Local Government and Industrial Relations Amendment Bill 2008

Explanatory Notes

General Outline

The Bill amends the following legislation:

Local Government Act 1993

Industrial Relations Act 1999.

The primary purpose of the Bill is to ensure that local government employers, other than Brisbane City Council (BCC), and their employees are covered by the State industrial relations jurisdiction. This is achieved by amending the *Local Government Act 1993* (LG Act) to provide that local governments are not incorporated. The BCC is constituted under separate legislation and its status as a corporation is not affected. Other local governments will no longer fall within the meaning of 'employer' in section 6(1) of the *Workplace Relations Act 1996* (Cwlth) (WR Act). None of the existing rights and liabilities of local governments will be affected.

This change will not affect the pay rates and other entitlements of local government employees nor remove their coverage by an industrial instrument. To ensure this, amendments to the *Industrial Relations Act 1999* (IR Act) are included in the Bill to convert the relevant federal industrial instruments to State industrial instruments of the same type (e.g. federal awards become State awards). In addition, the pay rates and other entitlements of local government employees are explicitly preserved so that there will be no change to the pay an employee receives as a result of the Bill.

The Bill also amends the *Local Government Act 1993* to facilitate specific aspects of local government reform.

Short Title

The short title of the Bill is the Local Government and Industrial Relations Amendment Bill 2008.

Policy Objectives of the Legislation

The Bill is intended to support Queensland's extensive local government reforms in 2007 and, in particular, the commitment by the Queensland Government to ensure that local government employees are covered by the State jurisdiction as far as is legally possible. The Bill is also intended to ensure that Queensland has the capacity to legislate to protect the terms and conditions of employees affected by the local government reforms.

The question of whether the 'corporations power' in section 51(xx) of the Commonwealth Constitution can cover current local governments is uncertain. The Bill is intended to put the issue beyond doubt by removing the provisions in the LG Act that give local governments their corporate status, thereby removing them from the reach of the WR Act. This will ensure that all local governments, other than the BCC, are covered by the State industrial relations system and local governments will be able to make their industrial relations arrangements with confidence and certainty. It will also restore to local government employees the fairness and balance provided by the Queensland system. The ability of local governments to continue to structure their employment arrangements in ways that are appropriate to their business operations will not be affected, save that the IR Act will apply.

The BCC has been excluded from the Bill because it was not included in the local government reform process. In addition, the Bill does not apply to any corporations established by local governments.

Reasons for the Bill

On 27 March 2006, the *Workplace Relations Amendment (Work Choices) Act 2005* (Cwlth) came into effect. These significant amendments to the federal industrial relations system are known as 'Work Choices'. The WR Act as amended by Work Choices relies significantly on the Commonwealth's power to regulate 'constitutional corporations', i.e. foreign corporations, trading corporations and financial corporations, and covers the field with respect to those employers that are constitutional corporations. As a result, Work Choices removed all constitutional corporations from the State industrial relations system.

The question of whether a law based on the corporations power can regulate local governments is uncertain and therefore the question of whether current local governments are caught by the WR Act is uncertain. This uncertainty is compounded by the fact that an employer is only a ‘trading corporation’ if the employer’s level of trading is significant or substantial but current legal tests do not provide a firm basis for assessing what is ‘significant’ or ‘substantial’. The Bill resolves this uncertainty by constituting local governments other than the BCC as entities which are not corporations. This ensures that local governments are covered by the State industrial relations system.

The Bill preserves the terms and conditions of employment of local government employees and retains their coverage by industrial instruments. This will allow new employees to be covered by the same industrial instruments and also allow the Queensland Industrial Relations Commission (QIRC) to exercise its powers in relation to the industrial instruments applying to local government employees.

In 2007, local government boundaries were reviewed by the Local Government Reform Commission. As a result, local government boundaries were amended and the number of local governments reduced. The *Local Government Reform Implementation Act 2007* implements the restructure which will come into effect on 15 March 2008.

Arrangements for employees affected by the reforms are managed under the Act and the *Local Government Workforce Transition Code of Practice* (the Code) and the proposed Local Government Reform Implementation Regulation 2008. The Code includes commitments to employees affected by the reforms, including: no job losses as a result of the reforms; no forced relocations for 12 months; all existing conditions and arrangements transfer to the new employer and no overall reduction in working conditions.

The provisions to ‘de-corporatise’ local governments are included in the Bill to ensure that Queensland local government employment is subject to the State industrial relations system. Following any changes to the Commonwealth’s workplace legislation, these provisions will be reviewed.

