

Queensland



**LOCAL GOVERNMENT
LEGISLATION
AMENDMENT ACT 1997**

Act No. 23 of 1997

Queensland



LOCAL GOVERNMENT LEGISLATION AMENDMENT ACT 1997

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Queensland



**Local Government Legislation Amendment
Act 1997**

Act No. 23 of 1997

**An Act to amend legislation about local government, and for other
purposes**

[Assented to 22 May 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Local Government Legislation Amendment Act 1997*.

Commencement

2. The following sections commence on a day to be fixed by proclamation—

- section 5(1)
- section 17(1)
- section 39 (so far as it inserts chapters 7B and 7C)
- sections 40 to 49
- section 50
- section 53 (so far as it inserts section 793C)
- section 54 (so far as it inserts sections 803G to 803N and 803P).

PART 2—AMENDMENT OF CITY OF BRISBANE ACT 1924

Act amended in pt 2

3. This part amends the *City of Brisbane Act 1924*.

Amendment of s 3 (Interpretation)**4. Section 3—***insert—*

‘(3) For the application of the *Local Government Act 1993*, chapters 7A to 7C (the “**applied provisions**”), to the council, a word that is used in this Act and is defined in or for the applied provisions has the meaning given under the applied provisions unless a contrary intention appears or the word is defined in this Act.’.

Amendment of s 3A (Application of the Local Government Act)

5.(1) Section 3A(2), after ‘• chapter 7A (National competition reform of significant business activities)—

insert—

- chapter 7B (Conduct of competitive business activities)
- chapter 7C (Reform of certain water and sewerage services)’.

(2) Section 3A(2), after ‘• chapter 11 (Provisions aiding local government)’—

insert—

- chapter 14 (General)
 - part 2 (Miscellaneous)
 - section 793B (Application of Freedom of Information Act and Judicial Review Act)’.

(3) Section 3A(2), after ‘• division 3 (Local laws and local law policies)’—

insert—

- division 3A (Anti-competitive provisions of existing local laws and existing local law policies)’.

Amendment of s 22 (Remuneration of mayor and councillors)

6.(1) Section 22, after subsection (1A)—

insert—

‘**(1AA)** Despite subsection (1A), councillors who are directors of a significant business entity—

- (a) may receive salaries in addition to the salaries under subsection (1A); but
- (b) must receive the same additional salary.

‘**(1AB)** Despite subsection (1A), councillors who are shareholder’s delegates for the council’s LGOC—

- (a) may receive salaries in addition to the salaries under subsection (1A); but
- (b) must receive the same additional salary.’

(2) Section 22(1B)—

insert—

- ‘(e) unless otherwise determined by the council, councillors who are directors of significant business entities under the *Local Government Act 1993*, chapter 7A, part 6¹ may also receive remuneration and allowances payable to directors of the entity.’

Amendment of s 39B (Delegation)

7. Section 39B—

insert—

‘**(2)** This section does not apply to powers of the council as a shareholder of an LGOC, under the *Local Government Act 1993*, chapter 7A, part 6.’

Amendment of s 39C (Council register)

8.(1) Section 39C(1)—

insert—

¹ *Local Government Act 1993*, chapter 7A, part 6 (Local Government Owned Corporations)

‘(da)appointments by the council of shareholder’s delegates for its LGOC under the *Local Government Act 1993*, section 458GM;²’.

(2) Section 39C—

insert—

‘(5) This section applies to delegations by shareholder’s delegates under the *Local Government Act 1993*, section 458KF³ as if the shareholder’s delegates were the council.’.

Amendment of s 108 (Content of budget documents)

9. Section 108(1)—

insert—

‘(ea)state, for each of its significant business activities to which the *Local Government Act 1993*, chapter 7A, part 4 or 5 or chapter 7C⁴ applies, its estimated revenue and expenditure (whether by note to the individual program budgets or otherwise); and’.

Amendment of s 116 (Preparation of annual financial statements)

10. Section 116(2)(c)(iv), after ‘budget’—

insert—

‘including a comparison of the estimated costs and revenue against the actual revenue and expenditure for the year for its significant business activities to which the *Local Government Act 1993*, chapter 7A, part 4 or 5 or chapter 7C⁵ applies’.

² *Local Government Act 1993*, section 458GM (Appointment of councillors as shareholder’s delegates)

³ *Local Government Act 1993*, section 458KF (Monitoring and assessment of corporatised corporations)

⁴ *Local Government Act 1993*, chapter 7A, part 4 (Full cost pricing for significant business activities) or 5 (Commercialisation of significant business activities) or chapter 7C (Reform of certain water and sewerage services)

⁵ *Local Government Act 1993*, chapter 7A, part 4 (Full cost pricing for significant business activities) or 5 (Commercialisation of significant business activities) or chapter 7C (Reform of certain water and sewerage services)

Amendment of s 119 (Annual report)**11. Section 119(3)—***insert—*

‘(ea) names of shareholder’s delegates of the council for its LGOs for the year under the *Local Government Act 1993*, section 458GM;⁶ and’.

Amendment of s 127 (Financial management standards)**12. Section 127(2)—***omit, insert—*

‘(2) A regulation may make standards about—

- (a) requirements for full cost pricing and their application to significant business activities of the council under the *Local Government Act 1993*, chapter 7A, part 4; and
- (b) commercialisation and its application to the council’s commercial business units under the *Local Government Act 1993*, chapter 7A, part 5; and
- (c) corporatisation and its application to corporatised corporations of the council under the *Local Government Act 1993*, chapter 7A, part 6;⁷ and
- (d) a code of competitive conduct for application of competitive neutrality principles to the council’s business activities and roads business activities under the *Local Government Act 1993*, chapter 7B;⁸ and
- (e) facilitating the implementation of the *Local Government Act*

⁶ *Local Government Act 1993*, section 458GM (Appointment of councillors as shareholder’s delegates)

⁷ *Local Government Act 1993*, chapter 7A, part 4 (Full cost pricing for significant business activities), part 5 (Commercialisation of significant business activities), part 6 (Local government owned corporations)

⁸ *Local Government Act 1993*, chapter 7B (Conduct of Competitive Business activities)

1993, chapter 7C⁹ including—

- (i) charging arrangements for, and bases of operation of, relevant business activities providing water and sewerage services; and
- (ii) providing how the following are to be applied—
 - (A) consumption as the basis for utility charges for water services;
 - (B) full cost recovery for water and sewerage services;
 - (C) identification and disclosure of cross-subsidies between classes of consumers and community service obligations in the provision of water and sewerage services;
 - (D) disclosure of the classes of consumers who are provided with water or sewerage services at an amount below full cost and the amount.

‘(3) The council, significant business entities (including corporatised corporations) and trustees of any scheme maintained under section 23 or 25E, must comply with the standards.’.

PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended in pt 3 and schedule

13. This part and the schedule amend the *Local Government Act 1993*.

Amendment of s 4 (Definitions)

14. Section 4—

⁹ *Local Government Act 1993*, chapter 7C (Reform of certain water and sewerage services)

insert—

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

“LGOC” see section 458DH.

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

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

Amendment of s 7 (Meaning of “material personal interest”)

15.(1) Section 7(1), after ‘loss’—

insert—

‘, including a benefit or loss as a director of a significant business entity under chapter 7A, part 6’.

(2) Section 7(3)(a)(i), after ‘committee’—

insert—

‘or directors of significant business entities that are or are to become LGOCs’.

(3) Section 7(3)(c)(ii), after ‘committees’—

insert—

‘or a director of a significant business entity that is or is to become an LGOC or the shareholder’s delegate for an LGOC’.

Amendment of s 8 (Meaning of “open to inspection”)

16. Section 8(1)—

insert—

‘(aa)if a document is open to inspection under chapter 7A, 7B or 7C—it must be held in the local government’s public office.’.

Amendment of s 9 (Act applies only so far as expressly provided)

17.(1) Section 9(2), after ‘• chapter 7A (National competition reform of significant business activities)’—

insert—

- chapter 7B (Conduct of competitive business activities)
- chapter 7C (Reform of certain water and sewerage services)’.

(2) Section 9(2), after ‘• chapter 11 (Provisions aiding local government)’—

insert—

- chapter 14 (General)
 - part 2 (Miscellaneous)
 - section 793B (Application of Freedom of Information Act and Judicial Review Act)’.

(3) Section 9(2), after ‘• division 3 (Local laws and local law policies)’—

insert—

- division 3A (Anti-competitive provisions of existing local laws and existing local law policies)’.

Amendment of s 10 (How local government Acts apply to Brisbane City Council)

18. Section 10(a)—

insert—

~~t(xai)~~ local government’s annual report includes a reference to an annual report of the Brisbane City Council’; and

~~t(xaiii)~~ utility charge includes a reference to a utility charge under the *City of Brisbane Act 1924*.’.

Replacement of s 137ZZI (Expiry of pt 2A)

19. Section 137ZZI—

omit, insert—

‘Expiry and savings

‘137ZZI.(1) This part expires on 1 July 1997.

‘(2) Despite subsection (1), an adjustment of boundaries of the divisions of the amalgamated Gold Coast area under a regulation under section 137ZZB(2)(d) continues to have effect until the boundaries are otherwise changed under this Act.’.

Insertion of new s 173A

20. After section 173—

insert—

‘Councillor ceases to be councillor on becoming director of significant business entity

‘173A. On a councillor becoming a director of a significant business entity contrary to section 458FE, the councillor ceases to be a councillor.’.

Amendment of s 386 (Delegation by local government)

21.(1) Section 386—

insert—

‘(4A) All appointments by a local government of shareholder’s delegates for its LGOCs under section 458GM must be recorded in the register.’.

(2) Section 386—

insert—

‘(7) Subsections (1) to (4) do not apply to powers of a local government as a shareholder of an LGOC, under chapter 7A, part 6.

‘(8) Subsections (4) to (6) apply to delegations by shareholder’s delegates under section 458KF as if the shareholder’s delegates were the local government.’.

Amendment of s 416 (Issue of standards)

22. Section 416(1)—

insert—

- ‘(d) requirements for full cost pricing and their application to significant business activities of local governments under chapter 7A, part 4;¹⁰ and
- (e) commercialisation and its application to local governments’ commercial business units under chapter 7A, part 5; and
- (f) corporatisation and its application to corporatised corporations of local governments under chapter 7A, part 6;¹¹ and
- (g) a code of competitive conduct for application of competitive neutrality principles to local governments’ business activities and roads business activities under chapter 7B; and
- (h) facilitating the implementation of chapter 7C¹² including—
 - (i) charging arrangements for, and bases of operation of, relevant business activities providing water and sewerage services; and
 - (ii) providing how the following are to be applied—
 - (A) consumption as the basis for utility charges for water services;
 - (B) full cost recovery for water and sewerage services;
 - (C) identification and disclosure of cross-subsidies between classes of consumers and community service obligations in the provision of water and sewerage services;
 - (D) disclosure of the classes of consumers who are provided with water or sewerage services at an amount below full cost and the amount.’.

¹⁰ *Local Government Act 1993*, chapter 7A, part 4 (Full cost pricing for significant business activities)

¹¹ *Local Government Act 1993*, chapter 7A, part 6 (Local government owned corporations)

¹² *Local Government Act 1993*, chapter 7C (Reform of certain water and sewerage services).

Amendment of s 417 (Standards must be complied with)

23. Section 417, after ‘scheme’—

insert—

‘and significant business entity (including a corporatised corporation)’.

Amendment of s 434 (Content of operating fund budgets)

24. Section 434—

insert—

‘(4) For subsection (1)(a), the following are included as significant activities of the local government—

- (a) the local government’s significant business activities carried on on a full cost pricing basis;
- (b) the activities of the local government’s commercial business units;
- (c) the local government’s significant business activities to which chapter 7C applies.’.

Amendment of s 450 (Content of report about other issues of public interest)

25. Section 450—

insert—

- ‘(l) names of shareholder’s delegates of the local government for its LGOCs for the year under section 458GM.’.

Renumbering of ss 458B–458M

26. Sections 458B, 458C, 458D, 458E, 458F, 458G, 458H, 458I, 458J, 458K, 458L and 458M—

renumber as sections 458AA, 458AB, 458B, 458BA, 458BB, 458BC, 458BD, 458BE, 458BF, 458BH, 458BI and 458BJ respectively.

Amendment of s 458AB (Definitions for ch 7A)

27.(1) Section 458AB (as renumbered), definitions “**Competition Policies Agreement**” and “**significant business activity**”—

omit.

(2) Section 458AB (as renumbered)—

insert—

“**business activity**”, of a local government, means an activity of the local government trading in goods and services to clients, including, for example, providing cleansing services, water and sewerage services, off-street parking and cultural, sporting and recreational facilities, but does not include the construction or maintenance of roads or State-controlled roads or library services.

“**Competition Principles Agreement**” means the Competition Principles Agreement made on 11 April 1995 between the Commonwealth, the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia, the State of Tasmania, the Australian Capital Territory and the Northern Territory, as in force for the time being.

“**government tax**” means tax imposed under a Commonwealth Act, or a State Act, including this Act.

“**new type 1 business activity**” means a business activity of a local government identified by it as a new type 1 business activity under section 458AD.

“**new type 1 or 2 business activity**” means a new type 1 business activity or a new type 2 business activity.

“**new type 2 business activity**” means a business activity of a local government identified by it as a new type 2 business activity under section 458AD.

“**significant business activity**”, of a local government, means—

- (a) a type 1 or 2 business activity; or
 - (b) a new type 1 or 2 business activity;
- and includes a part of the activity.

“**significant business entity**” means an entity established by resolution of a local government under part 6, and includes a significant business entity after it becomes a corporatised corporation.

“**tax**” includes any charge, duty, fee, levy and rate.

“**threshold amount**”, for identifying a new type 1 or 2 business activity, see section 458AC.

“**type 1 or 2 business activity**” means a type 1 business activity or a type 2 business activity.’.

Insertion of new ch 7A, pt 2A

28. After section 458AB (as renumbered)—

insert—

‘PART 2A—IDENTIFICATION OF NEW TYPE 1 AND 2 BUSINESS ACTIVITIES

‘Minister to decide threshold amounts for identifying new type 1 or 2 business activities

‘**458AC.(1)** Before the end of each financial year, the Minister must decide for the financial year amounts (the “**threshold amounts**”) for identifying a business activity that should be a new type 1 or 2 business activity.

‘**(2)** The Minister may decide threshold amounts only after consultation with the Local Government Association.

‘**(3)** For an activity that should be a new type 1 business activity, a threshold amount is an amount of expenditure the Minister considers is the equivalent (at 30 June in the financial year in which the amount is decided after adjustment for actual or estimated cost of living movements and changes to applicable accounting systems) of current expenditure of—

(a) for water and sewerage combined activities—\$25 million at 30 June 1993; or

(b) for other activities—\$15 million at 30 June 1993.

‘**(4)** For an activity that should be a new type 2 business activity, a

threshold amount is an amount of expenditure the Minister considers is the equivalent (at 30 June in the financial year in which the amount is decided after adjustment for actual or estimated cost of living movements and changes to applicable accounting systems) of current expenditure of—

- (a) for water and sewerage combined activities—\$7.5 million at 30 June 1993; or
- (b) for other activities—\$5 million at 30 June 1993.

‘(5) The Minister must in the financial year in which threshold amounts are decided publish the threshold amounts by gazette notice.

‘**Annual review of business activities**

‘**458AD.(1)** As soon as practicable after its budget meeting for a financial year (the “**relevant year**”), a local government must, for the financial year, identify its business activities that—

- (a) are new type 1 or 2 business activities; and
- (b) have not previously been identified as being significant business activities.

‘(2) For subsection (1), a business activity is a new type 1 or 2 business activity of a local government, if, based on financial information presented to the local government’s budget meeting for the relevant year, the activity had expenditure for the preceding financial year greater than the threshold amount decided for the activity in that preceding financial year.

‘(3) A notice under section 458AC(5) may state matters in financial information presented to the budget meeting for a financial year, the local government must, or must not, consider in deciding if an activity should be a new type 1 or 2 business activity for the following financial year.

‘**Notice to Minister of new type 1 or 2 business activities**

‘**458AE.** As soon as practicable after deciding a business activity is a new type 1 or 2 business activity, a local government must give written notice to the Minister.’.

Amendment of ch 7A, pt 3, heading

29. Chapter 7A, part 3, heading, after ‘2’—

insert—

‘and new types 1 and 2’.

Amendment of s 458B (Matters to be addressed by public benefit assessment for type 1 business activity)

30.(1) Section 458B (as renumbered), heading, after ‘1’—

insert—

‘or new type 1’.

(2) Section 458B (as renumbered), after ‘1’—

insert—

‘or new type 1’.

(3) Section 458B (as renumbered)—

insert—

‘**(2)** An assessment may, and it is declared always could, consider—

- (a) different reforms for separate parts of the activity; and
- (b) sequential reforms for the whole or part of the activity.

Example to subsection (2)—

An assessment may consider whether the whole or part of an activity should be reformed and, in recommending reform of part of the activity, the public benefit assessment report could recommend that for the part—

- (a) full cost pricing be implemented by 1 July 1999; and
- (b) commercialisation be implemented by 1 July 2000; and
- (c) the activity be corporatised by 1 July 2002.’.

Amendment of s 458BA (Matters to be addressed by public benefit assessment for type 2 business activity)

31.(1) Section 458BA (as renumbered), heading, after ‘2’—

insert—

‘or new type 2’.

(2) Section 458BA (as renumbered), after ‘2’—

insert—

‘or new type 2’.

(3) Section 458BA (as renumbered)—

insert—

‘(2) An assessment may, and it is declared always could, consider—

- (a) different reforms for separate parts of the activity; and
- (b) sequential reforms for the whole or part of the activity.

Example to subsection (2)—

An assessment may consider whether the whole or part of an activity should be reformed and, in recommending reform of part of the activity, the public benefit assessment report could recommend that for the part—

- (a) full cost pricing be implemented by 1 July 1999; and
- (b) commercialisation be implemented by 1 July 2000; and
- (c) the activity be corporatised by 1 July 2002.’.

Amendment of s 458BB (What is corporatisation)

32. Section 458BB (as renumbered)—

insert—

‘(4) Part 6 applies to the implementation of corporatisation for a significant business activity of a local government.’.

Amendment of s 458BC (What is commercialisation)

33. Section 458BC (as renumbered)—

insert—

‘(3) Part 5 applies to the commercialisation of a significant business activity of a local government.’.

Amendment of s 458BD (What is full cost pricing)

34. Section 458BD (as renumbered)—

insert—

‘(2) Part 4 applies to the application of full cost pricing for a significant business activity of a local government.’.

Amendment of s 458BE (Matters to be addressed in public benefit assessment reports)

35. Section 458BE (as renumbered)—

insert—

‘(2) A report may, and it is declared always could, recommend—

- (a) different reforms for separate parts of the activity; and
- (b) sequential reforms for the whole or part of the activity.

Example to subsection (2)—

An assessment may consider whether the whole or part of an activity should be reformed and, in recommending reform of part of the activity, the public benefit assessment report could recommend that for the part—

- (a) full cost pricing be implemented by 1 July 1999; and
- (b) commercialisation be implemented by 1 July 2000; and
- (c) the activity be corporatised by 1 July 2002.’.

Amendment of s 458BF (Public benefit assessments to be undertaken)

36. Section 458BF (as renumbered)—

insert—

‘(2) A local government may, by resolution, decide a public benefit assessment is to be carried out and a public benefit assessment report be prepared for any of its activities that are not significant business activities.

‘(3) If a local government acts under subsection (2), this chapter, (other

than sections 458BG, 458BI(1) and 458BO(3)¹³), applies, with all necessary changes, to the activity as if it were a type 2 business activity.’.

Insertion of new s 458BG

37. After section 458BF (as renumbered)—

insert—

‘Fresh public benefit assessment if reforms not implemented within 3 years

‘458BG.(1) This section applies if—

- (a) a public benefit assessment report on a significant business activity of a local government recommends reforms under this part; and
- (b) the local government resolves not to implement any reforms.

‘(2) The local government must ensure a fresh public benefit assessment is carried out and a fresh public benefit assessment report prepared for the activity within 3 years after the end of the financial year in which the report was first presented to the local government.’.

Amendment of s 458BI (Timing for assessments and reports)

38. Section 458BI(1) (as renumbered)—

omit, insert—

‘458BI.(1) The public benefit assessment report must be completed—

- (a) for a type 1 or 2 business activity—
 - (i) before 30 June 1997; or
 - (ii) a day (not later than 30 September 1997) approved by the Minister; or
- (b) for a new type 1 business activity—

¹³ Sections 458BG (Fresh public benefit assessment if reforms not implemented within 3 years), 458BI (Timing for assessments and reports), 458BO (Timetable for implementation of reforms)

- (i) before the end of the financial year for which the activity is first identified by the local government as a new type 1 business activity; or
- (ii) a day (not later than 3 months after the end of the financial year) approved by the Minister; or
- (c) for a new type 2 business activity—
 - (i) before the end of the financial year for which the activity is first identified by the local government as a new type 2 business activity; or
 - (ii) a day (not later than 3 months after the end of the financial year) approved by the Minister.’.

Insertion of new ch 7A, pt 3, div 4 and pts 4 to 6, and chs 7B and 7C

39. After section 458BJ (as renumbered)—

insert—

‘Division 4—Action to be taken on public benefit assessment reports

‘Object of division

‘458BK. The object of this division is to require local governments to consider public benefit assessment reports and to decide whether or not to implement reforms of their significant business activities and, if reforms are to be implemented, timetables for implementation of the reforms.

‘Local government to give public notice of public benefit assessment report

‘458BL.(1) A local government must give public notice of the public benefit assessment report for each of its significant business activities.

‘(2) The notice must be given by—

- (a) publishing the notice, as soon as practicable after the report has been presented to a meeting of the local government under section 458BI(2), once in a newspaper circulating generally in the local government’s area; and

- (b) putting a copy of the notice on display in a conspicuous place in the local government's public office on the day on which the notice is published under paragraph (a); and
- (c) keeping the copy of the notice on display until the local government resolves under section 458BN whether any of the reforms considered under section 458B or 458BA¹⁴ should be implemented for the significant business activity.

‘(3) The notice must state the following—

- (a) the name of the local government;
- (b) the report has been presented to the local government;
- (c) a summary of the report's recommendations;
- (d) the day, under section 458BN, on or before which the local government is required to decide whether to implement any of the reforms mentioned in the report;
- (e) the report is open to inspection.

‘Public access to public benefit assessment reports

‘458BM. From the day the public benefit assessment report for a significant business activity is presented to a meeting of a local government until the local government decides under section 458BN whether to implement any of the reforms—

- (a) a copy of the report must be open to inspection; and
- (b) copies of the report must be available for purchase at the local government's public office at the price stated in the notice about the report.

