Local Government Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the Local Government Legislation Amendment Bill 2014.

Policy objectives and the reasons for them

The *Local Government Electoral Act 2011* (LGEA) provides for the fair and transparent conduct of council elections in Queensland and gives the Electoral Commission of Queensland (ECQ) a mandate to oversee and conduct all local government elections.

On 27 November 2013, the Government released the Local Government Electoral Act Review Discussion Paper to seek community feedback on a number of issues and options for improvements to Queensland's local government electoral laws. The discussion paper was informed by the Electoral Reform Amendment Bill 2013 and issues identified by the local government sector and the ECQ following the 2012 local government elections.

Since the release of the discussion paper, opportunities for further and closer alignment of the LGEA with the *Electoral Act 1992* (EA) have been identified. Alignment of the legislative frameworks governing the state and local government electoral systems, where appropriate, is consistent with the Partners in Government Agreement (PIGA) signed by the Queensland Government and the Local Government Association of Queensland on 4 July 2012.

A key principle of the PIGA is: *the governance arrangements that apply to local government should, where appropriate, be consistent with those applying to the state government—the obligations placed on local government will generally not be higher or lower than those applying to the state government*.

Further, consistent with the Government's policy to empower local governments to make local decisions in the best interests of their communities, and to complement the reforms made by the *Local Government and Other Legislation Amendment Act 2012* and the *Local Government and Other Legislation Amendment Act 2013*, the objectives of the Bill are to:

1. empower the chief executive officer of a local government to be the returning officer for an election;
2. make consistent the system of voting for mayors in divided and undivided councils;
3. simplify the voting rules in first-past-the-post elections;
4. further align the LGEA with the EA, where appropriate; and
5. adopt recent reforms made to the EA to ensure the opportunity for full participation in Queensland's local government electoral process and to enhance voter integrity and voting convenience.

The Bill makes minor amendments to the *City of Brisbane Act 2010*, the EA and the *Local Government Act 2009* to clarify policy intent and remove redundant provisions.

Achievement of policy objectives

To achieve the policy objectives, the Bill makes the following amendments to:

- empower the chief executive officer (CEO) of a local government to be the returning officer (RO);
- empower the Electoral Commission of Queensland (ECQ) to direct a CEO RO and approve the CEO RO's election plan;
- change voting for mayors in undivided local governments from first-past-the-post (FPTP) to optional-preferential (OPV) and simplify voting for candidates in FPTP elections;
- introduce a cut-off date for a local government to apply for a full postal ballot;
- provide for the ECQ to declare the result of the election of the mayor separately to the declaration of the other councillors;
- more closely align the *Local Government Electoral Act 2011* (LGEA) with the *Electoral Act 1992* (EA), where relevant and appropriate, including:
  - aligning provisions relating to roll closures, ballot papers, special postal voters, re-count of votes, failure to vote, candidate gift disclosure periods, candidate deposits, offences, and the ECQ's investigation powers; and
  - adopting a number of reforms in the *Electoral Reform Amendment Act 2014* (ERA Act) in relation to increased access to postal voting, regulation of how-to-vote cards, electronic voting and proof of identity requirements;
- clarify in the *City of Brisbane Act 2010* (COBA) and the *Local Government Act 2009* (LGA) that a councillor who is subject to a suspended sentence is disqualified from being a councillor immediately on the sentence being handed down;
- repeal obsolete de-amalgamation provisions in the LGA; and
- correct the obsolete reference to the LGA in section 177 of the EA.

Empowering the CEO to be the RO for a local government election

Since the 2008 quadrennial elections, the ECQ is responsible for conducting all local government elections, including by-elections. Generally, a local government must pay the costs incurred by the ECQ for conducting an election, including the remuneration, allowances and reasonable expenses paid to members or staff of the ECQ. Similarly, all local governments contribute to the ongoing annual costs incurred by the ECQ in running its dedicated local government elections team.

There have been consistent calls from the local government sector since 2008 for local governments to again conduct their own elections. To deliver on the Government's election policy to empower local governments to make decisions in the best interests of their communities, and in response to concerns raised by some local governments regarding the cost of the 2012 elections conducted by the ECQ, the Bill empowers the CEO of a local government to be the RO for their local government area for a local government election (quadrennial, by-election or fresh election) unless the CEO advises the ECQ otherwise.

Empowering the CEO RO to make decisions appropriate to local circumstances is expected to result in savings for a council. For example, the CEO RO may decide there are savings for

council in the use of council assets, both human and material, which would otherwise be a cost owed by the council to the ECQ.

The Bill makes the CEO's decision binding on a new CEO for that particular election to avoid a new CEO, appointed shortly before an election, from changing the decision of the previous CEO, leaving insufficient time for the ECQ to make alternate arrangements to appoint a RO. A CEO who decides not to be the RO for a quadrennial election must notify the ECQ by 1 July (the notification day) in the year preceding the election. The policy intent is for the notice to be binding on an incoming CEO after 1 July.

The Bill provides that the CEO RO cannot contract out the role of RO, however the CEO RO may appoint and direct staff as required to assist with his or her responsibilities. The Bill also provides that the RO must act in accordance with directions given by the ECQ and continues to prohibit a CEO RO from being a member of a political party.

Under section 8 of the LGEA, the functions of the ECQ include conducting quadrennial elections, by-elections and fresh elections. To assist the ECQ in the performance of these functions, the ECQ may remove a CEO as RO where the ECQ believes the CEO is unable to perform his or her duties as RO or, the CEO RO does not comply with a direction of the ECQ (including a direction to implement or comply with a part of the election plan).

Bill requires the CEO RO to give the ECQ an election plan by 1 September in the year preceding a quadrennial election, 10 business days after a by-election vacancy occurs, and by 10 business days after a regulation directs a fresh election. The Bill enables the CEO RO to give the election plan to the ECQ at a later day approved by the ECQ, should circumstances require.

The election plan includes details of electoral officers to be appointed, the location of polling booths and any other matters as directed by the ECQ. The proposal is for the plan to be a working document developed by the CEO RO in consultation with the ECQ.

To assist CEO ROs, the ECQ propose to provide an information pack including a plan template, statistical information from the last quadrennial election including information on staffing, polling booths and the last general return from the quadrennial election which includes feedback on the logistical set up of the election. Further, the ECQ will continue to provide/offer full training for ROs and the provision of materials for ROs to conduct training for polling officials.

Make consistent the system of voting for mayors

Voting for both mayors and councillors in undivided local governments is FPTP, while mayors and councillors in divided local governments are elected using OPV. To make the system of voting for mayors consistent across divided and undivided local governments, and consistent with the method of voting for members of the Legislative Assembly, the Bill changes the system of voting for mayors in undivided local governments to OPV. Voting for councillors in undivided local governments will remain FPTP, however the Bill also simplifies the method of numbering candidates in these elections (refer below).

Method of numbering candidates in FPTP elections

The 2008 amalgamations provided that all new local governments would be undivided, unless each of the amalgamating councils agreed to be divided. This resulted in an increase in undivided councils with 54 of the 77 councils now undivided. The remaining 23 councils have single member electoral divisions and use OPV for both mayor and councillor elections.

Without amendment, the LGEA requires FPTP electors to vote for the exact number of candidates to be elected (for example, if there are five councillor positions, electors mark five candidates of their choice on the ballot paper). If an elector fails to vote for the number of candidates to be elected (for example, only votes for four candidates instead of voting for five candidates), the ballot paper is informal. The exception is numbering, if the elector marks the ballot paper sequentially using numbers greater than the number of vacancies, the numbering exhausts after the number of vacancies has been marked.

The ECQ advised the system leads to a high number of informal votes. To maximise the opportunity for full participation in Queensland's local government electoral process, the Bill gives voters the option to vote for less than the number of councillors to be elected, up to, or more than the number of councillors to be elected. However, voting for more than the number of councillors to be elected with ticks or crosses or voting with the same numeral will make the vote informal.

Cut-off date to apply for a full postal ballot

Conducting an election entirely by postal ballot is unique to local government. Full postal ballots are resource intensive and require detailed forward planning. Under the LGEA councils may apply to the Minister to conduct all or part of their elections as a full postal ballot if their local government area includes a large rural sector, large remote areas or extensive island areas. Following the Minister's approval, the ECQ is notified that a full postal ballot will be conducted.

The Bill requires a full postal ballot application to be made by 1 July in the year preceding a quadrennial election to allow time for the Minister to consider the application, for approvals to be conveyed to the ECQ, for greater consultation between councils and the ECQ on possible logistical issues, and more time to conduct public awareness campaigns and other supporting activities. The Bill enables the Minister to approve a later day for receipt of the application, should circumstances require.

Notifying results of the election of mayor

The Bill allows the result of the poll for a mayor to be notified under section 100 at the earliest possible time so notification is not delayed if the results of councillor polls are still being finalised.

Closer alignment of the LGEA with the EA

Align roll closure and enrolment provisions with state legislation

At the state level, the electoral rolls are closed five to seven days following the issue of the writ for the election and eligible voters may enrol, or update their details after the rolls are

closed, and up to the day before the election. During this period for the 2012 state election, an additional 18,908 people enrolled to vote and a further 45,710 people updated their details.

Under the LGEA, the roll for a quadrennial election is compiled at 31 January in the year of the election. The roll may therefore be more than two months old at the time of the election in March, potentially disenfranchising a number of voters who are not enrolled before 31 January. The ECQ advised the different roll closure processes and allowances for state and local government elections may have led to a degree of voter confusion at the 2012 elections. Aligning the LGEA roll closure provisions with the EA will enable more voters to enrol before the election and reduce potential confusion in future elections.

Align ballot paper provisions with state legislation

The Bill clarifies the ECQ has the overall responsibility for approving ballot papers, including the printing of all ballot papers and the supply of ballot papers to ROs for distribution. The Bill removes the requirement for an approved form and allows the ballot paper to have an abbreviation of the political party's name against a political party's endorsed candidate, consistent with the EA.

Register of special postal voters

The EA enables the ECQ to maintain a register of special postal voters who are sent ballot material automatically. Register eligibility is reviewed periodically. Special postal voters may include silent electors, distance electors, religious electors, overseas electors and voters who need help voting because of disability, motor impairment or insufficient literacy levels.

Under the LGEA, the ECQ provides postal ballot material only to those voters who are omitted from the roll due to personal safety concerns. The LGEA does not provide for a register of special postal voters and unlike state elections, distance electors, religious electors and electors who are incapacitated must re-apply to cast a postal vote for each election. The Bill introduces a register of special postal voters for local government elections to bring it into line with the state system.

Re-count of votes

The LGEA and the EA have provisions related to disputed results and the Court of Disputed Returns. Unlike the EA, the LGEA does not provide for the re-counting of votes. The Bill amends the LGEA to allow the ECQ to direct a re-count of votes. If there is a re-count, all councillors for a local government will not be sworn in until the re-count is complete.

Failure to vote

Currently difficulties have arisen in enforcing local government non-voting offences in court partly due to an absence of a defined place where a non-voting offence can be said to have occurred as required by the *Justices Act 1886*. The Bill amends the failure to vote provisions in the LGEA to align more closely with the non-voting provisions of the EA.

Clarify candidate gift disclosure periods

The LGEA requires financial disclosure matters to be actioned according to the 'conclusion of the election'. The EA provides greater certainty by requiring disclosure matters to be actioned according to the polling day. The Bill aligns the LGEA with the EA where relevant.

Returning a candidate's deposit

Without amendment, the LGEA prohibits a candidate's deposit from being refunded until the candidate gives a return about gifts to the ECQ. The LGEA section 117(1) provides a candidate for an election, other than a candidate who is a member of a group of candidates for the election, must, within 15 weeks after the conclusion of the election, give the electoral commission a return about gifts. In contrast, section 89 of the EA does not prohibit the return of a candidate's deposit until a candidate has given the ECQ a return disclosing gifts under section 261 of the EA.

The Bill amends section 40 to remove the prohibition on returning a candidate's deposit until the candidate gives a financial disclosure return about gifts to the ECQ, consistent with the EA section 89.

Align offences with state legislation

The LGEA provides a maximum penalty of 1 year imprisonment for giving false or misleading information required under the Act. In contrast the maximum penalty under the Criminal Code section 98B for a person who gives false or misleading information to the ECQ under the EA or the *Referendums Act 1997* is 7 years imprisonment. The Bill aligns the penalties.

In addition, the EA provides it is an offence for a person to unlawfully disclose information gained because of the person's involvement in the administration of the Act with a maximum penalty of 40 penalty units or 18 months imprisonment. The LGEA has no equivalent provision. The Bill aligns the LGEA with the EA by making it an offence to unlawfully disclose information gained in the administration of the LGEA.

ECQ's investigation powers

Investigation powers under the EA are in relation to Part 11 (Election funding and financial disclosure). The EA section 320 makes provision for the appointment of authorised officers to ensure the ECQ has suitably qualified persons to assist the ECQ to properly deal with issues about compliance with Part 11 of the EA.

The Bill aligns the LGEA with the EA by applying the authorised officer provisions of the EA Part 11 to the LGEA Part 6 (Electoral funding and financial disclosure).