Achieving the Objectives

Removal of corporate attributes of local governments

The Bill will ensure that local governments are covered by the State jurisdiction. This will be achieved by altering the statutory characteristics

conferred on local governments through the LG Act and making it clear that they are not incorporated. As a result, a local government will not be an ‘employer’ as defined by section 6(1) of the WR Act, which relevantly provides that an *employer* means a constitutional corporation.

The removal of the some of the statutory attributes conferred by the Queensland Parliament on local governments will not destroy their identity or existence and therefore will not affect their existing rights and liabilities, such as their contractual obligations. In addition, local governments will retain their existing powers under section 36 of the LG Act to enter into contracts; acquire, hold, deal with and dispose of property; charge for services and facilities; and do all things necessary to enable them to exercise their jurisdiction as local governments.

These powers are reinforced by provisions in the Bill which make it clear that all the powers exercisable by local governments, which arise from their status as corporations, can continue to be exercised.

The Bill replaces provisions in the LG Act which state that a local government is a body corporate with perpetual succession, has a common seal, and can sue and be sued in its own name. New provisions state that a local government is constituted by its councillors, except when temporarily constituted by an administrator or the chief executive officer, and that a local government is not a corporation.

Instead of executing documents under a common seal, the Bill provides that local governments can execute documents by the mayor or an authorised councillor signing the document. At times when there are no councillors, the chief executive officer or administrator may execute a document by signing it. There is also power to make a regulation to provide for additional ways to execute a document.

The Bill also provides that proceedings by or against a local government must be started in the name of the local government.

An existing provision of the LG Act protects individual councillors from civil liability, provided they act honestly and without negligence. In order to emphasise the legal personality of the local government as separate from its members, the Bill also provides that no matter or thing done honestly by the local government or by a councillor in constituting the local government in administration of the Act or performance of functions under the LG Act or another Act shall subject a councillor to any liability. The same indemnity applies to a chief executive officer of a local government or an administrator when constituting a local government.

These provisions will ensure that local governments can continue to conduct their business as usual.

Preservation of industrial instruments and terms of employment

Because the WR Act will not apply to the employees of local governments, federal industrial instruments will not apply to them. To ensure that employees continue to have the benefit of being covered by an industrial instrument and that future employees are employed on the same terms and conditions, the Bill "converts" federal industrial instruments applying to local governments into State industrial instruments. This also gives the QIRC the power to deal with those instruments.

The Bill takes applicable original federal awards to be State awards, containing the relevant Australian Pay and Classification Scale (APCS) associated with the pre-reform award which had preserved the applicable original awards under the WR Act.

The Bill takes applicable pre-reform federal certified agreements to be State certified agreements.

The Bill takes applicable federal union collective agreements to be State certified agreements, except that provisions about dispute resolution are replaced by a model dispute settlement procedure approved by the QIRC. This is because, under Work Choices, the ability of the independent industrial tribunal to resolve disputes was severely curtailed and dispute resolution procedures were required to reflect that limitation. The model dispute settlement procedure provided by the Bill ensures that the QIRC can effectively resolve disputes and puts local governments and their employees in the same position as all other parties in the State system. The model dispute settlement procedure also acknowledges the role of unions. The Bill also restores the pre-Work Choices status quo with respect to union rights in relation to the substitute State agreement.

The Bill takes applicable federal employee collective agreements to be State certified agreements.

The Bill takes an Australian Workplace Agreement to be a Queensland Workplace Agreement, which operates only for a transitional period.

Many local government employees were covered by state industrial instruments before Work Choices came into effect. The WR Act preserved the state industrial instruments as federal instruments but did not make the state instruments void in the State jurisdiction. Those state industrial

instruments will apply to local government employees on their return to the state industrial relations system.

Under the WR Act, the terms of notional agreements preserving state awards (NAPSAs) are taken to include the terms of the original state award which would have determined a term or condition of employment of a person who was not subject to a state employment agreement at the commencement of Work Choices. Once employees who were covered by NAPSAs return to the state jurisdiction, they will be covered by the state award, just as they were before Work Choices came into effect. However, the wage rates in the Australian Pay and Classification Scale (APCS) associated with the NAPSA will have moved, since the commencement of Work Choices, with decisions of the Australian Fair Pay Commission (AFPC). The state award rates will have moved with state wage cases determined by the QIRC. Since 27 March 2006, the state wage case increases have been higher than the AFPC increases. Some local governments may have continued to pay in accordance with the state award rates while others may have paid in accordance with the APCS rates. The Bill ensures that employees continue to be paid in accordance with the rates they received prior to the commencement of the amendments, until a general ruling by the QIRC. The first general ruling is likely to be the state wage case decision, which is expected in September 2008. When the state wage decision becomes effective, the award rates will apply as a minimum to all employees subject to the award.