‘Local government to resolve whether to implement reforms

‘458BN.(1) As soon as practicable, and not later than 3 months after a public benefit assessment report for a significant business activity has been

¹⁴ Section 458B (Matters to be addressed by public benefit assessment for type 1 or new type 1 business activity) Section 458BA (Matters to be addressed by public benefit assessment for type 2 or new type 2 business activity)

first presented to a meeting of a local government, the local government must resolve whether any of the reforms considered under section 458B or 458BA¹⁵ should be implemented for the whole or part of the activity.

‘(2) A resolution not to implement a reform recommended in the report must include a statement of the reasons for not implementing the reform.

‘Timetable for implementation of reforms

‘**458BO.(1)** This section applies if a local government resolves under section 458BN to implement a reform of a significant business activity.

‘(2) The local government must also, by the resolution, decide a timetable for implementation of the reform under subsection (3).

‘(3) The reform of the activity must be implemented on or before—

- (a) for a type 1 or 2 business activity—1 July 1998; or
- (b) for a new type 1 or 2 business activity—the start of the second financial year after the financial year for which the activity was identified as being a new type 1 or 2 business activity.

‘(4) For a particular significant business activity, the Minister may extend the time for its implementation subject to the terms the Minister considers appropriate.

‘(5) If the Minister extends the time for implementation, the local government may, by resolution, amend the timetable for implementation in accordance with the extension.

‘(6) Subsection (7) applies if, under section 458BN, a local government resolves to implement a series of reforms for the whole or part of a significant business activity.

‘(7) Subsection (3) applies only to the first of the series of reforms for the significant business activity but the resolution of the local government must include a timetable for implementation of the remaining reforms.

¹⁵ Section 458B (Matters to be addressed by public benefit assessment for type 1 or new type 1 business activity) or 458BA (Matters to be addressed by public benefit assessment for type 2 or new type 2 business activity)

‘Notice to Minister of resolution

‘458BP. As soon as practicable after making a resolution to implement, or not to implement, a reform considered under section 458B or 458BA, a local government must give to the Minister—

- (a) a copy of the public benefit assessment report; and
- (b) a copy of the resolution.

‘Reforms not implemented, may later be implemented

‘458BQ.(1) Although a local government resolves not to implement a reform recommended in a public benefit assessment report for a significant business activity, the local government may, at a later time, resolve to implement the reform.

‘(2) Sections 458BO (other than subsection (3)) and 458BP apply, with all necessary changes, to a local government acting under this section.

‘PART 4—FULL COST PRICING FOR SIGNIFICANT BUSINESS ACTIVITIES**‘Application of pt 4**

‘458C. This part applies to a significant business activity of a local government if the local government has resolved under section 458BN or 458BQ¹⁶ to implement full cost pricing for the activity.

‘Meaning of “full cost pricing”

‘458CA.(1) **“Full cost pricing”**, for a significant business activity of a local government, is charging for goods or services taking into account the full cost of providing the goods or services, including estimates of amounts equivalent to—

¹⁶ Section 458BN (Local government to resolve whether to implement reforms) or 458BQ (Reforms not implemented, may be later implemented)

- (a) government taxes that are not otherwise payable to the Commonwealth, State or local government; and
- (b) debt guarantee fees for State guarantees.

‘(2) Full cost pricing includes—

- (a) where possible and appropriate, the removal of advantages and disadvantages that would not apply to the significant business activity if it were carried on by a private sector business; and
- (b) if removal of the advantages or disadvantages does not happen, taking them into account in charging for goods or services.

‘(3) Full cost pricing also includes the requirement to comply with Commonwealth, State and local government requirements about protecting the environment and planning and approval processes that would apply only if the activity were carried on by a private sector business.

‘Guarantees by State

‘**458CB.** If the State guarantees repayment of a debt of a local government for a significant business activity for which full cost pricing is implemented, the local government must in carrying on the activity take account of amounts equivalent to the cost of funds advantage the local government obtains over commercial rates of interest because of the guarantee.

‘Local government to implement full cost pricing for significant business activities

‘**458CC.** The local government must implement full cost pricing for each of its significant business activities in accordance with the timetable for its implementation.¹⁷

¹⁷ Section 458BO (Timetable for implementation of reforms) requires a local government to decide a timetable for implementation of reforms

‘PART 5—COMMERCIALISATION OF SIGNIFICANT BUSINESS ACTIVITIES

‘Division 1—Preliminary

‘Application of pt 5

‘458CD. This part applies to a significant business activity of a local government if the local government has resolved under section 458BN or 458BQ¹⁸ to implement commercialisation of the activity.

‘Division 2—Background and objectives of part

‘Objectives of commercialisation

‘458CE. The objectives of commercialisation of significant business activities of a local government are to improve overall economic performance and the local government’s ability to carry out its responsibilities for the good rule and government of its area by—

- (a) establishing efficient and effective commercial business units; and
- (b) establishing a framework for operation and accountability of the units.

‘How objectives of commercialisation are to be achieved—key principles and their elements

‘458CF. The objectives of commercialisation of significant business activities are to be achieved through application of the key principles of commercialisation and their elements.

¹⁸ Section 458BN (Local government to resolve whether to implement reforms) or 458BQ (Reforms not implemented, may be later implemented)

‘Key objectives of commercial business units under commercialisation

‘458CG.(1) Under commercialisation, the key objectives of a local government’s commercial business unit are to be commercially successful in carrying on its activities and efficient and effective in the provision of goods and delivery of its services, including things done as community service obligations.

‘(2) The commercial success, efficiency and effectiveness of a commercial business unit are to be measured against its financial and non-financial performance targets.

‘Division 3—Interpretation**‘Meaning of “commercialisation”**

‘458CH.(1) “Commercialisation” of a significant business activity of a local government involves—

- (a) the activity being carried on by a commercial business unit of the local government that is not a legal entity separate from the local government; and
- (b) the unit providing goods or services on a commercial and full cost pricing basis; and
- (c) subsidies to do anything, as community service obligations, that would not otherwise be in the commercial interests of the unit to do.

‘(2) “Commercialisation” includes—

- (a) retention by the local government of—
 - (i) amounts equivalent to government taxes that are not otherwise payable to the Commonwealth, State or local government; and
 - (ii) amounts equivalent to debt guarantee fees for State guarantees; and
- (b) compliance with Commonwealth, State and local government requirements that apply only if the activity were carried on by a private sector business, including, for example, requirements

relating to the protection of the environment and planning and approval processes.

‘Meaning of “key principles of commercialisation”

‘458CI.(1) The “key principles of commercialisation” are—

- (a) principle 1—clarity of objectives; and
- (b) principle 2—management autonomy and authority; and
- (c) principle 3—accountability for performance; and
- (d) principle 4—competitive neutrality.

(2) The elements of principle 1 are that—

- (a) the commercial business unit will have clear, non-conflicting objectives; and
- (b) specific financial and non-financial performance targets will be set for the commercial activities of the commercial business unit; and
- (c) any activities of a local government policy formulation or regulatory nature will, wherever possible, be kept separate from its commercial business unit; and
- (d) any community service obligations of the commercial business unit will be—
 - (i) clearly identified in the unit’s annual performance plan; and
 - (ii) separately costed; and
- (e) the commercial business unit will be appropriately funded for its community service obligations and any funding will be made apparent; and
- (f) the commercial business unit will be set performance targets for its community service obligations.

(3) The elements of principle 2 are that—

- (a) the commercial business unit will be required to use its best endeavours to ensure it meets its performance targets; and
- (b) the commercial business unit will be given the autonomy in its day to day operations subject to overarching control mechanisms

under the commercialisation framework; and

- (c) local government directions for the commercial business unit to achieve non-commercial objectives will be exercised in an open way; and
- (d) in its day to day operations the commercial business unit will be at arms length to its local government.

(4) The elements of principle 3 are that—

- (a) performance of the commercial business unit will be monitored by the local government against performance targets specified in its annual performance plan; and
- (b) commercial business units will generally be subject to the basic management framework of the local government and will comply with the requirements of laws applying to local governments.

(5) The elements of principle 4 are that—

- (a) the efficiency of overall resource use is promoted by ensuring markets are not unnecessarily distorted; and
- (b) wherever possible and appropriate, advantages and disadvantages accruing to a commercial business unit because it is part of the local government should be removed.

‘Definitions for pt 5

‘458CJ. In this part—

“commercialisation” see s 458CH.

“community service obligations”, of a commercial business unit of a local government, means the obligations to do anything the local government is satisfied—

- (a) are not in the unit’s commercial interests to perform; and
- (b) arise because of a direction by the local government; and
- (c) do not arise because of the application of the following key principles of commercialisation and their elements—
 - (i) principle 3—accountability for performance;

(ii) principle 4—competitive neutrality.

“full cost pricing”, for a significant business activity of a local government, is charging for goods or services taking into account the full cost of providing the goods or services, including amounts equivalent to—

- (a) government taxes that are not otherwise payable to the Commonwealth, State or local government; and
- (b) debt guarantee fees for State guarantees.

“key principles of commercialisation” see section 458CI.

‘Division 4—Establishment of commercial business unit

‘Local government to establish commercial business unit

‘458CK. A local government must establish a unit of the local government (a **“commercial business unit”**) for carrying on of 1 or more of the local government’s significant business activities under the resolution to implement commercialisation of the activity.¹⁹

‘Division 5—Operations of commercial business unit

‘Additional requirements for corporate plan

‘458CL. A local government’s corporate plan under chapter 7, part 2, must include, for each of its commercial business units, an outline of—

- (a) its objectives; and
- (b) the nature and scope of the activities proposed to be carried out by the unit.

¹⁹ Section 458BN (Local government to resolve whether to implement reforms) requires a resolution.

‘Performance plan for commercial business units

‘458CM.(1) There must be an annual performance plan for each commercial business unit.

‘(2) A local government’s operational plan under chapter 7, part 2, must include the annual performance plan for each of its commercial business units.

‘(3) A performance plan may be amended at any time before the end of the financial year for which it is prepared.

‘Division 6—Annual statement of operations on commercial business unit**‘Annual statement of operations on commercial business unit**

‘458CN.(1) A local government must ensure an annual statement on the operations of each commercial business unit for the preceding financial year is given to the local government.

‘(2) The statement must contain—

- (a) information to enable an informed assessment to be made of the unit’s operations, including a comparison of the unit’s performance with its annual performance plan; and
- (b) particulars of any amendments made to its annual performance plan in the financial year; and
- (c) particulars of any directions (including directions about community service obligations to be carried out by the unit) to the unit for the financial year; and
- (d) particulars of the impact that any changes to its annual performance plan may have had on the unit’s financial position, operating surpluses and deficits and prospects.

‘(3) The statement must be included in the local government’s annual report.

‘Commonwealth and State tax equivalents

‘458CO.(1) The Treasurer may issue a manual (the **“tax equivalents manual”**) about deciding the amounts (**“tax equivalents”**) that must be taken into account by a commercial business unit in applying full cost pricing to its operations as the value of benefits derived by the unit if there is no liability to pay a government tax that would be payable by the unit if it were not a part of a local government.

‘(2) Without limiting subsection (1), the tax equivalents manual may provide for—

- (a) rulings by the tax assessor appointed under subsection (3) on issues about tax equivalents, including the application of rulings under a Commonwealth Act about Commonwealth tax; and
- (b) lodging of returns and giving of information; and
- (c) assessing returns; and
- (d) functions and powers of the tax assessor; and
- (e) objections and appeals against assessments and rulings.

‘(3) The Treasurer may appoint a person to be the tax assessor under the tax equivalents manual.

‘(4) A commercial business unit must, as required under the tax equivalents manual, account for tax equivalents.

‘(5) The Treasurer must table a copy of the tax equivalents manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment made.

‘Guarantees by State

‘458CP. If the State guarantees repayment of a debt of a local government for a significant business activity carried on by a commercial business unit of the local government, the local government must in the unit’s operations take account of amounts equivalent to the cost of funds advantage the unit obtains over commercial rates of interest because of the guarantee.

‘PART 6—LOCAL GOVERNMENT OWNED CORPORATIONS

‘Division 1—Preliminary

‘Subdivision 1—Application of part

‘Application of pt 6

‘458D. This part applies to a significant business activity of a local government if the local government resolves to implement corporatisation in relation to the activity.²⁰

‘Subdivision 2—Outline of part and its background and objectives

‘What this part provides

‘458DA. This part provides for the processes necessary to allow for—

- (a) local governments to propose the acquisition of a part of a local government, or parts of local governments, carrying on a significant business activity by corporatised corporations; and
- (b) the nomination of parts of local governments carrying on significant business activities as candidate LGOCs or candidate subsidiaries; and
- (c) the preparation and approval of corporatisation charters for candidate LGOCs; and
- (d) the establishment of significant business entities as separate legal entities; and
- (e) significant business entities to become corporatised corporations

²⁰ See sections 458BN (Local government to resolve whether to implement reforms), 458BQ (If partial reforms implemented, further reforms may be implemented), 458FA (Local government proposes corporatisation of significant business activity).

- and to acquire the business of candidates; and
- (f) the operation of corporatised corporations.

‘Objectives of corporatisation

‘458DB. The objectives of corporatisation are to improve overall economic performance, and the ability of local governments to carry out their responsibilities for the good rule and government of their areas, by—

- (a) establishing efficient and effective corporatised corporations; and
- (b) establishing a framework for accountability of corporatised corporations.

‘How objectives of corporatisation are to be achieved—key principles and their elements

‘458DC. The objectives of corporatisation are to be achieved through application of the key principles of corporatisation and their elements.

‘Key objectives of corporatised corporation under corporatisation

‘458DD.(1) Under corporatisation, the key objectives of a corporatised corporation are to be commercially successful in the carrying on of its activities and efficient and effective in the provision of goods and delivery of its services, including services provided as community service obligations.

‘(2) The commercial success, efficiency and effectiveness of a corporatised corporation are to be measured against its financial and non-financial performance targets.

‘Subdivision 3—Interpretation

‘Meaning of “corporatisation”

‘458DE. “**Corporatisation**” is a reform process for certain significant business activities of local governments that—

- (a) changes the conditions and the structure under which the business activities are carried on so they are acquired and carried on by separate legal entities (corporatised corporations) and, as far as practicable, on a commercial basis and in a competitive environment; and
- (b) provides for local government ownership (whether directly or through ownership of an LGOC) of the corporatised corporations operating the business activities; and
- (c) allows local governments to provide strategic direction to the corporatised corporations by setting financial and non-financial performance targets and community service obligations.

‘Meaning of “key principles of corporatisation”

‘458DF.(1) The **“key principles of corporatisation”** are—

- (a) principle 1—clarity of objectives; and
- (b) principle 2—management autonomy and authority; and
- (c) principle 3—strict accountability for performance; and
- (d) principle 4—competitive neutrality.

(2) The elements of principle 1 are that—

- (a) each corporatised corporation will have clear, non-conflicting objectives; and
- (b) each corporatised corporation will be set specific financial and non-financial performance targets for its commercial activities; and
- (c) any activities of a local governmental policy formulation or regulatory nature will, wherever possible, be kept separate from its corporatised corporation; and
- (d) any community service obligations of the corporatised corporation will be—
 - (i) clearly identified in the corporation’s statement of corporate intent; and
 - (ii) separately costed; and

- (e) the corporatised corporation will be appropriately compensated for its community service obligations and any funding will be made apparent; and
 - (f) the corporatised corporation will be set performance targets for its community service obligations.
- (3)** The elements of principle 2 are that—
- (a) each corporatised corporation will have a board of directors appointed on merit; and
 - (b) the board will be required to use its best endeavours to ensure that the corporation meets its performance targets; and
 - (c) the board will be given the autonomy and authority to make commercial decisions within areas of responsibility defined by the corporatisation framework; and
 - (d) the local government's former power to make decisions on the operation of a significant business activity will be replaced with procedures for strategic monitoring of corporatised corporations; and
 - (e) the role of the shareholder in relation to the corporatised corporation will be clearly defined; and
 - (f) local government reserve powers will be required to be exercised in an open way.
- (4)** The elements of principle 3 are that—
- (a) the board of the corporatised corporation will be accountable to the shareholder for the corporation's performance; and
 - (b) the corporation's statement of corporate intent will form the basis for accountability; and
 - (c) performance will be monitored by the shareholder against performance targets stated in the statement of corporate intent; and
 - (d) shareholder monitoring of the corporation is intended to compensate for the absence of the wide range of monitoring to which listed corporations are subject by, for example, the sharemarket and Commonwealth regulatory agencies.

(5) The elements of principle 4 are that—

- (a) the efficiency of overall resource use is promoted by ensuring markets are not unnecessarily distorted; and
- (b) to ensure, wherever possible, the removal of advantages and disadvantages accruing to the corporatised corporation as a result of local government ownership; and
- (c) if a corporation has monopoly or near monopoly power—
 - (i) if a local government decides it is appropriate to increase competition, there may be reform of the business activity; and
 - (ii) special monitoring may be necessary to prevent abuse of this power.

‘Meaning of “statement of corporate intent”

‘458DG.(1) The **“statement of corporate intent”** of a corporatised corporation is a document created for the corporation under division 3, subdivision 9.²¹

‘(2) It is intended that the statement of corporate intent should represent an agreement between the board of the corporation and its shareholder but the statement is not a contract for carrying out of work or for supply of goods or services.

‘Definitions for pt 6

‘458DH. In this part—

“board”, of a corporatised corporation, means the corporation’s board of directors.

“borrow” includes—

- (a) raise money or credit; and
- (b) obtain financial accommodation; and

²¹ Division 3 (Local government owned corporatisation and subsidiaries), subdivision 9 (Statement of corporate intent—general)

(c) borrow in a foreign currency.

“candidate” means a candidate LGOC or a candidate subsidiary.

“candidate LGOC” means a part of a local government carrying on a significant business activity nominated by the local government under section 458EA²² for its business to become the business of an LGOC.

“candidate subsidiary” means a part of a local government carrying on a significant business activity nominated by the local government under section 458EA for its business to become the business of a subsidiary of an LGOC.

“charter transitional part” see section 458EI.

“Commonwealth tax” means tax imposed under a Commonwealth Act.

“community service obligations” see section 458I.

“corporatisation” see section 458DE.

“corporatisation charter” means—

(a) for a candidate LGOC—

- (i) the draft corporatisation charter approved by the candidate LGOC’s local government as its corporatisation charter; or
- (ii) if the local government approves an amendment of the corporatisation charter—the corporatisation charter as amended; or

(b) for an LGOC—the corporatisation charter for the LGOC when it was a candidate LGOC as amended from time to time and, on expiry of the charter transitional part, the remainder of the charter.

“corporatised corporation” means an LGOC or a subsidiary of an LGOC.

“financial accommodation”, for a corporatised corporation, includes a financial benefit and assistance to obtain a financial benefit, arising from or because of—

(a) a loan; or

(b) issuing, endorsing or other dealing in promissory notes; or

²² Section 458EA (Nomination of candidate LGOC or LGOC’s subsidiary)

- (c) drawing, accepting, endorsing or other dealing in bills of exchange; or
- (d) issuing, purchasing or other dealing in securities; or
- (e) granting or taking a lease of any property for financing purposes; or
- (f) another arrangement prescribed under a regulation.

“instrument” means an instrument of any kind (whether express or implied and whether made or given orally or in writing), and includes—

- (a) a contract, deed, agreement, arrangement, understanding or undertaking; and
- (b) a mandate, instruction, notice, authority or order; and
- (c) a lease, licence, transfer, conveyance or other assurance; and
- (d) a guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) a mortgage, charge, lien or security.

“key principles of corporatisation” see section 458DF.

“lease” includes—

- (a) licence, charter or hiring arrangement of property; and
- (b) an arrangement under which a right to use, operate or provide goods or services in relation to property is granted by a person to another person.

“LGOC” (or **“local government owned corporation”**) means a significant business entity declared to be a local government’s LGOC by resolution of the local government that has taken effect.

“main undertakings”, for a corporatised corporation, means the undertakings stated in the corporation’s most recent statement of corporate intent as the corporation’s main undertakings.

“officer”, of a corporatised corporation, means—

- (a) a director of the corporation; or
- (b) the corporation’s chief executive officer; or

- (c) for sections other than sections 458IU, 458JB and 458JC—another person who is concerned, or takes part, in the corporation’s management; or
- (d) for sections 458IU, 458JB and 458JC—an employee of the corporation.

“security” includes inscribed stock, debenture, bond, debenture stock, note and any other document creating, evidencing or acknowledging indebtedness (whether or not constituting a charge on property).

“share”, for a significant business entity (including a corporatised corporation) or another corporation, means a share in the entity or corporation’s share capital.

“shareholder” means—

- (a) for an LGOC—
 - (i) if a local government holds all the shares in the LGOC—the local government; or
 - (ii) if 2 or more local governments hold shares in the LGOC—all local governments holding the shares in the LGOC; or
- (b) for a subsidiary of an LGOC—its LGOC.

“shareholder’s delegate” see section 458GM.

“State tax” means tax imposed under an Act, including this Act.

“statement of corporate intent” see section 458DG.

“subsidiary”, for an LGOC, means a significant business entity declared under this part to be a subsidiary of the LGOC by resolution of a local government that has taken effect.

“terms”, of appointment or employment, include terms relating to—

- (a) remuneration and allowances; and
- (b) duration of appointment or employment; and
- (c) termination of appointment or employment.

‘References to doing of act by corporatised corporation

‘458DI. In this part, a reference to the doing of an act by a corporatised corporation includes a reference to—

- (a) the making or giving of an instrument by the corporation; and
- (b) the transfer of property by or to the corporation; and
- (c) the incurring of a liability by the corporation.

‘References to local governments etc.

‘458DJ.(1) In this part, a reference to a candidate’s local government is a reference to the local government that, under section 458EA,²³ nominated the candidate to become the business of an LGOC or a subsidiary.

‘(2) In this part, a reference to an LGOC’s local government is a reference to the LGOC’s shareholder.

‘(3) In this part, a reference to a subsidiary’s local government is a reference to the local government whose LGOC is the subsidiary’s shareholder.

‘(4) In this part, a reference to a significant business entity’s local government is a reference to the local government that resolved to establish the entity.

‘(5) If 2 or more local governments make a resolution about an LGOC, a significant business entity, a candidate or a subsidiary (in each case, the **“entity”**)—

- (a) a reference, in subsections (1) to (4), to the entity’s local government is a reference to all of the local governments acting jointly; and
- (b) a reference to the local government area of the entity’s local government is a reference to the local government areas of all the local governments.

²³ Section 458EA (Nomination of candidate LGOC or LGOC’s subsidiary)

*‘Subdivision 4—Corporatised corporation not a local government***‘Corporatised corporation not a local government**

‘458DK. A corporatised corporation does not form part of a local government.

