

Local Government Legislation Amendment Bill 2005

Explanatory Notes

GENERAL OUTLINE

Objectives of the Bill

The objectives of the Bill are to:

- insert in the *Local Government Act 1993* (LGA) a framework for councillor codes of conduct and their enforcement;
- insert in the LGA provisions requiring councils to establish a general complaints process;
- amend the LGA to allow councillors to salary sacrifice for superannuation purposes; and
- make miscellaneous amendments to the LGA, the *City of Brisbane Act 1924* (CoBA), and the *Local Government (Community Government Areas) Act 2004* (LGCGAA).

Reasons for the Bill

Councillor codes of conduct

Currently there is no legislative requirement for Queensland local governments to adopt a code of conduct for their councillors. A number of reports from State inquiries about the conduct of public officials have recommended codes of conduct for elected officials at both the State and local levels. The approach taken in relation to local government has been to wait until a code was in place for Members of Parliament (MPs). In September 2001 conduct requirements for MPs were consolidated in the *Code of Ethical Standards*, updated in 2003.

The Department of Local Government, Planning, Sport and Recreation (DLGPSR) reviewed whether legislation should be developed to require local governments to adopt a code of conduct for councillors and how such a requirement might best be incorporated into the local government framework. A Discussion Paper was released in October 2003 and responses supported the development of a code of conduct framework.

Consistency with elements of the *Code of Ethical Standards* for MPs was a key factor in developing the framework for councillors.

A consultation kit comprising a draft Bill and booklet was released for public comment in January 2005. Submissions in response to this kit gave continued support for an enforceable framework for councillor codes of conduct.

General complaints process

The LGA does not currently require local governments to establish a general complaints process, although DLGPSR and the Ombudsman have, in recent years, encouraged councils to adopt such a process. The last review of the Ombudsman's office recommended State agencies and local governments be required to have a general complaint process. In addition, the proposed code of conduct framework requires minor breaches be dealt with using a general complaints process. This necessitated a statutory requirement for a general complaints process, however this proposal was not developed at the time the codes of conduct discussion paper was released for public comment.

The consultation kit for codes of conduct included the draft legislative proposals for the complaints process.

Salary sacrificing for councillors

The LGA will be amended to allow councillors to salary sacrifice for superannuation purposes. This is consistent with provisions for Commonwealth MPs and proposed provisions for Queensland MPs.

Miscellaneous amendments

The LGA will be amended to allow local government employees to opt out of mandatory superannuation contributions in order to avoid exceeding the Commonwealth's reasonable benefits limit. The LGCGAA will be amended to allow Aboriginal councils to operate commercial activities without complying with the enterprise provisions of the LGA except where they have a joint venture with the private sector. The Bill also includes some minor technical amendments.

Administrative Cost to Government

There are no financial implications for the State as a result of establishing a code. The extension of the roles of the Crime and Misconduct Commission

and Ombudsman in referring breaches of the code, or the Ombudsman regarding investigations about enforcement of the code by councils, will be met within existing resources. Any funding requirements for implementation and administration will be met by local governments and DLGPSR.

Consistency with Fundamental Legislative Principles

The Bill does not infringe any Fundamental Legislative Principles. In relation to new sections 250ZH and 250ZI of the LGA, as provided for by clause 16 of the Bill, consideration has been given to the question of whether indemnity for panel members and persons giving information to a conduct review panel might infringe the Fundamental Legislative Principle that no-one is immune from prosecution. The immunity only applies if the person acts honestly and without negligence. In addition, new section 250ZH shifts liability to the local government if liability is prevented from attaching to the conduct review panel member. Therefore, the provisions are considered reasonable with adequate justification.

Consultation

In relation to codes of conduct and the general complaints process, a consultation kit comprising a draft Bill and booklet titled *Local Government Act 1993: Draft Legislative Proposals: A Regulatory Framework for Councillor Codes of Conduct* was released for public comment in January 2005, with 4 March 2005 as the closing date for submissions. Copies of the consultation kit were forwarded to all State MPs, councils and councillors, in addition to people who asked for a copy. Responses were received from 33 councils, 8 individual councillors, the Local Government Association of Queensland (LGAQ), Local Government Managers Australia and 11 community organisations and individuals.

