

# Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019

## Explanatory Notes

### Short title

The short title of the Bill is the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019.

### Policy objectives and the reasons for them

The policy objective of the Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Bill 2019 (the Bill) is to continue the Government's rolling local government reform agenda guided by four key principles of integrity, transparency, diversity (reflecting electorate diversity) and consistency, as appropriate, with State and Commonwealth electoral and governance frameworks.

Accordingly, the objectives of the Bill are to implement:

- the Government's policy in relation to a number of remaining recommendations of the Crime and Corruption Commission's (CCC) report: *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*<sup>1</sup> (the Belcarra Report);
- the Government's response<sup>2</sup> to a number of recommendations of the Inquiry Report of the independent panel: *A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election*<sup>3</sup> (Soorley Report); and
- other significant reforms to improve diversity, transparency, integrity and consistency in the local government system, decision-making and local government elections.

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<sup>1</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*. A copy of the report is available at: <http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T1861.pdf>

<sup>2</sup> A copy of the Government's response to *A review of the conduct of the 2016 Local Government elections, the referendum and the Toowoomba South by-election* is available at: <https://cabinet.qld.gov.au/documents/2017/Jun/Refer/Attachments/Response.PDF>

<sup>3</sup> *A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election*. A copy of the report is available at: <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T984.pdf>

## **Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government**

Following the Queensland local government elections on 19 March 2016 the CCC received a number of allegations about the conduct of candidates in the 2016 local government elections for the Gold Coast City Council, Moreton Bay Regional Council, Ipswich City Council and Logan City Council.

In response to these allegations, the CCC initiated Operation Belcarra in September 2016 to determine whether candidates committed offences under the *Local Government Electoral Act 2011* (LGEA) that could constitute corrupt conduct and to examine practices that may give rise to actual or perceived corruption or otherwise undermine public confidence in the integrity of local government, with a view to identify strategies or reforms to help prevent or decrease corruption risks and increase public confidence.

On 4 October 2017, the Belcarra Report was tabled in the Legislative Assembly. The Belcarra Report contains 31 recommendations to improve equity, transparency, integrity and accountability in Queensland local government elections and decision-making.

On 10 October 2017, the Premier and then Minister for the Arts tabled the Government's response<sup>4</sup> to the Belcarra Report, supporting or supporting in principle all the recommendations.

The *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Belcarra Stage 1 Act) was given assent on 21 May 2018 and was the first stage of reform to implement the Government's response to the Belcarra Report recommendations.

The Belcarra Stage 1 Act implemented the Government's response to the following recommendations:

- recommendation 20 to ban donations from property developers for candidates, groups of candidates, third parties, political parties and councillors
- recommendations 23 to 26 to strengthen the processes associated with the management of councillor conflicts of interest and penalties for non-compliance.

The Bill represents the second stage of reform. The policy objective of the Bill includes implementing the Government's policy in relation to the following Belcarra Report recommendations:

- recommendation 2 (real-time disclosure of electoral expenditure)
- recommendations 3 and 4 (disclosure of candidate interests as a condition of nomination)
- recommendation 5 (registration and behaviour of groups of candidates)
- recommendations 6, 18 and 19 (additional details for disclosures about gifts, loans and third-party expenditure for political activities)

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<sup>4</sup> A copy of the Government's response to *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* is available at:

<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T1960.pdf>

- recommendations 7 and 21 (deeming election participants and councillors to have knowledge of the original source of electoral gifts or loans)
- recommendation 8 (all gift recipients to notify donors of the donor's disclosure obligations)
- recommendation 10 (prospective notification to proposed donors of recipients' disclosure obligations)
- recommendation 12 (mandatory attendance at training session prior to nomination as a candidate)
- recommendations 14 and 15 (restrictions on the use of dedicated accounts for candidates and groups of candidates and providing details of dedicated accounts upon nomination)
- recommendations 29 and 30 (increasing penalties, including by prescribing additional integrity offences and amending limitation periods for particular offences).

### **Soorley Report: A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election**

In response to voter concerns following the holding of the referendum on four-year fixed parliamentary terms in conjunction with local government elections on 19 March 2016, the Attorney-General and then Minister for Justice and Minister for Training and Skills appointed an independent panel to undertake an inquiry into the performance of the Electoral Commission Queensland's (ECQ) conduct of the 2016 local government elections, the referendum on fixed four-year terms as well as the by-election for the state seat of Toowoomba South. The Soorley report makes 74 recommendations including recommendations relating to operational matters for the ECQ and recommendations of a policy and legislative nature.

On 15 June 2017, the Attorney-General and Minister for Justice tabled the Government's response to Soorley Report. The Government undertook to consider recommendations directed to it of a policy and legislative nature and progress any necessary and desirable amendments in advance of the next ordinary general State election and quadrennial local government elections.

The policy objective of the Bill includes implementing the Government's response to the following Soorley Report recommendations:

- recommendation 41 (earlier timeframes for receipt of an application for a postal vote)
- recommendation 44 (amended process for local governments to apply to the Minister for a local government election to be held by postal ballot)
- recommendation 61 (pre-election processing of postal votes)
- recommendation 74 (amendments relating to operational electoral matters).

### **Improve accountability, transparency, integrity and consistency in the local government system, decision-making and local government elections**

The policy objective of the Bill includes continuation of the Government's rolling local government reform agenda to further improve accountability, transparency, integrity and consistency in the local government system, decision-making and local government elections.

In relation to local government elections, the Bill amends the LGEA to:

- mandate full-preferential voting for mayoral and single councillor elections
- strengthen the election gift disclosure requirements for sitting councillors and the election expenditure disclosure requirements for third parties
- achieve better alignment between State and local government elections and make operational improvements and support efficiencies in the local government electoral system.

In relation to the local government system and decision-making, the Bill will:

- clarify and further strengthen how councillors' conflicts of interest are managed
- strengthen the existing State intervention powers in chapter 5, part 1 of the *Local Government Act 2009* (LGA) and apply the full suite of LGA State intervention provisions to the Brisbane City Council (BCC)
- apply the LGA councillor complaints framework to the BCC
- make amendments to the LGA councillor complaints framework, including to streamline investigations where alleged corrupt conduct of a local government employee is linked to alleged corrupt conduct of a councillor or where alleged inappropriate conduct and misconduct of a councillor are linked
- amend the powers of mayors (other than for BCC) in relation to budgets, the appointment of senior executive employees, and directions to the chief executive officer and senior executive employees and provide for a record of directions from the mayor to the chief executive officer
- improve access to information for all councillors and provide for greater transparency regarding BCC decision-making
- clarify the status of suspended councillors in relation to their absence from local government meetings
- prescribe additional decisions that councils are prohibited from making during a caretaker period
- extend the prohibition on publishing or distributing election material during a caretaker period to local government-controlled entities
- introduce new requirements relating to councillors' registers of interests to align with the requirements applying to State Members of Parliament for statements of interests
- clarify that a proposed 'local government change' could request multi-member divisions.

## **Achievement of policy objectives**

### **Operation Belcarra: a blueprint for integrity and addressing corruption risk in local government**

#### **Belcarra Report Recommendation 2 — real-time disclosure of electoral expenditure**

Belcarra Report Recommendation 2 is: *that the LGEA be amended to require real-time disclosure of electoral expenditure by candidates, groups of candidates, political parties and associated entities at local government elections. The disclosure scheme should ensure that*

- (a) *all expenditure, including that currently required to be disclosed by third parties, is disclosed within seven business days of the date the expenditure is incurred, or immediately if the expenditure is incurred within the seven business days before polling day*

*(b) all expenditure disclosures are made publicly available by the ECQ as soon as practicable, or immediately if the disclosure is provided within the seven business days before polling day.*<sup>5</sup>

In relation to Recommendation 2, the Government supported the recommendation in principle and noted there are no current electoral expenditure disclosure requirements for candidates or groups of candidates.

To implement the Government's response, the Bill amends the LGEA to require disclosure of electoral expenditure of \$500 or more incurred by candidates, groups of candidates, registered political parties and associated entities during the disclosure period for the election. In addition to requirements for real-time disclosure by third parties in new section 125A of the LGEA. The return must be given to the ECQ by the disclosure date which is to be prescribed by regulation. In addition, a summary return must be given within the required period which is defined as meaning 15 weeks after the polling day.

The Bill provides that electoral expenditure is expenditure incurred on, or a gift in kind given for particular purposes, including political advertisements and other material advocating for or against a candidate, group of candidates or political party.

Belcarra Report Recommendations 3 and 4 — disclosure of candidate interests as a condition of nomination

Belcarra Report Recommendation 3 is: *that the LGEA be amended to:*

*(a) require all candidates, as part of their nomination, to provide to the ECQ a declaration of interests containing the same financial and non-financial particulars mentioned in Schedule 5 of the Local Government Regulation 2012 (LGR) and Schedule 3 of the City of Brisbane Regulation 2012 (CBR), and also*

- for candidates who are currently members of a political party, body or association, and/or trade or professional organisation – the date from which the candidate has been a member*
- for candidates who were previously members of a political party, body or association, and/or trade or professional organisation – the name and address of the entity and the dates between which the candidate was a member.*

*Failure to do so would mean that a person is not properly nominated as a candidate. For the purposes of this requirement, Schedule 5, section 17 of the LGR and Schedule 3, section 17 of the CBR should apply to the candidate as if they are an elected Councillor.*

*(b) require candidates to advise the ECQ of any new interest or change to an existing interest within seven business days, or immediately if the new interest or change to an existing interest occurs within the seven business days before polling day*

*(c) make it an offence for a candidate to fail to declare an interest or to fail to notify the ECQ of a change to an interest within the required timeframe, with prosecutions able to be started at any time within four years after the offence was committed, consistent with the current*

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<sup>5</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government.* 2017; p.48.

*limitation period for offences about disclosure returns. A suitable penalty should apply, including possible removal from office.*<sup>6</sup>

Belcarra Report Recommendation 4 is: *that the ECQ:*

- (a) publish all declarations of interests on the ECQ website as soon as practicable after the close of nominations for an election*
- (b) ensure that any changes to a candidate's declaration of interests are published as soon as practicable after being notified, or immediately if advised within the seven business days before polling day.*<sup>7</sup>

The Government response supported Recommendation 3 in principle to provide requirements to publish and maintain a register of interests for all candidates, which will establish a level playing field. The response stated that register of interests requirements for all candidates should be aligned with the current register of interests requirements applying to existing councillors. Under current arrangements, the timeframe for updating a councillor's register of interests is 30 days. Consideration will be given to whether the updating requirement should be shortened, and whether it is appropriate to include a time frame on former memberships of political parties, bodies or associations. The LGA and *City of Brisbane Act 2010* (COBA) already establish an offence for failure to correct or update a register of interests.

The Government response supported Recommendation 4, noting that it is consistent with the intent of the real time disclosure of electoral gifts and donations that has already been established. The response also stated that ECQ will give consideration to how best to implement this recommendation.

To implement the Government's policy on Belcarra Recommendations 3 and 4 the Bill amends the LGEA to require candidates to declare additional matters on their nomination form and require the ECQ to publish a copy of the nomination on its website.

The additional matters include:

- whether the candidate is, or was within the last year, a member of a registered political party, trade or professional organisation
- whether the candidate or a close associate of the candidate is or has been within the previous year, a party to a contractual arrangement with the local government
- whether the candidate or a close associate of the candidate is engaged in a contractual process (for example a tender process or expression of interest process for a list of appropriately qualified suppliers) with the local government
- whether the candidate or a close associate of the candidate has made particular applications and representations to the local government under the *Planning Act 2016* and *Sustainable Planning Act 2009*.

The details required are the nature of each interest and if a close associate is involved, their name and address and the nature of their relationship with the candidate. If a candidate and their close

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<sup>6</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government. 2017; p.55*

<sup>7</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government. 2017; p.56*

associates do not have an interest in each of the additional matters required to be disclosed in the nomination, the candidate must provide a statement indicating this fact.

The Bill amends section 32 of the LGEA to require the ECQ to publish information or a statement contained in the nomination prescribed by regulation on ECQ's website and in other ways the returning officer considers appropriate.

Belcarra Report Recommendation 5 — record of membership and behaviour of groups of candidates

Belcarra Report Recommendation 5 is: *that*

(a) *the definition of a group of candidates in the Schedule of the LGEA be amended so that a group of candidates is defined by the behaviours of the group and/or its members rather than the purposes for which the group was formed. For example:*

*A group of candidates means a group of individuals, each of whom is a candidate for the election, where the candidates:*

- *receive the majority of their campaign funding from a common or shared source; or*
- *have a common or shared campaign strategy (e.g. shared policies, common slogans and branding); or*
- *use common or shared campaign resources (e.g. campaign workers, signs); or*
- *engage in cooperative campaigning activities, including using shared how-to-vote cards, engaging in joint advertising (e.g. on billboards) or formally endorsing another candidate.*

(b) *consequential amendments be made to the LGEA, including with respect to the recording of membership and agents for groups of candidates (ss.41-3), to account for the possibility that a group of candidates may be formed at any time before an election, including after the cut-off for candidate nominations.*<sup>8</sup>

The Government response supported Recommendation 5, noting that it will provide greater transparency on the intention of candidates to campaign and (if elected) operate as a collective and that it will be important to ensure a behavioural based approach does not unintentionally capture localised and unplanned cooperation that occurs frequently during campaigns and particularly in regional and remote areas.

The Government's policy in relation to Recommendation 5(a) is to amend the LGEA to prohibit specified campaign techniques by candidates other than members of groups or political parties. The Bill amends section 183 of the LGEA to provide that a person must not engage in a group campaign activity for an election unless the activity relates to candidates who are members of a group of candidates as stated in the record for the group published under section 41(4) of the LGEA or candidates who are endorsed by the same political party for the election. Group campaign activities include the use of the same campaign slogans, brands and how-to-vote cards and sharing

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<sup>8</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government.* 2017; p.61

the same resources for election campaigns (other than volunteers). Failure to comply with this provision attracts a maximum penalty of 100 penalty units and the offence is prescribed as an integrity offence.

To implement the Government's policy in relation to Recommendation 5(b) the Bill amends section 41 of the LGEA to provide that the group must give a record of membership to the electoral commission during the period starting 30 days after the polling day for a quadrennial election or the day after the polling day for another type of election and ending at noon on the last day for the receipt of nominations for candidates in the election. Because the record of membership may be given before a returning officer is appointed, the Bill amends section 41 and 42 of the LGEA to provide that the record of membership of the group and the instrument appointing the agent for the group is given to the ECQ rather than the returning officer and amends section 43 of the LGEA to provide that the ECQ rather than the returning officer keeps the register of group agents.

Belcarra Report Recommendations 6, 18 and 19 — additional details for disclosures about gifts, loans and third-party expenditure for political activities

Belcarra Report Recommendation 6 is: *that the relevant details for gifts in section 109 of the LGEA be amended to state that, for a gift derived wholly or in part from a source [other than a person identified by s.109(b)(iii)] intended to be used for a political purpose related to the local government election, the relevant details required also include the relevant details of each person or entity who was a source of the gift. Section 120(6) regarding loans should be similarly amended to reflect this requirement.*<sup>9</sup>

The Government's response gave in principle support to Recommendation 6, noting that further analysis on the breadth and scope of the proposed amendment is required as well as how the recommendation can be practically monitored and enforced.

Belcarra Report Recommendation 18 is: *that the definition of relevant details in section 109 of the LGEA be amended to include:*

- (a) for a gift made by an individual, the individual's occupation and employer (if applicable)*
- (b) for a gift purportedly made by a company, the names and residential or business addresses of the company's directors (or the directors of the controlling entity), and a description of the nature of the company's business*
- (c) for all gifts, a statement as to whether or not the person or other entity making the gift, or a related entity, currently has any business with, or matter or application under consideration by, the relevant council.*<sup>10</sup>

The Government's response supported Recommendation 18 on the basis that it will lead to greater transparency on the relationship between a donor and a council, noting that further analysis will be undertaken to clarify the scope of details to be disclosed, privacy implications for individuals, who makes the determination (for an individual) as to whether their occupation and employer is applicable, and whether failure to disclose should be an offence.

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<sup>9</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government.* 2017; p.65

<sup>10</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government.* 2017; p.75



Belcarra Report recommendation 19 is: *that section 124(3)(b)(iii) of the LGEA be amended to require the following details to be stated in a third party's return about expenditure, in lieu of the purpose of expenditure as currently required:*

- (a) whether the expenditure was used to benefit/support a particular candidate, group of candidates, political party or issue agenda, or to oppose a particular candidate, group of candidates, political party or issue agenda*
- (b) the name of the candidate, group of candidates, political party or issue agenda that the expenditure benefited/supported or opposed*
- (c) the name and residential or business address of the service provider or product supplier to whom the expenditure was paid (if applicable).<sup>11</sup>*

The Government's response gave in principle support to the overall intent of Recommendation 19 as it provides greater clarity on the intent and influence of third-party donations, noting further consideration will be given to item (c) naming service providers or product suppliers, given this would potentially result in the identification of small, local businesses who may be unaware they are selling goods and services for a political purpose.

To implement the Government's policy on Recommendations 6 and 18 the Bill amends section 109 of the LGEA to expand the relevant details for gifts or loans to include:

- if the gift or loan is made by an entity that is not the source of the gift or loan, that fact, and particular details about the source of the gift or loan
- if the person making the gift or loan has an interest in a local government matter that is greater than that of other persons in the local government area, that fact, and the nature of the person's interest
- for gifts or loans made by an individual, the name and residential or business address of the individual, the individual's occupation and, if appropriate, the industry in which the individual is employed, carries on a business or is otherwise engaged
- if the gift or loan is made by a corporation, the name and residential or business addresses of directors or members of the executive committee (however described) of the corporation or holding company and a description of the type of business the corporation carries on.

To implement the Government's policy on Recommendation 19, new section 125A of the Bill provides that if a third party incurs expenditure of \$500 or more during the disclosure period for the election the third party must give a return to the electoral commission about the expenditure and that the return must include:

- the purpose for incurring the expenditure
- the name and business address of the person who supplied the goods or service to which the expenditure relates
- if the expenditure was incurred to benefit, support or oppose a particular candidate, group of candidate or political party, that fact and the name of the candidate, group of candidates or political party

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<sup>11</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government.* 2017; p.75

- if the expenditure was incurred to support or oppose a particular issue in the election, that fact and a description of the issue.

Belcarra Report Recommendations 7 and 21 — deeming candidates and councillors to have knowledge of the original source of a gift or loan

Belcarra Report Recommendation 7 is: *that the LGEA be amended to deem that a gift and the source of the gift referred to in Recommendation 6 is at all times within the knowledge of the person or entity required to lodge a return under Part 6 and for the purpose of proving any offence under Part 9, Divisions 5–7.*<sup>12</sup>

Belcarra Report recommendation 21 is: *that the LGA and COBA be amended to deem that a gift and the source of a gift referred to in Recommendation 6 is at all times within the knowledge of the Councillor for the purposes of Chapter 6, Part 2, Divisions 5 and 6.*<sup>13</sup>

The Government's response supported both recommendations on the basis that the requirements are reasonable and enhance transparency.

To implement the Government's response to Recommendation 7 the Bill amends the LGEA to provide that in a proceeding for an offence against that Act relating to a gift or loan made to an election participant, the participant is presumed to know, unless the contrary is proven, that the gift was made to the participant and the identity of the entity that is the source of the gift or loan.

To implement the Government's response to Recommendations 21 the Bill amends the LGA and COBA to provide that in a proceeding for an offence against the conflict of interest provisions relating to a gift or loan given or made to a councillor, the councillor is presumed to know, unless the contrary is proven, that the gift or loan was given to the councillor and the source of the relevant gift or loan.

This section provides that an entity that makes a gift or loan of \$500 or more to a candidate, group of candidates, political party or third party must give the recipient a notice that states the relevant details for the gift or loan and, if the entity is not the source of the gift or loan, that fact and the relevant details in relation to the source of the gift or loan.

Belcarra Report Recommendation 8 – all gift recipients to notify donors of the donor's disclosure obligations

The LGEA section 124 provides that if a third party for an election incurs expenditure for a political activity relating to the election during the disclosure period for the election and the amount of the expenditure is \$500 or more, the third party must, for each amount of expenditure incurred during the disclosure period, give the ECQ a return on or before the disclosure date for the return.

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<sup>12</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government. 2017; p.65.*

<sup>13</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government. 2017; p.80.*

Belcarra Report Recommendation 8 is: that *the LGEA be amended to require all gift recipients, within seven business days of receiving a gift requiring a third party return under section 124 of the LGE Act, to notify the donor of their disclosure obligations. A suitable penalty should apply.*<sup>14</sup>

The Government response supported Recommendation 8 as it is a reasonable requirement and it enhances transparency. The amendment will place the onus on the candidate to ensure notification occurs.

To implement the Government's response to Recommendation 8 the Bill amends the LGEA to require candidates, groups of candidates and third parties for an election within seven business days after receiving a gift which may require a third party return under new section 125A to notify the donor that the donor may, under section 125A, be required to give a return.

To correct an existing anomaly in relation to the disclosure requirements for gifts given to a group of candidates by a third party and to ensure the notification requirement applies to a group of candidates, the Bill includes a consequential amendment to include a gift to a group of candidates, member of the group, or person acting on behalf of the group in section 125A.

The Bill provides for a maximum penalty of 20 penalty units for an offence against the notification requirements. A penalty of 20 penalty units is consistent with the penalty under section 264(9) of the EA, which provides for a similar notification requirement.

#### Belcarra Report Recommendation 10 – prospective notification to proposed donors of recipients' disclosure obligations

Belcarra Report Recommendation 10 is: *that the LGEA be amended to require candidates, groups of candidates and third parties to prospectively notify any proposed donor of the candidate's, group's or third party's disclosure obligations under section 117, 118 or 125 of the LGE Act.*<sup>15</sup>

The Government response supported Recommendation 10, stating, given that it requires proactive steps to notify prospective donors of the fact their donation will be publicly disclosed by candidates, groups of candidates or third parties, consideration will be given to the practical steps required to implement this recommendation.

Under the LGEA section 120, a candidate or group of candidates must also disclose any loans received. Although the CCC's recommendation, in relation to notification requirements, did not apply to loan providers, it is considered that loan recipients should also prospectively notify loan providers of the recipient's disclosure obligations so that loan providers are sufficiently informed when making a decision about providing a loan.

Accordingly, to implement the Government's response to Recommendation 10, the Bill amends the LGEA to require a candidate, the agent for a group of candidates and a third party for an election to take reasonable steps to notify the public about a requirement for the candidate, agent

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<sup>14</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government. 2017; p.67.*

<sup>15</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government 2017; p.68.*

or third party to state, in a return, the relevant details for a gift or loan for which a return is required under the LGEA part 6. The Bill provides examples of reasonable steps to notify the public. These include publishing a notice on a website; or including a notice with brochures distributed in the local government area or division of a local government area for which the candidate has been nominated for an election. The notification must include a fair summary of the provisions of the LGEA under which the requirement arises.

The Bill provides for a maximum penalty of 1 penalty unit for an offence against the notification requirements.

Belcarra Report Recommendation 12 – mandatory attendance at training session prior to nomination as a candidate

Belcarra Report Recommendation 12 is: *that the LGEA be amended to make attendance at a DILGP [the former Department of Infrastructure, Local Government and Planning] information session a mandatory requirement of nomination.*<sup>16</sup>

The Government response supported Recommendation 12 noting that: *Further consideration will be given to:*

- *the content and timing of information sessions*
- *whether it would be more appropriate for the ECQ to conduct these sessions*
- *measures to ensure attendance and engagement by candidates is monitored.*

To implement the Government's response to Recommendation 12 the Bill amends the LGEA section 26 to provide that a person may be nominated as a candidate for an election only if the person has, within six months before the nomination day for the election, successfully completed a training course approved by the department's chief executive about the person's obligations as a candidate, including the person's obligations under the LGEA part 6 (Electoral funding and financial disclosure); and the person's obligations as a councillor, if the person is elected or appointed, including obligations under a Local Government Act within the meaning of the LGA.

Belcarra Report Recommendations 14 and 15 (restrictions on the use of dedicated accounts for candidates and groups of candidates and providing details of dedicated accounts upon nomination)

Belcarra Report Recommendation 14 is: *that sections 126 and 127 of the LGEA be amended to expressly prohibit candidates and groups of candidates from using a credit card to pay for campaign expenses. Candidates would be permitted to use debit cards attached to their dedicated account.*<sup>17</sup>

Belcarra Report Recommendation 15 is: *that*

*(a) section 27(2) of LGEA be amended to require candidates' nominations to also contain the details of the candidate's dedicated account under section 126 of the LGEA*

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<sup>16</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government 2017; p.69.*

<sup>17</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government 2017; p.71.*

*(b) section 41(3) of LGEA be amended to require the record for a group of candidates to also state the details of the group's dedicated account under section 127 of the LGEA.*<sup>18</sup>

The Government response supported Recommendation 14 in principle noting that allowing use of the debit card linked to the campaign account should overcome difficulties that could arise from prohibiting use of credit cards and that it appears the CCC's underlying concerns relate to the reconciliation of individual purchases made by a credit card against expenditure from the campaign account. The Government response also indicated that further consideration will be given to practical implementation of Recommendation 14.

The Government response supported Recommendation 15, commenting that it is a reasonable requirement and improves transparency and accountability with the election monitoring process. It was also noted that the recommendation was not onerous on candidates or groups of candidates and will necessitate that they have a dedicated campaign account in place at the time of nomination.

Section 126 and 127 of the LGEA provide that candidates and groups of candidates must operate a dedicated account with a financial institution if the candidate or group of candidates receives or pays an amount for the conduct of the candidate's or group's campaign. Candidates must take all reasonable steps to ensure that requirements in relation to the operation of their dedicated accounts comply with the requirements in sections 126(2) to (7) and 127(2) to (7). A maximum penalty of 100 penalty units applies.

To implement the Government's response to Recommendation 14 the Bill inserts new section 127A of the LGEA to provide that an amount paid from a dedicated account may be paid in one, or a combination, of the following ways:

- an electronic funds transfer transaction
- debit card that withdraws the payment directly from the account
- cash withdrawn from the account.

The existing offences in section 126 and 127 of the LGEA will apply in relation to payments that do not comply with these requirements.

Further, the Bill inserts new section 127B which provides that a candidate must not use a credit card to pay an amount for the conduct of the election campaign of a candidate or group or candidates or pay an amount out of a campaign account to pay a charge incurred using a credit card. A maximum penalty of 100 penalty units will also apply for this offence.

To implement the Government's response to Recommendations 15 the Bill amends section 27 of the LGEA and section 41 of the LGEA to provide that a nomination form for a candidate and record of membership in a group of candidates must contain information about the candidate's or group's dedicated account.

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<sup>18</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government 2017*; p.72.

Belcarra Report Recommendations 29 and 30 — prescribing additional integrity offences, penalties and limitation periods for particular offences

Belcarra Report Recommendation 29 is: *that the LGEA be amended so that prosecutions for offences related to dedicated accounts (ss. 126 and 127) and groups of candidates (s.183) may be started at any time within four years after the offence was committed, consistent with the current limitation period for offences about disclosure returns.*<sup>19</sup>

Belcarra Report Recommendation 30 is: *that the penalties in the LGEA for offences including funding and disclosure offences be increased to provide an adequate deterrent to non-compliance. For councillors, removal from office should be considered.*<sup>20</sup>

The Government's response supported Recommendations 29 and 30 in principle. In relation to Recommendation 29 the Government noted that consideration will be given to the possibility of complaints being deliberately withheld and then made in the months leading up to the subsequent local government election. In relation to Recommendation 30 the Government noted a review will be undertaken of all relevant offences and penalties prior to finalisation and implementation.

To implement the Government's response to Recommendations 29 and 30, the Bill makes the following amendments to penalties and limitation periods to existing offences in the LGEA:

- sections 126(8) and 127(8) (candidates and members of groups of candidates must comply with requirements about the operation of dedicated campaign accounts) to be prescribed as integrity offences and limitation period for bringing an action to be 4 years
- maximum penalty for section 174 (Obstructing electoral officers) to be increased from 10 penalty units to 20 penalty units or 6 months imprisonment
- maximum penalty for section 176A(2) (Confidentiality of information) to be increased from 40 penalty units or 18 months imprisonment to 100 penalty units
- section 183 (Engaging in group campaign activities) to be amended to provide that the limitation for bringing an action is to be 4 years
- maximum penalty for section 192(3) (Secrecy of voting) to be increased from 10 penalty units to 20 penalty units or 6 months imprisonment
- maximum penalty for section 195(1) (provide a return under part 6 within the time required) to be amended from 20 penalty units to, if the person took all reasonable steps to give the return within the time required—20 penalty units; otherwise—100 penalty units
- maximum penalty for section 195(2) (give a return under part 6 which is false or misleading) to be amended from 100 penalty units if the person required to give the return is a candidate or otherwise 50 penalty units to 100 penalty units in all situations
- sections 195(1)(b), (2) and (3) (Offences about returns) to be prescribed as integrity offences under the LGA and COBA.

Section 153 of the LGA and section 153 of the COBA provide that a person convicted of an integrity offence cannot be a councillor 4 years after being convicted. Further, under section 182A

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<sup>19</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government 2017*; p.88.

<sup>20</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government 2017*; p.89.

of the LGA (renumbered as section 175K by the Bill) and section 186B of the COBA, a person is automatically suspended as a councillor if the person is charged with an integrity offence.

**Soorley Report: A review of the conduct of the 2016 local government elections, the referendum and the Toowoomba South by-election**

Soorley Report Recommendations 41, 44 and 61— postal vote processes

Soorley Report Recommendation 41 is: *that applications for postal votes be submitted to ECQ as soon as possible and no later than 10 working days prior to the election.*<sup>21</sup>

Soorley Report Recommendation 44 is: *that postal-only voting be restricted to councils in remote and regional areas where the total number of electors is less than 5000. All other councils should only have pre-poll, absentee and election day polling booth voting.*<sup>22</sup>

Soorley Report Recommendation 61 is: *that legislation be amended to allow all pre-poll and postal vote counting to commence at 4pm on election day in a secure area. This will place an added demand on scrutineers but will allow staff to focus on the close of the count and report results in a more timely manner.*<sup>23</sup>

In response to Recommendations 41, 44 and 61 the Government noted it would undertake a comprehensive review of early voting processes including postal and pre-polling in preparation for the next ordinary general State election (for the inaugural four year fixed parliamentary term) and the next local government elections. In relation to Recommendation 44 it noted further that postal-only voting is currently restricted to the local government context.

Section 79 of the LGEA applies to an application made by an elector to the returning officer to cast a postal vote in an election that is not a postal ballot election. Section 81 of the LGEA applies to a person who believes they are entitled to vote in a postal ballot election but the person has not been given a ballot paper and declaration envelope when they were distributed to electors by the returning officer under section 80 of the LGEA.

Both section 79 and section 81 provide that an application must be received by the returning officer no later than 7pm on the Wednesday before polling day. Section 79(4) and section 81(5) require the returning officer to give the applicant a ballot paper and declaration envelope and written instructions on how to cast a postal vote as soon as practicable after receiving the application.

To implement the Government's response to Recommendations 41 the Bill amends sections 79 and 81 to provide that a request for a postal vote must be received by the returning officer no later than 7 pm, 12 days before the polling day for the election (that is, because the polling day for an election is always a Saturday, 12 days before an election is 2 Mondays before the polling day).

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<sup>21</sup> *A review of the conduct of the 2016 Local Government elections, the referendum and the Toowoomba South by-election 2018*; p. 26

<sup>22</sup> *A review of the conduct of the 2016 Local Government elections, the referendum and the Toowoomba South by-election 2018*; p. 26

<sup>23</sup> *A review of the conduct of the 2016 Local Government elections, the referendum and the Toowoomba South by-election 2018*; p. 30

The existing requirements in section 79(4) and section 81(5) regarding distribution of papers for a postal vote will be retained.

The LGEA provides that a poll must be conducted by ballot taken under part 4 of the LGEA. Part 4 provides that the returning officer must arrange for places to be used on polling day as ordinary polling booths to enable electors in general to vote (section 48 LGEA) and must arrange for at least one place to be a pre-polling booth to enable electors to cast a pre-poll vote (section 50 LGEA). The returning officer may also arrange for a mobile polling booth (section 49 LGEA).

However, the LGEA also provides that a poll may be conducted by postal ballot only, with the Minister's approval (section 45 LGEA).

To implement the Government's response to Recommendation 44, the Bill inserts new sections 45AA, 45AB and 45A and amends section 45. The amendments provide that, if a local government applies to the Minister for a postal ballot, the Minister must refer the application to the Electoral Commissioner for recommendation. In making a recommendation, the Commissioner must have regard to the following matters:

- the reasons stated in the application, why the poll should be conducted by postal ballot
- the costs of conducting the poll by postal ballot compared to the costs of conducting the poll using polling booths
- the number of persons enrolled on the electoral roll for the local government area or part of the area to which the application relates
- the population density and distribution in the local government area or part of the area to which the application relates
- whether a poll has previously been conducted by postal ballot in the local government area or part of the area to which the application relates.

