



Queensland

# **Local Government and Industrial Relations Amendment Act 2008**

**Act No. 5 of 2008**





## Queensland

# Local Government and Industrial Relations Amendment Act 2008

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Queensland

# **Local Government and Industrial Relations Amendment Act 2008**

## **Act No. 5 of 2008**

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**An Act to amend the *Industrial Relations Act 1999* and the  
*Local Government Act 1993* and to make consequential  
amendments of other Acts**

**[Assented to 6 March 2008]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Local Government and Industrial Relations Amendment Act 2008*.

### **2 Commencement**

- (1) Parts 2 and 4 commence immediately after part 3.
- (2) Part 3 commences on 13 March 2008.

## **Part 2 Amendment of Industrial Relations Act 1999**

### **3 Act amended in pt 2**

This part amends the *Industrial Relations Act 1999*.

### **4 Amendment of s 409 (Definitions for ch 12)**

Section 409, definition *federal organisation*—  
*omit.*

### **5 Insertion of new ch 20, pt 7**

Chapter 20—  
*insert—*



## ‘Part 7    **Transitional provisions for Local Government and Industrial Relations Amendment Act 2008, part 3**

### ‘Division 1                                    **Preliminary**

#### ‘744    **Application of pt 7**

‘(1)    This part applies in relation to—

- (a)    a local government that, immediately before the commencement of the *Local Government and Industrial Relations Amendment Act 2008*, section 10, was an employer within the meaning of the Commonwealth Act, section 6(1); and
- (b)    an employee of a local government mentioned in paragraph (a) who, immediately before the commencement of the *Local Government and Industrial Relations Amendment Act 2008*, section 10, was an employee within the meaning of the Commonwealth Act, section 5(1).

‘(2)    In this section—

*local government* does not include the Brisbane City Council.

#### ‘745    **Definitions for pt 7**

‘In this part—

*APCS*, in relation to an employee, means the Australian Pay and Classification Scale applying to the employee under the Commonwealth Act.

*Australian workplace agreement* has the meaning given by the Commonwealth Act, section 326.

*commencement* means the commencement of this section.

[s 5]

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***employee collective agreement*** has the meaning given by the Commonwealth Act, section 327.

***federal instrument*** means any of the following—

- (a) an original award;
- (b) a pre-reform award;
- (c) a pre-reform certified agreement;
- (d) a pre-reform AWA;
- (e) an Australian workplace agreement;
- (f) a union collective agreement;
- (g) an employee collective agreement;
- (h) a notional agreement preserving State awards.

***notional agreement preserving State awards*** has the meaning given by the Commonwealth Act, schedule 8, clause 31.

***original award*** means an original award mentioned in the Work Choices Amendment Act, schedule 4, item 4(2).

***pre-reform AWA*** has the meaning given by the Commonwealth Act, schedule 7, clause 1.

***pre-reform award*** has the meaning given by the Commonwealth Act, section 4(1).

***pre-reform certified agreement*** has the meaning given by the Commonwealth Act, schedule 7, clause 1, but does not include a pre-reform certified agreement to which the Commonwealth Act, schedule 7, part 2, division 2 applies.

***substitute State instrument*** means the following—

- (a) for an original award—an award taken to have been made by the commission, and amended, as provided for under section 747;
- (b) for a pre-reform certified agreement—a certified agreement taken to have been certified by the commission as provided for under section 748;

- 
- (c) for an Australian workplace agreement or pre-reform AWA—a QWA approved by the commission as provided for under section 749;
  - (d) for a union collective agreement—a certified agreement certified by the commission, and amended, as provided for under section 750;
  - (e) for an employee collective agreement—a certified agreement certified by the commission as provided for under section 751;
  - (f) for a notional agreement preserving State awards—the awards applying as provided for under section 752.

*union collective agreement* has the meaning given by the Commonwealth Act, section 328.

*Work Choices Amendment Act* means the *Workplace Relations Amendment (Work Choices) Act 2005* (Cwlth).

## **‘746 Interpretation**

- ‘(1) This section has effect for this part.
- ‘(2) A reference to the Australian Industrial Relations Commission (however described) in a substitute State instrument is taken to be a reference to the commission.
- ‘(3) A reference to a provision of the Commonwealth Act or the Work Choices Amendment Act in a substitute State instrument is taken to be a reference to a corresponding provision of this Act.
- ‘(4) A reference in a substitute State instrument to a federal organisation mentioned in column 1 of the following table is taken to be a reference to the State organisation mentioned opposite in column 2 of the table—

[s 5]

**Table**

<b>Column 1 Federal organisations</b>	<b>Column 2 State organisations</b>
The Association of Professional Engineers, Scientists and Managers, Australia	The Association of Professional Engineers, Scientists and Managers, Australia, Queensland Branch, Union of Employees
Australian, Municipal, Administrative, Clerical and Services Union  Australian, Municipal, Administrative, Clerical and Services Union, Queensland Services Branch	Queensland Services, Industrial Union of Employees
Australian Nursing Federation  Australian Nursing Federation, Queensland Branch  Queensland Nurses' Union of Employees	Queensland Nurses' Union of Employees
The Australian Workers' Union of Employees, Queensland	The Australian Workers' Union of Employees, Queensland
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union  Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union - Queensland Branch  Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland	Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland

