Local Government and Other Legislation Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the *Local Government and Other Legislation Amendment Bill 2013*.

Policy objectives and the reasons for them

The objectives of the Bill are to deliver the following key policies of the Government:

- to ensure the new de-amalgamating local governments of Douglas, Livingstone, Mareeba and Noosa Shire Councils have the power to make budget and rating decisions from 1 January 2014 (changeover day), clarify that the transfer of assets between de-amalgamating local governments will not incur duty under the *Duties Act 2001* and provide transitional provisions for development applications affected by de-amalgamation;
- to ensure certainty for local communities by providing that only the Minister may apply to the Local Government Change Commission (change commission) to assess a local government change application;
- to further ensure that mayors and councillors are clearly in charge of councils by enabling one person to be both a councillor and a director of a local government corporate entity (other than the chairperson or deputy chairperson); and
- to ensure the planning and development system is more efficient and effective.

The Bill implements the final stages of the 2012 State election commitment to empower Queensland local governments, in particular, the *Empowering Queensland Local Government Policy 9.4.9.* This policy provides that if any local government boundaries are to be de-amalgamated, appropriate transitional and financial arrangements would be put in place to support the change.

On 9 March 2013, four Queensland communities participated in a poll under the *Local Government (De-amalgamation Polls) Regulation 2013* to gauge community interest for de-amalgamation in their respective local government areas. Those four communities - Douglas, Livingstone, Mareeba and Noosa (the new local governments) voted in favour of de-amalgamation from Cairns, Rockhampton, Tablelands and Sunshine Coast Regional Councils respectively (the continuing local governments).

Implementation of the de-amalgamations is being carried out in accordance with the provisions of the *Local Government Act 2009* (LGA) and the *Local Government (De-amalgamation Implementation) Regulation 2013*. Each local government affected by de-amalgamation has been appointed a Transfer Manager who is responsible for the

implementation to ensure the four new local governments are independently and effectively operational from the changeover day.

This Bill amends the LGA to give the new local governments the power to set a budget and to levy rates outside of the current prescribed budget cycle and to provide for the transfer of assets from a continuing local government to a new local government, without incurring a duty under the *Duties Act 2001*. The Bill amends the *Sustainable Planning Act 2009* (SPA) to provide transitional provisions for development applications affected by de-amalgamation.

To ensure certainty for local communities and to minimise the potential for any contradiction of the Government's policy intent for councils to remain as constituted after de-amalgamation, the Bill amends the LGA to provide that only the Minister for Local Government, Community Recovery and Resilience may apply to the change commission to assess a local government change application.

The Bill further contributes to the implementation of the Government's *Empowering Queensland Local Government Policy 4.4* of ensuring that mayors and local councillors are clearly in charge of councils by amending the LGA to enable one person to be both a councillor and a director of a local government corporate entity (other than the chairperson or deputy chairperson).

The Bill amends the SPA to reverse the current relationship and hierarchy between State planning policies (SPPs) and regional plans, and allow for the continued operation of development control plans (DCPs) that were prepared under the repealed *Local Government (Planning and Environment) Act 1990*, to allow for inclusion in the SPA planning schemes.

The Bill also makes minor and technical amendments to further clarify policy intent and to correct minor anomalies.

Achievement of policy objectives

To achieve the policy objectives, the Bill amends the *City of Brisbane Act 2010* (COBA), the LGA, the *Local Government and Other Legislation Amendment Act 2012* (LGOLA12) and the SPA.

Amendments to the *Local Government Act 2009*

Financial matters for de-amalgamation

The Bill empowers the new de-amalgamating local governments to:

- adopt the first budget for the remainder of the 2013-14 financial year before 1 February 2014 (or a later date set by the Minister);
- develop financial planning/accountability documents and financial policies for the new budget; and
- decide what rates and charges are to be levied for the remainder of the 2013-14 financial year as part of the new budget.

The Bill also exempts the new de-amalgamating local governments from:

- the requirement for the mayor to give each councillor of a new local government a copy of the new budget at least two weeks before the budget adoption meeting; and
- the requirement to hold a meeting within 14 days of the conclusion of the first fresh election of its councillors.

The provisions apply only to the new councils for the remainder of 2013-14 financial year and from then on all councils are to comply with existing financial management requirements.

Transfer of assets on de-amalgamation

The Explanatory Notes to section 260F of the LGA provide that a local government is not liable to pay a state tax under the *Duties Act 2001* for a transfer made to implement a de-amalgamation. However, section 260F(5) defines a 'state tax' to be a charge, fee or levy imposed under an Act, other than a duty under the *Duties Act 2001*. The Bill corrects the anomaly to ensure that the transfer of assets does not give rise to duty liability under the *Duties Act 2001* because of de-amalgamation.

Minister to apply to the Local Government Change Commission to assess a local government change application

Currently the Minister, a local government or the Electoral Commission of Queensland may make an application to the change commission for a local government change but only the Minister can make an application for an assessment of a change made under the 2007 reform process. To ensure certainty for local communities following de-amalgamation, the Bill provides that only the Minister may apply to the change commission to assess a local government change application and removes the outdated reference to the 2007 reform process.

One councillor may be a director of a corporate entity

Despite the recent repeal of the LGA corporate entity provisions, the LGA continues Wide Bay Water Corporation as a corporate entity and provides that the *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* (BEBA Regulation), as in force immediately before its repeal, continues to apply to a corporate entity corporatised under the LGA. Gladstone Airport Corporation is the other corporate entity corporatised under the LGA.

The Bill contributes to the implementation of the Government's *Empowering Queensland Local Government Policy 4.4* of ensuring that mayors and local councillors are clearly in charge of councils by amending the LGA to enable one person to be both a councillor and a director of a local government corporate entity. However, a person who is both a director of the corporate entity and a councillor of a local government can not be the chairperson or deputy chairperson of the board of the corporate entity.

Currently, the BEBA Regulation prohibits a person from being both a director of a corporate entity and a councillor or local government employee. As the BEBA Regulation is repealed a direct amendment is not possible but the effect of the BEBA Regulation may be amended by amendment to the LGA through further transitional provisions.

Minor and technical amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009*

- The process for the assessment of a councillor complaint depends on the complainant and whether the complaint is about the mayor or a councillor. The Bill clarifies the process for the preliminary assessment of a complaint about the conduct of a councillor if the complaint is made or received by the council, the department's chief executive or council's chief executive officer (CEO) under COBA and by the local government, the department's chief executive, the local government's CEO or the mayor under the LGA.

- Recent amendments prohibit a councillor from doing certain things if the councillor is in possession of inside information acquired as a councillor. Inadvertently the inside information offence is not also defined as an integrity offence. An integrity offence conviction means the councillor automatically stops being a councillor and can not be a councillor for four years after an integrity offence conviction. Given the seriousness of the inside information offence, as evidenced by the maximum penalty of 1000 penalty units or 2 years imprisonment, the Bill defines an inside information offence as an integrity offence.