The Commissioner may also ask the local government for further information the Commissioner reasonably requires to make the recommendation.

In deciding the application, the Minister must have regard to the Commissioner's recommendation and the matters stated above.

The existing provision in section 45 of the LGEA that the Minister's decision is not subject to appeal will be retained and extended to include the Commissioner's recommendation in new section 45A. Section 158 (Decisions not subject to appeal) will be replaced with a new section which applies unless the Supreme Court decides that the decision is affected by jurisdictional error. An equivalent amendment is made to the LGA section 244 (Decisions not subject to appeal) and COBA section 226 (Decisions not subject to appeal).

To implement the Government's response to Recommendation 61, section 89 of the LGEA will be amended to provide that, for an election other than a postal ballot election, the returning officer may, before or after the polling day, open all ballot boxes containing only declaration envelopes and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting. For postal ballot elections the returning officer may before, on or after the polling



day, open all ballot boxes and examine the declaration envelopes to decide whether the ballot papers are to be accepted for counting.

Soorley Report Recommendation 74 — amendments to operational electoral matters.

The Soorley Report Recommendation 74 is: *that ECQ's proposed legislation amendments [provided by ECQ to the review panel] be investigated and implemented as appropriate.*<sup>24</sup>

The Government agreed to consider this recommendation in preparation for the next ordinary general State election (for the inaugural four year fixed parliamentary term) and the next local government elections.

To implement the Government's response to Recommendation 74 the Bill makes the following amendments identified by the ECQ to increase consistency between State and local government elections and assist the ECQ to streamline operations and overall conduct of elections:

- omit the requirement for an elector at a polling booth to make a declaration when requesting a replacement ballot paper if the ballot paper given to the elector is accidentally defaced or destroyed and require an elector casting a postal vote to make a declaration when casting the postal vote, rather than when applying for a replacement ballot paper and declaration envelope, that the ballot paper sent to the elector has not been received or has been marked, damaged or destroyed and the elector has not otherwise voted in the election
- modernise the public notice requirements under the LGEA to reflect contemporary means of communication by replacing requirements to publish notices in newspapers or display notices at the office of the returning officer with requirements to publish notices on the ECQ website and other ways considered appropriate
- align the definition of gift in the LGEA with the definition in the EA
- amend section 91(2)(a) and (6) and 99(a) of the LGEA to remove the requirement for a separate detachable flap on declaration envelopes
- omit section 55(1)(b) of the LGEA to remove the requirement for each ballot paper to be attached to a butt that has a unique number for the local government area, or division of the local government area.

**Improve accountability, transparency, integrity and consistency in the local government system, decision-making and local government elections**

Voting methodology

The existing system of voting in local government elections under section 65 of the LGEA is optional-preferential voting for mayoral and single councillor elections. In any other case, the first-past-the-post methodology applies. The Bill amends section 65 of the LGEA to mandate full-preferential voting for mayoral and single councillor elections, with no changes to the methodology in other cases.

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<sup>24</sup> A review of the conduct of the 2016 Local Government elections, the referendum and the Toowoomba South by-election 2018; p. 38

Further amendments will:

- amend section 83 of the LGEA to provide that an elector must record preference votes for all of the candidates in an election
- amend section 83 of the LGEA to provide that if one square on a ballot paper opposite the name of a candidate has been left blank, the ballot paper is taken to be a formal ballot paper if the elector has indicated their preference consecutively without repetition, the candidate whose name is opposite the blank square is taken to be the voter's last preference
- make consequential amendments to reflect the change to full preference voting.

This amendment will commence by proclamation and will align local government voting methodologies with State and Federal elections to minimise voter confusion.

#### Election donation disclosure requirements for sitting councillors

Under the existing disclosure requirements, the disclosure period for election gifts received by a sitting councillor 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. For example, in respect of a councillor elected at the 2016 quadrennial election the disclosure period starts 30 days after that election and ends 30 days after the 2020 quadrennial election.

Because the LGEA defines a candidate to mean a person whose nomination for election as a councillor has been certified by the returning officer under section 27(3)(a), a sitting councillor is not required to disclose gifts or loans received until their nomination for the next election is certified by the returning officer. The Local Government Electoral Regulation 2012 (LGER) provides for the 'disclosure date' for returns by candidates for gifts or loans received. For gifts or loans received from the start of the disclosure period to the day before their nomination is certified for the next election, a sitting councillor must submit a 'catch-up' return which discloses these gifts and loans on or before the seventh business day after the day before their nomination is certified. Gifts or loans received on the day their nomination is certified or after must be disclosed on or before the seventh business day after the gift or loan is received.

The Bill amends the LGEA to provide that for the LGEA part 4 division 2 subdivision 3 (Membership and agents for group of candidates), part 6 (Electoral funding and financial disclosure) and part 9 (Enforcement) 'candidate', for an election, includes a person who:

- is an elected or appointed councillor at any time during the disclosure period mentioned in the LGEA section 106A for a candidate
- has announced or otherwise publicly indicated an intention to be a candidate in the election or
- has otherwise indicated the person's intention to be a candidate in the election including, for example by accepting a gift made for the purpose of the election.

New section 106A amends the disclosure period for candidates. For a candidate who was not a candidate in an election held within 5 years before the polling day, the period starts on the earlier of the following days: the day the person announces or otherwise publicly indicates the person's intention to be a candidate in the election; the day the person nominates as a candidate in the

election; the day the person otherwise indicates the person's intention to be a candidate in the election, including, for example, by accepting a gift made for the purpose of the election.

The effects of the amendment to the definition of 'candidate' include that a sitting councillor will be required to disclose gifts and loans regardless of when the gift or loan is received during the disclosure period, including the period prior to their nomination for the next election being certified.

These amendments and associated transitional provisions commence on a day to be fixed by proclamation to allow councillors and others to be informed of the amendments and to allow for administrative arrangements to be made in advance of commencement. Also, consequential amendments to the LGER will be proposed in relation to the 'disclosure date' for sitting councillors.

#### Disclosure period for third party expenditure for political activity

Currently under the LGEA, there is an anomaly between the disclosure period for third party expenditure and the disclosure period for gifts to previous candidates (for example sitting councillors), gifts to groups of candidates and gifts to third parties. Under the LGEA section 124, the disclosure period for third party expenditure starts on the day after the day the returning officer publishes notice of the election in a newspaper under the LGEA section 25 and ends at 6p.m. on the polling day for the election. However, the disclosure period for gifts to previous candidates (for example sitting councillors), gifts to groups of candidates and gifts to third parties starts 30 days after the polling day for the most recently held election for which the candidate was also a candidate (30 days after the polling day for the most recently held quadrennial elections for groups of candidates and third parties); and ends 30 days after the polling day for the current election.

To address this anomaly, the Bill amends the LGEA in relation to third party political expenditure to provide that the disclosure period for a third party to whom new section 125A (Expenditure returns – political expenditure by third party) applies is the period that starts 30 days after the polling day for the last quadrennial election; and ends 30 days after the polling day for the election. A regulation may prescribe another day on which the disclosure period starts or ends. These amendments and associated transitional provisions will commence on a day to be fixed by proclamation to allow third parties to be informed of the amendments in advance of commencement and to allow for administrative arrangements to be made. Also, amendments to the LGER will be proposed in relation to the appropriate 'disclosure date' for third party returns under the LGEA.

#### Operational electoral matters

In addition to amendments identified by the ECQ and implemented as part of the Government's response to the Soorley report recommendation 74, additional amendments have been identified to align State and local government electoral systems or to enhance the local government electoral framework.

The Bill amends the LGEA to achieve this objective, including to:

- provide for earlier approval of a how-to-vote cards as the LGEA provides for voting prior to polling day, for example at mobile polling booths during the period starting 11 days before the polling day and at pre-polling booths during the period starting 14 days before the polling day
- align Queensland's position on prisoner voting with the Commonwealth position post the High Court decision in *Roach v Electoral Commission* [2007] HCA 43
- expand the categories of persons who must complete a declaration envelope for an election to include electors who are serving a sentence of imprisonment or are otherwise detained on polling day and electors who attend a polling booth on polling day but are unable to make an ordinary vote for reasons beyond the elector's control
- requiring the ECQ to publish election information in relation to first preference votes and the distribution of preferences, and provide elector information to a registered political party, a group of candidates if at least one member of the group was elected at the election, or a councillor who was elected at the election but was not a member of a group of candidates or endorsed by a political party on request for a purpose related to an election
- provide for ECQ to change the nomination day or polling day if exceptional circumstances exist that are likely to impact on the conduct of the election
- allowing the returning officer or the presiding officer for a polling booth to adjourn or temporarily suspend polling at a polling booth in case of an emergency that will temporarily interrupt or obstruct the taking of the poll, including a serious threat of a riot or open violence, a serious risk to the health and safety of persons at the polling booth or other emergency
- ensuring that persons receiving voters roll information use that information for particular purposes
- mandate that ECQ publish returns and other documents on its website
- clarify that, if the date for a quadrennial election is changed by regulation, the new date must be a Saturday
- provide that the issuing officer at a polling booth may reproduce a ballot paper if the polling booth does not have, or runs out of ballot papers for an election
- provide that applications to cast postal votes may be made orally or in writing
- provide for notification to be given by the returning officer to an applicant if the application is received late or the elector is not entitled to cast a postal vote in the election.

#### Councillor's conflict of interest at a meeting

Currently, chapter 6, part 2, division 5A of the LGA and chapter 6, part 2, division 5A of the COBA provide for how councillors are to deal with personal interests in an accountable and transparent way.

To strengthen and clarify this process, the Bill (clauses 7, 106 and 111) amends the COBA and LGA by omitting these divisions and inserting new provisions into the COBA and LGA regarding personal interests of councillors. These provisions will apply where councillors are participating in decisions under an Act, a delegation or other authority as well as in a local government meeting. Particular matters which are ordinary business matters will be excluded from the operation of the conflict of interest provisions.

The new process provides for *prescribed conflicts of interest* and *declarable conflicts of interest*. Prescribed conflicts of interest are defined to include matters involving:

- an entity who has given gifts and loans to a councillor, or a group of councillors or a political party of which the councillor is a member which are required to be disclosed under the LGEA part 6 or other gifts or sponsored hospitality benefits given to the councillor or a close associate of the councillor;
- particular contracts between the councillor or a close associate of the councillor and the local government;
- particular employment matters relating to the chief executive officer if the chief executive officer is a close associate of the councillor;
- particular applications made to councillor by the councillor or a close associate of the councillor.

If a councillor has a prescribed conflict of interest in a matter, the councillor must not participate in a decision relating to the matter. If the councillor may, or is, participating in a decision on the matter, and the councillor first becomes aware of the prescribed conflict of interest at a local government meeting, the councillor must immediately inform the meeting. Otherwise, the councillor must, as soon as practicable, give the chief executive officer notice of the interest, including prescribed particulars, and must also give notice to a meeting of the local government or committee as appropriate. A maximum penalty of 200 penalty units or 2 years imprisonment will apply for these offences and the offences will be prescribed as integrity offences.

After giving notice to a meeting, the councillor must leave the meeting and stay away while the matter is being discussed and voted on. Failure to comply with this requirement will attract a maximum penalty of 200 penalty units or 2 years imprisonment.

A councillor has a declarable conflict of interest in a matter if the councillor has, or could reasonably be presumed to have, a conflict between the councillor's personal interests, or the personal interests of a related party of the councillor, and the public interest; and because of the conflict, the councillor's participation in a decision about the matter might lead to a decision that is contrary to the public interest. Particular situations are excluded from being declarable conflicts of interest (section 177L COBA and section 150EO LGA).

If a councillor is participating in a matter in which the councillor has a declarable conflict of interest in a matter, and the councillor first becomes aware of the declarable conflict of interest at a local government meeting, the councillor must stop participating and not further participate in the decision and must immediately inform the meeting of the declarable conflict of interest, including the prescribed particulars. In other situations, the councillor must stop participating in the decision and, as soon as practicable, give the chief executive officer notice of the interest, including prescribed particulars, and must also give notice to a meeting of the local government or committee as appropriate. A maximum penalty of 100 penalty units or 1 year's imprisonment will apply for these offences and the offences will be prescribed as integrity offences.

If a councillor has a declarable conflict of interest the eligible councillors (that is, councillors at the meeting who do not have a prescribed or declarable conflict of interest in the matter) must, by resolution, decide whether the councillor may participate in the decision or must not participate in

the decision and must leave the place where the meeting is being held while the matter is being discussed and voted on. Eligible councillors may impose conditions on the councillor's participation, and the councillor must comply with these conditions, or a decision of the eligible councillors that the councillor must not participate in the decision or must leave the meeting while the matter is being discussed and voted on. A maximum penalty of 100 penalty units or 1 year's imprisonment will apply to this offence.

The Bill provides that a decision by the eligible councillors may be made even if the number of eligible councillors is less than a majority or the eligible councillors do not form a quorum for the meeting. If the eligible councillors cannot make a decision, the councillors are taken to have decided that the councillor must leave, and stay away from, the place where the meeting is being held while the matter is discussed and voted on.

The Bill also provides that, if there is less than a quorum remaining at the meeting after councillors who have prescribed conflicts of interests or declarable conflicts of interest have left the place where the meeting is being held, the local government must delegate deciding the matter unless the matter cannot be delegated or must decide by resolution to defer the matter to a later meeting. The council must not delegate deciding a matter to an entity if the entity, or a member of the entity, has personal interests in the matter equivalent to a prescribed conflict of interest or declarable conflict of interest.

The Minister may approve a councillor participating in deciding a matter in a meeting if the matter could not otherwise be decided at the meeting because of a lack of quorum and the matter cannot be delegated.

The new process also:

- requires councillors who reasonably believe or suspect that another councillor has a prescribed conflict of interest or declarable conflict of interest in a matter, to immediately inform the person presiding at a meeting or the chief executive officer of their belief or suspicion
- provides for the obligations of councillors if another councillor has, as required above, informed the person presiding at a meeting of their reasonable belief or suspicion
- provides that a person must not take retaliatory action against a councillor who has complied with this requirement. A maximum penalty of 167 penalty units or 2 years imprisonment applies for this offence and the offence is prescribed as an integrity offence.

The Bill also inserts an offence for a councillor for a prescribed conflict of interest or declarable conflict of interest in a matter to direct, influence, attempt to influence or discuss the matter with another person who is participating in a decision of the local government relating to the matter. This offence will attract a maximum penalty of 200 penalty units or 2 years imprisonment and will be prescribed as an integrity offence.

#### State intervention powers

Chapter 5, part 1 of the LGA provides the State with certain powers of intervention in relation to a local government or a councillor, including:

- gathering information

- acting on the information gathered
- appointing an advisor or a financial controller
- removing an unsound decision
- suspending or dismissing a councillor or every councillor
- dissolving a local government.

The Belcarra Stage 1 Act amended the LGA chapter 5, part 1 to provide that a local government can be dissolved and a councillor or every councillor can be suspended or dismissed where the Minister for Local Government reasonably believes it is in the public interest to do so.

For consistency, the Bill further amends chapter 5, part 1 of the LGA to apply public interest grounds to other powers of intervention.

The Bill amends the LGA section 113 to provide under section 113(1)(a) that the purpose of the LGA chapter 5, part 1 is to allow the Minister or the department's chief executive, on behalf of the State, to gather information, including under a direction, to monitor and evaluate whether a local government or councillor is performing their responsibilities properly; or a local government or councillor is complying with laws applying to the local government or councillor, including the Local Government Acts; or it is otherwise in the public interest for the Minister or the department's chief executive to take remedial action under chapter 5, part 1. Under section 113(1)(b) the purpose of chapter 5, part 1 is to allow the Minister or the department's chief executive, on behalf of the State, to take remedial action.

Remedial action is action to improve a local government's or councillor's performance or compliance, or that is in the public interest, taken under new Division 2A (Remedial action initiated by chief executive) or Division 3 (Remedial action by Minister).

The term "public interest" is not defined. This is intentional, to permit the phrase to evolve over time to reflect community expectations over time.

Relevant factors in determining "public interest" may include but are not limited to the following factors:

- complying with applicable law (both its letter and spirit)
- carrying out functions fairly and impartially
- complying with the principles of procedural fairness/natural justice
- acting reasonably
- ensuring accountability and transparency
- exposing corrupt conduct or serious maladministration
- avoiding or properly managing private interests conflicting with official duties
- community confidence in a local government and/or its councillors.

Amendments to the LGA section 115 extend the grounds for gathering information to include monitoring and evaluating whether it is in the public interest to take remedial action in relation to the local government or councillor. The Bill also amends the LGA section 115(b) to provide that

the department's chief executive may carry out an investigation into whether it is in the public interest to take the remedial action.

The Bill amends the LGA section 116 to provide that if the department's chief executive believes the local government or councillor is not performing their responsibilities properly, or the local government or councillor is not complying with laws applying to the local government or councillor, including the Local Government Acts, or it is otherwise in the public interest for the Minister to take remedial action, the chief executive may make recommendations to the Minister about what remedial action to take. The Minister may take the remedial action the Minister considers appropriate in the circumstances and may publish certain information.

The Bill amends the LGA section 117 to provide that if the department's chief executive believes the local government is not performing its responsibilities properly, or the local government is not complying with laws applying to the local government, including the Local Government Acts, or it is otherwise in the public interest for the department's chief executive to appoint an advisor for the local government, the department's chief executive may, by gazette notice, appoint an advisor for the local government. Consequential amendments are made to the responsibilities of the advisor.

The Bill amends the LGA section 118 to provide that if the department's chief executive believes the local government is not performing its responsibilities properly, or the local government is not complying with laws applying to the local government, including the Local Government Acts, or it is otherwise in the public interest for the department's chief executive to appoint a financial controller for the local government, the department's chief executive may, by gazette notice, appoint a financial controller for the local government.

Further, the Bill amends the LGA section 121 to provide that the Minister may suspend or revoke a decision of the local government if the Minister believes a decision of the local government is contrary to any law or inconsistent with the local government principles or it is otherwise in the public interest to suspend or revoke the decision. Consequential amendments are made to the requirements of the gazette notice by which the decision is suspended or revoked. The gazette notice must state either how the decision is contrary to a law or inconsistent with the local government principles or why it is otherwise in the public interest to suspend or revoke the decision. If the decision has been suspended, the gazette notice must state how the decision may be amended so it is no longer contrary to the law or inconsistent with the local government principles or in the public interest to suspend the decision.

The Bill also makes a minor consequential amendment to section 236(2)(b) to provide that an interim administrator is the 'head of the local government' if all of the councillors have been suspended for a stated period under the LGA section 123(2) and an interim administrator has been appointed (the head of the local government is authorised to sign documents on behalf of a local government).



### State intervention powers under the LGA to apply to BCC

Currently under the LGA sections 122 and 123, the Minister may recommend that the Governor in Council suspend or dismiss a councillor, suspend every councillor and appoint an interim administrator, or dissolve a local government and appoint an interim administrator. The grounds for the suspension, dismissal or dissolution include where the conduct tribunal has recommended to the Minister that a councillor (or every councillor) be suspended or dismissed, where the Minister reasonably believes that a councillor or a local government has seriously or continuously breached the local government principles, and where the Minister reasonably believes it is otherwise in the public interest that a councillor (or every councillor) be suspended or dismissed.

In comparison, there are no corresponding powers under the COBA which enable BCC councillors to be suspended or dismissed, the BCC to be dissolved, or an interim administrator to be appointed.

To ensure the same sanctions across all local governments for the same conduct, the Bill applies the full suite of the State's powers under the LGA chapter 5, part 1 (as amended above) to the BCC and omits the comparable provisions in the COBA (chapter 5, part 1). The State's new powers of intervention with respect to BCC include permitting:

- the department's chief executive to carry out an investigation into whether it is in the public interest to take remedial action in relation to the BCC or a BCC councillor and to appoint an advisor or a financial controller for the BCC
- the Minister to suspend or revoke an unsound decision of the BCC
- the Minister to recommend that the Governor in Council suspend or dismiss a BCC councillor, suspend every BCC councillor and appoint an interim administrator, or dissolve the BCC and appoint an interim administrator.

### Councillor complaints framework under the LGA to apply to BCC

Currently, the COBA chapter 6, part 2, divisions 6 and 7 deal with the conduct and performance of BCC councillors and the conduct of BCC councillors in meetings of the council. In summary, the provisions provide for the preliminary assessment of complaints to be undertaken by the chief executive officer (CEO) of BCC (unless the complaint is made by the CEO in which case it is assessed by the department's chief executive); a complaint assessed to be about misconduct or inappropriate conduct to be referred to the BCC councillor conduct review panel; the BCC councillor conduct review panel to hear and decide complaints and to take disciplinary action; and the chairperson of the council or a committee chairperson to impose certain penalties for the disorderly conduct of BCC councillors in a meeting of the council or its committees.

In 2018, the Department of Local Government, Racing and Multicultural Affairs undertook a review to determine whether the new councillor complaints framework under the LGA should be wholly applied to the BCC to provide a single and independent councillor complaints framework across all 77 local governments.

Consequently, the Bill applies chapter 5A of the LGA to the BCC and omits chapter 6, part 2, divisions 6 and 7 of the COBA ensuring that in relation to councillor conduct the same behavioural standards, offences, penalties and investigating and hearing bodies apply to all local governments

and councillors in Queensland. Generally, the independent assessor will be responsible for investigating and dealing with BCC councillor conduct; the BCC will be responsible for dealing with suspected inappropriate conduct referred to the council by the independent assessor and deciding what disciplinary action should be taken; the conduct tribunal will be responsible for hearing and determining alleged misconduct and deciding what disciplinary action should be taken; and the chairperson of the council or a committee of the council will be responsible for dealing with unsuitable meeting conduct and deciding what disciplinary action should be taken.

The Bill also amends the COBA to provide appropriate transitional arrangements for the commencement of the LGA councillor complaints framework for BCC.

### Amendments to the councillor complaints framework under the LGA

#### *Councillor conduct information not to be given vexatiously or other than in good faith*

Under the LGA section 150R, a local government official (a councillor or CEO) must give the independent assessor a notice about a councillor's conduct if they become aware of information indicating the councillor may have engaged in inappropriate conduct or misconduct.

The Bill amends section 150R to provide that the local government official must not give the notice vexatiously or other than in good faith. The offence carries a maximum penalty of 85 penalty units. The amendments are intended to discourage the giving of information about a councillor's conduct improperly. The new offence and penalty are comparable to the offence and penalty under section 150AV of the LGA in relation to a person making an improper complaint about the conduct of a councillor.

#### *Investigation of particular conduct of local government employees*

To assist in streamlining investigations under chapter 5A of the LGA, the Bill expands the jurisdiction of the independent assessor to include the investigation of particular conduct of local government employees.

The Bill inserts new section 150TA to provide that the assessor must investigate the conduct of a local government employee if (a) the conduct is the subject of a complaint referred to the assessor by the CCC, and (b) the conduct is connected to the conduct of a councillor that is the subject of a complaint referred to the assessor by the CCC. The Bill also amends the functions of an investigator and the assessor to include investigating the conduct of a local government employee (sections 150AY and 150CU); gives an investigator particular powers for such investigations, i.e. the power to require a person to give information to the investigator and the power to require a person to attend a place and answer questions (sections 150CH and 150CJ); and makes numerous consequential amendments.

#### *Inappropriate conduct of a councillor that is connected to misconduct of the councillor*

The Bill amends section 150W to provide that if after investigating the conduct of a councillor the independent assessor is reasonably satisfied the councillor's conduct is inappropriate conduct that

is connected to conduct of the councillor that the assessor is reasonably satisfied is misconduct, the assessor may decide to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct (rather than refer the suspected inappropriate conduct to the local government to deal with).

As part of the amendments to section 150AJ, the assessor may only make an application to the conduct tribunal about the alleged inappropriate conduct if the application is also made about the connected alleged misconduct. The Bill also provides that after conducting the hearing the conduct tribunal must decide whether or not the councillor engaged in misconduct or inappropriate conduct or both and what disciplinary action to take for any misconduct or inappropriate conduct (section 150AQ); provides that the conduct tribunal must have regard to the disciplinary action a local government could have taken in relation to inappropriate conduct when deciding what action to take for a councillor's misconduct and inappropriate conduct, and that the conduct tribunal may only take the disciplinary action a local government could have taken in relation to inappropriate conduct where the councillor has engaged in appropriate conduct and not misconduct (section 150AR); and makes numerous consequential amendments.

The amendments will assist in streamlining investigations and will ensure that any disciplinary action reflects the totality principle, i.e. the total penalty is just and appropriate.

#### *Confidential information - investigations*

Section 150CK of the LGA generally empowers the independent assessor to require a person to keep particular information related to an investigation confidential, by giving the person a notice.

The Bill amends section 150CK to clarify that if the assessor gives a notice about confidentiality to a person, the notice is also confidential information. This means that the person must not disclose the notice to another person unless the person has a reasonable excuse or in specified circumstances.

#### *Conduct tribunal – investigating suspected inappropriate conduct at the request of a local government*

Section 150DL of the LGA provides that the functions of the conduct tribunal include investigating, at the request of a local government, the suspected inappropriate conduct of a councillor referred to the local government by the independent assessor and making recommendations to the local government about dealing with the conduct.

The Bill inserts new section 150DLA to provide that if the conduct tribunal is investigating, at the request of a local government, the suspected inappropriate conduct of a councillor referred to the local government by the assessor and the conduct tribunal is reasonably satisfied the conduct is misconduct, the conduct tribunal must refer the conduct to the assessor for further investigation under part 3, division 4 of the LGA. As a consequence, the Bill also amends section 150T to provide that the assessor must investigate the conduct of a councillor if the conduct is the subject of a referral made to the assessor by the conduct tribunal; and section 150W in relation to the

actions the assessor may take after investigating the conduct of a councillor referred to the assessor by the conduct tribunal.

Further, the Bill amends section 150DL (Functions of the conduct tribunal) to clarify that nothing in the section limits the president's duty under the *Crime and Corruption Act 2001* to notify the CCC about suspected corrupt conduct.

#### Powers of mayor – budget, chief executive officer and senior executive employees

The LGA section 12(4)(b) provides that the mayor has the responsibility of preparing a budget to present to the local government.

The LGA section 107A provides that a local government must consider the budget presented by the mayor and, by resolution, adopt the budget with or without amendment. The mayor must give a copy of the budget, as proposed to be presented to the local government, to each councillor at least 2 weeks before the local government is to consider adopting the budget. The section further provides that the local government must adopt a budget before 1 August in the financial year to which the budget relates.

The Local Government Association of Queensland (LGAQ) at its 2017 conference passed a resolution that it '*lobby the State Government for a change to the Local Government Act 2009 to remove the two sections first added in 2012 (s 12(4)(b) and s 107A of the Local Government Act 2009) that places responsibility for preparation and presentation of a budget solely on the position of Mayor.*'

The LGAQ noted that despite the 2012 amendments almost all local mayors continued to work with their fellow councillors to develop the draft budget, although the mayor formally presents the final draft to councillors in accordance with the LGA section 107A. The collaborative approach taken by mayors in the period leading up to the formal budget adoption ensures all councillors have sufficient time, information and input. The LGAQ considered that removal of the LGA section 12(4)(b) and section 107A would give effect to current custom and practice across most Queensland local governments.

The Bill amends the LGA to repeal sections 12(4)(b) and 107A. Repealing these provisions will allow each local government to implement processes which are most efficient and effective given its specific circumstances.

Further, while it is accepted that the mayor should have the power to direct the chief executive officer, subject to certain limitations, and that the local government should appoint the chief executive officer, the Bill amends the LGA section 12(4)(d), section 170 and section 196 to:

- repeal the power of the mayor to direct senior executive employees and make a minor consequential amendment to the LGA section 258 (Delegation of mayor's powers) to remove 'senior executive employees' from subsection (2)
- provide that the chief executive officer appoints all employees, including senior executive employees (and make associated transitional provision for existing senior executive employees)

- provide that a direction by the mayor to the chief executive officer must not be inconsistent with a resolution, or a document adopted by resolution, of the local government
- provide that the chief executive officer must keep a record of each direction given by the mayor to the chief executive officer and make each direction available to the local government.

It is considered that the existing powers of the mayor in relation to the appointment and direction of senior executive employees are unnecessary, as the mayor and councillors have and will continue to have the ability to drive the local government's agenda via the following powers:

- all significant decisions or policies that a local government must make or adopt such as the budget and organisational structure are made by all councillors at a council meeting
- the mayor and councillors appoint the chief executive officer
- the mayor can provide strategic direction to the chief executive officer
- the amendments do not prevent the chief executive officer consulting with the mayor and councillors about the appointment of senior executive employees.

Further, under the LGA all employees have the responsibility to implement the policies and priorities of the local government, the chief executive officer appoints all other employees, and the chief executive officer is responsible for managing and taking disciplinary action against employees. The amendments provide for a clear separation between the elected councillors who decide the policies, priorities and strategic direction and employees who are responsible for implementing the decisions of the councillors.

#### Improved access to information for all councillors

Generally, the LGA section 170A and the COBA section 171 provide that a councillor may ask a local government employee to provide advice to assist the councillor to carry out his or her responsibilities under the Act and may ask the chief executive officer to provide information that the local government has access to. With respect to a request to the chief executive officer for information, the chief executive officer must make all reasonable endeavours to comply with the request otherwise a maximum penalty of 10 penalty units applies.

There are currently some anomalies between the LGA and the COBA provisions, namely, the LGA section 170A(2) refers to the information that can be requested as 'relating to the local government' where the COBA does not; and the COBA section 171(4) places restrictions on the advice or information that can be requested by providing that a request of a BCC councillor is of no effect if the request relates to any ward of BCC other than the ward the councillor represents.

To improve councillor access to the advice and information they need to carry out their responsibilities and to make informed decisions in the public interest and to ensure consistency between the LGA and the COBA, the Bill amends the LGA section 170A and/or the COBA section 171 to provide:

- the information that can be requested under the COBA is to relate to the council and that a BCC councillor can request advice or information across all wards of BCC
- if the request for advice or information relates to a document, a copy of the document must also be provided

- the chief executive officer must comply with a request made to the chief executive officer for advice or information within 10 business days after receiving the request or within 20 business days after receiving the request if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days - a maximum penalty of 20 penalty units applies
- the chief executive officer must, if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days after receiving the request, give the councillor written notice about the belief and the reasons for the belief within 10 business days after receiving the request.

#### Greater transparency around BCC decision-making

The *Right to Information Act 2009* (RTI Act) exempts information relating to BCC's Establishment and Coordination Committee from right to information requests for a period of 10 years, including Committee submissions, briefing notes, agendas and minutes. This exemption is similar to the exemption provided under the RTI Act in relation to Cabinet information, however, no other local governments in Queensland have such an exemption.

To improve transparency around BCC decision-making and to better align the regimes across all local governments in Queensland, the Bill amends the RTI Act to remove the current exemption that applies to information of BCC's Establishment and Coordination Committee (schedule 3, section 4A). The Bill includes a transitional provision to ensure that any information of the Committee that was exempt information before the commencement continues to be exempt information for 10 years after the date the information was most recently considered by the Committee before the commencement, or the date the information was brought into existence.

#### Suspended councillors – absence from local government meetings

Under the LGA sections 122 and 123 the Minister for Local Government may suspend a councillor or every councillor under certain circumstances. Further, under the LGA section 182A (renumbered as section 175K by the Bill) and COBA section 186B a councillor is automatically suspended when charged with a disqualifying offence.

Section 162(1)(e) of the LGA provides for when a councillor's office becomes vacant. Section 162(1)(e) provides that a councillor's office becomes vacant if the councillor is absent from 2 or more consecutive ordinary meetings of the local government over a period of at least 2 months, unless the councillor is absent:

- in compliance with an order made by the conduct tribunal, the local government or the chairperson of a meeting of the local government or a committee of the local government; or
- with the local government's leave.

For clarity, the Bill adds a further circumstance (iii) while the councillor is suspended under the LGA section 122, 123 or 175K. The amendment clarifies that a councillor's absence from 2 or more consecutive ordinary meetings of the local government over a period of at least 2 months does not result in the councillor's office becoming vacant if the councillor is absent while the

councillor is suspended under section 122 (Removing a councillor), 123 (Suspending or dissolving a local government) or 175K (Automatic suspension for certain offences).

Amendments to COBA section 162(d) provide that a councillor's office becomes vacant if the councillor is absent, without the council's leave, for 2 or more consecutive ordinary meetings of the council over at least 2 months, unless the councillor is absent while the councillor is suspended under COBA section 186B (Automatic suspension for certain offences).

#### Prohibitions on making major policy decisions during a caretaker period

Under the LGA section 90B and the COBA section 92B, a local government is prohibited from making a major policy decision during a caretaker period for the local government. A 'major policy decision' for a local government currently means a decision about the appointment, remuneration or termination of the chief executive officer of the local government or a decision to enter into a contract the total value of which is more than the greater of \$200,000 or 1% of the local government's net rate and utility charges.