<b>Column 1</b> <b>Federal organisations</b>	<b>Column 2</b> <b>State organisations</b>
<p>Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia - Electrical, Energy and Services Division</p> <p>Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia - Electrical, Energy and Services Division - Queensland Divisional Branch</p>	<p>The Electrical Trades Union of Employees Queensland</p>
<p>Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division</p> <p>Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division - Queensland Divisional Branch</p> <p>The Plumbers and Gasfitters Employees' Union Of Australia, Queensland Branch, Union of Employees</p>	<p>Plumbers &amp; Gasfitters Employees' Union Queensland, Union of Employees</p>

[s 5]

<b>Column 1</b> <b>Federal organisations</b>	<b>Column 2</b> <b>State organisations</b>
Construction, Forestry, Mining & Energy Union, Queensland Construction, Forestry, Mining & Energy Union, Construction and General Division The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland	The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland
Federated Engine Drivers' and Firemens' Association of Australasia Queensland Branch, Union of Employees	Federated Engine Drivers' and Firemens' Association of Queensland, Union of Employees
Liquor, Hospitality and Miscellaneous Union Liquor, Hospitality and Miscellaneous Union, Queensland Branch Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees	Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
Transport Workers' Union of Australia Transport Workers' Union of Australia – Queensland Branch Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	Transport Workers' Union of Australia, Union of Employees (Queensland Branch)

‘(5) In this section—

*corresponding provision of this Act*, to a provision of the Commonwealth Act or the Work Choices Amendment Act, means—

- 
- (a) if paragraph (b) does not apply, a provision of this Act that is of similar effect to the provision of the Commonwealth Act or the Work Choices Amendment Act; or
  - (b) a provision of this Act declared under a regulation to be a corresponding provision.

*federal organisation* includes a transitionally registered association under the Commonwealth Act, schedule 10.

*State organisation* means an organisation registered under chapter 12.

## **‘Division 2                    Provisions for federal instruments**

### **‘747    Provision for original awards**

- ‘(1) This section makes provision in relation to each original award that, on 27 March 2006, was taken to have been replaced by a pre-reform award under the Work Choices Amendment Act, schedule 4, item 4(3) if the pre-reform award is in force immediately before the commencement.
- ‘(2) On the commencement, the original award is taken to be an award made by the commission under section 125.
- ‘(3) The award is taken to be amended so that any APCS applying to employees bound by the pre-reform award continues to apply to the employees bound by the award.
- ‘(4) Subject to subsection (3) and section 746, the award has effect according to its terms and, despite section 133, an action to enforce the award may be commenced on and after the day of the commencement.

### **‘748    Provision for pre-reform certified agreements**

- ‘(1) This section makes provision in relation to each pre-reform certified agreement in force immediately before the commencement.

[s 5]

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- '(2) On the commencement, the pre-reform certified agreement is taken to be a certified agreement certified by the commission under section 156.
- '(3) Subject to section 746, the certified agreement has effect according to its terms.

**'749 Provision for Australian workplace agreements and pre-reform AWAs**

- '(1) This section makes provision in relation to each of the following federal instruments in force immediately before the commencement—
  - (a) an Australian workplace agreement;
  - (b) a pre-reform AWA.
- '(2) On the commencement, a federal instrument to which this section applies is taken to be a QWA approved by the commission under section 203 that is in operation until the earlier of the following—
  - (a) the nominal expiry date stated in the federal instrument;
  - (b) 15 March 2009;
  - (c) the day the employee in relation to whom the QWA operates is bound by a certified agreement that is certified by the commission after the commencement.
- '(3) Subject to subsection (2) and section 746, and despite section 192(3)(c) and (4), the QWA has effect according to its terms.

**'750 Provision for union collective agreements**

- '(1) This section makes provision in relation to each union collective agreement in force immediately before the commencement.
- '(2) On the commencement, the union collective agreement is taken to be a certified agreement certified by the commission under section 156.



- 
- ‘(3) The certified agreement is taken to be amended by omitting any dispute settlement procedure (however described) provided for in the agreement and inserting instead clause 3.2 of the Sample Award - State 2004 attached to Practice Note PN 9 issued by the commission on 30 June 2004.

*Editor’s note—*

Clause 3.2 of the Sample Award provides for a grievance and dispute settling procedure. On the commencement, a copy of the practice note can be found on the commission’s website at <[www.qirc.qld.gov.au](http://www.qirc.qld.gov.au)>.

- ‘(4) Subject to subsection (3) and section 746, and despite section 169(7), the certified agreement has effect according to its terms.
- ‘(5) Without limiting the entities bound by the certified agreement, the certified agreement binds the following organisations—
- (a) an organisation that was bound by a relevant State employment agreement with a local government if the organisation is entitled to represent the industrial interests of employees of the local government who are bound by the certified agreement;
  - (b) a State organisation that is mentioned in the table in section 746(4) opposite any federal organisation or association that was bound by a pre-reform certified agreement replaced entirely or partly by the union collective agreement.
- ‘(6) In this section—

***preserved collective State agreement*** has the meaning given by the Commonwealth Act, schedule 8, clause 10.

***relevant State employment agreement*** means a State employment agreement as mentioned in the Commonwealth Act, schedule 8, clause 10 that, on 27 March 2006, was part of the basis on which a preserved collective State agreement came into operation.

