomination; and
  - (b) if the place of nomination is not also the public office of the local government to which the election relates—at the local government’s public office.

#### **435D Group agent nomination requirement**

- (1) This section states the group agent nomination requirement.
- (2) The group agent nomination requirement is a requirement that, when the record of group membership requirement was complied with, there was also given to the nomination entity for the candidate’s nomination an instrument, complying with subsection (3), appointing an adult as an agent for the group.
- (3) The instrument appointing the agent must—
  - (a) be in the approved form; and
  - (b) state the name and address of the person appointed as agent; and
  - (c) be signed by each of the candidates who are the members of the group; and
  - (d) be signed by the person appointed as agent, and include or be accompanied by—
    - (i) the person’s signed agreement to being appointed as the group’s agent; and
    - (ii) the person’s signed declaration that the person is eligible to be appointed as the group’s agent.
- (4) The instrument appointing the agent may be included in the record of the membership of the group.

#### **435E Register of group agents**

- (1) The nomination entity for a candidate’s nomination must keep a register to be known as the register of group agents.

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- (2) The nomination entity must record in its register of group agents the name and address of each person who is appointed as the agent for a group of candidates that includes the candidate as a member.
  - (3) The appointment of an agent for a group of candidates—
    - (a) is not effective under this Act until the appointment has been recorded in the relevant register of group agents; and
    - (b) ceases to be effective only if the person's name is taken from the register.
  - (4) The name of a person may be taken from the register under subsection (3)(b) only if—
    - (a) the person gives the nomination entity a written notice, signed by the person, stating that he or she has resigned the appointment as agent; and
    - (b) the group of candidates gives the nomination entity a written notice, signed by all members of the group, stating that the person has ceased to be the group's agent.
  - (5) If the name of a person is taken from the register under subsection (4), the group of candidates may act in accordance with the group agent nomination requirement to appoint another agent.
  - (6) If no agent is currently recorded for a group of candidates in a relevant register of group agents, all obligations under this Act applying to an agent, including liability for any offence, apply to each member of the group of candidates as if each candidate was the appointed agent of the group.

## **Division 5                      Miscellaneous**

### **436      Offences about returns**

- (1) A person must give a return the person is required to give under division 3 within the time required by the division.

Maximum penalty—20 penalty units.

- (2) A person must not give a return the person is required to give under division 3 containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty—

- (a) if the person is required to give the return as a candidate—100 penalty units;
- (b) if paragraph (a) does not apply—50 penalty units.
- (2A) If a candidate is a member of a group of candidates mentioned in division 3, and the group's agent is required under section 427A(2) or 428B(2) to give a return, the candidate must not allow the agent to give the return if it contains particulars that are, to the knowledge of the candidate, false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (3) A person (the *first person*) must not give to another person who is required to give a return under division 3 information to which the return relates that is, to the knowledge of the first person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

- (4) A prosecution for an offence against a provision of this section may be started at any time within 4 years after the offence was committed.
- (5) If a person is found guilty of an offence under subsection (1), a court may, as well as imposing a penalty under the subsection, order the person to give the relevant return within a time stated in the order.
- (6) If a person is found guilty of an offence under subsection (2), a court may, as well as imposing a penalty under the subsection, order the person to pay, within a time stated in the order, to a local government an amount equal to the amount of the value of any gifts made to, or for the benefit of, the person and not disclosed in a return.

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**437 Records to be kept**

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

Maximum penalty—20 penalty units.

- (2) In this section—

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

- (a) are, or could be, required to be stated in a return under division 3 about the election; or
- (b) evidence that the giver of a gift had an intention mentioned in section 430(6), definition *prescribed gift*, paragraph (a).

**438 Obtaining of information and completion of returns**

- (1) A person who is required to give a return under division 3 must—

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

Maximum penalty—20 penalty units.

- (2) The return must state whether the return is complete as required by division 3 and, if not complete, state—

- (a) the nature and type of particulars the person has not been able to obtain; and
- (b) the reasons why the person has not been able to obtain the particulars; and
- (c) if the person believes, on reasonable grounds, that another person whose name and address the person knows can give the particulars—that belief and the

reasons for it and the name and address of the other person.

- (3) If a return contains a statement mentioned in subsection (2)(c), the chief executive officer of the local government who receives the return must give a written notice to the person named in the statement asking the person to give the chief executive officer the particulars the person knows.
- (4) Subsection (5) applies if, at any time, within 5 years after the conclusion of an election, a person, who has made a statement under subsection (2) in a return about the election that the return is not complete, obtains information or particulars relevant to the return that the person was not able to obtain before completing the return.
- (5) The person must give to the chief executive officer of the local government to whom the return was given a written notice of the information or particulars obtained.

Maximum penalty for subsection (5)—20 penalty units.

#### **439 Attempts to commit offences**

- (1) A person who attempts to commit an offence against this part commits an offence.

Maximum penalty—half the maximum penalty for committing the offence.

- (2) The Criminal Code, section 4 applies to subsection (1).

#### **440 Noncompliance with part does not affect election**

- (1) A failure of a person to comply with a provision of this part for an election does not invalidate the election.
- (2) Without limiting subsection (1) but subject to section 153 of the Act, if a candidate who is elected at an election fails to comply with a provision of this part for the election, the failure does not invalidate the election of the candidate.



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## **Division 6                      Evidence**

### **441      Evidentiary provisions**

- (1) This section applies to a proceeding under this part.
- (2) A certificate purporting to be signed by the chief executive officer of a local government and stating any of the following matters is evidence of the matter—
  - (a) a stated document is an application, declaration, notice or return given or kept under this part, or a copy of it;
  - (b) on a stated day, a stated person was given a stated notice, under this part.

## **Part 9                              Miscellaneous election matters**

### **Division 2                      Code of conduct for candidates**

#### **441B   Code of conduct**

- (1) The chief executive of the department may develop, and make publicly available to local governments and otherwise as the chief executive considers appropriate, a code of conduct for candidates for elections for local governments.
- (2) A candidate for an election for a local government may, by written notice given to the chief executive officer of the local government, agree in writing to comply with the code of conduct.
- (3) The chief executive officer of the local government must keep a register of candidates for elections for the local government who have agreed to comply with the code of conduct.
- (4) The chief executive officer must—
  - (a) make the register publicly available for inspection; and

- (b) if asked by any person, advise the person whether or not a stated candidate is included in the register.

## **Division 3                      Caretaker period arrangements**

### **441C    Definitions for div 3**

In this division—

*caretaker period*, for an election, other than a by-election, for a local government, means the election period for the election under this Act.

*major policy decision*, for a local government, means a decision—

- (a) about the appointment of a chief executive officer of the local government; or
- (b) about the remuneration of the chief executive officer of the local government; or
- (c) to terminate the employment of the chief executive officer of the local government; or
- (d) to enter into a contract the total value of which is more than the greater of the following—
  - (i) \$150000;
  - (ii) 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements included in the local government's most recently adopted annual report.

### **441D    Prohibition on major policy decision in caretaker period**

- (1) A local government must not make a major policy decision in the caretaker period for an election for the local government.
- (2) However, if the local government considers that, having regard to exceptional circumstances that apply, it is necessary to make the major policy decision in the public interest, the

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local government may apply to the Minister for approval to make the decision.

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

#### **441E Invalidity of major policy decision in caretaker period without approval**

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

#### **441F Prohibition on election material in caretaker period**

A local government must not, in the caretaker period for an election for the local government, publish or distribute election matter for the election.

### **1077A Designated election offences and application of Criminal Code**

- (1) An offence (a *designated election offence*) against any of the following provisions is a crime—
  - section 383
  - section 385
  - section 386
  - section 389
  - section 399
  - section 401.
- (2) Section 242 of the Act does not apply to this section.
- (3) The Criminal Code, chapter 58A applies to a designated election offence.
- (4) Without limiting subsection (3), the chapter applies to a designated election offence as if the offence were an offence mentioned in section 552B(1)(ka) of the code.

*Editor's note—*

The Criminal Code, section 552B(1)(ka) refers to an offence against chapter 14, chapter division 2 of the code.

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## Schedule 4 Dictionary

## section 6

**1936 Act** means the repealed *Local Government Act 1936*.

**1993 Act** means the repealed *Local Government Act 1993*.

**accumulation benefit member**, for chapter 7, part 2, see section 216A.

**adopt**, by a local government, means adopt by resolution of the local government.

**advice guidelines** see section 170A(3).

**advisor** see section 117.

**ancillary works and encroachments** means—

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

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

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

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

*Example of standing—*

a person's classification level in the public service

**approved form** see section 266.

**approved inspection program** see section 133(2).

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

**authorised officer** means a person who holds office under section 204D.

**authorised person** means a person who holds office under section 202.

**beginning** of the local government's term see section 161(3).

**beneficial enterprise** see section 39.

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

**building certifying activity** see section 47(4).

**building unit** means a lot under—

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

**business activity**, of a local government, means trading in goods and services by the local government.

**business unit**, of a local government, is a part of the local government that conducts a business activity of the local government.

**cause detriment to a local government**—

1 To *cause detriment to a local government* includes—

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

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- 2 To *cause detriment to a local government* does not include—
- (a) merely embarrassing the council; or
  - (b) merely causing disagreement between councillors.

***change commission*** see section 22.

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

***chief executive officer*** means a person who holds an appointment under section 194.

***code of competitive conduct*** see section 47.

***commercialisation***, of a significant business activity, see section 44(2).

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

***community forum*** see section 87(2).

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

- (a) if the election is to the Brisbane City Council—
  - (i) for a quadrennial election—when the names of all elected candidates are published in the gazette; or
  - (ii) for a by-election (whether or not a poll is conducted)—when the name of the elected candidate is published in the gazette; or
- (b) if the election is to another local government—
  - (i) for an election of all the councillors—when the last declaration of a poll conducted in the election is displayed in the local government’s public office; or
  - (ii) for a by-election when a poll is conducted—when the declaration of the poll is displayed in the local government’s public office; or
  - (iii) for a by-election when no poll is conducted—after the nomination day for the by-election; or

- (iv) if the councillor is automatically elected (other than at a by-election) and a poll is conducted—the day on which the last declaration of a poll is displayed in the local government’s public office; or
- (v) if the councillor is automatically elected (other than at a by-election) and no poll is conducted—6p.m. on the day when a poll would otherwise have been required to be conducted.

