



Queensland

# **Local Government and Other Legislation Amendment Act 2012**

**Act No. 33 of 2012**





## Queensland

# Local Government and Other Legislation Amendment Act 2012

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## Queensland

### **Local Government and Other Legislation Amendment Act 2012**

### **Act No. 33 of 2012**

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**An Act to amend the City of Brisbane Act 2010, the Judicial Review Act 1991, the Libraries Act 1988, the Local Government Act 2009, the Local Government Electoral Act 2011, the Parliament of Queensland Act 2001, the Public Interest Disclosure Act 2010, the Public Sector Ethics Act 1994, the Public Service Act 2008, the Right to Information Act 2009 and the Transport Infrastructure Act 1994 for particular purposes**

**[Assented to 22 November 2012]**

[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 Other Legislation Amendment Act 2012*.

## **2 Commencement**

The following provisions commence on a day to be fixed by proclamation—

- sections 19, 57(3), 60, 65(2) and (3), 70, 77, 91, 106 to 108, 139(3), 142, 150, 151 and 172(1) and (3)
- section 175, to the extent it inserts new section 297
- parts 6 and 7
- schedule, amendments of the *Judicial Review Act 1991* and the *Public Interest Disclosure Act 2010*.

# **Part 2 Amendment of City of Brisbane Act 2010**

## **3 Act amended**

This part amends the *City of Brisbane Act 2010*.

*Note—*

See also the amendments in the schedule.

---

**4 Amendment of s 5 (Relationship with Local Government Act)**

Section 5(2)—

*omit, insert—*

- ‘(2) Generally, the Local Government Act does not apply to the Brisbane City Council or its councillors, employees, agents or contractors.
- ‘(3) However, particular provisions of the Local Government Act apply, or may apply, to the Brisbane City Council as a local government.

*Examples—*

- 1 The Local Government Act, chapter 7, part 2 applies to the council as a local government for the purpose of superannuation for certain persons who are connected to the council.
- 2 The Local Government Act, chapter 2A would apply to the council if the council were a component local government for a joint local government.’.

**5 Amendment of s 11 (Powers of council generally)**

Section 11—

*insert—*

- ‘(6) Subsections (7) and (8) apply if the council is a component local government for a joint local government.
- ‘(7) Despite subsection (1), the council may not, within the joint local government’s area, exercise a power for which the joint local government has jurisdiction.
- ‘(8) However, the council may exercise the power as a delegate of the joint local government.’.

**6 Amendment of s 12 (Power includes power to conduct joint government activities)**

Section 12(3)—

*insert—*

[s 7]

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‘(c) being a component local government for a joint local government.

*Note—*

For the establishment of joint local governments, see the Local Government Act, chapter 2A.’.

## **7 Amendment of s 14 (Responsibilities of councillors)**

Section 14(3)(e)—

*omit.*

## **8 Amendment of s 25 (Chairperson of the council)**

(1) Section 25(2), note, ‘185’—

*omit, insert—*

‘186A’.

(2) Section 25(4)—

*omit.*

## **9 Amendment of s 27 (What this part is about)**

(1) Section 27(3)(c), ‘is an adopted’—

*omit, insert—*

‘incorporates a’.

(2) Section 27(7), ‘adoption by all local governments.’—

*omit, insert—*

‘incorporation by all local governments into their local laws.’.

## **10 Replacement of ss 30 and 31**

Sections 30 and 31—

*omit, insert—*

---

**‘30 Local law making process**

- ‘(1) The council may decide its own process for making a local law to the extent that the process is not inconsistent with this part.
- ‘(2) The council makes a local law by passing a resolution to make the local law.
- ‘(3) If the council proposes to make a local law about a matter (the *new local law*) and there is an existing local law about the same matter that would be inconsistent with the new local law, the council must amend or repeal the existing local law so that there is no inconsistency.

*Note—*

The new local law may include the amendment or repeal of the inconsistent law in the same instrument.

- ‘(4) An interim local law must include a provision stating when the law expires.
- ‘(5) The council must ensure its local laws are drafted in compliance with the guidelines issued by the Parliamentary Counsel under the *Legislative Standards Act 1992*, section 9 for local laws and subordinate local laws.
- ‘(6) To remove any doubt, it is declared that the council does not have to carry out any public consultation before making either of the following—
  - (a) an interim local law;
  - (b) a local law that only incorporates a model local law and does not contain an anti-competitive provision.

**‘31 State interest check**

- ‘(1) This section applies if the council proposes to make a local law other than the following—
  - (a) a local law that incorporates a model local law;
  - (b) a subordinate local law.

[s 11]

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- ‘(2) However, this section also applies to a local law that incorporates a model local law if the local law includes more than—
- (a) the model local law; or
  - (b) any amendment or repeal of an existing local law that would be inconsistent with the model local law.
- ‘(3) The council must consult with relevant government entities about the overall State interest in the proposed local law before making the local law.’.

## **11 Amendment of s 32 (Notice of new local law)**

- (1) Section 32, heading—

*omit, insert—*

## **‘32 Publication of local laws’.**

- (2) Section 32(1)(a) to (c)—

*omit, insert—*

- ‘(a) in the gazette; and  
(b) on the council’s website.’.

- (3) Section 32—

*insert—*

- ‘(2A) The notice in the gazette must state—

- (a) that the notice is made by the council; and
- (b) the date when the council made the resolution to make the local law; and
- (c) the name of the local law; and
- (d) the name of any existing local law that was amended or repealed by the new local law.’.

- (4) Section 32(3), ‘notice must’—

*omit, insert—*

‘notice on the council’s website must’.

- 
- (5) Section 32(3)(e), ‘is an adopted’—  
*omit, insert—*  
‘incorporates a’.
- (6) Section 32(3)(j)(ii)—  
*omit, insert—*  
‘(ii) viewed by the public on the department’s website.’.
- (7) Section 32(6), ‘7 days’—  
*omit, insert—*  
‘14 days’.
- (8) Section 32(6)(b), after ‘law’—  
*insert—*  
‘in electronic form’.
- (9) Section 32(2A) to (6)—  
*renumber* as section 32(3) to (7).

## **12 Amendment of s 34 (Local law register)**

Section 34—

*insert—*

- ‘(3) The department’s chief executive must keep a database of the council’s local laws and ensure a copy of the database may be viewed by the public on the department’s website.’.

## **13 Amendment of s 35 (Consolidated versions of local laws)**

- (1) Section 35(1), ‘may’—  
*omit, insert—*  
‘must’.
- (2) Section 35(4), from ‘a copy’—  
*omit, insert—*

[s 14]

---

‘the Minister a copy of the consolidated version of the local law in electronic form.’.

**14 Omission of s 36 (Regular review of local laws)**

Section 36—

*omit.*

**15 Amendment of s 40 (Development processes)**

Section 40(3) to (5)—

*omit, insert—*

- ‘(3) However, if a local law already contains a provision that establishes an alternative development process, the council may amend or repeal the provision at any time.
- ‘(4) A local law has no effect to the extent that it is contrary to this section.
- ‘(5) This section does not apply to a local law about any of the following matters unless the matter is covered by the council’s planning scheme, the Planning Act or another instrument made under that Act—
- (a) advertising devices;
  - (b) gates and grids;
  - (c) levees;
  - (d) roadside dining.’.

**16 Amendment of s 42 (Suspending or revoking particular local laws)**

(1) Section 42(1)—

*omit, insert—*

- ‘(1) This section applies if the Minister reasonably believes a local law—
- (a) is contrary to any other law; or

- 
- (b) is inconsistent with the local government principles; or
  - (c) does not satisfactorily deal with the overall State interest.’.
- (2) Section 42(3)—  
*omit, insert—*
- ‘(3) The gazette notice must state—
- (a) how the local law is contrary to another law, is inconsistent with the local government principles or does not satisfactorily deal with the overall State interest; and
  - (b) if the local law has been suspended—how the local law may be amended so that it—
    - (i) is no longer contrary to the other law; or
    - (ii) is no longer inconsistent with the local government principles; or
    - (iii) satisfactorily deals with the overall State interest.’.

## 17 Insertion of new s 42B

Chapter 3, part 2, division 5—

*insert—*

### ‘42B Owners’ liability for party houses

- ‘(1) The council may make a local law that makes the owner of a residential property liable to a penalty because of excessive noise regularly emitted from the property.
- ‘(2) The *owner* of a residential property includes a tenant if the tenant has a right of exclusive occupation of the property under a lease.
- ‘(3) A *residential property* is a property of a type that would ordinarily be used, or is intended to be used, as a place of residence or mainly as a place of residence.
- ‘(4) To remove any doubt, it is declared that—

[s 18]

---

- (a) the local law may fix the number of times that excessive noise must be emitted from a property before the owner becomes liable to the penalty; and
  - (b) a property is not precluded from being a residential property merely because the property is rented on a short-term basis.
- ‘(5) In a proceeding about a contravention of the local law—
- (a) a noise abatement direction given to a person at a property is evidence of excessive noise being emitted from the property; and
  - (b) a copy of information recorded in the register of enforcement acts under the *Police Powers and Responsibilities Act 2000* about the giving of a noise abatement direction is evidence of the matters stated in it.
- ‘(6) A ***noise abatement direction*** is a direction given to a person by a police officer under the *Police Powers and Responsibilities Act 2000*, section 581(3).
- ‘(7) Despite subsection (5), a defendant may, with the leave of the court, require the prosecution to call any person involved in the giving of the noise abatement direction to give evidence at the hearing.
- ‘(8) The court may give leave only if the court is satisfied that—
- (a) an irregularity may exist in relation to the information or the giving of the noise abatement direction; or
  - (b) it is in the interests of justice that the person be called to give evidence.
- ‘(9) The chief executive officer may ask the police commissioner to give the chief executive officer information about noise abatement directions given to persons in Brisbane.
- ‘(10) The police commissioner must comply with the request.’

## 18 Replacement of s 44 (Conducting beneficial enterprises)

Section 44—

*omit, insert—*

**‘44 Conducting beneficial enterprises**

- ‘(1) The council may conduct a beneficial enterprise.
- ‘(2) To conduct the beneficial enterprise, the council—
  - (a) may participate with an association; but
  - (b) must not, either directly or by participating with an association, participate with an unlimited corporation.

*Note—*

Under the *Statutory Bodies Financial Arrangements Act 1982*, the council may need the Treasurer’s approval before entering into particular financial arrangements.

- ‘(3) An ***association*** is—
  - (a) a partnership; or
  - (b) a corporation limited by shares but not listed on a stock exchange; or
  - (c) a corporation limited by guarantee but not listed on a stock exchange; or
  - (d) another association of persons that is not a corporation.
- ‘(4) An ***unlimited corporation*** means a corporation whose members have no limit placed on their liability.
- ‘(5) The council ***participates*** with an association or unlimited corporation if the council—
  - (a) forms, or takes part in forming, an association or unlimited corporation; or
  - (b) becomes a member of an association or unlimited corporation; or
  - (c) takes part in the management of an association or unlimited corporation; or
  - (d) acquires or disposes of shares, debentures or securities of an association or unlimited corporation.’.

[s 19]

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**19 Replacement of s 45 (Register of beneficial enterprises)**

Section 45—

*omit, insert—*

**‘45 Identifying beneficial enterprises**

‘The council’s annual report for each financial year must contain a list of all the beneficial enterprises that the council conducted during the financial year.’.

**20 Omission of s 46 (Planning for a beneficial enterprise with the private sector)**

Section 46—

*omit.*

**21 Amendment of s 48 (Ways to apply the competitive neutrality principle)**

(1) Section 48(1)(b) and (c)—

*omit, insert—*

‘(b) full cost pricing of a significant business activity.’.

(2) Section 48(3)—

*omit.*

(3) Section 48(4), ‘or new corporate entity’—

*omit.*

(4) Section 48(5)(a), ‘corporatisation,’—

*omit.*

(5) Section 48(4) and (5)—

*renumber* as section 48(3) and (4).

**22 Omission of ch 3, pt 3, divs 3 and 4**

Chapter 3, part 3, divisions 3 and 4—

*omit.*

**23 Amendment of s 66 (Control of roads)**

Section 66—

*insert—*

‘(3) Nothing in subsection (1) makes the council liable for the construction, maintenance or improvement of a private road.

‘(4) A *private road* is a road over land that is owned by a person who may lawfully exclude other persons from using the road.’.

**24 Amendment of s 67 (Notice of intention to acquire land to widen a road)**

Section 67(3), ‘to the court’—

*omit, insert—*

‘to the council’.

**25 Amendment of s 69 (Appeal on a claim for compensation)**

(1) Section 69(1) and (3), ‘Planning and Environment Court’—

*omit, insert—*

‘Land Court’.

(2) Section 69(3)—

*renumber* as section 69(4).

(3) Section 69—

*insert—*

‘(3) However, the Land Court may extend the period mentioned in subsection (2) if satisfied in all the circumstances that it is reasonable to do so.’.

[s 26]

---

**26 Amendment of s 72 (Compensation if realignment not carried out)**

Section 72(1)(b), ‘the council has made structural improvements’—

*omit, insert—*

‘structural improvements have been made’.

**27 Amendment of s 75 (Closing roads)**

(1) Section 75(1), ‘traffic or particular traffic, if’—

*omit, insert—*

‘all traffic, or traffic of a particular class, if’.

(2) Section 75(2), ‘traffic—’—

*omit, insert—*

‘all traffic, or traffic of a particular class—’.

**28 Amendment of s 92 (Materials in infrastructure are council property)**

(1) Section 92(2)—

*renumber* as section 92(3).

(2) Section 92—

*insert—*

‘(2) If the council, in exercising a power of the council, constructs a structure or carries out any works on someone else’s land, the materials in the structure or works are the property of the council.’.

(3) Section 92—

*insert—*

‘(4) For subsection (1), it is irrelevant whether the thing mentioned in the subsection is on, over or under land that is owned by an entity other than the council.’.

**29 Amendment of ch 4, pt 3 hdg (Financial sustainability and accountability)**

Chapter 4, part 3, heading, ‘sustainability’—

*omit, insert—*

‘**planning**’.

**30 Amendment of s 103 (Systems of financial management)**

(1) Section 103(1)(a)(i) to (iii)—

*omit, insert—*

(i) the supply of goods or services; or

(ii) the disposal of assets; and’.

(2) Section 103(1)(b)(iv) and (vi)—

*omit.*

(3) Section 103(1)(b)(viii), from ‘function, in’—

*omit, insert—*

‘function.’.

(4) Section 103(1)(b)(v) to (viii)—

*renumber* as section 103(1)(b)(iv) to (vi).

(5) Section 103—

*insert—*

‘(4) A ***contract for the supply of goods or services*** includes a contract about carrying out work.

‘(5) To remove any doubt, it is declared that subsection (1)(a) does not require equal consideration to be given to each of the sound contracting principles.’.

