

Local Government Electoral Bill 2011

Explanatory Notes

Title of the Bill

Local Government Electoral Bill 2011

Introduction

The new stand alone local government electoral legislation is an essential component of the Local Government Reform program started in 2007 and a Queensland first. The Bill will provide a more accessible and transparent Act for councils, candidates for local government elections, the Electoral Commission of Queensland (ECQ) and the community. The Bill will provide for efficiency, transparency and integrity in local government elections, in line community expectations.

The Bill aligns the local government electoral legislation with the streamlined and practitioner friendly *Local Government Act 2009* (LGA 2009). Provisions relating to local government, including Brisbane City Council (BCC), have been consolidated into a stand alone piece of legislation, contributing to a reduction of the legislative burden on local governments, replacing four legislative instruments with one.

Electoral provisions contained in the LGA 2009 have been transferred to the Bill together with the relevant electoral provisions in the repealed *City of Brisbane Act 1924* (CoBA 1924) and the provisions in the *Electoral Act 1992* (EA 1992) relating to BCC. The opportunity has also been taken to review and replace electoral provisions contained in the *Local Government (Community Forums) Regulation 2008* with a model involving council appointments that is preferred by the two Indigenous Regional Councils, now operating fully under the LGA 2009 since 1 July 2010.

Fire safety in residential care buildings

Residential care buildings (RCBs) and budget accommodation buildings (BABs) were identified in the Childers Taskforce report as posing a high risk to life and an increased risk of multiple deaths in the event of a fire.

This is due to high occupancy numbers and a reduced capacity for individuals to evacuate without assistance.

On 1 July 2002, Queensland Development Code (QDC) Mandatory Part (MP) 2.1 'Fire safety in budget accommodation buildings' was introduced for existing BABs constructed, or approved, before 1 January 1992.

On 1 June 2007, QDC MP 2.2 'Fire safety in residential care buildings' was introduced for RCBs approved on or after 1 June 2007. QDC MP 2.2 requires the installation of sprinklers and building-wide alarms, and the maintenance of a 24 hour minimum support ratio across smoke compartments.

QDC MP 2.3 will be introduced to apply to RCBs built or approved prior to 1 June 2007 where the building accommodates six or more residents, and more than one resident requires physical assistance to evacuate the building during an emergency.

Swimming pool barriers on common boundaries

The *Neighbourhood Disputes Resolution Bill 2010* (NDRB) was introduced into Parliament on 25 November 2010. The NDRB will repeal the *Dividing Fences Act 1953* and will provide a new legislative scheme for dividing fences and trees.

The NDRB provides a consensual model for negotiations between neighbours about dividing fences, requiring them to consult and agree before altering, replacing or constructing a dividing fence.

The NDRB specifically excludes dividing fences that also serve as pool barriers from the scope of a number of its parts.

Each regulated pool in Queensland must have a pool barrier that complies with the pool safety standard (in the absence of a pool safety management plan) to help ensure that young children are not able to access the pool. Owners of swimming pools in existence prior to 1 December 2010 must construct a compliant pool barrier by 1 December 2015 or earlier if the property is sold or leased before this date. Pool owners who breach these obligations are subject to penalties.

In most cases an existing dividing fence will only need minor modifications to serve as a compliant pool barrier. It is already common practice to position at least part of a pool barrier on a common boundary or use an existing boundary fence as a pool barrier with minor modifications when the pool is constructed.

The policy underlying the Bill is to allow pool owners to construct pool barriers or modify existing fences on common boundaries, within certain constraints, without having first to obtain the agreement of the adjoining owner, and to make the pool owner responsible for the cost of constructing and maintaining that part of the fence. Where a pool owner needs to enter an adjoining property in order to carry out fencing work, the pool owner may do so only if the pool owner and the adjoining owner have agreed to the proposed fencing work and access to the land, or the pool owner is authorised to enter the land under a Queensland Civil and Administrative Tribunal (QCAT) access order.

The Bill also includes amendments to the *Mixed Use Development Act 1993*, *Sanctuary Cove Resort Act 1985*, LGA 2009, the *Animal Management (Cats and Dogs) Act 2008* (AMCDA), the *Public Trustee Act 1978*, *State Penalties Enforcement Act 1999* and *State Penalties Enforcement Regulation 2000*.

General policy objectives of the Bill

With few exceptions, the provisions in the Bill closely mirror those used for State elections. This reflects Government policy that there should be alignment between the requirements for State and local government, except where a unique situation in local government requires a different approach.

A major object of the new Bill is to relocate responsibility for the conduct and administration of all local government elections from local governments to the ECQ. Giving the ECQ a mandate to oversee and conduct all local government elections will create an independent, central point of coordination for local government elections. This will increase public confidence in the integrity, transparency and outcomes, of these elections.

The general intent of the Bill is to provide transparent, easy to use legislation to build a stronger and more transparent local government electoral system, rather than to change existing tried and true processes.

Mixed Use Development Act 1993 amendments

The MUDA pre-dates contemporary body corporate management frameworks set out under the *Body Corporate and Community Management Act 1997* (BCCMA), resulting in an outdated structure and a range of inequities for residents.

The proposed amendments address a number of pressing equity and procedural issues relating to bodies corporate operations, i.e. dispute resolution, use of proxies, financial disclosure and equitable representation on committees.

Sanctuary Cove Resort Act 1985 amendments

Minor amendments to *Sanctuary Cove Resort Act 1985* (SCRA) are necessary to correct an anomaly to enable future amendment of the land use plan.

Fire safety in residential care buildings

To achieve its objectives, the Bill will introduce a new chapter to the *Building Act 1975* (BA 1975). Chapter 7A – ‘Fire Safety for residential care buildings built, approved or applied for before 1 June 2007’ will introduce provisions which:

- define the term 'residential care buildings' (RCBs)
- define the term 'assessment categories' for RCBs
- introduce a fire safety standard
- define RCB assessors
- require assessment of RCBs against the fire safety standard by 1 March 2012
- require compliance of RCBs with the standard within 3 or 5 years depending upon as assessment of the fire risk for the building.

Swimming pool barriers on common boundaries

To achieve its objectives, the Bill will introduce a new part to Chapter 8 of the BA 1975 entitled ‘Neighbours’ rights and responsibilities for particular dividing fences’ to introduce provisions which:

- allow pool owners to construct a pool barrier on a common boundary if they give adjoining owners 14 days notice of the intention to construct a fence together with a description of the proposed fence;
- limit the type, height and design of pool barriers that a pool owner can construct;
- ensure that the pool owner must respect existing fence construction and in particular comply with requirements for a

special purpose fence (for example an acoustic fence or a fence for a regulated dog);

- require all pool barriers to meet the requirements for a ‘sufficient dividing fence’, as defined under the NDRB;
- provide that the pool owner may not enter an adjoining property for construction purposes, or construct a fence outside the above constraints, without the adjoining owner’s agreement or an order from QCAT; and
- clarify the rules relating to contributions between adjoining owners for pool fences.

Alternatives to achieve policy objectives

An alternative option is to retain local government electoral provisions in schedule 2 of the LGA 2009, due to expire on 31 December 2011, and the repealed CoBA 1924, continued in force by section 263 of the *City of Brisbane Act 2010* (CoBA 2010), and the EA 1992.

However, this would not provide a contemporary or appropriate legislative framework for local government elections or meet community expectations of efficiency, transparency and integrity in local government elections. It would disregard the outcomes of the Parliamentary Law, Justice and Safety Committee (LJSC) review of the local government electoral system.

MUDA and SCRA amendments

The Bill provides the necessary frameworks to achieve the above objectives. There are no other viable alternatives that would achieve the Government’s policy objectives.

Fire safety in residential care buildings

The policy objectives can only be achieved by legislative enactment.

Existing legislation already regulates new and existing BABs and RCBs approved post 1 July 2007. Further legislative provisions are required to improve fire safety in existing RCBs approved pre 1 July 2007.

Swimming pool barriers on common boundaries

The policy objectives can only be achieved by legislative enactment.

It is envisaged that most pool owners would choose to consult with neighbours with a view to reaching agreement about the fence and mutually convenient arrangements for carrying out the works.

However, where obtaining the agreement of an adjoining owner is impractical or not feasible, the provisions in the Bill regulate the situation so that affected pool owners can use boundary fences to comply so that they do not have to build a second fence inside the common boundary to avoid committing a pool safety offence.

Estimated implementation costs

Costs to Government

There will be upfront costs to Queensland Treasury to initially fund the 2012 local government quadrennial elections. After the elections, the ECQ will issue invoices to local governments to recoup these funds on a user-pays basis and these funds will be returned to the consolidated revenue fund. By-election costs and the costs of any fresh elections will be funded, and recouped, on the same basis.

There will also be additional upfront funds to establish a dedicated Local Government Elections Branch within the ECQ.

Costs to local government

A local government will continue to be responsible for the costs of conducting a local government election in its local government area and will be required to contribute to the costs of the ECQ in relation to shared and centrally administered local government election services.

MUDA and SCRA amendments

The Bill has no administrative cost impacts to the State in relation to the SCRA or MUDA amendments.

Fire safety in residential care buildings

The Department of Local Government and Planning will incur additional costs of approximately \$0.5 million relating to the implementation of the RCB inspection regime, detailed costing of the fire safety upgrades for RCBs and an education and awareness strategy.

On implementation of QDC MP 2.3, funding of approximately \$9.95 million will be required to upgrade the 33 Queensland Health buildings affected by this legislation.

Swimming pool barriers on common boundaries

The Bill does not impose any additional obligations on Government agencies that cannot be met from existing appropriations.

Consistency with Fundamental Legislative Principles

The Bill includes a number of potential breaches of fundamental legislative principles.

The Bill excludes the application of part 3 of the *Judicial Review Act 1991* to a decision of the Minister about whether the election for a local government area, or a part of a local government area may be conducted by postal ballot. This is considered justified on the grounds that in making such a decision the Minister must consider certain criteria and reflects the relationship between the State and local governments in section 70(2) of the *Constitution of Queensland Act 2001*.

Potential fundamental legislative principle issues arising over minor 'Henry VIII' clauses are justified to ensure the efficient and timely conduct of local government elections. The power to fix by regulation a different date for a quadrennial election in a particular year would only be used in rare circumstances, for example, if a Federal election was called for around the same time as a scheduled local government election or a local government election coincided with Easter.

The power to make a transitional regulation to deal with any matters necessary to facilitate the transition from the repealed election provisions in the LGA 2009 to this Bill is justified to ensure any election conducted under the Bill can be conducted efficiently and effectively and within the election timeframes legislated. A sunset clause for the section and any regulations made under it has been included and if a regulation is required, it will be quickly followed by an amendment to the Act.

The requirement that a candidate who is a member of a group of candidates is responsible for obligations of a group agent is carried over from the existing legislation. A group of candidates is required under the Bill to appoint an agent for the group, and liability attaches to a candidate only if no group agent is recorded in the register of group agents. The requirement, as part of the funding and disclosure requirements, is justified as it will contribute to the integrity and accountability of local government elections.

MUDA and SCRA amendments

The Bill has been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Potential inconsistencies identified by the Office of the Queensland Parliamentary Counsel have been addressed in the Bill.

In relation to the MUDA, a new provision enabling forced transfer of a letting agent's management rights potentially affects parties' rights and liberties under contracts and instruments of appointment. This provision is limited to the mechanism, based on a similar model to the *Managed Investments Act 1998* (Cth), to remove an under-performing manager under certain conditions in a manner that is not destructive to the body corporate scheme and allows the manager to depart with a financial return for the business the manager has built up.

Similarly, the proposed amendments introduce penalty units equivalent to the enforcement provisions for proxy misuse section 111, BCCM Standard Regulations. It is considered that the offences are equivalent and the penalties are a reasonable deterrent to the possible misuse of proxies at bodies corporate at MUDA communities, ensuring consistency with community management schemes covered by the BCCM Standard Regulations.

Fire safety in residential care buildings

The *Building Act 1975* amendment raises no fundamental legislative principle issues. The amendment has been drafted with regard to the fundamental legislative principles and is considered to comply with these principles.

Swimming pool barriers on common boundaries

The Bill provides that a person may enter land owned by another person if the parties have agreed or QCAT has made an order for work to be carried out and that access be granted. The person may only enter the other person's land at a reasonable time and to a reasonable extent needed to carry out the work. The person must give a notice to the other person at least 14 days before entering the other person's land. The person must not enter a dwelling on the land. This provision is considered justified given the protections built into the provision and the overall objective of assisting pool owners to comply with the pool safety standard in the interests of child safety. It facilitates the timely construction of pool fencing and also

recognises that pool owners are required by law to construct and maintain appropriate pool barriers.

Consultation

Community

In July 2007, as part of the Local Government Act review, an Issues Paper on Local Government elections was released for public consultation. An extensive consultation program was then undertaken with various peak bodies, councils and other Government agencies. Further consultation was recently undertaken by the LJSC. The LJSC received 143 responses to its Issues Paper released in June 2010 and held community forums in Toowoomba, Mt Isa, Townsville, Cairns, Rockhampton and Brisbane.

On 29 November 2010, the LJSC tabled the results of its consultation in its report *A new Local Government Electoral Act: Review of the local government electoral system (excluding BCC)*. On 28 February 2011, the Government tabled its response to the LJSC recommendations which have been taken into consideration during the development of the Bill.

Government

As part of the broader Local Government Reform Program, two workshops with government agencies and nine high level meetings with key statutory bodies and stakeholders were held to identify key themes and issues which informed the topics and outline of the Issues Papers, including the Issues Paper on local government elections.

Government agencies, including the ECQ, were further consulted during the development process for the Bill.

Targeted consultation

Targeted consultation on the Bill was carried out with the Local Government Association of Queensland (LGAQ), Local Government Managers Australia - Queensland Branch (LGMA), the Brisbane City Council (BCC) and the ECQ.

Queensland Office for Regulatory Efficiency

The Queensland Office for Regulatory Efficiency was consulted during the drafting of the legislation.

Integrated Development Assessment System

There are no implications for the Integrated Development Assessment System.

Ministerial Policy Committee

The Minister briefed the Policy Committee.

National Competition Policy

Queensland Treasury has been consulted in the development of the Bill and supports the streamlining and updating of the legislation.

Office of the Queensland Parliamentary Counsel

The Office of the Queensland Parliamentary Counsel has been briefed on the reforms and supports the legislative proposal.

MUDA and SCRA amendments

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. However, the amendments to SPA are consistent with the overall National planning framework agenda and appropriate governance structures and principles.

Fire safety in residential care buildings

The Queensland Government has undertaken an extensive program of industry and community consultation, beginning with surveys of Queensland's residential care buildings in 2006. Between January and June 2009, further state wide consultation with the residential care industry was undertaken to assess the practical operation of a new part of the Queensland Development Code (QDC).

Since that time, the Government has liaised extensively with industry stakeholders to ensure that the proposed QDC part is practical, appropriate and effective. Aged Care Queensland Incorporated, Blue Care, TriCare and a number of building industry professionals have been included in the development of the code.

In addition, the Department has liaised with other Queensland Government agencies, such as the Department of the Premier and Cabinet, Queensland Treasury, the Department of Health, the former Disability Services Queensland and the Queensland Fire and Rescue Service. The Commonwealth Department of Health and Aging has also been consulted.

Swimming pool barriers on common boundaries

A broad range of stakeholders was consulted in the development of the Bill and invited to provide feedback. They included the Unit Owners Association of Queensland, the Australian Resident Managers Association, the Community Titles Institute of Queensland, the Real Estate Institute of Queensland, the Master Builders Association, the Australian Institute of Building Surveyors, the Local Government Association of Queensland, the Queensland Law Society and the Swimming Pool and Spa Association.

Consistency with legislation of other jurisdictions

Fire safety in residential care buildings

In 2005 Victoria introduced mandatory fire safety standards for existing residential care buildings that required installation of sprinklers.

Swimming pool barriers on common boundaries

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another State.

Notes on Provisions

Part 1 Preliminary

1 Short title

Clause 1 sets out the short title of this Bill.

2 Commencement

Clause 2 provides that the Bill commences on assent except for those provisions specifically mentioned, which commence as stated.

3 Purpose of this Bill

Clause 3 states that the purpose of the Bill is to ensure the transparent conduct of elections of councillors of Queensland's local governments.

4 Definitions

Clause 4 states that the dictionary in the schedule defines particular words used in the Bill.

5 Particular references in this Bill

Clause 5 defines particular references used in the Bill.

6 References to divisions includes wards

Clause 6 provides that for this Bill a reference to a division of a local government area includes a reference to a ward of Brisbane under the CoBA 2010.

7 Meaning of conclusion of local government election

Clause 7 sets out the day the *conclusion* of the election of a councillor takes effect.

Part 2 Administration

Division 1 Electoral commission

8 Additional functions and powers of electoral commission

Clause 8 provides that as well as its existing functions under the EA 1992 the Electoral Commission of Queensland (the ECQ) has additional functions under this Bill, including conducting quadrennial elections, by-elections and fresh elections for all local governments.

Division 2 Electoral officers for local government elections

9 Returning officers

Clause 9 provides for the ECQ to appoint a returning officer for a local government election and the disqualifications to being a returning officer, including being the chief executive officer (CEO) of the local government for which a local government election is being conducted.

The Bill provides an exception to this disqualification—the ECQ may appoint a chief executive officer of a local government if the CEO is the only person reasonably available and the CEO is not a member of a political party and has experience conducting local government elections.

A returning officer is responsible for the proper conduct of a local government election.

10 Assistant returning officers

Clause 10 provides for the ECQ to appoint one or more assistant returning officers for a local government election. An assistant returning officer must not be a minor or a member of a political party.

An assistant returning officer is responsible for helping the returning officer perform their responsibilities.