**conflict of interest** see section 173(3).

**consolidated version**, of a local law, see section 32.

**contractor**, of a local government, means—

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

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

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

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

**corporatisation**, of a significant business activity, see section 44.

**cost-recovery fee** see section 97(2).

**councillor**, of a local government, includes the mayor.

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

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

**criminal history**, of a person, means all convictions, other than spent convictions, recorded against the person for



offences, in Queensland or elsewhere, whether before or after the commencement of this Act.

***defined benefit member***, for chapter 7, part 2, see section 216A.

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

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

***distribute*** a how-to-vote card—

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

*Examples—*

- 1 A person distributes how-to-vote cards if the person hands the cards to other persons or leaves them at a place for other persons to take away.
- 2 A person does not distribute how-to-vote cards if the person attaches the cards to walls and other structures, merely for display.

***division***, of a local government area, see section 8(3).

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

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

***elect*** includes re-elect.

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

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

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

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

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

- (a) a mortgage, lien or charge;
  - (b) a caveat;
  - (c) an agreement;
  - (d) a judgement, writ or process;
  - (e) an interest adverse to the interest of the land's owner;
- but does not include an easement.

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

**expired conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and
- (b) that is not revived as prescribed by section 11 of that Act.

**final part** of the local government's term see section 161(5).

**financial controller** see section 118.

**financial management documents** see section 104.

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

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

**full cost pricing**, of a significant business activity, see section 44(4).

**full-time government job** see section 168(3).

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

**grants commission** see section 228(1).

**head of a local government** means—

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

- 
- (c) if the local government is constituted by an interim administrator—the interim administrator.

**home** includes—

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

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

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

**how-to-vote card** means—

- (a) a card, handbill or pamphlet, relating to an election for which optional-preferential voting applies, that—
- (i) is or includes a representation of a ballot paper or part of a ballot paper; or
- (ii) is or includes something apparently intended to represent a ballot paper or part of a ballot paper; or
- (iii) lists the names of any or all of the candidates for the election with a number indicating an order of voting preference against the names of any or all of the candidates; or
- (iv) otherwise directs or encourages the casting of preference votes, other than first preference votes, in a particular way; or

- (b) a card, handbill or pamphlet, relating to an election for which first-past-the-post voting applies, that—
- (i) is or includes a representation of a ballot paper or part of a ballot paper; or
  - (ii) is or includes something apparently intended to represent a ballot paper or part of a ballot paper; or
  - (iii) directs or encourages the casting of a vote for a number of particular candidates equal to the number of candidates to be elected.

***identity card*** of a person means a card that—

- (a) identifies the person as an authorised person, local government worker or authorised officer; and
- (b) contains a recent photo of the person; and
- (c) contains a copy of the person's signature; and
- (d) states the expiry date for the identity card.

***inappropriate conduct*** see section 176(4).

***indigenous local government*** means—

- (a) the local government for the following local government areas—
  - Cherbourg
  - Doomadgee
  - Hope Vale
  - Kowanyama
  - Lockhart River
  - Mapoon
  - Napranum
  - Palm Island
  - Pormpuraaw
  - Woorabinda
  - Wujal Wujal

- Yarrabah; or
  - (b) an indigenous regional council.
- indigenous regional council*** see section 81(2).
- industrial instrument*** means an industrial instrument under the Industrial Relations Act.
- Industrial Relations Act*** means the *Industrial Relations Act 1999*.
- interim local law*** see section 26(4).
- investigator*** see section 212(2).
- joint government activity*** see section 10(2).
- judicial review*** is a review under the Judicial Review Act.
- Judicial Review Act*** is the *Judicial Review Act 1991*.
- land*** includes—
- (a) freehold land; and
  - (b) land held from the State for a leasehold interest; and
  - (c) a mining claim.
- Land Act*** means the *Land Act 1994*.
- Land Title Act*** means the *Land Title Act 1994*.
- LG super scheme*** see section 217(1).
- local government***—
- (a) for chapter 7, part 2—see section 216A; or
  - (b) generally—see section 8(1).
- Local Government Act*** means a law under which a local government performs the local government’s responsibilities, including for example—
- (a) this Act; and
  - (b) a local law; and
  - (c) the Planning Act; and
  - (d) a planning scheme; and

- (e) the Plumbing and Drainage Act; and
- (f) the *Water Act 2000*; and
- (g) the *Water Supply (Safety and Reliability) Act 2008*.

**local government area** see section 8(2).

**local government change** see section 17(2).

**Local Government Electoral Act** means the provisions of the 1993 Act relating to local government elections that continue in force under section 284.

**local government employee** means—

- (a) the chief executive officer; or
- (b) a person holding an appointment under section 196.

**local government entity**, for chapter 7, part 2, see section 216A.

**Local Government (Financial Assistance) Act** means the *Local Government (Financial Assistance) Act 1995* (Cwlth).

**local government principles** means the principles expressed in the form of outcomes set out in section 4(2).

**local government worker** see section 138(6).

**local law** see section 26(2).

**long-term asset management plan** see section 104(6).

**long-term community plan** see section 104(4).

**long-term financial plan** see section 104(5).

**material personal interest** see section 172(2).

**middle** of the local government's term see section 161(4).

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

**misconduct** see section 176(3).

**model local law** see section 26(8).

**National Competition Policy Agreements** means the following agreements (made between the Commonwealth and the States on 11 April 1995), as in force for the time being—

- 
- (a) the Conduct Code Agreement;
  - (b) the Competition Principles Agreement;
  - (c) the Agreement to Implement National Competition Policy and Related Reforms.

***notice of intention to acquire land*** see section 61(2).

***occupier***, of property, see section 125(6).

***ordinary business matter*** means—

- (a) the remuneration of councillors or members of a local government committee; or
- (b) the provision of superannuation entitlements or accident insurance for councillors or local government employees; or
- (c) the terms on which goods, services or facilities are to be offered by the local government for use or enjoyment of the public in the local government area; or
- (d) the making or levying of rates and charges, or the fixing of a cost-recovery fee, by the local government; or
- (e) a planning scheme of general application in the local government area; or
- (f) a resolution required for the adoption of a budget for the council; or
- (g) a matter that is of interest to a person merely as—
  - (i) an employee of the State or a government entity; or
  - (ii) an elector, ratepayer or resident of the local government area; or
  - (iii) a beneficiary under a policy of accident insurance, public liability or professional indemnity insurance held, or to be held, by the local government; or
  - (iv) a user of goods, services or facilities supplied, or to be supplied, by the local government (whether under a contract or otherwise) as a member of the public in common with other members of the public; or

- (v) a candidate for election or appointment as a mayor, deputy mayor or member of a committee of the local government; or
- (vi) a member of a non-profit, charitable or religious organisation involving no personal financial gain or loss to the person.

***overall State interest*** is—

- (a) an interest that the Minister considers affects the economic, environmental or social interest of all or part of the State; or
- (b) an interest that the Minister considers affects the interest of ensuring there is an accountable, effective, and efficient system of local government; or
- (c) an interest prescribed under a regulation.

***owner*** of land—

- (a) means—
  - (i) a registered proprietor of freehold land; or
  - (ii) a purchaser of freehold land from the State under an Act; or
  - (iii) a purchaser of land under a Housing Act contract; or
  - (iv) a person who has a share in land that the person bought under a Housing Act contract; or
  - (v) a lessee of land held from the State, and a manager, overseer or superintendent of the lessee who lives on the land; or
  - (vi) the holder of a mining claim or lease; or
  - (vii) the holder of land mentioned in the *Mineral Resources Act 1989*, schedule, definition *owner*; or
  - (viii) a lessee under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*; or



- 
- (ix) a lessee of land held from a government entity or local government; or
  - (x) the holder of an occupation permit or stock grazing permit under the Forestry Act or of a permit prescribed under a regulation; or
  - (xi) the holder of a permission to occupy from the chief executive of the department responsible for the administration of the Forestry Act; or
  - (xii) the holder of a permit to occupy under the Land Act; or
  - (xiii) a licensee under the Land Act; or
  - (xiv) for land on which there is a structure subject to a time share scheme—the person notified to the local government concerned as the person responsible for the administration of the scheme as between the participants in the scheme; or
  - (xv) another person who is entitled to receive rent for the land; or
  - (xvi) another person who would be entitled to receive rent for the land if it were leased at a full commercial rent; but
- (b) does not include the State, or a government entity, except as far as the State or government entity is liable under an Act to pay rates.

***Planning Act*** means the *Sustainable Planning Act 2009*.

***planning and accountability documents*** see section 104(3).

***Planning and Environment Court*** see the Planning Act.

***planning scheme*** has the meaning given in the Planning Act, section 79.

***Plumbing and Drainage Act*** means the *Plumbing and Drainage Act 2002*.

***police commissioner*** means the commissioner of the police service under the *Police Service Administration Act 1990*.

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

***private property*** see section 125(4).

***private sector*** means an entity that is not—

- (a) the Commonwealth or a State; or
- (b) a State authority; or
- (c) a local government.

***property*** means land, any structure on the land, and a vehicle.

***public office***, of a local government, see section 261.

***public place*** see section 125(5).

***public thoroughfare easement*** is an easement created under—

- (a) the Land Act, chapter 6, part 4, division 8; or
- (b) the Land Title Act, part 6, division 4.

***public utilities*** means—

- (a) works for the supply of drainage, electricity, gas, sewerage, telecommunications or water; or
- (b) works for an infrastructure corridor under the *State Development and Public Works Organisation Act 1971*, section 82; or
- (c) works for a purpose mentioned in the *State Development and Public Works Organisation Act 1971*, section 125; or
- (d) other works that is declared under a regulation to be a public utility.

***quadrennial election*** means the election for local governments that is held in 2012, and every fourth year after 2012.

***rateable land*** see section 93(2).

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

**reasonable proportion of electors** see section 15(2).

**regional conduct review panel** see section 176(7).

**registered officer**, of a political party, means the registered officer of the political party under the Electoral Act.

**registrar of titles** means the public authority responsible for registering title to land and dealings affecting land.