No provision is made for converting preserved State agreements (i.e., State certified agreements preserved by the WR Act at the commencement of Work Choices). These State agreements still have legal effect in the State jurisdiction and after the Bill commences, will apply to the employees who were subject to them and to any new employees.

To ensure that the Bill does not affect the pay rates and conditions of local government employees in any unforeseen ways and to protect "over award" payments, the Bill provides that, after the commencement of the Bill, all employees shall receive at least the wages and other benefits they received immediately before the commencement of the Bill. These benefits are preserved until a new certified agreement is made. However, if the employee is subject to the prescribed transitional arrangements associated with the transfer of local government employees to new water authorities under the *South East Queensland Water (Restructuring) Act 2007* or new local governments as part of local government reform, the preservation of benefits is subject to the prescribed transitional arrangements.

The Bill allows unions to "follow" their members through ensuring that the state counterparts of federal unions are bound by the state instruments substituted for federal instruments.

Facilitating local government reform

The Bill amends the *Local Government Act 1993* to provide for additional matters that have arisen since the passage of the *Local Government Reform Implementation Act 2007,* as follows:

- provide for implementation of the remuneration schedule for councillors following the first decision of the Local Government Remuneration Tribunal;
- clarify arrangements for councillors' expenses and the provision of services to councillors, including arrangements for a transitional expenses remuneration policy to apply until a local government adopts a policy that complies with guidelines issued by the chief executive. To promote compliance, a proposed expenses remuneration policy must be approved by the chief executive before being adopted;
- provide for regulations to be made to assist new local governments in meeting requirements of the Act after the changeover day;
- enable new local governments to defer until 2009 the identification of new significant business activities which are created as a direct result of local government reform, and to enable deferral of the conduct of any public benefit assessment of those businesses.

Fundamental Legislative Principles

The following two clauses of the Bill raise issues in relation to fundamental legislative principles.

A transitional regulation-making power in proposed section 756 of the *Industrial Relations Act 1999* raises a potential issue. However, the Scrutiny of Legislation Committee has previously indicated that, in the context of urgent legislation, a transitional regulation-making power may not constitute a breach of a fundamental legislative principle if it is subject to a 12 month sunset clause and a further sunset clause on any transitional regulations made pursuant to the regulation making power. The regulation making power proposed for the IR Act has been drafted accordingly.

The Bill also contains a transitional regulation-making power for the LG Act which is consistent with other regulation making powers to implement local government reform. The additional power, to apply to regulations for the transitional period after implementation, is proposed to be inserted into Chapter 3, part 1B of the LG Act, which, in accordance with section 159ZZAA of the Act, will expire in 2011 or at an earlier time under a regulation. The transitional regulation making power is considered essential to assist particular local governments to rationalise multiple rating systems after 15 March 2008.

Consultation

Extensive consultation occurred with key stakeholders before and during the drafting of the Bill, including the Local Government Association of Queensland (LGAQ), the Queensland Council of Unions, the Queensland Services, Industrial Union of Employees, and the Australian Workers' Union of Employees, Queensland.

Unions support employees being brought into the State industrial system and the preservation of conditions of employment and of industrial instruments.

The LGAQ has stated it would not oppose the amendments if they are implemented solely as an interim measure to bring local government employees into the Queensland industrial relations system. In addition the LGAQ sought a commitment that the Government would repeal the amendments and reinstate local governments' body corporate status when the Commonwealth *Workplace Relations Act 1996* is amended to exclude local government employees from Work Choices.

The provisions which remove local governments' corporate status will be reviewed after any amendments to Commonwealth industrial relations legislation. The LGAQ also sought indemnification of local governments for any loss they suffer from unintended adverse consequences arising from the amendments, and a commitment that the Queensland Government would immediately rectify any shortcomings in the proposed amendments that affect the day to day operations of local governments.

The Government's intention is to enable local governments to function as usual without any change to their current operations. These provisions are necessary to specifically address uncertainty in industrial relations coverage of local government employees. Subject to amendments to the *Workplace Relations Act 1996* (Cwlth) the Government will consider the

ongoing need for these new arrangements for local government entities in Queensland.

Notes on Clauses

Part 1 Preliminary

Short Title

Clause 1 sets out the short title of the Act as the *Local Government and Industrial Relations Amendment Act 2008*.