11 Presiding officers

Clause 11 provides that a returning officer may be presiding officer at a polling booth, or appoint an adult as presiding officer who is responsible for the proper conduct of a poll at a polling booth and for carrying out other duties as directed by the returning officer. Another adult may be appointed as presiding officer at a booth if the person who is presiding officer is unable to act in the position.

12 Issuing officers

Clause 12 provides that an issuing officer is a member of the ECQ's staff and is responsible for giving ballot papers, declaration forms and envelopes to voters and for performing other duties required by a returning officer.

13 Membership of a political party ends particular appointments

Clause 13 provides that a person's appointment as a returning officer or assistant returning officer ends if the person becomes a member of a political party. A person's appointment may also end for other reasons.

14 Obligation to notify of membership of a political party

Clause 14 states that on becoming a member of a political party a returning officer, or an assistant returning officer, must immediately notify the ECQ of their membership.

A penalty applies for a person not complying with this clause.

15 Returning officer may act through other officers

Clause 15 provides that if a returning officer authorises an assistant returning officer, presiding officer or issuing officer to do a thing that the returning officer may do under this Act, and the officer does it, the thing is taken to have been done by the returning officer.

16 Assistant returning officer may act through other officers

Clause 16 provides that if an assistant returning officer authorises a presiding officer or an issuing officer to do a thing that the assistant returning officer may do under this Act, and the officer does it, the thing is taken to have been done by the assistant returning officer.

Part 3 Voters rolls

17 Returning officer must compile voters roll

Clause 17 requires the returning officer to compile a voters roll for each election and for an electoral registrar under the EA 1992 to give the returning officer the help they reasonably need to compile that roll.

18 Cut off day for compiling voters roll

Clause 18 sets out the cut off day for the compilation of a voters roll—31 January in the year of the election for quadrennial elections and for a by-election, at least 5 days, but not more than 7 days, after notice of the date of the by-election is published in a newspaper under clause 23(3).

19 Requirements of voters roll

Clause 19 provides for what information must be included in a voters roll and the information that, under the EA 1992, must be excluded from a voters roll.

20 Inspection of voters roll

Clause 20 provides that the ECQ must make available at its public office the most recent version of all voters rolls for the public to inspect. The ECQ may also make a copy of the most recent version of a voters roll available for inspection by any person at any place it considers appropriate.

21 Supply of voters roll to candidates

Clause 21 provides that if a poll is to be conducted the returning officer must give a copy of the voters roll to each candidate for a local government election as soon as practicable after the nomination day.

Part 4 Local government elections

Division 1 Local government elections

22 Types of elections

Clause 22 sets out the types of local government elections under this Bill:

- quadrennial elections—the compulsory election of all elected members to be held in March every 4 years;
- by-elections—an election to replace a councillor due to the office becoming vacant; and

- fresh elections—the election for all elected members where a new local government is created or where a council is to be reformed following dissolution.

23 Date of quadrennial elections

Clause 23 provides that a quadrennial election must be held in 2012, and then every 4 years, on the last Saturday in March (or another day fixed by regulation for a particular year).

Though this clause could be considered a ‘Henry VIII clause’ in the broad definition, this reserve power is justified to ensure an election day may be moved in particular circumstances, for example if a Federal election were called at the same time as a scheduled local government election or a local government election coincided with Easter.

24 Date of by-elections

Clause 24 provides that a by-election must be held on the day fixed (within 12 weeks after the vacancy happens) by the returning officer for the election and sets out the steps a returning officer must take for the by-election as soon as practicable after fixing that day.

Division 2 Candidates for local government elections

Subdivision 1 Nominations of candidates

25 Calling for nominations

Clause 25 provides for a returning officer to invite nominations of candidates for a local government election by publishing notice of the election in a newspaper circulating generally in a local government area, or a division of a local government area, for which the election is to be held.

Nominations must be given to the returning officer at the office of the returning officer (the place of nomination).

26 Who may be nominated

Clause 26 specifies the qualifications for becoming a candidate for a local government election. The clause also sets out some nomination restrictions for a person who is a candidate for election as a member of an Australian Parliament. For example (under sections 152 and 155 of the LGA 2009 and the CoBA 2010) a person can not be a councillor while the person is a member of the Legislative Assembly and can not be a candidate in a local government election while a candidate for a seat in a State election.

27 How and when nomination takes place

Clause 27 requires a candidate for election to be nominated by the registered officer, under the EA 1992, of a political party that has endorsed the person as a candidate for the election or by 6 voters for the local government area, or division of the local government area, for which the election is to be held.

Nominations must be given to the returning officer after the invitation for nominations under clause 25 but before noon on the nomination day.

28 Grounds for deciding a person is not properly nominated

Clause 28 sets out grounds for a returning officer to decide a person is not properly nominated as a candidate for election. The clause provides details of instances where a nomination name may result in a candidate not being properly nominated, for example because the name could cause confusion, is a party name or is obscene or offensive.

If the returning officer decides a person is not properly nominated, the returning officer is to give the person notice of their decision, including the reasons for the decision, and advise the person of their right to seek an injunction.

29 Effect of multiple nominations

Clause 29 prohibits a person from nominating as a candidate for election as councillor and mayor of the same local government area or as councillor of more than one division of a local government area.

30 Withdrawal of consent to nomination

Clause 30 allows a candidate who has nominated for election to withdraw the nomination before noon on nomination day and to receive a refund of the nomination fee.

31 Certification of nominations

Clause 31 requires the returning officer to certify the nomination of a candidate who has been properly nominated and to give the candidate a copy of the certificate. If documentary evidence is required that the candidate or a nominator is a voter for the election, the onus of proof is on the candidate. A wrongly certified nomination does not validate the nomination.

32 Announcement of nominations

Clause 32 requires the returning officer to display a copy of each nomination received in a conspicuous position at their office.

33 Death of candidate

Clause 33 provides that if a candidate who has nominated for election dies before noon on nomination day then the person's nomination has no effect and a refund of the nomination fee must be made to the person's personal representative (or another person who paid the deposit).

34 Procedure if number of candidates not more than number required

Clause 34 provides for candidates who have nominated for election to be taken to be elected if the number of candidates is only equal to the number required to be elected. The returning officer must publish a notice in a newspaper advising that the nominees are taken to have been elected.

If nobody is nominated or the number of candidates nominated is less than is needed, the Governor in Council may appoint the number of people necessary to fully constitute the local government. A person appointed must be qualified to be a councillor and is taken to have been properly elected on appointment.

35 Procedure if number of candidates exceeds number required

Clause 35 requires the returning officer to give public notice that a poll will be conducted if the number of candidates nominated for election exceeds the number required. The notice must state the day of the poll, the names of all candidates properly nominated for election, the location of all ordinary polling booths and the ordinary voting hours of 8am to 6pm. The notice must be displayed in a conspicuous position at the office of the returning officer soon after noon on nomination day until the close of the poll as well as being published in a local newspaper.

36 Procedure on death of candidate when poll to be conducted

Clause 36 provides for election proceedings to start again if a properly nominated candidate dies after the close of nominations and before polling day. The deceased candidate's deposit must be refunded to the candidate's personal representative (or someone else who paid the deposit) and all other candidates' deposits refunded to the persons who paid them.

If proceedings for an election are started again the ECQ must, by gazette notice, fix a new polling day.

37 If successful candidate dies

Clause 37 provides for a candidate who is successful at an election but dies before the final result of the poll is declared, to be declared elected to the relevant office.

38 Extension of times

Clause 38 provides for the ECQ to fix a later date for nomination or polling day if it is likely the day will be affected by an emergency. The returning officer must publish a notice giving any necessary directions to candidates for election and information about the procedures to be followed by voters.

Subdivision 2 Deposits accompanying nomination

39 Deposit to accompany nomination

Clause 39 stipulates that a deposit of \$250 must be paid to the returning officer at the same time a nomination is given under clause 27.

40 Disposal of deposits generally

Clause 40 requires nomination deposits to be refunded if a candidate is elected, receives more than 4% of the total number of formal first preference votes cast in the election (for optional-preferential voting) or receives more than 4% of the total number of formal votes cast (for first-past-the-post voting).

Deposits of candidates who do not meet these criteria become the property of the State unless the candidate has withdrawn their nomination for election under clause 30 or the candidate dies before noon on nomination day (clause 33).

If a nomination deposit is to be refunded, it may be refunded to someone else with the written authority of the person who paid the deposit.

Subdivision 3 Recording of membership and agent for group of candidates

41 Record of group membership in group of candidates

Clause 41 states that a record of membership of a group of candidates must be given to the returning officer. The record must be in the approved form, state the names of the members and be signed by each member. The record is to be publicly displayed.

42 Appointment of agent for group of candidates

Clause 42 states that an instrument appointing an agent for a group of candidates is to be given to the returning officer at the same time as the record of membership. The instrument must be in the approved form, state the name and address of the agent, be signed by each member of the group

and include, or be accompanied by, the agent's consent and declaration that they are eligible to be appointed as agent.

43 Register of group agents

Clause 43 states that a returning officer must keep a register of group agents recording the name and address of each appointed agent for a group of candidates. Under this clause, the appointment of an agent does not take effect until it is been recorded on the register and the appointment only stops being effective once the agent's name is removed from the register. The agent's name can be removed by providing the returning officer with a written notice signed by the agent or a written notice signed by all members of the group.

If a person stops being the group's agent, the group may appoint another agent, but until then, all obligations and liabilities under the Act that apply to an agent apply to each member of the group.

Division 3 Arrangements for local government elections

Subdivision 1 Polls by ballots

44 Poll by ballot

Clause 44 provides that a poll must be conducted by ballot in accordance with this part.

45 Direction that poll be conducted by postal ballot

Clause 45 provides for a local government that satisfies certain criteria to apply to the Minister for a poll to be conducted by postal ballot. The Minister may approve such a request for the local government area, a division of the local government area or a part of the local government area marked on a map.

If the Minister decides to approve a postal ballot for a part of its area marked on a map the local government must ensure that the public may inspect the map at its public office or on its website.

Decisions of the Minister can not be appealed against.

Subdivision 2 Polling booths

46 Kinds of polling booths

Clause 46 provides for three kinds of polling booths for local government elections:

- an ordinary polling booth—a building or other structure, or a part of a building or other structure used to enable people in general to vote;
- a mobile polling booth—an institution or whole or part of a building, structure, vehicle or place made available for particular people to vote; and
- an early polling booth—a place declared as a polling booth for people to cast a pre-poll vote.

47 Polling booths—general

Clause 47 provides for the returning officer to arrange polling booths for a local government election and to ensure each polling booth is equipped with sufficient materials to enable people to vote. A polling booth may be used for more than one election that is being conducted at the same time for the local government area or a division of the area.

A place where liquor may be sold can not be used as a polling booth but a civic or cultural centre, community hall or similar place under the local government's control may be used, subject to the floor area to be used for voting being designated in the polling notice and no liquor being sold or supplied in that area during voting.

48 Provision of ordinary polling booths

Clause 48 allows for a returning officer to arrange for places to be used on polling day as ordinary polling booths. Public notice must be given of the

location of a booth and the ordinary voting hours. Public notice of any change of arrangements must be given by the returning officer.

49 Declaration of mobile polling booths

Clause 49 provides for mobile polling booths to be declared if a part of a local government area does not have enough voters to justify having an ordinary polling booth or the returning officer is satisfied that residents in an institution should be able to vote at the institution.

Public notice must be given declaring the relevant institution or place and specifying the times at which votes may be cast. Candidates for the election must be given written notice of the declaration of mobile polling booths and the times at which voting at the booth may take place.

50 Declaration of early polling booths

Clause 50 provides that the returning officer must arrange at least one place in a local government area as a polling booth for people to cast a pre-poll vote. The returning officer must also fix times for voting at the booth, publish notice, and given written notice to candidates, of the declaration of the polling booth and times for voting at the booth.

51 Duty of person in charge of institution

Clause 51 requires the person in charge of an institution to allow residents of the institution and issuing officers to have access to the booth during the declared voting hours.

52 Privacy for electors casting votes at polling booths

Clause 52 provides for the privacy of a person voting at a polling booth.

53 Adjournment of poll

Clause 53 allows a returning officer or presiding officer for a polling booth to adjourn the conduct of a poll at a polling booth if the conduct of the poll is likely to be interrupted or obstructed by an emergency.

If a poll is adjourned the returning officer must fix a day, no later than 34 days after the adjournment of the poll, and give public notice of the day fixed.

Subdivision 3 Ballot boxes, ballot papers and other documents

54 Ballot boxes generally

Clause 54 prescribes the requirements for a ballot box used in a poll and requires the box to be under an issuing officer's scrutiny and effective control. This clause also gives issuing officers, candidates and scrutineers for the poll, the right to inspect a ballot box before it is locked or sealed in readiness for receiving ballot papers.

55 Requirements of ballot papers

Clause 55 prescribes the requirements of ballot papers, including the design of ballot papers and how candidate names are to be included.

56 Ballot papers for separate polls

Clause 56 provides for the use of separate ballot papers in an election for mayor and another councillor of the local government.

57 Order of candidates' names on ballot papers

Clause 57 sets out the procedure to be followed by the returning officer in deciding the order candidates names will be listed on a ballot paper. A candidate, or their representative, may be present when the order of candidates' names is decided.

58 Distribution of ballot papers

Clause 58 requires the returning officer to ensure that all polling booths have sufficient numbers of ballot papers available at all polling booths.

The clause also details the content of the delivery note to be forwarded by the returning officer with each parcel of ballot papers supplied to a presiding officer. On receipt of the parcel a presiding officer must check its contents against the delivery note for any discrepancies. If a discrepancy is found the presiding officer must confirm the discrepancy by having the issuing officer, or if the issuing officer is not available, a responsible person, countercheck. If the discrepancy is confirmed it must be noted in the acknowledgment form, for return to the returning officer after

preliminary counting, and signed by the presiding officer and the person who made the countercheck.

Subdivision 4 Scrutineers

59 Candidates' entitlement to scrutineers

Clause 59 entitles each candidate to have a scrutineer present for each issuing officer at a polling booth or at a place where declaration envelopes are being examined or votes being counted. The scrutineer may be present at all times during voting, examination or counting.

60 Appointment of scrutineers

Clause 60 allows a candidate to appoint adults as scrutineers for the election.

61 Proof of identification

Clause 61 requires a scrutineer to carry evidence of identification and of their appointment as a scrutineer. This evidence must be produced to an issuing officer on demand.

62 Powers of scrutineers

Clause 62 provides for scrutineers to be present in a polling booth at various times before, during and after the poll and specifies what a scrutineer is entitled to do.

Subdivision 5 Errors, omissions or delays

63 Correction of errors, omissions or delays

Clause 63 empowers the ECQ to correct by gazette notice any error or omission in documentation used in a poll.

Division 4 Who may vote

64 Who may vote

Clause 64 sets out who is and who is not entitled to vote at a local government election.

Division 5 How voting takes place

Subdivision 1 System of voting

65 System of voting

Clause 65 states that the system of voting to be used in an area divided into single member divisions is optional preferential voting and, in all other cases, first-past-the-post voting.

66 Compulsory voting

Clause 66 makes voting at a local government election compulsory.

Subdivision 2 Casting votes

67 Ways in which to cast votes

Clause 67 sets out the different ways a person may cast a vote, other than in a postal ballot election. A person may cast their vote at an ordinary or mobile polling booth on polling day (an *ordinary vote*), cast their vote at an early polling booth before polling day (a *pre-poll vote*) or cast their vote up to polling day using posted voting papers (a *postal vote*).

In a postal ballot election a person must cast a postal vote.

68 Who may cast votes in particular ways

Clause 68 provides for a person voting in a local government election, other than in a postal ballot election, to cast an ordinary vote, a pre-poll

vote or a postal vote. An elector may only cast a postal vote, other than in a postal ballot election, if they satisfy certain criteria set out in subclause (4), for example being more than 8 km from a polling booth on voting day or not able to vote on the day because of religious beliefs.

Under this clause a person may cast an ordinary vote at a polling booth in any division of their local government area.

A person voting in a postal ballot election must cast a postal vote.

69 Who must complete a declaration envelope

Clause 69 specifies who must sign a declaration envelope when voting, for example, a person not on the roll because of official mistake or a person who appears to have already voted.

70 Casting an ordinary vote

Clause 70 sets out the steps a person must take to cast an ordinary vote in a local government election.

71 Casting a pre-poll vote

Clause 71 sets out the steps a person must take to cast a pre-poll vote in a local government election.

72 Casting a postal vote

Clause 72 sets out the steps a person must take to cast a postal vote in a local government election.

73 Voting hours for polling booths

Clause 73 sets out the voting hours for ordinary polling booths, mobile polling booths and early polling booths. The clause also defines *pre-polling period* as the period starting no earlier than 14 days before polling day or a longer period fixed, and published, by the returning officer.

74 Particular responsibilities of returning officer when electors cast postal votes

Clause 74 provides that if a returning officer receives a sealed envelope under clause 72 the returning officer must put it in the appropriate ballot box.

75 Particular responsibilities of issuing officers when electors cast ordinary or pre-poll votes

Clause 75 sets out the issuing officer's role during voting hours at an ordinary polling booth or pre-poll polling booth.

Subdivision 3 Special arrangements for particular voters

76 Arrangements for electors at hospitals etc.

Clause 76 sets out the procedures for an issuing officer visiting voters in a hospital to enable them to vote. In this clause, *hospital* includes a convalescent home, nursing home, home for the aged, or a hostel for the aged or infirm.

77 Arrangements for electoral visitor voting

Clause 77 enables voters who are ill, disabled or in advanced pregnancy, or voters caring for such a person, to apply for an electoral visitor vote. The procedures an issuing officer must follow when visiting a voter are set out in the clause.