- Currently the definitions of 'bribery offence' and 'integrity offence' in the COBA section 153(4)(c) and (5)(c) and the LGA section 153(4)(c) and (5)(c) respectively, provide for another offence to be prescribed under a regulation. The *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) define as an integrity offence the failure by a councillor to notify if an interest in the register of interests is no longer correct with a maximum penalty of 85 penalty units (CBR sections 240 and 270/LGR sections 253 and 292). No bribery offences have been prescribed by regulation. Under section 153(1)(d) of both the COBA and the LGA an integrity offence conviction means the councillor automatically stops being a councillor and can not be a councillor for four years after conviction.

  The Transport, Housing and Local Government Parliamentary Committee's (the Committee) May 2013 Report No. 23 (tabled on 12 February 2013) recommended that the provisions which enable other bribery and integrity offences to be prescribed under a regulation be deleted. The Committee considers that offences which disqualify a person from being a councillor should be specified in the Act and not made under a regulation due to the severe consequences imposed. The Committee also commented that a councillor's failure to give notice if an interest (listed in the register of interests) is no longer correct should not be grounds for dismissal.

  The Bill implements the Committee's recommendation 2 by repealing the power for a regulation to prescribe bribery and integrity offences. The Bill also relocates from the CBR and the LGR to COBA and the LGA respectively, the offence of a councillor who fails to notify if an interest in the register of interests is no longer correct with a maximum penalty of 85 penalty units to apply. However, if the offence was committed with intent the maximum penalty is 100 penalty units and the offence is defined as an integrity office. The Bill also makes the necessary consequential amendments to the CBR and the LGR.

- The COBA/LGA define a 'local government related law'/'local government Act' respectively, as a law under which a local government performs local government responsibilities. Inadvertently the *Building Act 1975* (BA) is not included in the

definition. For completeness, the Bill includes the BA as a law under which a local government performs local government responsibilities.

- The COBA/LGA prohibits a council from making a major policy decision during a caretaker period. A 'major policy decision' includes entering into a contract the total value of which is more than the greater of $150000 or 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements. Since 'major policy decision' was defined in 2011, the CBR/LGR were remade and define a 'large contractual arrangement' to mean a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, $200000 or more in a financial year. The Bill changes the amount of $150000 in the definition of 'major policy decision' to $200000 to align with the amounts in the CBR/LGR.

- The corporate entity provisions under the LGA were recently repealed and section 297 provides for LGA transitional matters for corporate entities but inadvertently does not continue matters as required under other Acts. The Bill clarifies in the LGA that local government corporate entity activities are also transitioned, where necessary, under the *Judicial Review Act 1991* and the *Public Interest Disclosure Act 2010*.

- Under the LGA section 196, the deputy mayor may be required to sit on a panel to appoint senior executives of the council. The deputy mayor can not delegate his or her powers. The Bill amends the LGA to enable the deputy mayor to delegate his or her functions and powers under section 196(4) to another councillor.

- Under the LGA, a person is qualified to be a councillor if the person is an Australian citizen, resides in the local government area and is not otherwise disqualified (under chapter 6 part 2). Under the COBA, a person is qualified to be a councillor of the council only if the person resides in Brisbane, is under the Electoral Act an enrolled elector for an electoral district in Brisbane, and is not disqualified from being a councillor because of a section in COBA. The *Parliament of Queensland Act 2001* (PQA) section 64 provides that a person may be nominated as a candidate for election, and may be elected as a member of the Legislative Assembly only if the person is an adult Australian citizen living in Queensland, is enrolled on an electoral roll for the electoral district or another electoral district and is not disqualified because of another provision in the PQA. The Bill amends the COBA and the LGA to align the councillor qualification provisions with the PQA.

- The Bill also corrects various cross-references in the COBA and the LGA.

Amendments to *the Local Government and Other Legislation Amendment Act 2012*

The LGOLA12 includes the repeal of the corporate entities regulation-making power in the LGA but the repeal was not commenced on assent as Wide Bay Water Corporation and Gladstone Airport Corporation continue to exist. The repeal is set to automatically commence so the Bill amends the LGOLA12 to retain the regulation-making power for as long as Wide Bay Water Corporation and Gladstone Airport Corporation continue to exist.

Amendments to the *Sustainable Planning Act 2009*

The local government de-amalgamations have implications for development applications in process on changeover day. Transitional provisions are required to address a range of situations impacting on development applications to provide consistency, clarity and certainty for the applicants and the affected local governments. These situations include development applications where the proposed development is wholly within the new local government area, and where the proposed development is within both local government areas, where certainty is required in terms of responsibility for making assessment decisions and representation in appeals.

Government policy on matters of State interest has been undergoing major reform since mid-2012, which will impact significantly on the role of State planning instruments. The proposed amendments will effectively reverse the current relationship between SPPs and regional plans, so that SPPs prevail over regional plans to the extent of any inconsistency, and narrow the focus of the relationship between regional plans and other instruments, to instruments under SPA. In August 2012, the Government announced the existing collection of individual issues-based SPPs would be replaced with a single SPP, expressing the Government's broad policy position on all matters of State interest. Consequently the intended role of SPPs under the single SPP will change from narrow, issues-based matters, to a broad and comprehensive policy intended to sit at the top of the hierarchy of planning instruments. It will also inform the development of all other planning instruments, including regional plans.

Several existing DCPs provide for substantial additional development in some of South East Queensland's fastest growing new communities. The infrastructure agreements put in place by these DCPs establish the basis for significant ongoing investment in these locations. Each DCP has substantial areas yet undeveloped. Although SPA provides for the continued operation of the DCPs prepared under the repealed *Local Government (Planning and Environment) Act 1990* and inclusion in planning schemes under the repealed *Integrated Planning Act 1997*, it does not allow the inclusion of those DCPs in a SPA planning scheme. These councils are currently preparing SPA planning schemes and amendments are required to allow for the inclusion of the DCPs in SPA planning schemes.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving policy objectives as legislative amendments are required to local government portfolio legislation and state development, infrastructure and planning portfolio legislation to ensure local governments have authority and capacity to contribute to the State's growth and economic success.

Estimated cost for government implementation

There are no estimated financial considerations for government arising from the Bill.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with these

provisions. However, the Bill includes some provisions that may be regarded as departures from FLPs. The justification for any departures is outlined below.

Rights and liberties of individuals

Qualifications for councillors

Amendments were originally proposed to the LGA to clarify that a candidate for councillor must be enrolled on the electoral roll as proof that the candidate is an adult, to make the LGA consistent with the requirements under the COBA and at the State level.

During drafting of the Bill, the Office of the Queensland Parliamentary Counsel (OQPC) commented that the COBA and the LGA are inconsistent with the PQA section 64 which provides that a person may be nominated as a candidate for election, and may be elected as a member of the Legislative Assembly only if the person is an adult Australian citizen living in Queensland, is enrolled on an electoral roll for the electoral district or another electoral district and is not disqualified because of another provision in the PQA.