Commencement

Clause 2 provides that Parts 2 and 4 of the Bill commence immediately after Part 3. Part 3 provides for the constitution of local governments as entities that are not incorporated. Part 3 commences on 13 March 2008. Other amendments to support reform will also commence on 13 March 2008.

Part 2 Amendment of Industrial Relations Act 1999

Clause 3 provides that Part 2 amends the *Industrial Relations Act 1999*.

Clause 4 removes the definition of *federal organisation* from section 409 of the Act (it is relocated to the Act's Dictionary in Schedule 5).

Clause 5 inserts a new Chapter 20, Part 7 into the Act, entitled:

Transitional provisions for Local Government and Industrial Relations Amendment Act 2008

New section 744 provides that the new Part 7 applies to local governments that were employers within the meaning of section 6(1) of the WR Act (i.e. constitutional corporations) immediately before local governments were constituted as entities which are not corporations and to their employees. New part 7 does not apply to Brisbane City Council.

New section 745 defines the terms used in new Part 7.

New section 746 provides for the replacement, in substitute State instruments, of a number of terms that are only relevant to the federal jurisdiction so that the State instruments can operative effectively. New section 746(2) provides that the Queensland Industrial Relations Commission (QIRC) replaces references to the Australian Industrial Relations Commission. New section 746(3) provides that provisions in the IR Act which correspond to the provisions in the WR Act or Work Choices Amendment Act replace references in the instrument to those Commonwealth provisions.

New section 746(4) provides that industrial organisations registered under the IR Act replace references in the instrument to industrial organisations registered under the WR Act. The counterpart organisations are listed in the Table to section 746(4).

New section 746(5) defines a corresponding provision of the IR Act as a provision that is of similar effect to a provision of the WR Act or the Work Choices Amendment Act or a provision that is declared by a regulation to be a corresponding provision. Section 746(5) also defines ‘federal organisation’ and ‘State organisation’ for the purposes of section 746(4).

New section 747 provides that an original federal award, which was taken to have been replaced by a pre-reform award in force before the commencement of the Bill, is taken to be an award made by the QIRC under section 125 of the IR Act. By carrying over the original award, any content that was made ineffective by Work Choices has full effect in the award. The award is also taken to be amended so that it includes the terms of any APCS that applied to the employees immediately before the commencement of the Bill. The award is also taken to have been amended in accordance with new section 746, which substitutes ‘federal’ terms for ‘State’ terms (for example, the substitution of references to the AIRC for references to the QIRC). New section 747(4) provides that the award has effect despite section 133. (Section 133 of the IR Act provides that an award must have been gazetted for 21 days before it can be enforced).

New section 748 provides that a pre-reform certified agreement that was in force before the commencement is taken to be a certified agreement certified by the QIRC under section 156 of the IR Act. The terms of the certified agreement are the same as the terms of the pre-reform certified agreement, except for the substitution of ‘federal’ terms for ‘State’ terms.

New section 749 provides that an Australian workplace agreement or a pre-reform AWA that was in force before the commencement is taken to be a QWA. However, the QWA stops operating on its nominal expiry date or 15 March 2009, whichever is first or when a certified agreement binding the employee is made after commencement. The terms of the QWA are the same as the terms of the AWA, subject to it ceasing to operate as provided for by the new section 749(2) and subject to the substitution of ‘federal’ terms for ‘State’ terms. In addition, sections 192(3)(c) and (4) of the IR Act have no effect in relation to the QWA.

New section 750 provides that a union collective agreement that was in force before the commencement is taken to be a certified agreement certified by the QIRC under section 156 of the IR Act, subject to modifications prescribed by section 750(3)(4) and (5). New subsection 750(3) provides that the model dispute resolution procedure approved by the QIRC under clause 3.2 of the *Sample Award – State 2004* is substituted for any dispute resolution procedure in the agreement.

New subsection 750(4) provides that, apart from the above modifications and those created by section 746, the new State agreement has effect according to its terms. The subsection also clarifies that section 750 overrides section 169(7) of the IR Act (section 169(7) does not allow the parties to an agreement to be amended).

New subsection 750(5) amends who is bound by the certified agreement. Where a union collective agreement covered employees who had previously been covered by state agreements or federal agreements, the employee organisations which were bound by those predecessor agreements are also bound by the certified agreement which is substituted for the union collective agreement.