**regulated pool** see the Building Act, section 231B.

**remedial action** see section 113(2).

**remedial notice** see section 138(2).

**remuneration category** means a remuneration category prescribed under a regulation.

**resolution**, of a local government, means the formal decision of the local government at a local government meeting.

**responsibility** includes a function.

**reward** does not include—

- (a) a councillor's remuneration as a councillor; or
- (b) an amount decided under the deed under the *Superannuation (State Public Sector) Act 1990* in relation to a transferring member within the meaning of section 32A of that Act; or
- (c) reasonable expenses actually incurred for any 1 or more of the following—
  - (i) accommodation;
  - (ii) meals;
  - (iii) domestic air travel;
  - (iv) taxi fares or public transport charges;
  - (v) motor vehicle hire; or
- (d) an amount paid as a pension or otherwise for past service in a full-time government job.

**road** see section 59(2).

**roads activity** see section 47(5).

***sanitary drain***—

- (a) means a drain that is immediately connected to, and used to carry discharges from, a soil or waste pipe; but
- (b) does not include a pipe that is a part of a drain for carrying off effluent from a property after treatment in an on-site sewerage facility.

***sewerage treatment system*** means the infrastructure used to receive, transport and treat sewage or effluent (including sewers, access chambers, machinery, outfalls, pumps, structures and vents, for example).

***sign***, a thing, includes the making of a mark on the thing in front of someone else who signs the thing as witness.

***significant business activity*** see section 43(4).

***spent conviction*** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and
- (b) that is not revived as prescribed by section 11 of that Act.

***standing committee***, of a local government, means a committee of its councillors that meets to discuss the topic decided by the local government when establishing the committee.

***State-controlled road*** has the meaning given in the Transport Infrastructure Act.

***State office***, of the department, means the office of the department at the address prescribed under a regulation.

***Statutory Bodies Financial Arrangements Act*** means the *Statutory Bodies Financial Arrangements Act 1982*.

***stormwater drain*** see section 76(2).

***stormwater installation*** see section 76(3).

***structure*** means anything that is built or constructed, whether or not it is attached to land.

***subordinate local law*** see section 26(5).

***super board*** see section 208.

***sustainable development*** is development that is designed to meet present needs while also taking into account future costs (including costs to the environment and the depletion of natural resources, for example).

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

***Transport Infrastructure Act*** means the *Transport Infrastructure Act 1994*.

***tribunal*** see section 183.

***trust deed*** means a trust deed made by the super board.

***trustee council*** see section 82(2).

***trust land*** see section 82(3).

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 July 2011. Future amendments of the Local Government Act 2009 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	12 June 2009	certain provs commenced
0B	none	1 July 2009	ch 9, pt 1 commenced
1	2009 Act No. 36 2009 Act No. 48 2009 Act No. 52 2010 Act No. 23	1 July 2010	
1A	2010 Act No. 35	1 December 2010	
1B	2010 Act No. 38	1 January 2011	
1C	2011 Act No. 8	8 April 2011	
1D	2011 Act No. 8	1 July 2011	
1E	2011 Act No. 17	2 July 2011	prov exp 1 July 2011

## 5 List of legislation

### **Local Government Act 2009 No. 17**

date of assent 12 June 2009

ss 1–2, sch 1 amdts 20–21 of the Local Government Act 1993 commenced on date of assent (see s 2(1))

ch 9 pt 1 commenced 1 July 2009 (see s 2(3))

s 284, sch 1 amdts 1–19, 21–25 of the Local Government Act 1993, sch 2 commenced 1 July 2010 immediately before the repeal of the Local Government Act 1993 (2010 SL No. 122 and see ss 2(2)(a)–(c), 288)

remaining provisions commenced 1 July 2010 (2010 SL No. 122)

Notes—(1) This Act contains provisions that were relocated from the Local Government Act 1993 (2010 No. 17 s 331 sch 1)

(2) List of sections relocated into the Local Government Act 2009—

s 5 into sch 2 as s 5 (see sch 1 amdt 1)

s 7 into sch 2 as s 7 (see sch 1 amdt 2)

ch 5 pts 1–4 (ss 266–283) into sch 2 as ch 5 pts 1–4 (ss 266–283) (see sch 1 amdt 16)

ch 5 pts 6–9 (ss 289–441F) into sch 2 as ch 5 pts 6–9 (ss 289–441F) (see sch 1 amdt 17)

s 1077A into sch 2 as s 1077A (see sch 1 amdt 19)

sch 2 definitions as listed into sch 2 s 1 (see sch 1 amdt 25)

amending legislation—

### **Sustainable Planning Act 2009 No. 36 ss 1–2, 872 sch 2**

date of assent 22 September 2009

ss 1–2 commenced on date of assent

s 872 sch 2 amdts 10–13 commenced 18 December 2009 (2009 SL No. 281) (amdts could not be given effect)

remaining provisions commenced 18 December 2009 (2009 SL No. 281)

### **State Penalties Enforcement and Other Legislation Amendment Act 2009 No. 48 ss 1, 2(5), ch 4**

date of assent 19 November 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 immediately after the commencement of the Queensland Civil and Administrative Tribunal Act 2009 No. 23 ch 7 (see s 2(5) and 2009 SL No. 251)

### **Integrity Act 2009 No. 52 ss 1–2, 115 sch 1**

date of assent 3 December 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2010 (2009 SL No. 310)

### **City of Brisbane Act 2010 No. 23 ss 1–2(1)(a), ch 9 pt 3**

date of assent

ss 1–2, 344 commenced on date of assent (see s 2(1)(a))

ss 272, 273(1) commenced 1 July 2010 (see s 2(1)) (amdts could not be given effect)

remaining provisions commenced 1 July 2010 (see s 2(1))



**Geothermal Energy Act 2010 No. 31 ss 1–2(1), s 585 sch 2 pt 4**

date of assent 1 September 2010

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2(1))**Building and Other Legislation Amendment Act (No. 2) 2010 No. 35 pts 1, 6**

date of assent 20 September 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2010 (2010 SL No. 308)

**Public Interest Disclosure Act 2010 No. 38 ss 1–2, 78 sch 3**

date of assent 20 September 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2011 (2010 SL No. 305)

**Personal Property Securities (Ancillary Provisions) Act 2010 No. 44 ss 1–2, ch 4 pt 42**

date of assent 14 October 2010

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)**Revenue and Other Legislation Amendment Act 2011 No. 8 ss 1, 2(2)(b), pt 7**

date of assent 8 April 2011

ss 1–2 commenced on date of assent

ss 61–76 commenced 1 July 2011 (2011 SL No. 90)

remaining provisions commenced on date of assent

**Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011 No. 17 pts 1, 3**

date of assent 6 June 2011

ss 1–2 commenced on date of assent

remaining provisions commenced 2 July 2011 (see s 2)

## 6 List of annotations

**Commencement**

s 2 amd 2010 No. 23 s 270

**Relationship with City of Brisbane Act 2010**

s 5 sub 2010 No. 23 s 271

**Responsibilities of councillors**

s 12 amd 2009 No. 52 s 115 sch 1; 2010 No. 23 s 272 (amdt could not be given effect)

**Responsibilities of local government employees**

s 13 amd 2009 No. 52 s 115 sch 1; 2010 No. 23 s 273(2) ((1) amdt could not be given effect)

**What this part is about**

s 14 amd 2010 No. 23 s 274

**Review of decisions of local government areas**

s 16 sub 2010 No. 23 s 275

**Assessment**

s 19 amd 2011 No. 8 s 58

**Casual commissioners**

s 23 amd 2010 No. 23 s 276

**Annual report of change commission**

s 25 amd 2010 No. 23 s 277; 2011 No. 8 s 59

**CHAPTER 3—THE BUSINESS OF LOCAL GOVERNMENTS**

**Local law making process**

s 29 sub 2010 No. 23 s 278

**State interest check**

s 29A ins 2010 No. 23 s 278

**Notice of new local law**

s 29B ins 2010 No. 23 s 278

**Development processes**

s 37 amd 2009 No. 36 s 872 sch 2

**Anti-competitive provisions**

s 38 amd 2010 No. 23 s 279

**Swimming pool safety**

s 38AA (prev s 38A) ins 2010 No. 35 s 39  
renum 2011 No. 8 s 60

**PART 2—BENEFICIAL ENTERPRISES AND BUSINESS ACTIVITIES**

pt hdg sub 2010 No. 23 s 280

**Conducting beneficial enterprises**

s 40 amd 2010 No. 23 s 281

**Identifying significant business activities**

s 45 amd 2010 No. 23 s 282

**Code of competitive conduct**

s 47 amd 2010 No. 23 s 283

**Competitive neutrality complaints**

s 48 amd 2010 No. 23 s 284

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

s 52 amd 2010 No. 23 s 285

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

div 4 (ss 58A–58B) ins 2010 No. 23 s 286

**PART 3—ROADS AND OTHER INFRASTRUCTURE**

**What this division is about**

s 59 amd 2010 No. 23 s 287

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

s 72            amd 2009 No. 36 s 872 sch 2

**Division 3—Other matters**

div 3 (ss 80A–80B) ins 2010 No. 23 s 288

**Land on which rates are levied**

s 93            amd 2009 No. 36 s 872 sch 2; 2010 No. 23 s 289

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

prov hdg    amd 2010 No. 23 s 290(1)

s 95            amd 2010 No. 23 s 290(2)