OQPC questioned whether the proposed amendments have sufficient regard to the rights and liberties of individuals as they could lead to a possible inconsistency between comparable provisions within the local government legislation, potentially obscuring the interpretation of the Statute book.

The amendments have subsequently been re-drafted to achieve a more uniform approach alleviating FLP concerns. The Bill amends section 152 of COBA and section 152 of the LGA to align the councillor qualification provisions with the PQA.

Integrity offence if a councillor intentionally fails to update register of interests

To implement the Committee's May 2013 Report No. 23 recommendation 2 and to give effect to the Committee's comments that a failure to notify if an interest in the register of interests is no longer correct should not be grounds for dismissal, the Bill inserts new sections 173B and 171B into the COBA and the LGA respectively, to relocate from the CBR and the LGR the offence of a councillor's failure to notify if an interest in the register of interests is no longer correct with a maximum penalty of 85 penalty units to apply.

The Bill also provides that if the offence was committed with intent the maximum penalty is 100 penalty units and the offence is defined as an integrity offence. An integrity offence conviction means the councillor automatically stops being a councillor and can not be a councillor for four years.

In relation to the issue of whether the consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation, it is considered the amendments are reasonably justified because they align with the local government principles set out in section 4(2) of COBA and the LGA by reinforcing expectations that councillors are to observe very high standards of ethical and legal behaviour. The amendments will promote the public interest ahead of the private interests of councillors and are designed to ensure the officers who constitute a local government operate with the highest degree of accountability and transparency.

The new sections provide for offences that carry maximum penalties for councillors of 85 penalty units (for inadvertently failing to update the register of interests) and 100 penalty units (for intentionally failing to update the register of interests). The existing maximum penalty of 85 penalty units currently located in the regulations and the new penalty of 100 penalty units (if the offence is committed with intent) are considered reasonably proportionate to the seriousness of the offences.

Minister to apply to the Local Government Change Commission to assess a local government change

The Bill amends the LGA section 18 to provide that only the Minister may apply to the change commission to assess whether a local government change should be made. Currently, only the Minister may apply to the change commission to assess whether to alter a local government change that was made under the 2007 reform process. For any other proposed local government change, the Minister, a local government, or the Electoral Commission of Queensland may apply to the change commission to assess whether the change should be made.

The Bill may give the perception of removing an avenue for an individual to initiate an assessment of a local government change and indirectly repeal an existing statutory right. The Bill is considered justified as it does not prevent an individual or local government from applying for a local government change, but requires only that applications be submitted to the Minister who will then apply to the change commission for assessment of the proposed local government change, if considered appropriate.

The Bill is consistent with Government policy for Queensland councils to remain as constituted and for no further de-amalgamations. The Bill aims to minimise the potential for any contradiction of the Government's policy to ensure certainty for local communities and to ensure that only local government changes that are in the public interest are referred to the change commission for independent assessment. It should also be noted that the two entities being removed by the Bill are not individuals.

Proposed transitional provisions for new de-amalgamating local governments for the remainder of the 2013-14 financial year

The Bill amends the LGA by inserting new section 305 to make further transitional arrangements for new de-amalgamating local governments. The Bill gives the new de-amalgamating local governments of Douglas, Livingstone, Mareeba and Noosa Shire Councils the power to manage their new financial responsibilities from changeover day.

Specifically, for the remainder of the 2013-14 financial year, section 305(3) removes the requirement for the mayor of a new local government to give a copy of the proposed budget to each councillor at least two weeks before the budget adoption meeting. This potentially places councillors at a disadvantage and could be perceived to be at odds with the local government principles that underpin the LGA about transparent and effective processes and decision-making in the public interest.

It is considered the amendment is justified because it will be essential for each new local government to manage their financial responsibilities, including the adoption of the budget,

within a very short time from changeover day and before 1 February 2014. Further, the Bill does not prevent consultation with councillors during the budget's preparation.

The new arrangement will operate for the rest of the 2013-14 financial year only and is designed to deal with the exigencies of de-amalgamation. From the 2014-15 financial year onwards, the new local governments will be required to comply with existing financial management requirements under the LGA.

Further, the Government's *Empowering Queensland Local Government Policy 9.4.9* provided that when establishing a new local government, as a result of communities voting for de-amalgamation, appropriate transitional and financial arrangements would support the change.

Proposed transitional provisions for amendments about State planning policy and regional plans

The Bill amends the hierarchy of State planning instruments to provide that where there is an inconsistency between the SPP and a regional plan or local planning instrument, the SPP prevails to the extent of the inconsistency. It also provides discretion for the assessment manager or referral agency to apply either the assessment provisions in place prior to the amendment, or those reflecting the new hierarchy.

These amendments are proposed and are necessary in order to implement the Government commitments to empower local government, and to have a single, coordinated State 'voice' in relation to planning instruments, which enable development and contribute to a 'four pillar economy'. While it is possible that an applicant may have submitted a development application based on the current hierarchy, an assessment manager should consider the potential impact on an applicant before choosing which hierarchy to apply in development assessment. In practice, it may also benefit the applicant.

Proposed transitional provisions relating to proceedings

The Bill provides for changes to occur where there are proceedings on foot. The changes relate to:

(a) where the land to which the proceeding is about, is located wholly within a new local government area; and
(b) where the land is partly within a continuing local government area and partly within a new local government area.

In the first instance, there will be a change in party to the proceeding from the continuing local government to the new local government. In the second instance, the Minister must decide either which one of the local governments, or both, are to be party to the proceeding. These amendments are necessary to deal with the complexities of the de-amalgamations.

While it is possible that an individual may be inconvenienced by a change in the parties to a proceeding, it is equally possible they may be benefited by such a change. The court has discretion to award costs and is likely to consider this factor in such a decision. The Department of Justice and Attorney-General was consulted on these provisions and did not raise any issues.

Consultation

Consultation on the draft exposure Bill with respect to the local government portfolio legislation was undertaken with the Local Government Association of Queensland (LGAQ), the Local Government Managers Australia, the Electoral Commission of Queensland, Brisbane City Council, and the de-amalgamating councils of Cairns, Rockhampton, Sunshine Coast and Tablelands Regional Councils.

Consultation on DCP amendments to SPA has occurred with Moreton Bay Regional Council, Sunshine Coast Regional Council and Ipswich City Council. The draft single SPP generated strong interest during the statutory consultation phase between 15 April and 12 June 2013, with regional information sessions, stakeholder meetings, telephone hotline and email enquiries. Feedback received supported elevating the SPP above regional plans in the hierarchy of planning instruments contained in SPA. Consultation on the proposed de-amalgamation amendments has been undertaken with the LGAQ, and the Cairns, Tablelands and Sunshine Coast Regional Councils.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and the extent to which it is uniform with or complementary to the Commonwealth or another State has been taken into consideration in the development of relevant parts of the Bill.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that when enacted the Bill will be called the *Local Government and Other Legislation Amendment Act 2013*.