Drafts of the salary sacrificing and other miscellaneous amendments were forwarded to the LGAQ, the Urban Local Government Association, LGSuper and Brisbane City Council.

Consultations on the draft Bill have also been held with representatives of the key stakeholders in Government including the Department of the Premier and Cabinet, Queensland Treasury, Government Superannuation Office, the Crime and Misconduct Commission (CMC), the Queensland Ombudsman, the Office of the Public Service Commissioner, the Department of Justice and Attorney-General, and the Department of Aboriginal and Torres Strait Islander Policy.

Notes on the Provisions

This section provides explanatory notes on each clause of the Bill. The index to the Bill contains numbers down the left hand side under the heading of section. These numbers correlate with the clauses in this paper. The clauses of a Bill only become sections of an Act when the Bill is passed by Parliament.

The clauses contain provisions that either amend existing provisions (sections) of the *City of Brisbane Act 1924* (CoBA), the *Local Government Act 1993* (LGA) and the *Local Government (Community Government Areas) Act 2004* (LGCGAA) or insert new sections in these Acts.

Part 1 - Preliminary

Clause 1 – Short title

Clause 1 provides the short title, the *Local Government Legislation Amendment Act 2005*.

Part 2 - Amendment of *City of Brisbane Act 1924*

Clause 2 – Act amended in pt 2

Clause 2 applies the amendments in part 2 to the CoBA.

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

Clause 3 amends section 3A to include regulatory provisions for councillor codes of conduct and a general complaints process in the list of LGA matters that apply to Brisbane City Council. It is intended that the code of conduct framework and requirement for a general complaints process will apply to all local governments. This amendment is necessary because, unless expressly provided for, the provisions of the LGA do not apply to

Brisbane City Council. This is due to the fact that Brisbane City Council operates under the LGA and the CoBA.

Clause 4 - Amendment of s 39C(Council register)

Clause 4 amends section 39 to clarify that Brisbane City Council is no longer required to keep its council register in a printed form with this document to be available to the public on demand for both inspection and sale purposes. This is consistent with the provision that applies to other local governments in section 513A of the LGA.

Clause 5 - Amendment of s 116 (Preparation of annual financial statements)

Clause 5 amends section 116 to clarify that Brisbane City Council's annual financial statements are to be prepared in accordance with the Australian Accounting Standards, consistent with provisions under the LGA.

Clause 6 - Amendment of s 119 (Annual report)

Clause 6 amends section 119 of the CoBA to require Brisbane City Council to include in its annual report information about how it has dealt with councillor code of conduct breaches. These measures are intended to inform the community about code breaches by councillors and how the council has dealt with them. This amendment is necessary because the annual reporting requirements for Brisbane City Council are set out in the CoBA. A similar amendment of the LGA for other councils is in clause 19.

Clause 7 - Amendment of s 127 (Financial management standards)

Clause 7 amends section 127(2)(e) to enable standards for a code of competitive conduct to also apply to building certification business activities. This is consistent with provisions for other local governments in the LGA.

Clause 8 – Amendment of sch 2 (Dictionary)

Clause 8 inserts into schedule 2 definitions for code of conduct, conduct review panel, and general complaints process.

Part 3 - Amendment of *Local Government Act 1993*

Clause 9 – Act amended in pt 3

Clause 9 applies the amendments in part 3 to the LGA.

Clause 10 – Amendment of s 9 (Act applies only so far as expressly provided)

Clause 10 amends section 9 to include regulatory provisions for councillor codes of conduct and a general complaints process in the list of LGA provisions that apply to Brisbane City Council. This provision corresponds with the provision in clause 3.

Clause 11 - Amendment of s 237 (Remuneration for service on local government and advisory committees)

Clause 11 inserts an additional subsection in section 237. The provision makes it clear that where a councillor enters into an arrangement with the local government to salary sacrifice for superannuation, their remuneration entitlement under this section is to be reduced by the amount the councillor nominated in the arrangement.