*‘Subdivision 5—Operation of part and application of laws***‘Extraterritorial operation**

‘458DL. It is the intention of Parliament that this part should apply, as far as possible, to—

- (a) land and things outside Queensland (whether in or outside Australia); and
- (b) acts, transactions and things done, entered into or happening outside Queensland (whether in or outside Australia); and
- (c) land, things, acts and transactions (wherever situated, done, entered into or happening) that would, apart from this part, be governed or otherwise affected by the law of another jurisdiction (including a foreign country).

‘Application of existing laws

‘458DM.(1) This part applies to a corporatised corporation and a local government despite anything in an Act, including this Act, that was enacted before the commencement of this part.

‘(2) If there is an inconsistency between this part and an Act enacted before the commencement of this part, this part prevails to the extent of the inconsistency.

‘(3) A regulation may provide that an Act or a provision of an Act, including this Act (other than this part), enacted before the commencement of this part applies to a corporatised corporation with changes stated in the regulation.

‘(4) A regulation made under subsection (3)—

- (a) expires 6 months after its notification in the gazette unless it is earlier repealed or its operation is extended by regulation; and
- (b) cannot operate after 1 year after its notification in the gazette.

‘Delegation of powers for corporatised corporations

‘458DN.(1) A local government may, by resolution, delegate to a corporatised corporation the local government’s powers under a local government Act the local government decides are necessary or convenient to facilitate carrying on the corporatised corporation’s business.

‘(2) In deciding whether to delegate a power, the local government must have regard to the key principles of corporatisation and their elements.

‘(3) A regulation may provide that a power of a local government under this or another Act cannot be delegated under this section.

‘(4) A delegation of a power ceases to have effect on the making of a regulation under subsection (3) providing that the power cannot be delegated under this section.

‘(5) Despite a requirement of this or another Act that a power of a local government may only be exercised by resolution of the local government, (including the making of a utility charge at a budget meeting) the power may be delegated under this section but may only be exercised by the corporatised corporation by resolution of its board.

‘(6) Subsections (1) and (5) do not apply to a power that, under this chapter, must be exercised by resolution of a local government.

‘(7) A local government may, by resolution, authorise its corporatised corporation to subdelegate powers delegated to the corporatised corporation under this section (other than powers of a local government mentioned in subsection (6)) to a person under section 458GP.

‘(8) The local government must notify the Minister in writing of each delegation it makes under this section.

‘(9) For local governments to which section 386 applies, section 386(4) to (6) applies to delegations under this section.

‘(10) For Brisbane City Council, the *City of Brisbane Act 1924*,

section 39C(1)(d) applies to delegations under this section.

‘(11) This section expires on 1 July 1999.

‘How Corporations Law is to be applied to corporatised corporations

‘**458DO.** If this part provides that the Corporations Law, or a particular provision of the Corporations Law, applies to a corporatised corporation, the Law or provision applies to the corporation, with all necessary changes and any changes prescribed under a regulation, to the greatest extent possible.

‘Division 2—Mechanisms for creating LGOCs and subsidiaries

‘Subdivision 1—Proposal for corporatisation

‘Local government proposes corporatisation

‘**458E.(1)** A local government may, by resolution, propose that a part of the local government carrying on a significant business activity will be acquired by a corporatised corporation.

‘(2) The local government may also propose, by resolution, that a corporatised corporation will be an LGOC or a subsidiary of an LGOC.

‘(3) To remove any doubt, it is declared that a local government may propose a corporatised corporation will acquire—

- (a) parts of the local government carrying on more than 1 significant business activity; or
- (b) parts of 2 or more local governments.

‘(4) A resolution under subsection (3)(b) is not effective until each local government makes the resolution.

Example of resolutions for this section—

A local government may, by resolution, propose a part of the local government carrying on its significant business activity will be acquired and operated by a corporatised corporation as a subsidiary of another corporatised corporation that will be an LGOC. While the subsidiary will carry on the business, it is answerable to its

LGOC which in turn is responsible to the local government for the subsidiary carrying on the business.

‘Nomination of candidate LGOC or LGOC’s subsidiary

‘458EA.(1) A local government may, by resolution, nominate a part of a local government carrying on a significant business activity to be a candidate LGOC or candidate subsidiary.

‘(2) A nomination of a candidate subsidiary must also nominate the LGOC or candidate LGOC of which it is to be a subsidiary.

‘(3) If parts of 2 or more local governments are nominated, the nomination is not effective until each of the local governments makes a nomination.

‘Subdivision 2—Preparation of corporatisation charter—preliminary

‘Meaning of “corporatisation charter”

‘458EB. The “corporatisation charter” for a candidate LGOC sets out the steps by which, and the basis on which—

- (a) a candidate LGOC’s business is to become the business of an LGOC; and
- (b) the key principles of corporatisation, and their elements, are to be implemented.

‘Candidate LGOC’s business may become business of LGOC following corporatisation charter

‘458EC.(1) A candidate LGOC’s business may become the business of an LGOC following the preparation and approval of a corporatisation charter and the implementation of its charter transitional part.

‘(2) However, a candidate LGOC’s business may become the business of an LGOC if a corporatisation charter has been prepared and approved although its charter transitional part has not been fully implemented.

‘Subdivision 3—Preparation of corporatisation charter—establishment committee

‘Establishment committee to be appointed

‘458ED.(1) The local government of a candidate LGOC must appoint a committee (the **“establishment committee”**) to—

- (a) prepare a draft corporatisation charter for the candidate; and
- (b) report to the local government on whether the candidate’s corporatisation charter is being implemented in a timely, efficient and effective way.

(2) If chapter 6, part 1, division 3²⁴ applies to a local government, the establishment committee must be appointed under the division.

‘(3) The establishment committee goes out of existence when the LGOC is established.

‘Composition of establishment committee

‘458EE. Councillors and employees of a local government may be members of an establishment committee appointed by the local government but together must not, at any time, be more than—

- (a) before 1 July 1999—two-thirds of the members; or
- (b) from 1 July 1999—one-half of the members.

‘Procedure for appointment of establishment committee

‘458EF.(1) The local government of a candidate LGOC must adopt processes for selection of appropriate persons for appointment as members of the establishment committee for the candidate.

‘(2) In appointing a person as a member, the local government must have regard to the person’s ability to make a contribution to the committee’s performance of its role.

‘(3) The processes are to be based on the principle that the committee

²⁴ Chapter 6, part 1, division 3 (Committees and their meetings)

should have the appropriate range of skills to ensure the corporatisation is a success.

Example of the application of this section—

The local government may—

- (a) identify the key attributes required; and
- (b) call for nominations through public advertising and canvassing of suitable individuals; and
- (c) evaluate nominations using independent expertise; and
- (d) provide for interviews of shortlisted individuals by a nominated group assisted by independent experts; and
- (e) appoint the most suitable individuals as members.

‘Draft corporatisation charter to be given to local government

‘458EG.(1) When the establishment committee for a candidate LGOC has prepared the candidate LGOC’s draft corporatisation charter, the committee must give a copy of the draft charter to the local government.

‘(2) The local government may return the draft charter to the committee and ask it to—

- (a) consider or further consider any matter and deal with the matter in the draft charter; and
- (b) revise the draft charter in the light of its consideration or further consideration.

‘(3) The establishment committee must comply with the request.

‘Subdivision 4—Preparation of corporatisation charter—requirements for charter

‘Matters to be included in draft corporatisation charter

‘458EH.(1) The draft corporatisation charter must contain the following matters—

- (a) an outline of how the key principles of corporatisation and their elements are to be applied by the LGOC and a timetable for their

application;

- (b) specification of appropriate systems of accounting for the LGOC and a timetable for their adoption;
- (c) a timetable for the adoption of commercial management and performance systems by the LGOC;
- (d) the scope of the LGOC's business activities, including any undertakings outside the LGOC's local government area;
- (e) a timetable and method for valuing the assets to be transferred to the LGOC and determining the LGOC's capital structure;
- (f) any other matter stated by the local government.

‘(2) The local government may determine that the draft corporatisation charter should also contain a timetable for—

- (a) identifying any existing activities of a policy formulation or regulatory nature of the candidate; and
- (b) identifying options for the activities to remain within the local government; and
- (c) identifying any community service obligations of the LGOC; and
- (d) costing any community service obligations of the LGOC.

‘(3) If there is a candidate subsidiary for the candidate LGOC, a reference in this section to an LGOC includes a reference to the subsidiary.

‘Other matters relevant to draft corporatisation charter preparation

‘458EL(1) The local government may determine—

- (a) steps to be taken in preparing the draft corporatisation charter; and
- (b) any other matter about the preparation of the draft corporatisation charter.

‘(2) The local government must also determine that the charter identify its parts that are concerned with the process to achieve corporatisation for the candidate LGOC (the “**charter transitional part**”).

‘Subdivision 5—Corporatisation charter—approvals

‘Approval of draft corporatisation charter

‘458EJ. The local government may, by resolution, approve the establishment committee’s draft corporatisation charter, or that charter as amended by the local government, as the candidate’s corporatisation charter.

‘Approval of amendments of corporatisation charter

‘458EK. The local government may, by resolution, at any time (whether before or after corporatisation is achieved) approve an amendment of a corporatisation charter.

‘Corporatisation charter open to inspection

‘458EL.(1) A copy of a corporatisation charter must be open to inspection.

‘(2) A copy of the charter may be purchased at the local government’s public office.

‘(3) The price of a copy of the charter must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

‘Deletion of commercially sensitive matters from corporatisation charter

‘458EM.(1) A local government may, by resolution, approve a matter in the corporatisation charter may be omitted from the copies of it to be made public if—

- (a) the matter is of a commercially sensitive nature to the corporatised corporation; and
- (b) a full statement of the matter is given to each councillor.

‘(2) For section 198(2)(a), a full statement of the matter given to councillors under subsection (1), is information that is confidential to the local government.

‘Subdivision 6—Corporatisation charter—expiry of charter transitional part

‘Expiry of charter transitional part

‘458EN. The charter transitional part of the corporatisation charter for a candidate LGOC expires on the approval by the shareholder of the first statement of corporate intent for the LGOC.

‘Subdivision 7—Corporatisation facilitative mechanisms—significant business entities

‘Purpose of subdivision

‘458F. This subdivision provides mechanisms to facilitate the corporatisation process by enabling, among other things, the establishment of a significant business entity.

‘Significant business entities

‘458FA.(1) In accordance with a resolution under section 458E, a local government or 2 or more local governments may resolve that a significant business entity be established.

‘(2) The resolution must state, among other things—

- (a) the name of the entity and its functions and powers; and
- (b) the part of the local government, or parts of local governments, the business of which is to be acquired by the significant business entity after it becomes a corporatised corporation.

‘(3) The significant business entity is established on the publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

‘(4) On establishment, the significant business entity—

- (a) is a body corporate; and
- (b) has the name stated in the resolution; and

- (c) has a seal; and
- (d) may sue and be sued in its corporate name; and
- (e) has such functions and powers as may be specified in the resolution.

‘(5) A resolution under subsection (1) is not effective until each local government makes the resolution under this section.

‘Transfer of assets, liabilities etc. to significant business entity

‘458FB.(1) For a significant business entity, a local government may, by resolution, make provision about—

- (a) whether, and, if so, the extent to which, the entity is the successor in law of a particular person; and
- (b) the assets and liabilities that are, or are not, assets and liabilities of the entity or of someone else; and
- (c) the consideration for a transfer of assets to the entity, which may include a debt to be owed by the entity to the local government; and
- (d) the instruments that are, or are not, to apply to the entity, including whether or not the instruments are taken to be instruments—
 - (i) to which the entity is a party; or
 - (ii) that were given to, by or in favour of the entity; or
 - (iii) in which a reference is made to the entity; or
 - (iv) under which money is or may become payable, or other property is to be, or may become liable to be, transferred, conveyed or assigned to or by the entity; and
- (e) the proceedings to which the entity becomes a party in substitution for someone else; and
- (f) the existing employees of the local government and their rights.

‘(2) Without limiting subsection (1)—

- (a) a resolution under subsection (1)(c) may make provision about—

- (i) how the consideration is to be decided; and
 - (ii) the changing of the consideration, whether before or after the entity concerned becomes a corporatised corporation; and
 - (iii) the terms of the debt; and
- (b) a resolution under subsection (1)(d) may make provision about whether, and, if so, the extent to which, instruments apply to the entity in substitution for someone else; and
- (c) a resolution under subsection (1)(f) may provide for the office (including that of chief executive officer or a senior executive) the employee is to hold in the entity when it becomes a corporatised corporation.

‘(3) A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

‘(4) A resolution under subsection (1)(f) has effect despite the following provisions—

- (a) section 458FH;
- (b) division 6, section 458LQ.²⁵

‘(5) A resolution under this section must be stated to commence on the entity becoming a corporatised corporation or at a later time.

‘Subdivision 8—Significant business entities—directors and employees

‘Composition of boards including councillors and local government employees

‘458FC.(1) A councillor or local government employee may be a director of the local government’s significant business entity that is, or is to become, an LGOC if the councillor or employee is qualified for

²⁵ Section 458FH (Application of certain provisions about directors and executives to significant business entities), division 6 (Additional provisions relating to chief executive officers), section 458LQ (Appointment of chief executive officer)

appointment.

‘(2) However, directors mentioned in subsection (1) must not, at any time, be more than—

- (a) before 1 July 1999—two-thirds of all directors; or
- (b) from 1 July 1999—one-half of all directors.

‘(3) At least one-third of directors of a significant business entity that is, or is to become, an LGOC must not be councillors or employees of the local government or employees of the significant business entity.

‘(4) At least one-third of directors of a subsidiary must not be employees of its LGOC or the subsidiary.

‘(5) An appointment of a councillor or local government employee as director is made on the terms the local government decides.

‘(6) In taking part in meetings of the board of a significant business entity that is, or is to become, an LGOC, a director who is a councillor or local government employee must act in the best interests of the significant business entity.

‘(7) For a councillor to whom section 177²⁶ applies, if the councillor acts in accordance with subsection (6), the councillor is taken, for section 177(2), to act in compliance with the section.

‘(8) For a local government employee to whom section 729²⁷ applies, if the employee acts in accordance with subsection (6) the employee is taken, for section 729, to act in a way that shows proper concern for the public interest.

‘(9) Before 1 July 2001, the Minister must complete a review of the appropriateness of councillors and employees of local governments being directors of LGOCs, including LGOCs mentioned in subsection (10).

‘(10) From 1 July 2001, this section only applies to a significant business entity that is or is to become an LGOC, if its activities (being former significant business activities of its local government) are carried on by its subsidiaries.

²⁶ Section 177 (Councillors’ role)

²⁷ Section 729 (Integrity of local government employees)

Example for subsection (10)—

From 1 July 2001, this section will apply to an LGOC which does not itself trade in goods and services but is the shareholder of subsidiaries that do trade in goods and services.

‘(11) Subsections (2)(a), (3) and (4) expire on 1 July 2001.

‘Remuneration and allowances to directors of significant business entities who are councillors or employees of a local government

‘458FD.(1) Unless the local government decides otherwise, a councillor or employee of the local government who is also a director of the local government’s significant business entity is entitled as a director to remuneration and allowances payable to a director of the significant business entity.

‘(2) If the local government decides its councillors or employees are not entitled to directors’ remuneration and allowances, those remunerations and allowances must be paid by the significant business entity to the local government.

‘(3) From 1 July 2001, this section only applies to an LGOC mentioned in section 458FC(10).

‘Restrictions on councillors and employees being directors

‘458FE.(1) A person must not be both a councillor or employee of a local government and a director of the local government’s significant business entity.

‘(2) Subsection (1) does not apply to a significant business entity that is or is to become an LGOC—

- (a) if it is a significant business entity mentioned in section 458FC(10); or
- (b) for another significant business entity—until 1 July 2001.

‘(3) A person who is both a councillor or employee of a local government and a director of a significant business entity (that is or is to become an LGOC) immediately before subsection (1) applies to it, ceases to be a director on the subsection applying to the entity.

‘(4) From 1 July 2001—

- (a) at least one-half of the directors of a significant business entity that is or is to become an LGOC must not be employees of the entity; and
- (b) at least one-half of the directors of a subsidiary must not be employees of the subsidiary or its LGOC; and
- (c) at least one-half of the directors of a significant business entity mentioned in section 458FC(10) must not be councillors or employees of the local government or employees of the entity.

‘Prohibition on councillors being employees

‘458FF. A person must not be both a councillor of a local government and an employee of a significant business entity.

‘Subdivision 9—Interim board

‘Interim board of directors for significant business entity

‘458FG.(1) A local government may, by resolution, decide—

- (a) on a stated day, its significant business entity that is not a corporatised corporation is to have an interim board of directors; and
- (b) the role of the board.

‘(2) On the significant business entity becoming a corporatised corporation, the directors on the interim board go out of office.

‘Application of certain provisions about directors and executives to significant business entities

‘458FH.(1) This section applies to a significant business entity that is not a corporatised corporation.

‘(2) Sections 458GU to 458GW apply in relation to the significant business entity, with all necessary changes and any changes prescribed by regulation, as if it were a corporatised corporation.

‘(3) Division 5 applies in relation to the significant business entity, with all necessary changes and any changes prescribed by regulation, as if it were a corporatised corporation and its interim board of directors were its board of directors.

‘(4) Division 6 applies in relation to the significant business entity that is to become an LGOC, with all necessary changes and any changes prescribed by regulation, as if it were a corporatised corporation and its interim board of directors were its board of directors.

‘(5) Division 6 applies in relation to a significant business entity that is to become a subsidiary, with all necessary changes, and any changes prescribed by regulation and the change in subsection (6), as if it were a corporatised corporation and its interim board of directors were its board of directors.

‘(6) For a significant business entity that is to become a subsidiary, section 458LQ²⁸ is changed as follows—

Appointment of chief executive officer for significant business entity that is to become a subsidiary

458LQ.(1) A chief executive officer for a significant business entity that is to become a subsidiary is to be appointed by the entity’s interim board of directors.

(2) However, before the interim board of directors makes the appointment, it must consult with the interim board of directors of its parent corporation.

(3) In this section—

“parent corporation” of a significant business entity that is to become a subsidiary means the significant business entity that is to become the LGOC of which the candidate subsidiary is a subsidiary.

‘(7) A regulation made under this section—

²⁸ Section 458LQ (Appointment of chief executive officer)

- (a) expires 6 months after its notification in the gazette unless it is earlier repealed or its operation is extended under a regulation; and
- (b) cannot operate after 1 year after its notification in the gazette.

‘Subdivision 10—Corporatisation facilitative mechanisms—general

‘Assistance to significant business entities

‘458FI. A significant business entity, that is not a corporatised corporation, may arrange with the chief executive officer of the local government for the services of officers and employees of the local government or entities to be made available to it.

‘Share capital and issue of shares

‘458FJ.(1) The local government may, by resolution, provide that, on a stated day before a significant business entity becomes a corporatised corporation, the significant business entity is taken to have a share capital of a stated amount.

‘(2) The resolution takes effect on publication in the gazette of notice of the making of the resolution or on a later day stated in the resolution and the notice.

‘(3) Before becoming a corporatised corporation, the entity must apply the part of its capital that the local government directs in paying up, in full, shares in itself.

‘(4) As soon as practicable after complying with subsection (3), the entity must issue the shares paid up under the subsection.

‘(5) If an entity does not have an interim board of directors, the local government may apply the part of the capital and issue the shares on the entity’s behalf.

‘(6) Division 3, subdivision 3 applies to the entity as if it were a corporatised corporation.

‘(7) The local government may, by written notice to the entity, give directions about the issue, holding and transfer of shares paid up under

subsection (3).

‘(8) The entity must ensure the directions are complied with.

‘Variation of share capital

‘**458FK.(1)** This section applies to a significant business entity that is not a corporatised corporation.

‘(2) A local government may, by resolution, vary the share capital of the significant business entity.

‘(3) Without limiting subsection (2), a resolution may provide for—

- (a) the issue of further shares in the significant business entity; or
- (b) the cancellation of issued shares in the significant business entity; or
- (c) the consolidation or division of issued shares in the significant business entity.

‘(4) A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or on a later day stated in the resolution and the notice.

‘Subdivision does not affect existing legal relationships

‘**458FL.(1)** This subdivision has effect despite anything in any instrument.

‘(2) Nothing done under this subdivision in relation to a significant business entity—

- (a) places the entity or the local government in breach of contract or confidence or otherwise makes the entity or the local government liable for a civil wrong; or
- (b) makes the entity or the local government in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; or
- (c) is taken to fulfil a condition—

- (i) allowing a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
- (ii) requiring any money to be paid before its stated maturity; or
- (d) releases a surety or other obligee (in whole or part) from an obligation.

‘(3) If, apart from this subsection, the advice or consent of a person would be necessary under an instrument in order to give effect to this part, the advice is taken to have been obtained or the consent is taken to have been given.

‘Local government may deal with other matters

‘458FM.(1) A local government may, by resolution, make provision about any matter for which it is necessary or convenient to make provision to facilitate the corporatisation of a significant business entity.

‘(2) Also, a resolution under subsection (1) may change the name of a significant business entity.

‘(3) A resolution under subsection (2) does not affect the legal personality of the entity whose name is changed.

‘(4) Unless a contrary intention appears, a reference in an Act or document to the entity by its former name is taken to be a reference to the entity by its new name.

‘(5) A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or on a later day stated in the resolution and the notice.

‘Subdivision 11—Acting chief executive officer of significant business entity on corporatisation

‘Appointment of acting chief executive officer for significant business entity on corporatisation

‘458FN.(1) Before a significant business entity becomes a corporatised corporation, the entity’s local government may, on the recommendation of

the establishment committee, appoint an acting chief executive officer for the entity.

‘(2) An appointment under this section takes effect on the day the entity becomes a corporatised corporation.

‘(3) This section does not apply if there is an interim board for the entity.

‘Division 3—Local government owned corporations and subsidiaries

‘Subdivision 1—Declaration of LGOCs and subsidiaries

‘Declaration of entity as LGOC

‘**458G.(1)** If a local government is satisfied the transitional part of the corporatisation charter of its candidate LGOC has been sufficiently implemented or the candidate’s business would, apart from a resolution under section 458FB, be otherwise ready to become the business of an LGOC, the local government may resolve that a significant business entity that is not a corporatised corporation become an LGOC.

‘(2) The resolution must state the functions of the LGOC.

‘(3) A significant business entity cannot become an LGOC unless it complies with, or on becoming an LGOC will comply with, section 458GA.

‘(4) The significant business entity becomes an LGOC in accordance with the resolution under subsection (1) with the functions stated in the resolution on publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

‘Requirements for LGOCs

‘**458GA.(1)** An LGOC is not a corporation registered under the Corporations Law.