Clause 2 Commencement

Clause 2 prospectively commences clause 17; clause 19 to the extent it inserts new chapter 9, part 7, division 2; clause 31 to the extent it inserts new chapter 10, part 8, division 2; and clause 32(1) and (2), on 1 January 2014 to enable appropriate transitional and financial arrangements to take place to support de-amalgamation on 1 January 2014 (changeover day).

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

- clauses 25 to 29;
- clause 31 to the extent it inserts new chapter 10, part 8, division 1;
- clause 32(3) to (6);
- schedule 1 to the extent it amends the *Sustainability Planning Act 2009*.

The remaining provisions commence on assent.

Part 2 Amendment of City of Brisbane Act 2010

Clause 3 Act amended

Clause 3 states that part 2 and schedule 1 amend the *City of Brisbane Act 2010*.

Clause 4 Amendment of s 152 (Qualifications of councillors)

Clause 4 amends section 152 to add the requirement to the current list of qualifications of councillors that a councillor must be an adult Australian citizen. This aligns Brisbane councillor qualification requirements with all other local government councillors under the *Local Government Act 2009* and with the State MP qualification requirements under the *Parliament of Queensland Act 2001,* section 64.

Clause 5 Amendment of s 153 (Disqualification for certain offences)

Clause 5(1) omits subsection (4)(c) from section 153 to remove the power for a regulation to prescribe a bribery offence.

Clause 5(2) replaces the definition of *integrity offence* to remove the power for a regulation to prescribe an integrity offence.

The Transport, Housing and Local Government Parliamentary Committee's May 2013 Report No. 23 recommended that the provisions which enable bribery and integrity offences to be prescribed under a regulation be deleted. The Committee considers that offences which

disqualify a person from being a councillor should be specified in the Act and not made under a regulation due to the severe consequences imposed.

The replaced definition of *integrity offence* includes the offences under section 173A(2) or (3) to support the Government's commitment to ensure local governments operate with increased accountability and transparency to their communities. Section 173A was recently inserted in the *City of Brisbane Act 2010* to prohibit a councillor from doing certain things if the councillor is in possession of inside information acquired as a councillor similar to the insider trading provisions in the *Corporations Act 2001* (Cwlth). Inadvertently the inside information offence was not also defined as an integrity offence at the time section 173A was inserted. An integrity offence conviction means the councillor automatically stops being a councillor and can not be a councillor for four years after conviction. Given the seriousness of the inside information offence, as evidenced by the maximum penalty of 1000 penalty units or 2 years imprisonment, clause 5 defines an inside information offence as an integrity offence.

Clause 5(2) also provides that if a councillor is convicted of the more serious offence under new section 173B(2) to which paragraph (a) of the penalty applies, for intentionally failing to update a register of interests, the offence is an integrity offence.

The Bill is consistent with the other offences currently defined as integrity offences for example, when a councillor does not inform a meeting of the councillor's material personal interest and is also consistent with State and Commonwealth disqualification criteria.

At the State level, section 64(2) of the *Parliament of Queensland Act 2001* provides that a 'disqualified person' is someone who is subject to a term of imprisonment or detention, periodic or otherwise; or within two years of the day of nomination, has been convicted of an offence against the law of Queensland, another State or the Commonwealth and sentenced to more than one year's imprisonment.

At the Commonwealth level, The Constitution lists criteria that will disqualify a person from being capable of sitting as a senator or member of the House of Representatives. Some of the criteria are similar to the State provisions for example, section 44(ii) of The Constitution includes disqualifying a person who has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer.

Clause 5(2) also omits an outdated cross-reference (section 176(3)) and makes a reference more specific (section 174(5)) in the definition of *integrity offence*.

Clause 6 Insertion of new s 173B (Obligation of councillor to correct register of interests)

Clause 6 inserts new section 173B to elevate from the *City of Brisbane Regulation 2012* to the *City of Brisbane Act 2010*, the offence of a councillor who does not notify the CEO within 30 days of a change to a register of interests for the councillor or a person related to the councillor. The maximum penalty of 85 penalty units continues to apply to a councillor who fails to update a register of interests.

To support the Government's policy to ensure that council operates with accountability and transparency, clause 6 further provides that if the offence was committed with intent the maximum penalty is 100 penalty units and the offence is defined as an integrity offence. This offence would include as an element of the offence that the councillor intentionally did not inform the CEO of the interest or correct particulars.

Under section 153, a person can not be a councillor for four years after the person is convicted of an integrity offence.

Clause 7 Amendment of s 179 (Preliminary assessments of complaints)

Clause 7 amends section 179 to make specific reference to the CEO receiving a complaint about the conduct or performance of a councillor. The process for the assessment of a councillor complaint depends on the complainant and whether the complaint is about the mayor or a councillor. The Bill clarifies the process for the preliminary assessment of a complaint about the conduct or performance of a councillor if the complaint is made or received by the council, the department's chief executive or the CEO.

The amendment clarifies the preliminary assessment of the complaints process-

- if the council or the department's chief executive makes or receives a complaint – written notice must be given to the CEO and the CEO must conduct the preliminary assessment;
- if the CEO receives a complaint (other than from council or the department's chief executive), the CEO must conduct the preliminary assessment;
- if the CEO makes the complaint, written notice must be given to the department's chief executive and the department's chief executive must conduct the preliminary assessment.

Clause 8 Amendment of schedule (Dictionary)

Clause 8 amends three definitions:

- *local government related law* is a law under which council performs local government responsibilities. Inadvertently the *Building Act 1975* (BA) is not included in the definition. For completeness, the Bill includes the BA as a law under which council performs local government responsibilities;

- *major policy decision* - council is prohibited from making a major policy decision during a caretaker period. A 'major policy decision' includes entering into a contract the total value of which is more than the greater of $150000 or 1% of the council's net rate and utility charges as stated in council's audited financial statements. Since 'major policy decision' was defined in 2011, the *City of Brisbane Regulation 2012* (CBR) was remade and defines a 'large contractual arrangement' to mean a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, $200000 or more in a financial year. Clause 8 changes the amount of $150000 in the definition *major policy decision* to $200000 to align with the amount in the CBR;

- *preliminary assessment* - to correct a reference due to the renumbering of section 179 under clause 7.

Part 3 Amendment of Local Government Act 2009

Clause 9 Act amended

Clause 9 provides that part 3 and schedule 1 amend the *Local Government Act 2009*.

Clause 10 Replacement of s 18 (Who may start the change process)

Clause 10 replaces section 18 to provide that only the Minister may apply to the Local Government Change Commission to assess any local government change application. This supports the Government's intention to ensure certainty for local communities following de-amalgamations.

A local government change is a change of the boundaries of a local government area; any divisions of a local government area (not Brisbane City Council); the number of councillors for a local government; the name of a local government area; or the classification of a local government area.

Clause 10 also removes the outdated references to the 2007 reform process.