Adopting reforms in the *Electoral Reform Amendment Act 2014*

Recent reforms to the EA include increased access to postal voting, regulating how-to-vote cards, electronic voting and proof of identity when voting. The objectives of the reforms, as outlined in page 1 of the Explanatory Notes to the Electoral Reform Amendment Bill 2013 (ERA Bill), are to ensure the opportunity for full participation in Queensland's electoral

process and enhance voter integrity and voting convenience. The Bill extends these reforms to the local government sector, where appropriate, to ensure the same opportunity exists for full participation in Queensland's local government electoral process, and to enhance voter integrity and voting convenience for council elections.

Increased access to postal voting

The ERA Act removes the eligibility criteria for who may cast a postal vote. The EA provides that any eligible voter may apply to cast a postal vote in a Queensland state election. Further, particular overseas electors, including defence members or defence civilians and Australian Federal Police officers or staff members serving outside Australia, automatically receive ballot papers for a Queensland state election, consistent with Federal elections.

Without amendment, the LGEA section 68(4) provides an elector may only cast a postal vote in an election, other than a postal ballot election, in certain circumstances. The Bill amends the LGEA to reflect the recent amendments to the EA.

Regulation of how-to-vote cards

Currently, how-to-vote cards in council elections must be provided to the RO for authorisation 'no later than 5pm on the Friday that is at least 7 days before the polling day' and must be made available for public inspection before polling day at the place of nomination and the local government's public office.

The ERA Act requires the ECQ or RO to reject a how-to-vote card if satisfied the card is likely to mislead or deceive electors when they cast their votes. In making their decision to reject a card, the ECQ or RO must give the person who submitted the card written reasons for their decision. The person may then revise the card and resubmit it by 5pm on the Wednesday immediately before polling day. A how-to-vote card must also be made available on ECQ's website.

The Explanatory Notes to the ERA Bill section 183 (Lodging how-to-vote cards) provide that the amendment to enable the ECQ to refuse to register a how-to-vote card if satisfied the card is likely to mislead or deceive an elector could be inconsistent with the principles of natural justice as the person submitting the card will have no right of review of the decision. The necessarily tight timeframes involved in having a how-to-vote card submitted, assessed and published on ECQ's website would mean a review would be unlikely to be decided before polling day. To mitigate the concern, the ECQ or RO, on deciding not to register a how-to-vote card, must provide the person who submitted the card the reasons for the decision. The person would then have the opportunity to submit a revised card.

Page 40 of the Legal Affairs and Community Safety Committee's Report No. 56 (February 2014) on the ERA Bill identified a potential drafting error in relation to the deadline for lodging a how-to-vote card vs. the deadline for resubmitting a revised how-to-vote card that had been rejected previously.

The Attorney-General and Minister for Justice addressed the Committee's concerns in his second reading speech on the ERA Bill (Hansard 21 May 2014 p1706), clarifying that a revised card may be resubmitted until 5pm on the Wednesday immediately before polling day, and in resubmitting a revised card the person must comply only with the requirement to

provide the required number of how-to-vote cards and accompanying statutory declaration, not with the original timeframe for lodging the card.

The Bill aligns the LGEA with the EA to require how-to-vote cards to be lodged with the ECQ for scrutiny (with the same lodgement deadlines for original and revised cards) and for how-to-vote cards to also be made available for public inspection before polling day on the relevant local government's website.

Electronic voting at the local government level

The Bill provides for the introduction of electronic voting at the local government level as and when appropriate. Implementation is dependent upon the implementation of electronic voting at the state level. Consistent with the state, implementation priority is to be given to blind and vision impaired voters and voters who require assistance because of a disability, motor impairment or insufficient literacy. The Bill provides a prospective commencement of the provisions by proclamation.

Refer to the section 'Consistency with fundamental legislative principles' for further information.

Proof of identity requirements for pre-poll and ordinary voting

The Bill aligns the LGEA with the EA by introducing proof of identity requirements to vote at a pre-poll or ordinary polling booth in local government elections. Consistent with the ERA Act, the Bill enables an elector to make a declaration vote if the issuing officer is not satisfied of the elector's identity. A regulation is to prescribe the types of documents that may be used as proof of identity. Implementation is dependent upon implementation at the state level.

Page 27 of the Legal Affairs and Community Safety Committee's Report No. 56 (February 2014) on the ERA Bill noted the competing interests of the fundamental right to vote and regulating to ensure elections are fair and honest. The Committee also noted the concerns raised by submitters in relation to the provisions on proof of identity but considers the declaratory vote is a real means of ensuring that a person who wants to vote, will vote. On balance the Committee believes the availability of a declaration vote is an adequate safeguard against the risk of disenfranchisement of certain groups of electors.

The Committee made two recommendations in its report to further safeguard against the risk of disenfranchisement of certain groups of electors, namely that a reasonable range of documents (both photographic and non-photographic) be allowed to ensure that voters have the best chance of fulfilling the proof of identity requirements; and that the ECQ provide reasonable training to electoral officers in relation to both proof of identity requirements and assisting voters with the declaration process. These recommendations were supported by the Government (see the Government's response to Report No. 56 tabled in Parliament on 21 May 2014).

The Attorney-General and Minister for Justice reiterated in his second reading speech on the ERA Bill (Hansard 21 May 2014 p1705) that a wide range of photographic and non-photographic documents will be acceptable as proof of identity and that a voter who does not provide acceptable proof of their identity will still be allowed to cast a declaration vote. Also,

before the next state election the ECQ will provide the necessary training for electoral officers and will run a public awareness campaign to make the transition as easy as possible for every Queenslander.

In due course, amendments will be developed to the *Local Government Electoral Regulation 2012* to prescribe a reasonable range of documents that may be used as proof of identity to ensure voters are able to cast their vote in local government elections without incident. To align with the state, acceptable forms of ID proposed may include:

- current driver license;
- current Australian passport;
- voter identification letter issued by the ECQ;
- recent account or notice issued by a public utility; and
- identification card issued by the Commonwealth or a State as evidence of the person's entitlement to a financial benefit (e.g. a Commonwealth seniors health card, Medicare card, pensioner concession card).

The ECQ advise they will continue to provide/offer full training for ROs and the provision of materials for ROs to conduct training for polling officials. Further, as the Government proposes implementation first at the state level, voters will be familiar with the system in time for the local government quadrennial elections in March 2016. The Bill provides a prospective commencement of the provisions by proclamation.

Minor amendments

LGEA

The Bill makes a number of technical amendments to remove unnecessary red-tape and out-dated sections and to modernise the legislation, including:

- allowing for candidate deposits to be paid by electronic funds transfer;
- combining provisions related to certification of nominations and how and when nominations takes place;
- removing the requirement for approved forms where appropriate; and
- removing the requirement to include the name of a council on the envelope of postal ballot material if the RO is appointed by the ECQ (so material will not be incorrectly delivered to the council instead of the RO).

<u>Removing the requirement for approved forms</u>

Notice inviting candidate nominations—the LGEA section 25 requires the RO to publish notice of an election in a newspaper circulating generally in the local government area, or division of the local government area, for which the election is to be held. The notice must be in the approved form and state a day as the nomination day, must invite nominations of candidates and state that nominations must be given to the RO.

In contrast, the EA section 84 provides that the writ must set out, among other things, the cut-off day for the nomination of candidates for the election. Section 84(1) prescribes the information to be included in the writ but does not require an approved form.

To reduce red tape the Bill removes the requirement for the election notice to be in an approved form, and to reflect current practice as advised by the ECQ, requires the notice to be published in a newspaper and to include the information prescribed in the Act.

Notices declaring mobile polling booth and place as pre-polling booth—the LGEA section 49(3) requires the RO to publish a notice, in the approved form, in a newspaper circulating generally in the relevant part of the local government area declaring all or part of the institution or the place as a mobile polling booth and stating the times at which votes may be cast at the booth. In contrast, the EA section 99 provides the ECQ may, by gazette notice, declare the institution to be a mobile polling booth for the purposes of the election.

The LGEA section 50 requires the RO to publish a notice, in the approved form, in a newspaper circulating generally in the local government's area declaring the place to be a pre-polling booth and stating the times at which votes may be cast at the booth. In contrast, the EA section 111 provides the ECQ may declare, by gazette notice, a place to be a pre-poll voting office and state the times during which electors are allowed to make a pre-poll ordinary vote.

To reduce red tape and to align the LGEA with the EA, the Bill removes the requirement for declarations for mobile polling booths and pre-polling booths to be in an approved form.

Ballot papers—the LGEA section 55 provides for a ballot paper to be in the approved form. The ECQ has advised that ballot papers are formatted in accordance with the requirements of section 55, however an 'approved form' is not used. In contrast, the EA section 102 does not require ballot papers to be in an approved form. The Bill removes from the LGEA the red tape requirement for a ballot paper to be in an approved form and aligns the LGEA with the EA section 102(2).

Notice advising why ballot paper not counted—the LGEA section 103(2) requires that as soon as practicable after the election, the ECQ must send a notice in the approved form to the person advising the person why the ballot paper was not accepted for counting under section 91. ECQ has advised that a letter format is used. To reduce red tape, the Bill removes the requirement for an approved form and prescribes requirements in the LGEA.

COBA and the LGA

Under sections 154 of COBA and the LGA a person cannot be a councillor while the person is a prisoner. A prisoner is a person who is serving a period of imprisonment or is liable to serve a period of imprisonment, even though the person has been released from imprisonment (on parole or leave of absence, for example). A person automatically stops being a councillor when the person becomes a prisoner.

Without amendment, it is unclear as to whether section 154 extends to a councillor serving a suspended sentence and as such is disqualified from acting as a councillor. The Bill amends COBA and the LGA to clarify that a councillor serving a suspended sentence is disqualified from acting as a councillor. A councillor who has been sentenced to a term of imprisonment suspended for a fixed operational period is a 'prisoner' for the purposes of section 154(2).

The Bill also repeals provisions in the LGA relating to the de-amalgamation of four councils, recognising their transitional nature. The four local government de-amalgamations were effected on 1 January 2014 and these provisions are no longer required.

EA

The Bill corrects an anomaly in section 177 of the EA by replacing the obsolete reference to the LGA with the LGEA. In effect, the change will prohibit the misuse of electoral roll information other than for purposes related to an election under the LGEA.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by legislative amendment.

Estimated cost for government implementation

The cost of implementing the electoral reforms introduced by the Bill will be met from within existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles as required under the *Legislative Standards Act 1992* (LSA). Potential breaches of fundamental legislative principles are addressed below.

Rights and liberties of individuals

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation

New offence - confidentiality of information

Proposed new section 176A of the *Local Government Electoral Act 2011* (LGEA) will provide that it is an offence for a person to disclose confidential information gained because of the person's involvement in the administration the LGEA, to anyone else. Provision is made for instances where confidential information can be disclosed, i.e. for the purposes of the LGEA, under the authority of another Act, or in a proceeding before a court in which the information is relevant to the issue before the court. The offence is to carry a maximum penalty of 40 penalty units or 18 months imprisonment.

The amendment is proposed to align the LGEA with section 33 of the *Electoral Act 1992* (EA) which provides it is an offence for a person to disclose confidential information gained because of the person's involvement in the administration of the EA, with the same maximum penalty and the same exclusions. Section 33 of the EA was inserted in the legislation in 2002 (*Electoral and Other Acts Amendment Act 2002*) as part of a range of reforms to eliminate electoral fraud and restore public faith in the electoral process.

Under the Partners in Government Agreement (PIGA) signed by the Queensland Government and the Local Government Association of Queensland on 4 July 2012, governance

arrangements (including electoral arrangements) that apply to local government should, where appropriate, be consistent with those applying to the state government.

Consequently, it is considered the imposition of a new offence in this instance is sufficiently justified. It brings the local government electoral laws further in line with state electoral laws and reinforces voter expectations that the conduct of local government elections meets high standards of integrity, confidentiality and accountability.

The proposed maximum penalty of 40 penalty units or 18 months imprisonment is considered to be reasonably proportionate to the seriousness of the offence and is consistent with the penalty for other offences under the LGEA and the equivalent EA offence. The penalty for the equivalent EA offence has remained unchanged since 2002.

New offences - electronically assisted voting: protection of information technology

The Bill amends the LGEA to allow for the introduction of electronically assisted voting in council elections for certain categories of electors, as and when appropriate, in line with reforms in the *Electoral Reform Amendment Act 2014* (ERA Act) for state elections.

Proposed new section 75C will provide that a person must not disclose to another person a source code or other computer software relating to electronically assisted voting, unless the person is authorised to do so under the procedures made by the Electoral Commission of Queensland (ECQ) or an agreement has been entered into by the person with the electoral commissioner. The maximum penalty is 40 penalty units or 6 months imprisonment.

Further, a person must not, without reasonable excuse, destroy or interfere with a computer program, data file or electronic device used for or in connection with electronically assisted voting. The maximum penalty is 100 penalty units or 2 years imprisonment.

Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. While the proposed penalties are significant, it is appropriate that both the state and local government electoral systems impose the same maximum penalty for the same offence. The amendment is proposed to align the new offences and penalties under the LGEA for local government elections with the same new offences and penalties for state elections under the ERA Act. Under the PIGA signed by the Queensland Government and the Local Government Association of Queensland on 4 July 2012, governance arrangements (including electoral arrangements) that apply to local government should, where appropriate, be consistent with those applying to the state government. This approach also reflects the seriousness of the offences and further discourages corrupt or improper practices.