The Bill amends the definition of 'major policy decision' in the LGA and the COBA (schedules 4 and 2 respectively) to prescribe additional decisions that a local government is prohibited from making during a caretaker period without the Minister's approval, namely a decision:

- relating to making or preparing an arrangement, list, plan or register in the way provided under a regulation that can be used to establish an exception to obtaining quotes or tenders when entering into a contract; or
- to make, amend or repeal a local law; or
- to make, amend or repeal a local planning instrument under the Planning Act; or
- under the Planning Act, chapter 3, part 3, division 2 on a development application that includes a variation request; or
- under the Planning Act, chapter 3, part 5, division 2, subdivision 2 on a change application that is a change to a variation approval.

These decisions are considered significant policy decisions which should not be made in the lead-up to a local government election as they could bind a future local government.

#### Prohibitions on publishing/distributing election material during a caretaker period

Under the LGA section 90D and the COBA section 92D, a local government is prohibited from publishing or distributing election material during a caretaker period for the local government. Election material is defined as anything able to, or intended to:

- (a) influence an elector about voting at an election; or
- (b) affect the result of an election.

The Bill amends these provisions to provide that as well as a local government, a local government-controlled entity, is prohibited from publishing or distributing election material during a caretaker period for the local government. In addition, the Bill provides an example of 'election material' to help clarify its meaning, namely, a fact sheet or newsletter that raises the profile of a councillor.

### Councillors' registers of interests

The LGA section 171B and the COBA section 173B provide that a councillor must inform the chief executive officer within 30 days if the councillor or a person related to the councillor has an interest that must be recorded in a register of interests or there is a change to an interest recorded in a register of interests. The maximum penalty for failing to comply with this requirement is 85 penalty units. If the offence is committed with intent the maximum penalty is 100 penalty units and the offence is defined as an integrity offence which means that the councillor automatically stops being a councillor and cannot be a councillor for four years if convicted of the offence.

The Bill replaces the two-tier offence and maximum penalties of 85 penalty units and 100 penalty units for unintentionally or intentionally failing to correct a register of interests with a single offence and maximum penalty of 100 penalty units and omits the offence from the prescribed list of integrity offences under schedule 1 of the LGA and the COBA.

The Bill also introduces new requirements in relation to a councillor's register of interests to enhance local government transparency, accountability and integrity and to mirror the obligations imposed on State Members of Parliament in relation to statements of interests, namely:

- a councillor must inform the chief executive officer of the particulars of their interests (and the interests of a person related to the councillor) within 30 days after the day the councillor's term starts, or a longer period allowed by the Minister. A person ceases to be a councillor if the person does not comply with this requirement; and
- a councillor must inform the chief executive officer, within 30 days after the end of each financial year, that their register of interests (which includes the interests of a person related to the councillor) is correct and complete or provide particulars of any new or changed interests. The maximum penalty for failing to comply with this requirement is 100 penalty units.

### Local government change – multi-member divisions

Chapter 2, part 3 of the LGA governs the process for making a local government change, including the assessment of proposed local government changes by the Local Government Change Commission and implementation by a regulation. Section 17 provides that a local government change is a change of a local government's boundaries, divisions (other than the City of Brisbane), number of councillors, name or classification.

The Bill amends section 17 to provide that a change of the number of councillors for a local government can also include a change of the number of councillors for a division of a local government area, therefore clarifying that a proposed local government change under section 17(2)(c) of the Local Government Act could request multi-member divisions and change the number of councillors per division. Consequently, the Bill also amends section 15 and section 16 to provide that each division of a local government area must have a reasonable proportion of electors for each councillor elected, or to be elected, for the division and that a local government must review (no later than 1 March in the year before the year of the quadrennial elections) whether each division of its local government area has a reasonable proportion of electors for each councillor elected for a division.



## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

The State Government will incur additional costs in the implementation of the measures contained in the Bill. Funding for these costs will be considered through normal budgetary processes.

## **Consistency with fundamental legislative principles**

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

### **Rights and liberties of individuals**

The fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals (LSA section 4(2)(a)).

#### *Application of new councillor complaints framework to the Brisbane City Council*

As part of the Government's response to the independent review panel's report '*Councillor Complaints Review: A fair, effective and efficient framework*', the Government gave an undertaking to review the councillor complaints framework applying to the Brisbane City Council (BCC) within six months of the commencement of the new councillor complaints framework under the *Local Government Act 2009* (LGA) to determine whether the new framework should be extended to the BCC. The new LGA councillor complaints framework commenced on 3 December 2018.

The Bill applies the new councillor complaints framework under chapter 5A of the LGA to the BCC and omits the existing provisions in the *City of Brisbane Act 2010* (COBA) dealing with the conduct and performance of BCC councillors and the conduct in meetings of the BCC (chapter 6, part 2, divisions 6 and 7). The key clauses are 16, 34, 35, 41, 123 and 125. The Bill also makes numerous consequential amendments.

It is considered appropriate and reasonable that the BCC and BCC's councillors are governed by the same legislative framework dealing with councillor conduct that applies to all other local governments and councillors in Queensland, including the same behavioural standards, offences, penalties and investigating and hearing bodies. Also, unnecessary duplication between the COBA and the LGA will be eliminated by applying the LGA provisions to the BCC.

*Application of the State's intervention powers under the LGA to the Brisbane City Council*

The Bill applies the full suite of the State's powers under the LGA to intervene in local government matters and to seek to suspend or dismiss a councillor or dissolve a local government to the BCC and omits the comparable provisions in the COBA (chapter 5, part 1). The key clauses are 16, 17, 19, 124 and 137. The Bill also makes numerous consequential amendments, including the application of chapter 6, part 7 of the LGA to the BCC to provide for the appointment of an interim management committee (if an interim administrator is appointed for the BCC under section 123 of the LGA), conditions of appointment for the interim administrator or member of the interim management committee, and end of appointment for the interim administrator or member of the interim management committee.

Section 150AR of the LGA permits the conduct tribunal to recommend to the Minister that a councillor be suspended or dismissed, and the Minister is empowered to recommend this action to the Governor in Council under section 122. If the conduct tribunal recommends that every councillor be suspended or dismissed the Minister (under section 123) may recommend that the Governor in Council suspend every councillor and appoint an interim administrator or dissolve the local government and appoint an interim administrator. Further, the LGA prescribes other grounds for the suspension/dismissal of a councillor or the dissolution of a local government, for example, where the Minister reasonably believes that a councillor or the local government has seriously or continuously breached the local government principles or reasonably believes it is otherwise in the public interest that a councillor or every councillor be suspended or dismissed.

In comparison, the COBA section 183 only empowers the BCC Councillor Conduct Review Panel to recommend to the Minister that a councillor be suspended for a stated period. Despite this, there is no power under the COBA for the Minister to suspend a BCC councillor. The COBA does not provide any other grounds for the suspension of a BCC councillor and does not, in any circumstances, provide for the dismissal of a BCC councillor or dissolution of the BCC.

The proposed amendments will provide the State with new powers of intervention with respect to the BCC, including enabling:

- the department's chief executive to appoint an advisor or a financial controller for the BCC (LGA sections 117 and 118)
- the Minister to suspend or revoke an unsound decision of the BCC (LGA section 121)
- the Minister to recommend that the Governor in Council suspend or dismiss a BCC councillor (LGA section 122)
- the Minister to recommend that the Governor in Council suspend every BCC councillor and appoint an interim administrator (LGA section 123)
- the Minister to recommend that the Governor in Council dissolve the BCC and appoint an interim administrator (LGA section 123).

The proposed amendments are considered appropriate and reasonable as they ensure the same sanctions across all local governments for the same conduct and complement the proposed application of the new councillor complaints framework under the LGA to the BCC.

*Independent assessor to investigate and deal with particular conduct of local government employees*

Currently under chapter 5A of the LGA, the independent assessor is responsible for investigating and dealing with the conduct of councillors where it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the independent assessor by the CCC, corrupt conduct. The independent assessor has no jurisdiction in relation to the conduct of local government employees.

The Bill provides that the independent assessor must investigate particular conduct of local government employees (including BCC employees at the appropriate time). Clause 79 inserts new section 150TA into the LGA to provide that the independent assessor must investigate the conduct of a local government employee if–

- (a) the conduct is the subject of a complaint referred to the assessor by the CCC; and
- (b) the conduct is connected to the conduct of a councillor that is the subject of a complaint referred to the assessor by the CCC.

For an investigation into particular conduct of a local government employee, the powers of investigators will be limited to the power to require a person to give information and the power to require a person to attend a meeting and answer questions (clauses 94 and 95). The Bill makes numerous consequential amendments, including to the functions of investigators (LGA section 150AY) and to the functions of the independent assessor (LGA section 150CU). However, the Bill does not empower the independent assessor to take any disciplinary action against a local government employee.

The proposed amendments are considered appropriate and reasonable to provide for the streamlining of investigations where the alleged corrupt conduct of a local government employee is linked to the alleged corrupt conduct of a councillor.

*Removal from office for membership of a political party – returning officer or assistant returning officer*

Currently the LGEA section 13 provides for automatic termination of a person’s appointment as a returning officer or assistant returning officer if the person becomes a member of a political party. The Bill (clause 157) amends the LGEA to provide that the electoral commission must remove a returning officer or assistant returning officer if the officer becomes a member of a political party.

This does not limit the electoral commission’s power to remove a returning officer or assistant returning office from office. Clause 157 of the Bill could potentially be inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals. However, the termination will have no practical effect given incumbents are appointed on the understanding that their appointment would be terminated before commencement of the next election.

### *Prisoner voting*

Under section 64 of the LGEA, a person who is serving a sentence of imprisonment is not entitled to vote at an election. This aligns with the position under the Commonwealth *Electoral Act 1918* prior to the High Court decision in *Roach v Electoral Commission* [2007] HCA 43 (Roach) which found the previous corresponding Commonwealth provision invalid because it cast the net of disqualification too widely without regard to the culpability of the offender. Clause 174 of the Bill amends section 64 to provide that only persons serving a sentence of three years or longer are disqualified from voting. This is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect rights and liberties of individuals. However, the Bill moderates the current position in favour of a broad class of prisoners, aligns with the current Commonwealth position and has regard to the culpability of a person's offending in disqualifying them from voting.

Clause 175 of the Bill amends section 69 of the LGEA to provide that electors serving a sentence of imprisonment, or who are otherwise lawfully detained, on the polling day for the election (which includes those held on remand and those who are sentenced to a term of imprisonment) must vote by way of declaration vote. These amendments could potentially be inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals. The amendment reflects operational considerations and current practice for prisoners who are eligible to vote.

### *Extension to limitation periods for commencing prosecutions*

To implement the Government's response to recommendation 29 of the Belcarra Report, the Bill (clauses 188 and 248) provides that a prosecution for the following offences may be started at any time within 4 years after the offence was committed:

- part 6 division 5 of the LGEA (Operation of accounts)
- section 183(1) of the LGEA (Engaging in group campaign activities)

This is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect rights and liberties of individuals. Administrative power to start a prosecution or proceeding under legislation should be responsive to the general principle that there must be an end to liability to prosecution or proceedings at some reasonable point.

The Belcarra Report recommended that the limitation period for these offences be extended to four years to address a problem identified during the investigation that many offences under the LGEA have a limitation period of only one year. The CCC stated that short limitation periods can pose a barrier to effective enforcement by preventing those who fail to comply with their obligations from being prosecuted, particularly where possible breaches are not identified for some time or where investigations are complex and protracted.<sup>25</sup> The amendment is also consistent with section 195 of the LGEA which currently provides that prosecutions for offences about disclosure returns may be started at any time within 4 years after the offence was committed.

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<sup>25</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government. 2017; p87.*

*Application for postal vote to be made at least 12 days before polling day*

Under section 79 of the LGEA, the returning officer must send a ballot paper and declaration envelope to an elector who requests a postal vote if the request is received not later than 7pm on the Wednesday before polling day. Section 81 of the LGEA provides for a similar requirement for a person who believes they are entitled to vote in a postal ballot but has not been given a ballot paper and declaration envelope. However, this does not reflect current postal service delivery standards and it is unlikely that persons who request a postal ballot paper so close to polling day will receive it before polling day, particularly if in remote and regional areas.

Clause 177 of the Bill amends section 79 and clause 178 amends section 81 to provide that an elector's postal vote request must be received by the returning officer not later than 7pm on the day that is 12 days before the polling day for the election (that is, the second Monday before polling day). This is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals.

The 12 day cut-off date for postal vote applications for all electors will mean that those who request a postal vote have the reasonable prospect of the postal ballot being received before polling day. Those electors who are likely to require a postal vote will need to make their request earlier than they presently do. An elector whose address is more than 20 kilometres from a polling booth may apply to be included on the register of special postal voters in advance of an election and will automatically be sent a postal ballot once the election period commences. Electors in many local government areas have access to pre-poll voting. Telephone voting is also available to a wide cohort of persons. The earlier cut-off is intended to minimise electors being unexpectedly disenfranchised due to the practical limitations of reliance on the postal network.

**Proportionality of penalties**

The Bill inserts a number of new offences and amends existing offences to achieve the policy objectives. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

*Belcarra Report recommendation 2 – electoral expenditure returns*

Recommendation 2 of the Belcarra Report is that *'the Local Government Electoral Act be amended to require real-time disclosure of electoral expenditure by candidates, groups of candidates, political parties and associated entities at local government elections. The disclosure scheme should ensure that:*

- (a) all expenditure, including that currently required to be disclosed by third parties, is disclosed within seven business days of the date the expenditure is incurred, or immediately if the expenditure is incurred within the seven business days before polling day*
- (b) all expenditure disclosures are made publicly available by the ECQ as soon as practicable, or immediately if the disclosure is provided within the seven business days before polling day.'*

The Government supported recommendation 2 in principle, with the comment that it would consider these matters as part of the review of expenditure caps for Queensland local government elections to be conducted in response to recommendation 1.

To implement the Government's response to recommendation 2 it is proposed to amend the LGEA to provide that candidates, groups of candidates, third parties, political parties and associated entities are to be required to disclose electoral expenditure. Section 195 of the LGEA currently provides for a number of offences in relation to returns required to be given under part 6 (Electoral funding and financial disclosure). It is proposed that the existing offences in section 195 of the LGEA will apply in relation to expenditure returns, as for other returns required to be given under part 6 of the LGEA.

*Belcarra Report recommendation 5 - groups of candidates*

Currently, section 183 of the LGEA provides that it is an offence for a group of candidates to advertise or fundraise if particular requirements are not complied with. The maximum penalties that apply are 100 penalty units.

Recommendation 5 of the Belcarra Report is that the definition of a group of candidates in the LGEA be amended so that a group of candidates is defined by the behaviours of the group and/or its members rather than the purposes for which the group was formed, and that consequential amendments be made to the LGEA, including with respect to the recording of membership and agents for groups of candidates, to account for the possibility that a group of candidates may be formed at any time before an election, including after the cut off for candidate nominations.

To implement the Government's response to recommendation 5, it is proposed to amend the LGEA to provide that a person, other than a member of a group of candidates or a candidate endorsed by a political party, may not engage in particular campaign techniques (clause 248).

A person undertaking a prohibited group-like campaigning technique, unless part of a group of candidates, will be:

- committing an offence with a maximum penalty of 100 penalty units
- committing an integrity offence (clauses 53 and 152).

Given the importance associated with improving transparency around the intention of candidates to operate as a collective, prescribing this offence as an integrity offence with a maximum penalty of 100 penalty units is proportionate and reasonable. This, along with the maximum penalty of 100 penalty units, will provide for an adequate deterrent for candidates engaging in group campaign activities who fail to comply with their legislative obligations to register as a group of candidates.

*Belcarra Report recommendation 6 – donor to disclose source of gift*

Belcarra Report Recommendation 6 is: *that the relevant details for gifts in section 109 of the LGEA be amended to state that, for a gift derived wholly or in part from a source [other than a person identified by s.109(b)(iii)] intended to be used for a political purpose related to the local government election, the relevant details required also include the relevant details of each person*

*or entity who was a source of the gift. Section 120(6) regarding loans should be similarly amended to reflect this requirement.*

The Government's response gave in principle support to Recommendation 6, noting that further analysis on the breadth and scope of the proposed amendment is required as well as to how the recommendation can be practically monitored and enforced.

To implement the Government's response to recommendation 6, the Bill (clause 235) provides that if an entity makes a gift or loan of a value of \$500 or more to a candidate, group of candidates or registered political party or a gift of a value of \$500 to a third party to enable political expenditure, the entity must give the recipient of the gift or loan the relevant details of the gift or loan and, if the entity is not the source of the gift or loan the entity must also give the relevant details of the entity that is the source of the gift or loan. The maximum penalty is 20 penalty units.

This requirement will ensure that candidates are aware of the original source of any gift they receive for the purpose of making a disclosure under part 6, division 3 of the LGEA. This is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals. Although making a gift or loan is voluntary, it may require an individual to disclose information that he or she may reasonably wish to keep private (specifically, name and address information).

This impact on an individual's privacy is necessary to allow for increased transparency of the electoral system and support electors to make informed decisions. Without this information, which supplements that already required under the LGEA by those who give disclosable gifts or loans, the information would not be meaningful enough to provide the degree of transparency to support this objective. In addition, a safeguard applies so that the silent electors will not have their addresses published by ECQ. Individuals can apply to be silent electors on the grounds that having their address on the electoral roll would place at risk their, or another person's, safety. This ensures that the disclosure required for transparency is appropriately balanced with measures to ensure that the privacy of the address information of vulnerable individuals is protected. The offence attracts a penalty of 20 penalty units, which is consistent with similar offences in the Act.

#### *Belcarra Report recommendation 8 – recipients to notify donors of disclosure obligations*

Recommendation 8 of the Belcarra Report is that *'the Local Government Electoral Act be amended to require all gift recipients, within seven business days of receiving a gift requiring a third party return under section 124 of the LGE Act, to notify the donor of their disclosure obligations. A suitable penalty should apply.'*

The CCC noted at page 67 of the Belcarra Report that *'Many people seemed to be unaware of or unclear about their disclosure obligations under the LGE Act.'* The CCC further noted that *'in state elections, candidates are required to notify donors of their disclosure obligations as soon as practicable after receiving a donation, with the failure to do so attracting a maximum penalty of 20 penalty units (a \$2523 fine). The CCC is of the view that introducing this same requirement for donation recipients in local government elections (Recommendation 8) would markedly increase*

*disclosure by donors.*’ The CCC referenced the *Electoral Act 1992* section 264(9) which applies to State elections.

The Government response supported recommendation 8 ‘*as it is a reasonable requirement and it enhances transparency. The amendment will place the onus on the candidate to ensure notification occurs.*’

To implement the Government’s response to recommendation 8, the Bill amends the LGEA to require candidates, groups of candidates and third parties within 7 business days after receiving a gift which may require a third party return under the LGEA to notify the donor that the donor may, be required to give a return (clause 237, section 122A). The amendment extends the scope of the notification requirement beyond that which applies under the *Electoral Act 1992* section 264(9) (which only applies to candidates) to apply to candidates, groups of candidates and a third party who receives a gift from another third party to enable expenditure for political activity.

The Bill provides for a maximum penalty of 20 penalty units for an offence against the notification requirements. A penalty of 20 penalty units is considered proportionate and reasonable as it is consistent with the penalty under the *Electoral Act 1992* section 264(9).

#### *Belcarra Report recommendation 10 – prospective notification of disclosure obligations*

Recommendation 10 of the Belcarra Report is that ‘*the Local Government Electoral Act be amended to require candidates, groups of candidates and third parties to prospectively notify any proposed donor of the candidate’s, group’s or third party’s disclosure obligations under section 117, 118 or 125 of the LGE Act.*’

To implement the Government’s response to recommendation 10, the Bill amends the LGEA to require a candidate, the agent for a group of candidates and a third party to take reasonable steps to notify the public about a requirement for a person to state, in a return, the relevant details for a gift or loan for which a return is required under the LGEA part 6 (clause 237, section 122). The notification must include a fair summary of the provisions of the LGEA under which the requirement arises. The Bill provides for a maximum penalty of 1 penalty unit for an offence against the notification requirements.

While the Belcarra Report did not address whether a penalty should be imposed, the Government response commented that ‘*Given that it requires proactive steps to notify prospective donors of the fact their donation will be publicly disclosed by candidates, groups of candidates or third parties, consideration will be given to the practical steps required to implement this recommendation.*’ Because the identity of prospective donors may not be known to the recipient, it is considered that a penalty of 1 penalty unit is proportionate and reasonable. The Bill provides examples of reasonable steps to notify the public. These include publishing a notice on the candidate’s, group’s or third party’s website; including a notice with brochures distributed in the local government area or division of a local government area for which the candidate has been nominated for an election.



Other offences in the LGEA carrying a maximum penalty of 1 penalty unit include section 187 which prohibits a person from wearing or displaying any badge or emblem of a political party in a polling booth, and section 188 which prohibits a person from displaying a political statement inside a polling booth or within 6 metres of the entrance to a building that is, or is part of, a polling booth.

*Belcarra Report recommendation 14 – restrictions on the use of dedicated accounts*

Belcarra Report Recommendation 14 is: *that sections 126 and 127 of the LGEA be amended to expressly prohibit candidates and groups of candidates from using a credit card to pay for campaign expenses. Candidates would be permitted to use debit cards attached to their dedicated account.*

The Government's response supported recommendation 14 in principle noting that allowing use of the debit card linked to the campaign account should overcome difficulties that could arise from prohibiting use of credit cards and that it appears the CCC's underlying concerns relate to reconciliation of individual purchases made by a credit card against expenditure from the campaign account. Further consideration to be given to practical implementation.

To implement the Government's response to recommendation 14 of the Belcarra Report, the Bill (clause 188) amends the LGEA to expressly prohibit candidates and groups of candidates from using a credit card to pay for campaign expenses. Candidates would be permitted to use debit cards attached to their dedicated account. The maximum penalty of 100 penalty units is equivalent to the penalty that applies if a candidate or group of candidates fails to take all reasonable steps to comply with the requirements for operation of dedicated accounts (section 126(8) and section 127(8) of the LGEA).

*Belcarra Report recommendation 30 – review of LGEA penalties*

Recommendation 30 of the Belcarra Report is that *'the penalties in the Local Government Electoral Act for offences including funding and disclosure offences be increased to provide an adequate deterrent to non-compliance. For councillors, removal from office should be considered.'* The Government's response supported recommendation 30 in principle.

The Bill amends the LGEA to increase the maximum penalties that apply for a number of existing offences to implement the Government's response to recommendation 30.

The CCC noted at page 88 of the Belcarra Report that most of the offences its investigation related to attracted only relatively small penalties. For offences relating to disclosure returns, for example, penalties in Queensland *'are generally the lowest of all Australian jurisdictions, and are significantly lower than the highest penalties in New South Wales and Western Australia, which both provide for terms of imprisonment'*.

The CCC further noted at page 89 *'the effect of reducing the perceived seriousness of wrongdoing by councillors and others, undermining the effectiveness of the legislative framework in promoting integrity, transparency and accountability. To help ensure that the offence provisions in the LGE Act are a sufficient deterrent to non-compliance and allow breaches to be adequately sanctioned, the CCC recommends increased penalties for LGE Act offences, particularly those related to*

*funding and disclosure (Recommendation 30). For councillors, serious consideration should be given to providing for their removal from office.’*

To implement the Government’s response to recommendation 30, the Bill amends maximum penalties for the following existing offences in the LGEA.

LGEA section 126 (Requirement for candidate to operate dedicated account)

LGEA section 127 (Requirement for group of candidates to operate dedicated account)

Section 126 of the LGEA places an obligation on a candidate to operate a dedicated account. The penalty for failing to take reasonable steps to comply with the requirements is 100 penalty units. Section 127 of the LGEA places an obligation on a group of candidates to operate a dedicated account. The penalty for failing to take reasonable steps to comply with the requirements is 100 penalty units.

Given the importance associated with dedicated accounts in allowing meaningful auditing of electoral financing the Bill prescribes these offences as integrity offences, which will mean that a person convicted of the offence cannot be a councillor for 4 years (clauses 13 and 121).

LGEA section 174 (Obstructing electoral officers etc.)

Section 174 of the LGEA prohibits obstruction of a proceeding at an election, a scrutineer entering or leaving a polling booth or an electoral officer performing a function under the LGEA. The maximum penalty that applies is 10 penalty units.

The Bill increases the maximum penalty to 20 penalty units or 6 months imprisonment (clause 190). This penalty is equivalent to the maximum penalty in section 179 (Interfering with election right or duty) of the *Electoral Act 1992*.

LGEA section 176A (Confidentiality of information)

Section 176A provides that a person who gains information because of the person’s involvement in the administration of the LGEA must not disclose the information other than in prescribed circumstances. The maximum penalty that applies is 40 penalty units or 18 months imprisonment.

The Bill increases the maximum penalty for the offence to 100 penalty units (clause 191). This is equivalent to the maximum penalty in section 373 (Confidentiality of information) of the *Electoral Act 1992*.

LGEA section 192 (Secrecy of voting)

Section 192(3) of the LGEA provides that an electoral officer, or scrutineer, must not make a mark, memorandum or note on a voters roll or any other list of voters or otherwise that indicates for whom a person has cast a vote, or that would enable the officer or scrutineer to know or remember for whom a person has cast a vote. The maximum penalty that may be applied is 10 penalty units.

Section 193 of the *Electoral Act 1992* provides for a similar offence about secrecy of voting with a maximum penalty of 20 penalty units or 6 months imprisonment. For consistency with the *Electoral Act 1992* and to provide for an adequate deterrent, it is proposed to increase the maximum penalty for the offence in section 192(3) of the LGEA to 20 penalty units or 6 months imprisonment (clause 195).

#### LGEA section 195 (Offences about returns)

Section 195(1) of the LGEA provides that a person must give a return the person is required to give under a provision of part 6 within the time required by the provision. The maximum penalty for failing to comply with this requirement is 20 penalty units. Given the importance of transparent and accountable electoral disclosures and the seriousness of the offence, the Bill increases the maximum penalty for this offence to 20 penalty units if the person took all reasonable steps to give the return within the time required and 100 penalty units otherwise (clause 196). The offence will also be prescribed as an integrity offence if the person failed to take reasonable steps to comply (clauses 13 and 121).

Section 195(2) of the LGEA provides that a person must not give a return the person is required to give under part 6 containing particulars that are, to the knowledge of the person, false or misleading in a material particular. The maximum penalty that may be applied if the person is required to give the return as a candidate is 100 penalty units or otherwise 50 penalty units. To reflect the seriousness of knowingly providing false or misleading information in a return given to the ECQ, the Bill increases the maximum penalty to 100 penalty units in all situations (clause 19).

Section 195(3) of the LGEA provides that if a candidate is a member of a group of candidates and the group's agent is required under section 118 or 120 to give a return, the candidate must not allow the agent to give the return if it contains particulars that are, to the knowledge of the candidate, false or misleading in a material particular. The maximum penalty that may be applied for this offence is 100 penalty units.

Given the importance of transparent and accountable electoral disclosures and the seriousness of the offences, the Bill also prescribes the offences in section 195(1)(b), (2) and (3) as integrity offences (clauses 13 and 121).

#### *Transitional provision – new integrity offences*

The Bill amends the LGA and COBA to provide that a councillor who was charged with or convicted of a disqualifying offence prior to commencement of the amendments must, unless the councillor has a reasonable excuse, immediately notify the Minister, the chief executive officer and, if the councillor is not the mayor, the mayor, if the charge remains pending or the disqualification period for the conviction has not expired.

The maximum penalty for these offences is 100 penalty units. This is consistent with the maximum penalty for the similar offences in sections 326 and 327 of the LGA and section 278 and 279 of the COBA. The rights and liberties of the person are protected because the provisions allow for the councillor to have a reasonable excuse for non-compliance.

*Expansion of existing offences – LGEA section 180(1) and (3) (Unauthorised how-to-vote cards)*

The existing offences and enforcement provision in the LGEA section 180 (Unauthorised how-to-vote cards) apply ‘on polling day for an election’. The LGEA schedule (Dictionary) provides that polling day, for an election, means the day stated in a notice under section 35; or fixed by notice under section 36; or fixed by a notice under section 38; or fixed by a notice under section 53.

Under section 180(1) a person must not distribute or authorise someone else to distribute a how-to-vote card to which section 179(1) or (2) applies, unless section 179(1) or (2) has been complied with for the card. A maximum penalty of 20 penalty units applies.

Clause 193 of the Bill amends the LGEA section 180(1) to apply the existing requirements and the maximum penalty of 20 penalty units ‘on a day when votes may be cast’ instead of ‘on polling day for an election’. This encompasses a range of ways of casting votes, in addition to voting at an ordinary polling booth on polling day, for example voting at mobile polling booths prior to polling day and voting at pre-polling booths.

The effect of the amendment is to expand the circumstances in which a penalty applies. It is considered that the penalty is proportionate and reasonable as it applies consistently ‘on a day when votes may be cast’ regardless of how or when the vote is cast. Further, there is no increase to the existing penalty under LGEA section 180(1), which is consistent with the penalty of 20 penalty units applying under the equivalent provision for State elections, the *Electoral Act 1992* section 183(9).

The enforcement provision in the LGEA section 180(2) is similarly amended to provide that if, on a day when votes may be cast, an electoral officer reasonably suspects a person is distributing a how-to-vote card which does not comply with the legislative requirements, the electoral officer may require the person to produce the how-to-vote card for inspection. Under section 180(2)(b) the electoral officer may confiscate any how-to-vote cards that have not been given as required under section 179(1) or (2). The effect of the amendment is to expand the circumstances in which the enforcement provision applies, replacing ‘on polling day for an election’ with ‘on a day when votes may be cast’.

Under the LGEA section 180(3) a person must not obstruct an electoral officer in the exercise of the power under subsection (2)(b), unless the person has a reasonable excuse. A maximum penalty of 20 penalty units applies. While the Bill does not amend this provision, the effect of the Bill’s amendment to section 180(2)(b) is to expand the circumstances in which a penalty under section 180(3) applies, to include obstructing an electoral officer in the exercise of powers on a day when votes may be cast. This encompasses a range of ways of casting votes, in addition to voting at an ordinary polling booth on polling day, for example voting at mobile polling booths prior to polling day and voting at pre-polling booths.

It is considered that the penalty is proportionate and reasonable as it applies consistently ‘on a day when votes may be cast’ regardless of how the vote is cast. Further, there is no increase to the existing penalty under LGEA section 180(3), which is consistent with the penalty of 20 penalty

units applying under the equivalent provision for State elections, the *Electoral Act 1992* section 183(11).

*Failing to comply with a request for advice or information – LGA/COBA*

The LGA section 170A(8) and the COBA section 171(7) provide that a chief executive officer must make all reasonable endeavours to comply with a request from a councillor for information that the local government has access to. The maximum penalty for failing to comply with this requirement is 10 penalty units.

Clauses 47 and 147 of the Bill provide that a chief executive officer must comply with such a request within 10 business days after receiving the request, or, if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days, within 20 business days after receiving the request. The maximum penalty is increased from 10 penalty units to 20 penalty units. The Bill also applies the revised requirement and increased penalty with respect to a councillor asking the chief executive officer for advice to assist the councillor carry out his or her responsibilities. Currently, a councillor may ask a local government employee to provide such advice but there is no penalty for non-compliance. The new penalty applies only where the request for advice has been made of the chief executive officer.

The amendments are considered reasonably justified as they reflect the importance of councillors acquiring all the advice and information needed to carry out their responsibilities and make informed decisions in the public interest. Further, the increase in penalty from 10 penalty units to 20 penalty units is considered reasonably proportionate to the seriousness of the offence and a suitable deterrent to the potential interruption of the functions of elected local government representatives. A safeguard is included where the chief executive officer can extend (by written notice) the timeframe for complying with a request from 10 business days to 20 business days if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days. The notice must contain the reasons for the belief and be given to the councillor within 10 business days after receiving the request.

*Councillor conflicts of interest – LGA/COBA*

Chapter 6, part 2, division 5A of the LGA and chapter 6, part 2, division 5A of the COBA provide for dealing with councillors' personal interests in local government matters at local government meetings. These divisions provide for a number of offences in relation to conflicts of interest.

The Bill (clauses 7, 106 and 111) omits these provisions and inserts new chapter 5B of the LGA and chapter 6 part 2 division 5A of the COBA to deal with conflicts of interest. The new provisions replace the terms 'material personal interest' and 'conflict of interest' with new terms 'prescribed conflict of interest' and 'declarable conflict of interest'. Further, the new provisions apply if a councillor is participating in a decision in a meeting of the local government or a committee, or if the councillor is participating in a decision as a delegate of the local government, or under an Act or other authority.