Clause 11 Amendment of s 19 (Assessment)

Clause 11 amends section 19 by adding a reference to the Minister as a consequence of the proposal in clause 10 that only the Minister may propose a local government change to the Local Government Change Commission.

Clause 12 Amendment of s 152 (Qualifications of councillors)

Clause 12 amends section 152 to add requirements to the current list of qualifications of councillors that a councillor must be an adult and be enrolled on an electoral roll. This aligns local government councillor qualifications with Brisbane councillor qualification requirements under the *City of Brisbane Act 2010* and State MP qualification requirements under the *Parliament of Queensland Act 2001*, section 64.

Clause 13 Amendment of s 153 (Disqualification for certain offences)

Clause 13(1) omits subsection (4)(c) from section 153 to remove the head of power for a regulation to prescribe a bribery offence.

Clause 13(2) replaces the definition of *integrity offence* to remove the power for a regulation to prescribe an integrity offence.

The Transport, Housing and Local Government Parliamentary Committee's May 2013 Report No. 23 recommended that the provisions which enable bribery and integrity offences to be prescribed under a regulation be deleted. The Committee considers that offences which disqualify a person from being a councillor should be specified in the Act and not made under a regulation due to the severe consequences imposed.

The replaced definition of *integrity offence* includes the offences under section 171A(2) or (3) to support the Government commitment to ensure local governments operate with

increased accountability and transparency to their communities. Section 171A was recently inserted in the *Local Government Act 2009* to prohibit a councillor from doing certain things if the councillor is in possession of inside information acquired as a councillor similar to the insider trading provisions in the *Corporations Act 2001* (Cwlth). Inadvertently the inside information offence was not also defined as an integrity offence at the time section 171A was inserted. An integrity offence conviction means the councillor automatically stops being a councillor and can not be a councillor for four years after conviction. Given the seriousness of the inside information offence, as evidenced by the maximum penalty of 1000 penalty units or 2 years imprisonment, clause 13 defines an inside information offence as an integrity offence.

Clause 13(2) also provides that if a councillor is convicted of the more serious offence under new section 171B(2) to which paragraph (a) of the penalty applies, for intentionally failing to update a register of interests, the offence is an integrity offence.

This Bill is consistent with the other offences currently defined as integrity offences for example, when a councillor does not inform a meeting of the councillor's material personal interest and is also consistent with State and Commonwealth disqualification criteria.

At the State level, section 64(2) of the *Parliament of Queensland Act 2001* provides that a 'disqualified person' is someone who is subject to a term of imprisonment or detention, periodic or otherwise; or within two years of the day of nomination, has been convicted of an offence against the law of Queensland, another State or the Commonwealth and sentenced to more than one year's imprisonment.

At the Commonwealth level, The Constitution lists criteria that will disqualify a person from being capable of sitting as a senator or member of the House of Representatives. Some of the criteria are similar to the State provisions, for example, section 44(ii) of The Constitution includes disqualifying a person who has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer.

Clause 13 also makes a reference more specific (section 172(5)) in the definition of *integrity offence*.

Clause 14 Insertion of new s 171B (Obligation of councillor to correct register of interests)

Clause 14 inserts new section 171B to relocate from the *Local Government Regulation 2012* to the *Local Government Act 2009* the integrity offence of a councillor who does not notify the CEO within 30 days of a change to a register of interests for the councillor or a person related to the councillor. The maximum penalty of 85 penalty units continues to apply to a councillor who inadvertently fails to update a register of interests.

To support the Government's policy to ensure that local governments operate with accountability and transparency, clause 14 further provides that if the offence was committed with intent the maximum penalty is 100 penalty units and the offence is defined as an integrity offence. This offence would include as an element of the offence that the councillor intentionally did not inform the CEO of the interest or correct particulars.

Under section 153, a person can not be a councillor for four years after the person is convicted of an integrity offence.

Clause 15 Amendment of s 176B (Preliminary assessments of complaints)

Clause 15 amends section 176B to make specific reference to the CEO and mayor receiving a complaint about the conduct or performance of a councillor. The process for the assessment of a councillor complaint depends on the complainant and whether the complaint is about the mayor or a councillor. The Bill clarifies the process for the preliminary assessment of a complaint about the conduct or performance of a councillor if the complaint is made or received by the local government, the department's chief executive, the CEO or the mayor.

The amendment clarifies the preliminary assessment of the complaints process-

- if the local government or the department's chief executive makes or receives a complaint – written notice must be given to the CEO and the CEO must conduct the preliminary assessment;
- if the CEO or mayor makes a complaint – written notice must be given to the department's chief executive and the department's chief executive must conduct the preliminary assessment;
- if the mayor receives the complaint – written notice must be given to the CEO and the CEO must conduct the preliminary assessment;
- if the CEO receives the complaint (other than from the local government, the department's chief executive or the mayor), the CEO must conduct the preliminary assessment.

Clause 16 Amendment of s 196 (Appointing other local government employees)

Under section 196, the deputy mayor may be required to sit on a panel to appoint senior executives of the local government. Currently, the deputy mayor can not delegate his or her powers.

Clause 16 amends section 196 to enable the deputy mayor to delegate his or her functions or powers under section 196(4) to another councillor if necessary.

Clause 17 Amendment of s 260F (Implementation)

The de-amalgamation implementation requires the transfer of assets between the continuing and new local governments. While section 260F(4) of the *Local Government Act 2009* contains an exemption from a 'State tax', section 260F(5) specifically excludes duties imposed under the *Duties Act 2001* from the definition of a 'State tax'. The Explanatory Notes to the *Local Government and Other Legislation Amendment Act 2012*, provide that the policy intent of section 260F is that a local government is not liable to pay a State tax under the *Duties Act 2001* in relation to a transfer or other arrangements made to implement a de-amalgamation.

Clause 17 amends section 260F to clarify the policy intent and ensure that the transfer of assets does not give rise to duty liability under the *Duties Act 2001* for both the new and continuing local governments.

Clause 18 Amendment of s 297 (Continuation of particular provisions for corporate entities)

Clause 18 amends section 297 to add a note to cross-reference new sections 302 and 303. Sections 302 and 303 are transitional provisions inserted by this Bill and like section 297, provide for transitional arrangements specifically for corporate entities (see explanatory note for clause 19).

Clause 19 Insertion of new ch 9, pt 7 (Transitional provisions for Local Government and Other Legislation Amendment Act 2013)

Transitional arrangements - corporate entities

The *Local Government and Other Legislation Amendment Act 2012* repealed the *Local Government Act 2009* (LGA) corporate entity provisions requiring local governments to rely on the *Corporations Act 2001* (Cwlth) for the corporatisation of new business activities. Despite the recent repeal, the LGA continues Wide Bay Water Corporation (WBWC) as a corporate entity and provides that the *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* (BEBA Regulation), as in force immediately before its repeal, continues to apply to a corporate entity corporatised under the LGA. Gladstone Airport Corporation (GAC) is the other corporate entity corporatised under the LGA.