[s 5]

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### **‘751 Provision for employee collective agreements**

- ‘(1) This section makes provision in relation to each employee collective agreement in force immediately before the commencement.
- ‘(2) On the commencement, the employee collective agreement is taken to be a certified agreement certified by the commission under section 156.
- ‘(3) Subject to section 746, the certified agreement has effect according to its terms.
- ‘(4) Subsection (5) applies if an employee organisation gives the commission and the employer bound by the certified agreement notice that it wants to be bound by the certified agreement.
- ‘(5) The commission must decide that the certified agreement binds the employee organisation if the organisation satisfies the commission about the following—
  - (a) the organisation has at least 1 member—
    - (i) whose employment is, or will be, subject to the agreement; and
    - (ii) who asked the organisation to give the notice;
  - (b) the organisation—
    - (i) is bound by an award that binds the employer; or
    - (ii) if there is no award that binds the employer—is entitled to represent the industrial interests of relevant employees.

### **‘752 Provision for notional agreements preserving State awards**

- ‘(1) This section applies in relation to each employee of a local government who, immediately before the commencement, was bound by a notional agreement preserving State awards.
- ‘(2) On the commencement, the employee is subject to any award applying to the employee under this Act.

- 
- ‘(3) However if, immediately before the commencement, an employee was paid under an APCS, on the commencement, the employee is to be paid as provided for under the APCS until the employee’s wage rate in the award is varied under a general ruling under section 287.
- ‘(4) On the day the employee’s wage rate is varied, the employee is to be paid at a rate not less than the wage rate payable under the award.

## ‘Division 3            General

### ‘753    Preservation of existing entitlements

- ‘(1) This section applies in relation to each employee who, after the commencement, is bound by a substitute State instrument or an industrial instrument.
- ‘(2) After the commencement, the employee is entitled to receive not less than the remuneration the employee received before the commencement.
- ‘(3) Subject to the prescribed transitional arrangements, subsection (2) has effect until the employee is bound by a certified agreement certified by the commission after the commencement.
- ‘(4) In this section—
- prescribed transitional arrangements* means each of the following—
- (a) the *South East Queensland Water (Restructuring) Act 2007*, section 90;
  - (b) the *Local Government Reform Implementation Regulation 2008*, sections 46 and 73;
  - (c) the *Local Government Regulation 2005*, section 89Q;
  - (d) the *Local Government Reform Implementation (Transferring Areas) Regulation 2007*, section 50;

[s 5]

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- (e) sections 8.3.1 and 8.3.2 of the Local Government Workforce Transition Code of Practice - 2007 mentioned as having been made as a workforce transition code of practice under the *Local Government Act 1993*, section 159ZH in the *Local Government (Workforce Transition Code of Practice) Notice 2007* (SL No. 218 of 2007).

**remuneration**, in relation to an employee, includes—

- (a) the wage or salary payable to the employee; and
- (b) amounts payable or other benefits made available to the employee under a contract of service, a federal instrument or an industrial instrument.

#### **‘754 Organisations bound by substitute State instruments**

- ‘(1) This section applies if, under section 746(4), in a substitute State instrument a reference to a federal organisation or association is taken to be a reference to a State organisation.
- ‘(2) To remove any doubt, it is declared that the State organisation is bound by the substitute State instrument.

#### **‘755 Provisions for minimum entitlements**

- ‘(1) Sections 8A, 9, 9A, 10, 11 and 15 do not apply in relation to an employee bound by or subject to a relevant substitute State instrument until the earlier of the following (the ***end date for the employee***)—
  - (a) 15 March 2009;
  - (b) the day, after the commencement, the employee is bound by a certified agreement certified by the commission.
- ‘(2) Until the end date for the employee, the following provisions of the Commonwealth Act, to the extent they provide a more favourable outcome for the employee, are applied as a law of the State—

- 
- (a) provisions guaranteeing a federal minimum wage for the employee;
  - (b) provisions relating to maximum ordinary hours of work for the employee;
  - (c) provisions relating to paid leave for the employee because of a personal illness or injury;
  - (d) provisions relating to annual leave for the employee, other than the Commonwealth Act, section 235(2);
  - (e) provisions relating to entitlement to public holidays for the employee.
- ‘(3) For applying subsection (2), the provisions are to be construed by reference to the Commonwealth Act but with any necessary changes.
- ‘(4) Subsection (1) does not limit section 753.
- ‘(5) In this section—
- relevant substitute State instrument* means a substitute State instrument that applies to an employee other than any award applying to the employee after the commencement as provided for under section 752.

## ‘756 Transitional regulation-making power

- ‘(1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature—
- (a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the change from the operation of federal instruments as in force before the commencement to the operation of substitute State instruments after the commencement; or
  - (b) for which this part does not make provision or sufficient provision.
- ‘(2) A transitional regulation may have retrospective operation to a day not earlier than the commencement.