78 Help for electors voting

Clause 78 provides for a person who needs help voting to choose someone to accompany them and help them vote. The person must first satisfy an issuing officer that they are unable to vote without help.

Subdivision 4 Distribution of ballot papers

79 Applications to cast postal votes in local government elections that are not postal ballot elections

Clause 79 provides for application to be made to the returning officer for a person to cast a postal vote in a local government election that is not a postal ballot election. The application must be in the approved form, signed by the person wishing to cast the postal vote and received by the returning officer by 6pm on the Wednesday before polling day. If the application complies with these requirements, and the returning officer is satisfied the applicant is entitled to vote in the election, the returning officer must give the applicant a ballot paper, a declaration envelope, written voting instructions and an unsealed reply paid post envelope addressed to the returning officer.

The signature on the declaration envelope completed and returned to the returning officer under clause 72 must match the signature on the original application for a postal ballot.

The returning officer must keep a record of any ballot papers and declaration envelopes posted to voters under this clause.

80 Distribution of ballot papers to electors for postal ballot elections

Clause 80 provides that the returning officer must post a ballot paper, a declaration envelope, written voting instructions and an unsealed reply paid post envelope addressed to the returning officer to voters in a postal ballot election.

The returning officer must keep a record of any ballot papers and declaration envelopes posted to voters under this clause.

81 Applications to cast postal votes in postal ballot elections

Clause 81 provides that if a voter for a postal ballot election is not provided with a ballot paper and declaration envelope under clause 80 the person must apply in the approved form signed by the person and received by the returning officer by 6pm on the Wednesday before polling day. If the application complies with these requirements, and the returning officer is satisfied the applicant is entitled to vote in the election, the returning officer

must give the applicant a ballot paper, a declaration envelope, written voting instructions and an unsealed reply paid post envelope addressed to the returning officer.

The returning officer must keep a record of any ballot papers and declaration envelopes posted to voters under this clause.

82 Distribution of ballot papers to particular electors whose address has been omitted from a voters roll

Clause 82 provides for the returning officer to post to a voter mentioned in clause 69(1)(e) a ballot paper, a declaration envelope, written voting instructions and an unsealed reply paid post envelope addressed to the returning officer.

The returning officer must keep a record of any ballot papers and declaration envelopes posted to voters under this clause.

Subdivision 5 Recording a vote on ballot papers

83 How electors must record a vote on a ballot paper—optional-preferential voting

Clause 83 provides that if the system of voting at an election is optional-preferential voting a person must vote by marking the numeral 1 or a tick or a cross in the square opposite the name of the candidate whom the person prefers.

Alternatively the person may mark the numeral 1 or a tick or a cross in the square opposite the name of a candidate to record the person's first preference and mark the numerals 2, 3, 4, and so on in the other squares to indicate other preferences.

A person is required only to record a first-preference vote on a ballot paper but may also record further preference votes for one or more, but not necessarily all, of the other candidates.

84 How electors must record a vote on a ballot paper—first-past-the-post voting

Clause 84 provides that if the system of voting at an election is first-past-the-post voting the person must:

- for the election of a mayor—mark the numeral 1 or a tick or a cross in the square opposite the name of their preferred candidate; and
- for the election of other councillors—mark, in the case of one candidate to be elected, the numeral 1 or a tick or a cross in the square opposite the name of their preferred candidate, or, in the case of more than one candidate to be elected, the numeral 1 or a tick or a cross in the square opposite the name of one candidate for whom the person wishes to vote and the numerals 2, 3, 4 and so on in the squares opposite the names of the other candidates the person wishes to vote for, up to the number of candidates to be elected.

85 Replacement ballot papers

Clause 85 provides for the issue of a replacement ballot paper to a person if their original ballot paper has been accidentally destroyed or defaced, or lost in transit. An issuing officer must set all defaced or destroyed ballot papers aside for separate identification. The returning officer must record the name and place of residence of each person given a replacement ballot paper.

Division 6 Formal and informal votes

86 Formal and informal ballot papers—optional-preferential voting

Clause 86 provides the criteria for assessing whether a vote cast under the optional-preferential system of voting is formal or informal. An informal vote has no effect to record a vote in an election.

87 Formal and informal ballot papers—first-past-the-post voting

Clause 87 provides the criteria for assessing whether a vote cast under the first-past-the-post system of voting is formal or informal. An informal vote has no effect to record a vote in an election.

88 Ballot paper partly formal and partly informal

Clause 88 allows the formal part of a combined ballot paper (a ballot paper for the election of a mayor and a councillor or councillors) to be counted in the election and the informal part of the ballot paper to be rejected.

Division 7 Counting of votes

Subdivision 1 Processing declaration envelopes

89 Preliminary processing of declaration envelopes—general

Clause 89 provides for a returning officer to start processing declaration envelopes after 8am on polling day to decide if the envelopes will be accepted for counting. From 8am the returning officer can start opening ballot boxes containing only declaration envelopes and after 6pm can start opening other ballot boxes containing declaration envelopes. A parcel of declaration envelopes from a polling booth can be processed by the returning officer on receipt.

Counting of ballot papers can not start until after 6pm on polling day.

90 Preliminary processing of declaration envelopes—postal ballot election

Clause 90 allows a returning officer to start processing declaration envelopes received in a postal ballot election after 8am on the day before polling day. Counting of ballot papers can not start until after 6pm on polling day.

91 Procedure for processing declaration envelopes

Clause 91 sets out the procedures for processing declaration envelopes. All candidates for the election must be advised by the returning officer of the times and places where declaration envelopes will be examined to enable a candidate, or their scrutineer, to attend the examination.

Subdivision 2 Preliminary counts

92 Preliminary counting of ordinary votes

Clause 92 provides for a preliminary count by the presiding officer at a polling booth of all formal votes cast in an election.

93 Objections by scrutineers during preliminary count

Clause 93 provides that if a candidate or scrutineer objects to the treatment of a ballot paper as informal during a preliminary count the presiding officer at the polling booth must mark on the back of the ballot paper ‘formal’ or ‘informal’ depending on the officer’s decision to treat it as formal or informal.

If a candidate or scrutineer objects to the counting of a vote for a particular candidate the officer must mark on the back of the ballot paper the name of the candidate for whom the vote is counted.

94 Receipt of things given to returning officer

Clause 94 provides that if the returning officer or someone else receives things from the presiding officer at a polling booth they must give the presiding officer a receipt for the things.

Subdivision 3 Official count

95 Official counting of votes

Clause 95 sets out the procedure to be followed by the returning officer at the official counting of votes.

96 Objections by scrutineers during official count

Clause 96 provides that if a candidate or scrutineer objects to the treatment of a ballot paper as informal during the official count the returning officer must mark on the back of the ballot paper ‘formal’ or ‘informal’ depending on the officer’s decision to treat it as formal or informal.

If a candidate or scrutineer objects to the counting of a vote for a particular candidate the returning officer must mark on the back of the ballot paper the name of the candidate for whom the vote is counted.

Subdivision 4 Deciding results of local government elections

For local government elections conducted before 2008, a council chief executive officer, as returning officer, or other council staff, was responsible for the drawing of lots to resolve a tied vote. This resulted in a perception of a conflict in council roles and to a perception that drawing lots is an anachronistic method.

For these reasons, during development of the Bill consideration was given to referring tied votes under clause 97 or 98 to the Court of Disputed Returns but was decided against. As a tied result will only occur after the initial count, a check and then a recount, the only option available to the Court of Disputed Returns would be to order a fresh election which would be time consuming and expensive and could possibly result in the same outcome at a fresh election.

The method of resolving tied votes is a contemporary method used in elections throughout Australia. The drawing of lots by the independent ECQ will remove the perceived conflict of a council chief executive officer or council staff deciding a tied vote.

97 Counting of votes for optional-preferential system

Clause 97 details the procedure that must be followed in counting votes in an election where the voting system is optional-preferential voting.

The clause provides for a tied vote (where two candidates have an equal number of votes and they are the only candidates left in the count) to be resolved by the drawing of lots by the ECQ.

98 Counting of votes for first-past-the-post system

Clause 98 details the procedure that must be followed in counting votes in an election where the voting system is first-past-the-post voting.

Under the clause if only one person is to be elected (as either mayor or a councillor) and no candidate receives a majority of votes and two or more candidates have an equal number of votes the matter will be resolved by the drawing of lots by the ECQ.

Similarly, if two or more persons are to be elected as councillors, no candidate receives a majority of votes, two or more candidates receive the next highest number of votes with an equal number of votes and the number of tied candidates, together with any candidates already elected under subclause (4), is more than the number required for election, the matter will be resolved by the drawing of lots by the ECQ.

99 Returning officer's duty after counting votes

Clause 99 details the duties of the returning officer once the result of a poll for an election is known. Duties include the sealing up and endorsement of documentation used in the election and the examination of the voters roll if it appears someone has voted more than once, giving a list of such voters to each candidate in the election.

Division 8 Notifying the results of local government elections etc.

100 Notifying the results of an election

Clause 100 requires the ECQ to declare the result of a poll and the names of elected candidates once the result of the election is clear, even if all votes that may count in the election have not yet been received.

101 Notice of results of poll to candidates

Clause 101 requires the ECQ to give notice of the final result of the poll to each candidate.

102 Storage and disposal of material resulting from election

Clause 102 provides for the returning officer to destroy all unused ballot papers. The returning officer must also seal in packets all parcels previously sealed by the returning officer and endorse the contents of each packet.

The ECQ must keep these packets in safe custody until the next quadrennial election and then dispose of the packets in a way it considers appropriate.

103 Notice to electors whose ballot papers are not accepted

Clause 103 requires the ECQ to advise a person who cast a vote and completed a declaration envelope under clause 69(1)(b) if it was not accepted for counting because the returning officer was not satisfied that the person was entitled to cast the vote.

104 Notice to electoral commission of error in electoral roll

Clause 104 requires the returning officer to provide the ECQ with the names and addresses of persons who completed a declaration envelope because their name was left off the voters roll, apparently because of official error.

Part 5 Fresh elections

105 Arrangements for fresh election

Clause 105 provides for a fresh election to be held if, under section 123 of the LGA 2009 a local government is dissolved and a regulation directs that a fresh election of councillors be held or if a regulation directs that a fresh election be held because of action taken to implement a local government change under that Act. A fresh election is an election for the whole of the council, including the mayor.

Part 6 Electoral funding and financial disclosure

Division 1 Preliminary

106 Definitions for pt 6

Clause 106 defines particular words used in this part.

107 Meaning of gifts

Clause 107 defines a *gift* as the disposition of property (other than by will), the provision of a service for no payment or benefit (other than volunteer labour) or a payment or benefit of less than market value and includes a payment to participate in a fundraising activity.

The disposition of property or the provision of a service is not a gift if it is made in a private capacity, for the candidate's personal use and the candidate does not use it solely or substantially for election related purposes.

108 Meaning of value of gifts

Clause 108 defines the *value* of a gift as—

- for money—the amount given;
- for property—the market value, or the value of the property decided by principles prescribed under a regulation;
- for a service provided—the amount that would reasonably be charged if the service were provided commercially, or the value of the service decided by principles prescribed under a regulation;
- for payment to participate in a fundraising activity—the gross amount of the payment, regardless of the value of anything received in consideration for the payment.

109 Meaning of relevant details for gifts

Clause 109 defines the *relevant details* for a gift as its value, when it was made and:

- for a gift purported to have been made on behalf of the members of an unincorporated association—that association’s name and the names and residential or business addresses of the members of its executive committee (unless the association is a registered industrial organisation); or
- for a gift purported to have been made out of a trust fund or out of the funds of a foundation—the names and residential or business addresses of the trustees of that fund, or other people responsible for the funds of the foundation, and the title or other description of the fund or name of the foundation. Also, if the gift is made out of a trust account of a lawyer or accountant under the instructions of a person who is in substance the gift giver—the name and residential or business address of that person; or
- for any other gift—the name and residential or business address of the person who made gave the gift.

110 References to candidates

Clause 110 provides that a candidate in a local government election remains a candidate for the entire period of the candidate’s disclosure period. Candidates’ disclosure periods are set out in division 2, subdivision 1.

111 Agents and campaign committees

Clause 111 provides that a committee formed to help a candidate’s election campaign is considered to be a person acting for that candidate unless the committee is recognised by a political party as being part of that party and that a committee formed to help the election campaign of members of a group is considered to be a person acting for the group of candidates. Under this clause, liability would attach to such a committee.

112 Related corporations

Clause 112 provides that, for this part, a body corporate and another body corporate related to it are taken to be the one body corporate. Whether a body corporate is related to another is to be decided the same way it would be decided under the *Commonwealth Corporations Act 2001*.

The purpose of this clause is to protect the interests of a body corporate's members by requiring approval of those members before giving financial benefits to related parties that could endanger those interests.

Division 2 Disclosure periods

Subdivision 1 Disclosure period for candidates

113 Disclosure period for candidates who are councillors

Clause 113 sets out the disclosure period for a candidate who is a councillor of a local government.

114 Disclosure period for candidates who were previously candidates in a local government election

Clause 114 sets out the disclosure period for a candidate who has also been a candidate in a previous local government election, but is not a councillor.

115 Disclosure period for new candidates

Clause 115 sets out the disclosure period for a candidate who has not before been a candidate in a local government election or a local government councillor.

Subdivision 2 Disclosure period for groups of candidates

116 Disclosure period for groups of candidates

Clause 116 sets out the disclosure period for a group of candidates. A *group of candidates* is defined in the dictionary.

Division 3 Disclosure by candidates

117 Gifts to candidates

Clause 117 provides that a candidate must give a return to the ECQ, within 15 weeks after the conclusion of the election, about any gifts received during the candidate's disclosure period (except a gift made in a private capacity and for the candidate's personal use).

A successful candidate may declare on the return required before making the declaration of office that the candidate does not expect to receive any gifts during the (remaining) disclosure period for the election. In this case a further return would only be necessary if gifts were received within that period.

If it receives a return under this clause, the ECQ must give a copy of the return to the chief executive officer of the relevant local government.

118 Gifts to groups of candidates

Clause 118 provides for the disclosure to the ECQ, within 15 weeks after the conclusion of the election, of electoral gifts made to a group of candidates. A group may be formed to promote the election of candidates for a particular local government, but a group of candidates does not include a political party or an associated entity, i.e., the requirements do not apply to a group of candidates endorsed by a registered political party.

Each candidate in the group must lodge a return stating the details of all the gifts made to the group. This requirement is in addition to the return required to be lodged for gifts received by the candidate as an individual.

If it receives a return under this clause, the ECQ must give a copy of the return to the chief executive officer of the relevant local government.

119 Particular gifts not to be received

Clause 119 provides that a candidate or group of candidates may only receive a gift valued at \$200 or more during their disclosure period for the election if the person or group receiving the gift knows the relevant details of the gift or is given details by the entity giving the gift that the person or group believes to be correct and relevant.

If a person or group receives a gift in contravention of this clause, an amount of equal value to the gift must be paid by the person or group to the State and may be recovered by the State as a debt owing to the local government.

120 Loans to candidates or groups of candidates

Clause 120 provides that a candidate or, for a group of candidates, the group's agent must give to the ECQ, within 15 weeks after the conclusion of an election, a return detailing all loans received by the candidate or the group, other than loans from a financial institution, during the relevant disclosure period for the election.

A return under this clause must be in the approved form and state the total value of the loans and the number of people who made the loans. If a loan has a value of \$200 or more the return must include the additional details set out in subclause (4), including the terms and conditions of the loan.

121 Particular loans not to be received

Clause 121 provides that a candidate or group of candidates may only receive a loan of \$200 or more, other than from a financial institution, during their disclosure period for the election if the candidate or group keeps a record of the loan. The details to be recorded are set out in subclause (3), including the terms and conditions of a loan.

If a person or group receives a loan in contravention of this clause, the amount of the loan must be paid by the person or group to the State and may be recovered by the State as a debt owing to the State.

122 Electoral commission to give reminder notice to candidates

Clause 122 provides that the ECQ must, within 10 weeks after the conclusion of a local government election, give written notice to a candidate or agent for a group of candidates if the candidate or agent has not given to the ECQ a return required under this division.

The notice must remind the candidate or agent that they are required to give the return within 15 weeks after the conclusion of the election and a copy, or general outline of the provisions, listed in subclause (2) that may be relevant.

Division 4 Disclosure by third parties

123 Definition for div 4

Clause 123 defines a *third party* for a local government election as any entity, other than the exceptions listed.

124 Third party expenditure for political activity

Clause 124 requires third parties who incur expenditure of \$200 or more for a political activity, during the disclosure period for an election, to provide a return to the ECQ within 15 weeks after the conclusion of the election.

Third parties who incur expenditure for a political activity, for example production of pens with “Vote for Sarah”, will be required to provide a return if the expenditure is more than \$200.

125 Gifts received by third parties to enable expenditure for political activity

Clause 125 requires third parties who receive a gift of \$1000 or more intended by the giver to be used to incur expenditure or to reimburse expenditure for a political activity, during the disclosure period for an election, to provide a return to the ECQ within 15 weeks after the conclusion of the election.

Division 5 Operation of accounts

126 Requirement for candidate to operate dedicated account

Clause 126 sets out the requirements for a candidate to operate a dedicated account for any monies received or spent during the candidate’s disclosure period for the conduct of the candidate’s election campaign.

It is an offence for a candidate not to take all reasonable steps to ensure the account is set up and used for the campaign.

For transparency and accountability, it is important that a candidate keep discreet and detailed information about their income and expenditure in relation to an election campaign.

127 Requirement for group of candidates to operate dedicated account

Clause 127 sets out the requirements for a group of candidates to operate a dedicated account for any monies received or spent during the group's disclosure period for the conduct of the group's election campaign.

It is an offence for each candidate in the group to not to take all reasonable steps to ensure the account is set up and used for the campaign.