The BEBA Regulation prohibits a person from being both a director of a corporate entity and a councillor or local government employee. As the BEBA Regulation is repealed a direct amendment is not possible but the effect of the BEBA Regulation may be amended by amendment to the LGA through further transitional provisions.

In line with the Government's *Empowering Queensland Local Government Policy 4.4* to ensure that mayors and councillors are clearly in charge of councils, clause 19 inserts new section 302 to allow one director of a local government corporate entity to also be a councillor of the owner local government. However, a person who is both a director of the corporate entity and a councillor of a local government can not be the chairperson or deputy chairperson of the board of the corporate entity. The appointment of one councillor as a director is not mandatory and Gladstone Regional Council (owner of GAC) and Fraser Coast Regional Council (owner of WBWC) may elect not to appoint a councillor as a director.

Clause 19 also inserts new section 303 to clarify that local government corporate entity activities are also transitioned under the *Judicial Review Act 1991* (JRA) and the *Public Interest Disclosure Act 2010* (PIDA), not just the LGA. Inadvertently, section 297 of the LGA did not provide for transitional matters for corporate entities under the JRA or PIDA when the corporate entity provisions were repealed. The amendment essentially maintains the status quo of these two Acts for WBWC and GAC.

Transitional arrangements – first budget for new de-amalgamating local governments

On 1 January 2014, four new local governments - Douglas, Livingstone, Mareeba and Noosa Shire Councils - will be formed as a result of de-amalgamating from the continuing local governments of Cairns, Rockhampton, Tablelands and Sunshine Coast Regional Councils.

Clause 19 inserts new section 305 (Meeting to approve budget and levy rates and charges for period ending 30 June 2014) to ensure appropriate transitional and financial arrangements are in place to support the de-amalgamation by providing the new local governments with the power to set a budget and to levy rates outside of the prescribed budget cycle.

The LGA and the *Local Government Regulation 2012* (LGR) regulate the financial management and reporting responsibilities of local governments including the way in which a local government sets the budget and levies rates. Section 170(3) of the LGR enables a local government to amend the budget at any time; however section 94(2) of the LGA provides that a local government must decide by resolution at the annual budget meeting for a financial year what rates and charges are to be levied for the financial year.

Section 170 of the LGR provides that a local government is required to prepare and adopt the annual budget after 31 May in the year before the relevant financial year, but before 1 August, or a later date decided by the Minister. Section 107A of the LGA provides that a local government must consider the budget presented by the mayor and adopt the budget by resolution with or without amendments. The mayor must give each councillor a copy of the budget at least two weeks before the budget adoption meeting.

As the new local governments will be established on 1 January 2014, the Bill amends the LGA to enable the new local governments to manage their financial responsibilities from that date for the remainder of the 2013–14 financial year.

The proposed amendments empower the new de-amalgamating local governments to:

- adopt the first budget for the remainder of the 2013-14 financial year before 1 February 2014 (or a later date set by the Minister);
- develop financial planning/accountability documents and financial policies for the new budget; and
- decide what rates and charges are to be levied for the remainder of the 2013-14 financial year as part of the new budget.

The proposed amendments also exempt the new de-amalgamating local governments from the requirement for the mayor to give each councillor of a new local government a copy of the budget at least two weeks before the budget adoption meeting.

To complement the LGA amendments, it is proposed to make the necessary amendments to the LGR before the end of 2013 with prospective commencement on 1 January 2014.

Transitional arrangements – post-election meeting

Clause 19 also inserts new section 306 to exempt the new de-amalgamating local governments from section 175 of the *Local Government Act 2009* (LGA). Section 175 requires a local government to hold a meeting within 14 days after the conclusion of a fresh election of its councillors. At that meeting, the local government must, by resolution, appoint a deputy mayor from its councillors.

Under section 8 of the *Local Government (De-Amalgamation Implementation) Regulation 2013*, fresh elections must be conducted for the election of the mayor of each new local government and the election of the councillors of each new local government as if the new

local governments are in existence. A day for the elections will be fixed by the Minister by gazette notice. The elections for the new local governments will be held months before changeover day on 1 January 2014 making it impossible to comply with the requirements of section 175 of the LGA and hold a meeting in 2013.

New section 306 does provide however that a new local government must, by resolution, appoint a deputy mayor from its councillors at its first meeting after it comes into existence on 1 January 2014.

Clause 20 Amendment of sch 4 (Dictionary)

Clause 20 amends two definitions:

- *Local Government Act* is a law under which a local government performs local government responsibilities. Inadvertently the *Building Act 1975* (BA) was not included in the definition. For completeness, the Bill includes the BA as a law under which a local government performs local government responsibilities;

- *major policy decision* - a local government is prohibited from making a major policy decision during a caretaker period. A 'major policy decision' includes entering into a contract the total value of which is more than the greater of $150000 or 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements. Since 'major policy decision' was defined in 2011, the *Local Government Regulation 2012* (LGR) was remade and defines a 'large contractual arrangement' to mean a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, $200000 or more in a financial year. Clause 20 changes the amount of $150000 in the definition *major policy decision* to $200000 to align with the amounts in the LGR.

Part 4 Amendment of Local Government and Other Legislation Amendment Act 2012

Clause 21 Act amended

Clause 21 states that part 4 amends the *Local Government and Other Legislation Amendment Act 2012*.

Clause 22 Amendment of s 2 (Commencement)

Clause 22 amends section 2 of the *Local Government and Other Legislation Amendment Act 2012* (LGOLA12) to remove the reference to section 172(1) and (3) from the commencement provision.

Section 172(1) of LGOLA12 repeals the regulation-making power for corporate entities under section 270 of the *Local Government Act 2009* (LGA). Section 172(3) of LGOLA12 renumbers section 270 of the LGA as a result of the repeal of the corporate entity regulation-making power. Section 172(1) and (3) were to commence on a day to be fixed by proclamation. These provisions were not commenced as Wide Bay Water Corporation and Gladstone Airport Corporation continue to exist as corporate entities.

Section 172(1) and (3) of LGOLA12 are to be deleted by this Bill so that the repeal of the regulation-making power for corporate entities under the LGA does not automatically commence on 23 November 2013 under the *Acts Interpretation Act 1954* (see explanatory note for clause 23).

Clause 23 Amendment of s 172 (Amendment of s 270 (Regulation-making power))

As mentioned in clause 22, the *Local Government and Other Legislation Amendment Act 2012* (LGOLA12) includes the repeal of the regulation-making power for corporate entities in the *Local Government Act 2009* (LGA). The repeal was not commenced because Wide Bay Water Corporation (WBWC) and Gladstone Airport Corporation (GAC) continue to exist as corporate entities.

Clause 23 amends section 172 of LGOLA12 to delete the relevant provisions so that the repeal does not automatically commence on 23 November 2013 under the *Acts Interpretation Act 1954*. In effect, this will ensure the regulation-making power for corporate entities in the LGA is retained for as long as WBWC and GAC exist.