The Bill inserts the following new offences in relation to prescribed conflicts of interests:

- section 150EK LGA/section 177H COBA: a councillor with a prescribed conflict of interest in a matter must not participate in a decision relating to the matter
- section 150EL LGA/section 177I COBA: a councillor must give notice of a prescribed conflict of interest to the chief executive officer and subsequently to a meeting of the local government or a committee, or, if the councillor first becomes aware of the prescribed conflict of interest in a meeting, the councillor must immediately inform the meeting of the conflict
- section 150EM(2) LGA/section 177J COBA: a councillor with a prescribed conflict of interest in a matter who has given notice to a meeting must leave the meeting while the matter is discussed and voted on.

The maximum penalties that apply to these offences are 200 penalty units or 2 years imprisonment. These penalties are equivalent to the higher maximum penalty that applies under current provisions (section 175C(2) LGA/section 177C(2) COBA) in relation to material personal interests. The offences in sections 150EK and 150EL LGA and sections 177H and 177I COBA are prescribed as integrity offences (clauses 13 and 121).

The Bill inserts the following new offences in relation to declarable conflicts of interests:

- section 150EQ LGA/section 177N COBA: a councillor must not participate in a decision and must give notice of a declarable conflict of interest to the chief executive officer and subsequently to a meeting of the local government or a committee, or, if the councillor first becomes aware of the declarable conflict of interest in a meeting, the councillor must immediately inform the meeting of the conflict
- section 150ES LGA/section 177P COBA: a councillor must comply with any conditions imposed by other councillors in relation to the councillor's participation in a decision in which the councillor has a declarable conflict of interest.

The maximum penalties that apply to these offences are 100 penalty units or 1 year's imprisonment. These penalties are equivalent to the maximum penalty that applies under current provisions (section 175E(2) and (5) LGA/section 177E(2) and (5) COBA) in relation to conflicts of interests. The offences in section 150EQ LGA and section 177N COBA are prescribed as integrity offences (clauses 13 and 121).

The Bill also inserts the following offences which are similar to existing offences in the LGA and COBA:

- section 150EY LGA/section 177V COBA: offence to take retaliatory action. The maximum penalty for this offence is 167 penalty units or 2 years imprisonment and the offence will be prescribed as an integrity offence. This is equivalent to the maximum penalty that currently applies under section 175H LGA/section 177H COBA (Offence to take retaliatory action)
- section 150EZ LGA/section 177W COBA: offence for councillor with prescribed or declarable conflict of interest to influence others. The maximum penalty for this offence is 200 penalty units or 2 years imprisonment and the offence will be prescribed as an integrity offence. This is equivalent to the maximum penalty that currently applies under section 175I LGA/section 177I COBA (Offence for councillor with material personal interest or conflict of interest to influence others).

The maximum penalties that apply under the new provisions are substantial. However, they are reasonable and proportionate to ensure integrity in local government decision making and to reflect the local government principles that decision-making is in the public interest and supported by transparent and effective processes.

*Failing to comply with register of interests' obligations – LGA/COBA*

The LGA section 171B and the COBA section 173B provide that a councillor must inform the chief executive officer (in the approved form within 30 days) if the councillor or a person related to the councillor has an interest that must be recorded in a register of interests or there is a change to an interest recorded in a register of interests. The maximum penalty for failing to comply with this requirement is 85 penalty units. If the offence is committed with intent the maximum penalty is 100 penalty units and the offence is defined as an integrity offence which means that, if convicted, the councillor automatically stops being a councillor and cannot be a councillor for four years.

Clauses 49 and 149 of the Bill replace the two-tier offence and maximum penalties of 85 penalty units and 100 penalty units for unintentionally or intentionally failing to correct a register of interests with a single offence and maximum penalty of 100 penalty units and omits the offence from the prescribed list of integrity offences under schedule 1 of the LGA/COBA (clauses 53 and 152). The Bill (clauses 48 and 148) also requires that a councillor must inform the chief executive officer (in the approved form) of the particulars of their interests (and the interests of a person related to the councillor) within 30 days after the day the councillor's term starts, or a longer period allowed by the Minister. A person ceases to be a councillor if the person does not comply with this new requirement. Further, clauses 50 and 150 of the Bill require that within 30 days after the end of each financial year, a councillor must inform the chief executive officer (in the approved form) that their register of interests (which includes the interests of a person related to the councillor) is correct and complete or provide particulars of any new or changed interests. The maximum penalty for failing to comply with this new requirement is 100 penalty units.

The proposed new requirements mirror the obligations imposed on State Members of Parliament (MPs) to submit their first statements of interests within one month of taking office (*Parliament of Queensland Act 2001* (PQ Act), section 69B(1)), confirm their statements of interests are correct within one month of 30 June annually (*Standing Orders of the Legislative Assembly*, schedule 2 section 5(3)), and notify any changes to their statements of interests within one month after becoming aware of a change (PQ Act, section 69B(2)).

While the consequences for non-compliance of the proposed new requirements are greater than those that apply to State MPs, the penalties are considered reasonably proportionate and commensurate to the seriousness of the non-compliance. The proposed amendments promote the public interest ahead of the private interests of councillors and enhance local government transparency, accountability and integrity. The proposed maximum penalties of 100 penalty units for failing to correct a register of interests within 30 days after a change happens or failing to provide an annual confirmation that a register of interests is correct and complete, are equivalent to the existing maximum penalty under the LGA and the COBA for intentionally failing to correct a register of interests within 30 days after a change happens. Further, the consequence of a person

ceasing to be a councillor if the person does not inform the chief executive officer of their interests (and the interests of a person related to the councillor) within 30 days after the day the councillor's term starts or a longer period allowed by the Minister is identical to the consequence for a councillor failing to make the declaration of office within one month after being appointed/elected or a longer period allowed by the Minister (LGA/COBA section 169(5)). The Minister being empowered to allow a longer period for the giving of particulars of interests at the start of a councillor's term is considered a sufficient safeguard.

*Giving of notice about particular conduct vexatiously or other than in good faith – LGA*

Under the LGA section 150R, a local government official must give the independent assessor a notice about a councillor's conduct if they become aware of information indicating the councillor may have engaged in inappropriate conduct or misconduct. A 'local government official' is a councillor or the chief executive officer of the local government.

Clause 76 of the Bill amends section 150R of the LGA to provide that the local government official must not give the notice vexatiously or other than in good faith. A maximum penalty of 85 penalty units applies. For the purposes of applying the new councillor complaints framework under the LGA to the BCC, the Bill also provides for extending, at the appropriate time, the definition of 'local government official' to include the chief executive officer under the COBA.

While the threshold for the giving of a notice is quite low, i.e. if a local government official becomes aware of information indicating a councillor may have engaged in appropriate conduct or misconduct, the proposed new offence and penalty is considered proportionate and reasonable given the possible reputational damage to a councillor. Further, the proposed maximum penalty of 85 penalty units is the same as the existing maximum penalty under section 150AV of the LGA in relation to a person making a complaint about the conduct of a councillor vexatiously or not in good faith. The LGA section 150AV was modelled on section 216A of the *Crime and Corruption Act 2001* which imposes a maximum penalty of 85 penalty units if a person makes a complaint to the CCC vexatiously, not in good faith, or in other ways.

*Election and elector information – LGEA*

Clause 219 of the Bill inserts new section 101A into the LGEA which requires ECQ to:

- publish information about first preference votes and the distribution of votes; and
- give a registered political party, a group of candidates if at least 1 member of the group was elected and a candidate who was elected but was not a member of a group of candidates or endorsed by a registered political party elector information (that is, names and addresses; method of voting and in some instances, location of voting) on request.

However, ECQ must not give electoral information about a silent elector.

Section 101A(8) provides that a person must not use, disclose or allow another person to access elector information except for a purpose related to an election. The maximum penalty for this offence is 200 penalty units.



The proposal is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect rights and liberties by allowing political parties, groups of candidates and elected councillors access to the personal information of voters. Making this information available will assist the analysis of the demographics and patterns of voting at polling booths and changes in those demographics and patterns over time. It will also assist in communicating relevant information to electors (for example, where the location of polling booths change between elections). The information will also assist political participants to communicate with electors using methods consistent with voting trends. This will allow voters to be better informed in performing their duty to vote.

The provision is also consistent with the approach in New South Wales, Victoria and the Commonwealth. As an additional safeguard, the related offence provision is cast broadly providing that a person must not use, disclose to another or allow another person to access elector information unless the use, disclosure or giving of access is for a purpose related to an election.

#### *False or misleading information about gift - LGEA*

The Bill at clause 249 inserts a new section 195A into the LGEA. It provides that a person must not publish information about a gift made to or received by a candidate in an election, a group of candidates for an election, a registered political party or a third party that the person knows is false or misleading in a material particular. The maximum penalty is 20 penalty units.

This provision could potentially be inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals. The offences are appropriate and the penalties proportionate to the nature of the offending.

#### *Supply of voters roll to candidates – LGEA*

The Bill at clause 158 provides that a person must use, disclose to another person or allow another person access to information in a copy of a voters roll given to a candidate, unless the use, disclosure or giving of access is for a purpose provided for in this section. A maximum penalty of 20 penalty units or 6 months imprisonment will apply.

This is potentially inconsistent with the fundamental legislative principles that legislation should not adversely affect the rights and liberties of individuals. The amendment provides appropriate penalties to safeguard the information on the voters roll from misuse.

#### **Immunity from civil liability**

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification (LSA section 4(3)(h)).

*Extending civil liability protections to the BCC*

Section 235 of the LGA confers immunity upon State and local government administrators who act honestly and without negligence for acts done, or omissions made, under the LGA or the LGEA.

As a result of the Bill applying the provisions in the LGA relating to the powers of the State to intervene in local government matters (chapter 5, part 1) and councillor conduct (chapter 5A) to the BCC, clause 139 of the Bill extends the immunity under the LGA section 235 to a BCC councillor and the chief executive officer of the BCC as ‘local government administrators’, and to acts done or omissions made, honestly and without negligence, under the COBA.

The proposed amendments are considered reasonably justified to ensure that the same civil liability protections apply to the BCC that apply to all other local governments in Queensland for actions taken under the LGA. The provision provides immunity for an act done, or omission made, honestly and without negligence and shifts liability to the State or a local government in these circumstances. This safeguard ensures that an aggrieved party will be able to seek relief from the State or a local government.

**Administrative power should be subject to appropriate review**

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review—LSA section 4(3)(a).

*State intervention powers – public interest*

The Bill expands the basis on which remedial action can be taken by the Minister in relation to a local government or its councillors under the LGA, chapter 5, part 1 (including in relation to BCC and its councillors). Section 114 of the LGA provides that decisions of the Minister under part 1 are not subject to appeal. Accordingly, the LGA section 244 (Decisions not subject to appeal) applies. Under amendments in the Bill section 244 (clause 118), unless the Supreme Court decides the decision is affected by jurisdictional error, the decision is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside, or called into question in another way (including under the *Judicial Review Act 1991* (JR Act)) and is not subject to any declaratory, injunctive or other order of the Supreme Court, a tribunal or other entity court on any ground (see further explanation in relation to amendments to section 244 below).

Under amendments to section 116 (clause 64), if the department’s chief executive believes the local government or councillor is not performing their responsibilities properly or the local government or councillor is not complying with laws applying to the local government or councillor, including the Local Government Acts, or it is otherwise in the public interest for the Minister to take remedial action, the chief executive may make recommendations to the Minister about what remedial action to take. The Minister may take the remedial action the Minister considers appropriate in the circumstances.

The policy intent of the amendments to section 116 is to provide for appropriate remedial action. It is considered necessary that the existing limitation on review of administrative decisions applies in these circumstances. Safeguards include that the chief executive must hold a belief before making recommendations to the Minister. Further, if the Minister takes remedial action, the Minister may publish information about the way in which the local government or councillor is not performing their responsibilities properly or is not complying with laws applying to the local government or councillor or the reason it is in the public interest for the Minister to take remedial action.

Under amendments to section 121 (clause 68) if the Minister believes it is otherwise in the public interest to suspend or revoke a decision of the local government the Minister may suspend or revoke the decision.

The LGA section 121(2) provides that a ‘decision’ is (a) a resolution; or (b) an order to give effect to a resolution; or (c) a planning scheme; or (d) a part of a decision mentioned in paragraphs (a) to (c). (The LGA section 121(7) provides that the State is not liable for any loss or expense incurred by a person because a local government’s decision is suspended or revoked under this section.)

The policy intent of the amendments to section 121 is to provide for action to be taken in the public interest. It is considered that the public interest justifies such a limitation on review of administrative decisions. Further, it is considered that sufficient safeguards apply. The LGA section 120(2) provides that the Minister must give the local government or councillor written notice of the proposal to exercise a power under chapter 5, part 1, division 3. Under the LGA section 120(5) the Minister must have regard to all submissions that are made by the local government or councillor within the time specified in the notice.

There may be circumstances where the public interest justifies or even requires that a specific fundamental legislative principle example be modified or displaced.<sup>26</sup> It is considered that if circumstances arise which lead to the exercise of the Minister’s powers under amendments to the LGA sections 116 and 121, considerations of public interest justify the limitation on review of administrative decisions. Further, under the general law, judicial review can only be excluded to the extent the decision is not affected by jurisdictional error. The power to review jurisdictional error is a defining characteristic of the Supreme Court of a State.

*Review by QCAT – decisions of the conduct tribunal about inappropriate conduct*

Section 150AT of the LGA provides that the independent assessor and a councillor may apply to QCAT, as provided under the QCAT Act, for a review of a decision made by the conduct tribunal about councillor misconduct.

Clause 81 of the Bill provides that the independent assessor may, if reasonably satisfied that a councillor’s conduct is inappropriate conduct that is connected to conduct of the councillor that the independent assessor is reasonably satisfied is misconduct, make an application to the conduct

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<sup>26</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook* page 9

tribunal about the alleged misconduct and inappropriate conduct (rather than refer the suspected inappropriate conduct to the local government to deal with). The intent is to streamline investigations and for any penalty imposed to reflect the totality principle. In such circumstances, the Bill also enables the independent assessor and the councillor to apply to QCAT for a review of the inappropriate conduct decision.

It is considered appropriate that a review by QCAT is available for a decision made by the conduct tribunal about inappropriate conduct in the same way that a decision of the conduct tribunal about misconduct is reviewable by QCAT. Safeguards include that the independent assessor must be reasonably satisfied that the conduct is inappropriate conduct that is connected to conduct of the councillor that the independent assessor is reasonably satisfied is misconduct (the more serious level of conduct), before making an application to the conduct tribunal. After conducting a hearing, the conduct tribunal must decide whether or not the councillor has engaged in misconduct or inappropriate conduct or both. Further, the penalties available to the conduct tribunal will be limited where only the inappropriate conduct allegations are sustained, i.e. the conduct tribunal may only take the action a local government could have taken under section 150AH in relation to inappropriate conduct.

The review rights to QCAT are considered to provide an appropriate balance between individuals' rights and ensuring the system of disciplinary hearings is simple and efficient to minimise disruption to council operations.

*Soorley Report recommendation 44 – postal-only voting*

Recommendation 44 of the Soorley Report is that '*postal-only voting be restricted to councils in remote and regional areas where the total number of electors is less than 5000. All other councils should only have pre-poll, absentee and election day polling booth voting.*'

The Government's response commented that the Government will undertake a comprehensive review of early voting processes including postal and pre-polling in preparation for the next ordinary general State election and the next local government election. It was noted that postal-only voting is currently restricted to the local government context.

To improve transparency and accountability in decisions about whether a local government election can be conducted by postal ballot only, it is proposed to amend the LGEA to expressly provide for matters which must be considered. In addition, as the way an election is conducted will have operational impacts on the ECQ, it is proposed to amend the LGEA to provide that the application must be considered by ECQ and a recommendation made to the Minister about whether the application should be approved.

The Bill (clause 166) amends the LGEA to provide that a local government may apply to the electoral commissioner for a poll to be conducted by postal ballot. The electoral commissioner must make a recommendation to the Minister as to whether the application should be approved. The commissioner, in making a recommendation, must consider the following matters:

- the reasons provided by the local government as to why a postal ballot should be held

- the costs involved in running a postal ballot in comparison with the costs involved in running an election with ordinary polling booths
- the number of voters enrolled in the local government area, a division or divisions of the local government or a part of the local government area
- the population density and distribution in the local government area, a division or divisions of the local government or a part of the local government area
- whether polls for the local government area, a division or divisions of the local government or a part of the local government area have previously been conducted by postal ballot.

The electoral commissioner may also ask the local government for further information the commissioner reasonably requires to make the recommendation.

In making a decision to approve or not to approve the application, the Minister must consider the recommendation of the electoral commissioner and the matters stated above.

Section 45 currently provides that a decision of the Minister in relation to a postal ballot is not subject to appeal. This is not proposed to change and no review rights are to be provided for in relation to a recommendation of the commissioner.

It is appropriate for review rights not to be available in this situation to ensure that a ballot is able to proceed within the timeframes provided for in the LGEA and is not delayed while a review of the decision is carried out. Prescribing matters to be considered provides greater transparency around the commissioner's recommendation and the Minister's decision. Further, the proposed amendments will not affect the availability to voters of postal voting irrespective of whether the local government's application for a postal ballot is approved. In addition, if the local government's application is not approved, other options, such as pre-poll voting and electronically assisted voting may be available to voters.

#### *Decisions not subject to appeal – LGA/COBA/LGEA*

Section 226 of the COBA, section 244 of the LGA and section 158 of the LGEA provide that if a provision of the relevant Act declares a decision to be not subject to appeal, that means the decision can not be appealed against, challenged, reviewed, quashed, set aside, or called into question in any way (including under the JR Act, for example); and is not subject to any writ or order of a court on any ground.

Clauses 11, 118 and 189 of the Bill replace these sections with new sections which clarify that the sections apply unless the Supreme Court decides the decision is affected by jurisdictional error. Further, the new provisions provide that part 5 of the JR Act (Prerogative orders and injunctions) applies to the decision to the extent it is affected by jurisdictional error and that a person who would otherwise have been entitled to make an application under the JR Act in relation to the decision may apply under part 4 (Reasons for decision) of that Act for a statement of reasons in relation to the decision.

## **Natural justice**

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice—LSA section 4(3)(b).

The principles of natural justice are principles developed by the common law. The first principle requires that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person's case to the decision-maker. The second principle is that the decision-maker must be unbiased. Third, the principles require procedural fairness, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.<sup>27</sup>

### *State intervention powers – public interest*

The Bill strengthens the existing State intervention powers in the LGA chapter 5, part 1 to allow remedial action to be taken in certain circumstances, including in the public interest. These amendments will apply to all local governments, including BCC.

Under amendments to section 116 (clause 64), if the department's chief executive believes the local government or councillor is not performing their responsibilities properly or the local government or councillor is not complying with laws applying to the local government or councillor, including the Local Government Acts, or it is otherwise in the public interest for the Minister to take remedial action, the chief executive may make recommendations to the Minister about what remedial action to take. The Minister may take the remedial action the Minister considers appropriate in the circumstances.

The policy intent of the amendments to section 116 is to provide for appropriate remedial action. It is considered that principles of natural justice are satisfied. Safeguards include that the chief executive must hold a belief before making recommendations to the Minister. The Minister has the power to consider the appropriateness of the remedial action in the circumstances.

Further, if the Minister takes remedial action, the Minister may publish information about the way in which the local government or councillor is not performing their responsibilities properly or is not complying with laws applying to the local government or councillor or the reason it is in the public interest for the Minister to take remedial action.

If the Minister proposes to take remedial action under chapter 5 part 1 division 3 of the LGA, the Minister is required under section 120 of the LGA to give written notice to the councillor or local government of the proposal to exercise the power, unless the Minister considers that giving notice is likely to defeat the purpose of the exercise of the power; or the notice would serve no useful purpose.

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<sup>27</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 25

The notice must state the power that the Minister proposes to exercise, the reasons for exercising the power, any remedial action that the local government or councillor should take, and a reasonable time within which the local government or councillor may make submissions to the Minister about the proposal to exercise the power. The reasons stated in the notice are the only reasons that can be relied on in support of the exercise of the power. The Minister must have regard to all submissions that are made by the local government or councillor within the time specified in the notice. This affords the local government and councillors natural justice in relation to the Minister's exercise of the power, by providing an opportunity for them to respond to the grounds on which the Minister proposes to act before the Minister makes a final decision.

### **Balancing individual and community or more general interests**

The LSA lists matters to be considered in deciding whether legislation has sufficient regard to rights and liberties of individuals. The list of examples is not exhaustive of the issues relevant to this decision. Consideration of the effect of legislation on the rights and liberties of individuals often involves examining the balance between the rights of individuals and the rights of the community or more general rights.<sup>28</sup>

#### *State intervention powers – public interest*

The Bill strengthens the existing State intervention powers in the LGA chapter 5, part 1 to allow remedial action to be taken in certain circumstances, including in the public interest. These amendments will apply to all local governments, including BCC.

Under amendments to section 116 (clause 64), if the department's chief executive believes the local government or councillor is not performing their responsibilities properly or the local government or councillor is not complying with laws applying to the local government or councillor, including the Local Government Acts, or it is otherwise in the public interest for the Minister to take remedial action, the chief executive may make recommendations to the Minister about what remedial action to take. The Minister may take the remedial action the Minister considers appropriate in the circumstances.

It is considered that the amendments to section 116 provide an appropriate balance between the rights of individuals and the rights of the community or more general rights. Safeguards include the power to publish information about the way in which the local government or councillor is not performing their responsibilities properly or not complying with laws or the reason it is in the public interest for the Minister to take remedial action.

Under amendments to section 121 (clause 68) if the Minister believes it is otherwise in the public interest to suspend or revoke a decision of the local government the Minister may suspend or revoke the decision. The LGA section 121(2) provides that a 'decision' is (a) a resolution; or (b) an order to give effect to a resolution; or (c) a planning scheme; or (d) a part of a decision mentioned in paragraphs (a) to (c). (The LGA section 121(7) provides that the State is not liable

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<sup>28</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 138

for any loss or expense incurred by a person because a local government's decision is suspended or revoked under this section.)

The additional ground on which the Minister may suspend or revoke decisions of the local government, i.e. in the public interest, may affect the rights and liberties of individuals. It is considered that the amendments provide an appropriate balance between the rights of individuals and the rights of the community or more general rights. Further, it is considered that sufficient safeguards apply. The LGA section 120(2) provides that the Minister must give the local government written notice of the proposal to exercise a power under chapter 5, part 1, division 3. Under the LGA section 120(5) the Minister must have regard to all submissions that are made by the local government within the time specified in the notice. The amendments to the LGA section 121 also provide that the gazette notice must state why it is otherwise in the public interest to suspend or revoke the decision and if the decision has been suspended how the decision may be amended so it is no longer in the public interest to suspend the decision.

### **Reversal of onus of proof**

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification (LSA section 4(3)(d)).

#### *Belcarra Report recommendations 7 and 21 – knowledge of original source of gifts/loans*

To implement the Government's policy in relation to recommendation 7 of the Belcarra Report, the Bill (clause 246) amends the LGEA (new section 162A) to provide that in a proceeding for an offence against the LGEA relating to a gift or loan made to an election participant, the participant is presumed to know certain matters unless the contrary is proven. The matters are: that the gift or loan was made to the election participant and the identity of the entity that is the source of the gift or loan. An election participant means a candidate in an election; a group of candidates for an election; a third party to which section 118A (Gifts to third parties to enable political expenditure) or section 125A (Expenditure returns—political expenditure by third party) applies for an election or an agent of a group of candidates. Similar amendments are made at clause 244 of the Bill to the LGEA section 131 (Inability to complete returns).

In addition, to implement the Government's response to recommendation 21 of the Belcarra Report, the Bill (clause 144) amends the LGA (new section 150FB) and (clause 51) amends the COBA (new section 177Y) to provide that in a proceeding for an offence against a conflict of interest provision, relating to a gift or loan given or made to a councillor, the councillor is presumed to know that the gift or loan was given to the councillor and the source of the gift or loan, unless the contrary is proven.

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification. The Belcarra Report recommendation 7 recommended the inclusion of a provision to deem a gift and the source of a gift to be within the knowledge of persons required to lodge a return under the LGEA for the purposes of proving particular offences under that Act to increase transparency of donations for the benefit of voters and to ensure that candidates inquire about, and



have full knowledge of, the true sources of their campaign funds.<sup>29</sup> Recommendation 21 of the Belcarra report recommended amendments to deem a gift and source of the gift referred to in recommendation 6 be deemed to be at all times within the knowledge of the councillor for the purposes of chapter 6 part 2 divisions 5 and 6 of the LGA and COBA to address concerns that a conflict of interest may be ‘washed away’ by virtue of a donation being made via a third party.<sup>30</sup>

To ensure that recipients are aware of the source of gifts or loans, the Bill (clause 235) inserts new section 121B into the LGEA which provides that if an entity makes a gift or loan of a value of \$500 or more to a candidate, group of candidates or registered political party, or a gift of a value of \$500 to a third party to enable political expenditure, the entity must, when making the gift or loan, give the recipient notice of the relevant details of the gift or loan and, if the entity is not the source of the gift or loan, the entity must also give the recipient notice of that fact along with relevant details of the entity that is the source of the gift or loan. The maximum penalty is 20 penalty units. New section 121A of the LGEA provides for when an entity is the source of a gift or loan.

## **Institution of Parliament**

The fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament (LSA section 4(2)(b)).

### **Delegation of legislative power**

The Bill provides for a regulation to prescribe various matters. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill 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)).

### *Regulations*

Clause 27 – COBA new section 160AA (Extension of term of councillors elected at fresh elections)

Clause 221 – LGEA new section 106A (Meaning of *disclosure period*)

Clause 226 – LGEA new section 112A (When expenditure is incurred)

Clause 163 – LGEA amended section 32 (Announcement of nominations)

Clause 240 – LGEA amended section 128 (Electoral commission must publish returns and other documents)

Clause 248 – LGEA amended section 183 (Engaging in group campaign activities)

New section 160AA provides that a regulation may declare that the councillors elected at a fresh election are elected for a term ending at the conclusion of the quadrennial elections after the next quadrennial elections. This reflects the extension of the LGA state intervention powers to the BCC and is equivalent to section 160A of the LGA.

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<sup>29</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government. 2017; p.65.*

<sup>30</sup> *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government. 2017; p.80.*

New section 106A provides for disclosure periods for candidates, groups of candidates and third parties in an election and allows a regulation to prescribe another day on which a disclosure period may start or end. This section reflects the existing regulation making powers in sections 114, 115, 116, 124 and 125 of the LGEA.

New section 112A of the LGEA provides that, for part 6 of the LGEA, expenditure is incurred when the goods or services for which the expenditure is incurred are delivered or provided. The section specifically provides when expenditure on advertising and expenditure on the production and distribution of material for an election is incurred. For expenditure of another kind, the provision allows a regulation to prescribe the time the expenditure is incurred.

Amended section 32 of the LGEA provides for the publication of information or statement contained in a nomination on the commissioner's website after the nomination of a person has been certified and allows a regulation to prescribe the details that are to be published on the website. It is appropriate to provide that these matters may be delegated to subordinate legislation due to the nature and level of detail of a candidate's information required to be disclosed currently and with the new disclosure requirements for particular interests.

Amended section 128 of the LGEA provides, in relation to publishing returns and other documents on the ECQ website, that if publishing a return or other document would disclose any information prescribed by regulation, the electoral commission must publish a copy of the return or document from which the information has been deleted.

Amended section 183 of the LGEA provides a definition of 'group campaign activity' and provides that a regulation may prescribe another activity as a group campaign activity.

It is appropriate to provide that these matters may be delegated to subordinate legislation to ensure flexibility, particularly given the unique local circumstances associated with local government elections. Further, a regulation, when made, will sufficiently subject the exercise of the delegated legislative power to Parliamentary scrutiny.

## **Consultation**

The LGAQ, the ECQ, the CCC and Local Government Managers Australia (Queensland) (LGMA) were consulted. Consultation with the LGAQ included a series of workshops to discuss the proposed amendments which included a CEO reference group.

The BCC was extensively engaged on the proposal to apply the LGA Councillor Complaints process to BCC and on other key reform proposals.

In March 2019, the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) distributed an information paper to Mayors, CEOs, elected representatives, community organisations and industry stakeholders outlining the proposed legislation amendments and made the paper available on the Local Government Reforms page of its website. DLGRMA also held three live webinars open to anyone to attend; more than 200 users logged in

to the webinars which were recorded and made available for On Demand viewing on the Local Government Reforms webpage, accompanied by PowerPoint slides and transcripts which can be downloaded. DLGRMA established a Local Government reform hotline and dedicated email address for stakeholder questions and feedback on the key proposed reforms.

The LGAQ does not support the Bill, in particular amendments to:

- repeal Mayoral powers to direct senior executive employees, and to amend powers relating to the appointment of senior executive employees
- provide for full-preferential voting for elections for mayors and single-member divisions
- provide for limited declarations of interests by candidate. The LGAQ supports candidates being required to provide the same particulars as required in a councillor register of interests
- extend the public interest test for State intervention powers to other remedial action permitted under the LGA. The LGAQ has proposed that the public interest test provisions to be reviewed in two years to determine whether they are warranted.

BCC supports the application of the LGA Councillor Conduct framework to the BCC. However, BCC prefers that an independent panel consider allegations of inappropriate conduct, rather than the local government itself.

The LGMA broadly supports the proposed amendments contained in the Bill but has raised concerns about the offence for CEOs failing to provide advice to Councillors within 10 days (or 20 days in special circumstances).

The ECQ and the CCC support the Bill.

## **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, this Act may be cited as the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*.

#### Clause 2 Commencement

*Clause 2* states that the following provisions commence on a day to be fixed by proclamation:

- part 2, division 3;
- part 3, division 3;
- part 4, division 4;
- part 6.

### Part 2 Amendment of City of Brisbane Act 2010

#### Division 1 Preliminary

#### Clause 3 Act amended

*Clause 3* states that this part amends the *City of Brisbane Act 2010*.

#### Division 2 Amendments commencing on assent

#### Clause 4 Amendment of s 92D (Prohibition on election material in caretaker period)

*Clause 4* amends section 92D to provide that a controlled entity of the council is also prohibited from publishing or distributing election material during the caretaker period and that election material includes a fact sheet or newsletter that raises the profile of a councillor.

The amendments also insert new definitions for ‘control’ and ‘controlled entity’.

#### Clause 5 Amendment of s 148 (Obstructing enforcement of this Act or local laws etc.)

*Clause 5* amends section 148(3) to omit the reference to ‘chapter 5’ to reflect current drafting practice.

#### Clause 6 Amendment of s 162 (When a councillor’s office becomes vacant)

*Clause 6* amends section 162 to provide that a councillor’s office becomes vacant if the councillor is absent, without the council’s leave, for 2 or more consecutive ordinary meetings of the council

over at least 2 months, unless the councillor is absent while the councillor is suspended for certain offences under section 186B.

**Clause 7 Replacement of ch 6, pt 2, div 5A (Dealing with councillors' personal interests in council matters)**

*Clause 7* inserts new chapter 6, part 2, division 5A (Councillors' conflicts of interest).

**Division 5A Councillors' conflicts of interest**

**Subdivision 1 Preliminary**

**Section 177A Purpose of division**

New section 177A provides that the purpose of the chapter is to ensure the Brisbane City Council deals with a matter in an accountable and transparent way that meets community expectations, if a councillor has a personal interest in the matter.

**Section 177B When does a person participate in a decision**

New section 177B provides that division 5A, a reference to a councillor, or other person, participating in a decision includes a reference to the councillor or other person considering, discussing or voting on the decision in a meeting of the council and considering or making a decision under an Act, a delegation or another authority.

**Section 177C Personal interests in ordinary business matters of council**

New section 177C provides that division 5A does not apply to a conflict of interest in a matter, if the matter is solely, or relates solely to:

- the making or levying of rates and charges; or
- the fixing of a cost-recovery fee, by the council; or
- a planning scheme, or amendment of a planning scheme, for Brisbane; or
- a resolution required for the adoption of a budget for the council; or
- the remuneration or reimbursement of expenses of councillors or members of a committee of the council; or
- the provision of superannuation entitlements or public liability, professional indemnity or accident insurance for councillors; or
- a matter of interest to the councillor solely as a candidate for election or appointment as mayor, deputy mayor, councillor or member of a committee of the council.

Division 5A also does not apply to a conflict of interest in a matter relating to a corporation or association that arises solely because a councillor has been nominated or appointed by the council to be a member of the board of the corporation or association.

However, if a councillor decides to voluntarily comply with division 5A in relation to personal interests of the councillor in the matter, the personal interests are taken to be a declarable conflict

of interest and division 5A applies as if eligible councillors had, under section 177O(2), decided the councillor has a declarable conflict of interest in the matter.

## **Subdivision 2 Prescribed conflicts of interest**

### **Section 177D When councillor has *prescribed conflict of interest*—particular gifts or loans**

New section 177D provides that a councillor has a prescribed conflict of interest in a matter if:

- a gift or loan is given by an entity (the donor) that has an interest in the matter in the circumstances mentioned below;
- the gift or loan is given during the relevant term of the councillor; and
- all gifts or loans given by the donor during the councillor's relevant term total \$2,000 or more.