Clause 12 - Amendment of s 238 (Superannuation benefits for councillors)

Clause 12 inserts an additional subsection in section 238. This provision makes it clear that where a councillor enters into an arrangement with the local government to salary sacrifice for superannuation, the limits on a local government to make superannuation contributions for councillors set out in subsections (3)(a) and (3)(b) do not apply.

Clause 13 - Insertion of new s 238A

238A - Councillor may make salary sacrifice arrangements

Clause 13 inserts a new section 238A that enables councillors to enter into an arrangement with a local government to salary sacrifice for superannuation. Arrangements are limited to 50% of a councillor's remuneration entitlement. This is consistent with provisions for Commonwealth MPs and what is proposed for State MPs.

Clause 14 – Amendment of s 242 (Requirements of councillors before acting in office)

Clause 14 amends section 242 of the LGA to require councillors to formally accept and agree to comply with their code of conduct as part of making their declaration of office. This is intended to ensure that councillors are aware of their ethical obligations and responsibilities and represents a formal and ceremonial commitment to those obligations and responsibilities.

This provision is not intended to affect in any way a councillor's obligation to comply with their code of conduct. The code applies to a councillor as a consequence of its adoption by the council (see clause 16).

Clause 15 – Insertion of new s 243A**243A - Compliance with code of conduct**

Clause 15 inserts a new section 243A to make it clear that a councillor is required to comply with the ethical and behavioural obligations set out in their code of conduct. The provisions also make it clear that the code of conduct framework is a disciplinary framework in addition to the existing framework for offence provisions in the LGA.

Clause 16 – Insertion of new ch 4, pt 3A**Part 3A - Code of conduct for councillors**

Clause 16 inserts a new part 3A (Code of conduct for councillors) in chapter 4 (Local government councillors). The new part 3A sets out most of the new provisions for establishing a regulatory framework for councillor codes of conduct including how to make and adopt a code, categories of breaches, mechanisms to investigate possible breaches and penalties for code breaches. The purpose of mandatory councillor codes of conduct is to document appropriate behavioural standards for local government councillors and to provide an accountability measure to deal with breaches of these behavioural standards.

Part 3A - Code of conduct for councillors

Division 1 - Preliminary

New division 1 sets in place the basic requirement that councils have a code of conduct for councillors and establishes basic parameters such as timeframes and who are covered. It also provides for a model code which is intended to help councils in developing their own codes. The model code will automatically apply as a default for any councils that do not develop their councillor code of conduct by 1 March 2006.

Section 250A - Application of part to Brisbane City Council

New section 250A applies part 3A to Brisbane City Council. It is intended that the code of conduct framework will apply to all councils under the LGA. This amendment is necessary because, unless expressly provided for, the provisions of the LGA do not apply to Brisbane City Council. This is due to the fact that Brisbane City Council operates under the LGA and the CoBA.

Section 250B - Definitions for pt 3A

New section 250B provides a definition, for the code of conduct framework, of “committee of a local government.” For Brisbane City Council a committee in this context is a committee to which powers may be delegated under section 39B of the CoBA. For other councils a committee is defined as being a standing committee or advisory committee or an advisory committee if all the members are councillors. New section 250B also defines statutory obligation as being, for the code of conduct framework, an obligation required of councillors under the LGA. The only exception to this is the obligation for councillors (created under new section 243A) to comply with their code of conduct.

Section 250C - Requirement to adopt code of conduct for councillors

New section 250C requires each council to adopt by resolution a code of conduct for its councillors. This provision will make it mandatory

for councils to have a code of conduct in place to guide and regulate the behavioural standards of its councillors. Councils will have until 1 March 2006 to adopt a code of conduct consistent with the requirements set out in new division 3.

Section 250D - Model code of conduct for councillors

New section 250D provides for a model code of conduct. The Minister for Local Government has a discretionary power to make a model consistent with the content provisions proposed in new division 2. A requirement for gazettal of a model code of conduct ensures that interested parties, including communities, will be informed that a model code has been made. Councils may, if they wish, adopt the model code as their own code of conduct. For those councils that fail to adopt a code of conduct as required, the model code of conduct will automatically apply as their code.

Section 250E - Application and duration of code of conduct

New section 250E provides that a councillor code of conduct applies to all councillors in performing the duties of their office. A code of conduct continues to apply to councillors until it or another code is adopted following the review required within six months of each election.