**31 Amendment of s 106 (Councillor’s discretionary funds)**

Section 106(2)—

*omit, insert—*

[s 32]

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- ‘(2) **Discretionary funds** are funds in the council’s operating fund that are—
- (a) budgeted for community purposes; and
  - (b) allocated by a councillor at the councillor’s discretion.’.

### **32 Replacement of s 112 (Gathering information)**

Section 112—

*omit, insert—*

#### **‘112 Gathering information**

‘To monitor and evaluate the council’s or a councillor’s performance and compliance, the department’s chief executive may—

- (a) examine the information contained in the council’s records and operations; or
- (b) otherwise carry out an investigation of the council’s or councillor’s performance and compliance.’.

### **33 Amendment of s 127 (What this division is about)**

- (1) Section 127(2) and (4)—

*omit.*

- (2) Section 127(3)(e), ‘reasonable written notice’—

*omit, insert—*

‘a reasonable entry notice’.

- (3) Section 127(6)—

*insert—*

*Note—*

Not every employee or agent of the council would ordinarily be authorised to act under this division.’.

- (4) Section 127(3) to (8)—

*renumber* as section 127(2) to (6).

---

**34 Insertion of new s 127A**

After section 127—

*insert—*

**‘127A Notices for this division**

- ‘(1) A ***remedial notice*** is a written notice that requires the owner or occupier of a property to take action under a local government related law in relation to the property (including fencing a pool, for example).
- ‘(2) A remedial notice may only be given by the council to the person who, under a local government related law, is required to take the action stated in the notice.
- ‘(3) A ***reasonable entry notice*** is a written notice about a proposed entry of a property that—
  - (a) informs the owner or occupier of the property of—
    - (i) who is to enter the property; and
    - (ii) the reason for entering the property; and
    - (iii) the days and times when the property is to be entered; and
  - (b) is given to the owner or occupier of the property at least 7 days before the property is proposed to be entered.
- ‘(4) A remedial notice and a reasonable entry notice may not be combined unless—
  - (a) the owner of the property is also the occupier of the property; or
  - (b) the occupier of the property is the person who, under a local government related law, is required to take the action stated in the remedial notice.
- ‘(5) A notice given under this division in contravention of this section is of no effect.’.

[s 35]

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**35 Amendment of s 128 (Identity card for council workers)**

(1) Section 128, heading, ‘council workers’—

*omit, insert—*

**‘use under this division’.**

(2) Section 128(1)—

*omit, insert—*

‘(1) The council is not required to give a council worker an identity card unless the worker is exercising a power of entry under this division.’.

**36 Amendment of s 130 (Entry by an owner, with reasonable written notice, under a remedial notice)**

(1) Section 130, heading, ‘reasonable written notice’—

*omit, insert—*

**‘reasonable entry notice’.**

(2) Section 130(2)—

*omit, insert—*

‘(2) After the owner gives a reasonable entry notice to the occupier of the property, the owner or the owner’s agent may—

(a) enter the property at the times stated in the reasonable entry notice; and

(b) take the action that is required under the remedial notice.’.

(3) Section 130(4)—

*omit.*

(4) Section 130(5)—

*renumber* as section 130(4).

**37 Amendment of s 132 (Entry by a council worker, with reasonable written notice, under a remedial notice)**

- (1) Section 132, heading, ‘reasonable written notice’—  
*omit, insert—*  
**‘reasonable entry notice’.**
- (2) Section 132(1)(a) and (b)—  
*omit, insert—*
  - ‘(a) the council gives a remedial notice to the owner or the occupier of a property (the ***responsible person***); and
  - (b) the responsible person fails to take the action required under the remedial notice.’.
- (3) Section 132(2), ‘reasonable written notice to the owner and’—  
*omit, insert—*  
‘a reasonable entry notice to’.
- (4) Section 132(5) to (8)—  
*omit, insert—*
  - ‘(5) Interest is payable on the debt at the same rate that interest is payable on overdue rates levied by the council.
  - ‘(6) The council must give the person who failed to take the action written notice of the amount of the debt.
  - ‘(7) Subsection (8) applies if the person who failed to take the action is the owner of the property.
  - ‘(8) If the debt is not paid within 30 days after the date of the written notice, the council may recover the debt as if the debt were overdue rates.’.

[s 38]

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**38 Amendment of s 133 (Entry by a council worker, with reasonable written notice, to take materials)**

(1) Section 133, heading, ‘reasonable written notice’—

*omit, insert—*

‘**reasonable entry notice**’.

(2) Section 133(4), ‘reasonable written notice’—

*omit, insert—*

‘a reasonable entry notice’.

**39 Amendment of s 148 (Obstructing enforcement of this Act or local laws etc.)**

(1) Section 148(2)(e) and (f)—

*omit, insert—*

‘(e) the mayor;

(f) the chief executive officer;

(g) an authorised person.’.

(2) Section 148(3)—

*insert—*

*Notes—*

1 Council workers are only those employees and agents of the council who are authorised to act under chapter 5, part 2, division 2.

2 In particular circumstances a council worker may enter a property and carry out work or obtain materials in compliance with chapter 5, part 2, division 2.’.

**40 Amendment of s 155 (Disqualification because of other high office)**

Section 155(3)—

*omit, insert—*

‘(3) A person automatically stops being a councillor when the person becomes a government member.’.

---

**41 Insertion of new s 160A**

Chapter 6, part 2, division 2—

*insert—*

**‘160A Compulsory leave without pay**

‘A councillor must take leave without pay for the duration of the period for which the councillor is a candidate, within the meaning of the *Electoral Act 1992*, for election as a member of the Legislative Assembly.’.

**42 Omission of s 168 (Councillors and full-time government jobs)**

Section 168—

*omit.*

**43 Replacement of s 171 (Requests for help or advice)**

Section 171—

*omit, insert—*

**‘171 Requests for assistance or information**

‘(1) A councillor may ask a council employee to provide advice to assist the councillor to carry out his or her responsibilities under this Act.

‘(2) A councillor may, subject to any limits prescribed under a regulation, ask the chief executive officer to provide information that the council has access to.

*Example of a limit prescribed under a regulation—*

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

‘(3) Subsection (2) does not apply to information—

(a) that is a record of the BCC councillor conduct review panel; or

(b) if disclosure of the information to the councillor would be contrary to an order of a court or tribunal; or

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- (c) that would be privileged from production in a legal proceeding on the ground of legal professional privilege.
- ‘(4) A request of a councillor under subsection (1) or (2) is of no effect if the request—
  - (a) relates to any ward other than the ward the councillor represents; and
  - (b) does not comply with the acceptable requests guidelines.
- ‘(5) Subsection (4) does not apply to—
  - (a) the mayor; or
  - (b) the chairperson of the council if the request relates to the role of the chairperson; or
  - (c) the chairperson of a committee of the council if the request relates to the role of the chairperson.
- ‘(6) In this section a *council employee* includes a person prescribed under a regulation.
- ‘(7) The chief executive officer must make all reasonable endeavours to comply with a request under subsection (2).  
Maximum penalty for subsection (7)—10 penalty units.’.

#### **44 Amendment of s 173 (Use of information by councillors)**

Section 173—

*insert—*

- ‘(3) A councillor must not release information that the councillor knows, or ought reasonably to know, is information that is confidential to the council.

*Note—*

A contravention of this subsection is misconduct that may be dealt with by the BCC councillor conduct review panel.’.

---

## 45 Insertion of new s 173A

After section 173—

*insert—*

### **‘173A Prohibited conduct by councillor in possession of inside information**

‘(1) This section applies to a person (the *insider*) who is, or has been, a councillor if the insider—

- (a) acquired inside information as a councillor; and
- (b) knows, or ought reasonably to know, that the inside information is not generally available to the public.

‘(2) The insider must not cause the purchase or sale of an asset if knowledge of the inside information would be likely to influence a reasonable person in deciding whether or not to buy or sell the asset.

Maximum penalty—1000 penalty units or 2 years imprisonment.

‘(3) The insider must not cause the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.

Maximum penalty—1000 penalty units or 2 years imprisonment.

‘(4) In this section—

*cause*, in relation to an action, includes the following—

- (a) carry out the action;
- (b) instigate the action;
- (c) direct, or otherwise influence, another person to carry out or instigate the action.

*corporate entity* means a corporation that is owned by the council.

*inside information*, in relation to the council, means information about any of the following—

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- (a) the operations or finances of the council (including any business activity of the council) or any of its corporate entities;
- (b) a proposed policy of the council (including proposed changes to an existing policy);
- (c) a contract entered into, or proposed to be entered into, by the council or any of its corporate entities;
- (d) a tender process being conducted by or for the council or any of its corporate entities;
- (e) a decision, or proposed decision, of the council or any of its committees;
- (f) the exercise of a power, under a local government related law, by the council, a councillor or a council employee;
- (g) the exercise of a power, under an Act, by the State, a Minister, a statutory body or an employee of the State or statutory body, that affects the council, any of its corporate entities or land or infrastructure within Brisbane;
- (h) any legal or financial advice created for the council, any of its committees or any of its corporate entities.’.

**46 Amendment of s 174 (Councillor’s material personal interest at a meeting)**

(1) Section 174—

*insert—*

‘(2A) However, a councillor does not have a material personal interest in the matter if the councillor has no greater personal interest in the matter than that of other persons in Brisbane.

‘(2B) Subsection (2)(c) only applies to a councillor if the councillor knows, or ought reasonably to know, that their parent, child or sibling stands to gain a benefit or suffer a loss.’.

(2) Section 174(4), ‘subsection (3)’—

*omit, insert—*

‘subsection (5)’.

- (3) Section 174(4) and (7), ‘subsection (5)’—

*omit, insert—*

‘subsection (7)’.

- (4) Section 174(2A) to (7)—

*renumber* as section 174(3) to (9).

**47 Amendment of s 175 (Councillor’s conflict of interest at a meeting)**

- (1) Section 175(1)—

*omit, insert—*

‘(1) This section applies if—

(a) a matter is to be discussed at a meeting of the council or any of its committees; and

(b) the matter is not an ordinary business matter; and

(c) a councillor at the meeting—

(i) has a conflict of interest in the matter (the *real conflict of interest*); or

(ii) could reasonably be taken to have a conflict of interest in the matter (the *perceived conflict of interest*).’.

- (2) Section 175—

*insert—*

‘(2A) However, a councillor does not have a conflict of interest in a matter—

(a) merely because of—

(i) an engagement with a community group, sporting club or similar organisation undertaken by the councillor in his or her capacity as a councillor; or

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- (ii) membership of a political party; or
  - (iii) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or
  - (iv) the councillor's religious beliefs; or
  - (v) the councillor having been a student of a particular school or the councillor's involvement with a school as parent of a student at the school; or
- (b) if the councillor has no greater personal interest in the matter than that of other persons in Brisbane.'.
- (3) Section 175(4) to (6), 'subsection (3)'—  
*omit, insert—*  
'subsection (4)'.
- (4) Section 175(5), 'Subsection (6)'—  
*omit, insert—*  
'Subsection (7)'.
- (5) Section 175(2A) to (9)—  
*renumber* as section 175(3) to (10).

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

Section 176—

*omit.*

**49 Replacement of ss 178–180**

Sections 178 to 180—

*omit, insert—*

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**‘178 What this division is about**

- ‘(1) This division is about dealing with complaints about the conduct and performance of councillors, to ensure—
- (a) appropriate standards of conduct and performance are maintained; and
  - (b) a councillor who engages in inappropriate conduct or misconduct is appropriately disciplined.
- ‘(2) However, this division does not apply to the conduct of councillors at a meeting of the council or its committees, other than a failure of a councillor to comply with a direction to leave a meeting of the council or its committees made by the chairperson of the meeting.

*Note—*

The rules of procedure deal with the conduct of participants at meetings of the council or its committees.

- ‘(3) **Misconduct** is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor—
- (a) that adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor’s responsibilities or exercise of the councillor’s powers; or
  - (b) that is or involves—
    - (i) the performance of the councillor’s responsibilities, or the exercise of the councillor’s powers, in a way that is not honest or is not impartial; or
    - (ii) a breach of the trust placed in the councillor; or
    - (iii) a misuse of information or material acquired in or in connection with the performance of the councillor’s responsibilities, whether the misuse is for the benefit of the councillor or someone else; or
    - (iv) a refusal by the councillor to comply with a direction or order of the BCC councillor conduct review panel about the councillor; or

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- (v) a failure of the councillor to comply with a direction to leave a meeting of the council or its committees made by the chairperson of the meeting; or
- (c) that contravenes section 173(3) or 175(4).
- ‘(4) ***Inappropriate conduct*** is conduct of or by a councillor that is not appropriate conduct for a representative of the council, but is not misconduct.
- ‘(5) It is irrelevant whether the conduct that constitutes misconduct or inappropriate conduct was engaged in—
  - (a) within Queensland or elsewhere; or
  - (b) when the councillor was not exercising the responsibilities of a councillor.
- ‘(6) The ***BCC councillor conduct review panel*** is a body, created under this Act, that is responsible for hearing and deciding a complaint of misconduct or inappropriate conduct by a councillor.
- ‘(7) To remove any doubt, it is declared that a councillor may be dealt with for an act or omission that constitutes misconduct under this Act, and also be dealt with for the same act or omission—
  - (a) as the commission of an offence; or
  - (b) under the Crime and Misconduct Act.
- ‘(8) A decision under this division by any of the following persons is not subject to appeal—
  - (a) the BCC councillor conduct review panel;
  - (b) the department’s chief executive;
  - (c) the chief executive officer.

*Note—*

See section 226 for more information.

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### **‘178A Application to former councillors**

- ‘(1) This division applies to a complaint about the conduct of a person who is no longer a councillor if—
  - (a) the person was a councillor when the relevant conduct is alleged to have happened; and
  - (b) the complaint is made within 2 years after the person stopped being a councillor.
- ‘(2) However, an entity dealing with the complaint under this division may decide to take no further action in relation to the complaint, despite any contrary requirement of this division, if the entity considers the decision is in the public interest.
- ‘(3) An entity that makes a decision under subsection (2) must give the entity that made the complaint, and the accused person, a written notice that states—
  - (a) no further action will be taken in relation to the complaint; and
  - (b) the reasons for the decision.
- ‘(4) For applying this division to a complaint about a person who is no longer a councillor, a reference to a councillor is taken to be a reference to the person.

### **‘179 Preliminary assessments of complaints**

- ‘(1) This section applies if the council, or the department’s chief executive, makes or receives a complaint about the conduct or performance of a councillor.
- ‘(2) The council, or the department’s chief executive, must give written notice of the complaint to the chief executive officer.
- ‘(3) However, if the complaint was made by the chief executive officer, written notice of the complaint must be given to the department’s chief executive.
- ‘(4) After receiving notice of the complaint under subsection (2), the chief executive officer must conduct a preliminary assessment of the complaint.