[s 6]

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‘(3) A transitional regulation must declare it is a transitional regulation.

‘(4) This section and any transitional regulation expire 1 year after the commencement.’.

## **6 Amendment of sch 5 (Dictionary)**

Schedule 5, definition *federal organisation*—

*omit, insert*—

‘*federal organisation* means an organisation under the Commonwealth Act.’.

# **Part 3 Amendment of Local Government Act 1993**

## **7 Act amended in pt 3**

This part amends the *Local Government Act 1993*.

## **8 Replacement of ch 2, pt 1, div 4 (Composition of local governments)**

Chapter 2, part 1, division 4—

*omit, insert*—

### **‘Division 4 Number of councillors**

#### **‘32 Number of councillors**

‘(1) The number of councillors for a local government is the number prescribed for the local government under a regulation.

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*Note—*

This is a reviewable local government matter and requires a report and recommendation by the commissioner before implementation.

- ‘(2) However if no number is prescribed under a regulation, the number is 5.’.

## **9 Renumbering of s 34 (Local government name)**

Section 34—

*renumber* as section 33.

## **10 Replacement of s 35 (Local governments are bodies corporate etc.)**

Section 35—

*omit, insert—*

### **‘34 Constitution**

- ‘(1) A local government is constituted by the councillors for the time being of the local government.
- ‘(2) However, subject to section 178(3), if at any time there are no councillors of a local government, the local government is constituted by the local government’s chief executive officer.

*Note—*

If dissolved, a local government is constituted by an administrator appointed under section 178.

- ‘(3) A local government is not a corporation.

### **‘35 Proceedings**

- ‘(1) A proceeding by a local government must be started in the name of the local government.
- ‘(2) A proceeding against a local government must be started against the local government in its name.’.

[s 11]

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## **11 Amendment of s 36 (General powers)**

Section 36—

*insert—*

‘(6) A local government may exercise its powers in its own name.’.

## **12 Replacement of s 38 (Local government’s seal)**

Section 38—

*omit, insert—*

## **‘38 Execution of documents by local governments**

‘(1) A local government may execute a document in any of the following ways—

(a) if the local government is constituted by its councillors—

(i) by the mayor of the local government signing the document on behalf of the local government; or

(ii) by an authorised councillor of the local government signing the document on behalf of the local government;

(b) if the local government is constituted by its chief executive officer under section 34(2)—by the chief executive officer signing the document on behalf of the local government;

(c) if the local government is constituted by an administrator of the local government appointed under section 178—by the administrator signing the document on behalf of the local government;

(d) if a way is prescribed under a regulation—in the way prescribed.

‘(2) Subsection (1) does not limit section 472 or 483.

*Notes—*

1 A local government may, by resolution, delegate its powers, including powers under section 36, to particular persons under section 472.



- 2 A local government's delegate may make, vary or discharge a contract for the local government in particular circumstances under section 483.

'(3) In this section—

*authorised councillor*, of a local government, means a councillor of the local government who is authorised in writing by the mayor of the local government to execute documents on behalf of the local government.

**'38A Liability does not attach to councillors etc. acting honestly**

'(1) No matter or thing done honestly by—

- (a) a local government; or
- (b) any councillor in constituting the local government;

in the administration of this Act or in the performance or exercise, or intended performance or exercise, of any of the local government's functions or powers under an Act subjects any councillor of the local government to any liability in relation to the matter or thing.

'(2) No matter or thing done honestly by—

- (a) the chief executive officer of a local government in constituting the local government; or
- (b) the administrator of a local government in constituting the local government;

in the administration of this Act or in the performance or exercise, or intended performance or exercise, of the local government's functions or powers under an Act subjects the chief executive officer or administrator to any liability in relation to the matter or thing.

'(3) The protection given to a councillor, chief executive officer or administrator under this section is in addition to any other protection available to the councillor, chief executive officer or administrator under an Act or law.'

[s 13]

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**13 Replacement of s 49 (Joint local governments are bodies corporate etc.)**

Section 49—

*omit, insert—*

**‘49 Constitution**

- ‘(1) A joint local government is constituted by its members.
- ‘(2) However, subsection (3) applies if, at any time, a local government that is a component local government of a joint local government is constituted by the chief executive officer of the local government or an administrator of the local government appointed under section 178.
- ‘(3) For section 47, the representative of the local government is—
  - (a) if the chief executive officer constitutes the local government—the chief executive officer; or
  - (b) if the administrator constitutes the local government—the administrator.
- ‘(4) A joint local government is not a corporation.

**‘49A Proceedings**

- ‘(1) A proceeding by a joint local government must be started in the name of the joint local government.
- ‘(2) A proceeding against a joint local government must be started against the joint local government in its name.’.

**14 Amendment of s 50 (General powers)**

Section 50—

*insert—*

- ‘(6) A joint local government may exercise its powers in its own name.’.

---

**15 Replacement of s 53 (Joint local government's seal)**

Section 53—

*omit, insert—*

**'53 Execution of documents by joint local governments**

'(1) A joint local government may execute a document in any of the following ways—

(a) if the joint local government is constituted by its members—

(i) by the president of the joint local government signing the document on behalf of the joint local government; or

(ii) by an authorised member of the joint local government signing the document on behalf of the joint local government;

(b) if a way is prescribed under a regulation—in the way prescribed.