For transparency and accountability, it is important that a group of candidates keep discreet and detailed information about their income and expenditure in relation to an election campaign.

Division 6 Gifts register

128 Register of gifts

Clause 128 provides that the ECQ must keep a register of gifts for a local government election and sets out the requirements for such a register.

129 Access to gifts register

Clause 129 provides that the register kept under clause 128 must be available for public inspection. The clause sets a maximum penalty of 20 penalty units for someone knowingly disclosing information that is not a true copy, or a fair summary, of details in the register.

130 Queries on contents of gifts register

Clause 130 provides for a person who genuinely suspects or believes that a return given to the ECQ under this part is incorrect to inform the ECQ who must then take reasonable steps to inform the person who gave the return about the suspicion or belief.

If that person decides a return needs to be amended, the person must apply, under clause 132, to the ECQ to amend the return to make it correct. If the person decides the return does not need to be amended, the person must complete a statutory declaration to the effect that the return is correct and give the declaration to the ECQ.

Division 7 Miscellaneous

131 Statement about returns

Clause 131 provides that a person giving a return under this part must state whether the return is complete and, if it is not, the kind of particulars missing and why the person has been unable to get those particulars. If the person believes someone else can give the particulars and the person knows their name and address, the person must state their belief, their reasons for believing it and the name and address of the other person. In such a case, the returning officer must give written notice to that other person asking them to provide any particulars they know.

132 Amendment of returns

Clause 132 allows a person who gives a return to the ECQ under this part to apply at any time to the ECQ to amend the return. The application must be signed by the applicant and state the particulars of the required amendment.

On receiving such an application, the ECQ must allow the applicant to amend the return in accordance with the application and record in the register particulars of the date and time the amendment was made.

133 Things taken to be done by political party

Clause 133 provides that for this part a thing done for a political party (that is not a body corporate) by or with the authority of a member or officer of that party is taken to have been done by the political party.

134 Noncompliance with part does not affect election

Clause 134 provides that the failure of a person to comply with a provision of this part does not invalidate the election nor is the election of a candidate invalid because the candidate fails to comply with a provision of the part.

Part 7 Disputed Results

Division 1 Disputing local government elections

135 Definitions for div 1

Clause 135 defines particular terms for this part.

136 Local government election may be disputed under this part

Clause 136 provides that the only way to dispute the election of a person in a local government election is by application to the Court of Disputed Returns under this part.

137 Who may dispute an election

Clause 137 sets out who may dispute the election of a person in a local government election.

138 Requirements for an application to be effective

Clause 138 provides that for an application to dispute an election to have effect the application must set out the facts relied on and the order sought from the Court of Disputed Returns. The application must be signed and filed within seven days after the conclusion of the election with the Supreme Court registry in Brisbane. A \$400 deposit must accompany the application.

This clause does not prevent the amendment of an application to the Court of Disputed Returns.

139 Copies of application to be given to elected candidate and electoral commission

Clause 139 provides that the registrar of the Supreme Court must give a copy of an application filed under clause 138 to the candidate whose election is being disputed and to the ECQ, unless the ECQ filed the application.

140 Application to court for order relating to documents etc.

Clause 140 provides that if an applicant applies to the Court of Disputed Returns for an order requiring the ECQ or a returning officer to give the court specified documents and other things held by them in relation to the election, the court may make an order it considers appropriate.

141 Parties to application

Clause 141 specifies that the parties to an application are the person who filed it and any respondent under this clause, and that the ECQ is a respondent to any application by another person under this division.

A person whose election is being disputed may be a party to the application if they file a notice with the Supreme Court registry in Brisbane stating that they wish to be a respondent within seven days after receiving a copy of the application under clause 139.

142 How application is to be dealt with by the court

Clause 142 provides that in conducting hearings and proceedings in relation to the application the Court of Disputed Returns can disregard technicalities, legal forms and rules of evidence.

143 Application for dismissal of application disputing election

Clause 143 provides that if the ECQ applies to the Court of Disputed Returns for an order dismissing the application on the ground that there has been excessive delay by the applicant in relation to the application, the court may make an order it considers appropriate.

144 Powers of the court

Clause 144 provides that, subject to clause 145 which places restrictions on certain orders the Court of Disputed Returns may make and clause 146 which prohibits the court from considering certain evidence and making certain inquiries, the court may make any order or exercise any power in relation to the application it considers just and equitable.

Orders the court may make in relation to the application include that the person elected is taken not to have been elected, that a new election be

held, that another candidate is taken to have been elected or that the application be totally or partly dismissed or upheld.

In conducting hearings or proceedings the court may order the opening of a sealed declaration vote envelope but must, as far as is reasonably practicable, maintain the secrecy of the ballot.

145 Restrictions on particular orders

Clause 145 restricts the Court of Disputed Returns in making orders merely because of a delay by any member of the ECQ's staff in complying with the voting procedures or because of any absence, error or omission by any member of the ECQ's staff that appears unlikely to have affected the results of the election. Should the court find that a person was erroneously prevented from voting, the court must not take into account any evidence of the way the person might have voted.

146 Restriction on particular evidence and inquiries

Clause 146 prevents the Court of Disputed Returns taking into account certain evidence or making certain enquiries during proceedings. For example, the court must assume that the voters roll used was a certified copy in accordance with the other requirements of this Bill.

147 Copy of final court orders

Clause 147 requires the Court of Disputed Returns to provide a copy of the court's order to the Minister for Local Government, the ECQ and the relevant local government as soon as possible after it has been made.

148 Costs

Clause 148 provides for the Court of Disputed Returns to order an unsuccessful party to pay the reasonable costs of the other parties. If costs are awarded against the applicant, the deposit filed with the application must be applied to the payment of costs, if not the deposit must be refunded.

149 Decisions and orders to be final

Clause 149 provides that a decision or order of the Court of Disputed Returns is final and conclusive and can not be appealed against, subject to the right of appeal to the Court of Appeal.

150 Right of electoral commission and returning officer to have access to documents

Clause 150 provides that, unless the Court of Disputed Returns orders otherwise, the ECQ and returning officer maintain their right of access to a document in order to perform their functions despite the filing of the application.

Division 2 Appeals

151 Appeal to Court of Appeal on question of law

Clause 151 establishes a right of appeal to the Court of Appeal from the Court of Disputed Returns on a question of law.

152 Time for appealing

Clause 152 provides that to expedite resolution of the appeal, notice must be filed within seven days after the date of the decision or order appealed from.

153 Electoral commission is a party to appeal

Clause 153 states that whether or not it is the appellant the ECQ is a party to the appeal.

154 How appeal is dealt with by Court of Appeal

Clause 154 imposes an obligation on the Court of Appeal to use its best efforts to ensure the appeal is heard and a final decision or order is given as quickly as is reasonable in the circumstances.

155 Application for dismissal of appeal

Clause 155 provides that if a party who is not the appellant applies to the Court of Appeal for an order dismissing the appeal on the ground that there has been excessive delay by the appellant in relation to the appeal, the Court of Appeal may make an order it considers appropriate.

156 Copy of final court orders

Clause 156 provides for the registrar of the Supreme Court to arrange for a copy of the Court of Appeal's final orders to be sent to the Clerk of the Parliament, the ECQ and the local government to which the appeal relates.

157 Right of electoral commission and returning officer to have access to documents

Clause 157 provides that, unless the Court of Appeal orders otherwise, the ECQ and returning officer maintain their right of access to a document in order to perform their functions despite the filing of the notice of appeal.

Part 8 Legal provisions

158 Decisions not subject to appeal

Clause 158 exempts particular decisions under this Bill from appeal in any way.

A decision taken under this Bill that is not subject to appeal is a decision made by the State against a local government. The exemption of a decision from appeal reflects the relationship between the State and local governments in section 70(2) of the Queensland Constitution.

159 Postal vote presumed valid until contrary proved

Clause 159 provides that if a declaration envelope and ballot paper is received by the returning officer by post then it must be presumed that the requirements for voting by post have been complied with unless the contrary is proved.

160 Evidentiary value of list under s 164

Clause 160 provides that the list made under clause 164 or copies or extracts from that list which have been certified by the returning officer is evidence of the matters contained in the document.

161 Ballot papers as evidence

Clause 161 provides that a ballot paper used at an election and identified by evidence as one of the ballot papers given to or held by the ECQ under clause 102 is evidence of the vote or votes cast in the election.

162 Allegations of false or misleading information or document

Clause 162 makes it clear that in any proceeding for an offence against the Bill, involving false or misleading information or a false or misleading document, it is enough for a charge to state that the information or document was ‘false or misleading’ without specifying which.

163 Evidentiary provisions

Clause 163 provides that in any proceeding under this part a certificate purporting to be signed any member of the ECQ and stating a matter is evidence of that matter

Part 9 Enforcement

Division 1 Failure to vote

164 List of electors failing to vote

Clause 164 requires the returning officer to compile a list of voters who have not been issued with a ballot paper or have not returned their ballot paper. A copy of the list is to be given to the ECQ for holding.

165 Notice about failure to vote

Clause 165 provides that the ECQ must send a notice to a person who appears not to have voted in an election. The clause sets out the requirements of the notice and the requirements for a person receiving such a notice.

The person must comply with the notice unless the person is absent, or unable, because of physical incapacity, to comply with it, in which case another voter who has personal knowledge of the facts may comply on the person's behalf.

166 Payments for failure to vote

Clause 166 provides that if the ECQ sends a person a notice under clause 165 and the person pays, the ECQ must accept the payment, give the person a receipt and not take any further proceeding against the person for failing to vote.

167 Recording response to notice

Clause 167 requires the ECQ to record against the name of a person sent a notice under clause 165 if the voter has complied with the notice and if the voter had a valid and sufficient reason for failing to vote.

168 Failure to vote

Clause 168 makes it an offence for a person not to vote unless they have a valid reason, to not comply with a notice sent to the person under clause 165 or, in claiming to comply with the notice, to make a statement the person knows is false or misleading.

A person's belief that it is part of their religious duty not to vote is considered a valid and sufficient reason.

Division 2 Corrupt and improper practices affecting local government elections

169 False or misleading information

Clause 169 provides for a maximum penalty of 1 year of imprisonment for a person who knowingly gives information that is false or misleading, including in a document.

170 Bribery

Clause 170 provides a maximum penalty of 7 years imprisonment for any person who asks for a bribe or bribes another person so as to affect a person's election conduct—the way the person votes at an election, the nomination of a person or the person's support of, or opposition to, a candidate or political party.

171 Assisting illegal payments

Clause 171 provides a maximum penalty of 2 years imprisonment for a person who knowingly gives or replaces any money for a payment that is contrary to elections law.

172 Improperly influencing electoral officers

Clause 172 provides a maximum penalty of 35 penalty units or 1 year's imprisonment for any person attempting to improperly influence an electoral officer in the performance of their duties.

173 Obstructing electors

Clause 173 provides a maximum penalty of 20 penalty units or 6 months imprisonment for a person who obstructs the performance by a voter of their rights and responsibilities relating to the election.

174 Obstructing electoral officers etc.

Clause 174 provides a maximum penalty of 10 penalty units for anyone who wilfully obstructs or disturbs any proceeding during an election, intimidates or wilfully misleads an electoral officer performing their duties

under this Bill, or who stops a scrutineer entering or exiting a polling booth during voting hours or during the counting of votes.

175 Forged electoral papers

Clause 175 provides a maximum penalty of 10 years imprisonment for any person who forges or knowingly uses forged electoral papers. A maximum penalty of 10 years imprisonment also applies to a person who forges someone else's signature on an electoral paper.

176 Wilful neglect etc. of electoral officers

Clause 176 provides a maximum penalty of 20 penalty units for an electoral officer who wilfully neglects or fails to perform their duties under this Bill.

Division 3 Offences relating to electoral advertising

177 Author of election material must be named

Clause 177 provides a maximum penalty of 20 penalty units for an individual and 85 penalty units for a corporation for disseminating, during the election period, any election advertising that does not contain at the end the name and address of the person who authorised it.

The clause does not apply to advertising on a car sticker, T-shirt, lapel badge, pen, pencil or balloon, advertising prescribed by regulation or to the distribution of how-to-vote cards.

178 Distribution of how-to-vote cards

Clause 178 prohibits a person, during an election period, distributing or authorising someone else to distribute, a how-to-vote card if the person knows, or should know, that information on the card is incorrect and unless the card states at the end of each printed side of the card the name and address of the person who authorised the card as well as:

- if authorised for a political party or a candidate endorsed by a political party—the party's name; or

- if authorised for a group of candidates or for a candidate who is a member of a group of candidates—the group’s name; or
- otherwise—the candidate’s name and the word ‘candidate’.

179 Giving of how-to-vote cards to returning officer

Clause 179 provides for the lodging of how-to-vote cards with the returning officer by the person who authorised the card. Cards must be lodged by 5pm on the Friday that is at least 7 days before polling day with a statutory declaration setting out details of any financial contributions received from someone else or on behalf of someone else.

On receiving how-to-vote-cards, the returning officer must reject any that do not comply with clause 178. Accepted cards must be made available for public inspection before polling day and, to the extent reasonably practicable, on polling day.

180 Unauthorised how-to-vote cards

Clause 180 provides that, on polling day, a person must not distribute, or authorise someone else to distribute a how-to-vote card to which clause 179(1) or (2) applies unless the card complies with that clause. If, on polling day, an electoral officer reasonably suspects a person is distributing a how-to-vote card that does not comply, the electoral officer may require the person to produce the how-to-vote card for inspection and confiscate any non-compliant cards.

181 Headline to electoral advertisements

Clause 181 provides that the proprietor of a newspaper must print the headline ‘advertisement’ above any newspaper article, or paragraph, containing information relating to an election or a matter debated in the election if the article or paragraph is paid for, or will be paid for, or a reward or compensation, or promise of reward or compensation, has been made, or will be made, for the article or paragraph. A penalty applies.

182 Misleading voters

Clause 182 prohibits a person misleading voters during an election period. Under this clause a person must not:

- disseminate anything that purports to be a representation of a ballot paper for use in the election, if it is likely to induce a person to cast an informal vote or anything intended, or likely, to mislead a person about the ways of voting; or
- knowingly publish a false statement of fact about a candidate's personal character or conduct for the purpose of affecting the election of a candidate.

183 Offence for group of candidates to advertise or fundraise if particular requirements not complied with

Clause 183 makes it an offence to advertise or fundraise for the election if clauses 41 and 42 have not been complied with.

Division 4 Offences relating to voting

184 Leave to vote

Clause 184 sets a maximum penalty of 10 penalty units for an individual or 40 penalty units for a corporation who, after an employee has requested leave of absence to vote at an election, refuses to allow the leave or imposes a penalty or disproportionate pay deduction for the leave.

Unless the absence is likely to cause danger or substantial loss to the employer, leave of absence of no more than 2 hours must be allowed. An employee must not ask for leave of absence unless they intend using the time to vote and a maximum penalty of 10 penalty units applies.

185 Canvassing in or near polling booths

Clause 185 sets a maximum penalty of 10 penalty units for a person who when inside a polling booth or within 6 metres of an entrance to a building that is a polling booth, or part of a polling booth, loiters, canvasses for votes or induces a person to vote in a particular way or not at all.

186 Influencing voting by violence or intimidation

Clause 186 sets a maximum penalty of 2 years imprisonment for a person who uses violence or intimidation to influence the vote of a person at an election.

187 Party badges not to be worn in polling booths

Clause 187 sets a maximum penalty of 1 penalty unit for a person wearing or displaying any badge or emblem of a political party in a polling booth.

188 Displaying political statements around polling booths

Clause 188 sets a maximum penalty of 1 penalty unit for a person displaying a political statement inside a room with voting compartments or within 6 metres of the entrance to a building with voting compartments.

189 Voting if not entitled

Clause 189 sets a maximum penalty of 3 years imprisonment for a person who casts a vote and is not entitled to cast that vote or who procures another person to vote who is not entitled to vote.

190 Offences about ballot papers

Clause 190 sets a maximum penalty of 20 penalty units or 6 months imprisonment for a person who wilfully does not comply with the voting provisions of this division, including by:

- removing a ballot paper from a polling booth without authorisation;
- placing a ballot paper in a ballot box which either has not been marked by or given to the voter;
- having in their possession a ballot paper marked by another person or a declaration form or envelope signed by another person unless the person has a lawful excuse.

191 Failure to post, fax or deliver documents for someone else

Clause 191 sets a maximum penalty of 20 penalty units or 6 months imprisonment for a person who fails, without reasonable excuse, to post or deliver documents such as declaration forms, declaration envelopes, etc. given to them by another person for posting or delivery.

192 Secrecy of voting

Clause 192 sets a maximum penalty of 20 penalty units or 6 months imprisonment for a person who discloses information about which

candidate a person has voted for other than when required by law to disclose the information.

193 Breaking seals on parcels

Clause 193 sets a maximum penalty of 20 penalty units or 6 months imprisonment for a person who wilfully opens or breaks the seal of a parcel or packet sealed under this part without authorisation to do so.

194 Duty of witness in signing declaration envelopes

Clause 194 sets a maximum penalty of 20 penalty units or 6 months imprisonment for a person not complying with the clause. The clause provides that a person must not sign a declaration envelope as a witness unless they are satisfied as to the identity of the person who signs the declaration before them and they either know or are satisfied that the declaration made by the person is true.

Division 5 Offences relating to electoral funding and financial disclosure

195 Offences about returns

Clause 195 provides that a person must give a return they are required to give under a provision of part 6 in the time required by that particular provision.

The clause further provides that a person must not give a return containing particulars the person knows to be false or misleading in a material particular. Also, a candidate who is part of a group must ensure all returns lodged on the group's behalf are true. It is an offence for the candidate to allow the agent to give the return if it contains information the candidate knows is false or misleading.