‘(2) An LGOC must have a board of directors and have a share capital and issued shares.

‘Declaration of entity as subsidiary

‘**458GB.(1)** If a local government is satisfied the candidate subsidiary’s business would, apart from a resolution under section 458FB, be ready to become the business of a subsidiary of an LGOC, the local government may resolve that a significant business entity that is not a corporatised corporation become a subsidiary of the LGOC.

‘(2) The resolution must state the functions of the subsidiary.

‘(3) A significant business entity cannot become a subsidiary of an LGOC unless it complies with, or on becoming a subsidiary of an LGOC will comply with, section 458GC.

‘(4) The significant business entity becomes a subsidiary of an LGOC in accordance with the resolution under subsection (1) with the functions stated in the resolution on publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

‘Requirements for subsidiaries

‘**458GC.(1)** A subsidiary of an LGOC is not a corporation registered under the Corporations Law.

‘(2) A subsidiary of an LGOC must have a board of directors and have a share capital and issued shares.

‘Declaration does not affect legal personality etc.

‘**458GD.** The declaration of a significant business entity as a corporatised corporation does not, of itself, affect the legal personality of the entity or its functions and powers.

*‘Subdivision 2—Application of Corporations Law***‘Application of Corporations Law to corporatised corporations**

‘**458GE.(1)** The provisions of the Corporations Law stated under a regulation as applying to a corporatised corporation apply to the corporatised corporation as if—

- (a) the corporatised corporation were a public company and a company limited by shares; and
- (b) the shares in the corporatised corporation held by the corporatised corporation's shareholder were shares held in the corporatised corporation as a public company and a company limited by shares.

‘(2) The provisions of the Corporations Law (other than those applied to a corporatised corporation under subsection (1) or another provision of this part) do not apply to the corporatised corporation.

‘(3) A regulation made under subsection (1)—

- (a) expires 6 months from the day on which it is notified in the gazette unless it is earlier repealed or its operation is extended under a regulation; and
- (b) cannot operate after 1 year after its notification in the gazette.

‘Corporatised corporation exempt public authority

‘458GF. A corporatised corporation is an exempt public authority for the Corporations Law.

‘Subdivision 3—Shares of corporatised corporations

‘Local governments to be shareholder of LGOCs

‘458GG.(1) The local government that resolved the establishment of an LGOC must be the LGOC's shareholder.

‘(2) If the LGOC is formed on, the resolution of more than 1 local government, each of the local governments must be a shareholder of the LGOC.

‘LGOC to be shareholder of LGOC's subsidiary

‘458GH. For a subsidiary of an LGOC, the LGOC must be the shareholder of the subsidiary.

‘If 2 or more local governments are shareholders, shares and entitlements apportioned by agreement

‘**458GI.(1)** This section applies if 2 or more local governments are, or are to be, shareholders of an LGOC.

‘(2) Each local government is to hold the number or proportion of shares in the LGOC as the local governments agree.

‘(3) Subject to section 458GL, each local government is entitled to rights as a shareholder of the LGOC as agreed by resolution of the local governments.

‘Variation of shares and share capital of corporatised corporation

‘**458GJ.(1)** The shareholder of a corporatised corporation may vary the share capital of the corporation.

‘(2) Without limiting subsection (1), the shareholder may provide for—

- (a) the issue of further shares in the corporation; or
- (b) the cancellation of issued shares in the corporation; or
- (c) the consolidation or division of issued shares in the corporation.

‘(3) If the shareholder is a local government, the local government may only act under this section by resolution.

‘(4) If the shareholder is an LGOC, the LGOC may only act under this section by resolution of its board.

‘(5) A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or on a later day stated in the resolution and the notice.

‘Transfer, issue etc. of shares

‘**458GK.(1)** An LGOC’s shareholder may transfer shares in the LGOC only to—

- (a) another local government; or
- (b) if the LGOC is to become a subsidiary of another LGOC—the other LGOC.

‘(2) An LGOC may transfer shares in its subsidiary only to—

- (a) another LGOC; or
- (b) if the subsidiary is to become an LGOC—to its local government.

‘Shareholders must act jointly

‘458GL.(1) This section applies if an LGOC has more than 1 shareholder.

‘(2) If this part authorises an LGOC’s shareholder to do an act, the shareholders may only do the act jointly.

‘(3) If this part requires the shareholder to do an act, the shareholders must do the act jointly.

‘Subdivision 4—Shareholders and councillors

‘Appointment of councillors as shareholder’s delegates

‘458GM.(1) A local government may, by resolution, on the terms the local government decides, appoint 2 of its councillors as delegates (“shareholder’s delegates”) of the local government in its capacity as shareholder of its LGOC.

‘(2) If more than one-half of the directors of the LGOC are councillors or employees of the local government, the directors must not be shareholder’s delegates for the LGOC.

‘(3) Subsection (2) and this subsection expire on 1 July 1999.

‘(4) When acting as delegates of a local government under this part, the shareholder’s delegates must act jointly.

‘(5) Subject to direction by the local government by resolution, its shareholder’s delegates may, on behalf of the local government, exercise the following powers of the local government in relation to the local government’s corporatised corporations—

- (a) appointment (including terms of appointment) and removal of directors of the board of an LGOC or of the first board of a subsidiary of an LGOC (including chairpersons and deputy

chairpersons);

- (b) monitoring the performance of the LGOC and its subsidiaries;
- (c) making requests, or giving directions about and agreeing to a corporate plan and statement of corporate intent or changes to them;
- (d) exempting an LGOC from including matters in its statement of corporate intent;
- (e) giving directions to a board of an LGOC, other than if the power is stated to be by resolution of the local government.

‘(6) A shareholder’s delegate, in exercising a power under this section, must act to promote the principles of this part as they apply to the LGOC.

‘(7) A power exercised by a shareholder’s delegate of a local government is taken to have been exercised by the local government.

‘(8) A shareholder’s delegate must give the local government the reports on the performance of the LGOC requested by the local government, including information on decisions made by the LGOC, but excluding relevant commercially sensitive material given to the delegates by the LGOC.

‘(9) A shareholder’s delegate does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under this subdivision in relation to the LGOC or its subsidiaries.

‘(10) A liability that would, apart from subsection (9), attach to a shareholder’s delegate attaches instead to the local government.

‘(11) If a shareholders’ delegate lawfully makes a request or gives a direction to an LGOC under this section, the LGOC must comply with the request or direction as if the delegate were the local government.

‘Subdivision 5—Board of directors

‘Corporatised corporation to have board of directors

‘458GN. Each corporatised corporation must have a board of directors (the “**board**”).

‘Role of board

‘458GO. The role of a corporatised corporation’s board includes the following matters—

- (a) responsibility for the corporation’s commercial policy and management;
- (b) ensuring, as far as possible, the corporation achieves, and acts in accordance with, its statement of corporate intent and, for an LGOC, its corporatisation charter and carries out its objectives in its statement of corporate intent;
- (c) accounting to the corporation’s shareholder for its performance as required by this part and other laws applying to the corporation;
- (d) ensuring the corporation otherwise performs its functions in a proper, effective and efficient way.

‘Delegation by board

‘458GP. A corporatised corporation’s board may, by resolution, delegate its powers to—

- (a) a director; or
- (b) a committee of the board; or
- (c) the corporation’s chief executive officer; or
- (d) an employee of the corporation.

‘Additional provisions about board—div 5

‘458GQ. Additional provisions about the board are in division 5.

‘First board of LGOC

‘458GR.(1) For the appointment of the first board of an LGOC, the local government of the candidate LGOC must act under sections 458L(1) and 458LA(1) before its business becomes the business of the LGOC.

‘(2) The appointment takes effect when the candidate’s business becomes the business of the LGOC.

‘First board of LGOC subsidiary

‘458GS.(1) For the appointment of the first board of a subsidiary of an LGOC—

- (a) the LGOC; or
- (b) if the LGOC is not yet established—the local government of the candidate subsidiary;

must act under sections 458L(2) and 458LA(2) before the candidate’s business becomes the business of the subsidiary.

‘(2) For the local government acting under the sections, a reference in the sections to the LGOC is taken to be a reference to the local government of the candidate subsidiary.

‘(3) An appointment under this section—

- (a) takes effect when the candidate subsidiary’s business becomes the business of the subsidiary; and
- (b) if made by the local government—must be for not more than 3 months.

‘Subdivision 6—Chief executive officer**‘Corporatised corporations to have chief executive officer**

‘458GT. Each corporatised corporation is to have a chief executive officer.

‘Duties of chief executive officer

‘458GU. A corporatised corporation’s chief executive officer is, under its board, to manage the corporation.

‘Things done by chief executive officer

‘458GV. Anything done in the name of, or for, a corporatised corporation by its chief executive officer is taken to have been done by the corporation.

‘Delegation by chief executive officer

‘458GW.(1) A corporatised corporation’s chief executive officer may delegate the chief executive officer’s powers (including a power delegated to the chief executive officer) to an employee of the corporation.

‘(2) Subsection (1) has effect subject to any directions of the corporation’s board.

‘Additional provisions about chief executive officer—div 6

‘458GX. Additional provisions about a corporatised corporation’s chief executive officer are in division 6.

‘Subdivision 7—Corporate plan—general**‘LGOC must have corporate plan**

‘458H. Each LGOC must have a corporate plan.

‘Corporate plan to apply to subsidiaries

‘458HA. If an LGOC has a subsidiary, the LGOC’s corporate plan must apply to the LGOC and its subsidiary.

‘Subdivision 8—Preparation, agreement on and changes to corporate plan**‘Draft corporate plan**

‘458HB.(1) Before 1 May of each year, an LGOC’s board must prepare, and submit to its shareholder for agreement, a draft corporate plan for at least 3 years starting on 1 July of the year.

‘(2) However, for the LGOC’s first corporate plan, the LGOC must, within 1 month after becoming an LGOC, prepare, and submit to its shareholder for agreement, a draft corporate plan to apply from its corporatisation to, at the earliest, the third 30 June after it becomes a corporatised corporation.

‘(3) The board and the shareholder must try to reach agreement on the draft plan as soon as possible and, except if subsection (2) applies, not later than 1 month before the start of the period covered by the plan.

‘Duration of corporate plan

‘458HC. Subject to section 458HF, a corporate plan of an LGOC continues in force until a new corporate plan takes effect.

‘Special procedures in relation to draft corporate plan

‘458HD.(1) The shareholder may return the draft corporate plan to the board and ask it to—

- (a) consider or further consider any matter and deal with the matter in the draft plan; and
- (b) revise the draft plan in the light of its consideration or further consideration.

‘(2) The board must comply with the request as a matter of urgency.

‘(3) If a draft corporate plan has not been agreed to by the shareholder within 2 months from the day on which the LGOC becomes an LGOC, the shareholder may, by written notice, direct the board to—

- (a) take stated steps in relation to the draft plan; or
- (b) make stated changes to the draft plan.

‘(4) If a draft corporate plan, other than the first corporate plan, for a period from 1 July in a year has not been agreed to by the shareholder by 1 June of the year, the shareholder may, by written notice, direct the board to—

- (a) take stated steps in relation to the draft plan; or
- (b) make stated changes to the draft plan.

‘(5) The board must immediately comply with a direction under subsection (3) or (4).

‘(6) A copy of a direction must be open to inspection.

‘Corporate plan on agreement

‘458HE. Subject to section 458HC, when a draft corporate plan of an LGOC is agreed to by the shareholder, it becomes the LGOC’s corporate plan for the period of the plan.

‘Corporate plan pending agreement

‘458HF.(1) If a draft corporate plan for an LGOC has not been agreed to by the shareholder within 1 month from the day on which it becomes an LGOC (**“the time”**), the last draft corporate plan before the time is taken to be the LGOC’s corporate plan until a draft corporate plan becomes the LGOC’s corporate plan under section 458HE.

‘(2) If an LGOC’s shareholder has not agreed to a draft corporate plan, other than the first corporate plan, on or before 1 July in a year (also **“the time”**), the last draft corporate plan before the time is taken to be the LGOC’s corporate plan until a draft corporate plan becomes the LGOC’s corporate plan under section 458HE.

‘(3) In this section—

“last draft corporate plan”, before the time, means the draft corporate plan submitted, or last submitted, by the board to the shareholder (with any changes made by the board, whether before or after the time, at the direction of the shareholder).

‘Changes to corporate plan

‘458HG.(1) An LGOC’s corporate plan may be changed by its board with the agreement of its shareholder.

‘(2) The shareholder may, by written notice, direct the board to change the corporate plan.

‘(3) Before giving the direction, the shareholder must consult with the board and take its views into account.

‘(4) A copy of the direction must be open to inspection.

‘Corporate plan open to inspection

‘458HH.(1) A copy of an LGOC’s corporate plan must be open to inspection at the local government’s public office.

‘(2) A copy of the corporate plan may be purchased at the local government’s public office.

‘(3) The price of a copy of the corporate plan must be no more than the cost to the local government of having a copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

‘Deletion of commercially sensitive matters from corporate plan

‘458HI.(1) A matter in the corporate plan of an LGOC may be omitted from the copies of it to be made public if—

- (a) the matter is of a commercially sensitive nature to the LGOC or its subsidiary; and
- (b) a full statement of the matter is given—
 - (i) if there are shareholder’s delegates²⁹—to the delegates; or
 - (ii) if there are no shareholder’s delegates—to each councillor of the LGOC’s local government.

‘(2) For section 198(2)(a), a full statement of the matter given to shareholder’s delegates or councillors under subsection (1)(b), is information that is confidential to the local government.³⁰

‘Subdivision 9—Statement of corporate intent—general**‘Corporatised corporations must have statements of corporate intent**

‘458HJ.(1) Each corporatised corporation must have a statement of corporate intent for each financial year.

‘(2) If the corporation becomes a corporatised corporation other than on

²⁹ Section 458GM (Appointment of councillors as shareholder’s delegates) provides for appointment of shareholder’s delegates.

³⁰ Section 198 (Improper use of information by councillors)

1 July in a year, its first statement of corporate intent must be for the period from its corporatisation to 30 June next following.

‘LGOC’s statement of corporate intent must be consistent with corporate plan

‘458HK. An LGOC’s statement of corporate intent must be consistent with its corporate plan.

‘Subsidiary’s statement of corporate intent to be consistent with LGOC’s corporate plan and statement of corporate intent

‘458HL. A subsidiary’s statement of corporate intent must be consistent with its LGOC’s corporate plan and statement of corporate intent.

‘Subdivision 10—Matters to be included in statement of corporate intent

‘Matters to be included in statement of corporate intent

‘458HM.(1) A corporatised corporation’s statement of corporate intent must state the corporation’s financial and non-financial performance targets for its activities for the relevant financial year.

‘(2) A corporatised corporation’s statement of corporate intent must include the following additional matters—

- (a) an outline of the corporation’s objectives and functions;
- (b) an outline of the nature and scope of the activities proposed to be carried on by the corporation in the relevant financial year, including details of any changes, since the last statement of corporate intent, to the corporation’s undertakings outside the area of its local government;
- (c) an outline of the corporation’s main undertakings and any intention to dispose of any of them in the relevant financial year;
- (d) the corporation’s capital structure and dividend policies;
- (e) an outline of the major infrastructure investments proposed to be carried out by the corporation in the relevant financial year;

- (f) an outline of the outstanding and proposed borrowings by the corporation;
- (g) an outline of the policies adopted by the corporation to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability;
- (h) an outline of the corporation's policies and procedures relating to the acquisition and disposal of major assets;
- (i) the corporation's accounting policies applying to the preparation of its accounts;
- (j) the type of information to be given to the shareholder, including information to be given in quarterly and annual reports;
- (k) an outline of the employment and industrial relations policies of the corporation;
- (l) for an LGOC—any proposal for the establishment of a subsidiary of the LGOC;
- (m) the matters set out in the LGOC's charter transitional part that continue to be relevant to the operations of the corporatised corporation.

‘(3) The corporatised corporation's shareholder may exempt the corporation from including any matter, or any aspect of a matter, mentioned in subsection (2) in the statement of corporate intent if the shareholder considers the matter or aspect is not materially relevant to the corporatised corporation or its activities.

‘(4) The statement of corporate intent must also include the matters concerning its community service obligations required under section 458IA.³¹

‘(5) Subsections (1), (2) and (4) do not limit the matters that may be included in a statement of corporate intent.

Example for subsection (5)—

The statement of corporate intent could include matters set out in the LGOC's corporatisation charter.

³¹ Section 458IA (Community service obligations to be specified in statement of corporate intent)

‘Deletion of commercially sensitive matters from statement of corporate intent

‘458HN.(1) A matter in the statement of corporate intent of a corporatised corporation may be omitted from the copies of it to be made public if—

- (a) the matter is of a commercially sensitive nature to the corporatised corporation; and
- (b) a full statement of the matter is given—
 - (i) if the corporatised corporation is an LGOC and there are shareholder’s delegates³²—to the delegates; or
 - (ii) if the corporatised corporation is an LGOC and there are no shareholder’s delegates—to each councillor of the shareholder; or
 - (iii) if the corporatised corporation is a subsidiary and there are shareholder’s delegates of its LGOC—to the delegates; or
 - (iv) if the corporatised corporation is a subsidiary and there are no shareholder’s delegates of its LGOC—to each councillor of the LGOC’s shareholder.

‘(2) For section 198(2)(a), a full statement of the matter given to shareholder’s delegates or councillors under subsection (1)(b), is information that is confidential to the local government.³³

‘Subdivision 11—Preparation, agreement on and modification of statement of corporate intent**‘Draft statement of corporate intent**

‘458HO.(1) For each financial year, a corporatised corporation’s board must prepare, and submit to its shareholder for agreement, a draft statement of corporate intent before 1 May preceding the financial year.

³² Section 458GM (Appointment of councillors as shareholder’s delegates) provides for appointment of shareholder’s delegates.

³³ Section 198 (Improper use of information by councillors)

‘(2) For a corporatised corporation’s first statement of corporate intent, the corporation must, within 1 month after becoming a corporatised corporation, prepare, and submit to its shareholder for agreement, a draft statement of corporate intent from its becoming a corporatised corporation.

‘(3) The board and the shareholder must try to reach agreement on the draft statement as soon as possible and, except if subsection (2) applies, not later than the start of the financial year.

‘Consultation with industrial organisations etc.

‘**458HP.** In preparing a statement of corporate intent, a corporatised corporation’s board may consult with interested industrial organisations and employees.

‘Special procedures in relation to draft statement of corporate intent

‘**458HQ.(1)** The shareholder may return the draft statement of corporate intent to the board and ask it to—

- (a) consider or further consider any matter and deal with the matter in the draft statement; and
- (b) revise the draft statement in the light of its consideration or further consideration.

‘(2) The board must comply with the request as a matter of urgency.

‘(3) If a draft statement of corporate intent has not been agreed to by the shareholder within 2 months from the day on which the corporation becomes a corporatised corporation, the shareholder may, by written notice, direct the board to—

- (a) take stated steps in relation to the draft statement; or
- (b) make stated changes to the draft statement.

‘(4) If a draft statement of corporate intent of the corporation, other than its first statement of corporate intent, for a period from 1 July in a year has not been agreed to by its shareholder by 1 July of the year, the shareholder may, by written notice, direct the board to—

- (a) take stated steps in relation to the draft statement; or

(b) make stated changes to the draft statement.

‘(5) The board must immediately comply with a direction under subsection (3) or (4).

‘(6) A copy of a direction must be open to inspection.

‘Statement of corporate intent on agreement

‘**458HR.** When a draft statement of corporate intent of a corporatised corporation is agreed to by its shareholder, it becomes the corporation’s statement of corporate intent for the period of the statement.

‘Statement of corporate intent pending agreement

‘**458HS.(1)** If a draft statement of corporate intent has not been agreed to by its shareholder within 2 months from the day on which the corporation becomes a corporatised corporation (“**the time**”), the last draft statement of corporate intent is taken to be the corporation’s statement of corporate intent until a draft statement of corporate intent becomes the corporation’s statement of corporate intent under section 458HR.

‘(2) If the shareholder of a corporatised corporation has not agreed to a draft statement of corporate intent, other than the first statement of corporate intent, by 1 July in a year (also “**the time**”), the last draft statement of corporate intent is taken to be the corporation’s statement of corporate intent until a draft statement of corporate intent becomes the corporation’s statement of corporate intent under section 458HR.

‘(3) In this section—

‘**last draft statement of corporate intent**’, before the time, means the draft statement of corporate intent submitted, or last submitted, by the board to the shareholder (with any changes by the board, whether before or after the time, at the direction of the shareholder).

‘Changes to statement of corporate intent

‘**458HT.(1)** A corporatised corporation’s statement of corporate intent may be changed by its board with the agreement of its shareholder.

‘(2) The shareholder may, by written notice, direct the board to change

the statement of corporate intent.

‘(3) Before giving the direction, the shareholder must consult with the board and take its views into account.

‘(4) A copy of the direction must be open to inspection.

‘Statement of corporate intent open to inspection

‘**458HU.(1)** Subject to section 458HN, a copy of a corporatised corporation’s statement of corporate intent must be open to inspection at the local government’s public office.

‘(2) A copy of the statement of corporate intent may be purchased at the local government’s public office.

‘(3) The price of a copy of the statement of corporate intent must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

‘(4) The LGOC must give to the chief executive officer of the local government a copy of the current statement of corporate intent of each of its subsidiaries.

‘Subdivision 12—Community service obligations

‘Meaning of “community service obligations”

‘**458I.(1)** The “community service obligations” of a corporatised corporation are obligations to do anything that the corporation’s board establishes to the satisfaction of the shareholder—

- (a) are not in the commercial interests of the corporation to do; and
- (b) arise because of a direction by the corporation’s local government to its LGOC; and
- (c) do not arise because of the application of the following key principles of corporatisation and their elements—
 - (i) principle 3—strict accountability for performance;
 - (ii) principle 4—competitive neutrality.

‘(2) This section applies to the following directions and duties—

- (a) directions given to the LGOC’s board under section 458HD or 458HG;³⁴
- (b) a direction given to the corporatised corporation’s board under section 458HQ, 458HT, 458IB or 458JN;³⁵
- (c) any duty to carry out activities (including any economic development activities or activities of a regulatory or policy formulation nature) arising under an Act applying specifically to the corporatised corporation or corporatised corporations generally.

‘Community service obligations to be stated in statement of corporate intent

‘458IA.(1) The community service obligations that a corporatised corporation is to do are to be stated in its statement of corporate intent.

‘(2) The costings of, funding for, or other arrangements to make adjustments relating to, the corporation’s community service obligations are also to be stated in its statement of corporate intent.