**Cost-recovery fees**

s 97            amd 2010 No. 23 s 291

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

s 99            amd 2010 No. 23 s 292

**Financial management, planning and accountability documents**

s 104          amd 2010 No. 23 s 293

**Auditing, including internal auditing**

s 105          amd 2010 No. 23 s 294

**What this part is about**

s 108          sub 2010 No. 23 s 295

**CHAPTER 5—MONITORING AND ENFORCING THE LOCAL GOVERNMENT ACTS****What this part is about**

s 113          amd 2010 No. 23 s 296

**Gathering information**

s 115          amd 2010 No. 23 s 297

**Acting on the information gathered**

s 116          amd 2010 No. 23 s 298

**Financial controllers**

s 118          amd 2010 No. 23 s 299

**Removing unsound decisions**

s 121          amd 2009 No. 36 s 872 sch 2; 2010 No. 23 s 300

**PART 2—THE PUBLIC****Entry by authorised person, at reasonable times, to inspect regulated pools**

s 134A        ins 2010 No. 35 s 40

**General powers after entering a property**

s 135          amd 2010 No. 23 s 301; 2010 No. 35 s 41

**What this division is about**

s 138          amd 2010 No. 23 s 302

**Identity card for local government workers**

s 138A ins 2010 No. 23 s 303

**Entry by a local government worker, with reasonable written notice, to take materials**

s 143 amd 2010 No. 23 s 304

**Division 3—Offences**

div hdg om 2010 No. 23 s 305

**PART 3—INVESTIGATION OF LOCAL GOVERNMENT RECORDS**

pt hdg ins 2010 No. 23 s 305

**Division 1—Introduction**

div 1 (s 148A) ins 2010 No. 23 s 305

**Division 2—Investigations by department**

div 2 (ss 148B–148D) ins 2010 No. 23 s 305

**Division 3—Investigations by local government**

div 3 (ss 148E–148I) ins 2010 No. 23 s 305

**PART 4—OFFENCES**

pt hdg ins 2010 No. 23 s 305

**Obstructing enforcement of Local Government Acts etc.**

s 149 sub 2010 No. 23 s 305

**Impersonating authorised persons and authorised officers**

s 150 sub 2010 No. 23 s 305

**Duty to make documents available**

s 150A ins 2010 No. 23 s 305

**CHAPTER 6—ADMINISTRATION**

**Qualifications of councillors**

s 152 amd 2010 No. 23 s 306

**Senior councillors and full-time government jobs**

s 168 amd 2010 No. 23 s 307

**Giving directions to local government staff**

s 170 amd 2010 No. 23 s 308

**Requests by councillors for advice or information**

s 170A ins 2010 No. 23 s 309

**Use of information by councillors**

s 171 amd 2010 No. 23 s 310

**Councillor’s material personal interest at a meeting**

s 172 amd 2010 No. 23 s 311

**Post-election meetings**

s 175 amd 2010 No. 23 s 312

**What this division is about**

s 176      amd 2010 No. 23 s 313

**Assessing complaints**

s 177      amd 2010 No. 23 s 314; 2010 No. 38 s 78 sch 3

**Taking disciplinary action**

s 180      amd 2010 No. 23 s 315

**Inappropriate conduct**

s 181      amd 2010 No. 23 s 316

**Members of tribunal**

s 184      amd 2010 No. 23 s 317

**Disciplinary action against local government employees**

s 197      amd 2010 No. 23 s 318

**Use of information by local government employees**

prov hdg    amd 2010 No. 23 s 319(1)

s 200      amd 2010 No. 23 s 319(2)–(7)

**PART 5—LOCAL GOVERNMENT EMPLOYEES****Division 4—Equality of employment opportunity**

div 4 (ss 201A–201D) ins 2009 No. 48 s 160

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

s 204A     ins 2010 No. 23 s 320

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

s 204B     ins 2010 No. 23 s 320

**Use of criminal history information**

s 204C     ins 2010 No. 23 s 320

**PART 6A—AUTHORISED OFFICERS FOR THE DEPARTMENT**

pt 6A (ss 204D–204F) ins 2010 No. 23 s 321

**Board's responsibilities**

s 209      amd 2010 No. 23 s 322

**Board of directors**

s 210      amd 2010 No. 23 s 323; 2011 No. 8 s 61

**What this part is about**

s 216      amd 2011 No. 8 s 62

**Definitions for pt 2**

s 216A     ins 2011 No. 8 s 63

**LG super scheme**

s 217      amd 2011 No. 8 s 64

**Members of LG super scheme**

s 218      amd 2010 No. 23 s 324; 2011 No. 8 s 65

**Compulsory super contributions**

s 219      amd 2011 No. 8 s 66

**Amount of yearly contributions—particular employers**

s 220      sub 2011 No. 8 s 67

**Amount of yearly contributions—permanent employees and prescribed employees**

s 220A     ins 2011 No. 8 s 67

**Extra super contributions**

s 221      amd 2011 No. 8 s 68

**Adjusting super contributions when salary changed**

s 222      amd 2011 No. 8 s 69

**Super contributions for non-contributory members**

s 223      amd 2011 No. 8 s 70

**Interest is payable on unpaid super contributions**

s 224      amd 2011 No. 8 s 71

**Local governments must not establish employee superannuation schemes**

s 225      amd 2011 No. 8 s 72

**Super scheme for councillors**

s 226      amd 2010 No. 23 s 325; 2011 No. 8 s 73

**Members of grants commission**

s 231      amd 2010 No. 23 s 326

**Administrators to act honestly and without negligence are protected from liability**

s 235      amd 2010 No. 23 s 327; 2010 No. 38 s 78 sch 3

**Who is authorised to sign local government documents**

s 236      amd 2010 No. 23 s 328

**Substituted service**

s 239      amd 2010 No. 23 s 329

**Local Government Acts requiring a statement of a law**

s 239A     ins 2010 No. 23 s 330

**Delegation of local government powers**

s 257      amd 2010 No. 23 s 331

**Local government delegations register**

s 260      amd 2010 No. 23 s 332

**Powers in support of responsibilities**

s 262      amd 2010 No. 23 s 333

**Materials in infrastructure are local government property**

s 265      amd 2010 No. 23 s 334

**Land registry searches free of charge**

s 265A     ins 2010 No. 23 s 335

**Regulation-making power**

s 270 amd 2009 No. 48 s 161; 2010 No. 23 s 336

**CHAPTER 8—TRANSITIONALS, SAVINGS AND REPEALS FOR ACT No. 17 OF 2009 AND ACT No. 23 OF 2010**

ch hdg amd 2011 No. 8 s 74

**Local laws**

s 276 amd 2010 No. 23 s 337

**Remuneration schedule**

s 281 amd 2010 No. 23 s 338

**Continuation of implementation of reform**

s 282A ins 2010 No. 23 s 339

**Continuation of electoral and related provision**

s 284 amd 2010 No. 23 s 340  
exp 31 December 2011 (see s 284(3))

**Transitional regulation-making power**

s 285 exp 1 July 2011 (see s 285(4))

**Local Government Association**

s 287 amd 2010 No. 23 s 341

**Continuing casual commissioners**

s 288 ins 2010 No. 23 s 343

**Appeals against disciplinary action**

s 289 prev s 289 om ROB (see RA s 40)  
pres s 289 ins 2010 No. 23 s 343

**Superannuation for local government employees transferred to new water entities**

s 290 prev s 290 om ROB (see RA s 40)  
pres s 290 ins 2010 No. 23 s 343

**Repeal**

s 291 prev s 291 om ROB (see RA s 40)  
pres s 291 (prev s 288) renum 2010 No. 23 s 342

**CHAPTER 9—TRANSITIONAL PROVISION FOR REVENUE AND OTHER LEGISLATION AMENDMENT ACT 2011**

ch hdg prev ch 9 hdg om R1 (see RA s 7(1)(k))  
pres ch 9 hdg ins 2011 No. 8 s 75

**PART 1—AMENDMENT OF ANIMAL MANAGEMENT (CATS AND DOGS) ACT 2008**

pt hdg om ROB (see RA s 7(1)(k))

**References to City Super etc. in industrial instruments**

s 292 prev s 292 om ROB (see RA s 40)  
pres s 292 ins 2011 No. 8 s 75

**CHAPTER 10—TRANSITIONAL PROVISION FOR SUSTAINABLE PLANNING  
(HOUSING AFFORDABILITY AND INFRASTRUCTURE CHARGES  
REFORM) AMENDMENT ACT 2011**

**ch hdg** ins 2011 No. 17 s 7

**Continuation of implementation of matters under s 282A**

**s 293** prev s 293 om ROB (see RA s 40)  
pres s 293 ins 2011 No. 17 s 7

**Amendment of s 45 (Cat or dog must bear identification in particular circumstances)**

**s 294** om ROB (see RA s 40)

**Amendment of s 47 (What registration form must state)**

**s 295** om ROB (see RA s 40)

**Amendment of s 49 (Relevant local government must give registration notice)**

**s 296** om ROB (see RA s 40)

**Amendment of s 54 (Amendment of registration)**

**s 297** om ROB (see RA s 40)

**Amendment of s 55 (Relevant local government must give notice of change)**

**s 298** om ROB (see RA s 40)

**Amendment of s 56 (Relevant local government must give renewal notice)**

**s 299** om ROB (see RA s 40)

**Amendment of s 57 (What owner must do)**

**s 300** om ROB (see RA s 40)

**Amendment of s 58 (Relevant local government must give registration notice)**

**s 301** om ROB (see RA s 40)

**Amendment of s 61 (What is a declared dangerous dog)**

**s 302** om ROB (see RA s 40)

**Amendment of s 62 (What is a declared menacing dog)**

**s 303** om ROB (see RA s 40)

**Amendment of s 93 (Owner's obligations if proposed declaration notice in force)**

**s 304** om ROB (see RA s 40)

**Amendment of s 95 (Notice and taking effect of declaration)**

**s 305** om ROB (see RA s 40)

**Amendment of s 98 (Declared menacing dogs)**

**s 306** om ROB (see RA s 40)

**Amendment of s 104 (Appointment and qualifications)**

**s 307** om ROB (see RA s 40)

**Amendment of s 112 (Additional entry powers for particular dogs)**

**s 308** om ROB (see RA s 40)

**Amendment of s 130 (Return of dog if not regulated dog)**

**s 309** om ROB (see RA s 40)



**Amendment of s 131 (Return of regulated dog to registered owner)**

s 310 om ROB (see RA s 40)

**Amendment of s 173 (Who may inspect registers)**

s 311 om ROB (see RA s 40)

**Amendment of s 174 (Chief executive officer must give information)**

s 312 om ROB (see RA s 40)

**Amendment of s 181 (Who may apply for review)**

s 313 om ROB (see RA s 40)

**Amendment of s 182 (Requirements for making PID review application)**

s 314 om ROB (see RA s 40)

**Amendment of s 183 (Requirements for making general review application)**

s 315 om ROB (see RA s 40)

**Amendment of s 184 (Stay of operation of original decision)**

s 316 om ROB (see RA s 40)

**Amendment of s 189 (Starting appeal)**

s 317 om ROB (see RA s 40)

**Amendment of s 190 (Stay of operation of review notice)**

s 318 om ROB (see RA s 40)

**Amendment of s 194 (Particular persons must ensure dog does not attack or cause fear)**

s 319 om ROB (see RA s 40)

**Replacement of ss 195 and 196**

s 320 om ROB (see RA s 40)