The circumstances are, where the donor:

- gives to the councillor a gift or loan for which a return is required under the *Local Government Electoral Act 2011*, part 6; or
- gives to a group of candidates or a political party of which the councillor is a member, a gift or loan for an election for which a return is required under the *Local Government Electoral Act 2011*, part 6 and the councillor is a candidate in the election; or
- gives to the councillor, or a close associate of the councillor, a gift in other circumstances.

For working out the total gifts or loans given to a group of candidates or a political party, the amount of each gift or loan given to the group or political party must first be divided by the number of candidates in the group or political party.

### **Section 177E When councillor has *prescribed conflict of interest*—sponsored hospitality benefits**

New section 177E(1) provides that a councillor has a prescribed conflict of interest in a matter if a sponsored hospitality benefit is given to the councillor or a close associate of the councillor during the relevant term of the councillor by an entity (the donor) that has an interest in the matter and all the total sponsored benefits given to the councillor or close associate during the councillor's relevant term total \$2,000 or more.

New section 177E(2) provides a definition for 'sponsored hospitality benefit'.

### **Section 177F When councillor has *prescribed conflict of interest*—other**

New section 177F provides that a councillor has a prescribed conflict of interest in a matter if:

- the matter is, or relates to, a contract between the council and the councillor, or a close associate of the councillor, for the supply of goods or services to the council or the lease or sale of assets by the council; or
- the chief executive officer is a close associate of the councillor and the matter is or relates to the appointment, discipline, termination, remuneration or other employment conditions of the chief executive officer; or

- the matter is, or relates to, an application made to the council by the councillor, or a close associate of the councillor if the application is or was for the grant of a licence, permit, registration, approval or consideration of another matter under a local government related law and the councillor, or a close associate of the councillor has made a written submission to the council about the application before it is or was decided.

### **Section 177G Who is a *close associate* of a councillor**

New section 177G provides that a close associate of a councillor is a person in relation to the councillor that is:

- a spouse
- a parent, child or sibling
- a partner in a partnership
- an employer (other than a government entity)
- an entity (other than a government entity) for which the councillor is an executive officer or board member
- an entity in which the councillor or one of the persons mentioned above has an interest, other than an interest of less than 5% in an entity that is a listed corporation under the Corporations Act, section 9.

However, a parent, child or sibling is a close associate of a councillor in relation to a matter only if the councillor knows, or ought reasonably to know, about the parent's, child's or sibling's involvement in the matter.

### **Section 177H Councillor must not participate in decisions**

New section 177H provides that if a councillor has a prescribed conflict of interest in a matter, the councillor must not participate in a decision relating to the matter. A maximum penalty of 200 penalty units or 2 years imprisonment applies.

However, the councillor does not contravene the requirement by being present under an approval given under section 177S.

### **Section 177I Obligation of councillor with prescribed conflict of interest**

New section 177I applies that if a councillor may participate, or is participating, in a decision about a matter and becomes aware that the councillor has a prescribed conflict of interest in the matter.

If the councillor first becomes aware the councillor has the prescribed conflict of interest in the matter at a council meeting, the councillor must immediately inform the meeting of the prescribed conflict of interest, including the particulars stated below. Otherwise, the councillor must, as soon as practicable, give written notice of the prescribed conflict of interest, including relevant particulars, to the chief executive officer and must also give notice of the prescribed conflict of interest at the next meeting of the council or the next meeting of the committee, if the matter is to

be considered and decided at a meeting of a committee. A maximum penalty of 200 penalty units or 2 years imprisonment applies for both circumstances.

The particulars to be provided are:

- for a gift, loan or contract—the value of a gift, loan or contract;
- for an application for which a submission has been made—the matters the subject of the application and submission;
- name of any entity, other than the councillor, that has an interest in the matter;
- the nature of the councillor’s relationship with the entity that has an interest in the matter;
- details of the councillor’s, and any other entity’s, interest in the matter.

### **Section 177J Dealing with prescribed conflict of interest at a meeting**

New section 177J provides that if a councillor gives a notice at, or informs, a meeting of the councillor’s prescribed conflict of interest in a matter, the councillor must leave the place where the meeting is held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on. A maximum penalty of 200 penalty units or 2 years imprisonment applies.

However, the councillor does not contravene the requirement by participating in a decision or being present under an approval given under section 177S.

### **Subdivision 3 Declarable conflicts of interest**

#### **Section 177K What is a *declarable conflict of interest***

New section 177K provides that, subject to section 177L, a councillor has a declarable conflict of interest in a matter if the councillor has, or could reasonably be presumed to have, a conflict between the councillor’s personal interests, or the personal interests of a related party of the councillor, and the public interest and because of the conflict, the councillor’s participation in a decision about the matter might lead to a decision that is contrary to the public interest.

#### **Section 177L Interests that are not declarable conflicts of interest**

New section 177L provides that a councillor does not have a declarable conflict of interest in a matter if:

- the conflict of interest is a prescribed conflict of interest in the matter; or
- the conflict of interest arises solely because:
  - the councillor undertakes an engagement in the capacity of a councillor for a community group, sporting club or similar organisation and is not appointed as an executive officer of the organisation; or
  - the councillor, or a related party of the councillor is a member of a community group, sporting club or similar organisation and is not an executive officer of the organisation; or
  - the councillor, or a related party of the councillor, is a member of a political party; or



- the councillor, or a related party of the councillor, has an interest in an educational facility or provider of a child care service as a student or former student, or a parent or a grandparent of a student, of the facility or service; or
- the conflict of interest arises solely because of the religious beliefs of the councillor or a related party of the councillor; or
- the councillor, or a related party of the councillor, stands to gain benefit or suffer a loss because of the conflict of interest, that is no greater than the benefit or loss that a significant proportion of persons in Brisbane stands to gain or lose; or
- the conflict of interest arises solely because the councillor, or a related party of the councillor, receives gifts, loans or sponsored hospitality benefits from an entity totalling \$500 or less during the councillor's relevant term.

New section 177L also provides a definition of 'sponsored hospitality benefit'.

### **Section 177M Who is a *related party* of a councillor**

New section 177M provides that a related party of a councillor includes a close associate (other than an entity mentioned in section 177(1)(f)), a parent, child or sibling of the councillor's spouse and a person who has a close personal relationship with the councillor.

### **Section 177N Obligation of councillor with declarable conflict of interest**

New section 177N applies if a councillor may participate or is participating in a decision about a matter and becomes aware that they have a declarable conflict of interest in the matter.

If the councillor first becomes aware the councillor has the declarable conflict of interest at a council meeting, the councillor must stop participating, and must not further participate, in a decision relating to the matter; and must immediately inform the meeting of the declarable conflict of interest, including the particulars stated below. Otherwise, the councillor must stop participating, and must not further participate in a decision relating to the matter, must, as soon as practicable, give notice of the declarable conflict of interest in the matter to the chief executive and give notice of the declarable conflict of interest including the particulars below at the next meeting of the council or at a meeting of a committee of a council if the matter is to be considered and decided at the committee meeting. A maximum penalty of 100 penalty units or 1 year's imprisonment applies in both circumstances.

The particulars are:

- the nature of the declarable conflict of interest;
- if the declarable conflict of interest arises because of the councillor's relationship with a related party, the name of the related party, the nature of the relationship of the related party to the councillor and the nature of the related party's interests in the matter;
- if the councillor's or related party's personal interests arise because of the receipt of a gift or loan from another person, the name of the other person, the nature of the relationship of the other person to the councillor, the nature of the other person's interests in the matter and the value of the gift or loan, and the date the gift was given, or loan was made.

The councillor does not contravene subsection (2)(a) or (3)(a) if the councillor has complied with section 177N and either a decision has been made under section 177P(2)(a)(i) or (b)(i) that the councillor may participate in the decision despite having a declarable conflict of interest in the matter or the councillor is participating in the decision under an approval given under section 177S.

### **Section 177O Procedure if meeting informed of councillor's personal interests**

New section 177O provides that if a council meeting is informed that a councillor has personal interests in a matter by a person other than the councillor, the eligible councillors at the meeting must decide whether the councillor has a declarable conflict of interest in the matter.

### **Section 177P Procedure if councillor has declarable conflict of interest**

New section 177P provides that if a councillor has a declarable interest in a matter under section 177N(2) or (3) or decided by eligible councillor at a meeting under 177O(2), the eligible councillors must, by resolution, decide:

- for a matter that would (other than for the councillor's conflict of interest) have been decided by the councillor under an Act, a delegation or authority, whether the councillor:
  - may participate in the decision despite the councillor's conflict of interest; or
  - must not participate in the decision, and must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the eligible councillors discuss and vote on the matter; or
- for another matter:
  - whether the councillor may participate in a decision about the matter at the meeting, including by voting on the matter or
  - must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the eligible councillors discuss and vote on the matter.

The eligible councillors may impose conditions on the councillor if it is decided that the councillor may participate in a decision about a matter under subsection (2)(a)(i) or (b)(i).

A maximum penalty of 100 penalty units or 1 year's imprisonment applies for non-compliance with a decision under subsection (2)(a)(ii) or (b)(ii) or any conditions imposed on a decision under subsection (3).

However, the councillor does not contravene this section by participating in a decision or being present under an approval given under section 177S.

### **Section 177Q Decisions of eligible councillors**

New section 177Q provides that even if the number of eligible councillors is less than a majority or the eligible councillors do not form a quorum for the meeting, the eligible councillors may make a decision under section 177O or 177P other than a matter mentioned in section 177R.

The councillor who is the subject of the decision may remain at the meeting while the decision is made but cannot vote or otherwise participate in the making of the decision, other than by answering a question put to them necessary to assist the eligible councillors to make the decision.

If the eligible councillors can not make a decision under section 177O or 177P, the eligible councillors are taken to have decided under section 177P(2)(a)(ii) or (b)(ii) that the councillor must leave, and stay away from, the place where the meeting is being held while the eligible councillors discuss and vote on the matter.

A decision about a councillor under section 177O or 177P for a matter applies in relation to the councillor participating in the decision, and all subsequent decisions about the matter.

#### **Subdivision 4 Other matters**

#### **Section 177R Procedure if no quorum for deciding a matter because of prescribed conflicts of interest or declarable conflicts of interest**

New section 177R provides that the council must delegate deciding a matter under section 238, unless it cannot be delegated, or decide, by resolution, to defer the matter to a later meeting, if a matter in which one or more councillors have a prescribed conflict of interest or declarable conflict of interest that is to be decided at the meeting and there is less than a quorum remaining at the meeting after any of the councillors with a prescribed or declarable conflict of interest leave, and stay away from, the place where the meeting is being held.

The council must not delegate deciding the matter to an entity if the entity, or a majority of the entity's members, have personal interests that are, or are equivalent in nature to, a prescribed or declarable conflict of interest in the matter.

A councillor does not contravene section 177H(1), 177J(2), 177N(2)(a) or (3)(a) or 177P(4) by participating in a decision, if the councillor's participation is for the purpose of delegating the matter or deferring the matter to a later meeting.

#### **Section 177S Minister's approval for councillor to participate or be present to decide matter**

New section 177S provides that the Minister may, by signed notice given to a councillor, approve the councillor participating in deciding a matter in a meeting, including being present while the matter is discussed and voted on, if the matter could not otherwise be decided at the meeting because of section 177R(1) and deciding the matter cannot be delegated under section 238. The Minister may also give the approval subject to the conditions stated in the notice.

#### **Section 177T Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest**

New section 177T provides that if a councillor reasonably believes, or reasonably suspects, another councillor who has either a prescribed or declarable conflict of interest is participating in a decision in contravention of section 177H(1) or 177N(2)(a) or (3)(a) respectively, the councillor who has

the belief or suspicion must immediately inform the person who is presiding over the meeting about the belief or suspicion (if the belief or suspicion arises in a local government meeting), or otherwise, as soon as practicable, inform the chief executive officer of the belief or suspicion. The councillor must also inform the person presiding over a meeting or the chief executive officer of the facts and circumstances forming the basis of the belief or suspicion.

### **Section 177U Obligation of councillor if conflict of interest reported under s 177T**

New section 177U provides that if, under section 177T, a councillor (the informing councillor) informs the person presiding at a council meeting of a belief or suspicion about another councillor (the relevant councillor), the relevant councillor must do one of the following:

- if the relevant councillor has a prescribed conflict of interest—comply with section 177H(2)
- if the relevant councillor has a declarable conflict of interest—comply with section 177N(2)
- if the relevant councillor considers there is no prescribed conflict of interest or declarable conflict of interest—inform the meeting of the relevant councillor’s belief, including reasons for the belief.

If the relevant councillor considers there is no prescribed conflict of interest or declarable conflict of interest and informs the meeting of this belief, the informing councillor must inform the meeting about the particulars of the informing councillor’s belief or suspicion and the eligible councillors at the meeting must decide whether or not the relevant councillor has a prescribed conflict of interest or declarable conflict of interest in the matter.

If the eligible councillors decide the relevant councillor has a prescribed conflict of interest in the matter, section 177J is taken to apply to the relevant councillor for the matter. If it is decided the relevant councillor has a declarable conflict of interest in the matter, sections 177N(2) and 177P are taken to apply to the relevant councillor for the matter.

### **Section 177V Offence to take retaliatory action**

New section 177V provides that a person must not, because a councillor complied with section 177T:

- prejudice, or threaten to prejudice, the safety or career of the councillor or another person; or
- intimidate or harass, or threaten to intimidate or harass, the councillor or another person;
- take any action that is, or is likely to be, detrimental to the councillor or another person.

A maximum penalty of 167 penalty units or 2 years imprisonment applies.

### **Section 177W Offence for councillor with prescribed conflict of interest or declarable conflict of interest to influence others**

New section 177W provides that a councillor who has a prescribed conflict of interest or declarable conflict of interest in a matter must not direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the council relating to the matter. A maximum penalty of 200 penalty units or 2 years imprisonment applies.

A councillor does not contravene the requirement solely by participating in a decision relating to the matter, including by voting on the matter, if the participation is permitted under a decision mentioned in section 177P(2)(a)(i) or (b)(i) or approved by the Minister under section 177S.

A councillor also does not contravene the requirement solely because the councillor gives the chief executive officer the following information in compliance with division 5A – factual information about a matter information that is required to be given to the council about a matter, including in an application, to enable the council to decide the matter.

### **Section 177X Records about prescribed conflicts of interest or declarable conflicts of interest—meetings**

New section 177X provides that if a councillor gives notice to, or informs, a council meeting that the councillor, or another councillor, has a prescribed conflict of interest or declarable conflict of interest in a matter, the minutes of the meeting must record the following information:

- the names of the councillor and any other councillor who may have a conflict of interest;
- the particulars of the conflict of interest;
- if section 177U applies, the action the councillor takes under section 177U(1) and any decision made by the eligible councillors under section 177U(2);
- whether the councillor participated in deciding the matter, or was present for deciding the matter, under an approval under section 177S;
- for a matter to which the conflict of interest relates – the name of each eligible councillor who voted on the matter, and how each eligible councillor voted.

Additional information is required if the councillor has a declarable conflict of interest, including:

- for a decision under section 177O(2) – the name of each eligible councillor who voted in relation to whether the councillor has a declarable conflict of interest, and how each eligible councillor voted; and
- for a decision under section 177P – the decision, and reasons for the decision and the name of each eligible councillor who voted on the decision, and how each eligible councillor voted.

#### **Clause 8 Amendment of s 178 (What this division is about)**

*Clause 8* amends section 178(3) to replace the reference to section 177G(2) with section 177T(2).

#### **Clause 9 Amendment of s 214 (Decisions under this division are not subject to appeal)**

*Clause 9* amends the heading of section 214 to replace the incorrect reference to ‘division’ with ‘part’.

#### **Clause 10 Omission of s 224 (Types of offences under this Act)**

*Clause 10* omits section 224 in its entirety as there are currently no indictable offences (an offence that has a penalty of more than 2 years imprisonment) under the Act and it is not necessary to declare that an offence is a summary offence.

## **Clause 11 Replacement of s 226 (Decisions not subject to appeal)**

*Clause 11* replaces section 226 to provide that if the COBA declares a decision not to be subject to appeal, unless the Supreme Court decides the decision is affected by jurisdictional error, the decision:

- is final and conclusive; and
- can not be challenged, appealed against, reviewed, quashed, set aside or called into question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

The *Judicial Review Act 1991*, part 5 (Prerogative orders and injunctions) applies to the decision to the extent it is affected by jurisdictional error.

Any person who, but for subsection (2), could have made an application under the *Judicial Review Act 1991* in relation to the decision may apply under part 4 of that Act (Reasons for decisions) for a statement of reasons in relation to the decision. The term ‘decision’ is defined in this section.

## **Clause 12 Insertion of new ch 8, pt 10**

Clause 12 inserts new chapter 8, part 10, divisions 1 and 2 to provide transitional provisions for new disqualifying offences, repealed integrity offence provisions and amendments relating to conflicts of interest.

## **Part 10 Transitional provisions for Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019**

### **Division 1 Transitional provisions for new disqualifying offences**

#### **Section 280 Definitions for division**

Section 280 inserts definitions for part 10, division 1.

#### **Section 281 New disqualifying offence committed before commencement**

Section 281 provides that Chapter 6, part 2 applies in relation to a new disqualifying offence, even if the act or omission constituting the offence was committed before the commencement.

#### **Section 282 Existing charge for new disqualifying offence**

Section 282 applies if a proceeding for a new disqualifying offence against a councillor had started before the commencement but has not ended. The councillor is automatically suspended as a councillor on the commencement. Immediately after the commencement, the councillor must give a written notice about the proceeding for the new disqualifying offence to each of the following, unless the councillor has a reasonable excuse: the Minister; if the councillor is not the

mayor—the mayor; the chief executive officer. The maximum penalty is 100 penalty units. The notice must state the provision of the law to which the proceeding for the new disqualifying offence relates; and the day the councillor was charged with the offence.

The notice is taken to be a notice mentioned in section 186G(1)(a).

### **Section 283 Existing conviction for new disqualifying offence**

Section 283 applies if before the commencement, a councillor was convicted of an offence that is a new disqualifying offence; and on the commencement, the disqualifying period for the offence would not have ended. The councillor automatically stops being a councillor on the commencement. Immediately after the commencement, the councillor must give a written notice to each of the following, unless the councillor has a reasonable excuse: the Minister; if the councillor is not the mayor—the mayor; the chief executive officer. The maximum penalty is 100 penalty units. The notice must state the provision of the law against which the councillor was convicted; and the day the councillor was convicted.

The notice is taken to be a notice mentioned in section 186G(1)(a).

## **Division 2 Other transitional provisions commencing on assent**

### **Section 284 Proceedings for repealed integrity offence provisions**

New section 280 provides that for an offence against a repealed integrity offence provision committed by a person before the commencement of this section, without limiting the *Acts Interpretations Act 1954*, a proceeding for the offence may be continued or started, and the person may be convicted of the and punished for the offence as if the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*, section 111 had not commenced.

From the commencement, an offence against a repealed integrity offence provision continues, despite the repeal of the provision, to be an integrity offence for section 153; and a disqualifying offence for chapter 6.

### **Section 285 Continuation of Minister’s approval for councillor to participate or be present to decide matter**

Section 281 provides that a notice given by the Minister to a councillor under section 177F, as in force immediately before the commencement, if the notice is in force immediately before the commencement, the notice is taken to be a notice given under section 177S.

## **Clause 13 Amendment of sch 1 (Serious integrity offences and integrity offences)**

*Clause 13* amends schedule 1, part 2 to omit offences under this Act, as integrity offences - sections 177(C)(2) and 177E(2) or (5).

The amendments replace offences under this Act, as integrity offences - sections 177H (Offence to take retaliatory action) and 177I(2) or (3) (Offence for councillor with material personal interest or conflict of interest to influence others) with sections 177H (Councillor must not participate in decisions) and 177I(2) or (3) (Obligation of councillor with prescribed conflict of interest) .

The amendments also prescribe offences under this Act, as integrity offences - sections 177N(2) or (3) (Obligation of councillor with declarable conflict of interest), 177V (Offence to take retaliatory action) and 177W(2) (Obligation of councillor with prescribed or declarable conflict of interest to influence others).

The amendments also prescribe offences under the Local Government Electoral Act, as integrity offences - sections 126(8) (Requirement for candidate to operate dedicated account), 127(8) (Requirement for group of candidates to operate dedicated account), 195(1)(b), 195(2), 195(3) and 195(4) (Offences about returns).

A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction

#### **Clause 14      Amendment of sch 2 (Dictionary)**

*Clause 14* amends schedule 2 to:

- omit the definitions of ‘conflict of interest’, ‘material personal interest’, ‘ordinary business matter’, ‘perceived conflict of interest’ and ‘real conflict of interest’;
- insert definitions for ‘close associate’, ‘council meeting’, ‘declarable conflict of interest’, ‘eligible councillor’, ‘executive officer’, ‘gift’, ‘interest’, ‘loan’, ‘prescribed conflict of interest’, ‘related party’ and ‘relevant term’;
- replace the incorrect reference to section 195(2) in the definition of ‘investigator’ with section 205(2) and expand the definition of ‘major policy decision’ to include those decisions inserted under new paragraphs (e) to (i).

#### **Division 3      Amendments commencing by proclamation**

##### **Subdivision 1 Amendments relating to councillor complaints and State intervention powers**

#### **Clause 15      Amendment of s 3 (Purpose of this Act)**

*Clause 15* consequentially amends section 3(2)(f) to replace the reference to rules of procedure with the council’s procedures for the conduct of its meetings. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

#### **Clause 16      Amendment of s 5 (Relationship with Local Government Act)**

*Clause 16* consequentially amends section 5(3) to provide, as examples, the further provisions of the Local Government Act that apply, or may apply, to the Brisbane City Council as a local government, namely, chapter 5, part 1 regarding State intervention powers; chapter 5A regarding



councillor conduct and particular conduct of council employees; and chapter 6, part 7 regarding the appointment of an interim administrator and interim management committee.

**Clause 17 Amendment of s 13 (Who the council is constituted by)**

*Clause 17* consequentially amends section 13(2) to provide that, if all of the councillors have been suspended or the council has been dissolved under the Local Government Act, section 123, the council is constituted by an interim administrator.

If there are no councillors for any other reason and an interim administrator has not been appointed, the council is constituted by the chief executive officer (consistent with current section 13(2)).

The amendments are a consequence of applying chapter 5, part 1 of the Local Government Act in relation to the State's intervention powers to the Brisbane City Council.

**Clause 18 Amendment of s 25 (Chairperson of the council)**

*Clause 18* consequentially amends section 25(2) to replace the reference to rules of procedure with the council's procedures for the conduct of its meetings; and the note to subsection (2) to provide that the chairperson of the council also has powers in relation to particular conduct of councillors at meetings of the council under the Local Government Act, section 150I (Chairperson may deal with unsuitable meeting conduct).

The amendments are a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 19 Omission of ch 5, pt 1 (The council)**

*Clause 19* omits chapter 5, part 1. The part is no longer required as the Bill inserts a new section 113A into the Local Government Act to provide that for chapter 5, part 1 of that Act, a local government includes Brisbane City Council, therefore applying the provisions under the Local Government Act, chapter 5, part 1 in relation to the State's intervention powers to the Brisbane City Council.

**Clause 20 Replacement of ch 5, pt 2, hdg (The public)**

*Clause 20* replaces the heading for chapter 5, part 2 with 'Monitoring and enforcement powers' to better describe what the part is about, as a consequence of the Bill omitting chapter 5, part 1 of the City of Brisbane Act.

**Clause 21 Amendment of s 139 (What this part is about)**

*Clause 21* consequentially amends section 139 to provide that the part also applies to investigations conducted by the department or the council into the accuracy of the council's registers or records that are required to be kept under the Local Government Act, chapter 5A. This is a consequence

of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 22 Amendment of s 142 (Power to require information or document for department investigation)**

*Clause 22* consequentially amends section 142(1)(a)(ii) to provide that the section also applies if the department's chief executive suspects or believes, on reasonable grounds that an offence against the Local Government Act, chapter 5A has been committed relating to a register or record. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 23 Amendment of s 145 (Power to require information or document for council investigation)**

*Clause 23* consequentially amends section 145(1)(a)(ii) to provide that the section also applies if the chief executive officer suspects or believes, on reasonable grounds, that an offence against the Local Government Act, chapter 5A has been committed relating to a register or record. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 24 Amendment of s 146 (Referral to department)**

*Clause 24* consequentially amends section 146(1) to provide that the section also applies if, because of inquiries made under this division, the chief executive officer concludes on reasonable grounds that an offence has been committed under the Local Government Act, chapter 5A relating to a register or record. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 25 Amendment of s 150 (Duty to make documents available)**

*Clause 25* consequentially amends section 150 to provide that a person who has charge of a document owned or held by the council must not obstruct the viewing or copying of the document by another person who is authorised to view or copy the document under this Act or the Local Government Act; and omit the second example.

The amendments are a consequence of applying chapter 5, part 1 and chapter 5A of the Local Government Act to the Brisbane City Council.

**Clause 26 Amendment of s 153 (Disqualification for certain offences)**

*Clause 26* amends the heading for section 153 to read 'Disqualification for certain offences or if dismissed' to better reflect the scope of matters dealt with under the section.

*Clause 26* consequentially amends section 153(1) to provide that a person cannot be a councillor for the remainder of the term before the next quadrennial elections if the person has been dismissed. New subsection (8) defines 'dismissed', for section 153, to mean dismissed as a

councillor under the Local Government Act, section 122 or because of the dissolution of the council under the Local Government Act, section 123. The amendments are a consequence of applying chapter 5, part 1 of the Local Government Act in relation to the State's intervention powers to the Brisbane City Council and are consistent with the proposed amendments to the Local Government Act, section 153.

**Clause 27 Insertion of new s 160AA (Extension of term of councillors elected at fresh elections)**

*Clause 27* inserts new section 160AA to provide that a regulation may declare that the councillors elected at a fresh election are elected for a term ending at the conclusion of the quadrennial elections after the next quadrennial elections. This is a consequence of applying chapter 5, part 1 of the Local Government Act in relation to the State's intervention powers to the Brisbane City Council and is consistent with current section 160A of the Local Government Act.

**Clause 28 Amendment of s 162 (When a councillor's office becomes vacant)**

*Clause 28* consequentially amends section 162(d) to provide that a councillor's office also becomes vacant if the councillor is absent from 2 or more consecutive ordinary meetings of the council over a period of at least 2 months, unless the councillor is absent:

- in compliance with an order made by the conduct tribunal, the council or the chairperson of the council or a committee of the council; or
- while the councillor is suspended under section 186B (Automatic suspension for certain offences) or the Local Government Act, section 122 or 123.

The amendments are a consequence of applying chapter 5, part 1 and chapter 5A of the Local Government Act to the Brisbane City Council and are consistent with the proposed amendments to the Local Government Act, section 162.

**Clause 29 Amendment of s 170 (Giving directions to council staff)**

*Clause 29* consequentially amends section 170(2) to insert a note indicating that contravention of section 170(2) is misconduct under the Local Government Act, section 150L(1)(c)(v) (What is misconduct) and could result in disciplinary action being taken against a councillor under that Act. The note also refers to the Local Government Act, sections 150AQ (Deciding about misconduct) and 150AR (Disciplinary action against councillor).

The amendments are a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 30 Amendment of s 171 (Requests for assistance or information)**

*Clause 30* consequentially amends section 171(4)(a) to replace the reference to the BCC councillor conduct review panel with the conduct tribunal and the former conduct review panel therefore providing that section 171(2) and (3) do not apply to information or a document that is a record of

the conduct tribunal or the former conduct review panel. The amendments also insert a new definition for ‘former conduct review panel’.

The amendments are a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 31 Amendment of s 172 (Inspection of particular records by councillors)**

*Clause 31* amends section 172(3) to modify the prescribed list of council records that a councillor cannot view, make a copy of, or take an extract from, by omitting the reference to a record of the BCC councillor conduct review panel and inserting references to a record of the conduct tribunal and a record of the former conduct review panel. In addition, a record of the statutory committee of the council and a record that could, if released, endanger the security of assets of the council or the public, have been omitted. The amendments also insert a new definition for ‘former conduct review panel’.

The amendments are a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council and to ensure consistency between the City of Brisbane Act and the Local Government Act.

**Clause 32 Amendment of s 173 (Use of information by councillors)**

*Clause 32* omits the note under section 173(3) and inserts a new note indicating that contravention of section 173(3) is misconduct under the Local Government Act, section 150L(1)(c)(v) (What is misconduct) and could result in disciplinary action being taken against a councillor (including a former councillor) under that Act. The note also refers to the Local Government Act, sections 150AQ (Deciding about misconduct) and 150AR (Disciplinary action against councillor).

The amendments are a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 33 Amendment of s 177T (Duty to report another councillor’s prescribed conflict of interest or declarable conflict of interest)**

*Clause 33* omits the note under section 177T(2) and inserts a new note indicating that contravention of section 177T(2) is misconduct under the Local Government Act, section 150L(1)(c)(v) (What is misconduct) and could result in disciplinary action being taken against a councillor under that Act. The note also refers to the Local Government Act, sections 150AQ (Deciding about misconduct) and 150AR (Disciplinary action against councillor).

The amendments are a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 34 Omission of ch 6, pt 2, divs 6 and 7**

*Clause 34* omits chapter 6, part 2, division 6 (Conduct and performance of councillors) and chapter 6, part 2, division 7 (Conduct in meetings of the council). The divisions are no longer required as the Bill applies the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 35 Omission of ch 6, pt 3 (BCC councillor conduct review panel)**

*Clause 35* omits chapter 6, part 3 (BCC councillor conduct review panel) as a consequence of the Bill applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 36 Amendment of s 215 (False or misleading information)**

*Clause 36* consequentially amends section 215(1) to omit the reference to the BCC councillor conduct review panel. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 37 Amendment of s 216 (Administrators who act honestly and without negligence are protected from liability)**

*Clause 37* consequentially amends section 216(2) to omit the reference to the BCC councillor conduct review panel. This a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

The amendments also change the wording of section 216(6) to align with the wording of section 235(8) of the Local Government Act.

**Clause 38 Amendment of s 217 (Who is authorised to sign council documents)**

*Clause 38* consequentially amends section 217(2)(b) to provide that, if all of the councillors have been suspended or the council has been dissolved under the Local Government Act, section 123 and an interim administrator is appointed, the head of the council is the interim administrator. If there are no councillors for any other reason and an interim administrator has not been appointed, the head of the council is the chief executive officer (consistent with current section 217(2)(b)).

The amendments are a consequence of applying chapter 5, part 1 of the Local Government Act in relation to the State's intervention powers to the Brisbane City Council.

**Clause 39 Amendment of s 233 (Evidence of directions given to council)**

*Clause 39* consequentially amends section 233 to provide that the section also applies to a document that purports to be a direction that the Minister, or the department's chief executive, gave to the council under the Local Government Act. This is a consequence of applying chapter 5,

part 1 of the Local Government Act in relation to the State's intervention powers to the Brisbane City Council.

**Clause 40 Amendment of s 238 (Delegation of council powers)**

*Clause 40* consequentially amends section 238 to provide that the council may only delegate a power to make a decision about a councillor's conduct under the Local Government Act, section 150AG (Decision about inappropriate conduct) to the mayor; the Establishment and Coordination Committee; or a standing committee of the council. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

Minor amendments are also made to section 238(2) to replace 'However' with 'Also'.

**Clause 41 Insertion of new ch 8, pt 10, div 3**

Clause 41 inserts a new chapter 8, part 10, division 3 to provide for the transition of the Brisbane City Council to the councillor complaints framework under the Local Government Act.

**Division 3 Transitional provisions for councillor conduct**

**Section 286 Definitions for division**

New section 286 inserts definitions for 'assessed', 'assessor', 'existing complaint', 'former' and 'local government official'.

**Section 287 Existing complaints not assessed**

New section 287 applies if, immediately before the commencement, an existing complaint about a councillor's conduct had not been assessed.

An 'existing complaint' is a complaint about the conduct or performance of a councillor made before commencement to the council, the department's chief executive, or chief executive officer of the council. A complaint is 'assessed' if a preliminary assessment of the complaint was conducted under former section 179.

If section 287 applies, the assessor must deal with the existing complaint under the Local Government Act, chapter 5A as if the existing complaint was made or referred to the assessor under chapter 5A of that Act. This will allow complaints made before commencement but which are at a very early stage of consideration to be dealt with under the Local Government Act.

An entity holding information relating to the existing complaint must, as soon as practicable after the commencement, give the information to the assessor. This section is subject to section 290.

### **Section 288 Existing inappropriate conduct and misconduct complaints**

New section 288 provides that the section applies if, immediately before the commencement, an existing complaint about a councillor was assessed to be about inappropriate conduct or misconduct and a final decision dealing with the complaint had not been made.