‘(3) A corporatised corporation’s statement of corporate intent is conclusive, as between the corporation and its shareholder, of—

- (a) the nature and extent of the community service obligations of the corporation; and
- (b) the ways in which, and the extent to which, the corporation is to be compensated by the shareholder for the community service obligations.

³⁴ Section 458HD (Changes to corporate plan) or 458HG (Special procedures in relation to draft corporate plan)

³⁵ Section 458HQ (Special procedures in relation to draft statement of corporate intent), 458HT (Changes of statement of corporate intent), 458IB (Reserve power of shareholder to give directions to LGOC in public interest) or 458JN (Reserve power of shareholder to direct that asset not be disposed of)

‘Subdivision 13—General reserve powers of shareholder

‘Reserve power of shareholder to give directions to LGOC in public interest

‘458IB.(1) An LGOC’s shareholder may, by resolution, give the LGOC’s board a written direction in relation to the LGOC and its subsidiaries if the shareholder is satisfied, because of exceptional circumstances, it is necessary to give the direction in the public interest.

‘(2) The board must ensure the direction is complied with by the LGOC.

‘(3) If the direction concerns the LGOC’s subsidiary, the LGOC board must, to the extent the direction concerns the subsidiary—

- (a) notify the subsidiary of the direction; and
- (b) ensure the direction is complied with by the subsidiary.

‘(4) The subsidiary’s board must ensure that a direction of which it has been notified is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

‘(5) Before giving the direction, the shareholder must—

- (a) consult with the LGOC; and
- (b) ask the board to advise it whether, in its opinion, complying with the direction would not be in the commercial interests of the LGOC or any of its subsidiaries.

‘(6) A copy of the direction must be open to inspection.

‘Subdivision 14—Suspected insolvency from directions

‘Notice of suspected insolvency because of direction

‘458IC.(1) This section applies if—

- (a) a corporatised corporation’s board is given a direction by its shareholder; and
- (b) the board suspects the corporation, or, for an LGOC, its subsidiary, will or may become insolvent; and

- (c) in the board's opinion, the cause or a substantial cause of the suspected insolvency would be compliance with the direction.

'(2) The board must immediately give written notice to the shareholder, the auditor-general and, if the corporation is a subsidiary, its local government of—

- (a) the suspicion; and
(b) its reasons for the opinion.

'(3) The notice must state that it is given under this section.

'(4) The giving of the notice operates to suspend the direction until—

- (a) the shareholder advises the board, in writing, that the shareholder is not satisfied—
(i) the board's suspicion mentioned in subsection (1)(b) is well-founded; or
(ii) the board's opinion mentioned in subsection (1)(c) is justified; or
(b) the direction is revoked.

'(5) If the shareholder is satisfied the board's suspicion is well-founded, the shareholder must immediately—

- (a) if also satisfied the board's opinion is justified—revoke the direction; and
(b) in any case—give the board the written directions the shareholder considers necessary or desirable, including any directions necessary or desirable to ensure—
(i) the corporation or, for an LGOC, its subsidiary does not incur further debts; or
(ii) the LGOC or its subsidiary will be able to pay all its debts as and when they become due.

'(6) Without limiting subsection (5), a direction under this section may require an LGOC or any of its subsidiaries to stop or limit particular activities.

'(7) If the shareholder is a local government, a direction under subsection (5) must be by resolution of the local government.

‘(8) The board of the corporatised corporation must ensure a direction under this section is complied with by the corporation.

‘(9) If the direction to an LGOC’s board concerns the LGOC’s subsidiary, the LGOC board must, to the extent the direction concerns the subsidiary—

- (a) notify the subsidiary of the direction; and
- (b) ensure the direction is complied with by the subsidiary.

‘(10) The subsidiary’s board must ensure that a direction of which it has been notified is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

‘(11) A copy of the direction by a local government must be open to inspection.

‘(12) This section is in addition to, and does not limit, another provision of this part or another law.

‘(13) The shareholder must give the auditor-general a copy of every advice or direction given under this section to the board.

‘Subdivision 15—Limitation on local government directions

‘Corporatised corporation and board not otherwise subject to local government direction

‘458ID. Except as otherwise provided by this or another Act, a corporatised corporation and its board are not subject to direction by or on behalf of its local government under this part.

‘Subdivision 16—Reports and other accountability matters

‘Application of Financial Administration and Audit Act

‘458IE.(1) The provisions of the *Financial Administration and Audit Act 1977* that apply to local governments (“**the provisions**”) apply to a corporatised corporation with any changes prescribed by regulation.

‘(2) A regulation made under subsection (1)—

(a) expires 6 months after its notification in the gazette unless it is earlier repealed or its operation is extended under a regulation; and

(b) cannot operate after 1 year after its notification in the gazette.

‘(3) For the purposes of the provisions, a corporatised corporation is a controlled entity.

‘(4) The provisions apply to a corporatised corporation as if a reference in the Act to the appropriate Minister were a reference to the local government.

‘Quarterly reports

‘458IF.(1) A corporatised corporation’s board must give to its shareholder a report on the corporation’s operations including, for an LGOC, its subsidiaries for each of the first 3 quarters of a financial year.

‘(2) A quarterly report must be given to—

(a) for an LGOC if there are shareholder’s delegates—the shareholder’s delegates; and

(b) for corporatised corporations to which paragraph (a) does not apply—the shareholder.

‘(3) A quarterly report must be given—

(a) within 1 month after the end of the quarter; or

(b) if another period after the end of the quarter is agreed between the board and the shareholder—within the agreed period.

‘(4) A quarterly report must include the information required to be given in the report by the corporation’s statement of corporate intent.

‘(5) For section 198(2)(a), a quarterly report of an LGOC is information that is confidential to the LGOC’s local government.³⁶

‘Annual reports

‘458IG.(1) A corporatised corporation’s board must give to its shareholder an annual report on the corporation’s operations including, for an LGOC, its subsidiaries for each financial year.

‘(2) The annual report must be given to the shareholder—

- (a) within 4 months after the end of the financial year; or
- (b) if another period after the end of the financial year is agreed between the board and the shareholder—within the agreed period.

‘(3) The annual report³⁷ must—

- (a) contain the information that is required to be included in the report by its shareholder to enable an informed assessment to be made of the corporation’s operations, including for an LGOC, the operations of its subsidiaries and including a comparison of the performance of the corporation with its statement of corporate intent; and
- (b) state the corporation’s dividend policy for the financial year to which the report relates; and
- (c) include the statement of corporate intent for the relevant financial year; and
- (d) include particulars of any changes made to the statement of corporate intent during the relevant financial year; and
- (e) include particulars of any directions given to the board by the

³⁶ Section 198 (Improper use of information by councillors)

³⁷ Under section 458II certain material may be deleted from the report.

shareholder relating to the relevant financial year;³⁸ and

- (f) include particulars of the impact on the financial position, profits and losses and prospects of the corporation, including, for an LGOC, its subsidiaries of any changes to the statement of corporate intent, and any directions given to the board by the shareholder, relating to the relevant financial year.

‘(4) The annual report must also state whether or not, in the directors’ opinion, there are, when the statement is made, reasonable grounds to believe the corporation will be able to pay its debts as and when they fall due.

‘(5) This section does not limit the matters required to be included in, or to accompany, a corporation’s annual report under another Act or law.

‘Annual report open to inspection

‘458IH.(1) A copy of an LGOC’s annual report must be open to inspection at the local government’s public office.

‘(2) A copy of the report may be purchased at the local government’s public office.

³⁸ An LGOC’s shareholder may give directions to the board of an LGOC under—

- section 458HD (Special procedures in relation to draft corporate plan)
- section 458HG (Changes to corporate plan)
- section 458HQ (Draft statement of corporate intent)
- section 458HT (Changes to statement of corporate intent)
- section 458IB (Reserve power of shareholder to give directions to LGOC in public interest)
- section 458IC (Notice of suspected insolvency because of direction)
- section 458IV (Notice of suspected insolvency otherwise than because of direction)
- section 458JK (Payment of dividends)
- section 458JL (Interim dividends)
- section 458JN (Reserve power of shareholder to direct that asset not be disposed of)

‘(3) The price of a copy of the report must be no more than the cost to the local government of having a copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

‘Omission of certain matters from annual report etc.

‘458II.(1) A matter required to be included in the annual report of an LGOC for a financial year may be omitted from the copies of the annual report (and accompanying documents) to be made public if—

- (a) the matter is of a commercially sensitive nature to the LGOC or its subsidiary; and
- (b) a full statement of the matter is given—
 - (i) if there are shareholder’s delegates³⁹—to the delegates; or
 - (ii) if there are no shareholder’s delegates—to each councillor of the shareholder.

‘(2) For section 198(2)(a), a full statement of the matter given to shareholder’s delegates or councillors under subsection (1)(b), is information that is confidential to the LGOC’s local government.⁴⁰

‘(3) An annual report of an LGOC may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates it is a summary only; and
- (b) a full statement of the matter is given to the local government when the annual report is given to the shareholder.

‘(4) Subsections (1) to (3) have effect despite section 458IG or another Act or law.

‘(5) Subsection (1) has effect despite subsection (3).

³⁹ Section 458GM (Appointment of councillors as shareholder’s delegates) provides for appointment of shareholder’s delegates.

⁴⁰ Section 198 (Improper use of information by councillors)

‘LGOC board to keep shareholder informed

‘458IJ.(1) An LGOC’s board must—

- (a) keep its shareholder reasonably informed of the operations, financial performance and financial position of the LGOC and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the LGOC and its subsidiaries; and
- (b) give to the shareholder reports and information that the shareholder requires to enable the shareholder to—
 - (i) make informed assessments of matters mentioned in paragraph (a); or
 - (ii) comply with reporting requirements on the shareholder under an Act; and
- (c) if matters arise that, in the board’s opinion, may prevent or significantly affect achievement of the LGOC’s objectives or targets in its statement of corporate intent—immediately inform the shareholder of the matters and its opinion in relation to them.

‘(2) However, a matter that is of a commercially sensitive nature to an LGOC or its subsidiary may be omitted from information given by the LGOC under subsection (1) if a full statement of the matter is given—

- (a) if there are shareholder’s delegates—to the delegates; or
- (b) if there are no shareholder’s delegates—to each councillor of the shareholder.

‘(3) For section 198(2)(a), a full statement of the matter given to shareholder’s delegates or councillors under subsection (2) is information that is confidential to the LGOC’s local government.⁴¹

‘(4) Subsection (1) does not limit the matters of which the board is required to keep the shareholder informed, or limit the reports or information the board is required, or may be required, to give to the shareholder, under another Act or law.

‘(5) If there are shareholder’s delegates for the LGOC, the reports and

⁴¹ Section 198 (Improper use of information by councillors)

information under subsection (1) must be given to the shareholder's delegates on behalf of the local government.

'Subdivision 17—Duties and liabilities of directors and other officers

'Disclosure of interests by directors

'458IK.(1) If a corporatised corporation's director has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

'(2) The disclosure must be recorded in the board's minutes.

'Voting by interested director

'458IL.(1) A corporatised corporation's director who has a material personal interest in a matter being considered by the board must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a **"related resolution"**) under subsection (2) in relation to the matter (whether in relation to the director or another director); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

'(2) Subsection (1) does not apply to the matter if the board has, at any time, passed a resolution that—

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

‘(3) A quorum is present during a consideration of a matter by the board only if at least 2 directors are present who are entitled to vote on any motion that may be moved in relation to the matter.

‘(4) The corporation’s shareholder or the shareholder’s delegate may, by signing consent to a proposed resolution, deal with a matter if the board cannot deal with it because of subsection (3).

‘Duty and liability of certain officers of corporatised corporation

‘458IM.(1) An officer of a corporatised corporation must act honestly in the exercise of powers, and discharge of functions, as an officer of the corporatised corporation.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the corporatised corporation, creditors of the corporation or creditors of another person or for another fraudulent purpose—500 penalty units or 5 year’s imprisonment; or
- (b) in any other case—100 penalty units.

‘(2) In the exercise of powers and the discharge of functions, an officer of a corporatised corporation must exercise the degree of care and diligence that a reasonable person in a like position in a corporatised corporation would exercise in the corporation’s circumstances.

Maximum penalty—100 penalty units.

‘(3) An officer of a corporatised corporation, or a person who has been an officer of a corporatised corporation, must not make improper use of information acquired as an officer of the corporatised corporation—

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person; or
- (b) to cause detriment to the corporation.

Maximum penalty—500 penalty units or 5 year’s imprisonment.

‘(4) An officer of a corporatised corporation must not make improper use of the officer’s position as an officer of the corporatised corporation—

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person; or

(b) to cause detriment to the corporation.

Maximum penalty—500 penalty units or 5 year’s imprisonment.

‘(5) If a person contravenes this section in relation to a corporatised corporation, the corporation may recover from the person as a debt due to the corporation—

- (a) if anyone made a profit because of the contravention—an amount equal to the profit; and
- (b) if the corporation suffered loss or damage because of the contravention—an amount equal to the loss or damage.

‘(6) An amount may be recovered from the person under subsection (5) whether or not the person has been convicted of an offence in relation to the contravention.

‘(7) Subsection (5) is in addition to, and does not limit, the *Crimes (Confiscation of Profits) Act 1989*.

‘(8) In determining for the purposes of subsection (2) the degree of care and diligence that a reasonable person in a like position in a corporatised corporation would exercise in the circumstances of the corporatised corporation concerned, regard must be had to—

- (a) the fact that the person is an officer of the corporatised corporation; and
- (b) the application of this part to the corporation; and
- (c) relevant matters required or permitted to be done under this part in relation to the corporation;

including, for example—

- (d) any relevant community service obligations of the corporation; and
- (e) any relevant directions or approvals given to the corporation by its shareholder.

‘(9) Subsection (8) does not limit the matters to which regard may be had for subsection (2).

‘(10) This section—

- (a) is in addition to, and does not limit, any rule of law relating to the

duty or liability of a person because of the person's office in relation to a corporation; and

- (b) does not prevent civil proceedings being started for a breach of the duty or the liability.

'Prohibition on loans to directors

'458IN.(1) A corporatised corporation must not, whether directly or indirectly—

- (a) make a loan to a director, a spouse of a director or a relative of either of them; or
- (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of either of them.

'(2) Subsection (1) does not apply to the entering into by the corporation of an instrument with a person mentioned in subsection (1) if the instrument is entered into on the same terms as similar instruments are entered into by the corporation with members of the public.

'(3) A director of a corporatised corporation who is knowingly concerned in a contravention of subsection (1) by the corporation (whether or not in relation to the director) commits an offence.

Maximum penalty—100 penalty units.

'(4) In this section—

"relative" means—

- (a) a parent or remoter lineal ancestor; or
- (b) a son, daughter or remoter issue; or
- (c) a brother or sister.

'When corporatised corporation not to indemnify officers

'458IO.(1) A corporatised corporation must not—

- (a) indemnify a person who is or has been an officer of the corporation against a liability incurred as an officer; or

- (b) exempt a person who is or has been an officer of the corporation from a liability incurred as an officer.

‘(2) An instrument is void so far as it provides for the corporation to do something that subsection (1) prohibits.

‘(3) Subsection (1) does not prevent the corporation from indemnifying a person against a civil liability (other than a liability to the corporation or a subsidiary of the corporation) unless the liability arises out of conduct involving a lack of good faith.

‘(4) Subsection (1) does not prevent the corporation from indemnifying a person against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

‘(5) The corporation may give an indemnity mentioned in subsection (3) or (4) only with the prior approval of its shareholder.

‘(6) In this section—

“**indemnify**” includes indemnify indirectly through 1 or more interposed entities.

‘Corporatised corporation not to pay premiums for certain liabilities of officers

‘**458IP.(1)** A corporatised corporation must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of the corporation against a liability—

- (a) incurred by the person as an officer; and
- (b) arising out of conduct involving—
- (i) a wilful breach of duty in relation to the corporation; or
- (ii) without limiting subparagraph (i), a contravention of section 458IM (3) or (4).

‘(2) Subsection (1) does not apply to a liability for costs and expenses

incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.

‘(3) An instrument is void so far as it insures a person against a liability in contravention of subsection (1).

‘(4) In this section—

“pay” includes pay indirectly through 1 or more interposed entities.

‘Director’s duty to prevent insolvent trading

‘458IQ.(1) If—

- (a) immediately before a corporatised corporation incurs a debt—
 - (i) there are reasonable grounds to suspect that the corporation will not be able to pay all its debts as and when they become payable; or
 - (ii) there are reasonable grounds to suspect that, if the corporation incurs the debt, it will not be able to pay all its debts as and when they become payable; and
- (b) the corporation is, or later becomes, unable to pay all its debts as and when they become payable;

a person who is a director of the corporation, or takes part in the corporation’s management, at the time when the debt is incurred commits an offence.

Maximum penalty—100 penalty units or 1 year’s imprisonment.

‘(2) In a proceeding against a person for an offence against this section, it is a defence if it is proved—

- (a) that the debt was incurred without the person’s express or implied authority or consent; or
- (b) that, at the time when the debt was incurred, the person did not have reasonable cause to suspect—
 - (i) that the corporation would not be able to pay all its debts as and when they became payable; or
 - (ii) that, if the corporation incurred that debt, it would not be able to pay all its debts as and when they became payable; or

- (c) that the person took all reasonable steps to prevent the corporation from incurring the debt; or
- (d) for a director—that the person did not take part at the time in the corporation’s management because of illness or for some other good cause.

‘Court may order compensation

‘**458IR.(1)** If a person is found guilty of an offence against section 458IQ in relation to the incurring of a debt by a corporatised corporation, the Supreme Court or a District Court may declare that the person is to be personally responsible without any limitation of liability for the payment to the corporation of the amount required to satisfy the part of the corporation’s debts that the court considers proper.

‘**(2)** This section does not affect any rights of a person to indemnity, subrogation or contribution.

‘**(3)** This section—

- (a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person’s office in relation to a corporation; and
- (b) does not prevent proceedings being instituted for a breach of the duty or the liability.

‘Examination of persons concerned with corporatised corporations

‘**458IS.(1)** If it appears to the attorney-general or a local government that there are reasonable grounds to believe—

- (a) a person who has been concerned, or taken part, in a corporatised corporation’s management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the corporation; or
- (b) a person may be capable of giving information in relation to a corporatised corporation’s management, administration or affairs;

the attorney-general or local government may apply to the Supreme Court

or a District Court for an order under this section in relation to the person.

‘(2) If the attorney-general makes an application under subsection (1) about a corporatised corporation, the attorney-general must, as soon as practicable, advise the corporation’s local government.

‘(3) A local government may only make an application under subsection (1) in relation to its corporatised corporation and must, as soon as practicable after making an application, advise the attorney-general.

‘(4) If the court is satisfied it is reasonable and appropriate for the person to be examined the court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the corporation’s management, administration or affairs.

‘(5) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

‘(6) The court may give directions about—

- (a) the matters to be inquired into at the examination; and
- (b) the procedures to be followed at the examination (including, if the examination is to be held in private, the persons who may be present).

‘(7) The person must not fail, without reasonable excuse—

- (a) to attend as required by the order; or
- (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or 2 year’s imprisonment.

‘(8) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or 2 year’s imprisonment.

‘(9) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or 2 year’s imprisonment.

‘(10) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person’s possession,

or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

'(11) The person must not, without reasonable excuse, contravene a direction under subsection (8).

Maximum penalty—200 penalty units or 2 year's imprisonment.

'(12) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

'(13) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—500 penalty units or 5 year's imprisonment.

'(14) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

'(15) If—

- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
- (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty;

the answer is not admissible in evidence against the person in—

- (c) a criminal proceeding; or
- (d) a proceeding for the imposition of a penalty;

other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.

'(16) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.

'(17) Subject to subsection (15), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.

‘(18) The person may, at the person’s own expense, employ a lawyer, and the lawyer may put to the person questions that the court considers just to enable the person to explain or qualify any answers given by the person.

‘(19) The court may adjourn the examination from time to time.

‘(20) The court may order the whole or any part of the costs incurred by the person be paid by—

- (a) if the application was made by the attorney-general—the State; or
- (b) if the application was made by a local government—the local government.

‘Power to grant relief

‘458IT.(1) This section applies to a corporatised corporation’s director, chief executive officer or employee.

‘(2) If, in a proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty as a person to whom this section applies, it appears to the court that—

- (a) the person is or may be liable for the negligence, default or breach; but
- (b) the person has acted honestly and, having regard to all the circumstances of the case (including circumstances connected with the person’s appointment) the person ought fairly to be excused for the negligence, default or breach;

the court may relieve the person (in whole or part) from liability on terms the court considers appropriate.

‘(3) If a person to whom this section applies believes a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the person may apply to the Supreme Court or a District Court for relief.

‘(4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.

‘(5) If—

- (a) a proceeding mentioned in subsection (2) is being tried by a judge

with a jury; and

- (b) the judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved (in whole or part) from the liability sought to be enforced against the person;

the judge may withdraw the case (in whole or part) from the jury and direct that judgment be entered for the defendant on the terms (as to costs or otherwise) the judge considers appropriate.

‘False or misleading information or documents

‘458IU.(1) An officer of a corporatised corporation must not—

- (a) make a statement concerning the affairs of the corporation to another officer or the corporation’s shareholder that the first officer knows is false or misleading in a material particular; or
- (b) omit from a statement concerning the corporation’s affairs made to another officer or the corporation’s shareholder anything without which the statement is, to the first officer’s knowledge, misleading in a material particular.

‘(2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person’s knowledge.

‘(3) An officer of a corporatised corporation must not give to an officer, the corporation’s shareholder, a director, officer or employee of the shareholder, the corporation’s local government or a councillor of the corporation’s local government a document containing information that the first officer knows is false, misleading or incomplete in a material particular without—

- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty for subsections (1) and (3)—

- (a) if the contravention is committed with intent to deceive or defraud

the corporatised corporation, creditors of the corporation or creditors of another person or for another fraudulent purpose—500 penalty units or 5 year’s imprisonment; or

- (b) in any other case—100 penalty units.

‘Notice of suspected insolvency otherwise than because of direction

‘458IV.(1) This section applies if—

- (a) a corporatised corporation’s board suspects that the corporation or, for an LGOC, its subsidiary is, may be, will or may become insolvent; and
- (b) in the board’s opinion, compliance with a direction given by the shareholder is not or would not be the cause or a substantial cause of the suspected insolvency.

‘(2) The board must immediately give written notice to the corporation’s shareholder and the auditor-general and, if the corporation is a subsidiary, to its local government of—

- (a) the suspicion; and
- (b) its reasons for the opinion.

‘(3) The notice must state that it is given under this section.

‘(4) If the shareholder is satisfied that the board’s suspicion is well-founded, the shareholder must immediately give the board the written directions that the shareholder considers necessary or desirable, including any directions necessary or desirable to ensure—

- (a) the corporation or subsidiary does not incur further debts; or
- (b) the corporation or subsidiary will be able to pay all its debts as and when they become due.