**Amendment of s 206 (Delegation by chief executive officer)**

s 321 om ROB (see RA s 40)

**Amendment of s 209 (Approval of forms)**

s 322 om ROB (see RA s 40)

**Amendment of s 211 (Deferral for particular local governments)**

s 323 om ROB (see RA s 40)

**Amendment of s 212 (Restricted dog registers)**

s 324 om ROB (see RA s 40)

**Amendment of s 213 (Cats and dogs implanted before commencement)**

s 325 om ROB (see RA s 40)

**Replacement of s 216 (Cat or dog not registered at commencement)**

s 326 om ROB (see RA s 40)

**Insertion of new ss 217A and 217B**

s 327 om ROB (see RA s 40)

**Insertion of new s 221A**

s 328 om ROB (see RA s 40)

**Amendment of sch 1 (Permit conditions and conditions applying to declared dangerous and menacing dogs)**

s 329 om ROB (see RA s 40)

**Amendment of sch 2 (Dictionary)**

s 330 om ROB (see RA s 40)

**PART 2—AMENDMENT OF ACTS**

pt 2 (s 331) om R1 (see RA ss 7(1)(k) and 40)

**SCHEDULE 1—ACTS AMENDED**

amd R0A (see RA s 40); 2010 No. 23 s 344

om R1 (see RA s 40)

**SCHEDULE 2—LOCAL GOVERNMENT ELECTIONS**

exp 31 December 2011 (see s 284(3))

**Definitions**

- s 1 (prev 1993 No. 70 sch 2 as reloc from s 3 2001 No. 98 s 4(5))  
exp 31 December 2011 (see s 284(3))
- def “**area**” sub 2009 No. 17 s 331 sch 1 amdt 22  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**code of conduct**” ins 2005 No. 26 s 23  
sub 2009 No. 17 s 331 sch 1 amdt 23  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**commissioner**” sub 1996 No. 81 s 16  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**conclusion**” sub 1996 No. 81 s 16  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**continuing candidate**” reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**cut off day**” amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**declaration envelope**” sub 1996 No. 81 s 16  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**declaration form**” reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**declaration vote**” reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**declaration voter**” sub 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**distribute**” ins 2001 No. 25 s 12  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**division**” reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**elect**” reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**election**” reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**election matter**” reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**election period**” amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 25
  - def “**elector**” reloc 2009 No. 17 s 331 sch 1 amdt 25

- def **“electoral commission”** ins 2007 No. 31 s 20(1)  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“electoral officer”** sub 1996 No. 81 s 16  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“electoral paper”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“electoral roll”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“exhausted ballot paper”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“fresh election”** amd 1999 No. 30 s 97  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“how-to-vote card”** ins 2001 No. 25 s 12  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“infringement notice”** sub 1999 No. 70 s 166 sch 1  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“infringement notice offence”** sub 1999 No. 70 s 166 sch 1  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“institution”** amd 2006 No. 41 s 355  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“issuing officer”** sub 1996 No. 81 s 16  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“mobile polling booth”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“nomination day”** amd 1999 No. 30 s 97  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“open to inspection”** amd 1999 No. 30 s 97  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“ordinary polling booth”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“ordinary voting hours”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“place”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“political party”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“polling booth”** amd 1999 No. 30 s 97  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“polling day”** amd 1999 No. 30 s 97  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“postal ballot election”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“returning officer”** ins 1996 No. 81 s 16(2)  
 sub 2009 No. 17 s 331 sch 1 amdt 24  
 reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“voters roll”** reloc 2009 No. 17 s 331 sch 1 amdt 25
- def **“voting hours”** amd 1999 No. 30 s 97  
 reloc 2009 No. 17 s 331 sch 1 amdt 25

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

- s 5 (prev 1993 No. 70 s 5) amd 1996 No. 81 s 17; 1999 No. 59 s 60 sch; 2009 No. 17 s 331 sch 1 amdt 1AA–1AB (amd 2010 No. 23 s 344(4))  
 reloc 2009 No. 17 s 331 sch 1 amdt 1  
exp 31 December 2011 (see s 284(3))

**Meaning of “open to inspection”**

- s 7 (prev 1993 No. 70 s 7) amd 1996 No. 81 s 18; 1997 No. 23 s 16; 1997 No. 76 s 9; 2009 No. 17 s 331 sch 1 amdt 2

reloc 2009 No. 17 s 331 sch 1 amdt 3  
exp 31 December 2011 (see s 284(3))

## **CHAPTER 5—LOCAL GOVERNMENT ELECTIONS**

**ch hdg** (prev 1993 No. 70 ch 5 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

### **PART 1—GENERAL**

**pt hdg** (prev 1993 No. 70 ch 5 pt 1 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

#### **Quadrennial elections**

**s 266** (prev 1993 No. 70 s 266) sub 1999 No. 59 s 5  
reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

#### **Types of elections**

**s 267** (prev 1993 No. 70 s 267) amd 1999 No. 59 s 60 sch  
reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

#### **Elections to be held on a Saturday**

**s 268** (prev 1993 No. 70 s 268) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

#### **Date of quadrennial elections**

**s 269** (prev 1993 No. 70 s 269) sub 1995 No. 57 s 4 sch 1; 1999 No. 59 s 6  
reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

#### **Date of by-elections**

**s 270** (prev 1993 No. 70 s 270) amd 1999 No. 30 s 36  
reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

#### **Local governments responsible for expenditure for conducting elections**

**s 271** (prev 1993 No. 70 s 271) ins 1996 No. 81 s 32  
reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

### **PART 2—RETURNING OFFICERS**

**pt hdg** (prev 1993 No. 70 ch 5 pt 2 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

#### **Chief executive officer is returning officer**

**s 272** (prev 1993 No. 70 s 272) amd 1996 No. 81 s 33; 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

#### **Appointment of returning officer in place of the chief executive officer**

**s 273** (prev 1993 No. 70 s 273) sub 1996 No. 81 s 34  
reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**Returning officer's duty for by-election**

s 274 (prev 1993 No. 70 s 274) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**PART 3—VOTERS ROLL**

pt hdg (prev 1993 No. 70 ch 5 pt 3 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**Returning officer must compile voters roll**

s 275 (prev 1993 No. 70 s 275) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**Qualification for enrolment on voters roll**

s 276 (prev 1993 No. 70 s 276) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**Cut off day for voters roll**

s 277 (prev 1993 No. 70 s 277) amd 1999 No. 30 ss 37, 97; 1999 No. 59 s 60 sch  
reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**Use of electoral roll when practicable**

s 278 (prev 1993 No. 70 s 278) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**Requirements of voters roll**

s 279 (prev 1993 No. 70 s 279) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

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

s 280 (prev 1993 No. 70 s 280) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**Electoral registrars to help returning officers**

s 281 (prev 1993 No. 70 s 281) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**PART 4—VOTING**

pt hdg (prev 1993 No. 70 ch 5 pt 4 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**Compulsory voting**

s 282 (prev 1993 No. 70 s 282) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**System of voting**

s 283 (prev 1993 No. 70 s 283) reloc 2009 No. 17 s 331 sch 1 amdt 16  
exp 31 December 2011 (see s 284(3))

**PART 6—CONDUCT OF ELECTIONS**

pt hdg (prev 1993 No. 70 ch 5 pt 6 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 1—Preliminary**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 1 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Conduct of elections**

**s 289** (prev 1993 No. 70 s 289) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 2—Electoral officers**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 2 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Returning officer**

**s 290** (prev 1993 No. 70 s 290) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Assistant returning officers**

**s 291** (prev 1993 No. 70 s 291) ins 1996 No. 81 s 36  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Presiding officers**

**s 292** (prev 1993 No. 70 s 292) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Issuing officers**

**s 293** (prev 1993 No. 70 s 293) amd 1996 No. 81 s 37  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Declaration by issuing officers**

**s 294** (prev 1993 No. 70 s 294) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Returning officer may act through other officers**

**s 295** (prev 1993 No. 70 s 295) sub 1996 No. 81 s 38  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Assistant returning officer may act through certain authorised officers**

**s 296** (prev 1993 No. 70 s 296) ins 1996 No. 81 s 39  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Supply and use of voters rolls**

**s 297** (prev 1993 No. 70 s 297) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 3—Candidates for election or appointment**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 3 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Qualification for nomination**

**s 298** (prev 1993 No. 70 s 298) amd 1996 No. 81 s 40; 1999 No. 30 s 97; 2001 No. 29 s 7; 2009 No. 17 s 331 sch 1 amds 4–4A (amd 2010 No. 23 s 344(6))  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Prohibition of dual candidature**

**s 299** (prev 1993 No. 70 s 299) amd 2009 No. 17 s 331 sch 1 amdt 4B (amd 2010 No. 23 s 344(6))  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Leave to local government employee to contest election**

**s 300** (prev 1993 No. 70 s 300) amd 2009 No. 17 s 331 sch 1 amdt 4C (amd 2010 No. 23 s 344(6))  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 4—Nominations of candidates for election**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 4 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Calling for nominations**

**s 301** (prev 1993 No. 70 s 301) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Who may nominate**

**s 302** (prev 1993 No. 70 s 302) amd 1996 No. 81 s 42; 1999 No. 30 s 97; 2009 No. 17 s 331 sch 1 amdt 4D (amd 2010 No. 23 s 344(6))  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**How and when nomination is given**

**s 303** (prev 1993 No. 70 s 303) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Deposit to accompany nomination**

**s 304** (prev 1993 No. 70 s 304) amd 1997 No. 17 s 74 sch; 2007 No. 21 s 12  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Special grounds for deciding a person is not properly nominated**

**s 305** (prev 1993 No. 70 s 305) ins 1996 No. 81 s 43  
amd 2004 No. 53 s 2 sch  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Certificate of returning officer**