196 Records to be kept

Clause 196 provides that someone who makes or receives a relevant record for an election must keep the record for at least 5 years after the conclusion of the election, unless they have transferred it to someone else in the normal course of business. A maximum penalty of 20 penalty units applies.

Relevant record is defined for the purposes of the clause.

197 Obtaining information for returns

Clause 197 provides that a person required to give a return under part 6 must take all reasonable steps to obtain the necessary information to complete the return and complete it as far as they are able with that information. A maximum penalty of 20 penalty units applies.

198 Further information for incomplete returns

Clause 198 applies if a person, within 5 years after the conclusion of an election, makes a statement that an election return is not complete. If the person acquires information or particulars relevant to the return that they were unable to obtain before completing the return, the person must give the returning officer to whom they gave the return written notice of the information or particulars. A maximum penalty of 20 penalty units applies for not providing such information to the returning officer.

Division 6 Attempts

199 Attempts to commit offences

Clause 199 provides that an attempt by a person to commit an offence against this part is an offence by the person and a penalty of half the maximum penalty for committing the offence applies.

Division 7 Injunctions

200 Injunctions

Clause 200 allows, in relation to an election, a candidate or a nominee for candidate, or in any case, the ECQ to apply to the Supreme Court for an injunction against a person to prohibit that person doing, continuing to do or failing to do an activity constituting a contravention of, or an offence against, this part.

Part 10 Miscellaneous

201 Designated election offences and application of Criminal Code

Clause 201 provides that an offence against one of the clauses listed is a crime under the Criminal Code and must be heard and decided summarily unless the defendant informs the Magistrates Court they want a trial by jury.

202 Local governments responsible for expenditure for conducting local government elections

Clause 202 provides that a local government is responsible for the costs incurred for conducting an election in its local government area and must pay such costs to the ECQ. A local government may also be responsible for other election related costs, including costs in common for shared centrally administered election services.

203 Leave to local government employee to contest local government election

Clause 203 makes arrangement for a local government employee contesting a local government election to have access to leave of up to 2 months. For this purpose, the employee is entitled to paid leave if they have accrued leave or, if not, may take unpaid leave.

204 Inspection of documents

Clause 204 provides that a person authorised under this Bill to inspect a document may do so, including copying the document or taking extracts from it, free of charge and during normal business hours. However, a fee of no more than the cost of having a copy available for purchase and any relevant postage costs may be charged by the person or entity in charge of the document if they supply a facility or service to the person in copying or taking an extract from a document.

205 Persons serving a sentence of imprisonment

Clause 205 provides that a person is serving a sentence of imprisonment only if they are serving full-time detention for an offence against a law of the Commonwealth or of a State or Territory.

206 Office of returning officer

Clause 206 provides that a returning officer must have a public office for an election and that the ECQ must publish notice of the offices of returning officers in a newspaper circulating generally in the relevant local government area, or division of the local government area.

207 Approved forms

Clause 207 provides that the ECQ may approve forms for use under the Bill. Forms may be combined or used with forms approved under another Act.

208 Regulation-making power

Clause 208 provides for regulations to be made under this Bill, including a regulation about the principles under which the value of a gift that is property is to be decided under clause 108.

Part 11 Transitional provisions

209 Transitional regulation-making power

Clause 209 establishes a power to make a regulation to deal with any matters to facilitate the transition from the repealed election provisions in the LGA 2009 or the CoBA 2010 to this Bill, if this Bill does not make sufficient provision.

Though this clause could be considered a ‘Henry VIII clause’ in the broad definition, it is justified to ensure any election conducted under the Bill can be conducted efficiently and effectively and within the election timeframes legislated. The clause, and any regulations made under it, will expire 1 year after the commencement of the clause. Any regulations required to be

made under this clause would be followed by amendments to the Bill at the earliest opportunity.

Part 12 Amendments of Acts and a regulation

Division 1 Amendment of this Act

210 Act amended

Clause 210 states that division 1 amends this Bill.

211 Amendment of long title

Clause 211 is a consequential amendment to provide for the amendment of the long title after the commencement of this Bill.

Division 2 Amendment of Animal Management (Cats and Dogs) Act 2008

212 Act amended

Clause 212 states that division 2 amends the *Animal Management (Cats and Dogs) Act 2008*.

213 Amendment of s 103 (Cost of regulated dog enclosure—dividing fence)

Clause 213 amends section 103. At present the section is restricted to lessees who own restricted dogs. The Explanatory Notes for the *Animal Management (Cats and Dogs) Bill 2008* provide that section 103(3) applies to lessees who own regulated dogs, that is, owners of restricted dogs, declared menacing and declared dangerous dogs who are leasing a property. The amendment provides for the policy intent as set out in the Explanatory Notes for the *Animal Management (Cats and Dogs) Bill 2008*.

The clause also provides that where part of a dog enclosure along a common boundary for a regulated dog is proposed to be used as a pool barrier the provisions of the *Building Act*, chapter 8, part 2A, set the levels of contribution.

Division 3 Amendments of Building Act 1975 relating to pool barriers

214 Act amended

Clause 214 states that this division amends the *Building Act 1975*.

215 Amendment of s 231B (What is a regulated pool)

Clause 215 amends section 231B to exclude from the definition of ‘regulated pool’, a swimming pool that is open to the public and is operated by a local government or other statutory body under the *Statutory Bodies Financial Arrangements Act 1982*. Such pools include the public pools operated by South Bank Corporation at South Bank.

This provision also clarifies that the *Building Act*, chapter 8, part 2A applies to regulated pools and pools that are the subject of a pool safety management plan.

216 Replacement of s 245U (Apportioning cost of constructing etc. dividing fence)

Clause 216 replaces section 245U. Subsection (1) makes it an offence to wilfully interfere with a barrier for a regulated pool to which the pool safety standard applies in a way that makes the pool noncompliant with the standard. The maximum penalty for the offence is 165 penalty units.

The provision is intended to deter conduct that compromises a pool barrier that complies with the pool safety standard.

Subsection (2), an exception for the offence, provides that subsection (1) does not apply in relation to certain fencing work, including where an adjoining owner attaches a thing to a part of a pool barrier that is a dividing fence if attaching the thing does not unreasonably and materially alter or damage the barrier. This exception is intended to ensure that if an adjoining owner attaches a bracket, hook, hose hanger or a similar thing to a part of a

pool barrier that is a dividing fence, or paints their side of the fence, the adjoining owner will not be committing the offence created by subsection (1).

Subsection (2) recognises that a pool owner is responsible for maintaining the barrier's compliance and cannot rely on a neighbour refraining from placing objects in the non-climbable zone of a pool barrier on the neighbour's side of the fence. Instead, a pool owner can ensure that the barrier complies with the pool safety standard by raising the height of the barrier to 1.8 metres and thereby establishing the necessary non-climbable zone on their side of the fence.

217 Renumbering of s 246 (When particular local law has no force or effect for regulated pool)

Clause 217 renumbers section 246 as section 245W.

218 Insertion of new pt 2A

Clause 218 inserts new part 2A in chapter 8.

Part 2A Neighbours' rights and responsibilities for particular dividing fences

Division 1 Introduction

245X Overview

This section provides an overview of the provisions set out in part 2A.

Division 2 Interpretation

245XA Definitions for pt 2A

This section includes the definitions for particular terms used in part 2A. In particular, ‘special purpose fence’ is defined to include an acoustic barrier. The definition is intended to capture fences with noise reduction qualities, some of which may have been designed for use by a neighbour with a particular sensitivity to noise. The definition also captures fences that are constructed for the containment of a regulated dog.

Division 3 Rights and responsibilities of pool owners and their neighbours for particular dividing fences

245XB Right to construct pool barrier along common boundary

This section allows a pool owner to construct a pool barrier (that complies with the pool safety standard) on a common boundary of adjoining land where there is no existing dividing fence on the boundary, in the circumstances set out in the section.

A pool owner may construct such a barrier with the agreement of the adjoining owner or where QCAT has ordered that the barrier be constructed. Also, a pool owner may construct such a barrier without the agreement of the adjoining owner and without any QCAT order provided certain conditions are met. In particular, the completed barrier must comply with the pool safety standard, it must be a ‘sufficient dividing fence’ and the pool owner must give the adjoining owner a notice of proposed fencing work at least 14 days before the work is carried out.

Many pool owners choose to have a 1.8 metre fence as this allows them to rely on a non-climbable zone on their side of the boundary. This is because with a 1.8 metre fence pool owners are not reliant on anything done on the neighbour’s side of the fence to comply with the pool safety standard.

This section uses the definition of ‘sufficient dividing fence’ set out in the *Neighbourhood Disputes Resolution Act 2011*.

245XC Walls on common boundary

This section allows a pool owner to use the wall of a building on a common boundary as a pool barrier if the wall would, without alteration, comply with the pool safety standard. Such a wall may not be altered, demolished or replaced without the agreement of the owner of the building.

If a wall does not comply with the pool safety standard the pool owner will need to construct a separate pool barrier on their land. Also, if a wall complies with the safety standard at a particular time and is later altered and ceases to comply (for example where a window is installed in the wall) the pool owner will need to construct a separate pool barrier on their land.

245XD Right to alter or replace existing dividing fence for the purpose of a pool barrier

This section allows a pool owner to alter or replace a dividing fence on a common boundary of adjoining land so that it can be used as a pool barrier (that complies with the pool safety standard) for a regulated pool on the owner's land, in the circumstances set out in the section.

A pool owner may alter or replace an existing dividing fence with the agreement of the adjoining owner or where QCAT has made an order permitting the work. Also, a pool owner may alter or replace the dividing fence without the agreement of the adjoining owner and without any QCAT order provided certain conditions are met.

In particular, the barrier must comply with the pool safety standard, it must be a 'sufficient dividing fence' constructed using similar materials and colours to those of the existing dividing fence and the pool owner must give the adjoining owner a notice of proposed fencing work at least 14 days before the work is carried out. Where a pool owner chooses to build a sufficient dividing fence, the fence would normally be at least 1.8 metres in height to allow the pool owner to use the inside of the fence as the non-climbable zone. This is because with a 1.8 metre fence pool owners are not reliant on anything done on the neighbour's side of the fence to comply with the pool safety standard.

The section also provides for circumstances where the common boundary is being used as a special purpose fence. In this case when altering or replacing the existing fence the pool owner must ensure that the new fence continues to serve the particular purpose that the existing of the existing special purpose fence serves.

For example if the existing dividing fence is used as an enclosure for a regulated dog, the pool owner must ensure that the new fencing work complies with the requirements for the existing regulated dog enclosure. This may involve ensuring that a small child can not reach into the dog enclosure.

This section uses the definition of ‘sufficient dividing fence’ in the *Neighbourhood Disputes Resolution Act 2011*.

245XE Right to construct part of the barrier for pool barrier for 2 neighbouring pools along the common boundary or alter or replace existing fence

Where there is, or is proposed to be, a regulated pool on each side of a common boundary the owners must agree on the fencing work for the part of the fence that acts as a barrier for both pools. Where they cannot agree they must obtain an order from QCAT before undertaking any work.

This ensures that owners, who will mutually benefit from the operation of a pool barrier, can not undertake fencing work on the common boundary without

first obtaining agreement from their neighbour or an order from QCAT. This recognises that as both owners will rely on the fence to comply with the pool safety standard neither should be able to act independently of the other.

245XF Limited right of neighbour to alter or replace part of pool barrier along a common boundary

This section allows a non pool owner to alter or replace part of a pool barrier used by their neighbour as a pool barrier (the ‘relevant part’) if the non pool owner gains the agreement of the pool owner or QCAT orders that the fencing work be carried out.

Under the section, the right of the non pool owner, or their lessee, to alter or replace the relevant part in the absence of the pool owner’s agreement or a QCAT order is limited. The non pool owner may only attach something to the fence that does not unreasonably and materially alter or damage the barrier (for example, a hook for a pot plant), or paint their side of the fence, without obtaining their neighbour’s agreement or providing their neighbour with a notice of proposed fencing work.

To undertake any other more significant work the non pool owner must obtain consent, or an order from QCAT, prior to undertaking the work.

The section also provides a mechanism for non pool owners to inform their neighbours of significant proposed fencing work.

245XG Right to enter adjoining land to carry out fencing work

This section provides the circumstances in which a person may enter land owned by another person to carry out fencing work.

The purpose of this provision is to clarify that no right of access arises out of the operation of the *Building Act*, chapter 8, part 2A unless QCAT makes an order under section 245XQ or the parties agree.

245XH Apportioning cost of constructing etc. dividing fence forming part of a pool barrier

This section provides for the way in which the cost of fencing work for a dividing fence on common boundary used as a pool barrier is apportioned between adjoining owners.

The purpose of the provision is to ensure that pool owners are responsible for the costs associated with building or maintaining pool barriers.

The exception occurs where the adjoining owner has an existing fence that the pool owner is required to respect when constructing altering or replacing with a new fence. In these cases the pool owner will be required to cover the initial cost of ensuring that the new fence meets the requirements of the old fence, but is not responsible for maintaining the fence to the extent that it is beyond the requirements for a pool barrier.

By way of an example if a pool owner wishes to replace an existing 2 metre high dog enclosure for a regulated dog with a pool barrier, the pool owner will bear the cost of rebuilding the fence to 2 metres and ensuring that the pool barrier meets requirement of the dog enclosure. However, after the new fence is built the pool owner does not require the part of the fence above 1.8 meters to comply with the pool safety standard. As such the dog owner alone benefits from this portion of the fence and so bears the costs of maintaining this part of the fence.

Likewise if an owner undertakes work that only benefits one side of the fence, for example rendering one side of a block wall, then no contribution can be obtained from the adjoining owner.

Finally the provision makes it clear that where a fence is damaged by one of the owners, that owner is responsible for the cost of repairing or replacing the fence.

245XI Attaching things to a dividing fence forming part of a pool barrier

This section prevents unreasonable and material alteration of a dividing fence by the attachment of something to the fence without consent from the adjoining neighbour. Examples are provided in the section, for instance, a carport, a shade sail and lattice-work. It is inappropriate for one adjoining owner to unreasonably or materially alter or damage a fence without first consulting with their neighbour. If this occurs, the other adjoining owner can apply to QCAT for an order restoring the fence to a reasonable standard having regard to its state before the attachment.

The section clarifies that it does not apply a thing attached to a fence to make it comply with the pool safety standard.

245XJ Negligent or deliberate act or omission

There are occasions in which the dividing fence is damaged or destroyed by an adjoining owner or a person who enters land with their express consent. This clause requires the owner to restore the fence to a reasonable standard.

245XK Urgent fencing work

There will be occasions in which it is necessary to undertake fencing work urgently, for example when the barrier is damaged or destroyed and presents an immediate risk to children.

When that occurs, an owner may undertake urgent fencing work, without providing notice to the adjoining owner.

Division 4 Process for obtaining contribution and resolving disputes

Subdivision 1 Introduction

245XL Overview

This section provides an overview of the provisions set out in division 4 of part 2A.

Subdivision 2 Notices

245XM Notice of proposed fencing work

This section provides a mechanism for a property owner to notify an adjoining owner of their intention to carry out fencing work under this part.

The notice must provide sufficient information for the adjoining owner to understand the full extent of the fencing work that is proposed. The notice must also outline any proposed access arrangements, and any proposed contributions that are being sought by the owner under section 245XH.

245XN Notice to contribute for urgent fencing work

This section provides a notice mechanism for a property owner to obtain a contribution to the cost of urgent fencing work for a dividing fence forming part of a pool barrier from an adjoining pool owner.

The provision is subject to the operation of section 245XH which provides the circumstances that an owner can obtain contributions for undertaking fencing work on a pool barrier.

The provision clarifies that if an owner needs to build temporary fencing to ensure the safety of children they can claim the reasonable costs for undertaking this work.

Subdivision 3 Resolving disputes

245XO Jurisdiction

This clause confers jurisdiction on QCAT to hear and decide any matter arising under this part.

A new jurisdiction is conferred upon QCAT to decide which of 2 or more fences on the boundary of adjoining lands is the dividing fence and to order the removal of the other fences.

Further, QCAT is given express jurisdiction where there is a fence other than a dividing fence on adjoining lands to order its removal if QCAT considers that its removal is necessary to allow fencing work for a dividing fence.

245XP Representation

This clause allows a party to be represented by a real estate agent. This may occur if the party is absent or the real estate agent is given authority to act on behalf of the owner.

245XQ Orders about carrying out fencing work

This clause outlines the kinds of orders QCAT may make in an application in relation to fencing work for pool barrier on a common boundary.

The clause clarifies that occupation of land on either side of a dividing fence as a result of a QCAT order that fencing work be carried out on a line other than the common boundary, does not affect title to or possession of the land.

The clause allows QCAT to make any order for any other work to be carried out that is necessary to carry out fencing work including work for a retaining wall. This would be necessary when the structure of the dividing fence is or would be compromised by the failure of a retaining wall and cannot be repaired or constructed unless the retaining wall is repaired. It would also cover works such as drainage which are necessary for repairing a dividing fence.

The clause also clarifies that QCAT can make an order about whether a proposed fence would comply with the pool safety standard and whether a fence has, or could lawfully be used as a pool safety barrier. This jurisdiction will not remove the requirement for a pool owner to obtain a pool safety certificate under the *Building Act*, chapter 8.

245XR Matters for QCAT consideration

This clause lists some of the matters QCAT may consider in deciding any matter under this part.

Most of these are in common with section 36 of the NDRB with the exception of the ability of QCAT to take into account the pool safety standard.

In deciding applications, QCAT may give consideration to all the circumstances of the application, including the items listed in the section. For example, in deciding whether a pool barrier along a common boundary will be a sufficient dividing fence, QCAT may consider the kind of dividing fence normally used in the area.