‘(5) Without limiting subsection (4), a direction under this section may require the corporation or, for an LGOC, any of its subsidiaries to cease or limit particular activities.

‘(6) If the shareholder is a local government, a direction under subsection (4) must be by resolution of the local government.

‘(7) The board must ensure a direction under this section is complied

with by the corporation.

‘(8) If the direction to an LGOC’s board concerns the LGOC’s subsidiary, the LGOC’s board must, to the extent the direction concerns the subsidiary—

- (a) notify the subsidiary of the direction; and
- (b) ensure the direction is complied with by the subsidiary.

‘(9) The subsidiary’s board must ensure that a direction of which it has been notified is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

‘(10) A copy of the direction by a local government must be open to inspection.

‘(11) This section is in addition to, and does not limit, another provision of this part or another law.

‘(12) This section has effect despite the Corporations Law.

‘(13) The shareholder must give the auditor-general a copy of every advice or direction given under this section to the board.

‘Subdivision 18—Legal capacity and powers

‘Objects of subdivision

‘458J. The objects of this subdivision include—

- (a) abolishing any application of the doctrine of ultra vires to corporatised corporations; and
- (b) ensuring corporatised corporations give effect to any restrictions on their objects or powers, but without affecting the validity of their dealings with others.

‘General powers of corporatised corporations

‘458JA.(1) A corporatised corporation has, for or in connection with the performance of its functions, all the powers of a natural person, including, for example, the power to—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint agents and attorneys; and
- (d) charge, and fix terms, for goods, services and information supplied by it; and
- (e) engage consultants; and
- (f) do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

‘(2) Without limiting subsection (1), the corporatised corporation has the powers that are conferred on it by this or another Act.

‘(3) The corporatised corporation may exercise its powers inside and outside Queensland.

‘(4) Without limiting subsection (3), the corporatised corporation may exercise its powers in a foreign country.

‘(5) The fact that the doing of an act by the corporatised corporation would not be, or is not, in its best interests does not affect its power to do the act.

‘(6) In this section—

“power” includes legal capacity.

‘Restrictions on powers of corporatised corporations

‘458JB.(1) Section 458JA has effect in relation to a corporatised corporation subject to any restrictions on the corporation’s powers expressly imposed under this or another Act.

‘(2) Section 458JA also has effect in relation to the corporatised corporation subject to any restrictions expressly imposed by—

- (a) any relevant statement of corporate intent of the corporation; and
- (b) any relevant directions or approvals given to the corporation by the corporation’s shareholder.

‘(3) A corporatised corporation must not—

- (a) exercise a power contrary to a restriction mentioned in

subsection (1) or (2); or

- (b) do an act otherwise than in pursuance of the corporation's objects or functions.

'(4) The exercise of a power or the doing of an act is not invalid merely because—

- (a) the power is exercised in contravention of subsection (3)(a); or
- (b) the act is done in contravention of subsection (3)(b).

'(5) An officer of the corporatised corporation who is involved in the contravention contravenes this subsection.

'(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

'(7) The corporatised corporation or officer of the corporation is not guilty of an offence merely because of the relevant contravention.

'(8) The fact that—

- (a) by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), the corporatised corporation contravened, or would contravene, subsection (3); or
- (b) by doing a particular act, an officer of the corporation contravened, or would contravene, subsection (5);

may be asserted or relied on only in proceedings between the corporation and officers of the corporation.

'(9) In this section—

“restriction” includes prohibition.

'Persons having dealings with corporatised corporations etc.

'458JC.(1) A person having dealings with a corporatised corporation is entitled to make the assumptions mentioned in subsection (4) and, in a proceeding in relation to the dealings, any assertion by the corporation that the matters that the person is entitled to assume were not correct must be disregarded.

'(2) A person (the **“first person”**) having dealings with a person (the **“second person”**) who has acquired, or purports to have acquired, title to

property from a corporatised corporation (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (4).

‘(3) In a proceeding in relation to the dealings mentioned in subsection (2), any assertion by the corporation or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

‘(4) The assumptions that a person is, because of subsections (1) to (3), entitled to make are—

- (a) that, at all relevant times, this part has been complied with; and
- (b) that a person who is held out by the corporation to be an officer or agent of the corporation has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the corporation who has authority to issue a document on behalf of the corporation has authority to warrant that the document is genuine and that an officer or agent of the corporation who has authority to issue a certified copy of a document on behalf of the corporation has authority to warrant that the copy is a true copy; and
- (d) that a document has been properly sealed by the corporation if—
 - (i) it bears what appears to be an imprint of the corporation’s seal; and
 - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a director of the corporation or the corporation’s chief executive officer; and
- (e) that the corporation’s directors, chief executive officer, employees and agents have properly performed their duties to the corporation.

‘(5) However, a person is not entitled to assume a matter mentioned in subsection (4) if—

- (a) the person has actual knowledge the assumption would be incorrect; or

- (b) because of the person's connection or relationship with the corporation, the person ought to know the assumption would be incorrect.

‘(6) If, because of subsection (5), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with the corporation—subsection (1) does not apply to any assertion by the corporation in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the corporation of title to property—subsections (2) and (3) do not apply to any assertion by the corporation or another person in relation to the assumption.

‘LGOC may direct subsidiary

‘458JD.(1) An LGOC may give written directions to a subsidiary of the LGOC—

- (a) to ensure the subsidiary complies with, and gives effect to the purposes of, this part; and
- (b) about the payment of amounts to allow the LGOC to make payments under sections 458JK and 458JL.⁴²

‘(2) An LGOC's local government may, by resolution, provide for an LGOC to give directions to a subsidiary about anything else.

‘Subsidiaries must comply with directions

‘458JE. A subsidiary must comply with a direction given to it under section 458JD.

‘Sections 458JD and 458JE not limiting

‘458JF. Sections 458JD and 458JE do not, by implication, limit the powers that an LGOC otherwise has to direct a subsidiary.

⁴² Section 458JK (Payment of dividends) and 458JL (Interim dividends)

‘Subdivision 19—Finance—taxation**‘State taxes**

‘458JG.(1) A corporatised corporation is not liable to pay State taxes in relation to any matter, instrument, transaction or thing greater than the State taxes that it would have been liable to pay in relation to the matter, instrument, transaction or thing if the corporation were a local government.

Examples for subsection (1)—

1. If the local government is liable to pay payroll tax in relation to the payroll for employees, an LGOC would also be liable to pay the tax.

2. If as a local government, stamp duty is not payable on a transaction, the LGOC is not liable to pay that duty.

‘(2) State tax is not payable in relation to anything done (including, for example, a transaction entered into or an instrument made, executed, lodged or given) because of, or for a purpose connected with or arising out of, division 2 or subdivision 3 of this division.⁴³

‘(3) So far as the legislative power of the Parliament permits, the reference in subsection (2) to State tax includes a reference to tax imposed under an Act of another State.

‘Commonwealth and State tax equivalents

‘458JH.(1) The Treasurer may issue a manual (the **“tax equivalents manual”**) about deciding the amounts (**“tax equivalents”**) to be paid by a corporatised corporation to its local government as the value of benefits derived by the corporation because it is not liable to pay Commonwealth or State tax that would be payable if it were neither a corporatised corporation nor a local government.

‘(2) Without limiting subsection (1), the tax equivalents manual may provide for—

(a) rulings by the tax assessor appointed under subsection (3) on

⁴³ Division 2 (Mechanisms for creating LGOCs and subsidiaries) and division 3 (Local government owned corporations and subsidiaries), subdivision 3 (Shares of corporatised corporations)

issues about tax equivalents, including the application of rulings under a Commonwealth Act about Commonwealth tax; and

- (b) the lodging of returns and giving of information by corporatised corporations; and
- (c) assessing returns; and
- (d) the functions and powers of the tax assessor; and
- (e) objections and appeals against assessments and rulings.

‘(3) The Treasurer may appoint a person to be the tax assessor under the tax equivalents manual.

‘(4) A corporatised corporation must, as required under the tax equivalents manual, pay tax equivalents to its local government.

‘(5) The Treasurer must table a copy of the tax equivalents manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment made.

‘Subdivision 20—Finance—borrowings and guarantees

‘Guarantees by local government

‘458JI. A local government is liable for the debts and other liabilities of its corporatised corporations only if, and to the extent that, the liability is expressly and lawfully undertaken on behalf of the local government.

‘Payment for cost of funds advantage of guarantees by local government

‘458JJ. If the State or a local government guarantees repayment by a corporatised corporation of its debt, the corporation must pay to its local government amounts equivalent to the cost of funds advantage over commercial rates of interests.

*‘Subdivision 21—Finance—dividends***‘Payment of dividends**

‘458JK.(1) Within 1 month after the end of each financial year, a corporatised corporation’s board must advise the corporation’s shareholder of the recommendation that, in the light of the information then available to the board, it is likely to make under subsection (2).

‘(2) Within 4 months after the end of the financial year, the board must recommend to the shareholder that the corporation pay a stated dividend, or not pay a dividend, for the financial year.

‘(3) The board must consult with the shareholder before making the recommendation.

‘(4) Within 1 month after receiving the recommendation, the shareholder must either—

- (a) approve the recommendation; or
- (b) direct the payment of a stated dividend or a different stated dividend.

‘(5) If the shareholder is a local government, the approval or direction must be by resolution of the local government.

‘(6) The corporation’s dividend for a financial year must not exceed its profits, after—

- (a) provision has been made for any income tax or its equivalents; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

‘(7) The dividend must be paid within 6 months after the end of the financial year or any further period that the shareholder allows.

‘(8) For a corporation that is corporatised other than on 1 July, its first financial year is the period from the day of its corporation to 30 June following, unless its local government resolves a longer period.

‘(9) A copy of the direction must be open to inspection.

‘Interim dividends

‘**458JL.(1)** A corporatised corporation’s shareholder may, at any time after 1 January in a financial year, require the corporation’s board to make a recommendation about the payment of interim amounts to the shareholder (including the times at which the amounts are to be paid) on account of the dividend that may become payable under section 458LL for the financial year.

‘(2) Within 1 month after receiving notice of the requirement, the board must make a recommendation to the shareholder.

‘(3) The shareholder must, within 1 month after receiving the recommendation, either—

- (a) approve the recommendation; or
- (b) direct the payment, at stated times, of stated amounts, or different stated amounts, on account of the dividend that may become payable for the financial year.

‘(4) If the shareholder is a local government the approval and direction must be by resolution of the local government.

‘(5) A direction under subsection (3)(b) must not direct the payment of an amount that is more than the corporatised corporation’s estimated profit for the first 6 months of the financial year, after—

- (a) provision has been made for any income tax or its equivalents; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

‘(6) A copy of the direction must be open to inspection.

‘Dividend payment for financial year of becoming a corporatised corporation

‘**458JM.** For applying section 458JK to a corporatised corporation for the financial year when it became a corporatised corporation a dividend, or an amount in the nature of a dividend, payable by the corporation is payable for, at the discretion of the corporation’s shareholder—

- (a) the entire financial year; or

- (b) the part of the financial year for which it was a corporatised corporation.

Example—

A candidate LGOC becomes the business of an LGOC on 1 January 2000. Depending on what the shareholder decides under paragraph (a), the dividend the LGOC has to pay for the 1999–2000 financial year will relate either to the entire financial year (even though it is an LGOC for only half the year), or only to the period 1 January 2000 to 30 June 2000.

‘Subdivision 22—Acquisition and disposal of assets and subsidiaries

‘Reserve power of shareholder to direct that asset not be disposed of

‘458JN.(1) An LGOC’s shareholder may, after consultation with the LGOC’s board, give the board a written direction requiring the LGOC or a subsidiary of the LGOC not to dispose of a stated asset or class of assets.

‘(2) The direction must be by resolution of the local government.

‘(3) The board must ensure the direction is complied with by its subsidiaries.

‘(4) If the direction to an LGOC’s board concerns the LGOC’s subsidiary, the LGOC’s board must, to the extent the direction concerns the subsidiary—

(a) notify the subsidiary of the direction; and

(b) ensure the direction is complied with by the subsidiary.

‘(5) The subsidiary’s board must ensure that a direction of which it has been notified is complied with in relation to the subsidiary to the extent that the direction concerns the subsidiary.

‘(6) A copy of the direction must be open to inspection.

‘Disposal of main undertakings

‘458JO.(1) An LGOC or a subsidiary may dispose of any of its main undertakings only with the prior approval, by resolution, of the LGOC’s local government.

‘(2) Subject to subsection (1), if an LGOC or its subsidiary disposes of any of its main undertakings, the LGOC must, as soon as practicable, give the local government written notice of the disposal.

‘Acquiring of other subsidiaries prohibited

‘458JP.(1) A corporatised corporation must not form, or participate in forming, a company that would become its subsidiary if the corporatised corporation were a corporation registered under the Corporations Law.

‘(2) A corporatised corporation may only acquire shares, or participate in any other transaction, that will result in a body corporate becoming or ceasing to be its subsidiary if the body corporate is established under this part.

‘Subdivision 23—Employees

‘Employees of corporatised corporations

‘458JQ. The chief executive officer of a corporatised corporation may, on behalf of the corporation, engage the employees the chief executive officer considers necessary to perform the corporation’s functions.

‘Terms of employment

‘458JR.(1) The terms of employment of the employees of a corporatised corporation are as determined by the corporation.

‘(2) Subsection (1) has effect subject to any relevant award or industrial agreement.

‘(3) Employees of a corporatised corporation are not employees of its local government.

‘Arrangements relating to staff

‘458JS.(1) A corporatised corporation may arrange with the chief executive of a department, or with an authority of the State, or the chief executive officer of a local government for the services of officers or

employees of the department or authority or local government to be made available to it.

‘(2) A corporatised corporation may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

‘(3) A corporatised corporation may arrange for the services of an employee of the corporation to be made available to—

- (a) the Commonwealth or another State; or
- (b) an authority of the Commonwealth or another State; or
- (c) a local government.

‘Superannuation schemes

‘458JT.(1) A corporatised corporation may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

‘(2) However, the corporation may not establish or take part in a superannuation scheme that does not meet the requirements of the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

‘Superannuation for officers and employees of corporatised corporation who were previously officers of a local government

‘458JU.(1) In this section—

“**existing scheme**”, for a person to whom this section applies, means the Local Government Superannuation Scheme or a superannuation scheme established by Brisbane City Council for council employees under the *City of Brisbane Act 1924*.

“**person to whom this section applies**” means a person employed by a corporatised corporation who, immediately before becoming employed, was a member of an existing scheme.

‘(2) If a person to whom this section applies was employed by Brisbane City Council, subject to subsection (4)—

- (a) the person is to continue to be a member of the existing scheme and, for that purpose, is taken to be a council employee; and
- (b) the existing scheme continues to apply to the person and, for the purpose, the corporatised corporation is to contribute to the scheme as if it were the Brisbane City Council.

‘(3) If a person to whom this section applies was employed by another local government, subject to subsection (4)—

- (a) the person is to continue to be a member of the existing scheme and, for that purpose, is taken to be an employee of a local government and an eligible member under section 772(1);⁴⁴ and
- (b) the existing scheme continues to apply to the person, and, for the purpose, the corporatised corporation is taken to be a local government employing the person for chapter 13, part 3.

‘(4) If—

- (a) the corporatised corporation establishes, joins in establishing or takes part in establishing a superannuation scheme (other than an existing scheme); and
- (b) a person continued to be a member of an existing scheme under subsection (2) or (3);

the person may, under arrangements prescribed under a regulation, stop being a member and become a member of the scheme established or taken part in by the corporation.

‘Preservation of leave and other entitlements of certain former employees of local government

‘458JV.(1) This section applies to a person who—

- (a) becomes employed by a corporatised corporation in a permanent or full-time capacity within 1 year after the corporation becomes a corporatised corporation; and

⁴⁴ Section 772 (Membership of scheme)

- (b) was an employee of a local government employed in a permanent or full-time capacity immediately before becoming employed by the corporation.

‘(2) If, when first employed by the corporatised corporation, the person had leave entitlements that had been accrued as an employee of a local government, the person must be treated as having accrued the entitlements as an employee of the corporation.

‘(3) If, when first employed by the corporatised corporation, the person had not accrued leave entitlements as an employee of a local government, for accruing leave entitlements of the person as an employee of the corporation, the person’s employment with the local government is taken to be employment by the corporation.

‘(4) A person is not under this section to claim or receive benefits twice for the same entitlement.

‘(5) If the person, as an employee of the corporatised corporation is or becomes entitled to another entitlement based on the person’s length of service with the corporation, the person’s employment with the local government is taken to be employment by the corporation.

‘(6) A person’s cessation of employment with a local government to become an employee of the corporatised corporation is not to be treated as a termination of the person’s employment with the local government under a redundancy or voluntary early retirement or other similar arrangement.

‘Subdivision 24—Other matters

‘Corporatised corporation’s seal

‘458K.(1) A corporatised corporation’s seal is to be kept in the custody directed by the board and may be used only as authorised by the board.

‘(2) The attaching of the seal to a document must be witnessed by—

- (a) 2 or more directors; or
- (b) at least 1 director and the corporation’s chief executive officer; or
- (c) a director or the corporation’s chief executive officer and 1 or more persons authorised by the board.

‘(3) Judicial notice must be taken of the imprint of the corporation’s seal appearing on a document.

‘Change of functions and name of corporatised corporation

‘**458KA.(1)** A local government may, by resolution, change the functions or name of its corporatised corporation.

‘(2) A resolution under this section takes effect on publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

‘Authentication of documents

‘**458KB.** A document made by a corporatised corporation (other than a document that is required by law to be sealed) is sufficiently authenticated if it is signed by—

- (a) the chairperson of the board; or
- (b) the corporation’s chief executive officer; or
- (c) a person authorised to sign the document by—
 - (i) resolution of the board; or
 - (ii) direction of the corporation’s chief executive officer.

‘Judicial notice of certain signatures

‘**458KC.** Judicial notice must be taken of—

- (a) the official signature of a person who is or has been chairperson of the board of a corporatised corporation or a corporatised corporation’s director or chief executive officer; and
- (b) the fact that the person holds or has held the office concerned.

‘Application of Criminal Justice Act

‘**458KD.** A corporatised corporation is a unit of public administration for the *Criminal Justice Act 1989*.

‘Application of Parliamentary Commissioner Act 1974

‘458KE.(1) The *Parliamentary Commissioner Act 1974* does not apply to—

- (a) a corporatised corporation prescribed under a regulation; or
- (b) the making of a recommendation to the shareholder of a corporatised corporation; or
- (c) a decision about a corporatised corporation’s commercial policy; or
- (d) a corporatised corporation in relation to its commercially competitive activities.

‘(2) In this section—

“commercially competitive activity” means activity carried on, on a commercial basis, in competition with a person, other than—

- (a) the Commonwealth or a State; or
- (b) a State authority; or
- (c) a local government.

‘Division 4—Miscellaneous**‘Monitoring and assessment of corporatised corporations**

‘458KF.(1) The shareholder of a corporatised corporation or its shareholder’s delegate may delegate the shareholder’s powers under section 458IJ⁴⁵ to an appropriately qualified person.

‘(2) The shareholder of a corporatised corporation may ask the chief executive officer of the local government to investigate, and report on, any matter relating to a corporatised corporation.

‘(3) For the investigation, the chief executive officer may give the corporation written directions.

‘(4) Without limiting subsection (3), the chief executive officer may

⁴⁵ Section 458IJ (LGOC board to keep shareholder informed)

direct the corporation—

- (a) to give to the chief executive officer any information about the corporation and its subsidiaries the chief executive officer considers necessary or desirable in connection with the investigation; and
- (b) to permit persons authorised by the chief executive officer to have access to stated records and other documents about the corporation and its subsidiaries that the chief executive officer considers necessary or desirable in connection with the investigation; and
- (c) to take steps that the chief executive officer considers necessary or desirable for the investigation.

‘(5) The corporation must ensure any direction given to it under this section—

- (a) is complied with by itself; and
- (b) is also complied with by its subsidiaries.

‘(6) The chief executive officer may delegate to an appropriately qualified employee of the local government or another appropriately qualified person the chief executive officer’s powers under this section (including powers delegated to the chief executive officer under subsection (1)).

‘Giving of documents to board

‘**458KG.** If this part authorises or requires a document to be given to a board of a corporatised corporation, it may be given to the chairperson of the board.

‘Judicial notice of certain resolutions

‘**458KH.(1)** This section applies to resolutions under this part that, to be effective, must be published in the gazette.

‘(2) To avoid any doubt, it is declared that on a resolution taking effect, it has the force of law.

‘(3) On publication in the gazette of a notice of the resolution, judicial notice must be taken of the resolution.

‘When resolutions amending certain resolutions take effect

‘458KI. If, under this part, a resolution of a local government (the “**first resolution**”) does not take effect until publication in the gazette of a notice of the making of the resolution, another resolution of the local government amending the first resolution also has no effect until publication in the gazette of notice of the making of the resolution or a later day stated in the resolution and the notice.

‘Local governments and certain officers not directors etc.

‘458KJ.(1) This section does not apply to a councillor or employee of a local government who is a director of an LGOC to the extent the councillor or employee acts in the capacity of director.

‘(2) The following are not to be treated as officers of an LGOC or any subsidiary of the LGOC—

- (a) shareholders of the LGOC;
- (b) the shareholder’s delegates;
- (c) for a subsidiary—its LGOC;
- (d) councillors of the LGOC’s local government in the performance of their duties as councillors for the local government;
- (e) employees of the LGOC’s local government in the performance of their duties as employees for the local government.

‘(3) A councillor or employee of a local government does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under this part in relation to an LGOC or a subsidiary of an LGOC.

‘(4) A liability that would, apart from subsection (3), attach to the councillor or employee attaches instead to the local government.

‘(5) This section has effect despite the Corporations Law.

‘Division 5—Additional provisions relating to board of corporatised corporations

‘Subdivision 1—Composition of board

‘Composition of board

‘458L.(1) An LGOC’s board must consist of at least 5 directors appointed by its shareholder.

‘(2) An LGOC’s subsidiary’s board must consist of at least 5 directors appointed by its LGOC.

‘Chairperson and deputy chairperson

‘458LA.(1) The shareholder must appoint a director to be the chairperson of its LGOC’s board and may appoint another director to be the board’s deputy chairperson.

‘(2) The LGOC must appoint a director of its subsidiary to be the chairperson of the subsidiary’s board and may appoint another director to be the board’s deputy chairperson.

‘(3) If there is a deputy chairperson, the deputy chairperson is to act as chairperson—

- (a) during a vacancy in the office of chairperson; and
- (b) during all periods when the chairperson is absent from duty or, for another reason, cannot perform the functions of the office.