Increase in penalty - false or misleading information

The Bill amends section 169 of the LGEA to increase the maximum penalty for giving false or misleading information from 1 year imprisonment to 7 years imprisonment. Further, the Bill amends section 201 of the LGEA to provide that an offence against section 169 of the LGEA is a crime.

Section 169 of the LGEA currently provides that a person must not give information under the LGEA to a returning officer or the ECQ that the person knows is false or misleading. The maximum penalty is 1 year imprisonment.

Section 98B of the Criminal Code provides that a person who gives information to the ECQ under the EA or the *Referendums Act 1997* that the person knows is false or misleading is guilty of a crime. The maximum penalty is 7 years imprisonment.

Under the PIGA signed by the Queensland Government and the Local Government Association of Queensland on 4 July 2012, governance arrangements (including electoral arrangements) that apply to local government should, where appropriate, be consistent with those applying to the state government.

The amendment is proposed to align the penalty and the criminality of the offence under the LGEA for local government elections with the penalty and the nature of the offence for the same activity under the Criminal Code for state elections.

Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence (*Fundamental Legislative Principles: The OQPC Notebook page 120*). In 2002 the *Electoral and Other Acts Amendment Act 2002* relocated the most serious electoral offences, including giving false or misleading information, from the EA to the Criminal Code. The penalties were set at a level commensurate with penalties in other Australian jurisdictions and were part of a range of reforms to eliminate electoral fraud and restore public faith in the electoral process.

Consequently, it is considered the proposed penalty increase under section 169 of the LGEA to align with section 98B of the Criminal Code has sufficient regard to the fundamental legislative principles. While the proposed increase in penalty is significant, it is appropriate that both the state and local government electoral systems impose the same maximum penalty for the same offence. This approach reflects the seriousness of the offence and further discourages corrupt or improper practices. It should be noted that the proposed higher penalty is also consistent with the penalty of 7 years imprisonment imposed under section 112 of the Criminal Code for giving false or misleading information to another person under the authorising Act for an election other than an election of a member of the Legislative Assembly or an election for a local government.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and provides appropriate protection against self-incrimination – LSA, sections 4(3)(e) and 4(3)(f)

When deciding the powers that should be conferred on authorities to investigate or inquire into a matter, consideration must be given to the extent to which the power is capable of abuse or may otherwise be insufficiently sensitive to the rights and liberties of individuals

Authorised officers

Currently under the LGEA there are no review, inspection, compliance or investigation powers to enable the ECQ to investigate breaches of the LGEA.

The EA provides for the appointment of authorised officers and gives those officers particular powers to deal with issues about compliance with the EA Part 11 (election funding and

financial disclosure) for state elections. The authorised officer provisions under the EA do not extend to the investigation of breaches of the LGEA.

Consequently, the Bill inserts new part 6, new division 6A in the LGEA to provide that the functions of an authorised officer under Part 11 of the EA also include investigating and ensuring compliance with Part 6 of the LGEA. Further, an authorised officer may exercise powers under Part 11 of the EA. Authorised officer powers include the power to enter premises, seize items, forfeit property and to request information. The amendment is consistent with the overarching policy to align the LGEA with the EA and addresses the current practical difficulty posed by the lack of enforcement powers in the LGEA. Adequate investigative powers with appropriate safeguards are essential to ensure the integrity of the electoral process.

Further, it is considered that the powers in the EA are subject to adequate safeguards. An authorised officer can only be appointed under the provisions to investigate matters on behalf of the electoral commissioner if he or she has the requisite qualifications and once appointed must produce or display his or her identify card on exercising his or her powers. The power to enter places is consistent with fundamental legislative principles, with entry only permitted with the occupier's consent, with a warrant or to a place of business.

The power to search any place, inspect items, take extracts etc. only applies once lawful entry has been obtained by the authorised officer. It is submitted that these powers are proportionate to the interference in rights and liberties involved. In particular, there are sufficient provisions regarding safeguards for items seized, including the return of seized items. The amendments also permit access to the seized item until it is either forfeited or returned.

The power to require a person's name and address and the production of certain documents is proportionate to the offences under the LGEA, but are also necessary to enable penalty infringement notices to be issued in relation to certain offences. The circumstances requiring a person to provide their personal details or documentation are clearly defined in the amendment proposed and will only apply where a person is found to be committing an offence or where an authorised officer reasonably suspects an offence has occurred.

In relation to the issue of whether consideration has been given to the extent to which the powers are capable of abuse or may otherwise be insufficiently sensitive to the rights and liberties of individuals, it is considered the amendments are reasonably justified because they clearly identify the powers that are required and provide the necessary safeguards for the exercise of those powers.

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification – LSA, section 4(3)(d)
(Legislation should not provide that something is conclusive evidence of a fact, without the highest justification)

<u>Failure to vote</u>

Section 168 of the LGEA addresses consequences arising from a person's failure to vote.

In a proceeding for an offence, the Bill (proposed new section 168(4)) proposes to permit a certificate signed by a member of the ECQ's staff to be adduced as evidence as to the following matters:

(a) an elector failed to vote at an election;
(b) a notice was sent by the ECQ to the elector on a stated day; and
(c) a form was not received by the ECQ from the elector by the required date.

Whilst this provision has been raised as a potential breach of fundamental legislative principles by the Office of the Queensland Parliamentary Counsel, it is submitted that no such breach has occurred as the certificate is not conclusive evidence of a fact.

Instead, it is a provision which facilitates the process of providing a fact by providing for a certificate of a fact, giving the person an opportunity to challenge such evidence. Accordingly, the proposed amendment to section 168 is not purporting to be a conclusive evidence of fact.

Legislation should not confer immunity from proceeding or prosecution without adequate justification – LSA, section 4(3)(h)

Administrators who act honestly and without negligence are protected from liability

Section 216 of the *City of Brisbane Act 2010* (COBA) and section 235 of the *Local Government Act 2009* (LGA) both confer immunity upon state and local government administrators who act honestly and without negligence when acting under those Acts. The Bill seeks to amend section 216 of COBA and section 235 of the LGA to extend that immunity to state and local government administrators who act honestly and without negligence when acting under the LGEA.

Where liability would have attached to a state administrator, it instead will attach to the state. When liability would have attached to a local government administrator, it instead will attach to the local government.

This amendment reflects the proposed express right of a chief executive officer of a local government to act as returning officer during an election and the reality that local government employees are likely to also be required to carry out roles under the LGEA as a result of their status as a local government employee.

Whilst one of the fundamental principles of the law is that everyone is equal before the law and should be fully liable for one's acts or omissions, such a departure can be justified in relation to:

- public servants implementing announced policy, particularly when liability instead attaches to the state; and
- persons carrying out statutory functions.

It is submitted that there is sufficient public benefit in extending this protection to local government employees who carry out roles and responsibilities under the LGEA. Particularly in smaller communities, local government employees may be asked to assist with the running

of local government elections in their community, as a result of their status as a local government employee under COBA or the LGA.

It is submitted that the proposal to instead attach liability to the state or the local government will provide sufficient safeguards and will ensure that an aggrieved person will be able to seek relief against an entity. However, the identity of that entity will be the state or a local government rather than an individual administrator who has performed functions under the LGEA. This can be contrasted against an aggrieved person who is unable to seek legal relief at all as a result of an absolute legislative immunity provision. Accordingly, while the Bill does breach the fundamental legislative principle of not conferring immunity from prosecution, it is submitted that there is adequate justification for such a breach, with the amendment not denying a third party the right to seek legal relief.

Sufficient regard to the institution of Parliament

Legislation should allow the delegation of legislative power only in appropriate cases and to appropriate persons – LSA, section 4(4)(a)

Legislation should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly – LSA, section 4(4)(b)

Electronically assisted voting

The Bill amends section 68 to allow for the introduction of electronically assisted voting in council elections for certain categories of electors, as and when appropriate. The introduction of electronically assisted voting at the local level will be dependent upon implementation at the state level.

The Explanatory Notes to the Electoral Reform Amendment Bill 2013 (ERA Bill) at page 2 provide:

> *The Government has noted its support, in principle, for making electronically assisted voting available to all Queensland voters, subject to being satisfied of the associated security arrangements, such as ensuring voting information cannot be intercepted. Electronically assisted voting will have considerable resource implications and significant feasibility, systems development and implementation lead times (including for necessary trialling). For these reasons, initially the priority is electronically assisted voting for blind and vision impaired voters; and voters who need help voting because of a disability, motor impairment or insufficient literacy. Other suitable categories may be subsequently prescribed by regulation.*

The proposed amendments to the LGEA align with changes to the EA for state elections under the ERA Act.

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament. Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, the legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons (LSA section 4(4)(a)) and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (LSA section 4(4)(b)).

Amendments to the LGEA contain delegations of legislative power which could potentially breach the fundamental legislative principles, each is addressed as follows.

Class of electors who may make an electronically assisted vote

Proposed new section 68(5A)(c) under clause 50(4) of the Bill provides that a regulation may prescribe a class of elector who may make an electronically assisted vote.

Consistent with amendments to the EA under the ERA Act, priority will be for electronically assisted voting for blind and vision impaired voters and voters who need help voting because of a disability, motor impairment or insufficient literacy. This will enable these voters to cast their votes independently and in secret. Other suitable categories of electors may be subsequently prescribed by regulation.

For state elections, the Government acknowledges that electronically assisted voting will have considerable resource implications and significant feasibility, systems development and implementation lead times (including for necessary trialling). Until such time as the Government is satisfied of the security arrangements associated with electronically assisted voting, for example, ensuring voting information cannot be intercepted, this system of voting will not be made available to all Queensland voters.

The Attorney-General and Minister for Justice stated in his explanatory speech on the ERA Bill that the government supports offering electronically assisted voting to all Queenslanders if associated security and integrity arrangements can be assured (Hansard 21 November 2013 p4222).

The Legal Affairs and Community Safety Committee's Report No. 56 (February 2014) on the ERA Bill commended the proposal to introduce electronically assisted voting for state elections and supported its staggered introduction and the proposed expansion of its operation to additional categories of voters.

By prescribing subsequent suitable categories of electors who can make an electronically assisted vote, there is sufficient flexibility to acknowledge progress made with respect to key areas, such as community awareness and voting security. The provisions allow for regulatory amendments to reflect progress in key areas made between quadrennial elections and by-elections allowing electronically assisted voting to apply more broadly across the community.

A regulation extending the ambit of electronically assisting voting in local government elections underpins the proposed amendment. It is clear through the introduction of the proposed amendment and consideration of provisions regarding electronically assisted voting in the ERA Bill by Parliament and the Committee that such a regulation would be consistent with Parliament's policy intention.

Prescribed procedures for electronically assisted voting

Proposed new section 75A provides for the ECQ to make procedures about how an electronically assisted vote may be cast.

The delegation of legislative power has been mitigated by prescribing in the legislation the information to be included in the procedures and providing that the procedures do not take effect until they are approved by a regulation, tabled in the Legislative Assembly with the regulation, and published on the ECQ's website.

Electoral commissioner may decide electronically assisted voting is not to be used

Proposed new section 75D provides for the ECQ to decide that electronically assisted voting is not to be used for a particular council election, or by a class of electors at a particular council election.

The equivalent provision in the ERA Act attracted adverse comments from the Legal Affairs and Community Safety Committee in its report on the ERA Bill (No. 56, February 2014), pages 39-40. The Committee noted that the provision was a broad power with no criteria to limit the delegation of legislative power. While the Explanatory Notes to the ERA Bill (page 7) refer to a decision by the ECQ not to use electronically assisted voting at a particular election because of emergent security concerns or technical issues, these criteria and factors were not reflected in the ERA Act.

The proposed amendments to the LGEA mirror the ERA Act and propose to allow the ECQ discretion to decide that electronically assisted voting is not to be used either at a particular election or by a class of electors at a particular election.

Consistent with the proposed amendments to the EA, the proposed amendment to the LGEA also provides that the ECQ's decision must be in writing and published on its website. Further, the Bill provides for review of electronically assisted voting which reflects amendments under the ERA Act and includes obligations on the ECQ, at the request of the Minister, to conduct a review of the use of electronically assisted voting for an election and an investigation into extending the use of electronically assisted voting to other electors for elections. The ECQ is required to give the Minister a report on the review and investigation which is tabled by the Minister in the Legislative Assembly. Accordingly, it is considered that the amendments sufficiently subject the exercise of the delegated legislative power to scrutiny by the Legislative Assembly.

Further, as the Government has foreshadowed necessary trialling of electronic voting for state elections, implementation for local government elections will be subsequent to implementation at the state level. Page 40 of the Legal Affairs and Community Safety Committee's Report No. 56 (February 2014) on the ERA Bill noted that the *Parliamentary Electorates and Elections Act 1912* (NSW) contains a similar provision applicable to state elections which enables the electoral commissioner to determine that technology assisted voting is not to be used in a specified election.

Page 31 of the Committee's report acknowledged that a number of submissions recommended that the Queensland Government build on the experience of other jurisdictions in this area.

In this regard, the New South Wales Joint Standing Committee on Electoral Matters (JSCEM) in its March 2014 report 'Inquiry into the 2012 Local Government Elections' recommended that the Government extend technology assisted voting (or iVote) to be available to all electors ahead of the 2016 local government elections and subsequent state

elections. The JSCEM was satisfied that 'on the evidence available iVote has largely been a success' (paragraph 5.66 refers).