Part 5 Amendment of Sustainable Planning Act 2009

Clause 24 Act amended

Clause 24 states that part 5 and schedule 1 amend the *Sustainable Planning Act 2009*.

Clause 25 Amendment of s 15 (State planning instruments under Act)

Clause 25 reverses the order of a State planning policy and a regional plan. This will reflect the new hierarchy of State planning instruments.

Clause 26 Amendment of s 26 (Relationship with other instruments)

Clause 26 amends section 26(3) to provide that where there is an inconsistency between a regional plan and a local planning instrument the regional plan prevails to the extent of the inconsistency.

Clause 27 Replacement of s 43 (Relationship with local planning instruments)

Clause 27 amends section 43 (Relationship with regional plans and local planning instruments) to provide that where there is an inconsistency between a State planning policy and a regional plan or local planning instrument, the State planning policy prevails to the extent of the inconsistency.

Clause 28 Renumbering and relocation of ch 2, pts 3 and 4

Clause 28 renumbers and relocates these parts to reflect the change in hierarchy of State planning instruments.

Clause 29 Amendment of s 74 (Notice of repeal)

Clause 29 amends section 74(6) to allow for the planning Minister to take sole action to publish a notice about the repeal of a State planning instrument, and to give a copy of this notice to the relevant local government(s) when the instrument was jointly made by the planning Minister and an eligible Minister. The decision to repeal the State planning instrument remains a joint decision when the instrument was jointly made by the planning Minister and an eligible Minister.

Clause 30 Insertion of new s 86

New section 86 Planning schemes for particular local governments enables the local governments of Ipswich City Council, Moreton Bay Regional Council and Sunshine Coast Regional Council to apply or adopt a development control plan (DCP) mentioned in subsection (2) by including a statement in its planning scheme that the DCP applies to the part of the planning scheme area to which the DCP applies. This will enable the continued development of these areas and provision of essential infrastructure to these communities.

The DCPs were originally made under the repealed *Local Government (Planning and Environment) Act 1990* and were able to be transitioned into planning schemes made under the now repealed *Integrated Planning Act 1997* (IPA). Section 857 of the *Sustainable Planning Act 2009* (SPA) provided for the continuation of particular DCPs made under the repealed *Local Government (Planning and Environment) Act 1990* and validated under the repealed IPA, and ensured that DCPs incorporated into a planning scheme under the repealed IPA continued to be valid. There was no similar provision included in SPA when it commenced.

Under section 86, the DCPs may be applied or adopted by a SPA planning scheme. If the DCP is applied or adopted by a SPA planning scheme, section 857 will apply to the DCP.

The only DCPs that may be applied or adopted by a SPA planning scheme are:
- Development Control Plan 1 Kawana Waters
- Mango Hill Infrastructure Development Control Plan
- Springfield Structure Plan.

This section allows for these existing DCPs to be adopted or applied by a SPA planning scheme simply by a statement in the planning scheme that the DCP applies to the part of the planning scheme area to which the DCP applies. The DCP can not itself be incorporated into the text of the planning scheme.

If a planning scheme is amended to include this statement under section 86, the amendment must be made in accordance with section 117 of SPA.

Clause 31 Insertion of new ch 10, pt 8

Clause 31 inserts **Part 8 Transitional provisions for Local Government and Other Legislation Amendment Act 2013**

Division 1 State planning instruments

New section 948 provides that the section applies to existing development applications made but not decided before commencement. The provision requires that these development applications must be dealt with as if sections 26 and 43 had not been amended by this amending Act. However, it also allows the assessment manager or referral agency for the application to apply section 26 or 43 as amended to the extent it considers appropriate. This provides some discretion for the assessment manager or referral agency to apply the relevant provisions according to the specific circumstances. In light of the Government's intention for the single State planning policy to prevail to the extent of inconsistencies with older regional plans, the discretion will enable the application of this new hierarchy to resolve any conflicts. A relevant consideration in deciding to apply the new or old hierarchy would include whether the application of the new hierarchy may adversely affect the applicant. It also provides a definition to clarify the term 'amending Act'.

Division 2 De-amalgamation of particular local governments

949 Definitions for pt 8, div 2

The Cairns, Rockhampton, Sunshine Coast and Tablelands Regional Councils have voted to de-amalgamate, with the changeover date being 1 January 2014.

This section identifies the continuing local governments and new local governments and their respective areas. It also defines the relationship between specific pairs of continuing local governments and new local governments, for example Cairns Regional Council (continuing local government) being related to Douglas Shire Council (new local government).

This section also specifies the changeover day as being 1 January 2014 and what 'application' means in this division, and other terms relevant to the application of this division.

This section also provides meanings for terms specifically used in this part and division – for example, 'decision maker', 'land'.

Subdivision 2 Applications or requests made before changeover day

This subdivision details the transitional criteria and process for applications and requests in process at the time of de-amalgamation changeover.

950 Application or request relating to land wholly within continuing local government area

New section 950 specifies that, where an application or a request was made to the continuing local government prior to changeover day but not decided, and the land to which it relates is

wholly within the continuing local government area, then the continuing local government will remain the decision maker for those applications and requests.

951 Application or request relating to land wholly within new local government area

New section 951 specifies that where an application or a request was made to the continuing local government prior to changeover day but not decided, and the land to which it relates is wholly within the new local government area, then the new local government becomes the decision maker for those applications and requests.

If, on 1 January 2014 the new local government is required to carry out a step as decision maker which has not been done or only partially done by the continuing local government and a timeframe applies to that step, then from the changeover day, the new local government has a further 10 business days to carry out that step. This is in addition to any remaining time to carry out the step. The additional time only applies to that step.

For example, suppose that the Act requires a local government to take a particular step as a decision maker within 30 business days of an application being made. If on the changeover day, a new local government becomes the decision maker and 15 business days have elapsed, the new local government has an additional 10 business days from the changeover day to take the step. That is, the new local government will have 25 business days from the changeover day to take the step.

952 Application or request relating to land within continuing and new local government area

New section 952 specifies the criteria and process where the continuing local government was the decision maker prior to the changeover date and the development intersects both the continuing and new local government area.

The section provides that, where an application or a request was made to the continuing local government prior to changeover day but not decided, and the land to which it relates is within both the continuing local government area and the new local government area, then the continuing local government must choose whether or not it continues to be the decision maker. The continuing local government must decide by the end of 2 January 2014, which applications and requests they will continue as the decision maker. This is to ensure a smooth transition from one decision maker to another, in a timely manner.

For those development applications that are transferred to the new local government, it is the whole of the development application that is transferred, not just the part that is within the new local government area – applications are not split.

If the continuing local government chooses to continue, then it must consult with the related new local government before deciding the application or request. The continuing local government must give the new local government and the applicant or the person making the request, notice of whether or not it is continuing as the decision maker within 2 business days of making that decision. The new local government becomes the decision maker on the day they receive the notice that the continuing local government is not continuing as the decision maker. The new local government must consult with the related continuing local government before it decides the application or request.