245XS Application for order in absence of adjoining owner

This section allows QCAT to make orders in the absence of an adjoining owner in circumstances where the owner seeking order can not locate the adjoining owner after making all reasonable enquiries.

In some circumstances, an owner may be unable to give notice to the other adjoining owner.

In those circumstances, an owner may apply to QCAT for the relevant order authorising fencing work. QCAT must be satisfied that the owner has made reasonable inquiries but has been unable to locate the adjoining owner.

The clause allows an agent to appear in the absence of the owner. The owner who carries out the fencing work authorised by QCAT may at a later date give notice to the other adjoining owner and is entitled to seek contribution. The other adjoining owner is given an entitlement to apply to QCAT for a variation of the order.

The clause applies even though the adjoining owner or owner has ceased to own the relevant parcel of land.

Examples of reasonable inquiries are given, for instance, searching the electoral roll and inquiring of other neighbours or contacting the local council.

Division 5 Process for dealing with unauthorised fencing work

245XT Unauthorised fencing work

This section provides for when an owner is taken to have carried out fencing work without authorisation. It is only authorised where the owners have agreed or where QCAT has ordered the work be carried out, or work is carried out in accordance with division 3 (Rights and responsibilities of pool owners and their neighbours for particular dividing fences).

Examples of unauthorised fencing work could include work that does not meet the requirements for a sufficient dividing fence or does not meet the requirements for an existing special purpose fence.

245XU Application before unauthorised fencing work

Pool owners may apply to QCAT for an order preventing the adjoining owner from carrying out unauthorised fencing work. This may be done where the owner believes on reasonable grounds that the adjoining owner intends to carry out unauthorised work. A copy of the application must be given to the adjoining owner at least 1 day before the application is heard by QCAT.

245XV Application after unauthorised fencing work

If an owner carries out unauthorised fencing work, then the adjoining owner may apply to QCAT for an order requiring the owner to rectify the fence. QCAT may also order that the owner bear the costs of the rectification.

Division 6 Process if common boundary not agreed

245XW Process if common boundary not agreed

This clause outlines the process to apply if the adjoining owners do not agree on the position of the common boundary line.

Division 7 General

245XX Measurement of the height of a dividing fence or pool barrier

This clause clarifies the method to be used in measuring the height of a dividing fence or pool barrier for the purposes of the part.

245XY Substantial compliance is adequate

Substantial compliance with the terms of any agreement, notice or order referred to in this part is sufficient for the purposes of this part.

245XZ Giving documents

A document may be given to a person by leaving it with a person who is apparently an adult living at the relevant address or leaving it at the relevant address in a position where it reasonably likely to come to the person's attention, or posting it to the relevant address.

Evidence of giving of a document may be given orally or by affidavit. A justice of the peace is authorised to take and receive an affidavit whether or not any matter to which the affidavit relates is pending in any court or QCAT.

If there are 2 or more joint owners of land and a person is unable to give every owner the document, the document is deemed to have been given to all joint owners if the person gives the document to at least 1 of the joint owners.

The meaning of relevant address for an owner of land is the usual or last known place of residence or business for the owner and includes the owner's address according to the records held by the local government. The

meaning of document is a notice or order made under this part. The relevant local government for an owner of land means the local government of the local government area in which the land is situated.

246 Descriptions in notice

The description of any land, fence, line or boundary in a notice under this part is sufficient if it allows no reasonable doubt as to which land, fence, line or boundary is concerned or if it is shown that the person served with the notice knew the relevant land, fence, line or boundary.

219 Amendment of s 246AB (Nonconformity notice)

Clause 219 amends section 246AB (Nonconformity notice) to correct a typographical error.

220 Amendment of s 246ATJ (Requirement to obtain pool safety certificate for regulated pool that is not a shared pool)

Clause 220 amends section 246ATJ (Requirement to obtain pool safety certificate for regulated pool that is not a shared pool).

The amended section provides for the pool safety certificate to be obtained within 90 days. However, where proceedings have been commenced in QCAT, then the 90 days does not include those days that the pool owner is involved in QCAT proceedings about the pool safety barrier.

The purpose of this provision is to ensure that pool owners are not disadvantaged by having less time to comply with the requirement to get a pool safety certificate under the *Building Act*, chapter 8 if they become involved in QCAT proceedings about the pool safety barrier.

221 Amendment of s 246ATK (Requirement to obtain pool safety certificate for regulated pool that is a shared pool)

Clause 221 amends section 246ATK (Requirement to obtain pool safety certificate for regulated pool that is a shared pool).

The amended section provides for the pool safety certificate to be obtained within 90 days. However, where proceedings have been commenced in QCAT, then the 90 days does not include those days that the pool owner is involved in QCAT proceedings about the pool safety barrier.

The purpose of this provision is to ensure that pool owners are not disadvantaged by having less time to comply with the requirement to get a pool safety certificate under the *Building Act*, chapter 8 if they become involved in QCAT proceedings about the pool safety barrier.

222 Amendment of sch 2 (Dictionary)

Clause 222 omits certain definitions, to avoid duplication, and inserts a number of clauses that define particular words defined in Chapter 8, Part 2A.

Division 3 Amendments of Building Act 1975 relating residential care buildings

223 Act Amended

Clause 223 states that this division amends the *Building Act 1975*.

224 Amendment of s 3 (Simplified outline of main provisions of Act)

Clause 224 amends section 3 “Simplified outline of main provisions of Act” to include reference to the new Chapter 7A. This chapter has been included to provide fire safety standards for existing buildings built prior to 1 June 2007, which the existing QDC parts do not currently cover.

225 Amendment of s 5 (What is building work)

Clause 225 amends section 5 to include a new example of building work for RCBs. Building work now includes a management procedure under the fire safety standard (RCB).

226 Amendment of s 30 (Relevant laws and other documents for assessment of building work)

Clause 226 amends section 30 to include the fire safety standard (RCB) as a building assessment provision relevant for the assessment of building work for an RCB.

227 Amendment of s 63 (Restriction on granting building development application for budget accommodation building)

Clause 227 makes an amendment to the heading of section 63.

228 Insertion of new s 63A

Clause 228 inserts a new section 63A which places a restriction on an assessment manager when assessing a building development application for a RCB. The purpose of this provision is to ensure that where substantial alterations are made to a RCB the whole building must comply with the fire safety standard (RCB).

229 Amendment of s 81 (Building development approval for particular alterations may require existing building or structure to comply with building assessment provisions)

Clause 229 amends section 81 so that the assessment manager cannot require the building development approval for alterations to a RCB to require the entire existing building to comply with the building assessment provisions that deal with fire safety in addition to complying with the fire safety standard (RCB).

230 Amendment of s 103 (Certificate requirements)

Clause 230 amends section 103 so that if the assessment manager uses a building solution in the building development approval that relies on a management procedure, that management procedure must be included on the Certificate of Classification for the building.

231 Amendment of s 108A (Owner's obligations about access to certificate of classification)

Clause 231 moves the definition of 'authorised officer' to the dictionary in schedule 3.

232 Insertion of new ch 7A

Clause 232 inserts the new Chapter 7A.

Chapter 7A Fire Safety for Residential Care Buildings built, approved or applied for, before 1 June 2007

Part 1 Application of Chapter 7A

Section 231AA

Section 231AA is introduced to outline the application of Chapter 7A. It is intended that only existing RCBs that were built prior to, or obtained approval to construct prior to, 1 June 2007 be captured.

It is not proposed to capture existing building that already comply with either Part 7 - Fire safety for budget accommodation buildings, or QDC MP 2.2 - Fire safety in residential care buildings.

Part 2 Interpretation

Section 231AB introduces new definitions for Chapter 7A.

Section 231AC defines what buildings are considered RCBs for the purposes of QDC MP 2.3. These buildings have high occupancy numbers with a large percentage of occupants requiring physical assistance in the event of an evacuation.

Section 231AD outlines the assessment categories for RCBs. The categories distinguish between buildings on the basis of their type of construction and number of storeys.

Part 3 Fire safety standard (RCB)

Section 231AE states what the fire safety standard (RCB) is. The fire safety standard (RCB) is designed to prescribe standards which the RCBs must follow to achieve and maintain an improved level of safety against fire.

Part 3A RCB Assessors

Section 231AF Who is an RCB Assessor

This section describes those persons who may carry out an assessment of a residential care building to determine which risk category the building falls within and whether the building complies with the fire safety standard (RCB).

This section complements section 231AG in ensuring that only appropriately qualified persons are allowed to perform these assessments.

Section 231AG Chief executive may approve public service employees to assess RCBs

This section empowers the chief executive to allow a public service employee to perform assessments on residential care buildings to determine which risk category the building falls within and whether the building complies with the fire safety standard (RCB). It also sets out the requisite characteristics that the chief executive must consider a public service employee to possess before the chief executive may grant approval for that employee to carry out assessments on residential care buildings.

The section also sets out the requisite characteristics the chief executive must consider a public service employee possesses before granting approval to carry out assessments on residential care buildings.

Part 4 Assessment of residential care buildings

Section 231AH Owner must have RCB assessed for assessment category and compliance with fire safety standard (RCB)

This section outlines the date by which an owner of a residential care building must have the building assessed to determine which risk category the building falls within and whether or not it complies with the fire safety standard (RCB). This date will be 1 March 2012, unless a later date is prescribed under a regulation.

The section also imposes an obligation on the owner of a residential care building to provide the assessor with a plan of the building (drawn to scale) and any other information necessary for the assessor to complete their report.

The section ensures that assessments of residential care buildings are completed by 1 March 2012. This will ensure building owners are aware of what they need to do to their buildings to comply with the standard well in advance of compliance deadlines.

Section 231AI RCB assessment reports

This section outlines the minimum components of reports that synthesise the results of a residential care building assessment and regulates the provision of a compliance certificate for residential care buildings that comply with the fire safety standard (RCB). Assessment reports will therefore be standardised and of a high quality, promoting certainty and allowing building owners to take swift remedial action.

The section requires the assessor of a residential care building to provide the owner of that building with a report (in the approved form) that either is or includes an information notice to indicate the assessor's decision in relation to the building's assessment category, whether the building complies with the fire safety standard (RCB) and, if it does not comply with that standard, the nature of the non-compliance.

If the nature of the non-compliance relates to sprinklers, this section mandates that the report must also include a statement noting which parts of the building do not comply and the area of those parts in square metres.

The statement about which parts of the building do not comply can consist of a reference to the plan of the residential care building provided by the owner to the assessor under section 231AH(2)(a).

The assessor's report must also include:

- The plan required to be provided to the assessor under section 231AH(2)(a)
- The construction type (A/B/C) of the building
- The number of the rise of storeys for the building
- The usual number of persons resident in the building
- Any other matter prescribed under a regulation.

If the assessor decides that the building does comply with the fire safety standard (RCB), then the assessor must also issue a certificate in the approved form to signify this compliance.

Section 231AJ Further assessment by an RCB assessor

This section regulates a situation where, in response to an assessment report noting non-compliance with the fire safety standard (RCB), the owner of a RCB undertakes building work to comply with the fire safety standard (RCB) and consequently engages a different assessor from the one responsible for the original assessment and report. This section allows the subsequent assessor to accept and without further checking rely on the report given by the original assessor when issuing a compliance certificate or certificate of classification for the building.

This section cultivates an efficient assessment process. It allows subsequent assessors to rely on the reports of previous assessors. Subsequent assessors are then able to finalise the certification process without having to duplicate the assessment work already undertaken by a previous assessor.

Section 231AK When owner must obtain fire safety (RCB) compliance certificate or certificate of classification

This section outlines the timeframes in which the owners of residential care buildings must obtain a compliance certificate, which signifies their building's compliance, and/or a certificate of classification for any new building work undertaken that requires a building application. A certificate

of classification will signify that the new building work is compliant with QDC MP 2.3.

Assessment category 1 RCBs must comply with the fire safety standard within 3 years (1 September 2014). Assessment category 2 RCBs must comply with the fire safety standard within 5 years (1 September 2016).

These deadlines may be extended by regulation or upon the approval of a relevant application submitted to a local government. A local governments ability to extend the deadline will be limited to a further 12 months in total.

Section 231AL Approval of a later day for obtaining fire safety (RCB) compliance certificate or certificate of classification

This section provides the machinery by which the owner of a residential care building may extend their compliance deadline. The owner may make a written application to the relevant local government to approve a deferment of the owner's compliance deadline. The application must be made before the end of the relevant period.

In order to grant such an application, the local government may consult any relevant entity, but must consult with the Queensland Fire and Rescue Service prior to making a decision or imposing any conditions. It is intended that the Local Government ensure that any conditions that are imposed complement the building's fire and evacuation plan and therefore consultation with the Queensland Fire and Rescue Service is essential in this regard. Before extending the time for compliance the local government must satisfy itself that undue hardship would befall the occupants of the relevant residential care buildings if the application were refused.

This section empowers local governments to impose reasonable conditions with the grant of an application and creates an obligation on the applicant to comply with those conditions. An example of a condition that a local government could impose would include ensuring that the RCB owner put in place appropriate measures to address the safety of occupants during the extension.

The section allocates 20 business days from receipt of the application for the local government to make a determination and inform the applicant, via an information notice, of their decision. If an approval is granted, the local government has a further 20 business days to notify the chief executive of this approval.

Local can only extend the relevant time period by a total of 12 months.

Section 231AM Owner must ensure RCB continues to comply with fire safety standard (RCB)

Once the owner of a residential care building has obtained a fire safety certificate or certificate of classification that indicates their building's compliance with the fire safety standard (RCB), this section creates an obligation to ensure that the residential care building continues to comply at all times.

Maintaining compliance is the responsibility of the owner of a residential care building, unless the owner is not the operator of the residential care services. In such instances, the obligation to maintain compliance is imposed on the operator.

Should any event cause the residential care building to become non-compliant with the fire safety standard (RCB), this section also imposes an obligation on the relevant owner or operator to remedy the breach and obtain another assessment and certificate to signify the building's compliance.

Both of these obligations are subject to the owner or the operator having a reasonable excuse defence.

Fire safety is an ongoing concern for high-occupancy buildings. As is standard practice for fire safety measures, this section was designed to ensure that appropriate fire safety precautions are continually in place, with appropriate checks and inspections taking place as necessary.

Part 5 General

Section 231AN General obligations of operator of RCB

This section outlines the obligations imposed on operators of residential care services, if they do not own the building in which those services are provided. These operators are required to provide the owner of the residential care building with all reasonable access, information and other assistance to the extent that it facilitates the owner's compliance with their obligations under Chapter 7A.

This section ensures that an owner of a residential care building is able to fully discharge their obligations under this chapter. Without this section, an operator may have prevented an owner from upgrading their building,

providing that owner with a reasonable excuse for not doing so, without imposing a comparable obligation on another party.

Section 231AO Owner must give RCB assessment report to chief executive and local government

Unless the owner of a residential care building has a reasonable excuse, this section requires them to provide the chief executive and the relevant local government with a copy of the assessment report for their building within 10 business days of them receiving that report.

However, if the assessor responsible for the assessment report is a building certifier employed or appointed by the relevant local government, then the owner need not send a copy of the report to that local government. Similarly, if the assessor responsible for the assessment report is a public service employee approved by the chief executive, the owner need not provide a copy of that report to the chief executive.

This section ensures that the chief executive, their department and relevant local governments have access to comprehensive information about the standards of fire safety in residential care buildings throughout Queensland. This will assist in monitoring and compliance activities as well as in the development of any future policy initiatives.

Section 231AP Owner must give fire safety (RCB) compliance certificate to chief executive and local government

Once the owner of a residential care building receives a fire safety (RCB) compliance certificate for their building, this section requires them to provide a copy of the certificate to the chief executive and to the relevant local government within 10 business days, unless the owner has a reasonable excuse. If the owner is given a Certificate of Classification for the building work to comply with the fire safety standard (RCB) this section requires them to provide a copy of the certificate to the chief executive within 10 business days, unless the owner has a reasonable excuse. This will assist in monitoring and compliance activities.

Section 231 AQ Owner's obligations about access to fire safety (RCB) compliance certificate

Unless the owner of a residential care building has a reasonable excuse for not doing so, this section requires the owner, upon receiving a relevant

request from a fire service officer or an authorised local government representative, to produce at least a copy of the fire safety (RCB) compliance certificate for the building. The owner must comply with this request, provided such a document has been issued. The section also notes that, as part of their request, the fire service or local government officer may require the document to be produced at the residential care building.

This section ensures that relevant officers have sufficient access to fire safety (RCB) compliance certificates so that they may carry out compliance monitoring and enforcement activities.

233 Amendment of s 231A (Definitions for ch 8)

This clause consequentially omits the definition of member from section 231A (Definitions for Ch 8). This definition has been moved to Schedule 2 (Dictionary) of the *Building Act 1975* to avoid repetition, as it is equally applicable in relation to the residential care amendments.

234 Amendment of s 256 (Prosecution of offences)

Clause 234 inserts additional classes of people who may, for an offence against the *Building Act 1975*, make a complaint. This clause will allow fire service officers and authorised local government personnel to make such complaints for an offence against chapter 7A. This will promote consistency across the enforcement of offences under the Act.

235 Replacement of sch 1 (The QDC on 15 April 2010)

Clause 235 replaces schedule 1 with an updated schedule including the parts of the Queensland Development Code that have been added since 15 April 2010. This includes QDC MP 2.3 Fire safety in existing residential care buildings (pre 1 June 2007).

236 Amendment of sch 2 (Dictionary)

Clause 236 omits certain definitions, to avoid duplication, and inserts a number of clauses that define particular words defined in Chapter 7A.

Division 5 Amendment of City of Brisbane Act 2010

237 Act amended

Clause 237 provides that division 5 amends the *City of Brisbane Act 2010*.