It is considered the proposed amendments have sufficient regard to the fundamental legislative principles. Making electronically assisted voting available at the local level to electors with impairment or an insufficient level of literacy will enable these persons to vote independently and without assistance for the first time. The amendments also recognise the Government's support to extend the operation of electronically assisted voting to all Queenslanders in the future by enabling a regulation to prescribe other classes of electors who may cast an electronic vote.

Consultation

On 27 November 2013, the Government released the Local Government Electoral Act Review Discussion Paper to seek community feedback on a number of issues and options for improvements to Queensland's local government electoral laws. The discussion paper was informed by the Electoral Reform Amendment Bill 2013 and issues identified by the local government sector and the Electoral Commission of Queensland (ECQ) following the 2012 local government elections.

Targeted dissemination of the discussion paper was directed to all mayors and council chief executive officers (CEOs) and peak bodies, including the Local Government Association of Queensland (LGAQ), Local Government Managers Australia (LGMA), Brisbane City Council (BCC) and ECQ. Face-to-face meetings were also held with the LGAQ, LGMA, BCC and ECQ at the time.

There was broad support for the majority of the proposals in the discussion paper. The proposals relating to electronic voting and proof of identity requirements attracted comment with support mostly conditional on successful trials at the state level. Approximately one third of the 77 councils made a submission on each of the proposals in the discussion paper with a small number of councils raising additional issues. Local action groups and individual constituents tended to focus on specific issues, such as the introduction of proof of identity requirements and the provision for CEOs to undertake the role of returning officer.

The Bill was developed giving consideration to the 46 submissions received on the discussion paper, additional proposals identified for improving Queensland's local government electoral laws, and proposals to further align the local government electoral system with the state's electoral system, where relevant.

In May 2014, a draft exposure Bill was released for targeted consultation with the LGAQ, LGMA, BCC and ECQ. Issues resulting from this targeted consultation have been considered and addressed, where appropriate. The LGAQ, LGMA, BCC and ECQ support the Bill.

The ECQ provided advice on the operational implications of the proposed amendments throughout the Bill's development and it is intended to further consult with the ECQ in planning for implementation of the changes.

Consistency with legislation of other jurisdictions

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

Clause 1 Short title

Clause 1 states that, when enacted, the Bill may be cited as the *Local Government Legislation Amendment Act 2014*.

Clause 2 Commencement

Clause 2 provides that amendments to the *City of Brisbane Act 2010* and the *Local Government Act 2009* (LGA) to clarify that a councillor serving a suspended sentence is disqualified from acting as a councillor, and the amendments to repeal obsolete de-amalgamation provisions in the LGA commence on Assent.

Voter identification and electronically assisted voting are proposed to be implemented following implementation at the state level. Consequently, it is proposed the sections that are not in relation to voter identification and electronically assisted voting will commence by proclamation before voter identification and electronically assisted voting.

Part 2 Amendment of City of Brisbane Act 2010

Clause 3 Act amended

Clause 3 states part 2 and schedule 1 amends the *City of Brisbane Act 2010*

Clause 4 Amendment of s 154 (Disqualification of prisoners)

Clause 4 amends section 154 to provide that 'prisoner' includes a person who is not serving a term of imprisonment because the term of imprisonment was suspended under the *Penalties and Sentences Act 1992*, section 144. The amendment is to clarify that a councillor serving a suspended sentence is disqualified from acting as a councillor. A councillor who has been sentenced to a term of imprisonment suspended for a fixed operational period is a "prisoner" for the purposes of section 154(2).

Currently, section 154 provides a person cannot be a councillor while the person is a prisoner. A prisoner is a person who is serving a period of imprisonment; or is liable to serve a period of imprisonment, even though the person has been released from imprisonment (on parole or leave of absence, for example). A person automatically stops being a councillor when the person becomes a prisoner. Without amendment, it is unclear as to whether section 154 extends to a councillor serving a suspended sentence and as such is disqualified from acting as a councillor.

Clause 5 Amendment of s 216 (Administrators who act honestly and without negligence are protected from liability)

Clause 5 amends section 216 to prescribe that a State administrator or council administrator is not civilly liable for an act done under this Act or the *Local Government Electoral Act 2011*, or omission made under this Act or the *Local Government Electoral Act 2011*, honestly and without negligence.

The Bill extends immunity to council administrators who act honestly and without negligence when acting under the LGEA. The amendment reflects the proposed express right of a chief executive officer (CEO) of council to act as returning office (RO) during an election and the ability for the CEO RO to appoint persons to assist the CEO RO in the proper conduct of the election and to carry out functions under the LGEA. (Refer also to Consistency with fundamental legislative principles).

Clause 6 Amendment of sch 1 (Dictionary)

Clause 6 amends schedule 1 (Dictionary) to align the definition of 'conclusion' with the *Local Government Electoral Act 2011*, section 7 (as amended).

Part 3 Amendment of Local Government Act 2009

Clause 7 Act amended

Clause 7 states part 3 and schedule 1 amends the *Local Government Act 2009*.

Clause 8 Amendment of s 154 (Disqualification of prisoners)

Clause 8 amends section 154 to provide that 'prisoner' includes a person who is not serving a term of imprisonment because the term of imprisonment was suspended under the *Penalties and Sentences Act 1992*, section 144. The amendment is to clarify that a councillor serving a suspended sentence is disqualified from acting as a councillor. A councillor who has been sentenced to a term of imprisonment suspended for a fixed operational period is a "prisoner" for the purposes of section 154(2).

Currently, section 154 provides a person cannot be a councillor while the person is a prisoner. A prisoner is a person who is serving a period of imprisonment; or is liable to serve a period of imprisonment, even though the person has been released from imprisonment (on parole or leave of absence, for example). A person automatically stops being a councillor when the person becomes a prisoner. Without amendment, it is unclear as to whether section 154 extends to a councillor serving a suspended sentence and as such is disqualified from acting as a councillor.

Clause 9 Amendment of s 235 (Administrators who act honestly and without negligence are protected from liability)

Clause 9 amends section 235 to prescribe that a State administrator or council administrator is not civilly liable for an act done under this Act or the LGEA, or omission made under this Act or the LGEA, honestly and without negligence.

The Bill extends immunity to local government administrators who act honestly and without negligence when acting under the LGEA. The amendment reflects the proposed express right of a CEO of a local government to act as returning office during an election and the ability for the CEO returning officer to appoint persons to assist the CEO returning officer in the proper conduct of the election and to carry out functions under the LGEA. (Refer also to Consistency with fundamental legislative principles).

Clause 10 Omission of ss 260A-260E

Clause 10 omits redundant provisions relating to the de-amalgamation of councils.

Clause 11 Amendment of s 260F (Implementation)

Clause 11 amends the heading to section 260F to Regulation-making power for implementation of de-amalgamations, renumbers the section as 270A and relocates the section to follow the LGA's general regulation making head of power to clarify that a regulation implementation power continues for de-amalgamating councils. The amendment also provides a definition of the term 'de-amalgamation' of a local government area to mean a separation of the area into different local government areas, each to be governed by its own local government.

Clause 12 Amendment of sch 4 (Dictionary)

Clause 12 amends schedule 4 (Dictionary) to align the definition of 'conclusion' with the *Local Government Electoral Act 2011*, section 7 (as amended).

Part 4 Amendment of Local Government Electoral Act 2011

Clause 13 Act amended

Clause 13 states part 4 and schedule 1 amends the *Local Government Electoral Act 2011*.

Clause 14 Amendment of s 7 (Meaning of *conclusion* of local government election)

Clause 14 amends section 7 to clarify the meaning of 'conclusion' of the election of a councillor. The declaration of a poll means the declaration by the electoral commission under section 100, and the conclusion is the day the declaration is displayed at the office of the returning officer – as required by section 100(2)(a) of the Act.

Clause 15 Replacement of s 9 (Returning officers)

Clause 15 replaces section 9 to provide that the CEO of a local government is the returning officer for all local government elections unless he/she is a member of a political party, or gives a *withdrawal notice* to the electoral commission advising that he/she will not undertake the role of returning officer or, the electoral commission gives a written notice (*removal notice* under subsection (4)) for the election to the CEO returning officer. The period within which a CEO must provide the withdrawal notice will depend on whether the election is a

quadrennial election, by-election or fresh election (*notification day*). The notices are binding on CEOs and subsequent CEOs on and from the notification day.

In the event that the CEO gives the withdrawal notice, or the electoral commission gives a removal notice to the CEO returning officer, the electoral commission must appoint another person to fulfil that role. The other person must not be a minor or a member of a political party.

Clause 16 Insertion of new s 9A

Clause 16 inserts new section 9A (Responsibility of returning officers) to provide that the returning officer continues to be responsible for the proper conduct of an election. The electoral commission continues to have the overall responsibility for conducting local government elections (refer section 8), and section 9A provides that the electoral commission has the power to direct a CEO returning officer. The returning officer must comply with a direction for the proper conduct of the election. A direction may include a direction about the CEO returning officer's election plan (refer new section 24A). A failure to comply with a direction may result in the electoral commission giving the CEO returning officer a removal notice under section 9(4). Further the CEO returning officer must not delegate a function or power of the returning officer under this Act.

Clause 17 Amendment of s 10 (Assistant returning officers)

Clause 17 amends section 10 to provide that if, for an election, there is a CEO returning officer the CEO returning officer may appoint a person as an assistant returning officer for the election. Otherwise the electoral commission may appoint a person as an assistant returning officer for the election. The person must not be a minor or a member of a political party. The CEO returning officer may appoint one or more assistant returning officers for an election. If the CEO is not the returning officer section 10 continues to provide for the electoral commission to appoint an assistant returning officer. A person appointed by the CEO returning officer under this section is to be employed or contracted under the *City of Brisbane Act 2010* or the *Local Government Act 2009*, refer new section 12B.

Clause 18 Amendment of s 11 (Presiding officers)

Clause 18 amends section 11 to clarify that the returning officer, (including a CEO returning officer), must appoint a person as a presiding officer at each polling booth. A person appointed by the CEO returning officer under this section is to be employed or contracted under the *City of Brisbane Act 2010* or the *Local Government Act 2009*, refer new section 12B.

Clause 19 Amendment of s 12 (Issuing officers)

Clause 19 amends section 12 to provide that if, for an election, there is a CEO returning officer, the CEO returning officer may appoint a person as an issuing officer for the election. Otherwise section 12 continues to provide that a member of staff of the electoral commission is an issuing officer for the election. 'Staff of the electoral commission' is defined in section 29 of the *Electoral Act 1992* and includes electoral registrars, returning officers and assistant returning officers appointed; and other staff necessary for the performance of the commission's functions. A person appointed by the CEO returning officer under this section

is to be employed or contracted under the *City of Brisbane Act 2010* or the *Local Government Act 2009*, refer new section 12B.

Clause 20 Insertion of new ss 12A and 12B

Clause 20 inserts new section 12A (CEO returning officer may appoint persons to carry out relevant duties) empowers the CEO returning officer to appoint a person to carry out a relevant duty for the election in addition to the power of the CEO returning officer to appoint persons under sections 10-12.

New section 12B (Appointments made by CEO returning officer) provides that a person appointed by the CEO returning officer under section 12A, and also persons appointed under section 10 (Assistant returning officers), section 11 (Presiding officers) and section 12 (Issuing officers) are to be employed or contracted under the *City of Brisbane Act 2010* (if the election is for the Brisbane City Council) or otherwise, the *Local Government Act 2009*.

New section 12B(2) provides that a person's appointment by the CEO returning officer will end if the CEO ceases to be the returning officer. The circumstances under which the CEO returning officer may cease to be the returning officer are provided for under section 9. If the CEO returning officer ceases to be the returning officer the electoral commission must appoint the returning officer (section 9(5)). Section 12B(2) also ceases appointments made by the CEO returning officer so that if the electoral commission appoints the returning officer, the electoral commission and the returning officer may also appoint other persons for the election.

Clause 21 Amendment of pt 3, hdg (Voters rolls)

Clause 21 amends part 3 heading, to include 'and register of special postal voters'.

Clause 22 Insertion of pt 3, div 1, hdg

Clause 22 inserts new part 3 division 1 heading- 'Division 1 Voters rolls'.

Clause 23 Amendment of s 17 (Returning officer must compile voters roll)

Clause 23 amends the section 17 heading to clarify that either the electoral commission or a returning officer must compile the voters roll. Amended section 17 provides that if, for an election, there is a CEO returning officer, the electoral commission must compile a roll of persons entitled to vote at the election. Otherwise, the returning officer continues to compile a roll of persons entitled to vote at the election and the electoral registrar under the *Electoral Act 1992* must continue to give the returning officer the assistance reasonably required to compile the voters roll.

Clause 24 Amendment of s 18 (Cut off day for compiling voters roll)

Clause 24 amends section 18 heading to clarify the provision is about the compilation of voters rolls, and inserts new section 18(1) to provide that a voters roll for a quadrennial election or fresh election must be compiled by at least 5 days but not more than 7 days after the publication in a newspaper, under section 25(1), of notice of the election. A regulation may continue to fix a different cut-off day for a particular election.