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- ‘(5) After receiving notice of the complaint under subsection (3), the department’s chief executive must conduct a preliminary assessment of the complaint.
- ‘(6) A *preliminary assessment* is an assessment of a complaint about the conduct or performance of a councillor to decide whether the complaint—
  - (a) is about a frivolous matter or was made vexatiously; or
  - (b) is about inappropriate conduct, misconduct, official misconduct or another matter (including a general complaint against the council, for example); or
  - (c) is lacking in substance.
- ‘(7) This section does not apply to a complaint about official misconduct referred to the department’s chief executive by the Crime and Misconduct Commission established under the Crime and Misconduct Act.
- ‘(8) A complaint about the conduct of councillors at a meeting of the council or its committees is of no effect.

### ‘180 **Action after preliminary assessments**

- ‘(1) This section applies if the chief executive officer or the department’s chief executive (each a *complaints assessor*) conducts a preliminary assessment of a complaint about the conduct or performance of a councillor.
- ‘(2) The complaints assessor may decide no further action need be taken in relation to the complaint if the preliminary assessment is—
  - (a) that the complaint is about a frivolous matter or was made vexatiously; or
  - (b) that the complaint is lacking in substance.
- ‘(3) If the preliminary assessment is that the complaint is about misconduct or inappropriate conduct, the complaints assessor must refer the complaint to the BCC councillor conduct review panel.

- 
- ‘(4) If the preliminary assessment is that the complaint is about official misconduct under the Crime and Misconduct Act, the complaints assessor must deal with the complaint under that Act.
- ‘(5) If the preliminary assessment is that the complaint is about another matter, the complaints assessor must deal with the complaint in an appropriate way.
- ‘(6) After acting under subsection (2) to (5), the complaints assessor must give the entity that made the complaint, and the accused councillor, a written notice that states—
- (a) the type of complaint that the assessor has assessed the complaint as; and
  - (b) the action (if any) that is proposed to be taken in relation to the complaint; and
  - (c) if the complaint was about a frivolous matter, was made vexatiously or was lacking in substance—that it is an offence under subsection (7) for a person to make a complaint that is substantially the same as a complaint that the person has previously made.
- ‘(7) A person must not make a complaint about the conduct or performance of a councillor if—
- (a) the complaint is substantially the same as a complaint that the person has previously made; and
  - (b) the complaints assessor has given the person a notice that complies with subsection (6).
- Maximum penalty for subsection (7)—10 penalty units.’.

**50 Amendment of s 180A (Preliminary dealings with complaints before hearing)**

- (1) Section 180A(1) and (3), after ‘the chief executive officer’—  
*insert—*  
‘or the department’s chief executive’.
- (2) Section 180A—

[s 51]

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*insert—*

- ‘(4) Subsection (5) applies if the complainant is also a councillor.
- ‘(5) Before conducting a hearing of the complaint—
  - (a) the BCC councillor conduct review panel must require the complainant to appear before the panel to confirm the complaint; and
  - (b) the complainant must comply with the requirement made under paragraph (a).
- ‘(6) Despite section 178(3) and (4), a failure of a councillor to comply with a requirement under subsection (5)(a) is not misconduct or inappropriate conduct.’

## **51 Amendment of s 182 (Hearing and deciding complaints)**

- (1) Section 182(1)—

*omit, insert—*

- ‘(1) This section is about the hearing of a complaint of misconduct or inappropriate conduct by the BCC councillor conduct review panel.’
- (2) Section 182(2), (4) and (6), ‘or tribunal’—

*omit.*

## **52 Amendment of s 183 (Taking disciplinary action—BCC councillor conduct review panel)**

- (1) Section 183(5) and (6)—

*renumber* as section 183(7) and (8).

- (2) Section 183(1) to (4)—

*omit, insert—*

- ‘(1) This section applies if the BCC councillor conduct review panel decides, after hearing a complaint, that a councillor engaged in misconduct or inappropriate conduct.

- 
- ‘(2) The BCC councillor conduct review panel may make any 1 or more of the following orders or recommendations that it considers appropriate in view of the circumstances relating to the misconduct or inappropriate conduct—
- (a) an order that the councillor be counselled about the misconduct or inappropriate conduct, and how not to repeat the misconduct or inappropriate conduct;
  - (b) an order that the councillor make an admission of error or an apology;
  - (c) an order that the councillor participate in mediation with another person;
  - (d) a recommendation to the department’s chief executive to monitor the councillor or the council for compliance with the local government related laws;
  - (e) an order that the councillor reimburse the council;
  - (f) a recommendation to the Minister that the councillor be suspended for a stated period;
  - (g) a recommendation to the Crime and Misconduct Commission or the police commissioner that the councillor’s conduct be further investigated;
  - (h) an order that the councillor pay to the council an amount of not more than the monetary value of 50 penalty units.
- ‘(3) A recommendation mentioned in subsection (2)(f) may include a recommendation about the details of the suspension.
- ‘(4) When deciding what disciplinary action is appropriate in view of the circumstances relating to the misconduct or inappropriate conduct, the BCC councillor conduct review panel may consider—
- (a) any misconduct or inappropriate conduct of the councillor in the past; and
  - (b) any allegation made in the hearing that was admitted or was not challenged.
- ‘(5) Subsection (6) applies if—

[s 53]

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- (a) the BCC councillor conduct review panel decides, after hearing a complaint, that a councillor engaged in inappropriate conduct (the *repeat conduct*); and
  - (b) the panel has decided twice in the preceding year that the same councillor engaged in inappropriate conduct.
- ‘(6) When deciding what disciplinary action is appropriate, the BCC councillor conduct review panel must consider the repeat conduct to be misconduct.’.

### **53 Replacement of s 183A (Taking disciplinary action—tribunal)**

Section 183A—

*omit, insert—*

#### **‘183A Records about complaints**

- ‘(1) The chief executive officer must keep a record of—
  - (a) all written complaints received by the chief executive officer under this division; and
  - (b) the outcome of each written complaint, including any disciplinary action or other action that was taken in relation to the complaint.
- ‘(2) The chief executive officer must ensure that the public may inspect the part of the record that relates to outcomes of written complaints—
  - (a) at the council’s public office; or
  - (b) on the council’s website.
- ‘(3) However, subsection (2) does not apply to the record of a written complaint that—
  - (a) the chief executive officer or the department’s chief executive has assessed as being about a frivolous matter, having been made vexatiously or lacking in substance; or
  - (b) is a public interest disclosure within the meaning of the *Public Interest Disclosure Act 2010*.’.

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**54 Omission of ss 184 and 185**

Sections 184 and 185—

*omit.*

**55 Insertion of new ch 6, pt 2, div 7**

After section 186—

*insert—*

**‘Division 7 Conduct in meetings of the council**

**‘186A Conduct in meetings of the council or its committees**

- ‘(1) This section applies to the chairperson of the council or a committee chairperson in addition to any powers they may have under the council’s rules of procedure.
- ‘(2) If disorderly conduct happens in a meeting of the council or its committees, the chairperson of the meeting may make any 1 or more of the following orders that the chairperson considers appropriate in the circumstances—
  - (a) an order that the councillor’s conduct be noted in the minutes of the meeting;
  - (b) an order that the councillor leave the place where the meeting is being held (including any area set aside for the public), and stay out of the place for the rest of the meeting;
  - (c) if the councillor fails to comply with an order under paragraph (b) to leave a place—an order that the councillor be removed from the place.
- ‘(3) ***Disorderly conduct*** is conduct of a councillor that contravenes the council’s rules of procedure.
- ‘(4) The ***rules of procedure*** are, under a local law, the rules decided by council for the conduct of the participants at meetings of the council or its committees (including rules about challenging decisions of the chairperson relating to observing or enforcing the rules, for example).

[s 56]

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‘(5) A decision under this section by either of the following persons is not subject to appeal other than under the council’s rules of procedure—

- (a) the chairperson of the council;
- (b) a committee chairperson.

*Note—*

See section 226 for more information.’

**56 Amendment of s 191 (Appointing an acting chief executive officer)**

Section 191, ‘council’—

*omit, insert—*

‘Establishment and Coordination Committee’.

**57 Amendment of s 194 (Disciplinary action against council employees)**

(1) Section 194(1), ‘is the only person who’—

*omit.*

(2) Section 194(2)—

*omit, insert—*

‘(2) A regulation may prescribe—

- (a) when disciplinary action may be taken against a council employee; and
- (b) the types of disciplinary action that may be taken against a council employee.’

(3) Section 194(3)—

*omit.*

**58 Amendment of s 196 (Improper conduct by council employees)**

(1) Section 196(2)(a) to (c)—

*omit, insert—*

‘(a) a contractor of the council; and

(b) a type of person prescribed under a regulation.’

(2) Section 196(3), penalty—

*omit, insert—*

‘Maximum penalty—100 penalty units or 2 years imprisonment.’

**59 Amendment of s 197 (Use of information by council employees)**

(1) Section 197(2)(a) to (c)—

*omit, insert—*

‘(a) a contractor of the local government; and

(b) a type of person prescribed under a regulation.’

(2) Section 197(3), penalty—

*omit, insert—*

‘Maximum penalty—100 penalty units or 2 years imprisonment.’

(3) Section 197(4) and (6) to (8)—

*omit.*

(4) Section 197(9), penalty—

*omit, insert—*

‘Maximum penalty for subsection (5)—100 penalty units or 2 years imprisonment.’

(5) Section 197(5) and (9)—

*renumber* as section 197(4) and (5).

[s 60]

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**60 Replacement of s 198 (Annual report must detail remuneration)**

Section 198—

*omit, insert—*

**‘198 Annual report must detail remuneration**

- ‘(1) The annual report of the council must state—
- (a) the total of all remuneration packages that are payable (in the year to which the annual report relates) to the senior management; and
  - (b) the number of employees in senior management who are being paid each band of remuneration.
- ‘(2) The *senior management* consists of the chief executive officer and all senior executive employees.
- ‘(3) Each *band of remuneration* is an increment of \$100000.
- ‘(4) To remove any doubt, it is declared that nothing in this section requires the exact salary of any employee in senior management to be separately stated in the annual report.’.

**61 Amendment of s 215 (False or misleading information)**

Section 215(1)(g) and (h)—

*omit, insert—*

‘(g) the grants commission.’.

**62 Amendment of s 216 (Administrators who act honestly and without negligence are protected from liability)**

(1) Section 216(1) and (2)—

*omit.*

(2) Section 216(4)(g) and (h)—

*omit, insert—*

‘(g) a person acting under the direction of a person mentioned in paragraph (a), (b) or (c).’.

- 
- (3) Section 216(5)(a) and (b)—  
*omit, insert—*  
(a) a councillor; or  
(b) the chief executive officer; or’.
- (4) Section 216(6) and (7), ‘(3)’—  
*omit, insert—*  
(1)’.
- (5) Section 216(3) to (8)—  
*renumber* as section 216(1) to (6).

**63 Amendment of s 217 (Who is authorised to sign council documents)**

- Section 217—  
*insert—*
- ‘(2) The *head of the council* is—  
(a) the mayor; or  
(b) if there are no councillors for any reason—the chief executive officer.’.

**64 Amendment of s 218 (Name in proceedings by or against council)**

- (1) Section 218(2)—  
*renumber* as section 218(3).
- (2) Section 218—  
*insert—*
- ‘(2) However, the council may start a proceeding under the *Justices Act 1886* in the name of a council employee who is a public officer within the meaning of that Act.’.

[s 65]

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**65 Amendment of s 238 (Delegation of council powers)**

(1) Section 238(1)—

*insert—*

‘(f) the Establishment and Coordination Committee.’.

(2) Section 238(1)(e)—

*omit.*

(3) Section 238(1)(f)—

*renumber* as section 238(1)(e).

**66 Amendment of s 239 (Delegation of chief executive officer’s powers)**

Section 239(2)(c)—

*omit.*

**67 Replacement of s 244 (Requirements for particular guidelines)**

Section 244—

*omit, insert—*

**‘244 Acceptable requests guidelines**

‘(1) The *acceptable requests guidelines* are guidelines about—

- (a) the way in which a councillor may ask a council employee for advice to help the councillor carry out his or her responsibilities under this Act; and
- (b) when advice relates to the ward a councillor represents; and
- (c) the reasonable limits on requests that a councillor may make.

‘(2) The acceptable requests guidelines are made by the Establishment and Coordination Committee.’.

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**68 Omission of s 249 (Review of this Act)**

Section 249—

*omit.*

**69 Insertion of new s 250A**

After section 250—

*insert—*

**‘250A Advisory polls**

‘The council may, in the way decided by the council, conduct a voluntary poll of the electors in Brisbane or a part of Brisbane on any issue of concern to Brisbane or the part.’.

**70 Amendment of s 252 (Regulation-making power)**

(1) Section 252(2)(b)—

*omit.*

(2) Section 252(2)(c) to (j)—

*renumber* as section 252(2)(b) to (i).

**71 Insertion of new ch 8, pt 5**

Chapter 8—

*insert—*

**‘Part 5 Transitional provisions for  
Local Government and Other  
Legislation Amendment Act  
2012**

**‘267 Change in dealing with complaints**

‘(1) This section applies if—

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- (a) the council, or the department's chief executive, makes or receives a complaint about the conduct or performance of a councillor before the commencement; and
  - (b) an entity had started dealing with, but had not finally dealt with, the complaint under chapter 6, part 2, division 6.
- '(2) The former process continues to apply in relation to the complaint despite any amendment of this Act under the *Local Government and Other Legislation Amendment Act 2012*.
- '(3) The **former process** is chapter 6, part 2, division 6 as in force immediately before the commencement.
- '(4) To remove any doubt, it is declared that—
- (a) an entity dealing with the complaint must deal with the complaint under the former process; and
  - (b) any disciplinary action taken against a councillor because of the complaint is limited to the action that may be taken under the former process.

## **'268 Change in process for making local laws**

- '(1) This section applies if the council has begun, but not completed, its process for making a local law before the commencement.
- '(2) The council may continue the process for making the local law despite any amendment of this Act under the *Local Government and Other Legislation Amendment Act 2012*.
- '(3) Chapter 3, part 1, as in force immediately before the commencement, continues to apply for the purpose of subsection (2).'

## **72 Amendment of schedule (Dictionary)**

- (1) Schedule, definitions *advice guidelines, BCC councillors code of conduct, corporatisation, drafting certificate, drafting standards, full-time government job, head of the council,*

*reasonable written notice, remedial notice, rules of procedure and tribunal*—

*omit.*

- (2) Schedule—

*insert*—

***‘component local government*** see the Local Government Act, section 25A(4).

***joint local government*** see the Local Government Act, section 25A(2).

***joint local government area*** see the Local Government Act, section 25A(3).

***public place***, for chapter 5, part 2, division 1, see section 114(5).

***preliminary assessment*** see section 179(6).

***reasonable entry notice*** see section 127A(3).

***remedial notice*** see section 127A(1).

***rules of procedure*** see section 186A(4).’.

- (3) Schedule, definition *acceptable requests guidelines*, ‘171(5)’—

*omit, insert*—

‘244(1)’.

- (4) Schedule, definition *BCC councillor conduct review panel*, ‘178(7)’—

*omit, insert*—

‘178(6)’.