'(2) Subsection (1) does not limit section 472 or 483.

*Notes—*

1 A joint local government may, by resolution, delegate its powers, including powers under section 50, to particular persons under section 472 as applied by section 12(1)(b).

2 A joint local government's delegate may make, vary or discharge a contract for the joint local government in particular circumstances under section 483 as applied by section 12(1)(b).

'(3) In this section—

*authorised member*, of a joint local government, means a member of the joint local government who is authorised in writing by the president of the joint local government to execute documents on behalf of the joint local government.

**'53A Liability does not attach to members acting honestly**

'(1) No matter or thing done honestly by—

(a) a joint local government; or

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(b) any member of the joint local government in constituting the joint local government;

in the administration of this Act or in the performance or exercise, or intended performance or exercise, of any of the joint local government's functions or powers under an Act subjects any member of the joint local government to any liability in relation to the matter or thing.

‘(2) The protection given to a member under this section is in addition to any other protection available to the member under an Act or law.’.

## **16 Insertion of new s 159YQA**

Chapter 3, part 1B, division 3, after section 159YQ—

*insert—*

### **‘159YQA Other transitional regulation-making power**

‘(1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature for the operation of this Act in relation to a new local government or an adjusted local government if this Act does not make provision or sufficient provision.

‘(2) A transitional regulation may have retrospective operation to a day not earlier than the changeover day.

‘(3) A transitional regulation must declare it is a transitional regulation.’.

## **17 Amendment of s 164 (Dissolution of local government)**

Section 164(3)(b), ‘as a body corporate’—

*omit.*

## **17A Insertion of new ch 4, pt 1, div 2A**

Chapter 4, part 1—

*insert—*

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**‘Division 2A                    Councillors holding paid State  
   appointment**

**‘226A Meaning of *paid State appointment* for div 2A**

- ‘(1) For this division, a person holds a *paid State appointment* if the person, for reward—
- (a) holds an office under, or is employed by, the State; or
  - (b) holds an appointment to or in or is employed by or in—
    - (i) an entity of the State; or
    - (ii) the parliamentary service of the Legislative Assembly; or
    - (iii) a court or tribunal, or a registry or other administrative office of a court or tribunal, of the State.
- ‘(2) However, a councillor of a local government does not hold a paid State appointment if—
- (a) an Act requires or expressly permits that the appointment be held by a councillor of a local government, however described; or
  - (b) when the appointment is held by a councillor of a local government, neither the councillor nor any other person is entitled to or is entitled to and receives any reward on account of the councillor holding the appointment.
- ‘(3) For subsection (2)(b), a councillor of a local government is not taken to be entitled to a reward if the councillor irrevocably waives for all legal purposes the entitlement to the reward.
- ‘(4) For a waiver under subsection (3), the councillor must, as soon as practicable after becoming aware of the entitlement—
- (a) waive the entitlement in writing; and
  - (b) give a copy of the waiver to—

[s 17A]

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- (i) if the councillor is the mayor of the local government—the chief executive officer of the local government; or
- (ii) otherwise—the mayor of the local government.

‘(5) In this section—

***reward*** does not include—

- (a) an amount decided under part 3; or

*Editor’s note—*

part 3 (Entitlements and obligations)

- (b) an amount decided under the deed under the *Superannuation (State Public Sector) Act 1990* in relation to a transferring member within the meaning of section 32A of that Act; or
- (c) reasonable expenses actually incurred by or for the person for any 1 or more of the following—
  - (i) accommodation;
  - (ii) meals;
  - (iii) domestic air travel;
  - (iv) taxi fares or public transport charges;
  - (v) motor vehicle hire; or
- (d) an amount (other than an amount paid at the pleasure of the State) paid as a pension, entitlement, remuneration, allowance or otherwise for past service in a paid State appointment.

**‘226B Meaning of *class A local government* and *class B local government* for div 2A**

- ‘(1) In this division, a ***class A local government*** is a local government prescribed under a regulation as a class A local government.
- ‘(2) However, if a regulation does not prescribe any local government as a class A local government, a ***class A local***

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*government* is a local government that, as decided by the remuneration tribunal under section 250AJ, belongs to category 3 or 4.

- ‘(3) In this division, a *class B local government* is a local government prescribed under a regulation as a class B local government.
- ‘(4) However, if a regulation does not prescribe any local government as a class B local government, a *class B local government* is any of the following—
- (a) Brisbane City Council;
  - (b) a local government that, as decided by the remuneration tribunal under section 250AJ, belongs to category 5 or a higher numbered category.