New section 751 provides that an employee collective agreement that was in force before the commencement is taken to be a certified agreement certified by the QIRC under section 156 of the IR Act. The terms of the new State agreement are the same as the terms of the employee collective agreement, subject to the replacement of ‘federal’ terms with ‘State’ terms as provided by section 746. Subsection 751(5) requires the QIRC to make

the agreement bind an employee organisation if it is satisfied that an employee bound by the agreement and who is a member of the union asks the union to give notice under the section; and the union is bound by an award that binds the employer or is entitled to represent the industrial interests of the relevant employees.

New section 752 provides that an employee who was bound by a notional agreement preserving State awards (NAPSA) prior to commencement is subject to any State award that applies to the employee. If the employee was paid under an applicable APCS immediately before commencement, the employee continues to be paid under the APCS until the employee's wage rate in the award is amended by a general ruling of the QIRC, whereupon the employee is entitled to be paid no less than the award rates. The first general ruling is likely to be the state wage case in September 2008.

New section 753 provides that an employee bound by a substitute State instrument or an industrial instrument must, after the commencement of the Bill, receive no less than the remuneration received before the commencement. Remuneration is defined broadly to include wages, salary and amounts payable or other benefits made available to the employee under a contract of service, a federal instrument or an industrial instrument. New subsection 753(3) provides that the preservation of remuneration applies only until a new certified agreement is made and that the preservation of remuneration is subject to prescribed transitional arrangements listed in new subsection 753(4).

These prescribed transitional arrangements are associated with the transfer of local government employees to new water authorities under the *South East Queensland Water (Restructuring) Act 2007* or new local governments as part of local government reform which will take place after commencement of the Bill. These transitional arrangements are already in place and will apply when local government employees are transferred. These transitional arrangements ensure continuity of service with the new employer and transfer an employee's accrued and accruing entitlements to their employment with the new employer and displace the old employer's obligation to pay out accrued benefits such as leave. Subsections 753(3) and (4) ensure that these transitional arrangements still apply.

New section 754 provides that if a reference to a federal organisation is replaced by a reference to a State employee organisation in a State substitute instrument, in accordance with section 746, then the State employee organisation is bound by the substitute State instrument.

New section 755 removes the application of sections 8A, 9, 9A, 10, 11 and 15 of the IR Act (which would otherwise apply) to employees bound by certain substitute State instruments for a transitional period.

Section 8A requires employees to receive a wage no less than the Queensland minimum wage.

Sections 9 and 9A regulate working hours for employees as well as penalty rates, shift allowances and casual rates.

Section 10 provides for a minimum amount of sick leave for employees.

Section 11 provides for a minimum amount of annual leave for employees.

Section 15 provides for payment for public holidays for employees.

The transitional period is until 15 March 2009 or earlier if the employee is bound by a certified agreement certified after commencement. During the transitional period, subsection 755(2) provides that an employee is entitled to the corresponding federal minimum entitlements, if they provide a better outcome for the employee than the State industrial instruments. This ensures that an employee's entitlements are the same after the commencement of the Bill as they were before the commencement of the Bill.

Employees whose wages and conditions are provided only by the State awards which were preserved as NAPSAs or who were bound by preserved state agreements immediately before commencement are not excluded from the minimum entitlements under the IR Act.

New section 756 provides that a regulation can be made of a saving or transitional nature to allow or facilitate the change from federal instruments to substitute State instruments or for which the Act does not make sufficient provision with respect to local governments and local government employees. The regulation may have retrospective operation but not earlier than commencement. Subsection 756(4) is a sunsetting clause that terminates the operation of section 756 and any transitional regulation after one year.

New section 757 amends Schedule 5 (the Dictionary) by inserting a definition for 'federal organisation' (i.e., a federal organisation under the WR Act).

Part 3 Amendment of Local Government Act 1993

Clause 7 provides that part 3 amends the *Local Government Act 1993.*

Clause 8 replaces chapter 2, part 1, division 4 (Composition of local governments) by omitting section 32, the content of which is included in new section 34, and renumbering section 33 as 32.

Clause 9 renumbers section 34 as section 33.

Clause 10 inserts new sections which constitute local governments as entities that are not corporations with perpetual succession. New sections 34 and 35 replace the old section 35.

New section 34 provides for the constitution of local government as an entity that is not a corporation. New section 34(1) provides that a local government is constituted by the councillors of the local government. The definition of "councillor" in the dictionary includes the mayor. New section 34(2) provides that the chief executive officer constitutes the local government at times when there are no councillors. This ensures the continued existence of the local government as an entity during periods when there are no councillors immediately after a poll and before the declaration of the poll. This new section is subject to section 178 which provides for the appointment of an administrator of a local government in certain circumstances.