- (5) Schedule, definition *conflict of interest*, ‘175(3)’—

*omit, insert*—

‘175(2)’.

- (6) Schedule, definition *council worker*, ‘127(6)’—

*omit, insert*—



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**75 Amendment of s 7 (What this part is about)**

Section 7(c) and (d)—

*omit, insert—*

‘(c) the responsibilities and powers of a local government, its councillors and its employees.’.

**76 Amendment of s 9 (Powers of local governments generally)**

Section 9—

*insert—*

‘(6) Subsections (7) and (8) apply if a local government is a component local government for a joint local government.

‘(7) Despite subsection (1), a local government may not, within the joint local government’s area, exercise a power for which the joint local government has jurisdiction.

‘(8) However, the local government may exercise the power as a delegate of the joint local government.’.

**77 Replacement of s 11 (Who a local government is constituted by)**

Section 11—

*omit, insert—*

**‘11 Local governments are bodies corporate etc.**

‘A local government—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its name.’.

**78 Amendment of s 12 (Responsibilities of councillors)**

(1) Section 12(4)(b)—

[s 79]

---

*omit, insert—*

‘(b) preparing a budget to present to the local government;’.

(2) Section 12(4)(c)—

*omit.*

(3) Section 12(4)(e), ‘chief executive officer,’—

*omit, insert—*

‘chief executive officer and senior executive employees.’.

(4) Section 12(4)(d) to (i)—

*renumber* as section 12(4)(c) to (h).

## **79 Amendment of s 13 (Responsibilities of local government employees)**

(1) Section 13(3)(e)—

*omit.*

(2) Section 13(3)(g)—

*omit, insert—*

‘(g) complying with requests from councillors under section 170A—

(i) for advice to assist the councillor carry out his or her role as a councillor; or

(ii) for information, that the local government has access to, relating to the local government.’.

(3) Section 13(3)(f) and (g)—

*renumber* as section 13(3)(e) and (f).

## **80 Insertion of new ch 2A**

After section 25—

*insert—*

---

## ‘Chapter 2A Joint local governments

### ‘Part 1 Preliminary

#### ‘25A What this chapter is about

- ‘(1) This chapter explains what a joint local government is and its responsibilities and powers.

*Note—*

For other flexible forms of cooperation between local governments, see section 10.

- ‘(2) A **joint local government** is an entity that, within a joint local government area, takes over particular responsibilities from its component local governments.
- ‘(3) A **joint local government area** is a part of the State that consists of the whole or parts of 2 or more local government areas of component local governments.
- ‘(4) A **component local government** is a local government entitled to be represented on a joint local government, either in its own right or as a member of a group of local governments.
- ‘(5) In this chapter **local government** includes the Brisbane City Council.

### ‘Part 2 Establishment and operation of joint local governments

#### ‘25B Constitution of joint local governments

- ‘(1) Before establishing a joint local government, the proposed component local governments must reach agreement about the constitution of the joint local government.

[s 80]

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- ‘(2) The *constitution* of a joint local government is a document setting out the following—
- (a) the name of the joint local government;
  - (b) the responsibilities to be transferred to the joint local government from its component local governments;
  - (c) the boundaries of the joint local government area;
  - (d) the number of members of the joint local government to which each component local government is entitled;
  - (e) the process for appointing members;
  - (f) the proportion of the cost of the operations of the joint local government that must be contributed by each of its component local governments;
  - (g) the recovery of the cost of the operations of the joint local government;
  - (h) another matter—
    - (i) for which it is necessary or convenient to provide for the joint local government’s establishment or operation; but
    - (ii) for which this Act does not make provision or adequate provision.
- ‘(3) The boundaries of a joint local government area may not be beyond the boundaries of its component local governments.
- ‘(4) Only a councillor of a component local government may be a member of a joint local government.
- ‘(5) The members of a joint local government are not entitled to any additional remuneration or allowances for being members of the joint local government.

## ‘25C Establishment of joint local governments

- ‘(1) A joint local government is established for an area if 2 or more local governments approve, by resolution, the constitution for the joint local government.

- 
- ‘(2) Two or more joint local governments may be established for the same joint local government area, or part of a joint local government area, if the joint local governments are to have different functions.
  - ‘(3) Each component local government must ensure the public may inspect or purchase a copy of an approved constitution for the joint local government at the component local government’s public office.

**‘25D Joint local governments are bodies corporate etc.**

‘A joint local government—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its name.

**‘25E Powers of joint local governments generally**

- ‘(1) A joint local government has the same powers as a local government to do anything that is necessary or convenient for performing its responsibilities.

*Notes—*

- 1 For the powers of a local government, see sections 9 and 262.
- 2 A joint local government only has the responsibilities given to it by its component local governments under its constitution. See section 25B(2).

- ‘(2) In exercising a power under subsection (1), a joint local government has the same limitations and obligations that its component local governments would have under this or another Act in exercising the power.

*Example—*

If a component local government must comply with particular requirements before exercising a power under an Act, a joint local government must also comply with the requirements before exercising the same power.

[s 80]

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- ‘(3) For the purpose of subsections (1) and (2), a reference to a local government in this or another Act is taken to include a reference to a joint local government.
- ‘(4) A joint local government may exercise its powers in its own name.

**‘25F Restriction on power to make or levy rates and charges**

- ‘(1) A joint local government can not make or levy any rates or charges on land.
- ‘(2) A component local government of a joint local government may make or levy rates and charges on land for a matter within its jurisdiction, even though—
  - (a) the land is within the joint local government’s area; and
  - (b) the purpose for the rates or charges relates to a matter within the joint local government’s jurisdiction.

**‘25G Limitation on powers of a component local government**

- ‘(1) A component local government may not, within a joint local government area, exercise a power for which the joint local government has jurisdiction.
- ‘(2) However, the component local government may exercise the power as a delegate of the joint local government.

**‘25H Chairperson and deputy chairperson**

- ‘A joint local government must appoint a chairperson and deputy chairperson from its members, by resolution, at—
- (a) the first meeting of the joint local government; and
  - (b) at its first meeting after each quadrennial election after the meeting mentioned in paragraph (a).

---

**‘25I Disbursement from operating fund of joint local government for purposes other than exclusive jurisdiction**

- ‘(1) A joint local government may make a disbursement from its operating fund for any purpose that—
- (a) is not within the exclusive jurisdiction of the joint local government; but
  - (b) is within the jurisdiction of its component local governments.
- ‘(2) However, the disbursement may be made only if—
- (a) the joint local government has, by resolution, decided the amount of the disbursement is not required for exercising its exclusive jurisdiction; and
  - (b) the component local governments approve the purpose for which the disbursement is to be made.
- ‘(3) The approval may be given for the purpose for disbursements in more than 1 financial year.
- ‘(4) A disbursement under this section may be made—
- (a) to a component local government or another entity; or
  - (b) directly by the joint local government.

**‘25J Winding up joint local governments**

- ‘(1) A joint local government may, by resolution, decide to wind up the joint local government.
- ‘(2) If a joint local government acts under subsection (1), the joint local government must cease to carry out activities except so far as is required for winding up the joint local government.’.

**81 Amendment of s 26 (What this part is about)**

- (1) Section 26(3)(c), ‘is an adopted’—  
*omit, insert—*  
‘incorporates a’.

[s 82]

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- (2) Section 26(7), ‘adoption by all local governments.’—  
*omit, insert—*  
‘incorporation by all local governments into their local laws.’.

## **82 Replacement of ss 29 and 29A**

Sections 29 and 29A—

*omit, insert—*

### **‘29 Local law making process**

- ‘(1) A local government may decide its own process for making a local law to the extent that the process is not inconsistent with this part.
- ‘(2) A local government makes a local law by passing a resolution to make the local law.
- ‘(3) If a local government proposes to make a local law about a matter (the *new local law*) and there is an existing local law about the same matter that would be inconsistent with the new local law, the local government must amend or repeal the existing local law so that there is no inconsistency.

*Note—*

The new local law may include the amendment or repeal of the inconsistent law in the same instrument.

- ‘(4) An interim local law must include a provision stating when the law expires.
- ‘(5) A local government must ensure its local laws are drafted in compliance with the guidelines issued by the Parliamentary Counsel under the *Legislative Standards Act 1992*, section 9 for local laws and subordinate local laws.
- ‘(6) To remove any doubt, it is declared that a local government does not have to carry out any public consultation before making either of the following—
- (a) an interim local law;
  - (b) a local law that only incorporates a model local law and does not contain an anti-competitive provision.

---

**‘29A State interest check**

- ‘(1) This section applies if a local government proposes to make a local law other than the following—
- (a) a local law that incorporates a model local law;
  - (b) a subordinate local law.
- ‘(2) However, this section also applies to a local law that incorporates a model local law if the local law includes more than—
- (a) the model local law; or
  - (b) any amendment or repeal of an existing local law that would be inconsistent with the model local law.
- ‘(3) A local government must consult with relevant government entities about the overall State interest in the proposed local law before making the local law.’.

**83 Amendment of s 29B (Notice of new local law)**

- (1) Section 29B, heading—  
*omit, insert—*

**‘29B Publication of local laws’.**

- (2) Section 29B(1)(a) to (c)—  
*omit, insert—*
- ‘(a) in the gazette; and
  - (b) on the local government’s website.’.
- (3) Section 29B—  
*insert—*
- ‘(2A) The notice in the gazette must state—
- (a) the name of the local government; and
  - (b) the date when the local government made the resolution to make the local law; and
  - (c) the name of the local law; and

[s 84]

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- (d) the name of any existing local law that was amended or repealed by the new local law.’.
- (4) Section 29B(3), ‘notice must’—  
*omit, insert*—  
‘notice on the local government’s website must’.
- (5) Section 29B(3)(e), ‘is an adopted’—  
*omit, insert*—  
‘incorporates a’.
- (6) Section 29B(3)(j)(ii)—  
*omit, insert*—  
‘(ii) viewed by the public on the department’s website.’.
- (7) Section 29B(6), ‘7 days’—  
*omit, insert*—  
‘14 days’.
- (8) Section 29B(6)(b), ‘law’—  
*omit, insert*—  
‘law in electronic form’.
- (9) Section 29B(2A) to (6)—  
*renumber* as section 29B(3) to (7).

#### **84 Amendment of s 31 (Local law register)**

Section 31—

*insert*—

- ‘(3) The department’s chief executive must keep a database of all local governments’ local laws and ensure a copy of the database may be viewed by the public on its website.’.

#### **85 Omission of s 33 (Regular review of local laws)**

Section 33—

*omit.*

**86 Amendment of s 37 (Development processes)**

Section 37(3) to (5)—

*omit, insert—*

- ‘(3) However, if a local law already contains a provision that establishes an alternative development process, the council may amend or repeal the provision at any time.
- ‘(4) A local law has no effect to the extent that it is contrary to this section.
- ‘(5) This section does not apply to a local government’s local law about any of the following matters unless the matter is covered by the local government’s planning scheme, the Planning Act or another instrument made under that Act—
  - (a) advertising devices;
  - (b) gates and grids;
  - (c) levees;
  - (d) roadside dining.’.

**87 Renumbering of ch 3, pt 1, div 4 (Miscellaneous)**

Chapter 3, part 1, division 4—

*renumber* as chapter 3, part 1, division 5.

**88 Insertion of new ch 3, pt 1, div 4**

Chapter 3, part 1—

*insert—*

[s 88]

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

### **‘38AB Suspending or revoking particular local laws**

- ‘(1) This section applies if the Minister reasonably believes a local law—
- (a) is contrary to any other law; or
  - (b) is inconsistent with the local government principles; or
  - (c) does not satisfactorily deal with the overall State interest.
- ‘(2) The Minister, by gazette notice, may—
- (a) suspend the local law, for a stated period or indefinitely; or
  - (b) revoke the local law.
- ‘(3) The gazette notice must state—
- (a) how the local law is contrary to another law, is inconsistent with the local government principles or does not satisfactorily deal with the overall State interest; and
  - (b) if the local law has been suspended—how the local law may be amended so that it—
    - (i) is no longer contrary to the other law; or
    - (ii) is no longer inconsistent with the local government principles; or
    - (iii) satisfactorily deals with the overall State interest.
- ‘(4) If the Minister suspends a local law, the local law stops having effect for the period stated in the gazette notice.
- ‘(5) If the Minister revokes the local law—
- (a) the local law stops having effect on the day stated in the gazette notice; or

- 
- (b) if no day is stated in the gazette notice—the local law is taken to never have had effect.
- ‘(6) The State is not liable for any loss or expense incurred by a person because a local law is suspended or revoked under this section.
- ‘(7) A decision of the Minister under this section is not subject to appeal.

*Note—*

See section 244 for more information.’.

## **89 Insertion of new s 38B**

Chapter 3, part 1—

*insert—*

### **‘38B Owners’ liability for party houses**

- ‘(1) A local government may make a local law that makes the owner of a residential property liable to a penalty because of excessive noise regularly emitted from the property.
- ‘(2) The *owner* of a residential property includes a tenant if the tenant has a right of exclusive occupation of the property under a lease.
- ‘(3) A *residential property* is a property of a type that would ordinarily be used, or is intended to be used, as a place of residence or mainly as a place of residence.
- ‘(4) To remove any doubt, it is declared that—
- (a) the local law may fix the number of times that excessive noise must be emitted from a property before the owner becomes liable to the penalty; and
- (b) a property is not precluded from being a residential property merely because the property is rented on a short-term basis.
- ‘(5) In a proceeding about a contravention of the local law—

[s 90]

---

- (a) a noise abatement direction given to a person at a property is evidence of excessive noise being emitted from the property; and
  - (b) a copy of information recorded in the register of enforcement acts under the *Police Powers and Responsibilities Act 2000* about the giving of a noise abatement direction is evidence of the matters stated in it.
- ‘(6) A **noise abatement direction** is a direction given to a person by a police officer under the *Police Powers and Responsibilities Act 2000*, section 581(3).
- ‘(7) Despite subsection (5), a defendant may, with the leave of the court, require the prosecution to call any person involved in the giving of the noise abatement direction to give evidence at the hearing.
- ‘(8) The court may give leave only if the court is satisfied that—
- (a) an irregularity may exist in relation to the information or the giving of the noise abatement direction; or
  - (b) it is in the interests of justice that the person be called to give evidence.
- ‘(9) The chief executive officer may ask the police commissioner to give the chief executive officer information about noise abatement directions given to persons in the local government area.
- ‘(10) The police commissioner must comply with the request.’

## **90 Replacement of s 40 (Conducting beneficial enterprises)**

Section 40—

*omit, insert—*

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

- ‘(1) A local government may conduct a beneficial enterprise.
- ‘(2) To conduct the beneficial enterprise, the local government—

- 
- (a) may participate with an association, other than by being an unlimited partner of a partnership; and
  - (b) must not, either directly or by participating with an association, participate with an unlimited corporation; and
  - (c) must not enter into an agreement that does not limit the liability of the local government, as between the parties to the agreement, to the amount committed by the local government under the agreement.