**‘226C Effect on paid State appointment of person’s election as councillor**

- ‘(1) If a person who holds a paid State appointment on a full time basis is elected or appointed as the mayor of a class A local government, the person’s paid State appointment is taken to end—
- (a) if the person is elected other than as mentioned in paragraph (b)—on the day before the day of the poll at which the person is elected; or
  - (b) if the person is elected under section 310(1)(a)—on the day before the day a poll would have been conducted if a poll had been required; or
  - (c) if the person is appointed—on the day before the day the person is appointed.
- ‘(2) If a person who holds a paid State appointment on a full time basis is elected or appointed as a councillor, whether or not the mayor, of a class B local government, the person’s paid State appointment is taken to end—

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- (a) if the person is elected other than as mentioned in paragraph (b)—on the day before the day of the poll at which the person is elected; or
  - (b) if the person is elected under section 310(1)(a) or if, for the Brisbane City Council, the person is elected under the *Electoral Act 1992*, section 89—on the day before the day a poll would have been conducted if a poll had been required; or
  - (c) if the person is appointed—on the day before the day the person is appointed.
- ‘(3) Subsections (1) and (2) do not stop a person whose holding of a paid State appointment (the *original appointment*) is ended under subsection (1) or (2)—
- (a) from being appointed to hold the original appointment on a part time basis; or
  - (b) from being appointed to hold another paid State appointment on a part time basis.
- ‘(4) A person appointed as mentioned in subsection (3) is entitled to retain all existing and accruing rights as if the holding of the original appointment, or other paid State appointment, on a part time basis were a continuation of the holding of the original appointment on a full time basis.

### **‘226D Councillor not to be appointed to paid State appointment**

- ‘(1) A person who is the mayor of a class A local government must not be appointed to hold a paid State appointment on a full time basis.
- ‘(2) A person who is a councillor, whether or not the mayor, of a class B local government must not be appointed to hold a paid State appointment on a full time basis.
- ‘(3) An appointment made in contravention of this section is void.’.



**18 Amendment of s 236A (Remuneration for councillors of local governments)**

(1) Section 236A(1), ‘A local government’—

*omit, insert—*

‘For a year, a local government’.

(2) Section 236A(2)—

*omit, insert—*

‘(2) The resolution—

(a) must be made within 2 months after the remuneration schedule, that applies for the year for the category of local government, is published in the gazette under section 250AQ; and

(b) may authorise payment of remuneration on and after 1 January of the year; and

(c) must state—

(i) the purpose for which the remuneration is to be paid; and

(ii) the person who is entitled to the remuneration; and

(iii) the amount of remuneration that is to be paid; and

(iv) if the amount of remuneration to be paid to councillors, other than the mayor, varies as between councillors—the reason for the variation.’.

**19 Amendment of s 236B (Reimbursement of expenses and provision of facilities for councillors of local governments)**

(1) Section 236B(1)—

*omit, insert—*

‘(1) A local government may, by resolution, authorise either or both of the following—

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- (a) payment of the reasonable expenses incurred, or to be incurred, by the local government's councillors for discharging their duties and responsibilities as councillors;
  - (b) provision of facilities, including, for example, administrative support staff, to the councillors for discharging their duties and responsibilities as councillors.'
- (2) Section 236B(2), after 'policy'—  
*insert*—  
'approved under section 250AR'.

**20 Amendment of s 237 (Remuneration for person serving on advisory committee)**

- (1) Section 237, heading—  
*omit, insert*—

**'237 Remuneration, reimbursement of expenses and provision of facilities for person serving on advisory committee'**

- (2) Section 237(1) and (2)—  
*omit, insert*—
- '(1) A local government may, by resolution, authorise any of the following—
- (a) payment of remuneration to a person who is a member of an advisory committee of the local government but is not a councillor;
  - (b) payment of the reasonable expenses incurred, or to be incurred, by the person for discharging the person's duties and responsibilities as a member of the advisory committee;
  - (c) provision of facilities, including, for example, administrative support staff, to the person for discharging the person's duties and responsibilities as a member of the advisory committee.

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- ‘(2) The resolution must state—
- (a) the purpose for which the remuneration or expenses are to be paid or the facilities provided; and
  - (b) the person who is entitled to the remuneration, expenses or facilities; and
  - (c) the amount of the remuneration or expenses or the basis on which it is calculated.’.
- (3) Section 237(3), ‘remuneration is’—  
*omit, insert—*  
‘remuneration or expenses are’.

## **21 Replacement of ss 250AR and 250AS**

Sections 250AR and 250AS—

*omit, insert—*

### **‘250AR Chief executive to approve proposed expenses reimbursement policy or amendments of the policy**

- ‘(1) A local government must give to the chief executive a copy of its proposed expenses reimbursement policy, or any proposed amendment of its expenses reimbursement policy, (the *proposed policy document*) for consideration.
- ‘(2) The proposed policy document must comply with any relevant guidelines issued by the chief executive.
- ‘(3) If the chief executive considers the proposed policy document complies with the guidelines, the chief executive must approve the proposed policy document and give the local government written notice of the approval.
- ‘(4) Also, the chief executive may approve the proposed policy document subject to the local government making the minor changes to the proposed policy document that the chief executive identifies as necessary to comply with the guidelines.
- ‘(5) If subsection (4) does not apply and the chief executive considers the proposed policy document does not comply with

[s 22]

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the guidelines, the chief executive must give the local government written notice—

- (a) advising how the proposed policy document does not comply; and
- (b) requiring the local government to give the chief executive a copy of the revised proposed policy document for reconsideration.