‘Subdivision 2—Meetings and other business of board

‘Meaning of “required minimum number” of directors

‘458LB. In this part, **“required minimum number”** of directors is the number that is half the number of directors of which the board for the time being consists or, if that number is not a whole number, the next higher whole number.

‘Conduct of meetings and other business

‘458LC. Subject to this part, the board may conduct its business (including its meetings) in the way it considers appropriate.

‘Times and places of meetings

‘458LD.(1) Meetings of the board are to be held at the times and places that the board determines.

‘(2) However, the chairperson—

- (a) may at any time call a meeting; and
- (b) if asked by at least the required minimum number of directors—must call a meeting as requested.

‘Presiding at meetings

‘459LE.(1) The chairperson is to preside at all meetings at which the chairperson is present.

‘(2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.

‘(3) If both the chairperson and deputy chairperson are not present at a meeting, the director chosen by the directors present at the meeting is to preside.

‘Quorum and voting at meetings

‘458LF.(1) At a meeting of the board—

- (a) the required minimum number of directors constitute a quorum; and
- (b) a question is to be decided by a majority of the votes of the directors present and voting; and
- (c) each director present has a vote on each question arising for decision and, if the votes are equal, the director presiding also has

a casting vote.

‘(2) Subsection (1)(a) has effect subject to section 458IL(3).⁴⁶

‘Participation in meetings by telephone etc.

‘**458LG.(1)** The board may permit directors to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) another form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.

‘(2) A director who participates in a meeting of the board under a permission under subsection (1) is taken to be present at the meeting.

‘Resolutions without meetings

‘**458LH.(1)** If at least a majority of directors sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the directors do not sign it on the same day, the day on which the last of the directors constituting the majority signs the document.

‘(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each director must immediately be advised of the matter and given a copy of the terms of the resolution.

‘(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, are taken to constitute a single document.

‘Minutes

‘**458LI.** The board must keep minutes of its proceedings.

⁴⁶ Section 458IL (Voting by interested director)

‘Subdivision 3—Provisions relating to directors**‘Appointment of directors**

‘458LJ.(1) A director of a corporatised corporation is to be appointed by its shareholder for a term of not more than 5 years.

‘(2) A person is not eligible for appointment if the person is not able to manage a corporation, within the meaning of the Corporations Law, because of section 229 of the Corporations Law.

‘LGOC director not to be chief executive officer or other employee of LGOC’s subsidiary

‘458LK. A person must not be both a director of an LGOC and the chief executive officer or another employee of a subsidiary of the LGOC.

‘Procedure for appointment of directors

‘458LL.(1) A shareholder of a corporatised corporation must adopt processes for selection of appropriate persons for appointment as directors of the corporation.

‘(2) In appointing a person as a director, the shareholder must have regard to the person’s ability to make a contribution to the corporation’s commercial performance and implementation of its statement of corporate intent.

‘(3) The processes are to be based on the principle that the board should have the appropriate range of skills to ensure the corporation is a successful business.

‘(4) The shareholder must—

- (a) identify the key attributes required; and
- (b) call for nominations through public advertising and canvassing of suitable individuals; and
- (c) evaluate nominations using independent expertise; and
- (d) provide for interviews of shortlisted individuals by a nominated group assisted by independent experts; and

(e) appoint the most suitable individuals as directors.

‘(5) The process for selection and appointment of directors of the corporation may be carried out in conjunction with the process for appointment of members of the establishment committee for the corporation.⁴⁷

‘(6) A shareholder may act under this section to prepare a panel of names of persons suitably qualified for appointment as director of the corporation.

‘Terms of appointment not provided for under divs 1–4

‘458LM.(1) In relation to matters not provided for under divisions 1 to 4, a director holds office on the terms of appointment determined by the shareholder.

‘(2) Except as determined by the shareholder, a director is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a director; or
- (b) in connection with retirement from office, or other termination of office, as a director.

‘Appointment of acting director

‘458LN. The shareholder may appoint a person to act as a director of a board during any period, or all periods, when a director is absent from duty or, for another reason, cannot perform the functions of the office.

‘Resignation

‘458LO.(1) A director, or person appointed under section 458LA⁴⁸, may resign by signed notice given to the shareholder.

‘(2) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson and remain a director.

⁴⁷ Section 458EF (Procedure for appointment of establishment committee) refers.

⁴⁸ Section 458LA (Chairperson and deputy chairperson)

‘Termination of appointment as director

‘**458LP.(1)** The shareholder may, at any time, terminate the appointment of all or any directors of the board for any reason or none.

‘(2) A person ceases to be a director of an LGOC if—

- (a) when appointed a director, the person was a councillor or employee of the LGOC’s local government; and
- (b) the person ceases to be a councillor or employee.

‘(3) A person also ceases to be a director of a corporatised corporation if the person ceases to be eligible for appointment as a director.

‘Division 6—Additional provisions relating to chief executive officers**‘Appointment of chief executive officer**

‘**458LQ.** A chief executive officer of a corporatised corporation is to be appointed by the corporation’s board.

‘Local government employees cannot be chief executive officers of corporatised corporations

‘**458LR.** A person must not be both an employee of a local government and the chief executive officer of a corporatised corporation.

‘Director may be chief executive officer

‘**458LS.(1)** Nothing in this part prevents a person who is not a councillor or employee of the local government being both a director and the chief executive officer of a corporatised corporation.

‘(2) However, a director of a corporatised corporation who is its chief executive officer must abstain from voting at meetings of the corporation’s board as a director on matters concerning the role, performance or employment conditions of the chief executive officer.

‘Appointment of acting chief executive officer

‘458LT. The board may appoint a person to act as chief executive officer—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chief executive officer is absent from duty or is, for another reason, cannot perform the functions of the office.

‘Terms of appointment not provided for under divs 1 to 4

‘458LU. The chief executive officer of a corporatised corporation holds office on the terms not provided for under divisions 1 to 4 as are decided by the board of the corporation.

‘Resignation

‘458LV. The chief executive officer of a corporatised corporation may resign by signed notice given to the chairperson of the corporation’s board.

‘Termination of appointment

‘458LW.(1) A corporatised corporation’s board may, at any time, terminate the appointment of the chief executive officer of the corporation for any reason or none.

‘(2) The termination of the appointment of the chief executive officer under subsection (1) does not affect any rights to compensation to which the chief executive officer may be entitled under the terms of the chief executive officer’s appointment.

‘CHAPTER 7B—CONDUCT OF COMPETITIVE BUSINESS ACTIVITIES

‘PART 1—OBJECT AND APPLICATION

‘Object of ch 7B

‘458M. The object of this chapter is to provide for—

- (a) the application of competitive neutrality principles to certain roads business activities of local governments; and
- (b) the identification of business activities of local governments to which competitive neutrality principles may apply; and
- (c) the application by local governments of competitive neutrality principles to those business activities.

‘Competitive neutrality principles

‘458MA. “Competitive neutrality principles” includes—

- (a) the efficiency of overall resource use is promoted by ensuring markets are not unnecessarily distorted; and
- (b) wherever possible and appropriate, advantages and disadvantages that arise because a business activity or roads business activity is part of a local government be removed.

‘Application to Brisbane City Council

‘458MB. This chapter applies to the Brisbane City Council.

‘PART 2—DEFINITIONS

‘Definitions for ch 7B

‘458MC. In this chapter—

“business activity” see section 458MD.

“code of competitive conduct”, for a local government, means a code in force for this chapter under—

- (a) if the Local Government Finance Standards apply to the local government—the standards; or
- (b) for Brisbane City Council—a regulation under the *City of Brisbane Act 1924*, section 127.

“roads business activity”, of a local government, means—

- (a) the construction or maintenance of State-controlled roads for which the local government submits an offer to carry out work on State-controlled roads in response to a tender invitation other than through a sole supplier arrangement; or
- (b) submission of a competitive tender for construction or road maintenance works—
 - (i) on roads of the local government which the local government has put out to competitive tender; or
 - (ii) called for by another local government;

but does not include an activity, or part of an activity, prescribed under a regulation.

‘Meaning of “business activity”

‘458MD.(1) A **“business activity”**, of a local government, is—

- (a) trading in goods and services to clients such as off-street parking and cultural, sporting and recreational facilities and quarries if, in carrying on the activity, the local government engages in competition with the private sector; or
- (b) submission of a competitive tender in the local government’s

own tendering process in competition with others for the provision of goods and services to itself.

‘(2) However, the following activities of a local government are not business activities—

- (a) a significant business activity under chapter 7A⁴⁹ if the local government has resolved to implement reforms under the chapter for the activity; or
- (b) a roads business activity; or
- (c) library services; or
- (d) an activity, or part of an activity, prescribed under a regulation.

‘PART 3—CODE OF COMPETITIVE CONDUCT

‘Code must be applied to roads business activities

‘458ME.(1) A local government must apply the code of competitive conduct in carrying on its roads business activities.

‘(2) Subsection (1) applies—

- (a) for an activity mentioned in the definition “roads business activity”, paragraph (a)—to offers submitted on or after 1 January 1998; and
- (b) for an activity mentioned in the definition “roads business activity”, paragraph (b)—to tenders submitted on or after 1 July 1998.

‘When code must be applied to other business activities

‘458MF. If, under part 4, a local government resolves the code of competitive conduct is to apply to a business activity of the local

⁴⁹ Chapter 7A (National competition reform of significant business activities)

government, the local government must apply the code in carrying on the business activity.

‘PART 4—ANNUAL REVIEW OF BUSINESS ACTIVITIES

‘Annual review of business activities

‘458MG. During each financial year (the “**relevant year**”) starting with the 1997–1998 financial year, a local government must identify its activities that are business activities.

‘Local government to resolve whether to apply code of competitive conduct to business activities

‘458MH.(1) During each financial year starting with the 1997–1998 financial year, each local government must resolve whether the code of competitive conduct should or should not be applied to each of its business activities for the following financial year.

‘(2) A local government may resolve under subsection (1) that the resolution is to take effect on a stated day earlier than the following financial year.

‘(3) A local government may, at any time, resolve the code should no longer apply to a business activity.

‘(4) A resolution under subsection (1) or (3) to not apply, or to no longer apply, the code to a business activity must include a statement of the reasons for not applying, or for no longer applying the code to the business activity.

‘Application of code of competitive conduct to other activities

‘458MI. Nothing in this chapter prevents a local government from applying the code of competitive conduct to another activity carried on by the local government.

‘Information to be included in annual report

‘458MJ.(1) A local government’s annual report must contain a list of its activities that were business activities during the financial year and a statement whether the code of competitive conduct was applied to each of the activities and, if not, the reason it was not applied.

‘(2) Subsection (1) first applies to the annual report for the 1998–1999 financial year.

‘(3) The annual report for the 1997–1998 financial year must also contain a list of its business activities under this chapter and a statement whether the local government intends to apply the code of competitive conduct for the 1998–1999 financial year to each of the activities and, if not, the reason it is intended not to be applied.

‘(4) Subsections (2) and (3) and this subsection expire on 1 July 2000.’.

**‘CHAPTER 7C—REFORM OF CERTAIN WATER
AND SEWERAGE SERVICES****‘PART 1—OBJECT AND APPLICATION****‘Object of ch 7C**

‘458N. The object of this chapter is, in relation to relevant business activities that provide water and sewerage services, to achieve efficiency and sustainability in the use of water by—

- (a) requiring an assessment by local governments of the cost-effectiveness of introducing two-part tariffs for water services; and
- (b) requiring decisions by local governments whether two-part tariffs are to be applied for water services; and
- (c) if two-part tariffs are to be applied for water services—requiring

- implementation of the tariffs in accordance with the decision; and
- (d) requiring charges for water services to be based on consumption; and
 - (e) requiring full cost recovery for water and sewerage services; and
 - (f) requiring identification and disclosure of cross-subsidies and community service obligations in the provision of water and sewerage services; and
 - (g) requiring disclosure of a class of consumers who are provided with water and sewerage services at an amount below full cost and the amount.

‘Application to Brisbane City Council

‘458NA. This chapter applies to the Brisbane City Council.

‘Meaning of relevant business activity

‘458NB. In this chapter—

“relevant business activity” means—

- (a) a significant business activity providing water or sewerage services; or
- (b) an activity of a corporatised corporation providing water or sewerage services that was a significant business activity.

‘PART 2—DEFINITIONS

‘Definitions for ch 7C

‘458NC. In this chapter—

“consumer”, of a service, means the person who is levied a utility charge for the service, whether an owner or the person at whose request the service is supplied.

“corporatised corporation” means a corporatised corporation under chapter 7A.⁵⁰

“new type 1 or 2 business activity” means a new type 1 or 2 business activity under chapter 7A.

“two-part tariff” means a basis for a utility charge for water services consisting of access and consumption components with the objective of achieving efficiency and sustainability in the use of water.

“two-part tariff report” see section 458ND.

“type 1 or 2 business activity” means a type 1 or 2 business activity under chapter 7A.

PART 3—ASSESSMENT OF COST EFFECTIVENESS OF TWO-PART TARIFFS FOR WATER SUPPLY

‘Assessment of cost effectiveness of two-part tariffs to be carried out

‘458ND.(1) A local government must ensure an assessment of the cost effectiveness of the application of a two-part tariff for a relevant business activity providing water services is carried out and a report (a **“two-part tariff report”**) prepared.

‘(2) A two-part tariff report must include—

- (a) a finding whether it is cost effective for the application of a two-part tariff for the service to an extent stated in the report; and
- (b) if the finding is that it is cost effective for application of a two-part tariff—
 - (i) a recommendation for application of a two-part tariff for the service to the extent stated in the report; and
 - (ii) if necessary, proposed strategies (including a timetable) that may be followed to apply a two-part tariff.

⁵⁰ Chapter 7A (National competition reform of significant business activities)

Example to subsection (2)—

A two-part tariff report could—

- (a) find that it is cost effective for a two-part tariff to be applied to part only of the local government's area and, in that part, only for stated consumers; and
- (b) recommend a two-part tariff apply to the stated consumers in the part.

'Local government to resolve on assessment and report process

'458NE. Subject to compliance with this chapter, the local government must decide—

- (a) how the assessment is to be conducted; and
- (b) the matters the report must deal with; and
- (c) when the report is to be presented to the local government.

Example for paragraph (a)—

The local government may decide the assessment is to include a public consultation process and be carried out by the local government or by external consultants or in cooperation with other local governments carrying out similar assessments or in conjunction with public benefit assessments under chapter 7A.

'Timing for assessments and reports

'458NF.(1) The two-part tariff report must be completed in enough time to allow the local government to comply with sections 458NK, 458NL and 458NO.

'(2) The report must be presented to a meeting of the local government as soon as practicable after the report is completed.

'Fresh assessment within 3 years if recommendation on two-part tariffs not implemented

'458NG.(1) This section applies if—

- (a) a two-part tariff report recommends the application of a two-part tariff to any extent for a relevant business activity; and
- (b) the local government resolves that a two-part tariff not apply for

the activity to the extent recommended.

‘(2) The local government must ensure a fresh assessment is carried out and a fresh two-part tariff report prepared for the activity within 3 years after the end of the financial year in which the report was presented to the local government.

‘(3) Section 458ND applies to the assessment and report as if the activity, to the extent that a two-part tariff has, contrary to the report mentioned in subsection (1), not been applied, were the relevant business activity.

‘Regulation about assessments and reports

‘458NH. A regulation may prescribe requirements for assessments and reports under this part including different requirements for different classes of assessments and reports.

‘PART 4—DECISION ON TWO-PART TARIFF REPORTS

‘Object of pt 4

‘458NI. The object of this part is to require local governments to consider two-part tariff reports and decide the application or otherwise of two-part tariffs for relevant business activities that provide a water service.

‘Public access to two-part tariff reports

‘458NJ. From presentation of the two-part tariff report for a relevant business activity to a meeting of a local government until the local government decides whether to apply a two-part tariff for the activity, the report must be open to inspection.

‘Local government to resolve whether to apply two-part tariff

‘458NK.(1) As soon as practicable, and within 3 months after presentation of a two-part tariff report for a relevant business activity to a meeting of a local government, the local government must resolve whether a two-part tariff should be applied, and the extent of the application, for the activity.

‘(2) A resolution to apply a two-part tariff must—

- (a) state the extent of application; and
- (b) if necessary, approve strategies (including a timetable) for its application under section 458NP.

‘(3) A resolution under subsection (1) inconsistent with the recommendation in the report must include a statement of the reasons for the inconsistency.

‘(4) Subsection (2)(b) does not prevent a local government changing its strategies for the application of a two-part tariff so long as a two-part tariff is applied under the resolution under subsection (2)(a).

‘Timing for resolution

‘458NL. The local government must make a resolution under section 458NK—

- (a) for a relevant business activity that is or was a type 1 or 2 business activity—
 - (i) by 31 December 1998; or
 - (ii) a day (not later than 31 March 1999) approved by the Minister; or
- (b) for a relevant business activity that is or was a new type 1 or 2 business activity—
 - (i) by 31 December after the financial year for which the activity is first identified by the local government as a new type 1 or 2 business activity; or
 - (ii) a day (not later than the following 31 March) approved by the Minister.

‘Notice to Minister of resolution

‘458NM. As soon as practicable after making a resolution that a two-part tariff apply or not apply for a relevant business activity, the local government must give to the Minister—

- (a) a copy of the two-part tariff report for the activity; and
- (b) a copy of the resolution.

**‘PART 5—IMPLEMENTATION OF CERTAIN
CHARGING ARRANGEMENTS AND REPORTING
PROCEDURES****‘Local governments to implement charging and operational
arrangements for relevant business activities**

‘458NN. A local government must ensure that, for a relevant business activity—

- (a) if it has resolved that a two-part tariff is to be applied for the activity—a two-part tariff is applied; and
- (b) consumption is the basis for utility charges for water services; and
- (c) full cost recovery is applied for water and sewerage services; and
- (d) cross-subsidies between classes of consumers and community service obligations in the provision of water and sewerage services are identified and disclosed; and
- (e) the classes of consumers who are provided with water and sewerage services at an amount below full cost and the amount are disclosed.

‘Start of work to apply two-part tariffs

‘458NO. If a local government approves strategies for application of a two-part tariff, for a relevant business activity, the local government must

ensure work is started to apply a two-part tariff under a resolution made under section 458NK on or before the day stated in section 458NL before which the resolution must be made.

‘Timetable for implementing arrangements

‘**458NP.(1)** This section applies to a local government required to act under section 458NN.

‘(2) Implementation must be completed on or before—

- (a) for a relevant business activity that is or was a type 1 or 2 business activity—1 July 2000; or
- (b) for a relevant business activity that is or was a new type 1 or 2 business activity—1 July of the year that is 2 years after the end of the financial year for which the activity was identified as being a new type 1 or 2 business activity.

‘(3) For a particular relevant business activity, the Minister may extend the time for its implementation subject to the terms the Minister considers appropriate.

‘Strategies for applying s 458NN(b) to (e)

‘**458NQ.** A local government must approve and start implementing strategies for the application to its relevant business activities of the matters stated in section 458NN(b) to (e) by—

- (a) for a relevant business activity that is or was a type 1 or 2 business activity—31 December 1998; or
- (b) for a relevant business activity that is or was a new type 1 or 2 business activity—31 December after the financial year for which the activity is first identified by the local government as a new type 1 or 2 business activity.’.

Insertion of new s 464A

40. Before section 465—

insert—

‘Application of division

‘**464A.** This division applies subject to division 5.⁵¹’.

Amendment of s 466 (Step 1—make a law)**41.** Section 466—

insert—

‘**(3)** For subsection (1)(a), the adoption of a model local law with changes about an anti-competitive provision consistent with a resolution of the local government made under section 489I in relation to the local law is the adoption of a model local law.

‘**(4)** A local government must not adopt a model local law with an anti-competitive provision (whether or not in an amended form) unless the local government has complied with division 5 in relation to the proposed model local law.’.

Amendment of s 467 (Step 2—give public notice of law)**42.(1)** Section 467(1)—

insert—

‘(e) if a public interest test report under division 5 has identified an anti-competitive provision in the model local law and the provision is changed—the fact of the anti-competitive provision and the extent of change.’.

(2) Section 467(4)—

insert—

‘(c) advice of any anti-competitive provisions included in the local law and reasons for their inclusion.’.

⁵¹ Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

Insertion of new s 472A

43. Before section 473—

insert—

‘Application of division

‘472A. This division applies subject to division 5.⁵²’.

Amendment of s 475 (Step 2—ensure proposed law satisfactorily deals with any State interest)

44. Section 475(1)(b)—

omit, insert—

‘(b) give the Minister information about—

- (i) any provision that, under division 5 is a possible anti-competitive provision of the proposed local law and actions taken or proposed to be taken by the local government under the division about the provision; and
- (ii) the proposed local law required by the Minister or by regulation.’.

Amendment of s 480 (Step 7—again ensure proposed law satisfactorily deals with any State interest)

45. Section 480—

insert—

‘(6) A local government must not act under subsection (2) unless the local government has complied with division 5⁵³ in relation to the proposed local law.’.

⁵² Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

⁵³ Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

Amendment of s 482 (Step 9—give public notice of law)

46. Section 482(4)—

insert—

‘(c) advice of any anti-competitive provisions included in the local law and reasons for their inclusion.’.

Insertion of new s 482A

47. Before section 483—

insert—

‘Application of division

‘482A. This division applies subject to division 5.⁵⁴’.

Amendment of s 488 (Step 5—make proposed policy)

48. Section 488—

insert—

‘(4) For subsection (2), an amendment of a proposed local law policy with changes consistent with a resolution of the local government made under section 489I in relation to the local law policy is not a substantial amendment of the policy.

‘(5) A local government must not act under subsection (1) or (2) unless the local government has complied with division 5⁵⁵ in relation to the proposed local law policy.’.

Amendment of s 489 (Step 6—give public notice of policy)

49. Section 489(3)—

insert—

⁵⁴ Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

⁵⁵ Division 5 (Anti-competitive provisions of proposed local laws and proposed local law policies)

‘(c) advice of any anti-competitive provisions included in the local law policy and reasons for their inclusion.’.

Insertion of new ch 8, pt 2, div 5

50. After section 489A—

insert—

Division 5—Anti-competitive provisions of proposed local laws and proposed local law policies

‘Application of division

‘489B.(1) In this section—

“cut-off day” means—

- (a) for a local law or local law policy made before 31 December 1997—31 December 1997; or
- (b) for a local law made under division 3 after 31 December 1997 and, if in making the local law, the local government, before 31 December 1997, complied with section 480(2)—a later day stated under a regulation.

‘(2) Subject to subsections (3) and (4), this division applies to local laws and local law policies made after the commencement of this section.