Without amendment section 18 provides that a voters roll for a quadrennial local government election must be compiled at 31 January in the year of the election, however, a regulation may fix a different cut-off day for a particular year. Section 23 provides a quadrennial election must be held in, and every fourth year after 2012 and a quadrennial election must be held on the last Saturday in March. The voters roll therefore may be more than two months out of date at the time of an election and a number of potential voters may be disenfranchised if they are not enrolled before 31 January.

At the state level, the *Electoral Act 1992* section 84 provides the roll is closed five to seven days following the issue of the writ for the general election. Following amendments to the *Electoral Act 1992* in 2011, section 106 allows persons to vote at an election who are not enrolled but are entitled to be enrolled on the electoral roll, and who have after the cut off day for the electoral rolls and up to 6pm on the day before the polling day, given notice to an electoral registrar for the electoral district under section 65.

To ensure the opportunity for full participation in Queensland's local government electoral process and to avoid voter confusion for future elections, the Bill amends section 18 to align the roll closure provisions with the *Electoral Act 1992* and makes a complementary amendment to section 64 to allow people to vote whose names are not on the voters roll but are entitled to be enrolled on the electoral roll under the *Electoral Act 1992* section 65, and who after the cut-off day for the poll and no later than 6pm on the day before the polling day, have given the electoral commission a notice under the *Electoral Act 1992* section 65.

The electoral commission reported in the 2012 State General Election: Evaluation Report and Statistical Returns that between 25 February 2012 (the 'official' roll close) and 23 March 2012, a further 64,618 enrolment transactions were required to be processed, 18,908 first time enrolments and 45,710 notified changes of address (refer page 29 of the report).

The electoral commission's 2012 Election Report on the Queensland Local Government Quadrennial Elections reported an awareness of elector confusion generated by the inconsistency between existing State and Local Government electoral laws. The electoral commission reported that where state and local government elections occur within close proximity, the potential for elector confusion is readily apparent. For example, 18 year olds who enrolled after the close of rolls were able to vote in the 2012 State election but found they were ineligible to vote in the 2012 local government elections that followed. Changes in an elector's address during the relevant period likewise took effect for the state election, but not for local government and the electoral commission can only lawfully despatch ballot material to electors on the roll for that event. The electoral commission strongly supports the standardisation of electoral legislation to the maximum extent possible (refer page 11 of the report).

Clause 25 Amendment of s 19 (Requirements of voters roll)

Clause 25 replaces section 19(2) to remove the reference to the returning officer as the responsibility for the compilation of the voters roll is provide for under section 17 (as amended). Section 19(2) continues to provide that a voters roll must not include an elector's address that, under the *Electoral Act 1992*, is excluded from the publicly available part of an electoral roll.

Clause 26 Amendment of s 21 (Supply of voters roll to candidates)

Clause 26 inserts new section 21(2) to provide that the electoral commission may decide the format the voters roll is to be given to the candidates and direct the returning officer to give the voters roll to candidates in that format.

Clause 27 Insertion of new pt 3, div 2

Clause 27 inserts new part 3, division 2, section 21A (Electoral commission to keep register of special postal voters) to align with the *Electoral Act 1992* section 68 which provides for the electoral commission to keep, or arrange to be kept, a register of special postal voters. Voters on the special postal voters register are sent ballot material automatically under the *Electoral Act 1992* section 119(4) which provides that the electoral commission must, as soon as practicable after the issue of the writ for an election, post a ballot paper and declaration envelope to each special postal voter. A person's eligibility for the register is reviewed periodically (*Electoral Act 1992* section 114).

Currently, the LGEA does not provide for a register of special postal voters. Distance electors, religious electors and incapacitated electors must reapply to cast a postal vote for every local government election. Further, the LGEA section 69(1)(e) provides that an elector must complete a declaration envelope for an election if the elector's address has been omitted from a voters roll because of safety concerns.

New section 21A provides that the electoral commission must keep, or arrange to be kept, a register of special postal voters. The electoral commissioner must, not less than 18 months but not more than 4 years after the result of a poll for a quadrennial election is declared, review the continuing eligibility of a person to cast a vote as a special postal voter. In conducting the review, the electoral commissioner must require each elector whose name is included in the register of special postal voters because of a circumstance mentioned in section 68(7)(a)(i) or (ii) (as amended) to advise, in the approved form, whether the elector still lives at the address shown on the voters roll. The electoral commissioner must also do a random check of the approved forms. (Refer also to amended section 68 (Who may cast votes in particular ways) and amended section 82 (Distribution of ballot papers to particular electors whose address has been omitted from electoral roll and to special postal voters).

Clause 28 Insertion of new s 24A

Clause 28 inserts new part 4, division 2, subdivision 1 section 24A **(**Plan for election) to provides that if, for an election, there is a CEO returning officer, the CEO returning officer must prepare and give a written plan for the proposed conduct of the election to the commissioner. The plan must include the electoral officers to be appointed, the location of the polling booths and other matters as directed by the commission and be given to the electoral commissioner before a certain day, or a later day approved by the electoral commissioner.

For a quadrennial election the plan must be given before 1 September in the year before the election. For a by-election, it must be given 10 business days after the vacancy of the office of a councillor occurs. For a fresh election it must be given 10 business days after a regulation directs that a fresh election be held under section 105.

The electoral commissioner must approve the plan if satisfied that the proposed conduct of the election will allow the CEO returning officer to perform the officer's function under section 9. The electoral commission has the power under section 7 of the *Electoral Act 1992* to do all things necessary or convenient to be done for or in connection with the performance of its functions including performing functions conferred on it by the LGEA. Under the LGEA new section 9A(2) continues to require the returning officer to comply with a direction given by the electoral commission. New section 9(4)(b) provides that if the CEO returning officer has failed to comply with a notice given under section 9A(2) the electoral commission may give a removal notice to the CEO returning officer under section 9(2)(c).

To assist CEO returning officers, the electoral commission propose to provide an information pack including a plan template, statistic information from the last quadrennial election including information on staffing, polling booths and the last general return from the quadrennial election which includes feedback on the logistical set up of the election. Further, the electoral commission will continue to provide/offer full training for returning officers and the provision of materials for returning officers to conduct training to polling officials.

The proposal is for the plan to be developed by the CEO returning officer in consultation with the electoral commission. The electoral commission advise other matters for inclusion may include other support systems which the CEO returning officer may wish to use and which would be clarified in the plan, including electronic election management systems, distribution of general information, central postal voting, electronically assisted voting, and election materials.

Clause 29 Amendment of s 25 (Calling for nominations)

Clause 29 amends section 25 to change the period for the nomination day to not less than 8 days or more than 18 days after publication of the election notice and not less than 18 days, or more than 42 days before the day on which the election is to be held, to align with the *Electoral Act 1992* section 84. To reduce red tape, the requirement for the notice under section 25(1) to be in an approved form is removed. Section 25(2) is consequentially renumbered.

Clause 30 Amendment of s 27 (How and when nomination takes place)

Clause 30 amends section 27 heading to read 'Making and certification of nominations' and combines current section 27 (nominations) and current section 31 (certification of nominations) into one section, to better align with the *Electoral Act 1992* section 88. A nomination must be in the approved form and contain the candidate's name, address and occupation; a signed statement by the candidate consenting to the nomination; and if applicable a signed statement by the registered political party's registered officer that the party has endorsed the candidate. The nomination must be given to the returning officer after the nominations are invited for the election but before noon on the nomination day.

If the returning officer is satisfied a person has been properly nominated, they must as soon as practicable certify the nomination in the approved form and give a copy of the certificate to the person. The certificate must state the time, day and place proposed for a draw, if necessary, for the order of listing of candidates' names on the ballot paper.

A person is properly nominated for an election if section 27(2) (as amended) is complied with or substantially complied with apart from a mere formal defect or error in the nomination; a person has not nominated multiple times (section 29 refers); the nominee's deposit has been paid to the returning officer (amended section 39 refers); and the nomination has not been withdrawn.

When considering whether a person is properly nominated, the returning officer is not required to look beyond the form of nomination and payment of the deposit; the voters roll; and documentary evidence produced by the nominee or nominator (who at the time the voters roll is compiled is an elector under the *Electoral Act 1992* for an electoral district (or part thereof) in the local government's area or is an elector for the election or registered officer of a registered political party, respectively).

If a nomination is wrongly certified by the returning officer, the certification is of no effect.

Clause 31 Amendment of s 28 (Grounds for deciding a person is not properly nominated)

Clause 31 to clarify that subsection 28(3) is in relation to a decision under section 28.

Clause 32 Omission of s 31 (Certification of nominations)

Clause 32 omits section 31, as a consequence of section 31 being combined with section 27.

Clause 33 Amendment of s 32 (Announcement of nominations)

Clause 33 amends section 32 to correct the cross-reference to section 27(3)(a), as a consequence of the amendments to section 27 and section 31.

Clause 34 Amendment of s 39 (Deposit to accompany nomination)

Clause 34 amends section 39 to provide that the deposit accompanying the nomination may be paid by electronic funds transfer. Without amendment section 39 provided that at the same time as a nomination is given to the returning officer under section 27, the nominee, or another person on behalf of the nominee, must deposit $250 with the returning officer. The deposit must be paid in cash, or by a cheque drawn by a financial institution.

To bring the legislation up-to-date with modern banking and in response to difficulties experienced by candidates during the 2012 local government elections in complying with section 39, the Bill gives candidates the option of paying nomination deposits by electronic funds transfer.

Clause 35 Amendment of s 40 (Disposal of deposits generally)

Clause 35 amends section 40 to remove the prohibition on returning a candidate's deposit until the candidate gives a return about gifts to the electoral commission under section 117(1) or until the end of the disclosure period if the candidate is not required to give a return about gifts under section 117(3). The amendments align with the *Electoral Act 1992* section 89 which provides a candidate's deposit must be held until the writ for the election has been returned. Section 40(3) and (4) are consequentially renumbered.

Clause 36 Amendment of s 41 (Record of membership in group of candidates)

Clause 36 amends section 41 to require that the record of membership given by a group to a returning officer must not only be in the approved form, and state the names of the candidates who are members of the group, and be signed by each of the candidates who are members of the group, but also must state the name of the group. Section 41(3)(aa) to (c) is consequentially renumbered.

Clause 37 Amendment of s 45 (Direction that poll be conducted by postal ballot)

Clause 37 inserts a new subsection in section 45 to require the application to the Minister for a poll to be conducted by a postal ballot must be made at least before 1 July in the year preceding a quadrennial election to allow enough time for the Minister to consider the application and for approvals to be conveyed to electoral commission. The Bill also allows the Minister to accept an application after 1 July should the Minister consider it necessary.

Conducting an election entirely by postal ballot is unique to local government. The LGEA section 45 provides that councils may apply to the Minister to conduct all or part of their elections as a postal ballot, if their area includes a large rural sector, large remote areas or extensive island areas. Approval may be given for all of the council area, particular divisions or particular geographic areas. For the 2012 quadrennial elections, of the then 73 local governments, 30 applied to conduct their entire elections fully by post and all were approved by the Minister. Section 45(5) is amended to correct a cross-reference. Section 45 (1A) to (5) is consequentially renumbered.

Clause 38 Amendment of s 46 (Kinds of polling booths)

Clause 38 amends section 46 to replace references to 'early polling' with 'pre-polling' and to make a minor amendment to the definition of 'ordinary polling booth.'

Clause 39 Amendment of s 49 (Declaration of mobile polling booths)

Clause 39 amends section 49(1) to provide that if the returning officer is satisfied patients or residents (rather than just residents) of an institution should be able to vote at the institution in a poll, the returning officer may arrange for all or part of the institution to be available as a mobile polling booth to enable the patients or residents to vote there in the poll. Further, section 49(3)(b) is amended to reduce red tape by removing the requirement for the notice declaring the mobile polling booth to be in an approved form.

The *Electoral Act 1992* section 99(8) provides that if the commission considers an area is too remote to have enough electors to justify an ordinary polling booth, the commission may arrange for the whole or part of a building, structure, vehicle or place to be available as a mobile polling booth at times determined by the commission during a prescribed period. Under section 99(9) the commission, a returning officer or an issuing officer may change these arrangements at any time and section 99(10) provides that if the arrangements are changed, the commission, returning officer or issuing officer must take the steps that are practical and appropriate to give public notice of the changed arrangements.

The Bill aligns the LGEA with the *Electoral Act 1992* by inserting new section 49(4) to allow the returning officer to change arrangements made under section 49(3) with respect to subsection (2) at any time. New section 49(5) provides that if the arrangements are changed the returning officer must take the steps that are practical and appropriate to give public notice of the changed arrangements. New sections 49(6) and (7) expand on existing sections 49(4) and (5) to take into account any change to arrangements made under new section 49(4).

Clause 40 Amendment of s 50 (Declaration of early polling booths)

Clause 40 amends section 50 heading from 'early polling' to 'pre-polling'. To reduce red tape, the requirement for the notice published by the returning officer under section 50(2)(b) to be in the approved form is omitted. The returning officer may also publish the notice under section 50(2)(b) in any other way the returning officer considers appropriate.

Clause 41 Amendment of s 51 (Duty of person in charge of institution)

Clause 41 amends section 51 to replace the reference to 'residents' with 'patients or residents'.