Division 2 - Content of codes of conduct for councillors

New division 2 sets out the required elements for councillor codes of conduct. They are: statutory obligations for councillors, ethics principles for local governments, criteria for a repeat breach, and information about making a complaint.

Section 250F - Statutory and additional obligations of councillors

The statutory obligations for councillors are, as defined in new section 250B, the obligations that the LGA places on councillors. Codes must also state whether or not for each of these obligations contravention attracts a penalty.

Councils may also use the ethics principles (see new section 250G) as a basis for additional ethical and behavioural obligations with which councillors must comply. These additional obligations must, if included, be based on 1 or more of the ethics principles and be consistent with the statutory obligations. Councils will thus have some discretion in deciding what additional ethical and behavioural obligations might be appropriate for their councillors.

Section 250G - Ethics principles for local government councillors

New section 250G(1) makes reference to the ethics principles for local government councillors that are set out in Schedule 1. New section 250G(2) requires the ethics principles to be included in a local government's councillor code of conduct.

The principles as set out in Schedule 1 have been adapted from the Statement of Fundamental Principles in the *Code of Ethical Standards* that apply to Members of the Queensland Parliament.

Section 250H - Code must state what a *repeat breach* is

New section 250H requires councils to decide what constitutes a repeat breach and to state this in the code. Possible examples include:

- x meeting breaches within a specified time period;
- x minor breaches within a specified time period; and
- x meeting or minor breaches within a specified time period.

Section 250I - Information about making a complaint

Information is to be included that indicates how a person can find out how to make a complaint about a councillor breaching their code of conduct. This may be a reference to the relevant part of the council's website or a contact telephone number.

Division 3 - Procedure for making code of conduct for councillors

New division 3 sets out the process councils must undertake when preparing and adopting their code of conduct. The process includes

requirements for giving public notice of a proposed code, receiving and considering properly made comments, and for making the code available for inspection and purchase.

Section 250J - Notice of draft code of conduct for councillors

New section 250J requires a council to give public notice once a new or amended code of conduct for councillors is drafted.

Section 250K - Requirement to consider comments

New section 250K requires a council to allow six weeks to consider public comment before resolving to adopt the code.

Section 250L - Code of conduct to be available for inspection and purchase

New section 250L requires a council to ensure its code of conduct is available for inspection and purchase.

Division 4 - Enforcement of code of conduct for councillors

New division 4 sets out measures for enforcing councillor codes of conduct. The enforcement framework has processes for reviewing code breach matters (including an independent mechanism for more serious code breach matters) and penalties for code breaches.

Subdivision 1 - Preliminary

Section 250M - Categories of code of conduct breaches

New subdivision 1 nominates and defines four categories of code breaches:

- *Meeting* - code breaches involving misbehaviour at meetings of the council or committees of the council.

- *Minor* – code breaches that are not otherwise defined. This category includes misbehaviour that is otherwise (not meeting or statutory related) inconsistent with the behavioural standards set out in the code of conduct (e.g. inappropriate behaviour towards other councillors or council employees).
- *Statutory* – behaviour that contravenes legislative provisions that either do not include a penalty (e.g. direction of staff) or are not pursued by the CMC as official misconduct.
- *Repeat* – minor or meeting code breaches that are ongoing. Councils are required to determine the criteria for determining a repeat breach.

Categorising breaches on this basis recognises the range of councillor misconduct that may result in a code of conduct breach and allows an appropriate response depending on the magnitude and/or type of code breach.

Section 250N - References in div 4 to code of conduct breaches

New section 250N provides that, in new division 4, a reference to a code breach may also mean a reference to an alleged code breach.

Subdivision 2 - Meeting breaches

New subdivision 2 outlines the process for dealing with meeting breaches including how a complaint about a meeting breach can be made and when and how a complaint is to be dealt with by a local government. Meeting breaches involve the misbehaviour of a councillor during meetings of the council or committees of the council.

Section 250O - Making a complaint about a meeting breach

New section 250O provides that a complaint of a meeting breach must be made by a councillor present at the council or committee meeting.