New section 34(3) specifies that a local government is not a corporation. Local governments are therefore not employers for the purposes of section 6(1) of the WR Act. A local government is no longer a body corporate

New section 35 specifies that legal proceedings by a local government, or against a local government, must be started by or against the local government in its name. This provision replaces the provision which stated that a local government can sue and be sued in its own name, which is one of the indicators of a corporation. Sections 38A, inserted by clause 12, and existing section 240 provide indemnity for individual councillors.

Clause 11 amends section 36 (General powers) by inserting a new provision that a local government may exercise its powers in its own name. This provision, along with new section 38A inserted by clause 12, clarifies that local governments may enter contracts in their own name. It removes any doubt that when a mayor or councillor sign a contract on behalf of a

local government under amended section 38, the mayor or councillor is not personally entering into a contract.

Clause 12 replaces section 38 with new sections 38 and 38A.

New section 38 (Execution of documents by local governments) provides for execution of documents by a local government, replacing the requirement for use of a common seal. In most circumstances a local government may execute a document by the mayor or an authorised councillor signing the document on behalf of the council. An authorised councillor is one authorised in writing by the mayor. At times when there are no councillors, for example before the declaration of the poll following a quadrennial election, the chief executive officer may execute a document by signing it. If an administrator has been appointed to constitute the local government, the administrator may execute a document.

This section does not limit the capacity of a delegate to make, vary or discharge a contract under delegation as provided by section 483 of the Act. In addition, new section 38 enables a regulation to specify another way a local government may execute a document. This allows for a regulation to be made if other mechanisms to execute documents become necessary.

New section 38A (Liability does not attach to councillors etc. acting honestly). This amendment arises from the change to the status of the entity of local government, and recognises that the entity is a local government and acts as an entity. In conjunction with sub clause (6), to be inserted into existing section 36, new section 38A protects individual councillors from liability for things done honestly by the local government, or by any councillor in constituting the local government. This indemnity applies to acts done honestly in administration of the *Local Government Act 1993*, or in performing functions or duties or exercising powers under that or another Act. The protection from liability applies to individual councillors and also to the chief executive officer or administrator when they constitute the local government, or an individual councillor in constituting the local government. The protection is in addition to any other protections under law or an Act, such as the protection in section 240 of the LG Act.

Clause 13 replaces section 49 (Joint local governments are bodies corporate etc) with new sections 49 and 49A.

New section 49 provides for the constitution of a joint local government as an entity that is not a corporation. New section 49(1) provides that a joint

local government is constituted by the members of the joint local government. New section 49 provides that if a component local government is constituted by the chief executive officer or an administrator, those people are the representatives who are members of the joint local government. This ensures the continued existence of the joint local government as an entity during periods when there are no councillors who are members from one or more component local governments.

New section 49 specifies that a joint local government is not a corporation. Joint local governments are therefore not employers for the purposes of section 6(1) of the WR Act. A joint local government is not a body corporate.

New section 49A specifies that legal proceedings by a joint local government, or against a joint local government, must be started by or against the joint local government in its name. This provision replaces the provision which stated that a joint local government can sue and be sued in its own name. New section 53A, inserted by clause 14, provides individual members with indemnity from liability.

Clause 14 amends section 50 (General powers) by inserting a new provision that a joint local government may exercise its powers in its own name. This provision, along with new section 53A inserted by clause 15, clarifies that local governments may enter contracts in their own name. It removes any doubt that when the president or an authorised member of a joint local government signs a contract on behalf of a joint local government under amended section 53 (inserted by clause 15), the president or member is not personally entering into a contract.

Clause 15 replaces section 53 with new sections 53 and 53A.

New section 53 (Execution of documents by joint local governments) replaces provision for a joint local governments seal. New section 53 provides for execution of documents by a joint local government, replacing the requirement for use of a common seal. A joint local government may execute a document by the president or an authorised member signing the document. This section does not limit the capacity of a delegate to make, vary or discharge a contract under delegation as provided by section 483 of the Act. In addition, new section 53 enables a regulation to specify another way a joint local government may execute a document. This allows for a regulation to be made if other mechanisms to execute documents become necessary.

New section 53A (Liability does not attach to members acting honestly). This amendment arises from the change the status of the entity of a joint local government, and recognises that the entity is a joint local government and acts as an entity. New section 53A protects individual members of a joint local government from liability for things done honestly by the joint local government, or by any member in constituting the joint local government. This indemnity applies to acts done honestly in administration of the *Local Government Act 1993*, or in performing functions or duties or exercising powers under that or another Act. The protection from liability applies to individual members and also to the chief executive officer or administrator when they constitute the local government, or an individual member in constituting the local government. This protection is in addition to other protections from liability under an Act or law.