*Note—*

Under the *Statutory Bodies Financial Arrangements Act 1982*, a local government may need the Treasurer's approval before entering into particular financial arrangements.

- '(3) An **association** is—
  - (a) a partnership; or
  - (b) a corporation limited by shares but not listed on a stock exchange; or
  - (c) a corporation limited by guarantee but not listed on a stock exchange; or
  - (d) another association of persons that is not a corporation.
- '(4) An **unlimited corporation** means a corporation whose members have no limit placed on their liability.
- '(5) A local government **participates** with an association or unlimited corporation if the local government—
  - (a) forms, or takes part in forming, an association or unlimited corporation; or
  - (b) becomes a member of an association or unlimited corporation; or
  - (c) takes part in the management of an association or unlimited corporation; or
  - (d) acquires or disposes of shares, debentures or securities of an association or unlimited corporation.'

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**91 Replacement of s 41 (Register of beneficial enterprises)**

Section 41—

*omit, insert—*

**‘41 Identifying beneficial enterprises**

‘A local government’s annual report for each financial year must contain a list of all the beneficial enterprises that the local government conducted during the financial year.’.

**92 Omission of s 42 (Planning for a beneficial enterprise with the private sector)**

Section 42—

*omit.*

**93 Amendment of s 44 (Ways to apply the competitive neutrality principle)**

(1) Section 44(1)(b) and (c)—

*omit, insert—*

‘(b) full cost pricing of a significant business activity.’.

(2) Section 44(3)—

*omit.*

(3) Section 44(4), ‘or new corporate entity’—

*omit.*

(4) Section 44(5)(a), ‘corporatisation,’—

*omit.*

(5) Section 44(4) and (5)—

*renumber* as section 44(3) and (4).

**94 Omission of ch 3, pt 2, divs 3 and 4**

Chapter 3, part 2, divisions 3 and 4—

*omit.*

**95 Amendment of s 60 (Control of roads)**

Section 60—

*insert—*

- ‘(3) Nothing in subsection (1) makes a local government liable for the construction, maintenance or improvement of a private road.
- ‘(4) A *private road* is a road over land that is owned by a person who may lawfully exclude other persons from using the road.’.

**96 Amendment of s 61 (Notice of intention to acquire land to widen a road)**

Section 61(3), ‘to the court’—

*omit, insert—*

‘to the local government’.

**97 Amendment of s 63 (Appeal on a claim for compensation)**

- (1) Section 63(1) and (3), ‘Planning and Environment Court’—

*omit, insert—*

‘Land Court’.

- (2) Section 63(3)—

*renumber* as section 63(4).

- (3) Section 63—

*insert—*

- ‘(3) However, the Land Court may extend the period if satisfied in all the circumstances that it is reasonable to do so.’.

[s 98]

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**98 Amendment of s 66 (Compensation if realignment not carried out)**

Section 66(1)(b), ‘the local government has made structural improvements’—

*omit, insert—*

‘structural improvements have been made’.

**99 Amendment of s 69 (Closing roads)**

(1) Section 69(1), ‘traffic or particular traffic, if’—

*omit, insert—*

‘all traffic, or traffic of a particular class, if’.

(2) Section 69(2), ‘traffic—’—

*omit, insert—*

‘all traffic or traffic of a particular class—’.

**100 Amendment of ch 3, pt 4 hdg (The business of indigenous regional councils)**

Chapter 3, part 4, heading, ‘regional councils’—

*omit, insert—*

‘local governments’.

**101 Replacement of s 81 (What this part is about)**

Section 81—

*omit, insert—*

**‘81 What this part is about**

‘This part contains provisions that relate only to the following local governments—

- (a) Aurukun Shire Council;
- (b) Mornington Shire Council;

- (c) an indigenous local government.’.

**102 Amendment of s 82 (What this division is about)**

Section 82(2)—

*omit, insert—*

- ‘(2) A **trustee council** is any of the following local governments if the local government is a trustee of trust land—
- (a) Aurukun Shire Council;
  - (b) Mornington Shire Council;
  - (c) an indigenous local government.’.

**103 Amendment of s 85 (Community forum input on trust change proposals)**

Section 85(1)(a) and (b)—

*omit, insert—*

- ‘(a) a trustee council is an indigenous regional council; and
- (b) the trustee council wants to consider a trust change proposal; and
- (c) a community forum has been established for the division of the local government where the trust land is located.’.

**104 Amendment of s 85A (Trust change decisions if no community forum)**

Section 85A(1)(a) and (b)—

*omit, insert—*

- ‘(a) a trustee council, that is an indigenous regional council, proposes to make a trust change decision; and
- (b) a community forum has not been established for the division of the local government where the trust land is located.’.

[s 105]

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**105 Amendment of ch 4, pt 3 hdg (Financial sustainability and accountability)**

Chapter 4, part 3, heading, ‘sustainability’—

*omit, insert—*

‘**planning**’.

**106 Omission of s 102 (Financial sustainability criteria)**

Section 102—

*omit.*

**106A Omission of s 103 (Financial management systems)**

Section 103—

*omit.*

**107 Replacement of s 104 (Financial management, planning and accountability documents)**

Section 104—

*omit, insert—*

**‘104 Financial management systems**

‘(1) To ensure it is financially sustainable, a local government must establish a system of financial management that—

(a) ensures regard is had to the sound contracting principles when entering into a contract for—

(i) the supply of goods or services; or

(ii) the disposal of assets; and

(b) complies with subsections (5) to (7).

‘(2) A local government is *financially sustainable* if the local government is able to maintain its financial capital and infrastructure capital over the long term.

‘(3) The *sound contracting principles* are—

- (a) value for money; and
  - (b) open and effective competition; and
  - (c) the development of competitive local business and industry; and
  - (d) environmental protection; and
  - (e) ethical behaviour and fair dealing.
- ‘(4) A ***contract for the supply of goods or services*** includes a contract about carrying out work.
- ‘(5) The system of financial management established by a local government must include—
- (a) the following financial planning documents prepared for the local government—
    - (i) a 5-year corporate plan that incorporates community engagement;
    - (ii) a long-term asset management plan;
    - (iii) a long-term financial forecast;
    - (iv) an annual budget including revenue statement;
    - (v) an annual operational plan; and
  - (b) the following financial accountability documents prepared for the local government—
    - (i) general purpose financial statements;
    - (ii) asset registers;
    - (iii) an annual report;
    - (iv) a report on the results of an annual review of the implementation of the annual operational plan; and
  - (c) the following financial policies of the local government—
    - (i) investment policy;
    - (ii) debt policy;
    - (iii) revenue policy.

[s 107A]

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- ‘(6) A local government must ensure the financial policies of the local government are regularly reviewed and updated as necessary.
- ‘(7) A local government must carry out a review of the implementation of the annual operational plan annually.
- ‘(8) To remove any doubt, it is declared that subsection (1)(a) does not require equal consideration to be given to each of the sound contracting principles.’.

**107A Amendment of s 105 (Auditing, including internal auditing)**

Section 105(5)—  
*omit.*

**108 Omission of s 106 (Sound contracting principles)**

Section 106—  
*omit.*

**109 Insertion of new s 107A**

Chapter 4, part 3—  
*insert—*

**‘107A Approval of budget**

- ‘(1) A local government must consider the budget presented by the mayor and, by resolution, adopt the budget with or without amendment.
- ‘(2) The mayor must give a copy of the budget, as proposed to be presented to the local government, to each councillor at least 2 weeks before the local government is to consider adopting the budget.
- ‘(3) The local government must adopt a budget before 1 August in the financial year to which the budget relates.’.

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**110 Amendment of s 109 (Councillor's discretionary funds)**

Section 109(2)—

*omit, insert—*

- ‘(2) **Discretionary funds** are funds in the local government's operating fund that are—
- (a) budgeted for community purposes; and
  - (b) allocated by a councillor at the councillor's discretion.’.

**111 Replacement of s 115 (Gathering information)**

Section 115—

*omit, insert—*

**‘115 Gathering information**

‘To monitor and evaluate a local government's or councillor's performance and compliance, the department's chief executive may—

- (a) examine the information contained in the local government's records and operations; or
- (b) otherwise carry out an investigation of the local government's or councillor's performance and compliance.’.

**112 Amendment of s 121 (Removing unsound decisions)**

Section 121(2)(a) to (e)—

*omit, insert—*

- ‘(a) a resolution; or
- (b) an order to give effect to a resolution; or
  - (c) a planning scheme; or
  - (d) a part of a decision mentioned in paragraphs (a) to (c).’.

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### **113 Amendment of s 138 (What this division is about)**

- (1) Section 138(2) and (4)—

*omit.*

- (2) Section 138(3)(e), ‘reasonable written notice’—

*omit, insert—*

‘a reasonable entry notice’.

- (3) Section 138(6)—

*insert—*

‘*Note—*

Not every employee or agent of the local government would ordinarily be authorised to act under this division.’.

- (4) Section 138—

*insert—*

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

- (5) Section 138(3) to (8)—

*renumber* as section 138(2) to (6).

### **114 Insertion of new s 138AA**

After section 138—

*insert—*

#### **‘138AA Notices for this division**

- ‘(1) A **remedial notice** is a written notice that requires the owner or occupier of a property to take action under a Local Government Act in relation to the property (including fencing a pool, for example).
- ‘(2) A remedial notice may only be given by a local government to the person who, under a Local Government Act, is required to take the action stated in the notice.

- 
- ‘(3) A **reasonable entry notice** is a written notice about a proposed entry of a property that—
- (a) informs the owner or occupier of the property of—
    - (i) who is to enter the property; and
    - (ii) the reason for entering the property; and
    - (iii) the days and times when the property is to be entered; and
  - (b) is given to the owner or occupier of the property at least 7 days before the property is proposed to be entered.
- ‘(4) A remedial notice and a reasonable entry notice may not be combined unless—
- (a) the owner of the property is also the occupier of the property; or
  - (b) the occupier of the property is the person who, under a Local Government Act, is required to take the action stated in the remedial notice.
- ‘(5) A notice given under this division in contravention of this section is of no effect.’.

**115 Amendment of s 138A (Identity card for local government workers)**

- (1) Section 138A, heading, ‘local government workers’—  
*omit, insert—*  
**‘use under this division’.**
  - (2) Section 138A(1)—  
*omit, insert—*
- ‘(1) A local government is not required to give a local government worker an identity card unless the worker is exercising a power of entry under this division.’.

[s 116]

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**116 Amendment of s 140 (Entry by an owner, with reasonable written notice, under a remedial notice)**

- (1) Section 140, heading, ‘reasonable written notice’—  
*omit, insert—*  
**‘reasonable entry notice’.**
- (2) Section 140(2)—  
*omit, insert—*
- ‘(2) After the owner gives a reasonable entry notice to the occupier of the property, the owner or the owner’s agent may—
  - (a) enter the property at the times stated in the reasonable entry notice; and
  - (b) take the action that is required under the remedial notice.’.
- (3) Section 140(4)—  
*omit.*
- (4) Section 140(5)—  
*renumber* as section 140(4).

**117 Amendment of s 142 (Entry by a local government worker, with reasonable written notice, under a remedial notice)**

- (1) Section 142, heading, ‘reasonable written notice’—  
*omit, insert—*  
**‘reasonable entry notice’.**
- (2) Section 142(1)(a) and (b)—  
*omit, insert—*  
‘(a) a local government gives a remedial notice to the owner or the occupier of a property (the ***responsible person***); and  
(b) the responsible person fails to take the action required under the remedial notice.’.

- 
- (3) Section 142(2), ‘reasonable written notice to the owner and’—  
*omit, insert—*  
‘a reasonable entry notice’.
- (4) Section 142(5) to (8)—  
*omit, insert—*
- ‘(5) Interest is payable on the debt at the same rate that interest is payable on overdue rates levied by the local government.
- ‘(6) The local government must give the person who failed to take the action written notice of the amount of the debt.
- ‘(7) Subsection (8) applies if the person who failed to take the action is the owner of the property.
- ‘(8) If the debt is not paid within 30 days after the date of the written notice, the local government may recover the debt as if the debt were overdue rates.’.

**118 Amendment of s 143 (Entry by a local government worker, with reasonable written notice, to take materials)**

- (1) Section 143, heading, ‘reasonable written notice’—  
*omit, insert—*  
‘**reasonable entry notice**’.
- (2) Section 143(4), ‘reasonable written notice’—  
*omit, insert—*  
‘a reasonable entry notice’.

**119 Amendment of s 149 (Obstructing enforcement of Local Government Acts etc.)**

- (1) Section 149(2)(e) and (f)—  
*omit, insert—*  
‘(e) the mayor;

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- (f) the chief executive officer;
  - (g) an authorised person.’
- (2) Section 149(3)—
- insert—*
- Notes—*
- 1 Local government workers are only those employees and agents of a local government who are authorised to act under chapter 5, part 2, division 2.
  - 2 In particular circumstances a local government worker may enter a property and carry out work or obtain materials in compliance with chapter 5, part 2, division 2.’.

## **120 Amendment of s 152 (Qualifications of councillors)**

- (1) Section 152(1), from ‘government,’ to ‘Council,’—
- omit, insert—*
- ‘government’.
- (2) Section 152(2) and (3)—
- omit.*

## **121 Amendment of s 155 (Disqualification because of other high office)**

- Section 155(3)—
- omit, insert—*
- ‘(3) A person automatically stops being a councillor when the person becomes a government member.’.

## **121A Omission of s 156A (Disqualification about residence)**

- Section 156A—
- omit.*

---

**122 Insertion of new s 160B**

Chapter 6, part 2, division 2—

*insert—*

**‘160B Compulsory leave without pay**

‘A councillor must take leave without pay for the duration of the period for which the councillor is a candidate, within the meaning of the *Electoral Act 1992*, for election as a member of the Legislative Assembly.’.

**123 Omission of s 168 (Senior councillors and full-time government jobs)**

Section 168—

*omit.*

**124 Amendment of s 170 (Giving directions to local government staff)**

(1) Section 170(1) and (2)—

*omit, insert—*

‘(1) The mayor may give a direction to the chief executive officer or senior executive employees.’.

(2) Section 170(3)—

*renumber* as section 170(2).

**125 Replacement of s 170A (Requests by councillors for advice or information)**

Section 170A—

*omit, insert—*

**‘170A Requests for assistance or information**

‘(1) A councillor may ask a local government employee provide advice to assist the councillor carry out his or her responsibilities under this Act.

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- ‘(2) A councillor may, subject to any limits prescribed under a regulation, ask the chief executive officer to provide information, that the local government has access to, relating to the local government.