Section 250P - When local government must deal with the complaint

New section 250P requires that meeting breach matters that occur at council meetings be dealt with at the meeting (unless a quorum is not present). Meeting breaches that occur during committee meetings will be referred to the council for consideration at the next council meeting after the matter is referred to it.

Section 250Q - How local government must deal with complaint

New section 250Q requires that the council, when dealing with the complaint, comply with the principles of natural justice. This would include, for example, allowing the relevant councillor a right of reply before the council makes its decision. (Note: this is given as an example only and is not intended to limit a council's application of the principles of natural justice).

Possible decisions by councils about meeting breach complaints include: that the complaint is frivolous and vexatious, that the relevant councillor did/did not commit a meeting breach, and that a penalty be imposed on the relevant councillor if they were found to have committed a breach.

A meeting breach by a councillor may constitute a repeat breach. Whether or not this occurs for a particular meeting breach will depend on the criteria for a repeat breach as determined by a council in its code (refer new section 250H). The process for dealing with a repeat breach complaint is similar to that in place for car licence demerit points. If the criteria for a repeat breach are met, the council will be able to refer the repeat breach matter to a conduct review panel for consideration, with the possibility of additional penalties for being a repeat offender.

Subdivision 3 - Minor breaches

New subdivision 3 sets out the process for dealing with minor breaches including how a complaint about a minor breach can be made and how a council is to deal with the complaint.

Section 250R - Making a complaint about a minor breach

New section 250R provides that a complaint of a minor breach is initially dealt with by the council's general complaints process with the possibility of resolution between the complainant and the relevant councillor. If the matter is resolved using the council's general complaints process it is not recorded as a code breach. If the matter is not resolved using this process it will then pass to the council for determination.

Section 250S - How local government must deal with complaints officer's report

New section 250S requires that the council, when dealing with the complaint, comply with the principles of natural justice. This would include, for example, allowing the councillor about whom the complaint has been made the opportunity to consider the report before the meeting and to give a reply at the meeting prior to the decision being made by the council. (Note: these are given as examples only and are not intended to limit a council's application of the principles of natural justice).

Possible decisions by councils about minor breach complaints include: that the complaint is frivolous and vexatious, that the relevant councillor did/did not commit a meeting breach, and that a penalty be imposed on the relevant councillor if they were found to have committed a breach.

A minor breach by a councillor may constitute a repeat breach. Whether or not this occurs for a particular minor breach will depend on the criteria for a repeat breach as determined by a council in its code (refer new section 250H). The process for dealing with a repeat breach complaint is similar to that in place for car licence demerit points. If the criteria for a repeat breach are met, the council will be able to refer the repeat breach matter to a conduct review panel for consideration, with the possibility of additional penalties for being a repeat offender.

Subdivision 4 – Repeat breaches and statutory breaches

New subdivision 4 sets out the processes for dealing with repeat and statutory breaches including how a complaint can be made, provision for review by a local government conduct review panel, and provision for a decision by the council.

Section 250T - Making a complaint about a statutory breach

New section 250T introduces a process for a person to make a complaint about a statutory breach and notes that this does not limit their ability to make a complaint under existing provisions of the *Crime and Misconduct Act 2001* or the *Ombudsman Act 2001*.

Section 250U - Referring complaints about statutory breaches to conduct review panel

New section 250U provides that the chief executive officer must refer a complaint about a statutory breach to the conduct review panel if (a) it does not have to be referred to the CMC or (b) the CMC or Ombudsman recommends it be dealt with by the conduct review panel. Through this process it is intended that the LGA will provide an accountability measure for statutory breaches that are not dealt with as official misconduct matters.

Section 250V - Review of complaints by conduct review panel

New section 250V requires the conduct review panel to investigate complaints about statutory and repeat breaches and to give a report to the council about its investigation. Reports by conduct review panels may make the following findings about a complaint:

- the complaint is frivolous and vexatious;
- not enough information is available to make a recommendation;
- the councillor has not breached the code of conduct; or
- the councillor has breached the code of conduct and a penalty is recommended.