Clause 42 Amendment of s 55 (Requirements of ballot papers)

Clause 42 amends section 55 to make a minor amendment to the heading. In line with the *Electoral Act 1992* section 102, new section 55(1AA) clarifies that the electoral commission has the overall responsibility for approving ballot papers, including the printing of all ballot papers and the supply of ballot papers to returning officers for distribution under section 58. The Bill amends section 55(1)(a) and (1)(f) respectively to remove the requirement for a ballot paper to be in the approved form and to require the ballot paper to have an abbreviation of the political party's name against a political party's endorsed candidate or where there is no abbreviation, the political party's full name.

As a consequence of the introduction of electronically assisted voting, amended section 55(1) provides that the requirements of a ballot paper do not apply to a completed ballot paper printed for an electronically assisted vote. However, new section 55(2A) provides that a completed ballot paper printed for an electronically assisted vote must be of a size or format that enables a vote cast electronically to be accurately determined.

Clause 43 Amendment of s 56 (Ballot papers for separate polls)

Clause 43 amends section 56 to provide that if the CEO is the returning officer for a local government election, it will be a decision of the electoral commission as to whether to use separate ballot papers or a combined ballot paper for the polls. Otherwise, the returning officer continues to decide to use separate ballot papers or a combined ballot paper.

Clause 44 Amendment of s 58 (Distribution of ballot papers)

Clause 44 amends section 58 heading to clarify the section also applies to voters rolls and amends section 58 to require that, in addition to ballot papers, a returning officer must also ensure an adequate number of certified copies of the voters roll for each electoral district (as at the cut-off day for electoral rolls) are available at polling places.

Clause 45 Replacement of ss 59 – 62

Clause 45 replaces part 4, division 3, subdivision 4, sections 59 to 62 to streamline the provisions about scrutineers into one section 59, to align with the *Electoral Act 1992* section 104.

Clause 46 Amendment of s 59 (Scrutineers)

Clause 46 amends section 59 to provide for the introduction of electronically assisted voting following implementation at the state level. The amendments are drafted in such a way as to prevent the amendment to section 59 commencing before the amendment to combine sections 59 to 62 under clause 45.

Clause 47 Amendment of s 64 (Who may vote)

Clause 47 amends section 64 to clarify who is entitled to vote at a local government election. Following amendments to the *Electoral Act 1992* in 2011, section 106 allows persons to vote at an election who are not enrolled but are entitled to be enrolled on the electoral roll and who have after the cut-off day for the electoral rolls and up to 6pm on the day before the polling day, given notice to the commission or an electoral registrar for the electoral district under section 65.

To align with the *Electoral Act 1992*, amended section 64 allows people to vote whose names are not on the voters roll but are entitled to be enrolled on the electoral roll under the Electoral Act section 65, and who after the cut-off day for the poll and no later than 6pm on the day before the polling day, have given the electoral commission a notice under the Electoral Act section 65.

Clause 48 Amendment of s 65 (System of voting)

Clause 48 amends section 65 to prescribe that the system of voting for all mayors, irrespective of whether the local government area is divided or undivided, is optional-preferential.

The *Local Government Act 2009* section 8 provides that a local government area may be divided into areas called divisions. The *Local Government Regulation 2012* schedule 1 provides for the number of councillors for local governments and the divisions of local government areas.

The two types of electoral systems used in local government elections are optional preferential voting (OPV) and first-past-the-post (FPTP). OPV is used in councils that are divided, that is, the local government consists of a number of internal divisions each having their own election and electing a single councillor. In OPV, an elector is only required to record a first-preference vote on a ballot paper but may also record preference votes for 1 or more, but not necessarily all, of the candidates.

The FPTP system is used in local governments that are undivided, that is, there are no divisions and all councillors are selected from one ballot paper. Therefore a ballot paper has a value equal to the number of vacancies.

To reduce confusion among voters in elections across divided and undivided local governments, the Bill changes the system of voting for mayors in undivided local governments from FPTP to OPV, consistent with voting for mayors in divided local governments and consistent with the method of voting for members of the Queensland Parliament. The system of voting for councillors in an undivided local government will remain FPTP.

Clause 49 Amendment of s 67 (Ways in which to cast votes)

Clause 49 amends section 67 to replace the words 'early polling' with 'pre-polling'. Further, section 67 is amended to provide that an elector may cast their vote by making an electronically assisted vote. Refer also to the explanatory notes for new part 4, division 5, subdivision 2A (Electronically assisted voting).

Clause 50 Amendment of s 68 (Who may cast votes in particular ways)

Clause 50 amends section 68(4) to remove the eligibility criteria for casting a postal vote and to further provide that a special postal voter may cast a postal vote. To align with the *Electoral Act 1992* section 114, new section 68(5A) provides that an elector is a special postal voter if the elector's name is included in the register of special postal voters (refer new section 21A (Electoral commission to keep register of special postal voters)) because of a written application that satisfies the electoral commission that the elector's address as shown on the voters roll at the time the application is made is more than 15km but not more than 20km by the nearest practicable route from a polling booth; or the elector's address is more than 20km by the nearest practicable route from a polling booth; or the elector is entitled to be enrolled as a general postal voter under the *Commonwealth Electoral Act 1918* section 184A(2)(d) to (k). An elector is also a special postal voter if the elector's address has been excluded from the electoral roll under an arrangement under the *Electoral Act 1992* section 62, because of the *Commonwealth Electoral Act 1918* section 104.

New section 68(5B) makes provision for an elector to cast an electronically assisted vote. In line with recent state reforms, priority will be for electors that can not vote without assistance because the elector has an impairment or an insufficient level of literacy; or the elector can not vote at a polling booth because of an impairment; or the elector is a member of a class of electors prescribed under a regulation for the section. Refer also new part 4, division 5, subdivision 2A (Electronically assisted voting).

Amended section 68 also reflects the recent amendments made to the EA section 114 to provide for particular overseas electors, including defence members or defence civilians and Australian Federal Police officers or staff members serving outside Australia to automatically receive ballot papers for a Queensland state election, as currently happens for Federal elections.

Clause 51 Amendment of s 69 (Who must complete a declaration envelope)

Clause 51 amends section 69 to provide that an elector must complete a declaration envelope for an election if the elector does not give the issuing officer the elector's proof of identity document under new section 70(3)(b).

Clause 52 Amendment of s 70 (Casting an ordinary vote)

Clause 52 amends section 70 to introduce proof of identity requirements to vote at a pre-poll or ordinary polling booth. Consistent with recent state reforms, the Bill enables an elector to make a declaration vote if the elector does not give an issuing officer the elector's proof of identity document (refer section 69 as amended).

A regulation is to prescribe the types of documents that may be used as proof of identity. To align with the state, a broad range of acceptable forms of ID are proposed which may include: current driver license, current Australian passport, voter identification letter issued by the electoral commission, recent account or notice issued by a public utility, identification card issued by the Commonwealth or a State as evidence of the person's entitlement to a financial benefit (for example, a Commonwealth seniors health card, Medicare card, pensioner concession card).

Section 70 is further amended to remove the requirement under subsection (5) that if an elector has a declaration envelope for the election but is not required to complete a declaration envelope when casting their vote, the elector must give the declaration envelope to the issuing officer at the booth.

Clause 53 Omission of s 71 (Casting a pre-poll vote)

Clause 53 repeals section 71 as a consequence of amended section 70 combining the requirements for casting a pre-poll vote with the requirements for casting an ordinary vote, where appropriate.

Clause 54 Amendment of s 72 (Casting a postal vote)

Clause 54 clarifies that a special postal voter does not have to apply for a declaration envelope and ballot paper. *Clause 54* also inserts new section 72(6) to provide that if an elector is unable to apply under subsection (2) for a declaration envelope and ballot paper, without help then another person may help the elector apply. (Refer also to section 82 as amended (Distribution of ballot papers to particular electors whose address has been omitted from electoral roll and to special postal voters)).

Clause 55 Amendment of s 73 (Voting hours for polling booths)

Clause 55 amends section 73 to change the reference from 'early polling' booth to 'pre-polling' booth.

Clause 56 Amendment of s 75 (Particular responsibilities of issuing officers when electors cast ordinary or pre-poll votes)

Clause 56 amends section 75 to provide that an issuing officer at a polling booth must give the elector a ballot paper if the elector gives the issuing officer the elector's proof of identity document, in addition to the elector's full name and address, and enables an elector to make a declaration vote if the elector does not give an issuing officer the elector's proof of identity document (refer section 69 as amended).

Consistent with recent state reforms, the term *proof of identity document* means a document relating to proof of a person's identity prescribed under a regulation.

Clause 57 Insertion of new pt 4, div 5, sdiv 2A

Clause 57 inserts new part 4, division 5, subdivision 2A sections 75A to 75E to provide for electronically assisted voting for local government elections to align with the *Electoral Act 1992* (as amended by the *Electoral Reform Amendment Act 2014*).

The Explanatory Notes on the Electoral Reform Amendment Bill 2013 at page 2 provide 'the Government has noted its support, in principle, for making electronically assisted voting available to all Queensland voters, subject to being satisfied of the associated security arrangements, such as ensuring voting information cannot be intercepted". (Refer also to the section 'Consistency with fundamental legislative principles' for further information).

Further, as the Government has foreshadowed necessary trialling of electronic voting for state elections, implementation for local government elections will be subsequent to implementation at the state level. As such, the Bill provides for prospective commencement of electronically assisted voting by proclamation (refer to clause 2 (Commencement)).

Clause 50(4) inserts new section 68(5A) to provide for the implementation of electronically assisted voting. The priority is to implement electronically assisted voting for an elector who can not vote without assistance because of impairment or because they have insufficient literacy. Provision is also made for a regulation to prescribe a class of electors who may make an electronically assisted vote.

New section 75A (Prescribed procedures for electronically assisted voting) provides for the electoral commission to make procedures about electronically assisted voting. The procedures must provide for the registration of electors who may cast an electronically assisted vote; the authentication of each electronically assisted vote; the recording of each elector who uses electronically assisted voting; ensuring the secrecy of each electronically assisted vote; the secure transmission of each electronically assisted vote to the electoral commissioner and secure storage of each electronically vote by the electoral commissioner until printing; the printing, for scrutiny and counting, of a ballot paper for each electronically assisted vote; and the secure delivery of each printed ballot paper to the returning officer. The procedures do not take effect until approved by regulation and must be tabled in the Legislative Assembly with the regulation and published on the electoral commission's website.

New section 75B (Audit of electronically assisted voting for an election) provides for the independent auditing, before and after each election, of the information technology used under the procedures for electronically assisted voting. The person appointed to conduct the audit must be an individual who is not and has not ever been a member of a political party. The person appointed may make recommendations to the electoral commission to reduce or eliminate risks that could affect the security, accuracy or secrecy of electronically assisted voting. A regulation may prescribe requirements about the conduct of an audit under the section.

New section 75C (Protection of information technology) provides for the protection of the information technology used for electronically assisted voting. Subclause (1) provides that it

is an offence for a person to disclose a source code or other computer software relating to electronically assisted voting unless the person is authorised to do so under the procedures approved under section 75A or an agreement entered into by the person with the electoral commissioner. The maximum penalty of 40 penalty units or 6 months imprisonment is consistent with the penalty under new section 176A of the LGEA and section 33 of the *Electoral Act 1992* for a person unlawfully disclosing information gained because of the person's involvement in the administration of the Act.

Subclause (2) provides that it is an offence to destroy or interfere with computer software, data file or electronic device used for or in connection with electronically assisted voting. The maximum penalty of 100 penalty units or 2 years imprisonment reflects the gravity of the offence.

New section 75D (Electoral commissioner may decide electronically assisted voting is not to be used) provides that the electoral commissioner may decide that electronically assisted voting is not to be used at a particular election or by a class of electors at a particular election. The decision must be in writing and published on the electoral commission's website.

New section 75E (Review of electronically assisted voting) provides that on request by the Minister following an election, the electoral commissioner must conduct a review of the use of electronically assisted voting for the election and an investigation into extending the use of electronically assisted voting to other electors for future elections. The electoral commissioner must give the Minister a report on the review and investigation. The Minister must, within 14 days after receiving the report, table the report in the Legislative Assembly.

Clause 58 Amendment of s 77 (Arrangements for electoral visitor voting)

Clause 58 amends section 77 to change to Wednesday 7pm the time a person has to make an application to vote as an electoral visitor voter to align with the *Electoral Act 1992* section 120 (as amended by the *Electoral Reform Amendment Act 2014*). The Bill makes complementary amendments to section 79 (Applications to cast postal votes in local government elections that are not postal ballot elections) and section 81 (Applications to cast postal votes in postal ballot elections).

Clause 58 also inserts new section 77(9) to provide that if an elector is unable to make an application without help, another person may help the person apply.

Clause 59 Amendment of s 78 (Help for electors voting)

Clause 59 amends section 78 to make provision for electors to be assisted, if required, in casting an electronically assisted vote.

Clause 60 Amendment of s 79 (Applications to cast postal votes in local government elections that are not postal ballot elections)

Clause 60 amends section 79 to enable a voter to apply on-line for a ballot paper and declaration envelope and to provide that the application must be received by the returning officer by 7pm on the Wednesday before polling day to align with the *Electoral Act 1992* section 119 as amended by the *Electoral Reform Amendment Act 2014*. This will increase the

chances of voters who apply for a postal vote on the last allowable day receiving their ballot material in time to cast a valid vote.