The assessor must deal with the existing complaint under the Local Government Act, chapter 5A as if the existing complaint was made or referred to the assessor under chapter 5A of that Act. This is necessary because the entity dealing with inappropriate conduct and misconduct complaints under the City of Brisbane Act provisions – the BCC councillor conduct review panel – will no longer exist after the commencement. Under chapter 5A of the Local Government Act, the assessor is required to provide a councillor with an opportunity to respond if the assessor intends to refer the complaint to the council or the conduct tribunal.

An entity holding relevant information relating to the existing complaint must, as soon as practicable after the commencement, give the information to the assessor. This section is subject to section 290.

### **Section 289 Existing orders taken into account**

New section 289 provides that the section applies if, before the commencement, an order was made against a councillor under section 183 as in force from time to time before the commencement and the order is substantially the same as an order that may be made under the Local Government Act, chapter 5A.

The order may be taken into account after commencement for the following purposes:

- the council or a local government official deciding whether to notify the assessor about a councillor's conduct under the Local Government Act, chapter 5A, part 3, division 3 or to give information about a councillor's conduct to the assessor under the Local Government Act, section 150AF
- the assessor deciding how to deal with the conduct of a councillor or a complaint about the conduct of a councillor under the Local Government Act, section 150W
- the council or conduct tribunal deciding what action to take in relation to any inappropriate conduct or misconduct of the councillor under the Local Government Act.

This section may apply if, for example, an order for inappropriate conduct made about a councillor before commencement is, taken together with two further orders for inappropriate conduct made after commencement and within 1 year of the first order, to be misconduct under the Local Government Act, section 150L(2).

### **Section 290 Dealing with particular pre-commencement complaints or conduct**

New section 290(1) provides that the section applies in relation to conduct engaged in by a councillor before the commencement, including conduct that is the subject of an existing complaint mentioned in section 287(1) or 288(1).

In deciding how to deal with the conduct, the assessor, a local government official, the council and the conduct tribunal must apply the former conduct definitions to the conduct and if the conduct is referred to the council or conduct tribunal only make an order that is substantially the same as an order that could have been made under former section 183.

To remove any doubt, the Local Government Act, chapter 5A otherwise applies in relation to an order mentioned in subsection (2). This will ensure that orders mentioned in subsection (2) are taken to be orders under chapter 5A of the Local Government Act, despite the conduct being assessed under former conduct definitions and only orders under former section 183 being made.

### **Section 291 Model procedures apply until procedures adopted**

New section 291 provides that if, immediately before the commencement, the council has not adopted the model procedures or other procedures under the Local Government Act, section 150G, the council is taken to have adopted the model procedures on the commencement.

The council is taken to have adopted the model procedures only until the council adopts either the model procedures or other procedures under the Local Government Act, section 150G.

### **Section 292 Process if no investigation policy**

New section 292 provides that if, on or after the commencement, the council is required to deal with the inappropriate conduct of a councillor under the Local Government Act, chapter 5A, part 3, division 5 but has not yet adopted an investigation policy under section 150AE of that Act, the council must decide, by resolution, the procedure for investigating the conduct.

However, if the assessor has recommended under the Local Government Act, section 150AC(3) how the conduct may be dealt with, the council must follow that recommendation or decide, by resolution, to deal with the complaint in another way. The council must state the reasons for its decision in the resolution.

### **Section 293 Offences against s 215 charged before commencement**

New section 293 provides that the section applies if a person was charged with an offence of providing false or misleading information to the BCC councillor conduct review panel before the commencement and the proceeding for the offence had not been finally decided on the commencement. The proceeding for the offence may be continued, and the person may be punished for the offence, as if the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*, section 36 had not commenced. This provision is to apply despite the Criminal Code, section 11.

### **Clause 42 Amendment of sch 1 (Serious integrity offences and integrity offences)**

*Clause 42* amends schedule 1, part 2 to prescribe two offences under the Local Government Act as integrity offences - sections 150AW(1) (Protection from reprisal) and 234(1) (False or



misleading information). A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction.

The amendments are a consequence of applying chapter 5, part 1 and chapter 5A of the Local Government Act to the Brisbane City Council.

**Clause 43 Amendment of sch 2 (Dictionary)**

*Clause 43* amends schedule 2 to:

- omit the definitions of ‘BCC councillor conduct review panel’, ‘inappropriate conduct’, ‘misconduct’, ‘preliminary assessment’ and ‘rules of procedure’;
- insert new definitions for ‘conduct tribunal’ and ‘interim administrator’.

**Subdivision 2 Other amendments commencing by proclamation**

**Clause 44 Amendment of s 24 (Establishment and Coordination Committee)**

*Clause 44* consequentially amends section 24(6) to omit the note as it refers to the *Right to Information Act 2009*, schedule 3, section 4A which is being omitted by the Bill.

**Clause 45 Amendment of s 162 (When a councillor’s office becomes vacant)**

*Clause 45* amends section 162(c) to provide that a councillor’s office also becomes vacant if the councillor does not comply with the City of Brisbane Act, new section 173AA (Obligation of councillor to inform chief executive officer of particulars of interests at start of term).

**Clause 46 Amendment of s 169 (Obligations of councillors before acting in office)**

*Clause 46* amends section 169(5)(a) to omit the reference to ‘1 month’ and replace it with ‘30 days’ for consistency with current section 173B and new sections 173AA and 174.

**Clause 47 Amendment of s 171 (Requests for assistance or information)**

*Clause 47* amends section 171 to provide that the information that a councillor may ask the chief executive officer to provide under section 171(2) is to relate to the council. However, by removing current section 171(4)(a), the amendments also provide that a councillor can request advice or information across all wards of Brisbane City Council. Further, if a request for advice or information under section 171(1) or (2) relates to a document, a copy of the document must also be provided.

The amendments also replace the current requirement in section 171(7) for the chief executive officer to make all reasonable endeavours to comply with a councillor request for information under section 171(2) with a new requirement and increases the maximum penalty for non-compliance. The new requirement provides that the chief executive officer must comply with a request made to the chief executive officer under section 171(1) or (2) – for advice or information – within 10 business days after receiving the request or within 20 business days after receiving the

request if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days. The maximum penalty for non-compliance is increased from 10 penalty units to 20 penalty units.

If the chief executive officer forms the belief that it is not practicable to comply with a request from a councillor for advice or information within 10 business days, the chief executive officer must give the councillor written notice about the belief and the reasons for the belief within 10 business days after receiving the request.

**Clause 48      Insertion of new s 173AA (Obligation of councillor to inform chief executive officer of particulars of interests at start of term)**

*Clause 48* inserts new section 173AA to provide that within 30 days after the day a councillor's term starts or a longer period allowed by the Minister, the councillor must, in the approved form, inform the chief executive officer of the particulars of an interest that must be recorded in a register of interests in relation to the councillor and a person who is related to the councillor. A person ceases to be a councillor if the person does not comply with the requirement.

New section 173AA provides a definition for 'related'.

**Clause 49      Amendment of s 173B (Obligation of councillor to correct register of interests)**

*Clause 49* amends section 173B(2) to replace the two-tier offence and maximum penalties of 85 penalty units and 100 penalty units for a councillor unintentionally or intentionally failing to correct a register of interests within the required timeframe with a single offence and maximum penalty of 100 penalty units for non-compliance. The current note to section 173B(2) is omitted as a consequence of the Bill removing this offence from the prescribed list of integrity offences in schedule 1, part 2 of the City of Brisbane Act. Minor amendments to subsections (1) and (2) provide further clarification.

The amendments also omit subsection (3) as the definition of 'related' now appears in new section 173AA.

**Clause 50      Insertion of new s 174 (Obligation of councillor to inform chief executive officer annually about register of interests)**

*Clause 50* inserts new section 174 to provide that a councillor must, within 30 days after the end of each financial year, inform the chief executive officer in the approved form:

- whether a register of interests in relation to the councillor or a person who is related to the councillor is correct; and
- of the particulars of an interest that is not recorded in a register of interests in relation to the councillor or a person who is related to the councillor but is required to be recorded in the register of interests; and
- of the change to an interest that is recorded in a register of interests in relation to the councillor or a person who is related to the councillor.

The maximum penalty for non-compliance is 100 penalty units.

**Clause 51     Insertion of new s 177Y (Presumption of knowledge of particular gifts or loans)**

*Clause 51* inserts new section 177Y to provide that in a proceeding against an offence against chapter 6, part 2, division 5A relating to a relevant gift or loan given or made to a councillor, the councillor is presumed to know that the relevant gift or loan was given to the councillor and the source of the relevant gift or loan, unless the contrary is proven.

New section 177Y also provides definitions for ‘relevant gift or loan’ and ‘source’.

**Clause 52     Amendment of s 244 (Acceptable requests guidelines)**

*Clause 52* amends section 244 to omit subsection (1)(b) ‘when advice relates to the ward a councillor represents’. This is a consequence of the Bill amending section 171 of the City of Brisbane Act to provide that a councillor can request advice or information across all wards of Brisbane City Council, not only for the ward the councillor represents.

**Clause 53     Amendment of sch 1 (Serious integrity offences and integrity offences)**

*Clause 53* amends schedule 1, part 2 to omit the entry for the City of Brisbane Act, section 173B(2) (Obligation of councillor to correct register of interests) from the prescribed list of integrity offences. Under amendments to section 173B(2), this offence will carry a maximum penalty of 100 penalty units.

The amendments also prescribe an offence under the Local Government Electoral Act as an integrity offence – section 183 (Engaging in group campaign activities). A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction.

**Clause 54     Amendment of sch 2 (Dictionary)**

*Clause 54* amends schedule 2 to insert a definition for ‘related’, to a councillor, into the Dictionary.

**Part 3         Amendment of Local Government Act 2009**

**Division 1     Preliminary**

**Clause 55     Act amended**

*Clause 55* states that this part amends the *Local Government Act 2009*.

**Division 2 Amendments commencing on assent**

**Clause 56 Replacement of ch 2, pt 2, hdg (Divisions of local government areas)**

*Clause 56* replaces the heading for chapter 2, part 2 to state ‘Councillors for divisions of local government areas’. This is a consequence of the proposed amendments to the Local Government Act, section 15.

**Clause 57 Amendment of s 15 (Division of local government areas)**

*Clause 57* makes various amendments to section 15, including to the heading, to refer generally to a reasonable proportion of electors for a councillor of a division of a local government area rather than to a reasonable proportion of electors for a division of a local government area. The amendments ensure the formula under subsection (2) for calculating a ‘reasonable proportion of electors’ operates properly regardless of whether a local government area consists solely of single-member or multi-member divisions or a combination of single-member and multi-member divisions.

**Clause 58 Amendment of s 16 (Review of divisions of local government areas)**

*Clause 58* amends section 16 to provide that a review by a local government under section 16 must assess whether each division of the local government area has a reasonable proportion of electors for each councillor elected for the division, consistent with the proposed amendments to the Local Government Act, section 15.

**Clause 59 Amendment of s 17 (What this part is about)**

*Clause 59* amends section 17(2)(c) to provide that a change of the number of councillors for a local government can also include a change of the number of councillors for a division of a local government area. The amendment clarifies that a proposed local government change under section 17(2)(c) of the Local Government Act could request multi-member divisions and change the number of councillors per division.

**Clause 60 Amendment of s 90D (Prohibition on election material in caretaker period)**

*Clause 60* amends section 90D(1) to provide that a controlled entity of a local government is also prohibited from publishing or distributing election material during a caretaker period for the local government and that election material includes a fact sheet or newsletter that raises the profile of a councillor.

The amendments also insert new definitions for ‘control’ and ‘controlled entity’.

**Clause 61 Replacement of s 113 (What this part is about)**

*Clause 61* amends section 113 to provide that the purpose of this part is to allow the Minister or the department’s chief executive, on behalf of the State to gather information, including under a

direction, to monitor and evaluate whether a local government or councillor is performing their responsibilities properly, or if they are complying with laws applying to them including the Local Government Acts, or it is otherwise in the public interest to take remedial action under this part. This section also defines ‘remedial action’.

**Clause 62      Amendment of s 115 (Gathering information)**

*Clause 62* amends section 115 to provide that the department’s chief executive may examine the information contained in the local government’s records and operations or otherwise investigate the local government or councillor to monitor and evaluate their performance and compliance, including whether it is in the public interest to take remedial action.

**Clause 63      Insertion of new ch 5, pt 1, div 2A, hdg**

*Clause 63* inserts a new heading (Division 2A Remedial action initiated by chief executive).

**Clause 64      Replacement of s 116 (Acting on the information gathered)**

*Clause 64* amends section 116 to provide that if the department’s chief executive believes the local government or councillor is not performing their responsibilities properly, or they are not complying with the laws, including the Local Government Acts, or it is otherwise in the public interest for the Minister to take remedial action, the chief executive may make recommendations to the Minister about what remedial action to take.

The amendments also provide that the Minister may take remedial action the Minister considers appropriate in the circumstances and may publish the reason it is in the public interest to take remedial action, or the remedial already taken, or the way in which the local government or councillor is not performing their responsibilities or is not complying with the law, including the Local Government Acts. The Minister may publish the information in a newspaper circulating generally in the local government area or direct the local government to publish the information on the local government’s website.

**Clause 65      Amendment of s 117 (Advisors)**

*Clause 65* amends section 117 to provide that the department’s chief executive may, by gazette notice, appoint an advisor for the local government if the chief executive believes that the local government is not performing its responsibilities, or is not complying with the laws, including the Local Government Acts, or it is otherwise in the public interest for the department’s chief executive to appoint an advisor for the local government.

**Clause 66      Amendment of s 118 (Financial controllers)**

*Clause 66* amends section 118 to provide that the department’s chief executive may, by gazette notice, appoint a financial controller for the local government if the chief executive believes that the local government is not performing its responsibilities properly, or the local government is not

complying with the laws, including the Local Government Acts, or it is otherwise in the public interest to appoint a financial controller.

**Clause 67 Replacement of ch 5, pt 1, div 3, hdg (Action by the Minister)**

*Clause 67* replaces the heading for chapter 5, part 1, division 3 with ‘Division 3 (Remedial action by Minister)’.

**Clause 68 Amendment of s 121 (Removing unsound decisions)**

*Clause 68* amends section 121 to provide that the Minister may, by gazette notice, suspend or revoke a decision of the local government if the Minister believes the decision is contrary to any law or inconsistent with the local government principles or it is otherwise in the public interest to suspend or revoke the decision.

The amendments also provide that the gazette notice must state either how the decision is contrary to a law or inconsistent with the local government principles or why it is otherwise in the public interest to suspend or revoke the decision. If the decision has been suspended, the gazette notice must also state how the decision may be amended so it is no longer contrary to the law or inconsistent with the local government principles or in the public interest to suspend the decision.

**Clause 69 Amendment of s 149 (Obstructing local government officials)**

*Clause 69* amends section 149(3) to omit the reference to ‘chapter 5’ to reflect current drafting practice.

**Clause 70 Replacement of ch 5A, hdg (Councillor conduct)**

*Clause 70* replaces the heading for chapter 5A with ‘Councillor conduct and particular conduct of local government employees’. This is a consequence of the Bill expanding the jurisdiction of the assessor to include the investigation of particular conduct of local government employees.

**Clause 71 Amendment of s 150B (Overview of chapter)**

*Clause 71* amends section 150B(1) to provide that chapter 5A is also about investigating and dealing with particular complaints about alleged or suspected corrupt conduct of local government employees and the entities that investigate and deal with these particular complaints. This is a consequence of the Bill expanding the jurisdiction of the assessor to include the investigation of particular conduct of local government employees.

*Clause 71* also amends section 150B(2)(c)(ii) to provide that under chapter 5A the assessor, after investigating a councillor’s conduct, may apply to the conduct tribunal to decide whether the councillor engaged in inappropriate conduct that is connected to misconduct and the action to be taken to discipline the councillor for the inappropriate conduct. This is a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 72 Amendment of s 150C (Definitions for chapter)**

*Clause 72* amends section 150C to omit the definition of ‘local government meeting’, as a definition of ‘local government meeting’ is being inserted in schedule 4 (Dictionary) of the Act.

**Clause 73 Amendment of ch 5A, pt 2, hdg (Conduct at local government meetings)**

*Clause 73* replaces the heading for chapter 5A, part 2 with ‘Councillor conduct at local government meetings’ to clarify that part 2 relates only to councillor conduct. This is a consequence of the Bill expanding the jurisdiction of the assessor to include the investigation of particular conduct of local government employees.

**Clause 74 Amendment of s 150L (What is misconduct)**

*Clause 74* consequentially amends section 150L(1)(c)(iv) to update the references to sections 150R, 170(2) and 175G with references to sections 150R(2), 170(3) and 150EW(2) respectively.

**Clause 75 Amendment of ch 5A, pt 3, div 3, hdg (Local government duties to notify assessor about particular conduct)**

*Clause 75* consequentially amends the heading for chapter 5A, part 3, division 3 ‘Local government duties to notify assessor about particular conduct’ to read ‘Local government duties to notify assessor about particular councillor conduct’ to clarify that chapter 5A, part 3, division 3 relates only to councillor conduct. This is a consequence of the Bill expanding the jurisdiction of the assessor to include the investigation of particular conduct of local government employees.

**Clause 76 Amendment of s 150R (Local government official must notify assessor about particular conduct)**

*Clause 76* amends section 150R to provide that it is an offence for a local government official to give the assessor a notice under section 150R about a councillor’s conduct vexatiously or other than in good faith. A maximum penalty of 85 penalty units applies.

**Clause 77 Amendment of ch 5A, pt 3, div 4, hdg (Investigation of councillor conduct)**

*Clause 77* amends the heading for chapter 5A, part 3, division 4 ‘Investigation of councillor conduct’ to read ‘Investigation of councillor conduct and particular conduct of local government employees’. This is a consequence of the Bill expanding the jurisdiction of the assessor to include the investigation of particular conduct of local government employees.

**Clause 78 Amendment of s 150T (Assessor must investigate conduct of councillor)**

*Clause 78* consequentially amends section 150T to provide that the assessor must investigate the conduct of a councillor if the conduct is the subject of a referral made to the assessor by the conduct tribunal under new section 150DLA.

**Clause 79 Insertion of new s 150TA (Assessor must investigate particular conduct of local government employee)**

*Clause 79* inserts new section 150TA to provide that the assessor must investigate the conduct of a local government employee if:

- the conduct is the subject of a complaint referred to the assessor by the Crime and Corruption Commission; and
- the conduct is connected to the conduct of a councillor that is the subject of a complaint referred to the assessor by the Crime and Corruption Commission.

Under chapter 2, part 3 of the *Crime and Corruption Act 2001*, the Crime and Corruption Commission may decide to refer a complaint to the assessor to deal with, whether or not in cooperation with the commission.

**Clause 80 Amendment of s 150V (Investigative powers)**

*Clause 80* amends section 150V(1) to provide that the assessor may exercise the assessor's powers as an investigator under part 4 for an investigation under new section 150TA (Assessor must investigate particular conduct of local government employee).

For an investigation of particular conduct of a local government employee, an investigator will have the power to require a person to give information to the investigator and the power to require a person to attend a place and answer questions. The Bill amends sections 150CH and 150CJ accordingly.

**Clause 81 Amendment of s 150W (Decision about conduct)**

*Clause 81* amends section 150W to provide that after investigating the conduct of a councillor, if the assessor is reasonably satisfied the councillor's conduct is inappropriate conduct and the conduct is connected to conduct of the councillor that the assessor is reasonably satisfied is misconduct, the assessor may decide to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct.

New section 150W(2) provides the decisions the assessor may make after investigating the conduct of a councillor that was referred to the assessor by the conduct tribunal under new section 150DLA. The assessor may decide to make an application to the conduct tribunal about the conduct (if the assessor is reasonably satisfied the councillor's conduct is misconduct) or the assessor may decide to give the conduct tribunal a notice stating the assessor is not reasonably satisfied the councillor's conduct is misconduct.

New section 150DLA provides that if the conduct tribunal is investigating, at the request of a local government, the suspected inappropriate conduct of a councillor referred to the local government by the assessor and the conduct tribunal is reasonably satisfied the conduct is misconduct, the conduct tribunal must refer the conduct to the assessor for further investigation under part 3, division 4 of the LGA.



**Clause 82 Amendment of s 150X (Decision to dismiss complaint)**

*Clause 82* amends section 150X to replace the reference to a complaint that ‘was not made in good faith’ with ‘was made other than in good faith’ to reflect current drafting practices.

**Clause 83 Amendment of s 150AA (Notice and opportunity for councillor to respond)**

*Clause 83* consequentially amends section 150AA(1)(b) and (2)(c)(ii) to replace references to ‘misconduct’ with references to conduct generally. This is a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 84 Amendment of s 150AB (Application of division)**

*Clause 84* consequentially amends section 150AB(b) to replace the reference to ‘section 150W(b)’ with ‘section 150W(1)(b)’.

**Clause 85 Amendment of ch 5A, pt 3, div 6, hdg (Application to conduct tribunal about misconduct)**

*Clause 85* amends the heading for chapter 5A, part 3, division 6 ‘Application to conduct tribunal about misconduct’ to read ‘Application to conduct tribunal about misconduct and connected inappropriate conduct’. This is a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 86 Amendment of s 150AI (Application of division)**

*Clause 86* amends section 150AI to provide that the division also applies if the assessor is reasonably satisfied a councillor has engaged in inappropriate conduct that is connected to the conduct of the councillor that the assessor is reasonably satisfied is misconduct. This is a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 87 Amendment of s 150AJ (Application to conduct tribunal about alleged misconduct)**

*Clause 87* amends section 150AJ(1) to provide that the assessor may also apply to the conduct tribunal to decide whether a councillor has engaged in inappropriate conduct that is connected to conduct of the councillor that is alleged misconduct.

The amendments to section 150AJ(2) provide that the application to the conduct tribunal must include details of the alleged misconduct or inappropriate conduct and any complaint received about the misconduct or inappropriate conduct and state why the assessor is reasonably satisfied that the councillor has engaged in misconduct and inappropriate conduct that is connected to the alleged misconduct.

New section 150AJ(3) provides that the assessor may make an application about the alleged inappropriate conduct only if the application is also made about the connected alleged misconduct.

**Clause 88 Amendment of s 150AN (Role of the assessor)**

*Clause 88* amends section 150AN(2) to provide that the onus of proof is on the assessor in a conduct tribunal hearing to prove a councillor engaged in misconduct and, if inappropriate conduct is alleged, the inappropriate conduct. This is a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 89 Amendment of s 150AQ (Deciding about misconduct)**

*Clause 89* amends section 150AQ to provide that after conducting a hearing, the conduct tribunal must decide whether or not a councillor has engaged in misconduct or inappropriate conduct or both (if the application relates to alleged misconduct and inappropriate conduct); or whether or not a councillor has engaged in misconduct (if the application relates only to alleged misconduct).

The conduct tribunal must also decide what action to take under section 150AR (Disciplinary action against councillor) to discipline the councillor if the conduct tribunal decides the councillor has engaged in misconduct or inappropriate conduct. In deciding what action to take, the conduct tribunal may consider a range of issues including any previous inappropriate conduct of the councillor (if the application relates to inappropriate conduct).

The amendments also amend the heading for section 150AQ to read ‘Deciding about misconduct and connected inappropriate conduct’ to better reflect the scope of matters dealt with under the section.

**Clause 90 Amendment of s 150AR (Disciplinary action against councillor)**

*Clause 90* amends section 150AR to prescribe new requirements for the conduct tribunal when deciding disciplinary action for misconduct or inappropriate conduct of a councillor. In deciding what action to take for engaging in misconduct and inappropriate conduct, the conduct tribunal must have regard to the action a local government could have taken under section 150AH in relation to inappropriate conduct. Similarly, for inappropriate conduct only, the conduct tribunal may only take the action a local government could have taken under section 150AH in relation to inappropriate conduct. Consequential amendments replace references to ‘misconduct’ in section 150AR(1)(b)(i) and (v) with ‘misconduct or inappropriate conduct’.

**Clause 91 Amendment of s 150AS (Notices and publication of decisions and orders)**

*Clause 91* consequentially amends section 150AS to provide that the section applies to a decision made by the conduct tribunal about whether or not a councillor has engaged in misconduct or inappropriate conduct or both and a decision made by the conduct tribunal to take action to discipline the councillor for the misconduct or inappropriate conduct or both.

**Clause 92 Amendment of s 150AV (Other improper complaints)**

*Clause 92* amends section 150AV to replace the reference to a person making a complaint ‘not in good faith’ with ‘other than in good faith’ to reflect current drafting practices.

**Clause 93 Amendment of s 150AY (Functions of investigators)**

*Clause 93* amends section 150AY(a) to provide that an investigator also has the function of investigating local government employees under chapter 5A, part 3 of the Local Government Act, as directed by the assessor.

Amendments to section 150AY(b) prescribe section 150R(3) as a ‘conduct provision’; consequentially replace the reference to section 150CK(4) with 150CK(5); prescribe new provisions relating to councillors’ conflicts of interest as ‘conduct provisions’; and omit references to the former material personal interest and conflict of interest provisions from the current prescribed list of ‘conduct provisions’. The functions of an investigator include investigating whether an offence has been committed against any of the conduct provisions.

**Clause 94 Amendment of s 150CH (Power to require information)**

*Clause 94* amends section 150CH(1)(b) to provide that the section also applies if an investigator reasonably believes that a person has information reasonably necessary for the investigator to investigate the conduct of a local government employee. The investigator may, by notice given to the person, require the person to give the investigator the information by a stated reasonable time.

**Clause 95 Amendment of s 150CJ (Power to require attendance)**

*Clause 95* amends section 150CJ(1)(b) to provide that an investigator may also require a person to attend a meeting with the investigator at a stated reasonable time and place and answer questions in relation to the investigation of the conduct of a local government employee.

**Clause 96 Amendment of s 150CK (Notice about confidentiality)**

*Clause 96* amends section 150CK to provide that a confidentiality notice may also be given to a person under section 150CK in relation to an investigation of the conduct of a local government employee, but only where the assessor reasonably believes the notice is necessary to ensure the investigation of the conduct of the local government employee is kept confidential. This is a consequence of the Bill expanding the jurisdiction of the assessor to include the investigation of particular conduct of local government employees.

The amendments also clarify that if the assessor gives a confidentiality notice under section 150CK, the notice is also confidential information.

**Clause 97 Amendment of s 150CN (Compensation)**

*Clause 97* amends section 150CN(2)(b) to provide that compensation may be claimed and ordered in a proceeding for an offence relating to the conduct of a local government employee, if the investigation of the conduct resulted in an investigator exercising or purporting to exercise a power that incurred a loss to a person.

**Clause 98 Amendment of s 150CU (Functions)**

*Clause 98* amends section 150CU(1) to provide that the assessor also has the function of investigating and dealing with the conduct of a local government employee if the conduct is the subject of a complaint referred to the assessor by the Crime and Corruption Commission and the conduct is connected to the conduct of a councillor that is the subject of a complaint referred to the assessor by the Crime and Corruption Commission.

**Clause 99 Amendment of s 150DB (Conflict of interest)**

*Clause 99* amends section 150DB(1) to provide that the section also applies if the assessor has an interest that may conflict with a fair and impartial investigation into the conduct of a local government employee. The assessor must not take part, or take further part, in consideration of the matter. This is a consequence of the Bill expanding the jurisdiction of the assessor to include the investigation of particular conduct of local government employees.

**Clause 100 Amendment of s 150DL (Functions)**

*Clause 100* amends section 150DL which prescribes the functions of the conduct tribunal to clarify that nothing in the section limits the president's duty under the *Crime and Corruption Act 2001* to notify the Crime and Corruption Commission about suspected corrupt conduct.

**Clause 101 Insertion of new s 150DLA (Referral of alleged misconduct to assessor)**

*Clause 101* inserts new section 150DLA to provide that if the conduct tribunal is investigating, at the request of a local government, the suspected inappropriate conduct of a councillor referred to the local government by the assessor and the conduct tribunal is reasonably satisfied the conduct is misconduct, the conduct tribunal must refer the conduct to the assessor for further investigation under part 3, division 4 of the Local Government Act.

**Clause 102 Amendment of s 150DU (Costs of conduct tribunal to be met by local government)**

*Clause 102* amends section 150DU(1)(a) to provide that a local government must also pay the costs of the conduct tribunal in relation to a hearing about the inappropriate conduct of a councillor under chapter 5A, part 3, division 6 of the Local Government Act (Application to conduct tribunal about misconduct and connected inappropriate conduct). This is a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 103 Amendment of s 150DX (Local governments to keep and publish register)**

*Clause 103* amends section 150DX(1)(c) to provide that the councillor conduct register required to be kept by local governments under section 150DX of the Local Government Act must include information relating to decisions made by the conduct tribunal about whether or not councillors engaged in inappropriate conduct. This is a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 104 Amendment of s 150DY (Content of register – decisions)**

*Clause 104* amends section 150DY(1)(c) to provide that the section also applies to a decision about the inappropriate conduct of a councillor made by the conduct tribunal and any action taken to discipline the councillor. The section prescribes the details about the decision that must be included in the councillor conduct register.

The amendments are a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 105 Amendment of s 150EB (Annual report)**

*Clause 105* amends section 150EB(2)(a)(vii) to provide that the annual report of the assessor must also contain a description of decisions made by the conduct tribunal about whether councillors engaged in inappropriate conduct. This is a consequence of the Bill permitting the assessor to make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct of a councillor, in certain circumstances.

**Clause 106 Insertion of new ch 5B**

*Clause 106* inserts new chapter 5B (Councillors' conflicts of interest).

**Chapter 5B Councillors' conflicts of interest**

**Part 1 Preliminary**

**Section 150ED Purpose of chapter**

New section 150ED provides that the purpose of chapter 5B is to ensure that if councillor has a personal interest in the matter, the local government deals with a matter in an accountable and transparent way that meets community expectations.

**Section 150EE When does a person participate in a decision**

New section 150EE provides that in chapter 5B, a reference to a councillor of a local government, or other person, participating in a decision includes a reference to the councillor or other person

considering, discussing or voting on the decision in a local government meeting and considering or making a decision under an Act, a delegation or another authority.

### **Section 150EF Personal interests in particular ordinary business matters of a local government**

New section 150EF provides that chapter 5B does not apply to a conflict of interest in a matter, if the matter is solely, or relates solely to:

- the making or levying of rates and charges; or
- the fixing of a cost-recovery fee, by the local government; or
- a planning scheme, or amendment of a planning scheme, for the local government area; or
- a resolution required for the adoption of a budget for the local government; or
- the remuneration or reimbursement of expenses of councillors or members of a committee of the local government; or
- the provision of superannuation entitlements or public liability, professional indemnity or accident insurance for councillors; or
- a matter of interest to the councillor solely as a candidate for election or appointment as mayor, deputy mayor, councillor or member of a committee of the local government.

Chapter 5B also does not apply to a councillor's conflict of interest in a matter relating to a corporation or association that arises solely because a councillor has been nominated or appointed by the local government to be a member of the board of the corporation or association.

However, if a councillor decides to voluntarily comply with chapter 5B in relation to personal interests of the councillor in the matter, the personal interests are taken to be a declarable conflict of interest and chapter 5B applies as if eligible councillors had, under section 150ER(2), decided the councillor has a declarable conflict of interest in the matter.

## **Part 2 Prescribed conflicts of interest**

### **Section 150EG When councillor has *prescribed conflict of interest* – particular gifts or loans**

New section 150EG provides that a councillor has a prescribed conflict of interest in a matter if:

- a gift or loan is given by an entity (the donor) that has an interest in the matter in circumstances mentioned below; and
- the gift or loan is given during the relevant term of the councillor; and
- all gifts or loans given by the donor during the councillor's relevant term in the same circumstances total \$2,000 or more.

The circumstances are, where the donor:

- gives to the councillor a gift or loan for which a return is required under the *Local Government Electoral Act 2011*, part 6; or
- gives to a group of candidates or a political party of which the councillor is a member, a gift or loan for an election for which a return is required under the *Local Government Electoral Act 2011*, part 6 and the councillor is a candidate in the election; or

- gives to the councillor, or a close associate of the councillor, a gift in other circumstances.

For working out the total gifts or loans given to a group of candidates or a political party, the amount of each gift or loan given to the group or political party must first be divided by the number of candidates in the group or political party.

**Section 150EH When councillor has *prescribed conflict of interest*—sponsored hospitality benefits**

New section 150EH(1) provides that a councillor has a prescribed conflict of interest in a matter if a sponsored hospitality benefit is given to the councillor or a close associate of the councillor during the relevant term of the councillor by an entity (the donor) that has an interest in the matter and all the total sponsored benefits given to the councillor or close associate during the councillor's relevant term total \$2,000 or more.

New section 150EH(2) provides a definition for 'sponsored hospitality benefit'.