If, on notification day the new local government is required to carry out a step as decision maker and this step has either not been done or only partially done by the continuing local government and a timeframe applies, the new local government has, in addition to any remaining time to carry out the step, a further 10 business days to carry out that step. The additional time only applies to that step.

For example, suppose that the Act requires a local government to take a particular step as a decision maker within 30 business days of an application being made. If on the notification day, a new local government becomes the decision maker and 15 business days have elapsed, the new local government has an additional 10 business days from the notification day to take the step. That is, the new local government will have 25 business days from the notification day to take the step.

953 Continuing local government to assist related new local government

New section 953 specifies the role of the continuing local government if the new local government becomes the decision maker for an application or request.

If the new local government becomes the decision maker for an application or request in place of the continuing local government, the continuing local government must proactively assist and provide the new local government all relevant material required for a seamless transition and to enable decisions to be made that are in compliance with the Act. All relevant material held prior to changeover day must be provided to the new local government. All relevant material received by the continuing local government post changeover date must be provided to the new local government.

Subdivision 3 Existing proceedings

This section details with the criteria and process for appeals and proceedings for existing applications and requests.

954 Land wholly within new local government area

New section 954 applies to an existing proceeding (for example, an application, request or decision) that was started prior to changeover day in which the continuing local government was a party to the proceeding and from changeover day, the land to which the proceeding relates is wholly within a new local government area.

This section specifies that the new local government becomes a party to the proceeding in place of the continuing local government.

955 Land within both continuing and new local government area

New section 955 applies to an existing proceeding (for example an application, request or decision) that was started prior to changeover day in which the continuing local government was a party to the proceeding and from changeover day, the land to which the proceeding relates is within both the continuing local government area and the new local government area.

This section specifies that in this instance, the continuing local government must request within 5 business days from the changeover day that the Minister determines for the purpose of the proceeding, either one, or both local governments will be party to the proceeding. Until this is determined, the continuing local government must continue to be a party to the proceeding. At any time prior to the Minister's decision, the new local government can elect to be joined as a party to the proceeding.

Subdivision 4 Proceedings commenced after changeover day

956 Land wholly within new local government area

New section 956 applies to an application, request or decision for which a decision was made by the continuing local government or a court prior to changeover day, and where a person could have, but has not, commenced proceedings in relation to the decision prior to changeover day.

This section specifies that if on changeover day the person has not started the proceeding and the land to which the application, request or approval relates is wholly within the new local government area, then the person can start a proceeding against the new local government, but not against the continuing local government.

957 Land within both continuing and new local government area

New section 957 applies to an application, request or decision for which a decision was made by the continuing local government or a court prior to changeover day, and where a person could have, but has not, commenced proceedings in relation to the decision prior to changeover day.

This section specifies that if on changeover day a person has not commenced proceedings and the land to which the application, request or approval relates is located within both the continuing local government area and new local government area, then the person can only commence a proceeding in relation to the application, request or decision against both the continuing local government and new local government. Within 5 business days after service of a proceeding, the continuing local government must then ask the Minister to determine either which one, or both local governments is to be party to the remainder of the proceeding. Until the Minister makes this decision, both local governments are parties to the proceeding.

Subdivision 5 Enforcement provision

958 Enforcement that may be taken by new local governments

New section 958 applies when a continuing local government would have been the assessing authority for a matter prior to changeover day and then on the changeover day, the land to which the matter relates is wholly or partly within a new local government area.

In this instance, from the changeover day, the new local government may give a show cause notice, or an enforcement notice or bring a proceeding under chapter 7, part 3, divisions 2, 3, 4 and 5 respectively.

This is to provide for those circumstances where the land is wholly or partly located within the new local government area, to enable that local government to take enforcement action where necessary, in cases where it is not the assessing authority.

As a consequence, it is reasonable to also enable the new local governments to receive benefits provided (for example receiving the fine as a result of a proceeding for an offence).

Subdivision 6 Miscellaneous

959 Provision about consultations

New section 959 relates to the consultation to occur between the continuing and new local governments where an application or request relating to land is within both the continuing and new local government areas.

Section 952(5) provides that this consultation is to occur between the local governments. Section 959 states that this consultation is to occur in any way considered appropriate by the local government. There is no adverse effect on the decision if this consultation does not occur – that is, a failure to consult does not invalidate the decision or affect the decision in any way.

Clause 32 Amendment of sch 3 (Dictionary)

These amendments include the new terms used relating to the de-amalgamation provisions.

These amendments also include those as a consequence of the change in the hierarchy of State planning instruments.

Part 6 Minor and consequential amendments

Clause 33 Legislation amended

Clause 33 is the authorising section for schedule 1 consequential amendments to the *City of Brisbane Act 2010*, *City of Brisbane Regulation 2012*, *Local Government Act 2009*, *Local Government Regulation 2012* and *Sustainable Planning Act 2009*.

Schedule 1 Minor and consequential amendments

City of Brisbane Act 2010

Amendment 1 replaces the reference to 'the schedule' in section 6 with 'schedule 1' due to the schedule being renumbered.

Amendments 2 and 3 remove references to community plans as the legislated requirement for local governments to have a community plan has previously been removed.

Amendment 4 corrects a cross-reference to the *Building Act 1975*.

Amendment 5 renumbers the schedule as schedule 1 in line with current drafting style.

City of Brisbane Regulation 2012

Amendment 1 omits section 240 (Prescribed integrity offence—Act, s 153) as a consequence of clause 5 which removes the ability for a regulation to be able to prescribe an integrity offence.

Amendments 2 to *7* amend section 270 (Obligation to notify if interest in register is no longer correct) as a consequence of clause 6 of the Bill which inserts new section 173B in the *City of Brisbane Act 2010* to elevate section 270(1) and (2) from the regulation.

Local Government Act 2009

Amendments 1 and 2 remove references to community plans as the legislated requirement for local governments to have a community plan has previously been removed.

Amendments 3 and 4 correct incorrect cross-references to the *Electoral Act 1992* and the *Building Act 1975* respectively.

Amendment 5 corrects an internal cross-reference in the definition of *conflict of interest*.

Amendment 6 corrects an internal cross-reference in the definition of *senior executive employee*.

Local Government Regulation 2012

Amendment 1 omits section 253 (Prescribed integrity offence—Act, s 153) as a consequence of clause 13 which removes the ability for a regulation to be able to prescribe an integrity offence.

Amendments 2 to *7* amend section 292 (Obligation to notify if interest in register is no longer correct) as a consequence of clause 14 of the Bill which inserts new section 171B in the *Local Government Act 2009* to elevate section 292(1) and (2) from the regulation.

Sustainable Planning Act 2009

These amendments identify the consequential renumbering and amendment of section numbers within notes of explanation within sections 83 and 104 and reference to part numbers within definitions in schedule 3.