### **‘250AS Requirement to adopt expenses reimbursement policy or amendment**

- ‘(1) A local government may only adopt, by resolution, an expenses reimbursement policy or an amendment of the expenses reimbursement policy that is the same as the proposed policy document approved by the chief executive under section 250AR.
- ‘(2) Subsection (1) does not limit a local government’s ability to publish the adopted expenses reimbursement policy in the way it chooses or to correct obvious errors in the approved proposed expenses reimbursement policy or amendment.
- ‘(3) The adopted expenses reimbursement policy or amendment must be notified as required under this division.’.

## **22 Omission of s 482 (Ways of entering into a contract)**

Section 482—

*omit.*

## **23 Amendment of s 534 (Content of report about other issues of public interest)**

Section 534(1)(f) and (g)—

*omit, insert—*

- ‘(f) a copy of any resolution made during the year under section 236A, 236B or 237; and
- (g) particulars of—

- (i) the total remuneration paid by it to each of its councillors under the remuneration schedule during the year; and
- (ii) the expenses incurred by, and the facilities provided to, each of its councillors under the local government's expenses reimbursement policy during the year; and
- (iii) the total superannuation contributions paid by it for each of its councillors during the year; and'.

**24 Amendment of s 539 (Notice for contribution to joint local government)**

Section 539(2)(a), ' , and bear the common seal of the joint local government'—

*omit.*

**25 Amendment of s 1115 (Proof of proceedings of local government)**

Section 1115(b), ' , under the local government's seal, and to be'—

*omit.*

**26 Amendment of s 1116 (Evidentiary value of land record)**

Section 1116, from ' , under the local government's seal' to 'is evidence'—

*omit, insert—*

'certified by the local government's chief executive officer, is evidence'.

**27 Replacement of s 1291 (Remuneration schedule for 2008)**

Section 1291—

*omit, insert—*

[s 28]

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### **‘1291 Remuneration for 2008**

- ‘(1) A resolution made under previous section 237 and in force when this section commences ceases to have effect—
- (a) for a merging local government that goes out of existence under section 159YHA on 15 March 2008—on 15 March 2008; or
  - (b) for a local government other than a local government mentioned in paragraph (a)—at the conclusion of the 2008 quadrennial election for councillors of the local government.
- ‘(2) The remuneration schedule for councillors of a local government for 2008 applies from the conclusion of the 2008 quadrennial election for councillors of the local government.
- ‘(3) Despite section 236A(2)(a) and (b), the resolution in relation to remuneration to a councillor for a local government that applies for 2008—
- (a) must be made as soon as practicable after the conclusion of the 2008 quadrennial election for councillors of the local government (the *poll declaration day*); and
  - (b) may authorise payment of remuneration on and after the poll declaration day.
- ‘(4) In this section—
- previous section 237* means section 237 as in force from time to time before the commencement of the *Local Government Reform Implementation Act 2007*.’.

### **28 Insertion of new ch 19, pt 15**

Chapter 19—

*insert—*

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**‘Part 15**                      **Transitional provisions for  
Local Government and  
Industrial Relations  
Amendment Act 2008**

**‘1294 Effect of change of legal status on existing local  
governments and joint local governments**

- ‘(1) On the commencement of this section, a local government in existence immediately before the commencement continues in existence as a local government, but not as a corporation.
- ‘(2) The change in the local government’s constitution effected by section 34 does not, in any way, affect—
- (a) the local government’s assets or rights and liabilities; or
  - (b) any matter or thing done by or in relation to the local government.
- ‘(3) On the commencement, a joint local government in existence immediately before the commencement continues in existence as a joint local government, but not as a corporation.
- ‘(4) The change in the joint local government’s constitution effected by section 49 does not, in any way, affect—
- (a) the joint local government’s assets or rights and liabilities; or
  - (b) any matter or thing done by or in relation to the joint local government.

**‘1295 Contractual rights etc. are unaffected**

- ‘(1) Without limiting section 1294 and to remove any doubt, it is declared that the continuation of a local government as constituted under section 34—
- (a) does not place the local government in breach of contract or otherwise make it guilty of a civil wrong; and

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- (b) does not make the local government in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability; and
  - (c) is not taken to fulfil a condition—
    - (i) allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability; or
    - (ii) requiring any amount to be paid before its stated maturity; and
  - (d) does not release a surety or other obligee, in whole or part, from an obligation; and
  - (e) does not negate any decision made by the local government.
- ‘(2) Without limiting section 1294 and to remove any doubt, it is declared that the continuation of a joint local government as constituted under section 49—
- (a) does not place the joint local government in breach of contract or otherwise make it guilty of a civil wrong; and
  - (b) does not make the joint local government in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability; and
  - (c) is not taken to fulfil a condition—
    - (i) allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability; or
    - (ii) requiring any amount to be paid before its stated maturity; and
  - (d) does not release a surety or other obligee, in whole or part, from an obligation; and
  - (e) does not negate any decision made by the joint local government.