‘(3) This division does not apply to local laws or local law policies made before the cut-off day if the local government, before 31 December 1997, decides to apply chapter 15, part 1, division 3A to the local law or local law policy as if the local law or local law policy were an existing local law or local law policy under that division.

‘(4) This division does not apply to interim local laws.

‘Definitions for div 5

‘489C. In this division—

“anti-competitive provision”, of a proposed local law or proposed local law policy, means a provision that, under a regulation, is treated as creating barriers to entry to a market or barriers to competition within a

market.

“possible anti-competitive provision” see section 489E.

“proposed local law” includes a local law proposed to be made under division 1.

“public interest test” means a review of a possible anti-competitive provision of a proposed local law or proposed local law policy under this division.

“public interest test report” means the report, including recommendations, on a public interest test.

‘Local laws and local law policies not to be made unless local government complies with division

‘489D. A local government must not make a local law or a local law policy unless the local government complies with this division.

‘Review of proposed local law or proposed local law policy to identify possible anti-competitive provisions

‘489E. A local government must carry out a review of its proposed local law or proposed local law policy and identify any provision of the law or policy that it considers may be an anti-competitive provision (a **“possible anti-competitive provision”**).

‘Public interest test of possible anti-competitive provisions

‘489F.(1) Before making a local law or local law policy containing a possible anti-competitive provision, a local government must ensure a public interest test is carried out and a public interest test report prepared for each of the possible anti-competitive provisions.

‘(2) A public interest test report must, for each possible anti-competitive provision, recommend—

- (a) that the provision should be retained as it is not an anti-competitive provision; or
- (b) for a provision that the report identifies as being an

anti-competitive provision—that the whole or part of the provision—

- (i) in the public interest, should be retained (whether in its current or another form); or
- (ii) should not be retained.

‘(3) For subsection (2), it is in the public interest for an anti-competitive provision to be retained (whether in its current or another form) if—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the proposed local law or proposed local law policy is by restricting competition in the way provided in the provision.

‘Local government to decide on test and report process

‘489G.(1) The local government must decide—

- (a) how the public interest test is to be conducted; and
- (b) the matters with which the public interest test report must deal.

‘(2) The decision must provide for a consultation process for the public interest test and state how the process is to be used in the test.

Example—

A local government may decide that the consultation process concerning possible anti-competitive provisions must include—

- (a) giving notice of the test and inviting submissions about the test; and
- (b) a period for submissions to be received; and
- (c) direct consultation with interested parties; and
- (d) consideration of the submissions received about the test.

The local government may also decide the process for the test may be carried out in conjunction with another process required for making the local law or local law policy such as step 3 in section 476 or step 2 in section 485.

‘(3) The decision is subject to a regulation under section 489K.

‘Public interest test report to be presented to local government meeting

‘489H. As soon as practicable after a public interest test report is completed, it must be presented to a meeting of the local government.

‘Local government to resolve whether to implement recommendations of public interest test

‘489I.(1) After a public interest test report has been presented to a meeting of a local government, the local government must resolve whether to implement the recommendations of the report.

‘(2) A local government may make a contrary resolution about an anti-competitive provision only if the local government is of the opinion and resolves that—

- (a) the benefits of the provision in the proposed local law or proposed local law policy to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the proposed local law or proposed local law policy is by restricting competition in the way provided in the provision.

‘(3) A resolution under subsection (2) must include a statement of the reasons for finding that—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the proposed local law or proposed local law policy is by restricting competition in the way provided in the provision.

‘(4) In subsections (2) and (3)—

“contrary resolution” means a resolution by a local government to—

- (a) retain an anti-competitive provision of a proposed local law or proposed local law policy despite a recommendation in a public interest test report that the provision should not be retained; or
- (b) retain an anti-competitive provision of a proposed local law or

proposed local law policy in a form not consistent with the form recommended in a public interest test report.

‘Public interest test reports are open to inspection

‘**489J.** From the day the public interest test report is presented to a meeting of a local government the report must be open to inspection.

‘Regulation about public interest tests and public interest test reports

‘**489K.** A regulation may be made about—

- (a) the procedures to be followed and criteria to be used to identify possible anti-competitive provisions of proposed local laws or proposed local law policies; and
- (b) requirements for public interest tests and public interest test reports; and
- (c) the giving of information by local governments to the Minister.’.

Replacement of s 672 (Proceedings for offences)

51. Section 672—

omit, insert—

‘Indictable and summary offences

‘**672.(1)** An offence against chapter 7A, part 6 for which the maximum penalty of imprisonment is 2 years or more is an indictable offence.

‘**(2)** Any other offence against this Act is a summary offence.

‘Proceedings for indictable offences

‘**672A.(1)** A proceeding for an indictable offence against this Act may be taken, at the prosecution’s election—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

‘**(2)** A magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers that the charge should be prosecuted on indictment.

‘(3) If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

‘(4) The maximum penalty that may be summarily imposed for an indictable offence is 100 penalty units or 1 year’s imprisonment.

‘Limitation on who may summarily hear indictable offence proceedings

‘672B.(1) A proceeding must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

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

‘Limitation on time for starting summary proceedings

‘**672C.** A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

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

Insertion of new s 712A

52. After section 712—

insert—

‘Proof of complainant’s knowledge of matter

‘**712A.** In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant’s knowledge on a stated day is evidence of the matter.’.

Insertion of new ss 793B–793C

53. After s 793A—

insert—

‘Application of Freedom of Information Act and Judicial Review Act

‘**793B.(1)** This section applies to the Brisbane City Council.

‘**(2)** The *Freedom of Information Act 1992* does not apply to a document received or brought into existence by a corporatised corporation in carrying out its excluded activities.

‘**(3)** The *Judicial Review Act 1991* does not apply to a decision of a corporatised corporation made in carrying out its excluded activities.

‘**(4)** A regulation may declare the activities of a corporatised corporation that are taken to be, or are taken not to be, activities conducted on a commercial basis.

‘**(5)** In this section—

“**commercial activities**” means activities conducted on a commercial basis.

“**community service obligations**” has the same meaning as in section 458I.

“**corporatised corporation**” has the same meaning as in chapter 7A, part 6.

“**excluded activities**” means—

- (a) commercial activities; or
- (b) community service obligations prescribed under a regulation.

‘Numbering and renumbering of Act

‘**793C.(1)** At the Minister’s direction, in the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act may be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

‘(2) Notice of the direction must be published in the gazette.’.

Insertion of new ch 15, pt 1, div 3A

54. After section 803—

insert—

‘Division 3A—Anti-competitive provisions of existing local laws and existing local law policies

‘Subdivision 1—Preliminary

‘Application to Brisbane City Council

‘**803A.** This division applies to the Brisbane City Council.

‘Application of div

‘**803B.(1)** In this section—

“**cut-off day**” means—

- (a) for a local law or local law policy made before 31 December

1997—31 December 1997; or

- (b) for a local law made under chapter 8, part 2, division 3 after 31 December 1997 and, in making the local law, the local government, before 31 December 1997, complied with section 480(2)—a later day stated under a regulation.

‘(2) This division applies to—

- (a) a local law or local law policy in force immediately before the commencement of this section; and
- (b) a local law or local law policy made after the commencement but before the cut-off day if, before 31 December 1997, the local government decided to apply this division to the local law or local law policy.

‘(3) This division does not apply to interim local laws.

‘(4) This division ceases to apply to a local law or local law policy on the local law or local law policy being repealed.

‘Definitions for div 3A

‘803C. In this division—

“**anti-competitive provision**”, of an existing local law or existing local law policy, means a provision that, under a regulation, is treated as creating barriers to entry to a market or barriers to competition within a market.

“**existing local law**” means a local law to which, under section 803B, this division applies.

“**existing local law policy**” means a local law policy to which, under section 803B, this division applies.

“**likely anti-competitive provision**” see section 803D.

“**possible anti-competitive provision**” see section 803G.

“**public interest test**” means a review of a possible anti-competitive provision of an existing local law or existing local law policy under this division.

“**public interest test report**” means the report, including recommendations, on a public interest test.

“type 1 or 2 business activity” means a type 1 or 2 business activity under chapter 7A.

‘Subdivision 2—Anti-competitive provisions of existing local laws and existing local law policies

‘Preliminary review of existing local laws and existing local law policies to identify likely anti-competitive provisions

‘803D.(1) A local government must carry out a preliminary review of its existing local laws and existing local law policies and identify any provision that it considers may be an anti-competitive provision (a **“likely anti-competitive provision”**).

‘(2) The local government must advise the Minister of the likely anti-competitive provisions.

‘Timing of preliminary review and advice to Minister

‘803E. A local government must comply with section 803D by—

- (a) for a local government that carries on a type 1 or 2 business activity⁵⁶—
 - (i) for existing local laws or existing local law policies made before the commencement of this section—31 July 1997; or
 - (ii) for existing local laws or existing local law policies made after the commencement—31 December 1997; or
- (b) for other local governments—31 December 1997.

‘Local government may decide likely anti-competitive provision is not an anti-competitive provision

‘803F.(1) This section applies if a local government, at any time before 1 January 1998, decides that a likely anti-competitive provision is not an anti-competitive provision.

⁵⁶ Section 458AB defines type 1 business activity and type 2 business activity.

‘(2) The local government must, before 1 January 1998, advise the Minister that the likely anti-competitive provision is not an anti-competitive provision and the reasons why it is not an anti-competitive provision.

‘Public interest test of possible anti-competitive provisions

‘803G.(1) In this section—

“possible anti-competitive provision” means, if a local government has carried out a preliminary review of an existing local law or an existing local law policy under section 803D, the likely anti-competitive provisions advised to the Minister under that section other than provisions the Minister has been advised under section 803F are not anti-competitive provisions.

‘(2) A local government must ensure a public interest test is carried out and a public interest test report prepared for each of its possible anti-competitive provisions.

‘(3) A public interest test report must, for each possible anti-competitive provision, recommend—

- (a) that the provision should be retained as it is not an anti-competitive provision; or
- (b) for a provision that the report identifies as being an anti-competitive provision—that the whole or part of the provision—
 - (i) in the public interest, should be retained (whether in its current or another form); or
 - (ii) should be repealed or amended to remove its anti-competitive effect.

‘(4) For subsection (3), it is in the public interest for an anti-competitive provision to be retained (whether in its current or another form) if—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the local law or local law policy is by restricting competition in the way provided in the provision.

‘Local government to decide on test and report process

‘803H.(1) The local government must decide—

- (a) how the public interest test is to be conducted; and
- (b) the matters with which the public interest test report must deal.

‘(2) The decision must provide for a consultation process for the public interest test and state how the process is to be used in the test.

Example—

A local government may decide that the consultation process concerning possible anti-competitive provisions must include—

- (a) giving notice of the test and inviting submissions about the test; and
- (b) a period for submissions to be received; and
- (c) direct consultation with interested parties; and
- (d) consideration of the submissions received about the test.

‘(3) The decision is subject to a regulation under section 803O.⁵⁷

‘Public interest test report to be presented to local government meeting

‘803I. As soon as practicable after a public interest test report is completed, it must be presented to a meeting of the local government.

‘Local government to resolve whether to implement recommendations of public interest test

‘803J.(1) After a public interest test report has been presented to a meeting of a local government, the local government must resolve whether to implement the recommendations of the report.

‘(2) A local government may only make a contrary resolution if the local government resolves—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and

⁵⁷ Section 803O (Transitional regulation making power about implementation of this division)

- (b) the most appropriate way of achieving the objectives of the existing local law or existing local law policy is by restricting competition in the way provided in the provision.

‘(3) A resolution under subsection (2) must include a statement of the reasons for finding—

- (a) the benefits of the provision to the community as a whole outweigh the costs; and
- (b) the most appropriate way of achieving the objectives of the existing local law or existing local law policy is by restricting competition in the way provided in the provision.

‘(4) As soon as practicable after making a resolution under this section, the local government must advise the Minister of its resolution.

‘(5) In this section—

“**contrary resolution**” means a resolution by a local government to—

- (a) retain an anti-competitive provision of an existing local law or existing local law policy despite a recommendation in a public interest test report that the provision should be repealed; or
- (b) amend an anti-competitive provision of an existing local law or existing local law policy contrary to a recommendation in a public interest test report.

‘Public interest test reports open to inspection

‘**803K.** From the day the public interest test report is presented to a meeting of a local government, the report must be open to inspection.

‘Repeal or amendment of anti-competitive provision

‘**803L.(1)** If a local government resolves to repeal or amend an anti-competitive provision of an existing local law under this division, it must, by resolution, make a local law repealing or amending the provision.

‘(2) If a local government resolves to repeal or amend an anti-competitive provision of an existing local law policy under this division, it must, by resolution, make a local law policy repealing or amending the provision.

‘(3) A notice of the making of the local law or a local law policy must be published in the gazette stating the following—

- (a) the name of the local government making the local law or local law policy;
- (b) the name of the local law or local law policy;
- (c) the date of the local government’s resolution making the local law or local law policy;
- (d) the name of the existing local law or existing local law policy;
- (e) that an anti-competitive provision of the existing local law or existing local law policy has been identified;
- (f) that the provision has been repealed or amended;
- (g) that a certified copy of the local law or local law policy is open to inspection at the local government’s public office and at the department’s state office.

‘(4) The local government’s chief executive officer must certify the required number of copies of the local law or local law policy to be the local law or local law policy as made by the local government.

‘(5) As soon as practicable after the making of the local law or local law policy, the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law or local law policy.

‘(6) Chapter 8, part 2⁵⁸ does not apply to a local law or local law policy made under this section.

‘Timing for resolution and implementation

‘**803M.** For an existing local law or local law policy, a local government must make a resolution under section 803J and, if necessary, implement the resolution under section 803L, before 1 July 1999.

⁵⁸ Chapter 8 (Local laws and local law policies), part 2 (Making local laws and local law policies)

‘Simultaneous action under division 3 and other provisions

‘803N. Actions under this division may be carried out in conjunction with or as part of action carried out under division 3 or chapter 8, part 2, division 5.

‘Transitional regulation making power about implementation of this division

‘803O. A regulation may prescribe—

- (a) the procedures to be followed and criteria to be used to identify possible anti-competitive provisions of existing local laws or existing local law policies; and
- (b) requirements for public interest tests and public interest test reports; and
- (c) the giving of information by local governments to the Minister.

‘Future identification and assessment of anti-competitive provisions

‘803P.(1) This section applies to a local law or local law policy for which a local government has resolved, under this division or chapter 8, part 2, division 5, to retain an anti-competitive provision.

‘(2) Within 10 years after making the resolution, the local government must act under this division in relation to the local law or local law policy.

‘(3) In applying this division for subsection (2)—

- (a) references to an **“existing local law”** means the local law to which the division is being applied under this section; and
- (b) references to an **“existing local law policy”** means the local law policy to which the division is being applied under this section; and
- (c) despite sections 803E and 803F, all actions to be taken under this division must be completed within 10 years after the making of the resolution.’.

PART 4—AMENDMENT OF WHISTLEBLOWERS PROTECTION ACT 1994

Act amended in pt 4

55. This part amends the *Whistleblowers Protection Act 1994*.

Amendment of s 7 (What is the general nature of the Act's scheme?)

56. Section 7(2)(e), after 'GOCs'—

insert—

'or corporatised corporations'.

Amendment of s 10 (How must a public interest disclosure be made (pt 4)?)

57. Section 10—

insert—

'(7) Part 4, division 6 provides for the application of the Act to corporatised corporations in a way intended to prevent the Act's administration adversely affecting corporatised corporation's commercial operations.'

Amendment of s 26 (Every public sector entity is an appropriate entity for certain things)

58. Section 26(2), 'or 5'—

omit, insert—

' , 5 or 6'.

Amendment of s 27 (How to disclose to appropriate entity)

59. Section 27(6), 'Division 4 and 5'—

omit, insert—

‘divisions 4 to 6’.

Amendment of s 30 (Units must report to Legislative Assembly on disclosures)

60.(1) Section 30(1), definition “**public sector entity**”—

insert—

‘(d) a corporatised corporation.’.

Amendment of s 31 (Minister must report to Legislative Assembly on Act’s administration)

61.(1) Section 31(1), definition “**public sector entity**”—

insert—

‘(d) a corporatised corporation.’.

Insertion of new pt 4, div 6

62. After section 37—

insert—

Division 6—Limitation on disclosure process for corporatised corporations

‘Object of division

‘37A.(1) This division deals with some issues about the treatment of corporatised corporations as public sector entities and their officers as public officers under this Act.

‘(2) The purpose of the division is to clarify the application of this Act and to ensure this Act’s administration does not detrimentally affect the commercial operation of corporatised corporations.

‘Application of Act to corporatised corporations

‘**37B.(1)** An officer of a corporatised corporation may, under section 15, 16 or 18,⁵⁹ make a public interest disclosure to the corporatised corporation about its conduct or the conduct of another officer of the corporatised corporation.

‘**(2)** An officer of a corporatised corporation may, under section 15, make a public interest disclosure to the Criminal Justice Commission about the conduct of the corporatised corporation or the conduct of another officer of the corporatised corporation.

‘**(3)** An officer of a corporatised corporation may, under section 17,⁶⁰ make a public interest disclosure to the corporatised corporation about its conduct, the conduct of another officer of the corporatised corporation or the conduct of a public sector contractor contracting with the corporatised corporation.

‘**(4)** An officer of a corporatised corporation may also make a public interest disclosure about a reprisal taken against the officer for making the public interest disclosure under subsection (1) or (3)—

- (a) under section 26(3),⁶¹ to the corporatised corporation; or
- (b) if the reprisal is official misconduct—to the Criminal Justice Commission.

‘**(5)** For public interest disclosures under subsections (1) to (4) and of applying any law about the disclosures—

- (a) the corporatised corporation is a public sector entity; and
- (b) the officer making the public interest disclosure is a public officer; and
- (c) if the public interest disclosure is made under section 17 about the conduct of another officer of the corporatised corporation—the

⁵⁹ Section 15 (Public officer may disclose official misconduct), 16 (Public officer may disclose maladministration) or 18 (Public officer may disclose danger to public health or safety or environment)

⁶⁰ Section 17 (Public officer may disclose negligent or improper management affecting public funds)

⁶¹ Section 26 (Every public sector entity is an appropriate entity for certain things)

other officer is a public officer.

‘(6) Other than as provided by subsection (5)—

- (a) a corporatised corporation is not a public sector entity under this Act; and
- (b) an officer of a corporatised corporation is not a public officer under this Act; and
- (c) an officer of a corporatised corporation cannot, as a public officer, make a public interest disclosure.

‘(7) This section does not affect the making of a public interest disclosure by anybody under section 19 or 20.⁶²

‘(8) This section does not affect the reference under section 28⁶³—

- (a) from a corporatised corporation to another public sector entity of a public interest disclosure made to the corporatised corporation under this section; or
- (b) from a public sector entity to a corporatised corporation of a public interest disclosure made to the public sector entity.’.

Amendment of sch 5 (Sectional definitions)

63.(1) Schedule 5, section 2(1)—

insert—

‘(1) a corporatised corporation, but only to the extent indicated under part 4, division 6 of the Act.’.

(2) Schedule 5, section 2(2)—

insert—

‘(aa) a corporatised corporation, other than to the extent indicated under part 4, division 6 of the Act;’.

⁶² Section 19 (Anybody may disclose danger to person with disability or to environment from particular contraventions) or 20 (Anybody may disclose reprisal)

⁶³ Section 28 (Disclosure may be referred to an appropriate entity)

Amendment of sch 6 (Dictionary)

64. Schedule 6—

insert—

- ‘ **“corporatised corporation”** has the same meaning as in the *Local Government Act 1993*, chapter 7A, part 6.’.

**PART 5—AMENDMENT OF PUBLIC SECTOR
ETHICS ACT 1994****Act amended in pt 5**

65. This part amends the *Public Sector Ethics Act 1994*.

Amendment of s 2 (Definitions)

66.(1) Section 2, definition **“public sector entity”**—

insert—

‘(ha)a corporatised corporation;’.

(2) Section 2—

insert—

- ‘ **“corporatised corporation”** has the same meaning as in the *Local Government Act 1993*, chapter 7A, part 6.’.

**PART 6—AMENDMENT OF PUBLIC SERVICE ACT
1996****Act amended in pt 6**

67. This part amends the *Public Service Act 1996*.

Amendment of s 21 (What is a “government entity”)

68. Section 21(2)(a)—

omit, insert—

‘(a) a local government or a corporatised corporation;’.

Amendment of sch 3 (Dictionary)

69. Schedule 3—

insert—

‘ “**corporatised corporation**” has the meaning given by the *Local Government Act 1993*, chapter 7A, part 6.’.

PART 7—AMENDMENT OF FREEDOM OF INFORMATION ACT 1992

Act amended in pt 7

70. This part amends the *Freedom of Information Act 1992*.

Amendment of s 7 (Definitions)

71. Section 7—

insert—

‘ “**corporatised corporation**” has the meaning given by the *Local Government Act 1993*, chapter 7A, part 6.’.

Insertion of new s 11B

72. After section 11A—

insert—

‘Application of Act to corporatised corporations

‘**11B.** This Act does not apply to documents received, or brought into existence, in carrying out a corporatised corporation’s activities to the extent provided under the *Local Government Act 1993*, section 793B.’.

PART 8—AMENDMENT OF JUDICIAL REVIEW ACT 1991**Act amended in pt 8**

73. This part amends the *Judicial Review Act 1991*.

Amendment of s 3 (Definitions)

74. Section 3—

insert—

‘ **“corporatised corporation”** has the meaning given by the *Local Government Act*, chapter 7A, part 6.’.

Insertion of new s 18B

75. After section 18A—

insert—

‘Application of Act to corporatised corporations

‘**18B.** This Act does not apply to decisions of a corporatised corporation to the extent provided under the *Local Government Act 1993*, section 793B.’.

SCHEDULE**MINOR AND CONSEQUENTIAL AMENDMENTS OF
LOCAL GOVERNMENT ACT 1993**

section 13

1. Section 7—*insert—*

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

2. Section 77(2), ‘not being’—*omit, insert—*

‘being’.

3. Section 174(2), after ‘ “local government employee” ’—*insert—*

‘includes an employee of a local government’s significant business entity but’.

**4. Sections 458BB(2)(a)(i) and 458BC(2)(a)(i) (as renumbered),
‘Commonwealth, State and local government taxes or rates’—***omit, insert—*

‘government taxes’.

5. Section 458BD (as renumbered), ‘458G(2)(a)’—*omit, insert—*

‘section 458BC(2)(a)’.

SCHEDULE (continued)

6. Section 458BE as renumbered, '458D or 458E'—*omit, insert—*

'458B or 458BA'.

7. Section 458BH(3) as renumbered, '458I'—*omit, insert—*

'458BE'.

8. Section 458BH(3) as renumbered, '458M'—*omit, insert—*

'458BJ'.