*Example of a limit prescribed under a regulation—*

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

- ‘(3) Subsection (2) does not apply to information—
- (a) that is a record of the regional conduct review panel or the tribunal; or
  - (b) if disclosure of the information to the councillor would be contrary to an order of a court or tribunal; or
  - (c) that would be privileged from production in a legal proceeding on the ground of legal professional privilege.
- ‘(4) A request of a councillor under subsection (1) or (2) is of no effect if the request does not comply with the acceptable requests guidelines.
- ‘(5) Subsection (4) does not apply to—
- (a) the mayor; or
  - (b) the chairperson of a committee of the council if the request relates to the role of the chairperson.
- ‘(6) The ***acceptable requests guidelines*** are guidelines, adopted by resolution of the local government, about—
- (a) the way in which a councillor may ask a local government employee for advice to help the councillor carry out his or her responsibilities under this Act; and
  - (b) reasonable limits on requests that a councillor may make.
- ‘(7) In this section a ***local government employee*** includes a person prescribed under a regulation.
- ‘(8) The chief executive officer must make all reasonable endeavours to comply with a request under subsection (2).  
Maximum penalty for subsection (8)—10 penalty units.’.

---

## 126 Insertion of new s 171A

After section 171—

*insert—*

### **‘171A Prohibited conduct by councillor in possession of inside information**

‘(1) This section applies to a person (the *insider*) who is, or has been, a councillor if the insider—

- (a) acquired inside information as a councillor; and
- (b) knows, or ought reasonably to know, that the inside information is not generally available to the public.

‘(2) The insider must not cause the purchase or sale of an asset if knowledge of the inside information would be likely to influence a reasonable person in deciding whether or not to buy or sell the asset.

Maximum penalty—1000 penalty units or 2 years imprisonment.

‘(3) The insider must not cause the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.

Maximum penalty—1000 penalty units or 2 years imprisonment.

‘(4) In this section—

*cause*, in relation to an action, includes the following—

- (a) carry out the action;
- (b) instigate the action;
- (c) direct, or otherwise influence, another person to carry out or instigate the action.

*corporate entity* means a corporation that is owned by the local government.

*inside information*, in relation to a local government, means information about any of the following—

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- (a) the operations or finances of the local government (including any business activity of the local government) or any of its corporate entities;
- (b) a proposed policy of the local government (including proposed changes to an existing policy);
- (c) a contract entered into, or proposed to be entered into, by the local government or any of its corporate entities;
- (d) a tender process being conducted by or for the local government or any of its corporate entities;
- (e) a decision, or proposed decision, of the local government or any of its committees;
- (f) the exercise of a power, under a Local Government Act, by the local government, a councillor or a local government employee;
- (g) the exercise of a power, under an Act, by the State, a Minister, a statutory body or an employee of the State or statutory body, that affects the local government, any of its corporate entities or land or infrastructure within the local government's area;
- (h) any legal or financial advice created for the local government, any of its committees or any of its corporate entities.'.

**127 Amendment of s 172 (Councillor's material personal interest at a meeting)**

(1) Section 172—

*insert—*

- '(2A) However, a councillor does not have a material personal interest in the matter if the councillor has no greater personal interest in the matter than that of other persons in the local government area.
- '(2B) Subsection (2)(c) only applies to a councillor if the councillor knows, or ought reasonably to know, that their parent, child or sibling stands to gain a benefit or suffer a loss.'.

- (2) Section 172(4), ‘subsection (3)’—  
*omit, insert—*  
‘subsection (5)’.
- (3) Section 172(4) and (7), ‘subsection (5)’—  
*omit, insert—*  
‘subsection (7)’.
- (4) Section 172(2A) to (7)—  
*renumber* as section 172(3) to (9).

**128 Amendment of s 173 (Councillor’s conflict of interest at a meeting)**

- (1) Section 173(1)—  
*omit, insert—*
  - ‘(1) This section applies if—
    - (a) a matter is to be discussed at a meeting of a local government or any of its committees; and
    - (b) the matter is not an ordinary business matter; and
    - (c) a councillor at the meeting—
      - (i) has a conflict of interest in the matter (the *real conflict of interest*); or
      - (ii) could reasonably be taken to have a conflict of interest in the matter (the *perceived conflict of interest*).’.
- (2) Section 173—  
*insert—*
  - ‘(2A) However, a councillor does not have a conflict of interest in a matter—
    - (a) merely because of—

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- (i) an engagement with a community group, sporting club or similar organisation undertaken by the councillor in his or her capacity as a councillor; or
  - (ii) membership of a political party; or
  - (iii) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or
  - (iv) the councillor's religious beliefs; or
  - (v) the councillor having been a student of a particular school or the councillor's involvement with a school as parent of a student at the school; or
- (b) if the councillor has no greater personal interest in the matter than that of other persons in the local government area.'.
- (3) Section 173(4) to (6), 'subsection (3)'—  
*omit, insert—*  
'subsection (4)'.
- (4) Section 173(5), 'Subsection (6)'—  
*omit, insert—*  
'Subsection (7)'.
- (5) Section 173(2A) to (9)—  
*renumber* as section 173(3) to (10).

**129 Omission of s 174 (Duty to report another councillor's material personal interest, conflict of interest or misconduct)**

Section 174—  
*omit.*

**130 Amendment of s 176 (What this division is about)**

- (1) Section 176(1)(b), after 'misconduct'—

*omit, insert—*

‘or inappropriate conduct’.

(2) Section 176(2) and (3)—

*omit, insert—*

‘(2) In summary—

(a) misconduct is dealt with by the regional conduct review panel or tribunal; and

(b) inappropriate conduct is dealt with by the mayor or the department’s chief executive.

‘(3) **Misconduct** is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor—

(a) that adversely affects, or could adversely affect, (either directly or indirectly) the honest and impartial performance of the councillor’s responsibilities or exercise of the councillor’s powers; or

(b) that is or involves—

(i) the performance of the councillor’s responsibilities, or the exercise of the councillor’s powers, in a way that is not honest or is not impartial; or

(ii) a breach of the trust placed in the councillor; or

(iii) a misuse of information or material acquired in or in connection with the performance of the councillor’s responsibilities, whether the misuse is for the benefit of the councillor or someone else; or

(iv) a failure by the councillor to comply with a direction to leave a meeting of the local government or its committees by the chairperson presiding at the meeting; or

(v) a refusal by the councillor to comply with a direction or order of the regional conduct review panel or tribunal about the councillor; or

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- (c) that is a repeat of inappropriate conduct that the mayor or the department's chief executive has ordered to be referred to the regional conduct review panel under section 181(2); or
  - (d) that contravenes section 171(3) or 173(4).'
- (3) Section 176(6)—  
*omit.*
- (4) Section 176(10)—  
*insert—*  
'(g) the department's chief executive.'
- (5) Section 176(7) to (10)—  
*renumber* as section 176(6) to (9).

### **131 Insertion of new ss 176A–176C**

After section 176—

*insert—*

#### **'176A Application to former councillors**

- '(1) This division applies to a complaint about the conduct of a person who is no longer a councillor if—
  - (a) the person was a councillor when the relevant conduct is alleged to have happened; and
  - (b) the complaint is made within 2 years after the person stopped being a councillor.
- '(2) However, an entity dealing with the complaint under this division may decide to take no further action in relation to the complaint, despite any contrary requirement of this division, if the entity considers the decision is in the public interest.
- '(3) An entity that makes a decision under subsection (2) must give the entity that made the complaint, and the accused person, a written notice that states—

- 
- (a) no further action will be taken in relation to the complaint; and
  - (b) the reasons for the decision.
- ‘(4) For applying this division to a complaint about a person who is no longer a councillor, a reference to a councillor is taken to be a reference to the person.

### ‘176B Preliminary assessments of complaints

- ‘(1) This section applies if a local government, or the department’s chief executive, makes or receives a complaint about the conduct or performance of a councillor.
- ‘(2) The local government, or the department’s chief executive, must give written notice of the complaint to the chief executive officer.
- ‘(3) However, if the complaint was made by the mayor or chief executive officer, written notice of the complaint must be given to the department’s chief executive.
- ‘(4) After receiving notice of the complaint under subsection (2), the chief executive officer must conduct a preliminary assessment of the complaint.
- ‘(5) After receiving notice of the complaint under subsection (3), the department’s chief executive must conduct the preliminary assessment of the complaint.
- ‘(6) A *preliminary assessment* is an assessment of a complaint about the conduct or performance of a councillor to decide whether the complaint—
  - (a) is about a frivolous matter or was made vexatiously; or
  - (b) is about inappropriate conduct, misconduct, official misconduct or another matter (including a general complaint against the local government, for example); or
  - (c) is lacking in substance.

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- ‘(7) This section does not apply to a complaint about official misconduct referred to the department’s chief executive by the Crime and Misconduct Commission established under the Crime and Misconduct Act.

### **‘176C Action after preliminary assessments**

- ‘(1) This section applies if the chief executive officer or the department’s chief executive (each a *complaints assessor*) conducts a preliminary assessment of a complaint about the conduct or performance of a councillor.
- ‘(2) The complaints assessor may decide no further action need be taken in relation to the complaint if the preliminary assessment is—
- (a) that the complaint is about a frivolous matter or was made vexatiously; or
  - (b) that the complaint is lacking in substance.
- ‘(3) If the preliminary assessment is that the complaint is about inappropriate conduct, the complaints assessor must—
- (a) if the complaints assessor is the chief executive officer—
    - (i) for a complaint about conduct of the mayor or deputy mayor—refer the complaint to the department’s chief executive; or
    - (ii) for a complaint about conduct of a councillor (other than the mayor or deputy mayor)—refer the complaint to the mayor for the mayor to take disciplinary action under section 181; or
  - (b) if the complaints assessor is the department’s chief executive—
    - (i) for a complaint about the conduct or performance of a councillor (other than the mayor or deputy mayor) made by any person other than the mayor—refer the complaint to the mayor; or

- 
- (ii) otherwise—take disciplinary action under section 181.
- ‘(4) If the preliminary assessment is that the complaint is about misconduct, the complaints assessor must refer the complaint to—
- (a) if the complaints assessor is the chief executive officer—the department’s chief executive; or
  - (b) if the complaints assessor is the department’s chief executive—the regional conduct review panel or the tribunal.
- ‘(5) If the preliminary assessment is that the complaint is about official misconduct under the Crime and Misconduct Act, the complaints assessor must deal with the complaint in compliance with that Act.
- ‘(6) If the preliminary assessment is that the complaint is about another matter, the complaints assessor must deal with the complaint in an appropriate way.
- ‘(7) After acting under subsection (2) to (6), the complaints assessor must give the entity that made the complaint, and the accused councillor, a written notice that states—
- (a) the type of complaint that the assessor has assessed the complaint as; and
  - (b) the action (if any) that is proposed to be taken in relation to the complaint; and
  - (c) if the complaint was about a frivolous matter, was made vexatiously or was lacking in substance—that it is an offence under subsection (8) for a person to make a complaint that is substantially the same as a complaint that the person has previously made.
- ‘(8) A person must not make a complaint about the conduct or performance of a councillor if—
- (a) the complaint is substantially the same as a complaint that the person has previously made; and

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- (b) the complaints assessor has given the person a notice that complies with subsection (7).

Maximum penalty for subsection (8)—10 penalty units.’

### **132 Replacement of s 177 (Assessing complaints)**

Section 177—

*omit, insert—*

#### **‘177 Complaints referred to the department’s chief executive**

- ‘(1) This section applies if the chief executive officer refers a complaint to the department’s chief executive under section 176C.
- ‘(2) Despite the preliminary assessment of the chief executive officer, the department’s chief executive may decide that—
- (a) the complaint be dismissed if the department’s chief executive considers the complaint or part is—
- (i) frivolous, vexatious or misconceived; or
- (ii) lacking in substance; or
- (iii) otherwise an abuse of process; or
- (b) the complaint is about inappropriate conduct rather than misconduct or about misconduct rather than inappropriate conduct; or
- (c) no further action be taken in relation to the complaint; or
- (d) some other action be taken in relation to the complaint.
- ‘(3) If the department’s chief executive agrees or decides the complaint is about misconduct, the department’s chief executive may refer the complaint to the regional conduct review panel or tribunal.
- ‘(4) If the department’s chief executive agrees or decides the complaint is about inappropriate conduct, the department’s chief executive must take disciplinary action under section 181.

- 
- ‘(5) If the department’s chief executive acts under subsection (2) or (3), the department’s chief executive must give written notice of the decision to the chief executive officer, the accused councillor and the entity that made the complaint.’

**133 Amendment of s 177A (Preliminary dealings with complaints before hearing)**

Section 177A—

*insert—*

- ‘(4) Subsection (5) applies if the complainant is also a councillor.
- ‘(5) Before conducting a hearing of the complaint—
- (a) the regional conduct review panel or the tribunal must require the complainant to appear before the panel or tribunal to confirm the complaint; and
  - (b) the complainant must comply with the requirement made under paragraph (a).
- ‘(6) Despite section 176(3) and (4), a failure of a councillor to comply with a requirement under subsection (5)(a) is not misconduct or inappropriate conduct.’

**134 Amendment of s 180 (Taking disciplinary action)**

- (1) Section 180(2)—

*omit, insert—*

- ‘(2) The regional conduct review panel may make any 1 or more of the following orders or recommendations that it considers appropriate in view of the circumstances relating to the misconduct—
- (a) an order that the councillor be counselled about the misconduct, and how not to repeat the misconduct;
  - (b) an order that the councillor make an admission of error or an apology;

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- (c) an order that the councillor participate in mediation with another person;
  - (d) a recommendation to the department's chief executive to monitor the councillor or the local government for compliance with the Local Government Acts;
  - (e) an order that the councillor reimburse the local government;
  - (f) a recommendation to the Crime and Misconduct Commission or the police commissioner that the councillor's conduct be further investigated;
  - (g) an order that the councillor pay to the local government an amount of not more than the monetary value of 50 penalty units.'
- (2) Section 180(5)(i), 'Commissioner of Police'—  
*insert—*  
'police commissioner'.
- (3) Section 180(5)—  
*insert—*  
'(j) an order that the councillor pay to the local government an amount of not more than the monetary value of 50 penalty units.'
- (4) Section 180(6), example—  
*omit.*

### **135 Replacement of s 181 (Inappropriate conduct)**

Section 181—

*omit, insert—*

### **'181 Inappropriate conduct**

- '(1) Subsections (2) and (3) apply if, under section 176C(3) or 177(4), a complaint is referred to the mayor or the department's chief executive to take disciplinary action against a councillor for inappropriate conduct.