**s 306** (prev 1993 No. 70 s 306) amd 1996 No. 81 s 44; 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Display of nominations**

s 307 (prev 1993 No. 70 s 307) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Termination of candidature before noon on nomination day**

s 308 (prev 1993 No. 70 s 308) amd 2007 No. 21 s 13  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Death of candidate**

s 309 (prev 1993 No. 70 s 309) amd 2007 No. 21 s 14  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Procedure if number of candidates not more than number required**

s 310 (prev 1993 No. 70 s 310) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Procedure if number of candidates exceeds number required**

s 311 (prev 1993 No. 70 s 311) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Supply of voters roll**

s 312 (prev 1993 No. 70 s 312) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Procedure on death of candidate when poll to be conducted**

s 313 (prev 1993 No. 70 s 313) amd 2007 No. 21 s 15  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disposal of deposits generally**

s 314 (prev 1993 No. 70 s 314) amd 1996 No. 81 s 44A; 1999 No. 30 s 38; 2007 No.  
21 s 16; 2009 No. 17 s 331 sch 1 amdt 4E (amd 2010 No. 23 s 344(6))  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**If successful candidate dies**

s 315 (prev 1993 No. 70 s 315) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Extension of times**

s 316 (prev 1993 No. 70 s 316) amd 1999 No. 30 s 97; 2007 No. 21 s 17  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Special provision about refunding deposits**

s 316A (prev 1993 No. 70 s 316A) ins 2007 No. 21 s 18  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))



**Division 5—Ballots**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 5 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Poll by ballot**

**s 317** (prev 1993 No. 70 s 317) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

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

**s 318** (prev 1993 No. 70 s 318) amd 1996 No. 81 s 45; 2007 No. 59 s 115  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 6—Polling booths**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 6 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Polling booths—general**

**s 319** (prev 1993 No. 70 s 319) amd 1996 No. 81 s 46; 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Provision of ordinary polling booths**

**s 320** (prev 1993 No. 70 s 320) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Declaration of mobile polling booths**

**s 321** (prev 1993 No. 70 s 321) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Duty of person in charge of institution**

**s 322** (prev 1993 No. 70 s 322) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Privacy of voting**

**s 323** (prev 1993 No. 70 s 323) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 7—Ballot boxes, papers and other documents**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 7 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Ballot boxes generally**

**s 324** (prev 1993 No. 70 s 324) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Requirements of ballot papers**

**s 325** (prev 1993 No. 70 s 325) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Separate ballot papers for separate polls**

s 326 (prev 1993 No. 70 s 326) amd 1999 No. 30 s 39  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Order of listing of candidates' names**

s 327 (prev 1993 No. 70 s 327) amd 1996 No. 81 s 47; 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Distribution of ballot papers**

s 328 (prev 1993 No. 70 s 328) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Correction of errors etc.**

s 329 (prev 1993 No. 70 s 329) amd 2007 No. 21 s 19  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 8—Scrutineers**

div hdg (prev 1993 No. 70 ch 5 pt 6 div 8 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Candidates' entitlement to scrutineers**

s 330 (prev 1993 No. 70 s 330) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Appointment of scrutineers**

s 331 (prev 1993 No. 70 s 331) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Proof of identification**

s 332 (prev 1993 No. 70 s 332) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Powers of scrutineers**

s 333 (prev 1993 No. 70 s 333) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 9—Voting generally**

div hdg (prev 1993 No. 70 ch 5 pt 6 div 9 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Who may vote**

s 334 (prev 1993 No. 70 s 334) amd 2002 No. 37 s 5  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**When votes may be cast at an ordinary polling booth or mobile polling booth**

s 335 (prev 1993 No. 70 s 335) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Procedure for voting at a polling booth**

**s 336** (prev 1993 No. 70 s 336) amd 1999 No. 30 s 97; 2006 No. 41 s 35J  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Duties of issuing officer for returned papers**

**s 337** (prev 1993 No. 70 s 337) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Arrangements for electors with disability**

**s 338** (prev 1993 No. 70 s 338) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Arrangements for electors at institutions**

**s 339** (prev 1993 No. 70 s 339) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Arrangements for electoral visitor voting**

**s 340** (prev 1993 No. 70 s 340) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Help for electors in voting**

**s 341** (prev 1993 No. 70 s 341) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Adjournment of poll**

**s 342** (prev 1993 No. 70 s 342) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 10—Declaration voting**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 10 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Who may cast a declaration vote**

**s 343** (prev 1993 No. 70 s 343) amd 2002 No. 37 s 2 sch; 2006 No. 41 s 35K  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Who must cast a declaration vote in ordinary elections**

**s 344** (prev 1993 No. 70 s 344) amd 2006 No. 41 s 35L  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Declaration voting for postal ballot elections**

**s 345** (prev 1993 No. 70 s 345) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**How declaration vote is cast**

s 346 (prev 1993 No. 70 s 346) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Distribution of ballot papers to certain electors who may cast declaration vote**

s 346A (prev 1993 No. 70 s 346A) ins 1999 No. 30 s 40  
amd 2007 No. 59 s 116  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Distribution of ballot papers to other electors who may or must cast declaration vote  
prov hdg**

sub 1999 No. 30 s 35 sch 2  
s 347 (prev 1993 No. 70 s 347) amd 1996 No. 81 s 48; 1999 No. 30 s 35 sch 2 pt 1, s  
97; 2006 No. 41 s 35M; 2007 No. 59 s 117  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**How declaration vote may be cast at a polling booth**

s 348 (prev 1993 No. 70 s 348) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Distribution of ballot papers to electors for postal ballot election**

s 349 (prev 1993 No. 70 s 349) amd 1996 No. 81 s 49; 1999 No. 30 s 97; 2006 No.  
41 s 35N; 2007 No. 59 s 118  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Record of ballot papers given to postal voters**

s 350 (prev 1993 No. 70 s 350) amd 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Casting a declaration vote by post**

s 351 (prev 1993 No. 70 s 351) amd 1997 No. 42 s 19 sch; 1999 No. 30 s 35 sch 2 pt  
1, s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Declaration voting before polling day**

s 352 (prev 1993 No. 70 s 352) amd 1996 No. 81 s 50; 1999 No. 30 s 35 sch 2 pt 1, s  
97; 2002 No. 37 s 6; 2006 No. 41 s 35O  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Distribution of declaration envelopes when separate ballot papers or polls on same  
day**

s 353 (prev 1993 No. 70 s 353) ins 1996 No. 81 s 51  
amd 1999 No. 30 s 41; 2009 No. 17 s 331 sch 1 amdt 5  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 11—Marking of ballot papers**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 11 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Optional-preferential voting**

**s 354** (prev 1993 No. 70 s 354) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**First-past-the-post voting**

**s 355** (prev 1993 No. 70 s 355) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 12—Replacement of ballot papers**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 12 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Use of replacement ballot papers**

**s 356** (prev 1993 No. 70 s 356) amd 1999 No. 30 s 35 sch 2 pt 1, s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 13—Effect of ballot papers**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 13 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Effect of ballot papers—optional-preferential voting**

**s 357** (prev 1993 No. 70 s 357) amd 1996 No. 81 s 52; 1999 No. 30 s 35 sch 2 pt 1, s 97; 2006 No. 41 s 35P  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Effect of ballot papers—first-past-the-post voting**

**s 358** (prev 1993 No. 70 s 358) amd 1996 No. 81 s 53; 1999 No. 30 s 35 sch 2 pt 1, s 97; 2006 No. 41 s 35Q  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Posted vote presumed valid until contrary proved**

**s 359** (prev 1993 No. 70 s 359) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Formal and informal ballot papers**

**s 360** (prev 1993 No. 70 s 360) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Ballot paper partly formal and partly informal**

**s 361** (prev 1993 No. 70 s 361) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 14—Counting of votes**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 14 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Votes to be counted in accordance with this division**

**s 362** (prev 1993 No. 70 s 362) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Preliminary counting by presiding officer**

**s 363** (prev 1993 No. 70 s 363) amd 1996 No. 81 s 54; 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Preliminary processing of declaration votes by returning officer—postal ballot election**

**s 363A** (prev 1993 No. 70 s 363A) ins 1999 No. 30 s 42  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Preliminary processing of declaration votes by returning officer—other elections**

**prov hdg** sub 1999 No. 30 s 35 sch 2 pt 1  
**s 364** (prev 1993 No. 70 s 364) amd 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Procedure for processing declaration envelopes**

**s 365** (prev 1993 No. 70 s 365) amd 1996 No. 81 s 55; 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Official counting of votes**

**s 366** (prev 1993 No. 70 s 366) amd 1996 No. 81 s 56; 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Treatment of ballot paper to which objection is made**

**s 367** (prev 1993 No. 70 s 367) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Counting of votes for optional-preferential system**

**s 368** (prev 1993 No. 70 s 368) amd 1999 No. 30 s 97; 2002 No. 37 s 7  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

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

**s 369** (prev 1993 No. 70 s 369) amd 1999 No. 30 s 97; 2002 No. 37 s 8  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Returning officer's duty after counting votes**

s 370 (prev 1993 No. 70 s 370) amd 1996 No. 81 s 57  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 15—Actions following poll**

div hdg (prev 1993 No. 70 ch 5 pt 6 div 15 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Declaration of poll**

s 371 (prev 1993 No. 70 s 371) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Notice of final result of poll**

s 372 (prev 1993 No. 70 s 372) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Resolution about electors who fail to vote**

s 373 (prev 1993 No. 70 s 373) ins 1996 No. 81 s 58  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**List of electors failing to vote**

s 374 (prev 1993 No. 70 s 374) amd 1996 No. 81 s 59; 1999 No. 30 s 97  
exp 31 December 2011 (see s 284(3))

**Notice of failure to vote etc.**

s 375 (prev 1993 No. 70 s 375) sub 1996 No. 81 s 60  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Payments for failure to vote**

s 376 (prev 1993 No. 70 s 376) ins 1996 No. 81 s 60  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Recording response to notice**

s 377 (prev 1993 No. 70 s 377) amd 1996 No. 81 s 61; 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Evidentiary value of list under s 374**

s 378 (prev 1993 No. 70 s 378) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disposal of material resulting from election**

s 379 (prev 1993 No. 70 s 379) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Ballot papers as evidence**

**s 380** (prev 1993 No. 70 s 380) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Notice to electors whose ballot papers are not accepted**

**s 381** (prev 1993 No. 70 s 381) ins 1996 No. 81 s 62  
amd 2006 No. 41 s 35R  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Notice to electoral commission of certain declaration votes**

**s 382** (prev 1993 No. 70 s 382) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 16—Enforcement**

**div hdg** (prev 1993 No. 70 ch 5 pt 6 div 16 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 1—Offences in general**