Clause 60 also replaces section 79(5) to clarify the return address to be used on a reply-paid-post envelope given by a returning officer to the applicant. This clarification is designed to reduce the risk of mail being misdirected.

Clause 61 Amendment of s 80 (Distribution of ballot papers to electors for postal ballot elections)

Clause 61 amends section 80 to specify the return- reply-paid-post envelope (if being sent within Australia) given by the returning officer to the elector, must now bear the returning officer's postal address together with the words 'Ballot Paper' to remove the reference to the name of the local government reducing the risk of mail being misdirected.

Clause 62 Amendment of s 81 (Applications to cast postal votes in postal ballot elections)

Clause 62 amends section 81(2) to enable a person who believes they are entitled to vote in a postal ballot election, but has not been given a ballot paper and declaration envelope under section 80, to contact the electoral commission by phone or email to expedite the process for the person to receive a ballot paper and declaration envelope. New subsection (2A) provides that an application to cast a postal vote in a postal ballot election must be received by the returning officer by 7pm on the Wednesday before polling day (consistent with amendments to section 77 and section 79).

Clause 62 also amends section 81(6) to clarify the return address to be used on a reply-paid-post envelope given by a returning officer to the applicant. This clarification is designed to reduce the risk of mail being misdirected.

New section 81(9) provides that if the elector is unable to make an application without help, another person may help the person apply.

Clause 63 Amendment of s 82 (Distribution of ballot papers to particular electors whose address has been omitted from a voters roll)

Clause 63 amends section 82 heading to clarify the section also applies to special postal voters. Section 82(1) has been replaced to require the electoral commission (in the case of the CEO being the returning officer), or the returning officer, to also post the election material listed to each special postal voter. Section 82(1)(d) specifies the return reply-paid-post envelope (if being sent within Australia) given by the electoral commission or the returning officer to the elector, must now bear the returning officer's postal address together with the words 'Ballot Paper' to remove the reference to the name of the local government reducing the risk of mail being misdirected. The definition of 'relevant entity' is to apply the section to the CEO returning officer or otherwise the returning officer, where appropriate.

Clause 64 Amendment of s 83 (How electors must record a vote on a ballot paper–optional-preferential voting)

Clause 64 amends section 83 to provide that if the elector votes using electronically assisted voting the elector must vote in accordance with the procedures approved under section 75A(3).

Clause 65 Amendment of s 84 (How electors must record a vote on a ballot paper–first-past-the-post voting)

Clause 65 amends section 84 to provide that if the elector votes using electronically assisted voting the elector must vote in accordance with the procedures approved under section 75A(3).

Section 84 is further amended to provide that for an election of councillors (excluding the mayor) where 2 or more candidates are to be elected, an elector may vote for one or more candidates with a tick or cross or with numbers.

Without amendment, first-past-the-post electors are required to vote for the number of candidates to be elected (i.e. if there are five councillor positions, electors mark five candidates of their choice on the ballot paper). If an elector fails to vote for the number of candidates to be elected (i.e. only marks four instead of five in the above example) the ballot paper is informal under section 87. The exception is numbering, if the elector marks the ballot paper sequentially using numbers greater than the number of vacancies, the numbering exhausts after the number of vacancies has been marked.

To maximise the opportunity for full participation in Queensland's local government electoral process, the Bill gives voters the option to vote for less than the number of councillor positions, or up to, or more than the overall number of candidates. However, voting for more than the number of candidates to be elected with ticks or crosses or voting using the same numerals for more than the number of councillors will make the vote informal.

Clause 66 Amendment of s 86 (Formal and informal ballot papers—optional-preferential voting)

Clause 66 amends section 86(4) to provide that if the person has made an application on-line under section 79 and section 81, a signature is not required on the declaration envelope.

Clause 67 Amendment of s 87 (Formal and informal ballot papers–first-past-the-post voting)

Clause 67 amends section 87(4) to provide that if the person has made an application on-line under section 79 and section 81, a signature is not required on the declaration envelope.

Section 87(5) is omitted as a consequence of the amendment to section 84 that specifies how electors are to record a vote in first-past-the-post and new section 84(4) which specifies that if the elector votes with ticks or crosses or the same numeral, the number of ticks or crosses or the same numerals must not be more than the number of candidates to be elected.

Clause 68 Amendment of s 89 (Preliminary processing of declaration envelopes–general)

Clause 68 amends section 89 heading to clarify the section also applies to postal ballot elections. *Clause 68* removes the restrictions on when the returning officer may open ballot boxes to enable preliminary processing of declaration envelopes for postal ballot elections (new section 89(1) and all elections other than postal ballot elections 89(2)), consistent with the *Electoral Act 1992* section 125.

Clause 69 Omission of s 90 (Preliminary processing of declaration envelopes—postal ballot election)

Clause 69 repeals section 90 as a consequence of the amendment to section 89 to combine sections 89 and 90.

Clause 70 Amendment of s 92 (Preliminary counting of ordinary votes)

Clause 70 amends section 92(4) as a consequence of implementing electronic voting and replaces subsection (6) to allow the approved from to include the necessary details required in the statement.

Clause 71 Omission of s 94 (Receipt of things given to returning officer)

Clause 71 omits section 94 as the electoral commission has advised that a receipt is no longer necessary when booth materials are returned, consequently the section is obsolete.

Clause 72 Insertion of new s 96A

Clause 72 inserts new section 96A (Re-counting of votes). Unlike the *Electoral Act 1992*, the LGEA does not provide for a re-count of votes. The *Electoral Act 1992* section 130 provides that at any time before a returning officer notifies the election of a candidate under section 131, or, the commission refers a matter to the Court of Disputed Returns under section 128(14), the commission may direct the returning officer, or another member of the commission's staff, to re-count some or all of the ballot papers for the election. A returning officer may re-count some or all of the ballot papers for an election at any time before the returning officer notifies the election of a candidate. A person carrying out a re-count of ballot papers must, so far as practicable, comply with section 128 (Official counting of votes).

The Bill aligns the LGEA with the *Electoral Act 1992* by enabling the electoral commission to direct the returning officer or another member of the electoral commission's staff , to re-count some or all of the ballot papers for the election before the electoral commission notifies the results of an election under section 100 or the electoral commission refers a matter to the Court of Disputed Returns under part 7.

Clause 73 Amendment of s 98 (Counting of votes for first-past-the-post system)

Clause 73 amends section 98(2) to omit the reference to mayor as a consequence of the amendment to section 65 to change the system of voting for mayors in undivided local governments to from first-past-the-post to optional preferential.

Section 98(4),(5) includes a note to clarify that the subsections also apply in the unlikely circumstance that a candidate in subsection (4)(b), and subsection (5) receives no votes, that the candidate has a number of votes that is 0.

Clause 74 Amendment of s 100 (Notifying the results of an election)

Clause 74 amends section 100 to allow the result of the poll for mayor to be notified at the earliest possible time so notification is not delayed by waiting for the result of the poll for other councillors.

Clause 75 Amendment of s 103 (Notice to electors whose ballot papers are not accepted)

Clause 75 reduces red tape by removing the requirement for an approved form in section 103(2).

Clause 76 Omission of s 113 (Disclosure period for candidates who are councillors)

Clause 76 omits section 113 to streamline sections 113 and 114 to prescribe that the same disclosure period for candidates in a local government election irrespective of whether the candidate is a councillor to align with the *Electoral Act 1992* section 198.

Clause 77 Amendment of s 114 (Disclosure period for candidates who were previously candidates in a local government election)

Clause 77 together with *clause 76* align the LGEA with the *Electoral Act 1992* section 198(1)(a) by prescribing the same disclosure period for candidates in a local government election irrespective of whether the candidate is a councillor. Subsections (2) and (3) are replaced with new subsection (2) to remove references to "conclusion of the election" to clarify that the candidate's disclosure period starts 30 days after the polling day for the most recently held election for which the candidate was also a candidate and ends 30 days after the polling day for the current election.

Clause 78 Amendment of s 115 (Disclosure period for new candidates)

Clause 78 amends section 115 heading to remove the reference to 'new candidates" to clarify that the section applies to other candidates not included under section 114 and omits the reference to "conclusion of the election" to clarify that the candidate's disclosure period ends 30 days after the polling day for the new election.

Clause 79 Amendment of s 116 (Disclosure period for groups of candidates)

Clause 79 amends section 116 to remove references to "conclusion of the election" to clarify that the disclosure period for groups of candidates starts 30 days after the polling day for the most recent quadrennial elections to have been held before the current election and ends 30 days after the polling day for the current election.

Clause 80 Insertion of new s 116A

Clause 80 inserts in part 6 division 3 before section 117 new section 116A to provide that the definition of 'required period' is to apply to the division, where relevant. 'Required period' is defined to mean 15 weeks after polling day, or if no poll is conducted, the day a poll would otherwise have been required to be conducted under this Act, refer section 7(c).

Clause 81 Amendment of s 117 (Gifts to candidates)

Clause 81 amends section 117 to replace the term "15 weeks after the conclusion of" the election with the required period for the election (defined in section 116A) to clarify that the gift disclosure period is 15 weeks after polling day, or if no poll is conducted, the day a poll would otherwise have been required to be conducted under this Act.

Clause 82 Amendment of s 118 (Gifts to groups of candidates)

Clause 82 amends section 118(2) to replace the term "15 weeks after the conclusion of" the election with the required period for the election (defined in section 116A) to clarify that the gift disclosure period is 15 weeks after polling day, or if no poll is conducted, the day a poll would otherwise have been required to be conducted under this Act.

Clause 83 Amendment of s 120 (Loans to candidates or groups of candidates)

Clause 83 amends section 120(1),(2) to replace the term "15 weeks after the conclusion of" the election with the required period for the election (defined in section 116A) to clarify that returns about loans received by the candidate from a person other than a financial institution must be given to the electoral commission within 15 weeks after polling day, or if no poll is conducted, the day a poll would otherwise have been required to be conducted under this Act.

Clause 84 Amendment of s 122 (Electoral commission to give reminder notice to candidates

Clause 84 amends section 122(1) to replace the term "conclusion of" the election to clarify that the electoral commission has 10 weeks after polling day, or if no poll is conducted, the day a poll would otherwise have been required to be conducted under this Act, to give written notice to a candidate. Section 122(2)(a) is amended to replace the term "15 weeks after the conclusion of" the election with the required period for the election (defined in section 116A) to clarify that the candidate has 15 weeks after polling day, or if no poll is conducted, the day a poll would otherwise have been required to be conducted under this Act, to give a return to the electoral commission.

Clause 85 Amendment of s 123 (Definition for div 4)

Clause 85 amends section 123 to apply the new definition of 'required period' in section 116A to division 4, where relevant. 'Required period' is defined to mean 15 weeks after polling day, or if no poll is conducted, the day a poll would otherwise have been required to be conducted under this Act, refer section 7(c).

Clause 86 Amendment of s 124 (Third party expenditure for political activity)

Clause 86 amends section 124(2) to replace the term "15 weeks after the conclusion of" the election with the required period for the election (defined in section 116A) to clarify that a third party for an election must within fifteen weeks after polling day give the electoral commission a return about expenditure.

Clause 87 Amendment of s 125 (Gifts received by third parties to enable expenditure for political activity)

Clause 87 amends section 125(2) to replace the term "15 weeks after the conclusion of" the election with the required period for the election (defined in section 116A) to clarify that a third party who receives a gift during the disclosure period must within fifteen weeks after polling day give the electoral commission a return about the gift.

Clause 88 Amendment of s 128 (Register of gifts)

Clause 88 amends section 128 to correct a cross reference to section 131(3).

Clause 89 Insertion of new pt 6, div 6A

Clause 89 inserts new division 6A section 130A (Functions and powers of authorised officers etc.). Currently under the LGEA there are no review, inspection, compliance or investigation powers to enable the electoral commission to investigate breaches of the LGEA. The *Electoral Act 1992* provides for the appointment of authorised officers and gives those officers particular powers to deal with issues about compliance with the *Electoral Act 1992* part 11 (election funding and financial disclosure) for state elections. The authorised officer provisions under the *Electoral Act 1992* do not extend to the investigation of breaches of the LGEA.

Consequently, new section 130A provides that the functions of an authorised officer under Part 11 of the *Electoral Act 1992* also include investigating and ensuring compliance with Part 6 of the LGEA. Further, an authorised officer may exercise powers under Part 11of the *Electoral Act 1992*. Authorised officer powers include the power to enter premises, seize items, forfeit property and to request information. The amendment is consistent with the overarching policy to align the LGEA with the *Electoral Act 1992* and addresses the current practical difficulty posed by the lack of enforcement powers in the LGEA. Adequate investigative powers with appropriate safeguards are essential to ensure the integrity of the electoral process.

Clause 90 Replacement of s 131 (Statement about returns)

Clause 90 replaces section 131 to better align the provision with the *Electoral Act 1992* section 312. It provides that if a person who is required to give a return under part 6 of the LGEA considers it is impossible to complete the return because the person is unable to obtain particulars that are required for the preparation of the return, the person may prepare the return to the extent that it is possible to do so without the particulars; and give the return to the electoral commission and give to the electoral commission a written notice. The notice includes reasons the person is unable to obtain the particulars and the name and address of another person who can give those particulars, if the person believes on reasonable grounds that another person can give those particulars.