- 
- ‘(2) The mayor or department’s chief executive may make either or both of the following orders that the mayor or department’s chief executive considers appropriate in the circumstances—
- (a) an order reprimanding the councillor for the inappropriate conduct;
  - (b) an order that any repeat of the inappropriate conduct be referred to the regional conduct review panel as misconduct.
- ‘(3) If the mayor or the department’s chief executive makes 3 orders under subsection (2) about the same councillor within the 1 year, the mayor or the department’s chief executive must refer the repeated inappropriate conduct by the councillor to a regional conduct review panel or the tribunal.
- ‘(4) If the mayor or the department’s chief executive refers repeated inappropriate conduct by the councillor to a regional conduct review panel or the tribunal under subsection (3)—
- (a) the matter is taken to be a complaint about misconduct; and
  - (b) the panel or tribunal must conduct a hearing of the complaint; and
  - (c) sections 178 to 180 apply for the hearing of the complaint; and
  - (d) the repeated inappropriate conduct by the councillor is taken to be misconduct.
- ‘(5) If inappropriate conduct happens in a meeting of the local government or its committees, the chairperson of the meeting may make any 1 or more of the following orders that the chairperson considers appropriate in the circumstances—
- (a) an order that the councillor’s inappropriate conduct be noted in the minutes of the meeting;
  - (b) an order that the councillor leave the place where the meeting is being held (including any area set aside for the public), and stay out of the place for the rest of the meeting;

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- (c) if the councillor fails to comply with an order made under paragraph (b) to leave a place—an order that the councillor be removed from the place.’.

### **136 Insertion of new s 181A**

After section 181—

*insert—*

#### **‘181A Records about complaints**

- ‘(1) The chief executive officer must keep a record of—
  - (a) all written complaints received by the chief executive officer under this part; and
  - (b) the outcome of each written complaint, including any disciplinary action or other action that was taken in relation to the complaint.
- ‘(2) The chief executive officer must ensure that the public may inspect the part of the record that relates to outcomes of written complaints—
  - (a) at the local government’s public office; or
  - (b) on the local government’s website.
- ‘(3) However, subsection (2) does not apply to the record of a written complaint that—
  - (a) the chief executive officer or the department’s chief executive has assessed as being about a frivolous matter, having been made vexatiously or lacking in substance; or
  - (b) is a public interest disclosure within the meaning of the *Public Interest Disclosure Act 2010*.’.

### **137 Amendment of s 189 (Appointing members of regional conduct review panels)**

Section 189(1), ‘members for the region in which the councillor in question resides’—

*omit, insert—*

‘members’.

**138 Amendment of s 196 (Appointing other local government employees)**

Section 196(3) to (6)—

*omit, insert—*

- ‘(3) The chief executive officer appoints local government employees (other than senior executive employees).
- ‘(4) A panel constituted by the following persons appoints a senior executive employee—
- (a) the mayor;
  - (b) the chief executive officer;
  - (c) either—
    - (i) if the senior executive employee is to report to only 1 committee of the local government—the chairperson of the committee; or
    - (ii) otherwise—the deputy mayor.
- ‘(5) A *senior executive employee*, of a local government, is an employee of the local government—
- (a) who reports directly to the chief executive officer; and
  - (b) whose position ordinarily would be considered to be a senior position in the local government’s corporate structure.’.

**139 Amendment of s 197 (Disciplinary action against local government employees)**

- (1) Section 197(1), ‘is the only person who’—

*omit.*

- (2) Section 197(2)—

*omit, insert—*

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- ‘(2) A regulation may prescribe—
- (a) when disciplinary action may be taken against a local government employee; and
  - (b) the types of disciplinary action that may be taken against a local government employee.’.

(3) Section 197(3)—  
*omit.*

**140 Amendment of s 199 (Improper conduct by local government employees)**

- (1) Section 199(2)(a) to (c)—  
*omit, insert—*
- ‘(a) a contractor of the local government; and
  - (b) a type of person prescribed under a regulation.’.
- (2) Section 199(3), penalty—  
*omit, insert—*
- ‘Maximum penalty—100 penalty units or 2 years imprisonment.’.

**141 Amendment of s 200 (Use of information by local government employees)**

- (1) Section 200(2)(a) to (c)—  
*omit, insert—*
- ‘(a) a contractor of the local government; and
  - (b) a type of person prescribed under a regulation.’.
- (2) Section 200(3), penalty—  
*omit, insert—*
- ‘Maximum penalty—100 penalty units or 2 years imprisonment.’.
- (3) Section 200(4) and (6) to (8)—

*omit.*

- (4) Section 200(9), penalty—

*omit, insert—*

‘Maximum penalty—100 penalty units or 2 years imprisonment.’.

- (5) Section 200(5) and (9)—

*renumber* as section 200(4) and (5).

**142 Replacement of s 201 (Annual report must detail remuneration)**

Section 201—

*omit, insert—*

**‘201 Annual report must detail remuneration**

- ‘(1) The annual report of a local government must state—
- (a) the total of all remuneration packages that are payable (in the year to which the annual report relates) to the senior management of the local government; and
  - (b) the number of employees in senior management who are being paid each band of remuneration.
- ‘(2) The *senior management*, of a local government, consists of the chief executive officer and all senior executive employees of the local government.
- ‘(3) Each *band of remuneration* is an increment of \$100000.
- ‘(4) To remove any doubt, it is declared that nothing in this section requires the exact salary of any employee in senior management to be separately stated in the annual report.’.

**143 Omission of ch 6, pt 5, div 4 (Equality of employment opportunity)**

Chapter 6, part 5, division 4—

*omit.*

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**144 Amendment of s 202 (Appointing authorised persons)**

- (1) Section 202(3) and (4)—  
*renumber* as section 202(4) and (5).
- (2) Section 202—  
*insert*—
- ‘(3) Also, a person is qualified to be an authorised person of a local government (the *adopting local government*) if—
  - (a) the person is an authorised person for another local government; and
  - (b) the adopting local government has, by resolution, decided that authorised persons of the other local government may be appointed as authorised persons of the adopting local government.’.

**145 Amendment of s 209 (Board’s responsibilities)**

- Section 209(2) to (4)—  
*omit, insert*—
- ‘(2) The super board may delegate its powers to—
    - (a) a committee of its directors; or
    - (b) an employee of the super board.’.

**146 Amendment of s 210 (Board of directors)**

- (1) Section 210(4)—  
*omit, insert*—
- ‘(4) The board of directors consists of the persons making up the board under the trust deed containing the rules that govern the operation of the LG super scheme.’.
- (2) Section 210(6)—  
*omit*.

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**147 Amendment of s 217 (LG super scheme)**

Section 217(3)(a)—

*omit, insert—*

- ‘(a) the yearly contribution that a local government or local government entity must make for a permanent employee who is a defined benefit member, based on the advice of an actuary; and

*Note—*

See section 220(3) and (5) for the contribution a local government must make for a permanent employee who is an accumulation benefit member.’.

**148 Amendment of s 220C (Exemption from payment of yearly contributions on grounds of financial hardship)**

- (1) Section 220C(1) to (3)—

*omit, insert—*

- ‘(1) An accumulation benefit member and his or her employer may agree in writing—
- (a) that the member is exempt, on the grounds of the member’s financial hardship, from paying all or a stated part of the contributions payable under section 220A(3) by the member; and
- (b) on the period, of not more than 1 year, of the exemption.
- ‘(2) Subsection (1)(b) does not limit the number of times the employer and member may agree to an exemption under subsection (1) for the member.
- ‘(3) The employer or member must give the super board a copy of the agreement within 2 months after the agreement is made.’.
- (2) Section 220C(5)—
- omit.*

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**149 Amendment of s 227 (Super schemes to be audited by auditor-general)**

- (1) Section 227, heading, ‘by auditor-general’—  
*omit.*
- (2) Section 227(2)—  
*omit, insert—*
- ‘(2) The trust deed must provide for the audit of the superannuation scheme that is required under the Commonwealth Super Act (including the appointment of an auditor, for example)’.

**150 Amendment of s 235 (Administrators who act honestly and without negligence are protected from liability)**

- (1) Section 235(1) and (2)—  
*omit.*
- (2) Section 235(5)(a) and (b)—  
*omit, insert—*
  - ‘(a) a councillor; or
  - (b) the chief executive officer; or’.
- (3) Section 235(5)—  
*insert—*
  - ‘(e) an interim administrator.’.
- (4) Section 235(6) and (7), ‘(3)’—  
*omit, insert—*
  - ‘(1)’.
- (5) Section 235(3) to (7)—  
*renumber* as section 235(1) to (5).
- (6) Section 235—  
*insert—*

- ‘(6) A joint local government, or any member of the joint local government, is not civilly liable for an act done under this Act, or omission made under this Act, honestly and without negligence.
- ‘(7) If subsection (6) prevents civil liability attaching to a member of a joint local government, liability attaches instead to the local government for which the member is a councillor.’.

**151 Amendment of s 236 (Who is authorised to sign local government documents)**

Section 236—

*insert—*

- ‘(2) The *head of the local government* is—
- (a) the mayor; or
  - (b) if all of the councillors have been dismissed under section 123 and an interim administrator is appointed—the interim administrator; or
  - (c) if there are no councillors for any other reason and an interim administrator has not been appointed—the chief executive officer.’.

**152 Insertion of new s 236A**

After section 236—

*insert—*

**‘236A Who is authorised to sign joint local government documents**

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

- (a) the chairperson of the joint local government;
- (b) a delegate of the joint local government;
- (c) a member of the joint local government, or a joint local government employee, who is authorised by the

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chairperson of the joint local government, in writing, to sign documents.’.

**153 Amendment of s 237 (Name in proceedings by or against a local government)**

(1) Section 237(2)—

*renumber* as section 237(3).

(2) Section 237—

*insert*—

‘(2) However, a local government may start a proceeding under the *Justices Act 1886* in the name of a local government employee who is a public officer within the meaning of that Act.’.

**154 Insertion of new s 237A**

After section 237—

*insert*—

**‘237A Name in proceedings by or against a joint local government**

‘(1) A proceeding by a joint local government must be started in the name of the joint local government.

‘(2) However, a joint local government may start a proceeding under the *Justices Act 1886* in the name of a joint local government employee who is a public officer within the meaning of that Act.

‘(3) A proceeding against a joint local government must be started against the joint local government in its name.’.

**155 Amendment of s 239 (Substituted service)**

Section 239—

*insert*—

‘(5) In this section, a reference to a local government includes a reference to a joint local government.’.

**156 Amendment of s 240 (Acting for a local government in legal proceedings)**

Section 240—

*insert—*

- ‘(4) In any proceedings, the chairperson of a joint local government, or another employee authorised in writing by the joint local government—
- (a) may give instructions and act as the authorised agent for the joint local government; and
  - (b) may sign all documents for the joint local government.
- ‘(5) A joint local government must pay the costs incurred by the chairperson or other employee in any proceedings.’.

**157 Amendment of s 245 (Judges and other office holders not disqualified from adjudicating)**

Section 245—

*insert—*

- ‘(2) A judge, magistrate, justice or presiding member of a tribunal is not disqualified from adjudicating in any proceedings to which a joint local government is a party only because the person is, or is liable to be, a ratepayer of a component local government for the joint local government.’.

**158 Amendment of s 246 (Where fines are to be paid to)**

Section 246—

*insert—*

- ‘(3) In this section, a reference to a local government includes a reference to a joint local government.’.

**159 Amendment of s 248 (Evidence of local laws)**

- (1) Section 248(2)—

*omit, insert—*

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- ‘(2) A *certified copy* of a local law or consolidated version of a local law is a copy that has been certified by—
- (a) for a local law made by a local government—the chief executive officer to be the local law or consolidated version as made by the local government; or
  - (b) for a local law made by a joint local government—the chairperson of the joint local government to be the local law or consolidated version as made by the joint local government.’.
- (2) Section 248(4), after ‘a local government’—  
*insert*—  
‘or joint local government’.

**160 Amendment of s 249 (Evidence of proceedings of local government)**

- (1) Section 249, heading, ‘of local government’—  
*omit*.
- (2) Section 249(2)—  
*renumber* as section 249(3).
- (3) Section 249—  
*insert*—
- ‘(2) Also, this section applies to a document that—
- (a) purports to be a copy of an entry in a record of the proceedings of a joint local government; and
  - (b) purports to have been signed at the time when the entry was made by the chairperson of the joint local government; and
  - (c) is certified by the chairperson to be a true copy of the document.’.

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**161 Amendment of s 250 (Evidentiary value of copies)**

- (1) Section 250(2)—  
*renumber* as section 250(3).
- (2) Section 250—  
*insert*—
- ‘(2) Also, this section applies to a copy of a document that—
  - (a) purports to be made under the authority of a joint local government or its chairperson; and
  - (b) purports to be verified by the chairperson or an employee who is authorised by the joint local government.’.

**162 Amendment of s 251 (Evidentiary value of certificates)**

- (1) Section 251(2)—  
*renumber* as section 251(3).
- (2) Section 251—  
*insert*—
- ‘(2) Also, this section applies to a certificate that—
  - (a) purports to be about the state of, or a fact in, a record of a joint local government; and
  - (b) purports to be signed by the chairperson of the joint local government.’.

**163 Amendment of s 252 (Evidence of directions given to local government)**

- (1) Section 252, heading, after ‘local government’—  
*insert*—  
‘**or joint local government**’.
- (2) Section 252(1)(a), after ‘a local government’—  
*insert*—

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‘or a joint local government’.

**164 Amendment of s 257 (Delegation of local government powers)**

(1) Section 257(1)(f)—

*omit.*

(2) Section 257—

*insert—*

‘(4) A delegation to the chief executive officer under subsection (1) must be reviewed annually by the local government.’.

**165 Insertion of new s 257A**

After section 257—

*insert—*

**‘257A Delegation of joint local government’s powers**

‘(1) A joint local government may, by resolution, delegate its powers about a component local government’s area to the component local government.

‘(2) Also, a joint local government may, by resolution, delegate its powers under this Act or another Act to—

(a) the chairperson of the joint local government; or

(b) a mayor of its component local governments; or

(c) the chief executive officer of the joint local government or its component local governments; or

(d) a committee of members of the joint local government or of councillors of its component local governments; or

(e) the chairperson of a committee mentioned in paragraph (d).

‘(3) Despite subsections (1) and (2), a joint local government must not delegate a power that an Act states must be exercised by resolution.’.

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**166 Amendment of s 258 (Delegation of mayor's powers)**

Section 258(2), after 'officer'—

*insert—*

'or senior executive employees'.

**167 Amendment of s 259 (Delegation of chief executive officer powers)**

Section 259(2)(c)—

*omit.*

**168 Insertion of new ch 7, pt 5A**

Chapter 7—

*insert—*

**'Part 5A Provisions about de-amalgamation**

**'260A What this part is about**

- '(1) This part is about a de-amalgamation of a local government area.
- '(2) A *de-amalgamation* of a local government area is the separation of the area into different local government areas, each to be governed by its own local government.

**'260B Poll about de-amalgamation**

- '(1) The Minister may ask the electoral commission to conduct a poll about the implementation of a de-amalgamation of a local government area.
- '(2) The Minister may request a poll under subsection (1) only within 1 year after the commencement of this section.

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- ‘(3) If the Minister requests a poll under subsection (1), the electoral commission must conduct the poll of the electors in the affected part of a local government area.
- ‘(4) The *affected part of the local government area* is that part of the area that is proposed to be separated from the rest of the local government area and governed by its own local government.
- ‘(5) The poll must be conducted by ballot taken in compliance with the requirements prescribed under a regulation.
- ‘(6) Voting at the poll is compulsory for electors in the affected part of the local government area.
- ‘(7) As soon as practicable after the conclusion of the poll, the electoral commission must advise the Minister of the result.
- ‘(8) If the result of the poll is a majority for de-amalgamation, the costs of the poll are to be paid by the affected part of the local government area.
- ‘(9) If the result of the poll is a majority against de-amalgamation, the costs of the poll are to be paid by the local government for the area.