**sdiv hdg** (prev 1993 No. 70 ch 5 pt 6 div 16 sdiv 1 hdg) reloc 2009 No. 17 s 331 sch 1  
amdt 17  
exp 31 December 2011 (see s 284(3))

**False or misleading information**

**s 383** (prev 1993 No. 70 s 383) amd 1999 No. 30 s 35 sch 2 pt 1  
sub 2007 No. 21 s 20  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Bribery**

**s 385** (prev 1993 No. 70 s 385) amd 1999 No. 30 s 35 sch 2 pt 1; 2007 No. 21 s 21  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Providing money for illegal payments**

**s 386** (prev 1993 No. 70 s 386) amd 1999 No. 30 s 35 sch 2 pt 1; 2007 No. 21 s 22  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Improperly influencing electoral officers**

**s 387** (prev 1993 No. 70 s 387) amd 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Interfering with electoral right or duty**

**s 388** (prev 1993 No. 70 s 388) amd 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))



**Forging or uttering electoral papers**

s 389 (prev 1993 No. 70 s 389) amd 1999 No. 30 s 35 sch 2 pt 1; 2007 No. 21 s 23  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Wilful neglect etc. of electoral officers**

s 390 (prev 1993 No. 70 s 390) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**No record to be made of vote cast**

s 391 (prev 1993 No. 70 s 391) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 2—Offences about electoral advertising and information**

sdiv hdg (prev 1993 No. 70 ch 5 pt 6 div 16 sdiv 2 hdg) reloc 2009 No. 17 s 331 sch 1  
amdt 17  
exp 31 December 2011 (see s 284(3))

**Responsibility for election matter**

s 392 (prev 1993 No. 70 s 392) amd 2001 No. 25 s 13; 2003 No. 85 s 18; 2007 No.  
21 s 24  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Distribution of how-to-vote cards**

s 392A (prev 1993 No. 70 s 392A) ins 2001 No. 25 s 14  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Lodging of how-to-vote cards**

s 392B (prev 1993 No. 70 s 392B) ins 2007 No. 21 s 25  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Headline to electoral advertisements**

s 393 (prev 1993 No. 70 s 393) amd 2007 No. 21 s 26  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Misleading voters**

s 394 (prev 1993 No. 70 s 394) amd 2007 No. 21 s 27  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 3—Offences about voting**

sdiv hdg (prev 1993 No. 70 ch 5 pt 6 div 16 sdiv 3 hdg) reloc 2009 No. 17 s 331 sch 1  
amdt 17  
exp 31 December 2011 (see s 284(3))

**Failure to vote**

s 395 (prev 1993 No. 70 s 395) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Leave to vote**

s 396 (prev 1993 No. 70 s 396) amd 2007 No. 21 s 28  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Canvassing in or near polling booths**

s 397 (prev 1993 No. 70 s 397) amd 2007 No. 21 s 29  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Interrupting voting etc.**

s 398 (prev 1993 No. 70 s 398) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Influencing voting**

s 399 (prev 1993 No. 70 s 399) amd 1999 No. 30 s 35 sch 2 pt 1; 2007 No. 21 s 30  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Party badges not to be worn in polling booths**

s 400 (prev 1993 No. 70 s 400) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Voting if not entitled**

s 401 (prev 1993 No. 70 s 401) amd 1999 No. 30 s 35 sch 2 pt 1; 2007 No. 21 s 31  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Offences relating to ballot papers**

s 402 (prev 1993 No. 70 s 402) amd 1999 No. 30 s 35 sch 2 pt 1, s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Failure to deliver or post documents for someone else**

s 403 (prev 1993 No. 70 s 403) amd 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Breach of confidentiality of vote**

s 404 (prev 1993 No. 70 s 404) amd 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Breaking seals on parcels**

s 405 (prev 1993 No. 70 s 405) amd 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Duty of witness to signing of declaration voting papers**

s 406 (prev 1993 No. 70 s 406) amd 1999 No. 30 s 35 sch 2 pt 1, s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 4—Injunctions**

**sdiv hdg** (prev 1993 No. 70 ch 5 pt 6 div 16 sdiv 4 hdg) reloc 2009 No. 17 s 331 sch 1  
amdt 17  
exp 31 December 2011 (see s 284(3))

**Injunctions to restrain contravention of chapter**

**s 407** (prev 1993 No. 70 s 407) amd 1996 No. 81 s 63  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**PART 7—FRESH ELECTIONS**

**pt hdg** (prev 1993 No. 70 ch 5 pt 7 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Requirements for fresh election**

**s 408** (prev 1993 No. 70 s 408) amd 1994 No. 77 s 3 sch 2; 1996 No. 81 s 15 sch;  
1997 No. 42 s 17; 1999 No. 30 s 97; 2004 No. 37 s 86 sch 1; 2009 No. 17 s  
331 sch 1 amds 6–8  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Time for fresh election**

**s 409** (prev 1993 No. 70 s 409) amd 1999 No. 30 s 97  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Returning officer for fresh election**

**s 410** (prev 1993 No. 70 s 410) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Voters roll for fresh election**

**s 411** (prev 1993 No. 70 s 411) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Other provisions of chapter apply**

**s 412** (prev 1993 No. 70 s 412) amd 1999 No. 59 s 60 sch  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Extension of terms of councillors**

**s 413** (prev 1993 No. 70 s 413) amd 1999 No. 59 s 60 sch  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**PART 8—DISCLOSURE OF ELECTION GIFTS AND LOANS AND  
REQUIREMENTS FOR ACCOUNTS**

**pt hdg** (prev 1993 No. 70 ch 5 pt 8 hdg) ins 1996 No. 81 s 63A  
amd 2007 No. 21 s 32  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 1—Preliminary**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 1 hdg) reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Application of pt 8 to Brisbane City Council**

**s 413A** (prev 1993 No. 70 s 413A) ins 1999 No. 30 s 43  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Definitions for pt 8**

**s 414** (prev 1993 No. 70 s 414) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))  
def “**disclosure period**” amd 1999 No. 30 s 35 sch 2 pt 1; 2007 No. 21 s 33(1)  
def “**disposition of property**” amd 2007 No. 21 s 33(2)  
def “**prescribed amount**” amd 1999 No. 30 s 35 sch 2 pt 1; 2007 No. 21 s  
33(3)  
def “**relevant details**” amd 2007 No. 21 s 33(4)

**Candidates**

**s 415** (prev 1993 No. 70 s 415) ins 1996 No. 81 s 63A  
amd 1999 No. 30 s 44; 2009 No. 17 s 331 sch 1 amdt 8A (amd 2010 No. 23 s  
344(7))  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Things taken to be done by political party**

**s 416** (prev 1993 No. 70 s 416) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Related corporations**

**s 417** (prev 1993 No. 70 s 417) ins 1996 No. 81 s 63A  
amd 2001 No. 45 s 29 sch 3  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Adjustment of prescribed amount in relation to disclosure period**

**s 417A** (prev 1993 No. 70 s 417A) ins 2007 No. 21 s 34  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 2—Disclosure periods**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 2 hdg) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 1—Disclosure periods for candidates for elections**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 2 sdiv 1 hdg) ins 1996 No. 81 s 63A  
exp 31 December 2011 (see s 284(3))

**Purpose of subdivision**

**s 418** (prev 1993 No. 70 s 418) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disclosure period for candidates at previous elections**

**s 419** (prev 1993 No. 70 s 419) ins 1996 No. 81 s 63A  
amd 1999 No. 59 s 7  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disclosure period for candidates at previous fresh elections**

**s 420** (prev 1993 No. 70 s 420) ins 1996 No. 81 s 63A  
amd 1999 No. 59 s 60 sch  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disclosure period for new candidates**

**s 421** (prev 1993 No. 70 s 421) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disclosure period for certain candidates who are appointed councillors**

**s 422** (prev 1993 No. 70 s 422) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 2—Disclosure period for groups of candidates and third parties for elections**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 2 sdiv 2 hdg) ins 1996 No. 81 s 63A  
sub 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Purpose of subdivision**

**s 423** (prev 1993 No. 70 s 423) ins 1996 No. 81 s 63A  
amd 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disclosure period for particular sections**

**prov hdg** amd 2007 No. 21 s 35(1)  
**s 423A** (prev 1993 No. 70 s 423A) ins 1999 No. 30 s 45  
amd 1999 No. 59 s 60 sch; 2007 No. 21 s 35(2)  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disclosure period for s 430**

**s 424** (prev 1993 No. 70 s 424) ins 1996 No. 81 s 63A  
amd 1999 No. 30 s 35 sch 2 pt 1; 1999 No. 59 s 60 sch  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Disclosure period for s 430A**

**s 425** (prev 1993 No. 70 s 425) ins 2007 No. 21 s 36  
amd 2009 No. 17 s 331 sch 1 amdts 8B–8C (amd 2010 No. 23 s 344(7))  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 3—Disclosure of gifts and loans and requirements for accounts**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 3 hdg) ins 1996 No. 81 s 63A  
amd 2007 No. 21 s 37  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 1—Preliminary**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 3 sdiv 1 hdg) ins 1996 No. 81 s 63A  
sub 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Definitions for div 3**

**prov hdg** sub 1999 No. 30 s 47(1)  
**s 426** (prev 1993 No. 70 s 426) ins 1996 No. 81 s 63A  
amd 1999 No. 30 s 47(2)–(3)  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))  
def “**agent**” ins 2007 No. 21 s 38(2)  
def “**group of candidates**” sub 2007 No. 21 s 38(1)–(2)

**Subdivision 1A—Disclosure by candidates for elections**

**sdiv hdg** (prev 1993 No. 70 ch 5 pt 8 div 3 sdiv 1A hdg) ins 1999 No. 30 s 35 sch 2 pt 1  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Gifts to candidates**

**s 427** (prev 1993 No. 70 s 427) amd 1999 No. 30 s 48; 2007 No. 21 s 39; 2009 No.  
17 s 331 sch 1 amdt 9  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Gifts to groups of candidates**

**s 427A** (prev 1993 No. 70 s 427A) ins 1999 No. 30 s 49; 2007 No. 21 s 40  
amd 2009 No. 17 s 331 sch 1 amdt 10  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Certain gifts not to be received**