238 Amendment of s 13 (Who the council is constituted by)

Clause 238 amends section 13 to replace a reference to a reference to this Bill.

239 Amendment of s 39 (Election advertising)

Clause 239 amends section 39 to state that a how-to-vote card includes a card under the EA 1992.

240 Insertion of new ch 3, pt 5

Clause 240 inserts in chapter 3 a new part 5 which sets out caretaker period arrangements for the council in the period leading up to an election. Caretaker arrangements ensure transparency and accountability during this period and diminish the potential for any perception of councillors' abuse of decision-making powers.

The arrangements prohibit the council making a major policy decision during the caretaker period, except in exceptional circumstances. If a major policy decision is made, it is not valid unless approved by the Minister as required under the part. The clause also states that the council must not disseminate election material during a caretaker period.

241 Amendment of s 164 (Filling a vacancy in the office of mayor)

Clause 241 amends section 164 to clarify that an appointment by the council must be made by resolution.

242 Amendment of s 166 (Filling a vacancy in the office of another councillor)

Clause 242 amends section 166 to clarify that an appointment by the council must be made by resolution.

243 Omission of s 263 (Transitional provisions for elections)

Clause 243 removes section 263 which is now redundant as council elections are conducted under this Bill.

244 Amendment of schedule (Dictionary)

Clause 244 amends the dictionary to replace the definition of *how-to-vote card* and to insert the new definition *major policy decision*, required for the caretaker provisions inserted by this Bill.

Division 6 Amendment of Criminal Code

245 Code amended

Clause 245 provides that division 6 amends the Criminal Code.

246 Amendment of ch 14, div 2, hdg (Legislative Assembly and Brisbane City Council elections and referendums)

Clause 246 amends the heading to remove a now redundant reference to the Brisbane City Council.

247 Amendment of s 98A (Reference to election or referendum)

Clause 247 amends section 98A to remove a now redundant reference to elections of the Brisbane City Council.

Division 7 Amendment of Electoral Act 1992

248 Act amended

Clause 248 provides that division 7 amends the *Electoral Act 1992*.

249 Amendment of s 30 (Electoral registrars)

Clause 249 amends section 30 to remove a reference to the appointment of returning officers under the *Local Government Act 2009*, which will now be done under this Bill.

250 Amendment of s 137 (Supreme Court to be Court of Disputed Returns)

Clause 250 amends section 137 to update a reference from the *Local Government Act 1993* to the *Local Government Act 2009*.

Division 8 Amendment of the Information Privacy Act 2009

251 Act amended

Clause 251 provides that division 8 amends the *Information Privacy Act 2009*.

252 Amendment of s 126 (Disciplinary action)

Clause 252 amends section 126 to provide that the Supreme Court is to be the Court of Disputed Returns for this Bill.

Division 9 Amendment of Local Government Act 2009

253 Act amended

Clause 253 provides that division 9 amends the *Local Government Act 2009*.

254 Amendment of s 36 (Election advertising)

Clause 254 amends section 36 to state that a how-to-vote card includes a card under the *Electoral Act 1992*.

255 Insertion of new s 85A

Clause 255 inserts new section 85A to provide that where a community forum has not been established a vote on a trust change decision can not be effected if the decision of the councillor for the division for which the land, the subject of the proposal is situated, votes against it. As well, such a decision must be agreed by a majority of councillors, all of who must consider the views of the broader community, including the affected community.

256 Amendment of s 87 (Community forums)

Clause 256 amends section 87 to provide that an indigenous regional council may establish a community forum for a division of its council and that members of the forum, other than the chairperson who is the councillor for the division, will be appointed rather than elected.

257 Amendment of s 88 (Members of a community forum)

Clause 257 amends section 88 to provide that the appointment of members to a community forum made by an indigenous regional council must be made by resolution of the council. Such appointments would follow a call for expressions of interest and a merit based selection process conducted by the indigenous regional council.

258 Amendment of s 89 (Payments to elected members of a community forum)

Clause 258 is a consequential amendment to replace references to ‘elected members’ of a community forum with references to ‘appointed members’.

259 Omission of s 90 (Convenors for a community forum)

Clause 259 omits section 90 the matters in which will now be dealt with administratively by an indigenous regional council.

260 Insertion of new ch 3, pt 5

Clause 260 inserts in chapter 3 a new part 5 which sets out caretaker period arrangements for local governments in the period leading up to an election. Caretaker arrangements ensure transparency and accountability during this

period and diminish the potential for any perception of councillors' abuse of decision-making powers.

The arrangements prohibit a local government making a major policy decision during the caretaker period, except in exceptional circumstances. If a major policy decision is made, it is not valid unless approved by the Minister as required under the division. The clause also states that a local government must not disseminate election material during a caretaker period.

261 Insertion of new s 156A

Clause 261 inserts a new section 156A to provide that a person can not be a councillor (including the mayor) of the Torres Strait Island Regional Council if the person does not live in the local government area.

262 Insertion of new s 160A

Clause 262 inserts new section 160A to provide a discretionary regulation-making power to extend the term of councillors elected at a fresh election until the conclusion of the quadrennial election after the next scheduled quadrennial election. In effect, a councillor could hold office in excess of the normal term of four years. This would be practical in certain instances, for example, if a fresh election were to be held in December 2015, there would be little point requiring another election to be held in March 2016 which is the date of the next scheduled quadrennial election. This would save local governments unnecessary costs and it is unlikely voter preferences would change in such a short time.

263 Amendment of s 163 (When a vacancy in an office must be filled)

Clause 263 amends section 163 to provide that a vacancy in the office of councillor must be filled within 12 weeks to make the timing consistent with the timing for holding a by-election.

264 Amendment of s 166 (Filling a vacancy in the office of another councillor)

Clause 264 amends section 166 to clarify that an appointment by the local government must be made by resolution.

265 Omission of s 284 (Continuation of electoral and related provisions)

Clause 265 removes section 284 which is now redundant as local government elections are conducted under this Bill.

266 Replacement of ch 9, hdg (Transitional provision for Revenue and Other Legislation Amendment Act 2011)

Clause 266 is a consequential amendment to replace the heading to chapter 9.

267 Insertion of new ch 9, pt 1, hdg

Clause 267 is a consequential amendment to insert a new part heading.

268 Omission of ch 10, hdg (Transitional provision for Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011)

Clause 268 is a consequential amendment to remove a redundant chapter heading.

269 Insertion of new ch 9, pt 2, hdg

Clause 269 is a consequential amendment to insert a new part heading.

270 Omission of sch 2 (Local government elections)

Clause 270 removes schedule 2 which is now redundant as local government elections are conducted under this Bill.

271 Amendment of sch 4 (Dictionary)

Clause 271 amends the dictionary to replace the definition of *how-to-vote card* and to insert the new definitions *Local Government Electoral Act*, which means this Bill, and *major policy decision*, required for the caretaker provisions inserted by this Bill.

Division 10 Amendment of Mixed Use Development Act 1993

272 Act amended

This clause provides that the Bill will amend the *Mixed Use Development Act 1993* (MUDA).

273 Amendment of s 3 (Definitions)

This clause amends this section to include definitions relevant to bodies corporate provisions in the Bill.

274 Insertion of new s 4A

Section 4A is inserted.

Section 4A (References to standard module)

This section clarifies that the square brackets used after section heading include a reference to a similar section of the Body Corporate and Community management (Standard Module) Regulation 2008 (BCCM Standard Module).

275 Amendment of s 166 (Definitions)

This amendment inserts a definition for ‘original owner’ specific to Part 9 ‘Bodies corporate’.

276 Amendment of s 169 (Members’ nominees)

This clause establishes parameters for the appointment of nominees to community and precinct bodies corporate, ensuring that the nominee appointed by the subsidiary body corporate is a member of and represents the interests of the subsidiary body corporate to the precinct or community body corporate. Particularly, it provides for a one-year timeframe for which a nominee can be appointed, bringing it in line with the *Body Corporate and Community Management Act 1997* (BCCMA).

277 Amendment of s 172 (Meetings of bodies corporate)

This amendment ensures that schedule 2, part 2 of the *Building Units and Group Titles Act 1980* and the definition of ordinary resolution applies to the bodies corporate established under the *Mixed Use Development Act 1993*.

278 Amendment of s 177 (Duties of bodies corporate)

This clause provides for improved transparency and accountability by requiring bodies corporate to keep, for at least 10 years, meeting minutes (including motions) and proper statements of accounts; and, for at least 2 years, records showing votes for motions and election ballots.

279 Amendment of s 185 (Constitution of executive committee)

This clause establishes procedures for electing committee members in Schedule 1 'Election of executive committee members of bodies corporate' and provides for who is eligible for election as a member of the executive committee. This amended section also prevents election of an individual that has a relevant body corporate debt.

280 Insertion of s 185A

Section 185A is inserted.

Section 185A (Code of conduct for voting members of executive committee)

This section aligns MUDA with the BCCMA by establishing a code of conduct for voting members of executive committees in Schedule 2. This clause also provides that on becoming a voting member of the executive committee, the person is taken to have agreed to comply with the code of conduct.

281 Amendment of s 186 (Vacation of office of member of executive committee)

This clause prescribes that an executive committee member must vacate the office when that person is removed from office, by ordinary resolution, based on a breach of the code of conduct.

282 Insertion of s 188A

Section 188A is inserted.

Section 188A Conflict of interest of executive committee member

This section introduces a requirement for committee members and proxies to disclose any conflict of interests. Where there is a conflict of interest, the member or proxy is not entitled to vote on a motion involving the issue.

283 Insertion of new pt 9, divs 6-8 and pt 9A

Part 9, divisions 6-8 and part 9A are inserted.

Division 6 Proxies for general meetings of bodies corporate

Subdivision 1 Representing precinct bodies corporate and meetings of community bodies corporate

Section 201A Application of sdiv 1

This section clarifies that this subdivision applies to appointment and use of proxies to represent a precinct body corporate at a general meeting of the community body corporate.

Section 201B Appointment

This section provides for the appointment of proxies to represent the precinct body corporate and the requirement that the precinct body corporate submit a completed proxy form to the secretary of the community body corporate by a particular time. It also provides for the community body corporate to prohibit the use of proxies by comprehensive resolution for particular things or altogether.

Section 201C Use of proxy

This section provides for a member of the community body corporate that is the proxy for the precinct body corporate to vote in the members own right and also as proxy, and prescribes where a proxy vote can not be used at the meeting.

Section 201D Special provisions about proxy use

This section clarifies proxy use by the precinct body corporate at general meetings of community bodies corporate and establishes what persons can and cannot be a proxy for the precinct body corporate. For example, the proxy cannot be the original owner of a precinct development lot; a body corporate manager; or an associate of these, unless the associate is one of the owners constituting a subsidiary body corporate.

Section 210 E Offence

This section introduces a penalty, to a maximum of 100 penalty units, for a person that knowingly exercises a proxy or votes where the person does not have the right to do so.

Subdivision 2 Meetings of precinct bodies corporate

Section 201F Application of sdiv 2

This section clarifies that this subdivision applies to the appointment and use of a proxy to represent a precinct body corporate at a general meeting of the precinct body corporate.

Section 201G Appointment

This section provides for the appointment and voting entitlement of proxies, a requirement to submit proxy form and the ability to prohibit of proxy use by comprehensive resolution. This section also prescribes that a person must not hold more than 5% of proxies where there are 20 or more lots with voting entitlements for the meeting, or more than one proxy where there are less than 20 lots for which there are voting requirements for the meeting.

Section 201H Use of proxy

This section provides for a member of the precinct body corporate that is also a proxy for another member to be able to vote both in the persons own right and also as proxy, and prescribes where a proxy vote can not be used at the general meeting.

Section 201I Special provisions about proxy use

This section clarifies proxy use at general meetings of the precinct body corporate and establishes what persons can and cannot be a proxy. For example, the proxy cannot be the original owner of a precinct development lot; a body corporate manager of the community body corporate of which the precinct body corporate is an member, the precinct body corporate or the subsidiary body corporate; or an associate of these, unless the associate is one of the owners constituting a body corporate that is a member of the precinct body corporate.

Section 201J Offence

This section introduces a penalty, to a maximum of 100 penalty units, for a person that knowingly exercises a proxy or votes where the person does not have the right to do so.

Subdivision 3 Matters applying to proxies for meetings of community and precinct bodies corporate

Section 201K Form of proxy

This section includes provisions for which a proxy is able to represent a person, including that the proxy will lapse at the end of the body corporate financial year, or earlier if stated.

Section 201L How proxy may be exercised

This section states that a proxy may be exercised in person, by show of hands, at the meeting or by completing a written or electronic vote on a motion before the start of or at the meeting.

Division 7 Accounts and auditing for precinct bodies corporate

Section 201M Application of div 7

This section clarifies that this division applies to the preparation of statement of accounts by a precinct body corporate.

Section 201N Accounts

This section details how a statement of accounts must be prepared, the necessary inclusions and that a copy must accompany the notice of the first annual general meeting following the end of the relevant financial year.

Section 201O Audit

This section requires annual auditing by an auditor agreed to by ordinary resolution, auditing requirements including that the auditor must give a certificate stating whether the statement gives a true and fair view of the body corporate's financial affairs (identifying deficiencies if necessary), and persons that can and cannot be appointed as auditor.

Division 8 Removal from office of voting members of executive committee for breach of code of conduct

Section 201P Notice for breach of code of conduct

This section provides for a body corporate to decide, by ordinary resolution, to give written notice to a voting member of the executive committee that the body corporate believes has breached the code of conduct. The section includes requirements for how this is to occur, including that the member may, within 21 days, provide a written response.

Section 201Q Removal of voting member at general meeting

This section prescribes that to remove a member from office the body corporate must, subject to meeting s 201P, include a motion to remove the member on the agenda of its next general meeting, attaching a copy of the

notice and written response (if received). The member can be removed by ordinary resolution at the meeting.

Part 9A Conduct of body corporate managers, service contractors and letting agents

Division 1 Preliminary

Section 201R Definitions

This section includes definitions relevant to this part.

Section 201S Meaning of financier for a letting agent's contract

This section prescribes when a person is a financier for a contract including authorisation by a body corporate based on written notice signed by both the financier and the letting agent. It provides for a person to stop being a financier for the contract subject to written notice to the body corporate, with or without the agreement of the letting agent.

Section 201T Meaning of letting agent and letting agent business

This section prescribes that a person is a letting agent only at the authorisation of a community body corporate for a site, or a precinct body corporate for a precinct. It clarifies that a letting agent business (subject to the *Property Agents and Motor Dealers Act 2000*) is the business of acting as the agent for the owners of one or more lots of the site or precinct and the owners choose to use the persons services in relation to leases or other occupancies of lots in the site or precinct.

Section 201U Meaning of service contractor for site or precinct

This section defines service contractor, including that the person is not an employee of the community or precinct body corporate and that the term of engagement is at least one year.

Division 2 Codes of conduct

Section 201V Code of conduct for body corporate manager and caretaking service contractor

This section introduces a code of conduct for body corporate manager and caretaking service contractor (schedule 3) and clarifies that compliance with the code is a condition of the instrument of appointment or contract.

Section 201W Code of conduct for letting agent

This section introduces a code of conduct (schedule 4) for letting agents.

Division 3 Required transfer of management rights for contravention of code of conduct

Subdivision 1 Preliminary

Section 201X Application of div 3

This section states when division 3 applies with respect to transfer of management rights of a letting agent for contravening the code of conduct.

Section 201Y Effect of division 3 on other provisions

This section clarifies that the provisions relevant to transfer or termination of a letting agent authorisation or contract are void to the extent the provisions are inconsistent with Division 3.

Subdivision 2 Transfer of management rights

Section 201Z Code contravention notice

This section provides for when a body corporate believes the letting agent has contravened or is contravening a provision of the code of conduct for letting agents, body corporate managers and caretaking service contractors.

The body corporate must, if required by ordinary resolution decided by secret ballot, give the letting agent a signed code contravention notice. The section details what the notice must state, including a reasonable period for which the agent may remedy the contravention.

Section 201ZA Grounds for requiring transfer

This section prescribes the grounds by which the body corporate may require the transfer of management rights including failure to comply with a code of contravention notice or where the body corporate continues to believe, after giving notice, the relevant code of conduct.

Section 201ZB Requirement for transfer

This section requires the letting agent to transfer its management rights where there are grounds for the body corporate to require the transfer, the transfer is agreed to by majority resolution decided by secret ballot, and the letting agent is given a written transfer notice.

Section 201ZC Transfer – letting agent’s choice of transferee

This section prescribes that the letting agent must transfer its management rights within certain time periods (9 months or 11 months) depending on whether the management rights include a service contract, to a person approved by the body corporate. This section prescribes conditions by which the body corporate may make its decision.

Section 201ZD Giving financier copy of transfer notice

This section requires the body corporate to advise the financier/s for the contract when giving the transfer notice to the letting agent.

Section 201ZE Transfer – body corporate’s choice of transferee

This section provides for when the letting agent does not transfer the management rights as required under 201ZC. The executive committee must give notice to the letting agent including the replacement agent, the price and period to transfer. The letting agent must transfer the management rights as directed in the notice from the executive committee. From sale proceeds, the letting agents must pay the body corporate costs incurred for undertaking this role.

Section 201ZF Terms of service contract on transfer

This section prescribes that for a service contract that has been transferred, the terms of the contract are the terms applying to the contract immediately before the transfer (existing terms), or as changed under a review advice by an independent person (as per s201ZH-ZJ).

Subdivision 3 Replacement of letting agent authorisation and service contract

Section 201ZG Replacement of letting agent authorisation and service contract in particular circumstances

This section applies where the term remaining of the letting agent's authorisation (including rights of extension) is less than seven years when transferred. In this case, the body corporate must, for a period of nine years: authorise the transferee to conduct letting agent business based on the terms applying immediately before the transfer; and if applicable, engage the transferee as a service contractor based on the existing terms or existing terms changed by review advice, unless the body corporate and transferee agree otherwise.