New section 250V also makes it clear that a councillor does not have access to information about a complaint of a code breach until the panel has concluded their review and the report of the panel has been given to the local government. This provision is intended to make clear, in consideration of section 469, that a councillor does not have access to information about a review of a possible code breach until the review has been concluded. A corresponding amendment is proposed for section 469 in clause 17.

Section 250W - Decision by local government about repeat breach or statutory breach

New section 250W sets out the process a council must use in responding to reports of a conduct review panel. If the panel's report includes recommendations, councils are required to decide by resolution whether the councillor has breached their code of conduct. No action is required if the panel considers the complaint to be frivolous or vexatious or if the panel reports there is insufficient information to make a recommendation. In the event of a code breach, a council may impose a penalty in accordance with new section 250X.

Councils are required to apply natural justice principles in determining code breach matters. This means that in the decision-making process, councils should, for example, be unbiased in their consideration of the findings of the panel and not make a determination without first hearing from the councillor about whom the complaint has been made. (Note: these are given as examples only and are not intended to limit a council's application of the principles of natural justice).

A council that rejects a recommendation from a conduct review panel must, in making their decision, include a statement of reasons for the rejection.

Subdivision 5 - Penalties

New subdivision 5 empowers councils to impose penalties on councillors found to have breached their code of conduct. Penalties for code breaches enable councillor codes of conduct to be enforced.

Either or both of the penalties can be imposed to sanction councillors who have breached their code of conduct.

Section 250X - Penalties local government may impose

New section 250X institutes two penalties for code of conduct breaches: written reprimand and meeting suspension. A council may decide to use either or both penalties for a code breach. The use of meeting suspension for code breaches is similar to the effect of MPs being suspended from Parliament, namely removal of the opportunity to influence the decision-making process during the period of suspension.

The application of the meeting suspension penalty varies according to the type of code breach. The maximum meeting suspension varies depending on the type of code breach involved. The maximum meeting suspension is up to two consecutive ordinary council meetings for a statutory or repeat breach, and up to one ordinary council meeting for a minor breach. The maximum penalty that can be imposed for a meeting breach is one ordinary council meeting and the remainder of the council meeting in which it is decided that the councillor has breached the code.

Section 250Y - Effect of suspension of councillor for s 252

New section 250Y provides that suspension from council meetings as a result of a code of conduct breach will not affect the provision in section 252 of the LGA relating to absences from council meetings.

Subdivision 6 - Conduct review panel

New subdivision 6 establishes the framework for local government conduct review panels. The purpose of these panels is to provide an independent review of some code of conduct matters. Conduct review panels will review statutory and repeat breach matters and make recommendations to the council for decision and action.

Section 250Z - Pool of members for conduct review panel

New section 250Z makes councils responsible for appointing a pool of members and for convening, as required, a panel of at least three

members to consider statutory or repeat breaches. Members are appointed for a term of not longer than four years.

Section 250ZA - Qualifications for appointment as member of conduct review panel

New section 250ZA provides that current MPs, councillors, council employees or members of political parties may not serve on a conduct review panel.

Section 250ZB - Removal from pool of conduct review panel members

New section 250ZB provides that members of the pool for conduct review panels may resign by giving notice to the council.

Section 250ZC - Quorum for meetings of conduct review panel

New section 250ZC provides the quorum requirements for a meeting of a conduct review panel. It is intended that the panels would generally operate on a basis similar to that provided in the LGA for local government advisory committees, including that decisions are to be made on a majority basis. Outlining basic requirements for the operation of conduct review panels provides a degree of consistency for how panels deal with code breach matters across Queensland.

Section 250ZD - Chairperson of conduct review panel

New section 250ZD provides that, if the council does not appoint a chairperson, the conduct review panel itself may do so.

Section 250ZE - Meetings of conduct review panel

New section 250ZE enables the conduct review panel to meet when and where it chooses. It also specifies the voting procedure for a panel making a decision.

Section 250ZF - Payment of fee to persons on conduct review panel by local government

New section 250ZF provides that panel members are entitled to receive a fee for reviewing code breach matters. The amount of fees

payable is a matter for each council to consider in establishing its pool of panel members, giving consideration to local circumstances.

Section 250ZG - Costs of conduct review panel to be met by local government

New section 250ZG provides that councils are responsible for the costs associated with the panel.