### ‘260C Failure to vote

- ‘(1) An elector must not fail to vote at the poll without valid and sufficient reason.  
Maximum penalty—1 penalty unit.
- ‘(2) An elector’s belief that it is part of the elector’s religious duty not to vote at elections is valid and sufficient reason for the elector’s failure to vote at the poll.

### ‘260D Leave to vote

- ‘(1) This section applies if—
  - (a) an employee who is an elector asks his or her employer, before the day for conducting the poll, for leave of absence to vote at the poll; and

- 
- (b) the absence is necessary to enable the employee to vote at the poll.
- ‘(2) The employer must allow the employee leave of absence for a reasonable period (not more than 2 hours) to enable the employee to vote at the poll, unless the absence is reasonably likely to cause danger or substantial loss to the employer in relation to the employment concerned.
- Maximum penalty—10 penalty units.
- ‘(3) The employer must not impose any penalty or disproportionate deduction of pay for the leave of absence.
- Maximum penalty—10 penalty units.
- ‘(4) An employee must not ask for leave of absence under subsection (1) to vote at the poll unless the employee genuinely intends to vote at the poll.
- Maximum penalty—10 penalty units.

### **‘260E Voting if not entitled**

A person must not, at the poll—

- (a) vote in someone else’s name (including a dead or fictitious person); or
- (b) vote more than once; or
- (c) cast a vote that the person knows the person is not entitled to cast; or
- (d) if the person knows someone else is not entitled to vote at the election—procure the other person to vote.

Maximum penalty—20 penalty units or 6 months imprisonment.

### **‘260F Implementation**

- ‘(1) The Governor in Council may implement the de-amalgamation of the local government area under a regulation.

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- ‘(2) The regulation may provide for anything that is necessary or convenient to facilitate the implementation of the de-amalgamation of the local government area.
- ‘(3) For example, the regulation may provide for—
  - (a) holding, postponing or cancelling a local government election; or
  - (b) the transfer of assets and liabilities from a local government to another local government; or
  - (c) the recovery of the costs of the de-amalgamation of the local government area; or
  - (d) the temporary continuation of a local law for the affected part of a local government area.
- ‘(4) A local government is not liable to pay a State tax in relation to a transfer or other arrangement made to implement a de-amalgamation.
- ‘(5) A *State tax* is a tax, charge, fee or levy imposed under an Act, other than a duty under the *Duties Act 2001*.’.

**169 Amendment of s 265 (Materials in infrastructure are local government property)**

- (1) Section 265(2)—  
*renumber* as section 265(3).
- (2) Section 265—  
*insert*—
- ‘(2) If a local government, in exercising a power of the local government, constructs a structure or carries out any works on someone else’s land, the materials in the structure or works are the property of the local government.’.
- (3) Section 265—  
*insert*—

- ‘(4) For subsection (1), it is irrelevant whether the thing mentioned in the subsection is on, over or under land that is owned by an entity other than the local government.’.

## **170 Omission of s 267 (Review of this Act)**

Section 267—

*omit.*

## **171 Insertion of new s 268A**

After section 268—

*insert—*

### **‘268A Advisory polls**

‘A local government may, in the way decided by the local government, conduct a voluntary poll of the electors in its area or a part of its area on any issue of concern to the area or part.’.

## **172 Amendment of s 270 (Regulation-making power)**

- (1) Section 270(2)(b)—

*omit.*

- (2) Section 270(2)—

*insert—*

‘(j) the financial planning and accountability of a local government, including the systems of financial management; or

‘(k) matters relating to a joint local government (including transferring assets and liabilities between a joint local government and a component local government).’.

- (3) Section 270(2)(c) to (k)—

*renumber* as section 270(2)(b) to (j).

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**173 Amendment of s 272 (Local governments, including joint local governments)**

Section 272—

*insert—*

- ‘(6) Despite subsection (2), a joint local government mentioned in the subsection (a *continued entity*) may discontinue its existence.
- ‘(7) Any action taken by a continued entity in relation to discontinuing its existence before the authorisation had effect is, and is taken to always have been, as validly done as it would be if the authorisation had been in force when the action was taken (for example, the disposal of all assets).
- ‘(8) The *authorisation* is the power a joint local government may exercise under subsection (6).’.

**174 Amendment of s 275 (Local government owned corporation)**

Section 275—

*insert—*

- ‘(2) Subsection (1) does not stop the corporate entity from being wound up.’.

**175 Insertion of new ch 9, pt 4**

Chapter 9—

*insert—*

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**‘Part 4**                      **Transitional provisions for  
Local Government and Other  
Legislation Amendment Act  
2012**

**‘Division 1**                **Transitional provisions about  
change of legal status**

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

- ‘(1) On the commencement, a local government in existence immediately before the commencement continues in existence as a local government, but as a body corporate.
- ‘(2) The change in the local government’s constitution effected by section 11 as in force after the commencement 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 as a body corporate.
- ‘(4) The change in the joint local government’s constitution effected by section 11 as in force after the commencement 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.

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## **‘296 Contractual rights etc. are unaffected**

‘Without limiting section 295 and to remove any doubt, it is declared that the continuation of a local government under that section—

- (a) does not place the local government in breach of contract or otherwise make it guilty of a civil wrong; and
- (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.

## **‘Division 2 Other transitional provisions**

### **‘297 Continuation of particular provisions for corporate entities**

- ‘(1) A *corporate entity* is an entity that was corporatised under this Act before the commencement and to which the Corporations Act does not apply.
- ‘(2) A provision of this Act, as in force immediately before the commencement, that applied in relation to a corporate entity, continues to apply in relation to the corporate entity—

- 
- (a) as if the provision were not amended or repealed under the *Local Government and Other Legislation Amendment Act 2012*; and
- (b) despite any amendment or repeal of the provision under the *Local Government and Other Legislation Amendment Act 2012*.

*Examples—*

- chapter 3, part 2, divisions 3 and 4
  - sections 199, 200 and 257
- ‘(3) A provision of the relevant regulations, as in force immediately before the commencement, that applied in relation to a corporate entity, continues to apply in relation to the corporate entity—
- (a) as it was in force immediately before the commencement; and
- (b) despite any amendment or repeal of the provision after the commencement.
- ‘(4) The *relevant regulations* are—
- (a) the *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010*; and
- (b) the *Local Government (Finance, Plans and Reporting) Regulation 2010*; and
- (c) the *Local Government (Operations) Regulation 2010*.
- ‘(5) A provision continued under subsection (2) or (3) continues in relation to a corporate entity until the corporate entity is wound up or otherwise ceases to be corporatised under this Act.

## ‘298 Change in dealing with complaints

- ‘(1) This section applies if—
- (a) a local government, or the department’s chief executive, makes or receives a complaint about the conduct or

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performance of a councillor before the commencement;  
and

- (b) an entity had started dealing with, but had not finally dealt with, the complaint under chapter 6, part 2, division 6.
- ‘(2) The former process continues to apply in relation to the complaint despite any amendment of this Act under the *Local Government and Other Legislation Amendment Act 2012*.
- ‘(3) The **former process** is chapter 6, part 2, division 6 as in force immediately before the commencement.
- ‘(4) To remove any doubt, it is declared that—
- (a) an entity dealing with the complaint must deal with the complaint under the former process; and
  - (b) any disciplinary action taken against a councillor because of the complaint is limited to the action that may be taken under the former process.

#### **‘299 Change in process for making local laws**

- ‘(1) This section applies if a local government has begun, but not completed, its process for making a local law before the commencement.
- ‘(2) The local government may continue the process for making the local law despite any amendment of this Act under the *Local Government and Other Legislation Amendment Act 2012*.
- ‘(3) Chapter 3, part 1, as in force immediately before the commencement, continues to apply for the purpose of subsection (2).’.

#### **176 Amendment of sch 4 (Dictionary)**

- (1) Schedule 4, definitions *advice guidelines, conclusion, corporate entity, corporatisation, drafting certificate, drafting standards, financial management documents, head of a local government, indigenous regional council, long-term asset*

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*management plan, long-term community plan, long-term financial plan, planning and accountability documents, public place and remedial notice—*

*omit.*

- (2) Schedule 4, definition *conviction*, first mention—

*omit.*

- (3) Schedule 4—

*insert—*

***‘component local government*** see section 25A(4).

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

- (a) for an election of all the councillors—the day when the last declaration of a poll conducted in the election is displayed at the office of the returning officer for the election; or
- (b) for a by-election for which a poll is conducted—the day when the declaration of the poll is displayed at the office of the returning officer for the election; or
- (c) for a by-election for which no poll is conducted—the day after the nomination day for the by-election; or
- (d) if the councillor is automatically elected (other than at a by-election) and a poll is conducted—the day when the last declaration of a poll is displayed at the office of the returning officer for the election; or
- (e) if the councillor is automatically elected (other than at a by-election) and no poll is conducted—6p.m. on the day when a poll would otherwise have been required to be conducted.

***indigenous regional council*** means—

- (a) the Northern Peninsula Area Regional Council; or
- (b) the Torres Strait Island Regional Council; or
- (c) an indigenous regional council prescribed under a regulation.

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***interim administrator*** means a person appointed by the Governor in Council under section 123 to act in place of the councillors of a local government.

***joint local government*** see section 25A(2).

***joint local government area*** see section 25A(3).

***preliminary assessment*** see section 176B(6).

***public place***, for chapter 5, part 2, division 1, see section 125(5).

***reasonable entry notice*** see section 138AA(3).

***remedial notice*** see section 138AA(1).

***senior executive employee***, of a local government, see section 196(5).’.

- (4) Schedule, definition *full cost pricing*, ‘44(4)’—  
*omit, insert—*  
‘44(3)’.
- (5) Schedule, definition *local government worker*, ‘138(6)’—  
*omit, insert—*  
‘138(4)’.
- (6) Schedule, definition *ordinary business matter*, paragraph (e)—  
*omit, insert—*  
‘(e) a planning scheme, or amendment of a planning scheme, for the local government area; or’.
- (7) Schedule, definition *ordinary business matter*, paragraph (f), ‘council’—  
*omit, insert—*  
‘local government’.
- (8) Schedule, definition *regional conduct review panel*, ‘176(7)’—  
*omit, insert—*



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‘(2) The display of a copy of the nomination must continue until the conclusion of the election.’.

**181 Amendment of s 34 (Procedure if number of candidates not more than number required)**

Section 34(2) to (4)—

*omit, insert—*

- ‘(2) If—
- (a) no-one is nominated as a candidate in an election; or
  - (b) the number of candidates nominated is less than the number required to be elected;
- the proceedings for the election must start again.
- ‘(3) However, if proceedings for the election have previously started again under subsection (2), the Governor in Council may, by gazette notice, appoint as councillors of the local government, the number of persons necessary to constitute fully the local government.
- ‘(4) Each person appointed under subsection (3) must be qualified to be elected as a councillor of the local government for the local government area, or division of the local government area, for which the election was to be held.
- ‘(5) Persons appointed under subsection (4) are taken to have been properly elected as councillors of the local government for which they are appointed.
- ‘(6) If proceedings for an election are started again under subsection (2)—
- (a) the deposits of the candidates must be refunded to the persons who paid the deposits; and
  - (b) the electoral commission must, by gazette notice, fix a new polling day for the election.’.

**182 Amendment of s 36 (Procedure on death of candidate when poll to be conducted)**

- (1) Section 36(2) to (4)—  
*renumber* as section 36(3) to (5).
- (2) Section 36—  
*omit, insert—*
- ‘(2) Also, the Minister may, by gazette notice, direct that—
  - (a) if subsection (1)(a) applies—all proceedings for the election of councillors of the local government start again; or
  - (b) if subsection (1)(b) applies—proceedings for holding an election of the mayor of the local government start again; or
  - (c) if subsection (1)(c) applies—
    - (i) proceedings for holding an election of the mayor of the local government start again; and
    - (ii) proceedings for the election of councillors for the other divisions of the local government start again.’.

**Part 5 Amendment of Parliament of Queensland Act 2001**

**183 Act amended**

This part amends the *Parliament of Queensland Act 2001*.

**184 Amendment of s 68 (Effect of election on particular candidates)**

Section 68(1), notes, item 2—





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## **Part 9**                      **Minor and consequential amendments**

### **192 Acts amended**

The schedule amends the Acts it mentions.

## **Schedule                      Acts amended**

section 192

### **City of Brisbane Act 2010**

- 1            Section 150, examples, ‘180(12)’—**  
*omit, insert—*  
‘183A(2)’.

### **Judicial Review Act 1991**

- 1            Section 18B—**  
*omit.*

### **Libraries Act 1988**

- 1            Section 55(3), ‘City of Brisbane Act 1924’—**  
*omit, insert—*  
‘City of Brisbane Act 2010’.

### **Local Government Act 2009**

- 1            Section 150A, example, ‘177(12)(a)’—**  
*omit, insert—*  
‘181A(2)(a)’.

**2 Section 153(5), ‘172, 174(3)’—**

*omit, insert—*

‘172’.

**3 Section 255, before ‘121’—**

*insert—*

‘38AB,’.

## **Public Interest Disclosure Act 2010**

**1 Section 18—**

*omit.*

**2 Section 26, definition *public sector entity*—**

*omit, insert—*

‘*public sector entity* includes a GOC.’.

**3 Section 43(3), definition *public sector entity*—**

*omit, insert—*

‘*public sector entity* includes a GOC.’.

**4 Section 46(4), definition *public officer*—**

*omit, insert—*

‘*public officer* includes an employee of a GOC.’.

**5 Section 57, definition *public sector entity*, paragraph (a)—**

*omit, insert—*

‘(a) includes a GOC; and’.

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**6 Section 64(2)(a), ‘government, corporate entity’—**

*omit, insert—*

‘government’.

**7 Section 66(3), definition *proper authority*—**

*omit, insert—*

*‘proper authority* includes a GOC.’.

**8 Section 71(4), definition *public sector entity*—**

*omit, insert—*

*‘public sector entity* includes a GOC.’.

**9 Schedule 4, definition *corporate entity*—**

*omit.*

## Transport Infrastructure Act 1994

**1 Section 89(2), ‘*City of Brisbane Act 1924*’—**

*omit, insert—*

*‘City of Brisbane Act 2010’.*

**2 Section 105K(b) and (c)—**

*omit, insert—*

(b) the *Local Government (Finance, Plans and Reporting) Regulation 2010*, section 176;

(c) the *City of Brisbane (Finance, Plans and Reporting) Regulation 2010*, section 171.’.

**3 Section 105ZA(1), ‘City of Brisbane Act 1924’—**  
*omit, insert—*  
*‘City of Brisbane Act 2010’.*

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