Clause 16 inserts new section 159YQA to provide a regulation making power to address transitional matters which arise after the implementation of local government reform. The *Local Government Implementation Reform Act 2007* provided a regulation-making power about matters to implement local government reform. The new section 159YQA provides for the making of regulations to facilitate new and adjusted local governments' compliance with some requirements of the *Local Government Act 1993* in the transitional period after implementation of local government reform. For example, it is anticipated that particular local governments may require additional time to comply with requirements of the Act about rates, which could be provided for in a transitional regulation. Subsection (3) provides that a transitional regulation may apply retrospectively to changeover day.

Clause 17 amends section 164 by omitting the reference to local government as a body corporate, to be consistent with amendments which create local governments as entities which are not corporations.

Clause 18 amends section 236A (Remuneration for councillors of local governments) to provide for implementation of the remuneration schedule determined by the Local Government Remuneration Tribunal. Subsection (2) requires a local government to pass a resolution, within 2 months of the gazettal of the remuneration schedule, authorizing payment of remuneration in accordance with the remuneration schedule from 1 January of each year and specifies requirements for the resolution. A separate transitional provision, inserted by clause 27, concerns remuneration for 2008.

Clause 19 amends section 236B (Reimbursement of expenses and provision of facilities for councillors of local governments) to clarify that it is not necessary for expenses to be paid directly to a councillor, and removes previous requirements for the resolution to be made within 6 months of a quadrennial election. Expenses to which a councillor is entitled under an expenses reimbursement policy may be paid to a councillor, or to a third party such as a transport provider or conference organiser.

Clause 20 amends section 237 (Remuneration, reimbursement of expenses and provision of facilities for person serving on advisory committee) to provide separately for remuneration and reimbursement expenses. The terms "remuneration" and "reimbursement of expenses" will be consistent between this section and the provisions for councillors' remuneration and councillors' expenses.

Clause 21 replaces sections 250AR and 250AS

New section 250AR (Chief executive to approve proposed expenses reimbursement policy or amendments of the policy) requires a local government to submit to the chief executive for approval a proposed expenses reimbursement policy that it is consistent with the guidelines issued by the chief executive. The chief executive must either approve the proposed expenses reimbursement policy, approve it subject to minor changes, or notify the local government of the ways that it does not comply and ask the local government to submit a revised proposed expenses reimbursement policy.

New section 250AS (Requirement to adopt expenses reimbursement policy or amendment) provides that the expenses reimbursement policy adopted by a local government must be the same as the proposed expenses reimbursement policy approved by the chief executive under section 250AR. However, this does not prevent a local government publishing the expenses reimbursement policy in a style it considers appropriate, correcting obvious errors or, for example, changing the date from that of the proposed policy to the finalised policy.

Clause 22 omits section 482 (Ways of entering a contract) which is not necessary as a result of amendments to sections 38 and 53 to omit provision for a common seal and provide for a local government or a joint local government to execute a document by signature of specified persons.

Clause 23 amends section 534 (Content of report about other issues of public interest) for consistency with other provisions which deal separately

with remuneration and the reimbursement of expenses. Local governments will continue to be required to report on resolutions made about councillors' remuneration and expenses, and about advisory committee members' remuneration and expenses, and the total remuneration and particulars of the expenses incurred by councillors and the services provided to councillors.

Clause 24 amends section 539 to remove a reference to the common seal of a joint local government.

Clause 25 removes a reference to a local government's seal in section 1115 (Proof of proceedings of local government).

Clause 26 amends section 1116 (Evidentiary value of land record) to remove a reference to a local government's seal.

Clause 27 amends section 1291 (Remuneration for 2008) by providing that any resolution made by a local government about remuneration levels before the introduction of the Local Government Remuneration Tribunal ceases to have effect. For a merging local government that goes out of existence on 15 March 2008, a resolution and the entitlement to remuneration cease on 15 March 2008. For other local governments, the effect of a resolution made under the former section 237 (as in force before amendment of the Act by the *Local Government Reform Implementation Act 2007)* ceases at the conclusion of the 2008 election. This amendment ensures there is no conflict between a resolution made by a local government under the previous section 237 of the Act, which was omitted by the *Local Government Reform Implementation Act 2007,* and the remuneration schedule.

The new remuneration schedule takes effect from the conclusion of the 2008 election but cannot be paid until a local government passes a resolution under section 236A of the Act. A local government must make a resolution in relation to the remuneration schedule as soon as practicable.