Section 250ZH - Indemnity for panel members

New section 250ZJ provides that panel members have statutory protection from civil liability. This is consistent with LGA provisions for councillors and local government employees. See also the note on this section under the heading above, “Fundamental Legislative Principles.”

Section 250ZI – Indemnity for persons giving information to a conduct review panel

New section 250ZI provides that persons giving information to panels about code breach matters have statutory protection from civil liability. This is consistent with LGA provisions for councillors and local government employees. See also the note on this section under the heading above, “Fundamental Legislative Principles.”

Subdivision 7 - Miscellaneous

Section 250ZJ - Frivolous or vexatious complaint

New section 250ZJ makes it an offence to make a frivolous or vexatious complaint about a code of conduct breach by a councillor if the person making the complaint has been given notice that the same complaint will not be reviewed because it is considered to be frivolous or vexatious. It is intended that councils have discretion in determining whether complaints are frivolous and vexatious. If they determine complaints to be frivolous and vexatious a notice may be given to the complainant. Should the complainant submit another code of conduct complaint that is substantially the same, and court proceedings are commenced, the courts may impose a monetary penalty on the complainant.

Clause 17 – Amendment of s 469 (inspection of records by members)

Clause 17 amends section 469 by inserting a reference in subsection (4) to new section 250W(5). This, together with the provision of new section 250W(5), means that a councillor will not have access to material, information and proceedings of a conduct review panel if the material is the subject of a complaint being reviewed by the panel (see subdivision 4 of clause 16). This provision is necessary to protect the integrity of a review in process in view of the current provision in section 469 giving councillors access to a council's records. It is intended that the material be available to councillors following the completion of the review by the panel. However, this is not intended to prevent a panel from providing a councillor with access to information held by it during its investigation.

Clause 18 – Insertion of new ch 6, pt 5**Part 5 - General complaints process**

Clause 18 inserts a new part 5 in chapter 6 that requires councils to put in place a general complaints process.

Section 501A - Application to Brisbane City Council

New section 501A ensures that the requirement for a general complaints process applies to Brisbane City Council as well as other councils.

Section 501B - Definitions for pt 5

New section 501B defines, for the purpose of part 5, the terms "affected person" and "complaint."

Section 501C - Meaning of *administrative action*

New section 501C means that the general complaints process will include all complaints to a council that the Queensland Ombudsman has jurisdiction to investigate. Complaints about levels of service or other matters outside the scope of the Ombudsman are not included. The process will also serve as the first point of review for councillor misbehaviour that involves minor code breach matters.

Section 501D - Local government to establish general complaints process

New section 501D requires that councils adopt by resolution a general complaints process and that they do so by 1 March 2006.

Section 501E - Requirements for general complaints process

New section 501E sets out the minimum requirements councils must address in developing their complaints process.

A key element under new subsections 501E(1)(a) and 501E(2) is the requirement for an independent process. These provisions require a council to have a complaints officer to investigate complaints who must be independent of the subject of the complaint. This means in effect that the general complaints process will need to provide for both internal and external reviews. Internal review will occur where the complaint is about an administrative action by council staff that can be investigated by a more senior officer, an officer of equivalent level from another branch, or the council itself. External reviews will occur where the complaint is about a decision of council or involves the behaviour of a councillor. These sorts of complaints will need to be investigated by a person who is outside the organisation.

Other matters that must be included in a council's general complaints process are:

- preliminary procedures before a complaint is made (including the possibility of mediation);
- how a person may make a complaint;
- how complaints are sent to the complaints officer and then investigated;
- giving a person who makes a complaint an opportunity to provide more information;
- a requirement for the complaints officer to give notice of a decision and the reasons for the decision to both the council and the affected person;
- a requirement that, if the matter is not resolved to the affected person's satisfaction, the complaints officer give that person and the council a written report with recommendations as appropriate;

- the timeframe for making a report about an unresolved complaint; and
- recording the number of complaints made and resolved using this process.

Apart from these minimum requirements, councils may exercise a wide discretion in determining the operations of their general complaints process. It is recognised that some councils have complaints processes in place that can be used and/or adapted to meet the proposed requirements.