**s 428** (prev 1993 No. 70 s 428) ins 1996 No. 81 s 63A  
amd 2007 No. 21 s 41  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Valuation of fundraising activity gifts**

s 428A (prev 1993 No. 70 s 428A) ins 2007 No. 21 s 42  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Loans to candidates or groups of candidates**

s 428B (prev 1993 No. 70 s 428B) ins 2007 No. 21 s 42  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Certain loans not to be received**

s 428C (prev 1993 No. 70 s 428C) ins 2007 No. 21 s 42  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Chief executive officer to give reminder notice to candidates**

s 429 (prev 1993 No. 70 s 429) ins 1996 No. 81 s 63A  
amd 1999 No. 30 ss 50, 97; 2007 No. 21 s 43; 2009 No. 17 s 331 sch 1 amdt  
11  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 2—Disclosure by third parties for elections**

sdiv hdg (prev 1993 No. 70 ch 5 pt 8 div 3 sdiv 2 hdg) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Gifts for third party expenditure for political purposes**

s 430 (prev 1993 No. 70 s 430) ins 1996 No. 81 s 63A  
amd 1999 No. 30 s 51; 2007 No. 21 s 44  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Third party expenditure for political purposes**

s 430A (prev 1993 No. 70 s 430A) ins 2007 No. 21 s 45  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**No requirement to give return if no further gifts to disclose**

s 431 (prev 1993 No. 70 s 431) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 3—Amendment of returns**

sdiv hdg (prev 1993 No. 70 ch 5 pt 8 div 3 sdiv 3 hdg) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Amendment of returns**

s 432 (prev 1993 No. 70 s 432) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Subdivision 4—Operation of accounts**

**sdiv hdg** (prev 1993 No. 70 ch 5 pt 8 div 3 sdiv 4 hdg) ins 2007 No. 21 s 47  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Requirement for candidate to operate dedicated account**

**s 432A** (prev 1993 No. 70 s 432A) ins 2007 No. 21 s 47  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Requirement for group of candidates to operate dedicated account**

**s 432B** (prev 1993 No. 70 s 432B) ins 2007 No. 21 s 47  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 4—Registers**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 4 hdg) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Registers of electoral gifts**

**s 433** (prev 1993 No. 70 s 433) ins 1996 No. 81 s 63A  
amd 2009 No. 17 s 331 sch 1 amdt 12  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Access to registers**

**s 434** (prev 1993 No. 70 s 434) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Queries on contents of register**

**s 435** (prev 1993 No. 70 s 435) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 4A—Recording of group’s membership and group’s agent**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 4A hdg) ins 2007 No. 21 s 48  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Definitions for div 4A**

**s 435A** (prev 1993 No. 70 s 435A) ins 2007 No. 21 s 48  
reloc 2009 No. 17 s 331 sch 1  
exp 31 December 2011 (see s 284(3))  
def “**nomination entity**” sub 2009 No. 17 s 331 sch 1 amdt 16B (amd 2010  
No. 23 s 344(8))



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**Offence to advertise or fundraise for group if nomination requirements not complied with**

**s 435B** (prev 1993 No. 70 s 435B) ins 2007 No. 21 s 48  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Record of group membership requirement**

**s 435C** (prev 1993 No. 70 s 435C) ins 2007 No. 21 s 48  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Group agent nomination requirement**

**s 435D** (prev 1993 No. 70 s 435D) ins 2007 No. 21 s 48  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Register of group agents**

**s 435E** (prev 1993 No. 70 s 435E) ins 2007 No. 21 s 48  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 5—Miscellaneous**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 5 hdg) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Offences about returns**

**s 436** (prev 1993 No. 70 s 436) ins 1996 No. 81 s 63A  
amd 2007 No. 21 s 49; 2009 No. 17 s 331 sch 1 amdt 13  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Records to be kept**

**s 437** (prev 1993 No. 70 s 437) ins 1996 No. 81 s 63A  
amd 1999 No. 59 s 10  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Obtaining of information and completion of returns**

**s 438** (prev 1993 No. 70 s 438) ins 1996 No. 81 s 63A  
amd 1999 No. 59 s 11  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Attempts to commit offences**

**s 439** (prev 1993 No. 70 s 439) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Noncompliance with part does not affect election**

**s 440** (prev 1993 No. 70 s 440) ins 1996 No. 81 s 63A  
amd 2009 No. 17 s 331 sch 1 amdt 14

reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 6—Evidence**

**div hdg** (prev 1993 No. 70 ch 5 pt 8 div 6 hdg) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Evidentiary provisions**

**s 441** (prev 1993 No. 70 s 441) ins 1996 No. 81 s 63A  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**PART 9—MISCELLANEOUS ELECTION MATTERS**

**pt hdg** (prev 1993 No. 70 ch 5 pt 9 hdg) ins 2007 No. 21 s 50  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 2—Code of conduct for candidates**

**div hdg** (prev 1993 No. 70 ch 5 pt 9 div 2 hdg) ins 2007 No. 21 s 50  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Code of conduct**

**s 441B** (prev 1993 No. 70 s 441B) ins 2007 No. 21 s 50  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Division 3—Caretaker period arrangements**

**div hdg** (prev 1993 No. 70 ch 5 pt 9 div 3 hdg) ins 2007 No. 21 s 50  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Definitions for div 3**

**s 441C** (prev 1993 No. 70 s 441C) ins 2007 No. 21 s 50  
def “**caretaker period**” amd 2008 No. 74 s 227  
sub 2009 No. 17 s 331 sch 1 amdt 16D (amd 2010 No. 23 s 344(8))  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Prohibition on major policy decision in caretaker period**

**s 441D** (prev 1993 No. 70 s 441D) ins 2007 No. 21 s 50  
amd 2009 No. 17 s 331 sch 1 amdt 15  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Invalidity of major policy decision in caretaker period without approval**

**s 441E** (prev 1993 No. 70 s 441E) ins 2007 No. 21 s 50  
reloc 2009 No. 17 s 331 sch 1 amdt 17  
exp 31 December 2011 (see s 284(3))

**Prohibition on election material in caretaker period**

**s 441F** (prev 1993 No. 70 s 441F) ins 2007 No. 21 s 50  
 reloc 2009 No. 17 s 331 sch 1 amdt 17  
 exp 31 December 2011 (see s 284(3))

**Designated election offences and application of Criminal Code**

**s 1077A** (prev 1993 No. 70 s 1077A) ins 2007 No. 21 s 53  
 amd 2009 No. 17 s 331 sch 1 amdt 18  
 reloc 2009 No. 17 s 331 sch 1 amdt 19  
 exp 31 December 2011 (see s 284(3))

**SCHEDULE 3—COMPARATIVE TERMS FOR THE BRISBANE CITY COUNCIL**

om 2010 No. 23 s 345

**SCHEDULE 4—DICTIONARY**

def “**accumulation benefit member**” ins 2011 No. 8 s 76(2)  
 def “**advice guidelines**” ins 2010 No. 23 s 346(2)  
 def “**auditor-general**” sub 2010 No. 23 s 346(1)–(2)  
 def “**authorised officer**” ins 2010 No. 23 s 346(2)  
 def “**business activity**” ins 2010 No. 23 s 346(2)  
 def “**cause detriment to a local government**” ins 2010 No. 23 s 346(2)  
 def “**conviction**” ins 2010 No. 23 s 346(2)  
 def “**corporate entity**” sub 2010 No. 23 s 346(1)–(2)  
 def “**criminal history**” ins 2010 No. 23 s 346(2)  
 def “**defined benefit member**” ins 2011 No. 8 s 76(2)  
 def “**drafting certificate**” sub 2010 No. 23 s 346(1)–(2)  
 def “**drafting standards**” ins 2010 No. 23 s 346(2)  
 def “**identity card**” amd 2010 No. 23 s 346(3)  
 def “**interim development control provision**” om 2009 No. 36 s 872 sch 2  
 (amdt could not be given effect); 2010 No. 23 s 346(1)  
 def “**investigator**” ins 2010 No. 23 s 346(2)  
 def “**LG super scheme**” sub 2011 No. 8 s 76  
 def “**local government**” sub 2011 No. 8 s 76  
 def “**Local Government Act**” amd 2009 No. 36 s 872 sch 2 (amdt could not  
 be given effect); 2010 No. 23 s 346(4)  
 def “**local government entity**” sub 2011 No. 8 s 76  
 def “**ordinary business matter**” sub 2010 No. 23 s 346(1)–(2)  
 def “**Planning Act**” amd 2009 No. 36 s 872 sch 2 (amdt could not be given  
 effect); 2010 No. 23 s 346(5)  
 def “**planning scheme**” amd 2009 No. 36 s 872 sch 2 (amdt could not be  
 given effect); 2010 No. 23 s 346(6)  
 def “**police commissioner**” ins 2010 No. 23 s 346(2)  
 def “**Queensland Contact with Lobbyists Code**” om 2009 No. 52 s 115 sch  
 1  
 def “**regulated pool**” ins 2010 No. 35 s 42  
 def “**spent conviction**” ins 2010 No. 23 s 346(2)  
 def “**standing committee**” ins 2010 No. 23 s 346(2)

## **7 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form 1 Version 2—Application – Warrant to enter**

pubd gaz 13 August 2010 p 1359

**Form 2 Version 2—Application – Court order to enter**

pubd gaz 13 August 2010 p 1359

**Form 3 Version 1—Application – Approval to invest in a beneficial enterprise with the private sector**

pubd gaz 25 June 2010 p 820

**Form 4 Version 1—Councillor statement of interests**

pubd gaz 25 June 2010 p 820

**Form 5 Version 1—Councillor’s related persons statement of interests**

pubd gaz 25 June 2010 p 820

**Form 6 Version 1—Notice of correct particulars for a statement of interests of a councillor or councillor’s related persons**

pubd gaz 25 June 2010 p 820

**Form 7 Version 1—Chief executive officer or senior contract employee statement of interests**

pubd gaz 25 June 2010 p 820

**Form 8 Version 1—Chief executive officer’s or senior contract employee’s related persons statement of interests**

pubd gaz 25 June 2010 p 820

**Form 9 Version 1—Notice of correct particulars for a statement of interests of a chief executive officer or senior contract employee or chief executive officer’s or senior contract employee’s related persons**

pubd gaz 25 June 2010 p 820

**Management Certificate for consolidated entities**

pubd gaz 27 May 2011 p 185

**Management Certificate for non-consolidated entities**

pubd gaz 27 May 2011 p 185