**Section 150EI When councillor has *prescribed conflict of interest*—other**

New section 150EI provides that a councillor has a prescribed conflict of interest in a matter if:

- the matter is, or relates to, a contract between the local government and the councillor, or a close associate of the councillor, for the supply of goods or services to the council or the lease or sale of assets by the council; or
- the chief executive officer is a close associate of the councillor and the matter is or relates to the appointment, discipline, termination, remuneration or other employment conditions of the chief executive officer; or
- the matter is, or relates to, an application made to the council by the councillor, or a close associate of the councillor if the matter is or was for the grant of a licence, permit, registration, approval or consideration of another matter under a Local Government Act and the councillor, or a close associate of the councillor has made a written submission to the council about the application before it is or was decided.

**Section 150EJ Who is a *close associate* of a councillor**

New section 150EJ provides that a close associate of a councillor is a person in relation to the councillor that is:

- a spouse
- a parent, child or sibling
- a partner in a partnership
- an employer, other than a government entity
- an entity, other than a government entity, for which the councillor is an executive officer or board member
- an entity in which the councillor or one of the persons mentioned above has an interest, other than an interest of less than 5% in an entity that is a listed corporation under the Corporations Act, section 9.

However, a parent, child or sibling is a close associate of a councillor in relation to a matter only if the councillor knows, or ought reasonably to know, about the parent's, child's or sibling's involvement in the matter.

### **Section 150EK Councillor must not participate in decisions**

New section 150EK provides that if a councillor has a prescribed conflict of interest in a matter, the councillor must not participate in a decision relating to the matter. A maximum penalty of 200 penalty units or 2 years imprisonment applies.

However, the councillor does not contravene the requirement by being present under an approval given under section 150EV.

### **Section 150EL Obligation of councillor with prescribed conflict of interest**

New section 150EL applies if a councillor may participate, or is participating, in a decision about a matter and becomes aware that the councillor has a prescribed conflict of interest in the matter.

If the councillor first becomes aware the councillor has the prescribed conflict of interest in the matter at a local government meeting, the councillor must immediately inform the meeting of the prescribed conflict of interest, including the particulars stated below. Otherwise, the councillor must, as soon as practicable, give written notice of the prescribed conflict of interest, including particulars stated below, to the chief executive officer and must also give notice of the prescribed conflict of interest at the next meeting of the local government or the next meeting of a committee, if the matter is to be considered and decided at a meeting of a committee. A maximum penalty of 200 penalty units or 2 years imprisonment applies for both circumstances.

The particulars to be provided are:

- for a gift, loan or contract—the value of a gift, loan or contract;
- for an application for which a submission has been made—the matters the subject of the application and submission;
- name of any entity, other than the councillor, that has an interest in the matter;
- the nature of the councillor's relationship with the entity that has an interest in the matter;
- details of the councillor's, and any other entity's, interest in the matter.

### **Section 150EM Dealing with prescribed conflict of interest at a meeting**

New section 150EM provides that if a councillor gives a notice at, or informs, a meeting of the councillor's prescribed conflict of interest in a matter, the councillor must leave the place at which the meeting is held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on. A maximum penalty of 200 penalty units or 2 years imprisonment applies.

However, the councillor does not contravene the requirement by participating in a decision or being present under an approval given under section 150EV.



### **Part 3           Declarable conflicts of interest**

#### **Section 150EN What is a *declarable conflict of interest***

New section 150EN provides that, subject to section 150EO, a councillor has a declarable conflict of interest in a matter if the councillor has, or could reasonably be presumed to have, a conflict between the councillor's personal interests, or the personal interests of a related party of the councillor, and the public interest and because of the conflict, the councillor's participating in a decision about the matter might lead to a decision that is contrary to the public interest.

#### **Section 150EO Interests that are not declarable conflicts of interest**

New section 150EO provides that a councillor does not have a declarable conflict of interest in a matter if:

- the conflict of interest is a prescribed conflict of interest in the matter; or
- the conflict of interest arises solely because:
  - the councillor undertakes an engagement in the capacity of a councillor for a community group, sporting club or similar organisation and is not appointed as an executive officer of the organisation; or
  - the councillor, or a related party of the councillor, is a member of a community group, sporting club or similar organisation and is not an executive officer of the organisation; or
  - the councillor, or a related party of the councillor, is a member of a political party; or
  - the councillor, or a related party of the councillor, has an interest in an educational facility or provider of a child care service as a student or former student, or a parent or a grandparent of a student, of the facility or service; or
- the conflict of interest arises solely because of the religious beliefs of the councillor or a related party of the councillor; or
- the councillor, or a related party of the councillor, stands to gain benefit or suffer a loss because of the conflict, that is no greater than the benefit or loss that a significant proportion of persons in the local government area stand to gain or lose; or
- the conflict of interest arises solely because of the councillor, or a related party of the councillor, receives gifts, loans or sponsored hospitality benefits from an entity totalling \$500 or less during the councillor's relevant term.

New section 150EO also provides a definition of 'sponsored hospitality benefit'.

#### **Section 150EP Who is a *related party* of a councillor**

New section 150EM provides that a related party of a councillor includes a close associate, other than an entity mentioned in section 150EJ(1)(f), a parent, child or sibling of the councillor's spouse and a person who has a close personal relationship with the councillor.

### **Section 150EQ Obligation of councillor with declarable conflict of interest**

New section 150EQ applies if a councillor may participate or is participating in a decision about a matter and becomes aware that they have a declarable conflict of interest in the matter.

If the councillor first becomes aware the councillor has the declarable conflict of interest at a local government meeting, the councillor must stop participating, and must not further participate, in a decision relating to the matter, and must immediately inform the meeting of the declarable conflict of interest, including the particulars stated below. Otherwise, the councillor must stop participating, and must not further participate in a decision relating to the matter, and must, as soon as practicable, give notice of the declarable conflict of interest in the matter to the chief executive and give notice of the declarable conflict of interest including the particulars below at the next meeting of the local government or at a meeting of a committee of a local government if the matter is to be considered and decided at the committee meeting. A maximum penalty of 100 penalty units or 1 year's imprisonment applies in both circumstances.

The particulars that must be given are:

- the nature of the declarable conflict of interest;
- if the declarable conflict of interest arises because of the councillor's relationship with a related party, the name of the related party, the nature of the relationship to the councillor and the nature of the related party's interests in the matter;
- if the councillor's or related party's personal interests arise because of the receipt of a gift or loan from another person, the name of the other person, the nature of the relationship of the other person to the councillor, the nature of the other person's interests in the matter and the value of the gift or loan, and the date the gift was given, or loan was made.

The councillor does not contravene subsection (2)(a) or (3)(a) if the councillor has complied with this section and either a decision has been made under section 150ES(2)(a)(i) or (b)(i) that the councillor may participate in the decision despite having a declarable conflict of interest in the matter or the councillor is participating in the decision under an approval given under section 150EV.

### **Section 150ER Procedure if meeting informed of councillor's personal interests**

New section 150ER provides that if a local government meeting is informed that a councillor has personal interests in a matter by a person other than the councillor, the eligible councillors at the meeting must decide whether the councillor has a declarable conflict of interest in the matter.

### **Section 150ES Procedure if councillor has declarable conflict of interest**

New section 150ES provides that if a councillor has a declarable interest in a matter as notified at a meeting under 150EQ(2) or (3) or decided by eligible councillors at a meeting under section 150ER(2), the eligible councillors must, by resolution, decide:

- for a matter that would, other than for the councillor's conflict of interest, have been decided by the councillor under an Act, a delegation or authority, whether the councillor:
  - may participate in the decision despite the councillor's conflict of interest; or

- must not participate in the decision, and must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the eligible councillors discuss and vote on the matter; or
- for another matter, whether the councillor:
  - may participate in a decision about the matter at the meeting, including by voting on the matter or
  - must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the eligible councillors discuss and vote on the matter.

The eligible councillors may impose conditions on the councillor under a decision mentioned in subsection (2)(a)(i) or (b)(i).

A maximum penalty of 100 penalty units or 1 year's imprisonment applies for non-compliance with a decision under subsection (2)(a)(ii) or (b)(ii) or any conditions imposed on a decision under subsection (3).

However, the councillor does not contravene subsection (4) by participating in a decision or being present under an approval given under section 150EV.

### **Section 150ET Decision of eligible councillors**

New section 150ET provides that even if the number of eligible councillors is less than a majority or the eligible councillors do not form a quorum for the meeting, the eligible councillors may make a decision under section 150ER or 150ES, other than a matter mentioned in section 150EU.

The councillor who is the subject of the decision may remain at the meeting while the decision is made but cannot vote or otherwise participate in the making of the decision, other than by answering a question put to the councillor necessary to assist the eligible councillors to make the decision.

If the eligible councillors can not make a decision under section 150ER or 150ES, the eligible councillors are taken to have decided under section 150ES(2)(a)(ii) or (b)(ii) that the councillor must leave, and stay away from, the place where the meeting is being held while the eligible councillors discuss and vote on the matter.

A decision about a councillor under section 150ER or 150ES for a matter applies in relation to their participation in the decision, and all subsequent decisions about the matter.

## **Part 4 Other matters**

### **Section 150EU Procedure if no quorum for deciding matter because of prescribed conflicts of interest or declarable conflicts of interest**

New section 150EU provides that the local government must delegate deciding a matter under section 257, unless it cannot be delegated under that section, or decide, by resolution, to defer the

matter to a later meeting, if a matter in which one or more councillors have a prescribed conflict of interest or declarable conflict of interest is to be decided at the meeting and there is less than a quorum remaining at the meeting after any of the councillors with a prescribed or declarable conflict of interest leave, and stay away from, the place where the meeting is being held.

The local government must not delegate deciding the matter to an entity if the entity, or a majority of its members, have personal interests that are, or are equivalent in nature to, a prescribed or declarable conflict of interest in the matter.

A councillor does not contravene section 150EK(1), 150EM(2), 150EQ(2)(a) or (3)(a) or 150ES(4) by participating in a decision, if the councillor's participation is for the purpose of delegating the matter or deferring the matter to a later meeting.

### **Section 150EV Minister's approval for councillor to participate or be present to decide matter**

New section 150EV provides that the Minister may, by signed notice given to a councillor, approve the councillor participating in deciding a matter in a meeting, including being present while the matter is discussed and voted on, if the matter could not otherwise be decided at the meeting because of section 150EU(1) and deciding the matter cannot be delegated under section 257. The Minister may also give the approval subject to the conditions stated in the notice.

### **Section 150EW Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest**

New section 150EW provides that if a councillor reasonably believes, or reasonably suspects, another councillor who has either a prescribed or declarable conflict of interest is participating in a decision in contravention of section 150EK(1) or 150EQ(2)(a) or (3)(a), respectively, the councillor who has the belief or suspicion must immediately inform the person who is presiding over the meeting (if the belief or suspicion arises in a local government meeting) or otherwise, as soon as practicable, inform the chief executive officer of the belief or suspicion.

The councillor must also inform the person presiding over a meeting or the chief executive officer, of the facts and circumstances forming the basis of the belief or suspicion.

### **Section 150EX Obligation of councillor if conflict of interest reported under s 150EW**

New section 150EX provides that if, under section 150EW, a councillor (the informing councillor) informs the person presiding at a local government meeting of a belief or suspicion about another councillor (the relevant councillor), the relevant councillor must do one of the following:

- if the relevant councillor has a prescribed conflict of interest—comply with section 150EL(2)
- if the relevant councillor has a declarable conflict of interest—comply with section 150EQ(2)
- if the relevant councillor considers there is no prescribed conflict of interest or declarable conflict of interest—inform the meeting of the relevant councillor's belief, including reasons for the belief.

If the relevant councillor considers there is no prescribed conflict of interest or declarable conflict of interest and informs the meeting of this belief, the informing councillor must inform the meeting about the particulars of the informing councillor's belief or suspicion and the eligible councillors at the meeting must decide whether or not the relevant councillor has a prescribed conflict of interest or declarable conflict of interest in the matter.

If the eligible councillors decide the relevant councillor has a prescribed conflict of interest in the matter, section 150EM(2) is taken to apply to the relevant councillor for the matter. If the eligible councillors decide the relevant councillor has a declarable conflict of interest in the matter, sections 150EQ(2) and 150ES are taken to apply to the relevant councillor for the matter.

### **Section 150EY Offences to take retaliatory action**

New section 150EY provides that a person must not, because a councillor complied with section 150EW:

- prejudice, or threaten to prejudice, the safety or career of the councillor or another person; or
- intimidate or harass, or threaten to intimidate or harass, the councillor or another person;
- take any action that is, or is likely to be, detrimental to the councillor or another person.

A maximum penalty of 167 penalty units or 2 years imprisonment applies.

### **Section 150EZ Offence for councillor with prescribed conflict of interest or declarable conflict of interest to influence others**

New section 150EZ provides that a councillor who has a prescribed conflict of interest or declarable conflict of interest in a matter must not direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the local government relating to the matter. A maximum penalty of 200 penalty units or 2 years imprisonment applies.

A councillor does not contravene the requirement solely by participating in a decision relating to the matter, including by voting on the matter, if the participation is permitted under a decision mentioned in section 150ES(2)(a)(i) or (b)(i) or approved by the Minister under section 150EV.

A councillor also does not contravene the requirement solely because the councillor gives the chief executive officer the following information in compliance with chapter 5B – factual information about a matter or information that is required to be given to the local government about a matter, including in an application, to enable the local government to decide the matter.

### **Section 150FA Records about prescribed conflicts of interest or declarable conflicts of interest – meetings**

New section 150FA provides that if a councillor gives notice to, or informs, a local government meeting that the councillor, or another councillor, has a prescribed conflict of interest or declarable conflict of interest in a matter, the minutes of the meeting must record the following information:

- the names of the councillor and any other councillor who may have a conflict of interest;
- the particulars of the conflict of interest;

- if section 150EX applies, the action the councillor takes under section 150EX(1) and any decision made by the eligible councillors under section 150EX(2);
- whether the councillor participated in deciding the matter, or was present for deciding the matter, under an approval under section 150EV;
- for a matter to which the conflict of interest relates – the name of each eligible councillor who voted on the matter, and how each eligible councillor voted.

Additional information is required if the councillor has a declarable conflict of interest, including:

- for a decision under section 150ER(2) – the name of each eligible councillor who voted in relation to whether the councillor has a declarable conflict of interest, and how each eligible councillor voted; and
- for a decision under section 150ES – the decision, and reasons for the decision and the name of each eligible councillor who voted on the decision, and how each eligible councillor voted.

**Clause 107 Amendment of s 162 (When a councillor’s office becomes vacant)**

*Clause 107* amends section 162(1)(e) to clarify that a councillor’s office does not become vacant if the councillor is absent, over a period of at least 2 months, from 2 or more consecutive ordinary meetings of the local government because the councillor is suspended under section 122 (Removing a councillor), section 123 (Suspending or dissolving a local government) or section 175K (Automatic suspension for certain offences).

**Clause 108 Amendment of s 170 (Giving directions to local government staff)**

*Clause 108* amends section 170 to provide that a mayor may give a direction to the chief executive officer but not to senior executive employees and that a direction by the mayor to the chief executive officer must not be inconsistent with a resolution, or a document adopted by resolution, of the local government. The chief executive officer must keep a record of each direction given to the chief executive officer and make each direction available to the local government.

The amendments also insert a note to clarify that contravention of section 170(3) (as renumbered) is misconduct under the Local Government Act, section 150L(1)(c)(iv) (What is misconduct) and could result in disciplinary action being taken against a councillor. The note also refers to the Local Government Act, sections 150AQ (Deciding about misconduct) and 150AR (Disciplinary action against councillor).

**Clause 109 Amendment of s 170A (Requests for assistance or information)**

*Clause 109* makes minor amendments to section 170A to rectify the grammar and replace the reference to ‘council’ with ‘local government’.

**Clause 110 Amendment of s 171 (Use of information by councillors)**

*Clause 110* amends section 171 by inserting a note to clarify that contravention of section 171(3) is misconduct under the Local Government Act, section 150L(1)(c)(iv) (What is misconduct) and could result in disciplinary action being taken against a councillor. The note also refers to the Local

Government Act, sections 150AQ (Deciding about misconduct) and 150AR (Disciplinary action against councillor).

**Clause 111 Omission of ch 6, pt 2, div 5A (Dealing with councillors' personal interests in local government matters)**

*Clause 111* omits chapter 6, part 2, division 5A as the Bill inserts new chapter 5B (Councillors' conflicts of interest) to deal with conflicts of interests.

**Clause 112 Amendment of s 182E (When suspension of councillor ends)**

*Clause 112* amends section 182E to replace reference to section 182A with 175K.

**Clause 113 Amendment of s 182F (Criminal history report)**

*Clause 113* amends section 182E to replace reference to section 182C with 175M.

**Clause 114 Amendment of s 182Q (Confidentiality of criminal history information)**

*Clause 114* amends section 182Q to replace reference to section 182F with 175P and section 182C with section 175M.

**Clause 115 Renumbering ss 182A - 182G**

*Clause 115* renumbers sections 182A to 182G as sections 175K to 175Q.

**Clause 116 Amendment of s 196 (Appointing other local government employees)**

*Clause 116* amends section 196 to provide that the chief executive officer appoints all local government employees, including senior executive employees, and removes the system for a panel to appoint a senior executive employee.

**Clause 117 Amendment of s 236 (Who is authorised to sign local government documents)**

*Clause 117* amends section 236 to provide that the interim administrator is the head of the local government if all of the councillors have been suspended or the local government has been dissolved under section 123 (Suspending or dissolving a local government) and an interim administrator is appointed.

**Clause 118 Replacement of s 244 (Decisions not subject to appeal)**

*Clause 118* replaces section 244 to provide that if the LGA declares a decision not to be subject to appeal, unless the Supreme Court decides the decision is affected by jurisdictional error, the decision:

- is final and conclusive; and

- can not be challenged, appealed against, reviewed, quashed, set aside or called into question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

The *Judicial Review Act 1991*, part 5 (Prerogative orders and injunctions) applies to the decision to the extent it is affected by jurisdictional error.

Any person who, but for subsection (2), could have made an application under the *Judicial Review Act 1991* in relation to the decision may apply under part 4 of that Act (Reasons for decisions) for a statement of reasons in relation to the decision. The term ‘decision’ is defined in this section.

#### **Clause 119 Amendment of s 258 (Delegation of mayor’s powers)**

*Clause 119* consequentially amends section 258(2) to remove the mayor’s ability to delegate to another councillor the power to give directions to senior executive employees, as the mayor’s power to give directions to senior executive employees is being removed in the Bill.

#### **Clause 120 Insertion of new ch 9, pt 14 (Transitional provisions for Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019)**

*Clause 120* inserts new chapter 9, part 14 to provide transitional provisions for new disqualifying offences, existing senior executive employees, repealed integrity offence provisions and amendments relating to conflicts of interest.

#### **Section 328 Definitions for division**

New section 328 provides definitions of ‘amending provision’ and ‘new disqualifying offence’.

#### **Section 329 New disqualifying offence committed before commencement**

New section 329 provides that chapter 6, part 2 applies to new disqualifying offences, even if the act or omission constituting the offence was committed before the commencement.

#### **Section 330 Existing charge for new disqualifying offence**

New section 330 applies if a proceeding for a new disqualifying offence against a councillor had started before the commencement but has not ended. The councillor is automatically suspended as a councillor on the commencement. Immediately after the commencement, the councillor must give a written notice about the proceeding for the new disqualifying offence to each of the following, unless the councillor has a reasonable excuse: the Minister; if the councillor is not the mayor—the mayor; the chief executive officer. The maximum penalty is 100 penalty units. The notice must state the provision of the law to which the proceeding for the new disqualifying offence relates; and the day the councillor was charged with the offence.



The notice is taken to be a notice mentioned in section 175P(1)(a).

### **Section 331 Existing conviction for new disqualifying offence**

New section 331 applies if before the commencement, a councillor was convicted of an offence that is a new disqualifying offence; and on the commencement, the disqualifying period for the offence would not have ended. The councillor automatically stops being a councillor on the commencement. Immediately after the commencement, the councillor must give a written notice to each of the following, unless the councillor has a reasonable excuse: the Minister; if the councillor is not the mayor—the mayor; the chief executive officer. The maximum penalty is 100 penalty units. The notice must state the provision of the law against which the councillor was convicted; and the day the councillor was convicted.

The notice is taken to be a notice mentioned in section 175Q(1)(a).

## **Division 2 Other transitional provisions commencing on assent**

### **Section 332 Existing senior executive employees**

New section 332 provides that a person who was a senior executive employee of a local government immediately before commencement of this section, is taken to have been appointed by the chief executive officer of the local government.

### **Section 333 Proceedings for repealed integrity offence provisions**

New section 333 provides that for an offence against a repealed integrity offence provision committed by a person before the commencement of this section, without limiting the *Acts Interpretations Act 1954*, a proceeding for the offence may be continued or started, and the person may be convicted of the and punished for the offence as if the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*, section 111 had not commenced.

From the commencement, an offence against a repealed integrity offence provision continues, despite the repeal of the provision, to be an integrity offence for section 153; and a disqualifying offence for chapter 6.

### **Section 334 Continuation of Minister's approval for councillor to participate or be present to decide matter**

New section 334 that a notice given by the Minister to a councillor under section 175F, as in force immediately before the commencement, if the notice is in force immediately before the commencement, the notice is taken to be a notice given under section 150EV.

**Clause 121 Amendment of sch 1 (Serious integrity offences and integrity offences)**

*Clause 121* amends schedule 1, part 1 to omit offences under this Act, as integrity offences - sections 175C(2), 175E(2) or (5), 175H and 175I(2) or (3).

The amendments also insert offences under this Act, as integrity offences - sections 150EK(1) (Councillor must not participate in decisions), 150EL(2) or (3) (Obligation of councillor with prescribed conflict of interest), 150EQ(2) or (3) (Obligation of councillor with declarable conflict of interest), 150EY (Offence to take retaliatory action) and 150EZ(2) (Obligation of councillor with prescribed or declarable conflict of interest to influence others).

The amendments also insert offences under the Local Government Electoral Act, as integrity offences - sections 126(8) (Requirement for candidate to operate dedicated account) and 127(8) (requirement for group of candidates to operate dedicated account), 195(1)(b), 195(2), 195(3) and 195(4) (Offences about returns).

A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction.

**Clause 122 Amendment of sch 4 (Dictionary)**

*Clause 122* amends schedule 4 to:

- omit the definitions of ‘conflict of interest’, ‘local government meeting’, ‘material personal interest’, ‘ordinary business matter’, ‘perceived conflict of interest’, ‘real conflict of interest’ and ‘senior executive employee’;
- insert definitions for ‘close associate’, ‘declarable conflict of interest’, ‘eligible councillor’, ‘executive officer’, ‘gift’, ‘interest’, ‘loan’, ‘local government meeting’, ‘prescribed conflict of interest’, ‘related party’, ‘relevant term’ and ‘senior executive employee’;
- expand the definition of ‘major policy decision’ to include those decisions inserted under new paragraphs (e) to (i).

**Division 3 Amendments commencing by proclamation**

**Subdivision 1 Amendments relating to councillor complaints and State intervention powers**

**Clause 123 Amendment of s 5 (Relationship with City of Brisbane Act 2010)**

*Clause 123* consequentially omits section 5(c) and (d) because the City of Brisbane Act will no longer provide for the way in which the conduct of councillors of the Brisbane City Council in meetings of the council and its committees is to be dealt with or the way complaints about councillors of the Brisbane City Council are to be dealt with. The Bill applies chapter 5A of the Local Government Act to the Brisbane City Council in this regard.

**Clause 124 Insertion of new s 113A (Meaning of local government and application of local government principles)**

*Clause 124* inserts new section 113A to provide that for chapter 5, part 1 of the Local Government Act a local government includes the Brisbane City Council. In effect, this amendment applies chapter 5, part 1 of the Local Government Act in relation to the State's intervention powers to the Brisbane City Council.

The amendments also provide that the local government principles under section 4 of the Local Government Act apply as if a reference in the principles to a councillor or local government employee included a reference to a councillor or council employee under the City of Brisbane Act.

**Clause 125 Amendment of s 150C (Definitions for chapter)**

*Clause 125* amends section 150C to insert two new definitions for chapter 5A – 'local government' and 'local government employee'. In effect, these definitions apply the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 126 Insertion of new s 150CAA (Application of local government principles)**

*Clause 126* inserts new section 150CAA to provide that for chapter 5A, the local government principles apply as if a reference in the principles to a councillor or local government employee included a reference to a councillor or council employee under the City of Brisbane Act.

**Clause 127 Amendment of s 150D (Minister to make code of conduct)**

*Clause 127* consequentially amends section 150D(1) to provide that the Minister must make a code of conduct that sets out the standards of behaviour for councillors in performing their functions as councillors under the Local Government Act and the City of Brisbane Act. This amendment and the changes to the notes under subsection (1) reflect the application of the councillor complaints framework under chapter 5A of the Local Government Act to the Brisbane City Council.

**Clause 128 Amendment of s 150L (What is misconduct)**

*Clause 128* consequentially amends section 150L to provide that the definition of 'misconduct' includes the contravention of the acceptable requests guidelines under the City of Brisbane Act and the contravention of the City of Brisbane Act, section 170(2) in relation to giving directions to council staff, section 173(3) in relation to the use of information by councillors, and section 177T in relation to reporting another councillor's prescribed or declarable conflict of interest. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 129 Amendment of s 150P (Complaints about councillor conduct must be referred to assessor)**

*Clause 129* amends the definition of ‘government entity’ under section 150P(5) to include the chief executive officer under the City of Brisbane Act. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 130 Amendment of s 150R (Local government official must notify assessor about particular conduct)**

*Clause 130* amends the definition of ‘local government official’ under section 150R(4) (as renumbered) to include the chief executive officer under the City of Brisbane Act. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 131 Amendment of s 150AG (Decision about inappropriate conduct)**

*Clause 131* amends the note under section 150AG(1) to insert a reference to the City of Brisbane Act, section 238(2) which limits delegation of the Brisbane City Council’s power to make decisions under section 150AG of the Local Government Act. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 132 Amendment of s 150AR (Disciplinary action against councillor)**

*Clause 132* amends section 150AR(1)(b)(vi) to provide that the conduct tribunal may make an order that a councillor cannot act as the chairperson of the council under the City of Brisbane Act for the remainder of the councillor’s term. This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 133 Amendment of s 150AY (Functions of investigators)**

*Clause 133* amends section 150AY(b) to prescribe provisions of the City of Brisbane Act as ‘conduct provisions’, namely, sections 173, 173A(2) or (3), 173B(2), 177H, 177I(2) or (3), 177J(2), 177N(2) or (3), 177P(4), 177V and 177W(2). This is a consequence of applying the councillor complaints framework under the Local Government Act, chapter 5A to the Brisbane City Council.

**Clause 134 Amendment of s 153 (Disqualification for certain offences)**

*Clause 134* amends the heading for section 153 to read ‘Disqualification for certain offences or if dismissed’ to better reflect the scope of matters dealt with under the section.

*Clause 134* also simplifies the wording in subsection (1)(e) and inserts a definition for ‘dismissed’.

The amendments are consistent with the proposed amendments to the City of Brisbane Act, section 153.

**Clause 135 Amendment of s 160 (When a councillor’s term ends)**

*Clause 135* amends section 160 to omit paragraph (d) as it is not necessary for section 160 to provide that a councillor’s term ends when the Legislative Assembly ratifies the dissolution of the local government under section 123. The Bill amends section 153 of the Local Government Act to provide that a person cannot be a councillor for the remainder of the term before the next quadrennial elections if the person has been dismissed, including dismissed as a councillor because of the dissolution of the local government under the Local Government Act, section 123.

**Clause 136 Amendment of s 162 (When a councillor’s office becomes vacant)**

*Clause 136* amends section 162 to omit subsection (1)(a) as it is not necessary for section 162 to provide that a councillor’s office becomes vacant if the councillor is dismissed. The Bill amends section 153 of the Local Government Act to provide that a person cannot be a councillor for the remainder of the term before the next quadrennial elections if the person has been dismissed.

**Clause 137 Insertion of new s 204G (Definition for part)**

*Clause 137* inserts new section 204G to provide that for chapter 6, part 7 a local government includes the Brisbane City Council. This is a consequence of applying chapter 5, part 1 of the Local Government Act in relation to the State’s intervention powers to the Brisbane City Council.

**Clause 138 Amendment of s 234 (False or misleading information)**

*Clause 138* consequentially amends section 234(1) to provide that a person commits an offence if the person gives information for this Act, that the person knows is false or misleading in a material particular, to the chief executive officer under the City of Brisbane Act. This is a consequence of applying chapter 5, part 1 and chapter 5A of the Local Government Act to the Brisbane City Council.

**Clause 139 Amendment of s 235 (Administrators who act honestly and without negligence are protected from liability)**

*Clause 139* amends section 235 to provide that a State administrator or local government administrator is not civilly liable for an act done or omission made, honestly and without negligence, under the City of Brisbane Act. The amendments also extend the civil liability protections under section 235 for a ‘local government administrator’ to a councillor and the chief executive officer under the City of Brisbane Act.

This is a consequence of applying chapter 5, part 1 and chapter 5A of the Local Government Act to the Brisbane City Council.

**Clause 140 Amendment of sch 4 (Dictionary)**

*Clause 140* consequentially amends the definition of ‘local government’ in schedule 4 to include cross-references to chapter 5, part 1; chapter 5A; and chapter 6, part 7 of the Local Government Act. The definition of ‘local government employee’ is consequentially amended to include a cross-reference to chapter 5A of the Local Government Act.

**Subdivision 2 Other amendments commencing by proclamation**

**Clause 141 Amendment of s 12 (Responsibilities of councillors)**

*Clause 141* amends and renumbers section 12 to remove the mayor’s extra responsibilities of preparing a budget to present to the local government and directing senior executive employees. The amendments also provide that it is the mayor’s responsibility to direct the chief executive officer in accordance with a resolution, or a document adopted by resolution, of the local government.

**Clause 142 Omission of s 107A (Approval of budget)**

*Clause 142* omits section 107A to remove the process for presenting the budget prepared by the mayor to the local government for approval, as it is no longer the mayor’s responsibility to prepare a budget and present to the local government.

**Clause 143 Amendment of s 150AY (Functions of investigators)**

*Clause 143* amends section 150AY(b) to prescribe new section 172 of the Local Government Act and new section 174 of the City of Brisbane Act as ‘conduct provisions’. The new sections require a councillor to inform the chief executive officer annually about the councillor’s register of interests. Under section 150AY the functions of an investigator include investigating whether an offence has been committed against any of the conduct provisions.

**Clause 144 Insertion of new s 150FB (Presumption of knowledge of particular gifts or loans)**

*Clause 144* inserts new section 150FB to provide that in a proceeding against an offence against chapter 5B relating to a relevant gift or loan given or made to a councillor, the councillor is presumed to know that the relevant gift or loan was given to the councillor and the source of the relevant gift or loan, unless the contrary is proven.

New section 253A also provides definitions for ‘relevant gift or loan’ and ‘source’.

**Clause 145 Amendment of s 162 (When a councillor’s office becomes vacant)**

*Clause 145* amends section 162(1)(d) to provide that a councillor’s office also becomes vacant if the councillor does not comply with the Local Government Act, new section 171AA (Obligation of councillor to inform chief executive officer of particulars of interests at start of term).

**Clause 146 Amendment of s 169 (Obligations of councillors before acting in office)**

*Clause 146* amends section 169(5)(a) to omit the reference to ‘1 month’ and replace it with ‘30 days’ for consistency with current section 171B and new sections 171AA and 172.

**Clause 147 Amendment of s 170A (Requests for assistance or information)**

*Clause 147* inserts new section 170A(3) to provide that if a request by a councillor for advice or information under section 170A(1) or (2) relates to a document, a copy of the document must also be provided.

New section 170A(3A) provides that subsection (2) and new subsection (3) in relation to a councillor request for information do not apply to information or a document that was a record of a former conduct review body (as defined). This amendment provides that information that was a record of a regional conduct review panel or the Local Government Remuneration and Discipline Tribunal under the former councillor complaints framework and that was excluded from councillor access under former section 170A(3)(a) of the Local Government Act, continues to be excluded.

The amendments also replace the current requirement in section 170A(8) for the chief executive officer to make all reasonable endeavours to comply with a councillor request for information under section 170A(2) with a new requirement and increases the maximum penalty for non-compliance. The new requirement provides that the chief executive officer must comply with a request made to the chief executive officer under section 170A(1) or (2) – for advice or information – within 10 business days after receiving the request or within 20 business days after receiving the request if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days. The maximum penalty for non-compliance is increased from 10 penalty units to 20 penalty units.

If the chief executive officer forms the belief that it is not practicable to comply with a request from a councillor for advice or information within 10 business days, the chief executive officer must give the councillor written notice about the belief and the reasons for the belief within 10 business days after receiving the request.

**Clause 148 Insertion of new s 171AA (Obligation of councillor to inform chief executive officer of particulars of interests at start of term)**

*Clause 148* inserts new section 171AA to provide that within 30 days after the day a councillor’s term starts or a longer period allowed by the Minister, the councillor must, in the approved form, inform the chief executive officer of the particulars of an interest that must be recorded in a register of interests in relation to the councillor and a person who is related to the councillor. A person ceases to be a councillor if the person does not comply with the requirement.