Section 501F - Refusal to investigate complaint

- Councils are provided with discretion to refuse consideration of a complaint in certain circumstances. These include:
- the complaint is trivial, frivolous or vexatious;
- the person making the complaint does not have a direct interest in the administrative action being complained about;
- another appeal or review is currently being undertaken about the matter and it would be reasonable to await the outcome of that process before considering or continuing to consider the complaint; and
- circumstances make an investigation unnecessary or unjustifiable.

Clause 19 – Amendment of s 534 (Content of report about other issues of public interest)

Clause 19 amends section 534 by inserting new requirements relating to councillor code of conduct matters for inclusion in a council's annual report. Code of conduct matters to be reported include:

- the number of code breaches by councillors;
- for each breach, the name of the councillor, a summary of the breach and any penalty applied;
- the number of complaints about alleged code breaches, other than frivolous or vexatious complaints, referred to the conduct review panel;
- the number of recommendations by the conduct review panel that were adopted or not adopted;

- the number of complaints resolved under the general complaints process and the number of those complaints that related to an alleged breach of the councillor code of conduct; and
- the number of complaints being investigated by the Queensland Ombudsman about how the council enforces its councillor code of conduct, as notified to the council.

Reporting publicly about code of conduct breaches contributes to the accountability framework for local government by informing the community about councillors that have chosen not to meet the agreed behavioural standards set out in their code of conduct. The requirement for councils to report on how they have responded to reviews by the conduct review panel provides a measure that indicates the council's efforts in upholding the agreed behavioural standards for councillors.

Clause 20 - Amendment of s 1182 (Local governments' liability for permanent employees)

Clause 20 inserts a new subsection in section 1182 to provide an exception to requirements in the foregoing subsections that require councils to make superannuation contributions for employees. The exception to these requirements is set out in new section 1183A and relates to nomination by an employee that additional contributions exceed their pension Reasonable Benefits Limit.

Clause 21 - Insertion of new s 1183A

1183A - Election by permanent employee to cease contributions

Clause 21 inserts a new section 1183A to make clear that a local government employee may elect to stop their local government employer making superannuation contributions for them in specific circumstances. The circumstances specified relate to existing provisions in Commonwealth legislation – *Superannuation Guarantee (Administration) Act 1992* that enable employees to elect to have their employer cease making superannuation contributions where additional contributions exceed their pension Reasonable Benefits Limits as defined in the *Income Tax Assessment Act 1936* (Cwlth) section 140ZD.

Clause 22 – Insertion of new sch 1

Clause 22 inserts a new Schedule 1 listing the ethics principles for local government councillors.

Clause 23 – Amendment of schedule (Dictionary)

Clause 23 amends the Schedule (Dictionary) by:

inserting definitions for:

- CMC
- code of conduct, and
- conduct review panel.

inserting signposts for the definition of:

- administrative action
- affected person
- committee
- complaint
- general complaints process
- meeting breach
- minor breach
- repeat breach
- statutory breach, and
- statutory obligation.

Part 4 - Amendment of *Local Government (Community Government Areas) Act 2004*

Clause 24 - Act amended in pt 4

Clause 24 applies the amendments in part 4 to the LGCGAA.

Clause 25 - Insertion of new s 11A

11A - Application of enterprise provisions in Local Government Act 1993

Clause 25 inserts a new section into the LGCGAA to exempt the enterprise provisions in chapter 6, part 4 of the LGA from applying to community government enterprises except where undertaken through a joint venture with the private sector. This will mean that most enterprises run by community governments will be able to continue operating as at present without complying with the constraints imposed by chapter 6 part 4 of the LGA. However, for any enterprises that might be undertaken as a joint

venture with the private sector, the constraints set out in the LGA will apply.

Clause 26 - Amendment of s 14 (Meaning of *reviewable community government matter*)

Clause 26 amends section 14 of the LGCGAA to include the matter of assigning and reassigning councillors of a community government to indigenous social groupings as a reviewable community government matter.

Clause 27 - Amendment of s18 (Commissions must have regard to prescribed issues)

Clause 27 amends section 18 of the LGCGAA to make it consistent with corresponding provisions in the LGA that apply to other local governments.