Clause 28 inserts a new Chapter 19, Part 15 into the Act entitled:

Transitional provisions for Local Government and Industrial Relations Amendment Act 2008

New section 1294 (Effect of different legal status on existing local governments and joint local governments) provides that the new section 34 does not affect the continued existence of a local government that was in existence immediately before the commencement of the section. The assets, rights and liabilities, and any matter or thing done by or in relation

to a local government in existence immediately before commencement are not affected by amendments in the new section 34. Local governments continue in existence, and their assets, rights and liabilities remain unchanged when their status changes from a body corporate to an entity created by this Act.

New section 1294 also provides that the continued existence of, and the rights, assets and liabilities of a joint local government that was in existence immediately before commencement of this section, continue unchanged, and that any matter or thing done by or in relation to the joint local government is not affected.

New section 1295 (Contractual rights etc are unaffected) declares that the continuation of local governments under section 34, does not place a local government or joint local government in breach of contracts, instruments or conditions, and does not release a surety or person from an obligation. To the maximum extent possible, this provision ensures that existing contracts remain on foot and existing rights and liabilities are enforceable. This new section would not be effective if a current contract for borrowings stated that the law of another jurisdiction applies to the contract and if a specific clause of that contract also required the local government to be a corporation.

Section 1295 also provides that the continuation of a local government, not as a corporation, does not negate any decision made by the local government.

New section 1296 (Chief executive to make transitional expenses reimbursement policy) provides for transitional arrangements for the payment of councillors' expenses and the provision of services to councillors after the conclusion of the 2008 election. A transitional expenses reimbursement policy, issued by the chief executive, will apply to all local governments from the conclusion of the election until the local government adopts an expenses reimbursement policy under section 250AR. The expenses reimbursement policy that is adopted by a local government must be approved by the chief executive under new section 250AR, inserted by clause 21.

New section 1297 provides transitional arrangements for compliance with National Competition Policy obligations in relation to new significant business activities arising from merger of businesses as a consequence of local government amalgamations. Local governments may defer identification of new significant business activities for the budget year, and

the consequent preparation of a public benefit assessment, until the 2009-2010 year.

Clause 29 omits 'remuneration' from the last item in the Ethics principles in Schedule 1, which previously referred to a local government's remuneration policy. This removes an inconsistency with provisions inserted in 2007 for remuneration for councillors to be set by the Local Government Remuneration Tribunal,

Clause 30 omits the definition of "remuneration" from the dictionary to remove an inconsistency with the provision for remuneration to be determined by the Local Government Remuneration Tribunal. Section 250AK(2) states that remuneration must not include any amount for expenses or facilities provided to a councillor.

Clause 30 also replaces the definition of "expenses reimbursement policy" to clarify that expenses can be paid to a third party, such as a provider of a service.

Part 4 Other amendments

Division 1 Amendment of Building Units and Group Titles Act 1980

Clause 31 provides that this division amends the *Building Units and Group Titles Act 1980.*

Clause 32 amends section 9(7) to omit reference to sealing with the seal of a local government.

Division 2 Amendment of Fire and Rescue Act 1990

Clause 33 provides that this division amends the *Fire and Rescue Service Act 1990.*

Clause 34 amends section 123 (Recovery of arrears) to omit reference to a common seal and replaces it with reference to the signature of the mayor.

Division 3 Amendment of Integrated Resort Development Act 1987

Clause 35 provides that this division amends the *Integrated Resort Development Act 1987.*

Clause 36 amends section 31 to omit reference to the seal of a local government, and refer instead to the local government's approval on a plan of subdivision and the schedule.

Clause 37 amends section 32 to omit reference to the seal of a local government.

Clause 38 amends section 52 to omit reference to the seal of a local government, and refer instead to the local government's approval on a plan of subdivision and the schedule.

Clause 39 amends section 53 to omit reference to the seal of a local government

Clause 40 amends section 61 to omit reference to the seal of a local government, and refer instead to the local government's approval on a building units or group titles plan and any schedule.

Clause 41 amends section 62 to omit reference to the seal of a local government.

Clause 42 amends section 79C to omit reference to the seal of a local government and refer instead to the local government's approval on a replacement schedule.

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

Clause 43 provides that this division amends the *Local Government (Robina Central Planning Agreement) Act 1992.*

Clause 44 inserts a provision in section 4 of the Act to provide that, if a local government is permitted or required under the planning agreement to seal a plan of subdivision, it is adequate for the local government to endorse its approval of the plan on the plan.

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