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**‘1296 Chief executive to make transitional expenses reimbursement policy**

- ‘(1) The chief executive may make a transitional expenses reimbursement policy for local governments.
- ‘(2) The transitional expenses reimbursement policy must provide for—
  - (a) payment of reasonable expenses incurred by councillors for discharging their duties and responsibilities as councillors; and
  - (b) the provision of facilities to the councillors for that purpose.
- ‘(3) For the transitional period for a local government—
  - (a) a councillor who incurs expenses in the discharge of duties or responsibilities as a councillor is entitled to the expenses provided for under the transitional expenses reimbursement policy; and
  - (b) a councillor is entitled to be provided with facilities for discharging duties or responsibilities as a councillor in accordance with the transitional expenses reimbursement policy.
- ‘(4) In this section—

*transitional period*, for a local government, means the period from the conclusion of the 2008 quadrennial election for the local government until the day it adopts an expenses reimbursement policy as provided for under section 250AS.

**‘1297 New local government may defer review of business activities and public benefit assessments**

- ‘(1) This section applies to a new local government.
- ‘(2) The new local government is not required to comply with sections 547 and 555 until 1 July 2009.
- ‘(3) In this section—  
*new local government* see section 159YD.

[s 29]

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**‘1298 Constitution of new local government from changeover day to conclusion of 2008 quadrennial election**

- ‘(1) This section applies to a new local government.
- ‘(2) Despite section 34, from 15 March 2008 until the end of the day that is the conclusion of the last 2008 quadrennial election held for any councillor for the new local government under chapter 3, part 1B, division 8, the new local government is constituted by the new local government’s chief executive officer.
- ‘(3) In this section—  
*new local government* see section 159YD.’.

**29 Amendment of sch 1 (Ethics principles for local government councillors)**

Schedule 1, section 6, ‘remuneration’—  
*omit.*

**30 Amendment of sch 2 (Dictionary)**

- (1) Schedule 2, definitions *expenses reimbursement policy* and *remuneration*—  
*omit.*
- (2) Schedule 2—  
*insert—*  
*‘expenses reimbursement policy* means a policy providing for the following—
  - (a) payment of reasonable expenses incurred, or to be incurred, by councillors of a local government for discharging their duties and responsibilities as councillors;
  - (b) provision of facilities to the councillors for that purpose.’.

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## **Part 4                      Other amendments**

### **Division 1                      Amendment of Building Units and Group Titles Act 1980**

#### **31            Act amended in div 1**

This division amends the *Building Units and Group Titles Act 1980*.

#### **32            Amendment of s 9 (Registration of plan)**

Section 9(7), ‘sealed with the common seal of the local government’—

*omit.*

### **Division 1A                      Amendment of Community Services Act 2007**

#### **32A          Act amended in div 1A**

This division amends the *Community Services Act 2007*.

#### **32B          Amendment of s 7 (Meaning of *service provider*)**

(1) Section 7(1), after ‘State,’—

*insert—*

‘or a local government’.

(2) Section 7, note—

*omit.*

[s 33]

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## **Division 2                      Amendment of Fire and Rescue Service Act 1990**

### **33        Act amended in div 2**

This division amends the *Fire and Rescue Service Act 1990*.

### **34        Amendment of s 123 (Recovery of arrears)**

Section 123(3)(c), ‘taken to be under the common seal’—

*omit, insert—*

‘as effective as it would be if signed by the mayor’.

## **Division 3                      Amendment of Integrated Resort Development Act 1987**

### **35        Act amended in div 3**

This division amends the *Integrated Resort Development Act 1987*.

### **36        Amendment of s 31 (Approval of local government)**

Section 31(4), ‘and under the seal of the local government’—

*omit, insert—*

‘of its approval on the plan of subdivision and the schedule’.

### **37        Amendment of s 32 (Registration of initial plan of subdivision)**

Section 32(1)(b), ‘under its seal’—

*omit.*

---

**38 Amendment of s 52 (Approval by local government)**

Section 52(3), ‘and under the seal of the local government’—  
*omit, insert—*  
‘of its approval on the plan of subdivision and the schedule’.

**39 Amendment of s 53 (Registration of plan of subdivision of initial lot)**

Section 53(1), ‘under its seal’—  
*omit.*

**40 Amendment of s 61 (Approval by local government)**

Section 61(4), ‘and under the seal of the local government’—  
*omit, insert—*  
‘of its approval on the building units plan or group titles plan and any schedule’.

**41 Amendment of s 62 (Registration of building units plan or group titles plan over secondary lot)**

Section 62(1), ‘under its seal’—  
*omit.*

**42 Amendment of s 79C (Approval of replacement schedule)**

Section 79C(3), ‘it under the local government’s seal’—  
*omit, insert—*  
‘its approval on the replacement schedule’.

[s 43]

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## **Division 4                      Amendment of Local Government (Robina Central Planning Agreement) Act 1992**

### **43            Act amended in div 4**

This division amends the *Local Government (Robina Central Planning Agreement) Act 1992*.

### **44            Amendment of s 4 (The planning agreement)**

Section 4—

*insert—*

- ‘(2) On and after 15 March 2008, if a local government is permitted or required under the planning agreement to seal a plan of subdivision, it is enough that the local government endorses its approval of the plan of subdivision on the plan.’

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