Subdivision 4 Reviewing terms of letting agent's service contract

Section 201ZH Reviewing terms of service contract

This section applies to the letting agent's management rights if it includes a service contract, and when the body corporate requires the transfer and has agreed, by ordinary resolution, to obtain a review advice about the service contract. The body corporate must obtain the review advice from an appropriate independent person within one month.

Section 201ZI Review criteria

This section prescribes the criteria by which the independent appropriate person must base the review advice.

Section 201ZJ Giving copy of review advice to letting agent and prospective buyer of management rights

This section requires the body corporate to provide the letting agent a copy of the review advice within 14 days of obtaining the advice, and to a prospective buyer upon request.

Subdivision 5 Disputes about transfer of management rights

Section 201ZK QCAT jurisdiction

This section clarifies that a party to a dispute about the transfer of a letting agents management rights may apply to QCAT, as provided under the QCAT Act, to resolve the dispute.

Division 4 Disputes about contractual matters

Section 201ZL QCAT jurisdiction

This section clarifies that where a dispute about a claimed or anticipated contractual matter regarding the appointment, engagement or authorisation of a person as a body corporate manager, caretaking service contractor or letting agency, a party to the dispute may apply for QCAT, as provided under the QCAT Act, to resolve the dispute. The section also defines a contractual matter.

Division 5 Termination of appointment, engagement or authorisation

Section 201ZM Termination for failure to comply with remedial action notice

This section allows a community or precinct body corporate to terminate the appointment of a body corporate manager or engagement as a service contractor if the person (or director of the corporation if applicable) engages in misconduct or is grossly negligent, fails to carry out duties, or

contravenes the relevant code of conduct as required under the appointment or engagement. Similarly, the body corporate is able to terminate a person's authorisation as a letting agent in the same circumstances where the person has been given a transfer notice and has not transferred the management rights. To terminate an appointment, engagement or authorisation, the body corporate must have given a remedial action notice, the person has not complied with the notice in the specified period and the body corporate has approved the termination of the appointment, engagement or authorisation by ordinary resolution. For termination of a caretaking service contractor engagement or letting agent authorisation, the motion to approve the termination must be by secret ballot.

A remedial action notice is also defined in this section.

284 Amendment of s 202 (Community development control by-laws)

This clause prescribes that a new dispute resolution mechanism provided for under a community development control by-law cannot limit disputes dealt with by QCAT (s214B). The amendment also clarifies that in this section, 'development control by-laws' refers to 'community development control by-laws'.

285 Amendment of s 204 (Application of community development control by-laws and community activities by-laws)

The amendment clarifies that in this section, 'development control by-laws' refers to 'community development control by-laws'.

286 Amendment of s 205 (Minor non-compliance with community development control by-laws and community activities by-laws)

The amendment clarifies that in this section, 'development control by-laws' refers to 'community development control by-laws'.

287 Amendment of s 208 (Precinct development control by-laws)

This clause prescribes that any dispute resolution mechanism provided for in precinct development control by-law cannot limit disputes dealt with by

QCAT (s214C). It also clarifies that in this section, ‘development control by-laws’ refers to ‘precinct development control by-laws’.

288 Amendment of s 210 (Application of precinct development control by-laws and precinct activities by-laws)

The amendment clarifies that in this section, ‘development control by-laws’ refers to ‘precinct development control by-laws’.

289 Amendment of s 211 (Minor non-compliance with precinct development control by-laws and precinct activities by-laws)

The amendment clarifies that in this section, ‘development control by-law’ refers to ‘precinct development control by-law’.

290 Insertion of new pt 11, div 1 hdg

Division 1 heading ‘Fire Safety’ is inserted

291 Replacement of s 214A (Dealing with disputes)

Section 214A is replaced.

Division 2 Resolution of particular disputes

Section 214A Dealing with particular disputes under BUGTA

This section clarifies that, subject to making reasonable attempts to resolve disputes using internal dispute resolution processes described in s214D, disputes under MUDA (other than those dealt with by QCAT under sections 201ZK, 201ZL, 214B or 214C) may be dealt with under the *Building Units and Group Titles Act 1980* (BUGTA), part 5.

Section 214B Dealing with matter relating to community development control by-law

This section prescribes matters that are within QCAT’s jurisdiction relevant to community development control by-laws, subject to QCAT being satisfied the applicant has made reasonable attempts to resolve the dispute

using internal resolution processes. This section also provides for who has standing make the application to QCAT.

Section 214C Dealing with matter relating to precinct development control by-law

This section prescribes matters within QCAT's jurisdiction relevant to precinct development control by-laws, subject to QCAT being satisfied the applicant has made reasonable attempts to resolve the dispute using internal resolution processes. This section also provides for who has standing to make the application to QCAT.

Section 214D Internal dispute resolution processes to be used before application

This section prescribes that, a referee for deciding an application for an order under BUGTA for certain matters or QCAT deciding an application for certain matters, must not decide the application unless satisfied that the applicant has made reasonable attempts to resolve the dispute using internal dispute resolution processes. Examples of internal dispute resolution processes are provided.

Division 3 Other matters

Section 214E Associates

This section clarifies when a person is considered an 'associate', as some new provisions specifically refer to when an 'associate' of a person is appropriate or not, for example proxy use (e.g. section 201D) and appointing an independent auditor (section 201O).

292 Insertion of new pt 14 and schs 1-5

Part 14 and schedules 1-5 are inserted.

Part 14 Transitional Provisions for MUDA

Division 1 Preliminary

Section 224 Definitions

This section includes definitions for this part, including commencement and effective day (6 months after commencement).

Division 2 Bodies corporate

Section 225 Deferred application of particular provisions

This section clarifies which sections do not apply until the effective day, including 185A and schedule 2, code of conduct for voting members of executive committees, and Part 9, divisions 6-8, which introduce requirements for proxies, accounts and auditing and breaches of the code of conduct.

Section 226 Application of code of conduct for existing voting members of executive committees

This section prescribes that the code of conduct for voting members of the executive committee outlined in schedule 1 applies to actions done or omissions made by a person who is a voting member of the executive committee on or after the effective day.

Section 227 Auditing accounts for first annual general meeting after evaluation day

This section prescribes that the auditing of accounts applies if, before the effective day, the precinct body corporate has authorised a person to prepare a statement of accounts under s177(1)(f) and that person has started its preparation and annual general meeting hasn't happened. In this instance, Section 201O does not apply to the auditing for the period authorised.

Division 3 Body corporate managers, service contractors and letting agents

Section 228 Deferred application of particular provisions

This section clarifies that Part 9A, division 2-5, codes of conduct for body corporate managers, service contractors and letting agents, required transfer of management rights for a contravention of code of conduct, disputes about contractual matters, and termination of engagement, appointment or authorisation do not apply until the effective day.

This section also provides that Schedules 3-4, code of conduct for body corporate managers, caretaking service contractors and letting agents, do not apply until the effective day.

Section 229 Application of code of conduct for existing body corporate managers and caretaking service contractors

This section clarifies that the code of conduct for existing managers and contractors applies to acts done or omissions made by a person who is the body corporate manager of the body corporate or caretaking service contractor on or after the effective day.

Section 230 Application of code of conduct for existing letting agents

This section clarifies that the code of conduct applies to existing letting agents from the effective day.

Schedule 1 Election of executive committee members of bodies corporate

Schedule 1 provides requirements for the election of executive committees of bodies corporate including nomination procedures outside of the first annual general meeting, requirements for nominations, conduct of elections for executive committee by secret ballot and open ballot, election of ordinary members of executive committee and conduct of ballot, including general requirements scrutiny of votes, deciding executive and

ordinary member positions and the declaration of voting results. Definitions of terms for Schedule 1 are also provided.

Schedule 2 Code of conduct for voting members of executive committees

Schedule 2 provides the code of conduct for voting members of the executive committee, including commitment to acquiring understanding of the Act and this code, honesty, fairness and confidentiality, acting in the best interests of body corporate and persons with estate or interest in lots, complying with Act and this code and disclosure of conflict of interest.

Schedule 3 Code of conduct for body corporate managers and caretaking service contractors

Schedule 3 provides the code of conduct for body corporate managers and caretaking service contractors, including commitment to knowledge of the Act and this code, honesty, fairness and professionalism, skill, care and diligence, acting in body corporate's best interests, keeping body corporate informed of developments, ensuring employees comply with Act and this code, disclosure of conflict of interest, goods and services to be supplied at competitive prices and keeping of particular records.

The code of conduct also requires that the body corporate manager or caretaking service contractor must not engage in fraudulent, misleading or unconscionable conduct.

Schedule 4 Code of conduct for letting agents

Schedule 4 provides the code of conduct for letting agents, including commitment to honesty, fairness, professionalism, skill, care and diligence, acting in body corporate's and individual lot owner's best interests, ensuring employees comply with Act and code and supply of good and services at competitive prices.

The code of conduct also requires that the letting agent must not engage in fraudulent, misleading or unconscionable conduct or cause nuisance by unreasonably affecting a person's lawful use or enjoyment of a lot in the site, precinct or common property.

Division 11 Amendment of Neighbourhood Disputes Resolution Act 2011

293 Act amended

Clause 293 states that division 11 amends the *Neighbourhood Disputes Resolution Act 2011*.

294 Amendment of s 9 (Non-application of provisions to barrier of regulated pool)

Clause 294 amends the note to section 9 (Non-application of provisions to barrier of regulated pool), replacing the reference to section 231B of the *Building Act 1975* to chapter 8, part 2A.

Division 12 Amendment of Public Trustee Act 1978

295 Act amended

Clause 295 states that division 12 amends the *Public Trustee Act 1978*.

296 Amendment of s 17A (Priority etc. of fees and charges)

Clause 296 amends section 17A to effect necessary changes consequential upon the *Personal Property Securities Act 2009* (Cwlth).

297 Amendment of s 98 (Definitions)

Clause 297 amends section 98 to provide that money held by the State does not become unclaimed money unless it has been in the possession of the State for 2 years.

298 Amendment of s 99A (Public trustee's register of unclaimed moneys)

Clause 298 amends section 99A to support the operation of the online publication of information contained in the Public Trustee unclaimed moneys register.

Division 13 Amendment of Queensland Civil and Administrative Tribunal Act 2009

299 Act amended

Clause 322 states that division 16 amends the *Queensland Civil and Administrative Tribunal Act 2009*.

300 Amendment of s 12 (When jurisdiction for minor civil dispute exercised)

Clause 323 amends section 12 (When jurisdiction for minor civil dispute exercised) to provide that where a person has applied to the tribunal for a decision in relation to a matter under the *Building Act 1975*, chapter 8, part 2A, i.e. in relation to dividing fences also being used as a pool barrier, that matter may be dealt with as a minor civil dispute.

301 Amendment of s 13 (Deciding minor civil dispute generally)

Clause 324 amends section 13 (Deciding minor civil dispute generally) to provide in that the tribunal is restricted to making a final decision for matters contained in the *Building Act 1975*, chapter 8, part 2A, i.e. in relation to dividing fences also being used as a pool barrier.

Subclause (2) amends section 13(4) to provide that the tribunal is not restricted to the prescribed amount (currently defined to mean \$25,000) under section 13(3), i.e. when requiring payment, granting relief, performance of work, etc. There may be circumstances where the value of constructing a pool barrier or works involving a special purpose fence could exceed this value and the tribunal should not be restricted on this basis.

302 Amendment of sch 3 (Dictionary)

Clause 325 amends the definition of minor civil dispute to provide that disputes about pool barriers on common boundaries may be dealt with as a minor civil dispute.

Division 14 Amendment of Sanctuary Cove Resort Act 1985

303 Act amended

This clause provides that the Bill will amend the *Sanctuary Cove Resort Act 1985*.

304 Replacement of s 4B (Meaning of proposed use plan of the site or adjacent site)

This amendment defines the proposed use plan of the site and adjacent site.

Section 4B(1) provides that the proposed use plan of the site is the plan of survey of the site that was approved under subsection 8(4) or (7) of the Act as in force immediately before 2 October 2009; or, if an amendment of the plan is approved under section 8(2) or 12M, the proposed use plan of the site is the amended plan as approved.

Section 4B(2) provides that if a plan of survey is approved by the local government under section 7(4), the plan of survey approved under that subsection is the proposed use plan of the site; or, if an amendment of that plan is approved under section 8(2) or 12M, the proposed use plan of the site is the amended plan as approved.

Section 4B(3) provides that the proposed use plan of the adjacent site is the plan of survey of the adjacent site that was approved under section 12D(4) or (7) of the Act as in force immediately before 2 October 2009; or, if an amendment of the plan is approved under section 12D(2) or 12M, the proposed use plan of the adjacent site is the amended plan as approved.

Section 4B(4) provides that if a plan of survey is approved by the local government under section 12C(4), the plan of survey approved under that subsection is the proposed use plan of the adjacent site; or, if an amendment of that plan is approved under section 8(2) or 12M, the proposed use plan of the site is the amended plan as approved.

Section 4B(5) clarifies that the approval of the proposed use plan of the site or adjacent site under section 12M does not limit later amendment and approval of the proposed use plan under 8(2) and 12D(2).

305 Amendment of s 7 (Proposed use plan of the site)

This provision replaces the title of this section to ‘Approval of plan of survey’ and omits section 7(7) to 7(9), which is inserted in new section 8.

306 Insertion of new s 8

This section prescribes process for amendment of proposed use plan for minor boundary variation of the site. The primary thoroughfare body corporate may lodge an amending plan to local government varying boundaries of zones within the site. Local government may approve an amending plan if it is satisfied that the plan meets certain conditions, including if the number of group titles and building titles lots is not more than the relevant maximum for the site, variation of the boundaries is of a minor nature and does not substantially prejudice the rights of any person.

307 Amendment of s 10 (Initial subdivision within the site)

This amendment corrects a cross reference to section 8(2) in 10(8)(b)(i) and a cross reference to section 12M in section 10(8)(b)(ii).

308 Amendment of s 12C (Proposed use plan of the adjacent site)

This provision replaces the title of this section to ‘Approval of plan of survey’ and omits section 12C(7) to 7(9), which is inserted in new section 12D.

309 Insertion of new s 12D

This section prescribes a process for amendment of proposed use plan for minor boundary variation of the adjacent site. The primary thoroughfare body corporate may lodge an amending plan to local government varying boundaries of zones within the adjacent site. Local government may approve an amending plan if it is satisfied that the plan meets certain conditions, including if the number of group titles and building titles lots is not more than the relevant maximum for the site, if the variation of the

boundaries is of a minor nature and does not substantially prejudice the rights of any person.

310 Amendment of s 12F (Initial subdivision within the adjacent site)

This amendment corrects a cross reference to section 12D(2) in section 12F(8)(b)(i) and a cross reference to section 12M in section 12F(8)(b)(ii).

311 Amendment of s 12I (Amendment applications)

This amendment updates a reference to section 8(2) and 12D(2) in section 12I(1)(b)(ii).

312 Amendment of s 12P (Approval of amendment of relevant plan)

This clause replaces subsection 12P(4) to clarify that following approval of amendment at 12P(1) and receipt of copy documents in (2)(d), the registrar of titles must register the amended plan.

313 Amendment of s 15A (Plan of survey where variation of boundary approved)

This amendment updates a reference to section 8(2), 12D(2) and 12M in section 15A(1) and corrects a reference to section 12M in section 15A(3).

314 Amendment of s 114 (References to proposed use plan of site)

The definition of proposed use plan of the site in this section refers to section 4B(1) of the Act as in force immediately before 2 October 2009. This clause provides that this section stops applying on commencement of section 4B(1) and (2) as amended by the *Sustainable Planning and Other Legislation Amendment Act 2011*.

315 Amendment of s 115 (References to proposed use plan of adjacent site)

The definition of proposed use plan of the adjacent in this section refers to section 4B(1) of the Act as in force immediately before 2 October 2009. This clause provides that this section stops applying on commencement of

section 4B(3) and (4) as amended by the *Sustainable Planning and Other Legislation Amendment Act 2011*.

316 Amendment of sch 9 (Dictionary)

This amendment updates references to the proposed use plan for the site and adjacent site.

Division 15 Amendment of State Penalties Enforcement Act 1999

317 Act amended

Clause 317 states that division 15 amends the *State Penalties Enforcement Act 1999*.

318 Amendment of s 63 (Issue of enforcement warrant)

Clause 318 amends section 63 to effect necessary changes consequential upon the *Personal Property Securities Act 2009* (Cwlth).

319 Amendment of s 73J (Accountability for, and distribution of, money received)

Clause 319 amends section 73J to effect necessary changes consequential upon the *Personal Property Securities Act 2009* (Cwlth).

320 Insertion of new pt 10, div 7

Clause 320 inserts new transitional division 7 to provide that the amendment of the *State Penalties Enforcement Regulation 2000* by this Bill in no way affects the Governor in Council's power to make further amendments to the regulation or to repeal it.

Division 16 Amendment of State Penalties Enforcement Regulation 2000

321 Regulation amended

Clause 321 provides that division 16 amends the *State Penalties Enforcement Regulation 2000*.

322 Insertion of new s 6A

Clause 322 inserts new section 6A to provide that the ECQ is the administering authority for an infringement notice offence against this Bill.

323 Amendment of sch 1 (Consumer related legislation)

Clause 323 removes a reference in schedule 1 to the *Motor Vehicles and Boats Securities Act 1986*.

324 Amendment of sch 5 (Other legislation)

Clause 324 amends schedule 5 to provide for infringement notice offences under this Bill.

Schedule Dictionary

The schedule defines the terms used in this Bill.