Clause 91 Amendment of s 134 (Noncompliance with part does not affect election)

Clause 91 amends section 134 to remove the note that provides "A conviction of an offence under this part may disqualify a person from being a councillor. See the *Local Government Act 2009*, section 153(3) and the *City of Brisbane Act 2010*, section 153(3)". The *Local Government Act 2009* , section 153 and the *City of Brisbane Act 2010*, section 153 provide that a person is disqualified from being a councillor if they commit an "electoral offence", which is defined in both Acts as a disqualifying electoral offence under the *Electoral Act 1992*. The *Electoral Act 1992*, section 2 defines a "disqualifying electoral offence" as an offence that relates to the election of a councillor, and for which the penalty imposed included a sentence of imprisonment. It follows that an offence under part 6 is not an "electoral offence" for the purposes of the *Local Government Act 2009*, section 153(3) and the *City of Brisbane Act 2010*, section 153(3), and therefore cannot disqualify a person from being a councillor.

Clause 92 Omission of s 135 (Definitions for div 1)

Clause 92 omits section 135, which defines 'applicant' and 'application' for the purpose of Part 7 'Disputed results'. The definitions are moved to the dictionary in the schedule.

Clause 93 Amendment of s 138 (Requirements for an application to be effective)

Clause 93 amends section 138 to align with the *Electoral Act 1992* section 140(3) by enabling a regulation to prescribe for a greater amount to be paid by the applicant when filing an application.

Clause 94 Amendment of s 145 (Restrictions on particular orders)

Clause 94 amends section 145 to provide that the Court of Disputed Returns must not make an order under section 144(2) (other than an order to dismiss the application) because of an absence or error of, or omission by, a CEO returning officer, an electoral officer appointed by a CEO returning officer or a member of the electoral commission's staff that appears unlikely to have had the effect that a candidate elected at an election would not have been elected.

Clause 95 Omission of s 160 (Evidentiary value of list under s 164)

Clause 95 omits section 160 as the requirements are no longer in current practice, making the section obsolete. Section 160 provided in a proceeding, a document purporting to be a list, or a copy of or extract from a list, made under section 164, and certified by the returning officer who made the list is evidence of the matters contained in the document. The electoral commission advised that the list of non-voters currently required to be prepared under section 164 is no longer prepared and without a list, a prosecution cannot rely on the evidentiary provision under section 160. The Bill amends section 168 to align the LGEA with the *Electoral Act 1992* section 186 evidentiary provisions.

Clause 96 Amendment of s 163 (Evidentiary provisions)

Clause 96 amends section 163 to include reference to a CEO returning officer where, in a proceeding for an offence against this Act, a certificate purporting to be signed by a member of the electoral commission or the CEO returning officer and stating a number of specific requirements, is evidence of the matter.

Clause 97 Omission of s 164 (List of electors failing to vote)

Clause 97 omits section 164 to remove the requirement for a returning officer to make a list of the names and addresses, and the numbers shown on the voters roll of all electors who failed to vote at a local government election because they have not been given ballot papers for the election, and postal voters who have not given their ballot papers to the returning officer. The list of non-voters currently required to be prepared under this section is no longer prepared and without a list, a prosecution cannot rely on the evidentiary provisions under section 160. The Bill amends section 168 to align the LGEA with *Electoral Act 1992* section 186 evidentiary provisions.

Clause 98 Replacement of s 165 (Notice about failure to vote)

Clause 98 amends section 165 to detail new requirements regarding the provision of a notice to an elector who appears to have failed to vote at a local government election.

Due to the omission of section 164, the obligation for a returning officer to generate a list of electors who failed to vote, is no longer in place and, therefore, the notice about failure to vote is not triggered by a list.

The amendment to section 165 reflects the intent of section 134 of the *Electoral Act 1992*, which stipulates that the electoral commission may send a notice to each elector who appears to have failed to vote. The notice must state that the elector appears to have failed to vote at the election, that it is an offence to fail to vote at an election and the penalty payment options, among other requirements. The elector also has a responsibility to respond to the electoral commission in the approved form, with or without payment, depending on whether the elector considers he/she has committed the offence.

While the elector must comply with the requirements of the notice, if the elector (*first elector)* is absent or unable, because of physical incapacity, to comply with the requirements of said notice, and another elector who has personal knowledge of the facts complies with the

requirements and in doing so also has his or her signature on the form witnessed, then the first elector is taken to have complied with the requirements.

Clause 99 Amendment of s 166 (Payments for failure to vote)

Clause 99 consequentially amends section 166 to clarify that if the electoral commission sends a person a notice for failure to vote at an election, under section 165(1), and the person in question makes payment to the electoral commission under that section, the electoral commission has responsibilities regarding the acceptance and receipting of that payment.

The electoral commission also has an obligation under this section not to pursue any proceeding against the elector for failing to vote at the election, which includes serving an infringement notice under the *State Penalties Enforcement Act 1999*.

Clause 100 Omission of s 167 (Recording response to notice)

Clause 100 omits section 167 to better reflect current practice and to align with the *Electoral Act 1992*, which does not contain a requirement for the electoral commission to record the response provided by a person who has been issued a notice for failure to vote at an election.

Clause 101 Amendment of s 168 (Failure to vote)

Clause 101 amends section 168 to clarify that an elector for an election must not fail to vote at the election without a valid and sufficient excuse. The term 'excuse' replaces the term 'reason' to align with the wording in the 'Offences relating to voting' division of the *Electoral Act 1992*.

Clause 101 aligns section 168 LGEA with the *Electoral Act 1992* section 186 to provide that an elector may be prosecuted for an offence only if the elector has been sent a notice about the election under section 165 LGEA. In a proceeding for an offence, a certificate purporting to be signed by a member of the electoral commission's staff stating any of the following matters is evidence of the matter: an elector failed to vote at the election; a notice was sent by the electoral commission to the elector under section 165 on a stated day; a form mentioned in section 165(1) was not received by the electoral commission from the elector by the day stated.

Further, if a form is not received by the electoral commission from the elector by the day stated under section 165(1), it is evidence the elector failed to vote at the election without a valid and sufficient excuse. If a form is received by the electoral commission about the elector's compliance with section 165, statements in the form purporting to be made by the elector are evidence as statements made by the elector. Statements by another elector under section 165(3) are evidence as statements made by the other elector.

The Bill also aligns section 168 with the *Electoral Act 1992* section 186(8) to provide that for the *Justices Act 1886* section 139, the place where an offence is committed is taken to be the office of the returning officer for the electoral district for which the elector was enrolled for the election.

Clause 102 Amendment of s 169 (False or misleading information)

Clause 102 amends section 169 to align with the *Electoral Act 1992* by increasing the maximum penalty for giving false or misleading information (to the electoral commission or a returning officer) in a material particular under the LGEA from 1 year to 7 years imprisonment. This is consistent with the maximum penalty prescribed under the Criminal Code.

Clause 103 Amendment of s 173 (Obstructing electors)

Clause 103 amends section 173 to clarify that the section applies to persons.

Clause 104 Amendment of s 175 (Forged electoral papers)

Clause 104 amends section 175 to clarify that a person is not permitted to make someone else's signature on an electoral paper, 'unless the person is authorised to do so' under this Act. This aligns with the requirements of the Criminal Code.

Clause 105 Insertion of new s 176A

Clause 105 inserts a new section 176A (Confidentiality of information) to provide that a person who is involved in the administration of this Act who gains information because of the person's involvement in the administration must not disclose the information to anyone else other than for the purposes of this Act; or under the authority of another Act; or in a proceeding before a court in which the information is relevant to the issue before the court. A maximum penalty of 40 penalty units or 18 months imprisonment will apply.

The amendment aligns the LGEA with section 33 of the *Electoral Act 1992* which provides it is an offence for a person to disclose confidential information gained because of the person's involvement in the administration of the *Electoral Act 1992*, with the same maximum penalty and the same exclusions. Section 33 of the *Electoral Act 1992* was inserted in the legislation in 2002 (*Electoral and Other Acts Amendment Act 2002*) as part of a range of reforms to eliminate electoral fraud and restore public faith in the electoral process. (Refer also to Consistency with fundamental legislative principles).

Clause 106 Amendment of s 177 (Author of election material must be named)

Clause 106 amends section 177 to require that a person must not, during the election period for an election, print, publish, distribute, broadcast, or allow or authorise another person to do those things in any advertisement, handbill, pamphlet or notice containing election material unless there appears, or is stated, at its end - the name and address (not a post office box) of the person who authorised the advertisement, handbill, pamphlet or notice.

The exception to this provision is if an advertisement is printed, published or distributed on a car sticker, T-shirt, lapel button, lapel badge, pen, pencil or balloon, or is of a kind prescribed by regulation.

The amendment also removes reference to 'advertisement authorisation' and inserts a definition for the term 'publish' which includes to publish on the internet, even if the internet site on which the publication is made is located outside of Queensland.

These amendments align with the requirements in the *Electoral Act 1992.*

Clause 107 Amendment of s 178 (Distribution of how-to-vote cards)

Clause 107 amends section 178 to prescribe the requirements for a how-to-vote card if the card is authorised for a political party or candidate endorsed by a political party.

If the register of political parties includes an abbreviation of the party's name, the party's abbreviated name must be stated on the card.. Otherwise, the name to be recorded on the card must be the party's full name included in the register.

Clause 108 Amendment of s 179 (Giving of how-to-vote cards to returning officer)

Clause 108 amends section 179 to replace 'returning officer' in the heading with 'electoral commission.' It further prescribes that the electoral commission (not the returning officer) will be responsible for receiving and processing how-to-vote cards prior to the polling day for an election. This includes rejecting a how-to-vote card if it does not comply with the requirements of section 178; or if, on reasonable grounds, it is likely to mislead or deceive an elector; and providing written reasons for a rejection to the person who authorised the rejected how-to-vote card.

In addition, the section now specifies that the returning officer must ensure an accepted how-to-vote card is available for public inspection for free at the local government's public office (if this is the place nominated under section 25 – Calling for nominations) or otherwise, the local government's public office as well as the place nominated under section 25. The returning officer must also ensure an accepted how-to-vote card is available on the local government's website.

Clause 109 Amendment of s 185 (Canvassing in or near polling booths)

Clause 109 amends section 185 to change the term 'early polling' to 'pre-polling' to align with wording contained in the *Electoral Act 1992*.

To continue with this alignment, the section is further extended to prescribe that a person must not canvass for votes, or induce an elector not to vote in a particular way or vote at all in the election, or loiter, or 'obstruct the free passage of electors' during an election period for an election in or at a polling booth.

Clause 110 Amendment of s 191 (Failure to post, fax or deliver documents for someone else)

Clause 110 amends section 191 to clarify that if a person is given, for delivery or posting to the returning officer, an application by another person under section 72 (Casting a postal vote), section 77 (Arrangements for electoral visitor voting), or section 81 (Applications to cast postal votes in postal ballot elections), then that person must promptly deliver or post it to the returning officer. The maximum penalty for a breach of this section is maintained at 20 penalty units or 6 months imprisonment.

Clause 111 Amendment of s 201 (Designated election offences and application of Criminal Code)

Clause 111 amends section 201 to add section 169(1) to section 201(1).

Clause 112 Amendment of sch (Dictionary)

Clause 112 amends the Schedule (Dictionary) to omit definitions 'early polling booth' and 'name' and replaces the definitions of 'applicant', 'application' and 'voters roll'.

The schedule further includes new definitions for the terms 'CEO returning officer, for an election' 'electoral commissioner', 'pre-polling booth', 'proof of identity document' and 'special postal voter'; as well as amendments to existing definitions for the terms 'candidate', 'Court of Disputed Returns', 'electoral officer', 'electoral paper', 'polling booth', and 'properly nominated', and 'returning officer'.

Part 5 Minor and consequential amendments

Clause 113 Acts amended

Clause 113 provides that schedule 1 amends the Acts it mentions, that is, the *City of Brisbane Act 2010*, the *Electoral Act 1992*, the *Local Government Act 2009* and the *Local Government Electoral Act 2011*.

Schedule 1 Minor and consequential amendments

City of Brisbane Act 2010
Clause 1 amends section 160A to update the reference to the Electoral Act.

Electoral Act 1992
Clause 1 amends section 177(2)(a)(ii) to replace reference to the *Local Government Act 2009* with reference to the *Local Government Electoral Act 2011*. Section 177 provides that the roll can only be used for purposes listed in subsection 2. As local government elections are provided for under the LGEA, section 177(2) inadvertently references the *Local Government Act 2009* and not the LGEA.

Local Government Act 2009
Clause 1 amends section 90A(1)(a) to update the reference to the Local Government Electoral Act.
Clause 2 amends section 160B to update the reference to the Electoral Act.
Clause 3 amends Chapter 7, part 5A to omit the heading.

Local Government Electoral Act 2011
Clause 1 amends section 34(5) to correct a reference to subsection (3).
Clause 2 amends part 4, division 5, subdivision 3 to replace 'voters' with 'electors'.
Clause 3 amends section 149 to correct a reference to division 2.
Clause 4 amends section 182 to replace 'voters' with 'electors'.
Clause 5 amends section 190(1)(a) to remove the reference to section 71 as a consequence of section 71 being omitted.