New section 171AA provides a definition for ‘related’.

**Clause 149 Amendment of section 171B (Obligation of councillor to correct register of interests)**

*Clause 149* amends section 171B(2) to replace the two-tier offence and maximum penalties of 85 penalty units and 100 penalty units for a councillor unintentionally or intentionally failing to correct a register of interests within the required timeframe with a single offence and maximum penalty of 100 penalty units for non-compliance. The current note to section 171B(2) is omitted as a consequence of the Bill removing this offence from the prescribed list of integrity offences in schedule 1, part 2 of the Local Government Act. Minor amendments to subsections (1) and (2) provide further clarification.

The amendments also omit subsection (3) as the definition of ‘related’ now appears in new section 171AA.

**Clause 150 Insertion of new s 172 (Obligation of councillor to inform chief executive officer annually about register of interests)**

*Clause 150* inserts new section 172 to provide that a councillor must, within 30 days after the end of each financial year, inform the chief executive officer in the approved form:

- whether a register of interests in relation to the councillor or a person who is related to the councillor is correct; and
- of the particulars of an interest that is not recorded in a register of interests in relation to the councillor or a person who is related to the councillor but is required to be recorded in the register of interests; and
- of the change to an interest that is recorded in a register of interests in relation to the councillor or a person who is related to the councillor.

The maximum penalty for non-compliance is 100 penalty units.

**Clause 151 Amendment of s 257 (Delegation of local government powers)**

*Clause 151* amends the definition of ‘joint standing committee’ in section 257(4) to clarify that a joint standing committee of a local government is a committee consisting of the local government and councillors of 1 or more other local governments.

**Clause 152 Amendment of sch 1 (Serious integrity offences and integrity offences)**

*Clause 152* amends schedule 1, part 2 to omit the entry for the Local Government Act, section 171B(2) (Obligation of councillor to correct register of interests) from the prescribed list of integrity offences. Under amendments to section 171B(2), this offence will carry a maximum penalty of 100 penalty units.

The amendments also prescribe an offence under the Local Government Electoral Act as an integrity offence – section 183 (Engaging in group campaign activities). A person who is convicted of an integrity offence is disqualified from being a councillor for 4 years after the conviction.



**Clause 153 Amendment of sch 4 (Dictionary)**

*Clause 153* amends schedule 4 to insert a definition for ‘related’, to a councillor, into the Dictionary.

**Part 4 Amendment of Local Government Electoral Act 2011**

**Division 1 Preliminary**

**Clause 154 Act amended**

*Clause 154* states that this part amends the *Local Government Electoral Act 2011*.

**Division 2 Amendments commencing on assent**

**Clause 155 Amendment of s 4 (Definitions)**

*Clause 155* amends section 4 to replace the reference to ‘schedule’ with ‘schedule 2’, as the schedule for the dictionary is being renumbered.

**Clause 156 Amendment of s 7 (Meaning of *conclusion* of local government election)**

*Clause 156* amends section 7(1) to provide that the conclusion of the election of a councillor or a by-election to elect a councillor is the day on which the last declaration of a poll is published on the electoral commission’s website under section 100(2) (Notifying the results of the election).

**Clause 157 Replacement of s 13 (Membership of a political party ends particular appointments)**

*Clause 157* replaces section 13 to provide that the electoral commission must remove a returning officer or assistant returning officer from office if the officer becomes a member of a political party. The electoral commission’s power to remove a returning officer or assistant returning officer from office under other circumstances are not limited by this section.

The amendments also provide that a returning officer’s or assistant returning officer’s membership of a political party or failure to immediately notify the electoral commission, does not invalidate anything done by the person while the person is a returning officer or assistant returning officer or, if the person does a thing for an election while the person is a returning officer or assistant returning officer, the election.

**Clause 158 Amendment of s 21 (Supply of voters roll to candidates)**

*Clause 158* amends section 21 to provide that a person must not use, disclose to another person or allow another person to access information in a copy of a voters roll given to a candidate under subsection (1), unless the use, disclosure or giving of access is for a purpose stated in the section. A maximum penalty of 20 penalty units or 6 months imprisonment applies.

**Clause 159 Amendment of s 23 (Date of quadrennial elections)**

*Clause 159* amends section 23(3) to clarify that while a regulation can fix a different day to the day prescribed by the Act for a quadrennial election for a particular year, that day must be a Saturday.

**Clause 160 Amendment of s 24 (Date of by-elections)**

*Clause 160* amends section 24(3) to provide that the notice fixing the day for holding a by-election is to be published on the electoral commission's website.

**Clause 161 Amendment of s 25 (Calling for nominations)**

*Clause 161* amends section 25(1) to provide that the returning officer must publish notice of an election on the electoral commission's website, and in other ways the returning officer considers appropriate.

**Clause 162 Amendment of s 26 (Who may be nominated)**

*Clause 162* amends and renumbers section 26 to provide that a candidate may be nominated for an election only if they have completed an approved training course within 6 months before nomination day for the election. The approved training course must be about the person's obligations as a candidate and their obligations as a councillor if they are elected or appointed under a Local Government Act.

**Clause 163 Amendment of s 32 (Announcement of nominations)**

*Clause 163* amends section 32 to provide that the returning office must publish the prescribed information for the nomination on the electoral commission's website and in other ways the returning officer considers appropriate. The publication of the prescribed information must continue until the conclusion of the election.

The prescribed information, for a nomination, means information or a statement in the nomination prescribed by regulation.

**Clause 164 Amendment of s 35 (Procedure if number of candidates exceeds number required)**

*Clause 164* amends section 35 to provide that where a poll is to be conducted for an election where the nominated candidates exceed the number required to be elected, the returning officer must public a public notice on the electoral commission's website, and in other ways the returning officer considers appropriate. The notice must be published as soon as practicable after noon on the nomination day and continue until the close of the poll.

**Clause 165 Amendment of s 38 (Extension of times)**

*Clause 165* amends section 38 to rename the heading to state ‘Changing nomination day or polling day’ and to provide that the electoral commission may also fix a later day as the nomination day or polling day if the conduct of the election is likely to be affected by a storm, flood, fire or a similar happening; or a riot or open violence or another exceptional circumstance.

For a nomination day, the later day to be fixed must be as close as practicable to the nomination day that was first stated on a notice published by the returning officer under section 25 (Calling for nominations).

For a polling day, the later day must be the Saturday that is as close as practicable to the day the poll would have been conducted under section 35 (Procedure if number of candidates exceeds number required).

The returning officer may give necessary directions about the procedures to be followed to candidates and to electors and if directions are given, they must be published on a notice on the electoral commission’s website, and in other ways the returning officer considers appropriate.

**Clause 166 Replacement of s 45 (Direction that poll be conducted by postal ballot)**

*Clause 166* replaces section 45 with new sections 45AA, 45AB, 45 and 45A to amend the process for the application and approval for a poll to be conducted by postal ballot.

**Section 45AA Application for direction that poll be conducted by postal ballot**

New section 45AA provides that for an election for all of a local government’s area, the local government may apply to the Minister for a poll to be conducted by postal ballot in all of the local government’s area or part or division of the local government’s area. If the election is for a division of the local government’s area, a local government may apply to the Minister for a poll to be conducted by postal ballot in the division or a part of the division.

For a poll for a quadrennial election, the application must be made before 1 May in the year preceding the quadrennial election or a later day approved by the Minister. For a poll for a by-election, the application must be made before the day fixed by the returning officer under section 24 (Date of by-elections) to hold the by-election.

**Section 45AB Referral of application to electoral commissioner for recommendation**

New section 45AB provides that the Minister must refer an application to conduct a postal ballot to the electoral commissioner for the commissioner’s recommendation about whether the application should be approved. The electoral commissioner must consider the application and give the Minister a written recommendation and reasons for whether the application should be approved.

Before making the recommendation, the electoral commissioner may ask the local government for further information that the electoral commissioner reasonably requires to make a recommendation for the application.

In making the recommendation, the electoral commissioner must have regard to:

- the reasons stated in the application why the poll should be conducted by postal ballot;
- the costs of conducting the poll by postal ballot compared to the costs of conducting the poll using polling booths;
- the number of persons enrolled on an electoral roll for an electoral district, or part of an electoral district, included in the area to which the application relates;
- the population density and distribution in the area to which the application relates;
- whether a poll has previously been conducted by postal ballot in the area to which the application relates.

### **Section 45 Direction that poll be conducted by postal ballot**

New section 45 provides that after receiving the electoral commissioner's recommendation about an application to conduct a postal ballot, the Minister must consider the application and decide to approve or not to approve the application. In deciding the application, the Minister must have regard to the electoral commissioner's recommendation and the reasons for the recommendation and the matters mentioned in section 45AB(4).

The approval may be given for all the local government's area, one or more divisions of its area or a part of its area marked on a map. If the approval is given for a part of a local government's area, the local government must ensure the public may inspect the relevant map at the local government's public office and on the local government's website. The local government must also publish details of the approval in a newspaper circulating generally in the part of the local government's area.

### **Section 45A Decisions under this subdivision are not subject to appeal**

New section 45A provides that a decision of the Minister or the electoral commissioner under part 4, division 3, subdivision 1 is not subject to appeal.

### **Clause 167 Amendment of s 49 (Declaration of mobile polling booths)**

*Clause 167* amends section 49(3) to provide that the returning officer must publish a notice declaring a mobile polling booth and stating the times at which votes may be cast at the booth on the electoral commission's website, and in other ways the returning officer considers appropriate.

### **Clause 168 Amendment of s 50 (Declaration of pre-polling booths)**

*Clause 168* amends and renumbers section 50 to provide that the returning officer may arrange a place as a polling booth for an election to enable electors to cast a pre-poll vote. The place may be located anywhere within or outside the local government area, or division of the area, for which the election is to be held. However, the place must be at the public office, or part of the public

office, of the local government for which the election is to be held or another office used by that local government to receive rate payments or another convenient place in that local government's area.

The amendments also provide that the returning officer must publish a notice declaring a pre-polling booth and the times at which votes may be cast at the booth on the electoral commission's website, and in other ways the returning officer considers appropriate.

**Clause 169 Insertion of new s 52A (Suspension of poll)**

*Clause 169* inserts section 52A to provide that a returning officer or the presiding officer for a polling booth may suspend the poll at the polling booth if the taking of the poll is, or is likely to be, temporarily interrupted or obstructed by a serious threat that a riot or open violence will happen or circumstances that pose a serious risk to the health or safety of persons at the polling booth, or another emergency. However, the suspension of the poll at the polling booth can not be for more than 4 hours. The section also provides for adjournment of the poll.

**Clause 170 Amendment of s 53 (Adjournment of poll)**

*Clause 170* amends section 53 to provide that a returning officer or presiding officer for a polling booth may adjourn the poll if the taking of the poll is, or is likely to be, interrupted by a storm, flood, fire or a similar happening; a riot or open violence; a serious threat that a riot or open violence will happen; circumstances that pose a serious risk to the health or safety of persons at the polling booth; another emergency; to the extent the taking of the poll can not start or continue at the polling booth.

If the poll is adjourned, the returning officer must fix a day for conducting the adjourned poll and publish notice of the day fixed on the electoral commissioner's website, and in other ways the returning officer considers appropriate.

**Clause 171 Amendment of s 55 (Ballot papers)**

*Clause 171* amends section 55 to provide that a ballot paper, other than a ballot paper reproduced as a result of a polling booth running out or not having ballot papers for an election, must be attached to a butt that states the local government area, or division of the local government area, for which the poll is conducted. The requirement for the butt to have a unique number is repealed.

**Clause 172 Amendment of s 58 (Distribution of ballot paper and voters roll)**

*Clause 172* amends section 58 to provide that, without limiting subsection 58(1)(b), a certified copy of a voters roll for an electoral district is available at a polling booth if a certified copy of the voters roll can be accessed from the polling booth; and an issuing officer at the polling booth can use the electronic certified copy to make an electronic record of the persons to whom a ballot paper is issued.

**Clause 173 Insertion of new s 58A (Ballot papers may be produced if required)**

*Clause 173* inserts section 58A provide that if a polling booth runs out of or does not have ballot papers for an election, an issuing officer at the polling booth may reproduce a ballot paper for the election and must keep a record of the number of ballot papers reproduced.

The ballot papers can be reproduced by photocopying, handwriting or printing, however, requirements for ballot papers under section 55(1) apply to a reproduced ballot paper.

**Clause 174 Amendment of s 64 (Who may vote)**

*Clause 174* amends section 64(3) to provide that a person is not entitled to vote at an election if serving a sentence of imprisonment of 3 years or longer.

**Clause 175 Amendment of s 69 (Who must complete a declaration envelope)**

*Clause 175* amends section 69(1) to provide that an elector who is serving a sentence of imprisonment, or is otherwise lawfully detained, on the polling day for the election must complete a declaration envelope for an election. Also, an elector who is not able to make an ordinary vote at the polling booth for a reason beyond the elector's control must complete a declaration envelope.

**Clause 176 Amendment of s 73 (Voting hours for polling booths)**

*Clause 176* amends section 73(5) to provide that if the returning officer fixes a day for polling day, the pre-polling period starts no earlier than the day published on the electoral commission's website, and in other ways the returning officer considers appropriate.

**Clause 177 Amendment of s 79 (Applications to cast postal votes in local government elections that are not postal ballot elections)**

*Clause 177* amends section 79 to provide that an elector may apply, orally or in writing, to the returning officer to cast a postal vote in an election that is not a postal ballot election and if the application is in writing then it must be in the approved form. The application must also be received by the returning officer no later than 7pm on the day that is 12 days before the polling day.

If the returning officer receives the application after the prescribed time or is satisfied that the elector is not entitled to cast a postal vote, the returning officer must give the elector a written notice stating that the elector is not entitled to cast a postal vote in the election.

**Clause 178 Amendment of s 81 (Applications to cast postal votes in postal ballot elections)**

*Clause 178* amends section 81 to provide that an elector may apply, orally or in writing, to the returning officer to cast a postal vote in a postal ballot election and if the application is in writing then it must be in the approved form. The application must state the address to which the ballot paper and declaration envelope is to be sent and may be given to the returning officer by any person. The application must also be received by the returning officer no later than 7pm on the day

that is 12 days before the polling day. Subsection (3) is also amended to reflect the requirements of the application.

If the returning officer receives the application after the prescribed time or is satisfied that the applicant is not entitled to cast a postal vote, they must give the applicant a written notice stating that they are not entitled to cast a postal vote in the election.

**Clause 179 Amendment of s 85 (Replacement ballot papers)**

*Clause 179* replaces section 85 with new sections 85 and 85A.

**Section 85 Replacement ballot paper issued at polling booth or by visiting issuing officer**

New section 85 provides that the issuing officer must give the elector another ballot paper if, while voting at a polling booth or when visited by an issuing officer under section 76 or 77 the elector satisfies the officer that:

- the ballot paper given to the elector is marked, damaged or destroyed to the extent that it cannot be used to cast a vote (spoilt ballot paper); and
- the spoilt ballot paper has not been put in a ballot box for the poll; and
- the elector has not voted in the election; and
- the elector gives the spoilt ballot paper, or the remains of the ballot paper, to the issuing officer.

The issuing officer must also place the spoilt ballot paper in an envelope, seal it and keep it for identification under section 92(9)(b) (Preliminary counting of votes).

**Section 85A Replacement ballot paper issued to postal voter**

New section 85A provides that this section applies if a ballot paper for an election and declaration envelope was sent under subdivision 4.

An elector may ask the returning officer for a replacement ballot paper if a ballot paper for an election and declaration envelope is sent to the elector and the elector either did not receive the ballot paper and declaration envelope or the ballot paper is marked, damaged or destroyed to the extent that it cannot be used to cast a postal vote. If the replacement ballot paper is to be sent to the elector, the request must state the address to which the ballot paper and declaration envelope are to be sent.

If the returning officer or an issuing officer receives the request in person, they must give another ballot paper or declaration envelope to the elector, or if the elector's request complies with subsection (3), the returning officer or issuing officer must post, deliver or otherwise send another ballot paper and declaration envelope to the elector as soon as practicable after receiving the request.

When the elector casts a postal vote the envelope is required to have a declaration that states the ballot paper sent to the elector has not been received or has been marked, damaged or destroyed and that the elector has not otherwise voted in the election.

The returning officer must keep a record of all ballot papers and declaration envelopes given or sent under this section.

**Clause 180 Amendment of s 89 (Preliminary processing of declaration envelopes)**

*Clause 180* amends section 89 to provide that for a postal ballot election, before, on or after the polling day, the returning officer may open all ballot boxes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

The amendments also provide that for an election other than a postal ballot election, before or after the polling day, the returning officer may open all ballot boxes containing only sealed declaration envelopes and examine the envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

**Clause 181 Amendment of s 91 (Procedure for processing declaration envelopes)**

*Clause 181* amends section 91 to remove the requirement for a separate detachable flap on declaration envelopes in subsection (2)(a) and (6).

The amendment provides that when the returning officer has examined the declaration envelopes and is satisfied the declaration has been properly completed, the envelope sealed and the declarant on the envelope is entitled to cast a vote, the returning officer must in the approved way record on the voters roll that the declarant has voted.

The returning officer must also seal, in separate parcels, all accepted declaration envelopes from which ballot papers have been removed and all rejected declaration envelopes and keep them in their custody for separate identification.

**Clause 182 Amendment of s 92 (Preliminary counting of ordinary votes)**

*Clause 182* amends section 92 to provide that the presiding officer for a polling booth must examine all ballot papers that are not in declaration envelopes, including ballot papers printed for electronically assisted votes, and take the prescribed steps in subsection (5).

The presiding officer must seal in a separate parcel all formal and informal ballot papers, including ballot papers printed for electronically assisted votes, declaration envelopes and unused ballot papers.

**Clause 183 Amendment of s 95 (Official counting of votes)**

*Clause 183* amends section 95 to provide that the returning office must, after opening all sealed parcels of ballots papers, examine all ballot papers that are not in declaration envelopes, including ballot papers printed for electronically assisted votes, and take the steps in paragraph (3)(b).



The returning officer must also keep in a separate parcel all informal ballot papers, including ballot papers printed for electronically assisted votes and all formal ballot papers, including ballot papers printed for electronically assisted votes.

**Clause 184 Amendment of s 99 (Returning officer’s duty after counting votes)**

*Clause 184* amends section 99(a), to reflect the removal of the requirement for a separate detachable flap on declaration envelopes.

**Clause 185 Amendment of s 100 (Notifying the results of an election)**

*Clause 185* amends section 100(2) to provide that the electoral commission must ensure the notice for the result of a poll for an election is published on the electoral commission’s website, and in other ways the electoral commission considers appropriate.

**Clause 186 Amendment of s 126 (Requirement for candidate to operate dedicated account)**

*Clause 186* amends section 126 to provide that all amounts paid by the candidate, or a person on behalf of the candidate, during the candidate’s disclosure period for the election for the conduct of the candidate’s election campaign must be paid out of the account in a way permitted under section 127A.

**Clause 187 Amendment of s 127 (Requirement for group of candidates to operate dedicated account)**

*Clause 187* amends section 127 to provide that all amounts paid by the group, or a person on behalf of the group, during the group’s disclosure period for the election for the conduct of the group’s election campaign must be paid out of the account in a way permitted under section 127A.

**Clause 188 Insertion of new ss 127A-127C**

*Clause 188* inserts new sections 127A, 127B and 127C.

**Section 127A Permitted ways to pay amounts from dedicated account**

New section 127A provides that an amount paid from an account under section 126(4) or 127(4) may be paid in either, or a combination of, electronic funds transfer transaction from the account; or using a debit card that withdraws the payment directly from the account; or in cash withdrawn from the account.

However, the amount of cash withdrawn must not exceed the amount to be paid or the amount to be paid rounded up to the nearest amount an ATM can dispense, if the cash is withdrawn from an ATM.

### **Section 127B Payment of campaign expenses by credit card prohibited**

New section 127B provides that, without limiting sections 126, 127 or 127A, a person to whom section 126(8) or 127(8) applies must not use a credit card to pay an amount for the conduct of the election campaign of a candidate or group of candidates; or pay an amount out of the dedicated account of a candidate or group of candidates to pay a charge incurred using a credit card. A maximum penalty of 100 penalty units applies.

For the prohibition from paying an amount out of the dedicated account, it does not matter whether or not the charge was incurred for the conduct of the election campaign of a candidate or group of candidates.

### **Section 127C Time for prosecuting offences**

New section 127C provides that prosecution for an offence against chapter 6, division 5 may be started at any time within 4 years after the offence was committed.

### **Clause 189 Replacement of s 158 (Decisions not subject to appeal)**

*Clause 189* replaces section 158 to provide that if the LGEA declares a decision not to be subject to appeal, unless the Supreme Court decides the decision is affected by jurisdictional error, the decision:

- is final and conclusive; and
- can not be challenged, appealed against, reviewed, quashed, set aside or called into question in another way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

The *Judicial Review Act 1991*, part 5 (Prerogative orders and injunctions) applies to the decision to the extent it is affected by jurisdictional error.

Any person who, but for subsection (2), could have made an application under the *Judicial Review Act 1991* in relation to the decision may apply under part 4 of that Act (Reasons for decisions) for a statement of reasons in relation to the decision. The term ‘decision’ is defined in this section.

### **Clause 190 Amendment of s 174 (Obstructing electoral officers etc.)**

*Clause 190* amends section 174 to increase the maximum penalty for non-compliance under this section to 20 penalty units or 6 months imprisonment.

### **Clause 191 Amendment of section 176A (Confidentiality of information)**

*Clause 191* amends section 176A to increase the maximum penalty for non-compliance under this section to 100 penalty units.

**Clause 192 Amendment of s 179 (Giving of how-to-vote cards to electoral commission)**

*Clause 192* amends section 179 to provide that the person who authorised a how-to-vote card for a candidate, political party or group of candidates for an election must give the how-to-vote cards and other required material to the electoral commission, no later than 5pm on Friday that is at least 7 days before the how-to-vote card is to be distributed on a day when votes may be cast for the election.

If the electoral commission accepts a how-to-vote card, the returning officer must ensure an accepted how-to-vote card is available for public inspection before the first day when votes may be cast for the election and, to the extent practicable, make them available on the day and at the place where the votes may be cast.

**Clause 193 Amendment of s 180 (Unauthorised how-to-vote cards)**

*Clause 193* amends section 180 to provide that a person must not distribute, or authorise someone else to distribute, a how-to-vote card to which section 179(1) or (2) (Giving of how-to-vote cards to electoral commission) applies on a day when voted may be cast for an election unless section 179(1) or (2) has been complied with for the card.

The amendments also replace the reference to ‘polling day’ with ‘a day when votes may be cast’ to clarify that section 180(2) applies to polling day and other relevant days where votes may be cast.

**Clause 194 Amendment of s 191 (Failure to post, fax or deliver documents for someone else)**

*Clause 194* amends the heading of section 191 to state ‘Failure to give or post documents for someone else’.

*Clause 194* also amends section 191 to replace the reference to ‘for delivery or posting’ with ‘to give’ and ‘deliver or post’ with ‘give, post or otherwise send’ to include other mediums of providing the documents to the returning officer. Section 191 is also amended to provide a reasonable excuse for the offence provision at section 191(1).

**Clause 195 Amendment of s 192 (Secrecy of voting)**

*Clause 195* amends section 192 to increase the maximum penalty for non-compliance with this section to 20 penalty units or 6 months imprisonment.

**Clause 196 Amendment of s 195 (Offences about returns)**

*Clause 196* amends section 195(1) to replace the maximum penalty for non-compliance for this section. The amendments provide that the maximum penalty of 20 penalty units applies to a person who took all reasonable steps to give the return within the time required, otherwise the maximum penalty of 100 penalty units applies.

The amendments also replace the maximum penalty under section 195(2) to provide for a maximum penalty of 100 penalty units for non-compliance.

**Clause 197 Amendment of s 198 (Further information for incomplete returns)**

*Clause 197* amends section 198(1)(a) to rectify the grammar.

*Clause 197* also amends section 198(2) to replace ‘returning officer’ with electoral commission and provide that a person must give the electoral commission written notice of information or particulars obtained.

**Clause 198 Amendment of s 206 (Office of returning officer)**

*Clause 198* amends section 206(2) to provide that the electoral commissioner must publish a notice of the address of the public office on the electoral commission’s website, and in other ways the electoral commission considers appropriate.

**Clause 199 Insertion of new pt 11, div 4**

*Clause 199* inserts new part 11, division 4 and subdivision 1 to provide transitional provisions for postal ballot applications.

**Division 4 Transitional provisions for Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019**

**Subdivision 1 Transitional provisions commencing on assent**

**Section 213 Existing applications under s 45**

New section 213 provides that postal ballot applications made under section 45 as in force before commencement that has not been decided before the commencement are taken to have been made under section 45AA.

**Section 214 Time for making applications under s 45AA for quadrennial election for 2020**

New section 214 provides that an application under section 45AA for a poll to be conducted by postal ballot for the 2020 quadrennial election, must be made before 1 July 2019 or a later day approved by the Minister. This is despite, section 45AA(2)(a) providing that the application must be made before 1 May.

**Clause 200 Amendment and numbering of schedule (Dictionary)**

*Clause 200* amends the schedule to:

- number as schedule 2;
- omit the definition of ‘emergency’; and
- insert the definition of ‘spoilt ballot paper’.

**Division 3 Amendments commencing by proclamation**

**Clause 201 Amendment of s 19 (Requirements of voters roll)**

*Clause 201* amends section 19 to refer to ‘silent elector’.

**Clause 202 Amendment of s 27 (Making and certification of nomination)**

*Clause 202* amends section 27(2) to provide that a nomination must also contain information about the account with a financial institution the candidate intends to use as the candidate’s account for section 126 and other matters stated in schedule 1.

**Clause 203 Amendment of pt 4, div 2, sdiv 3, hdg (Recording of membership and agents for group of candidates)**

*Clause 203* amends the heading of part 4, division 2, subdivision 3 to state ‘Membership and agents for group of candidates’.

**Clause 204 Amendment of s 40 (Disposal of deposits generally)**

*Clause 204* consequentially amends section 40 to replace a reference to ‘optional-preferential’ with ‘full-preferential’, to reflect the change from optional-preferential voting to full-preferential voting under section 65 (System of voting).

**Clause 205 Amendment of s 41 (Record of membership in group of candidates)**

*Clause 205* amends the heading of section 41 to state ‘Membership of group of candidates’.

Section 41 is also amended and renumbered to provide that in an election only one member of a group of candidates may be a mayoral candidate and a candidate can only be a member of one group of candidates.

A group of candidates must also give a record of the membership of the group to the electoral commission and the record must be signed by each of the candidates who is a member of the group and include information about the account with a financial institution the group intends to use as its account for section 127 (Requirement for group of candidates to operate dedicated account).

The record must be given during the period that starts if the last election was a quadrennial election – 30 days after the polling day for the quadrennial election, or otherwise – the day after the polling day for the last election and ends at noon the last day for the receipt of nominations for candidates in the election.

After receiving the record, the electoral commission must then ensure a copy of the record is published, as soon as practicable, on the commission’s website, and in other ways the electoral commission considers appropriate.

**Clause 206 Amendment of s 42 (Appointment of agent for group of candidates)**

*Clause 206(1)* amends section 42(2)(c) to rectify the grammar.

*Clause 206(2)* also amends section 42(3) to replace the reference to ‘returning officer’ with ‘electoral commission’, to provide that a copy of the instrument to appoint an agent for a group of candidates is to be given to the electoral commissioner.

**Clause 207 Amendment of s 43 (Register of group agents)**

*Clause 207* amends section 43 to replace the reference to ‘returning officer’ with ‘electoral commission’, to provide that the electoral commissioner must keep a register of the details of each person who is appointed as the agent for a group of candidates.

**Clause 208 Amendment of s 50 (Declaration of pre-polling booths)**

*Clause 208* amends section 50 to provide that the returning officer may arrange a place as a polling booth for an election to enable electors to cast a pre-poll vote. The polling booth may be located anywhere within or outside the local government area, or division of the area, for which the election is to be held. However, the returning officer must ensure that a polling booth is arranged at one of the following: the public office, or part of the public office, of the local government for which the election is to be held; or another office used by that local government to receive rate payments; or another convenient place in that local government’s area.

**Clause 209 Amendment of s 65 (System of voting)**

*Clause 209* amends section 65 to provide that the system of voting at an election for a local government divided into single-member divisions or for the election of a mayor is full-preferential voting.

**Clause 210 Amendment of s 68 (Who may cast votes in particular ways)**

*Clause 210* amends section 68 to refer to ‘silent elector’ and consequentially omits the note under the definition of ‘absentee vote’, as the Bill amends section 50 to allow a polling booth to be arranged outside the local government area for an election.

**Clause 211 Amendment of s 69 (Who must complete a declaration envelope)**

*Clause 211* amends section 69 to refer to ‘silent elector’.

**Clause 212 Amendment of s 73 (Voting hours for polling booths)**

*Clause 212* amends section 73 to replace the reference to section 50(2) with section 50(4) because of renumbering of section 50.

**Clause 213 Amendment of s 82 (Distribution of ballot papers to particular electors whose address has been omitted from electoral roll and to special postal voters)**

*Clause 213* consequentially amends section 82 to refer to ‘silent elector’.

**Clause 214 Amendment of s 83 (How electors must record a vote on a ballot paper—optional-preferential voting)**

*Clause 214* consequentially amends the heading of section 83 to state ‘How electors must record a vote on a ballot paper—full-preferential voting’ and replaces other references to ‘optional-preferential’ with ‘full-preferential’, to reflect the change from optional-preferential voting to full-preferential voting under section 65 (System of voting).

The amendments also provide that, for full-preferential voting, an elector must record preferences for all of the candidates to implement the new system of voting.

**Clause 215 Amendment of s 86 (Formal and informal ballot papers—optional-preferential voting)**

*Clause 215(1) & (2)* consequentially amends the heading of section 86 to state ‘Formal and informal ballot papers—full-preferential voting’ and replaces other references to ‘optional-preferential’ with ‘full-preferential’, to reflect the change from optional-preferential voting to full-preferential voting under section 65 (System of voting).

*Clause 215(3)* also amends section 86 to provide that a ballot paper is taken to contain writings or marks that indicate the elector’s intended order of preferences, even though the square opposite the name of one of the candidates has been left blank, if the elector has written the numbers 1, 2, 3 and so on in all the squares opposite the candidates’ names except for the blank square; and the numbers are consecutive numbers, without the repetition of a number. The ballot is taken to indicate that the candidate whose name is opposite the blank square is the elector’s last preference.

**Clause 216 Amendment of s 92 (Preliminary counting of ordinary votes)**

*Clause 216* consequentially amends section 92 to replace a reference to ‘optional-preferential’ with ‘full-preferential’, to reflect the change from optional-preferential voting to full-preferential voting under section 65 (System of voting).

**Clause 217 Amendment of s 95 (Official counting of votes)**

*Clause 217* consequentially amends section 95 to replace references to ‘optional-preferential’ with ‘full-preferential’, to reflect the change from optional-preferential voting to full-preferential voting under section 65 (System of voting).

**Clause 218 Amendment of s 97 (Counting of votes for optional-preferential system)**

*Clause 218* amends the heading of section 97 to state ‘Counting of votes for full-preferential voting’ and replaces other references to ‘optional-preferential’ with ‘full-preferential’, to reflect the change from optional-preferential voting to full-preferential voting under section 65 (System of voting).

The amendments also omit section 97(4)(b) to remove the requirement to exclude all ballot papers on which there is not recorded a preference vote for a candidate who has not been excluded for the count or a previous count for a further count assigning preference votes.

**Clause 219 Insertion of new s 101A (Election and elector information)**

*Clause 219* inserts new section 101A to provide that for an election, if the electoral commission has given notice of the final result of a poll, it must as soon as practicable publish on its website the number of formal first preference votes cast for each candidate and information about the distribution of other formal preference votes for the candidates in the poll.

The electoral commission must also comply with a request for elector information from a registered political party, group of candidates (if one member was elected) or a councillor who was elected and as a candidate and was not a member of a group or endorsed by a registered political party by giving them the elector information about each elector who was enrolled on the voters roll and voted in the election, unless the elector information is about a silent elector.

The elector information that is to be given for a request is the information about each elector who was enrolled on the voters roll:

- for each local government area if the request is from a registered political party;
- for the local government area or division for each member of the group that was elected, if the request is from a group of candidates; and
- for the local government area or division for which a councillor was elected, if the request is from the councillor.

The amendments also provide that a person must not disclose or allow another person access to elector information given to a registered political party, group of candidates or councillor unless it is for a purpose related to an election. The maximum penalty for non-compliance is 200 penalty units.

**Clause 220 Amendment of s 106 (Definitions for part)**

*Clause 220* amends section 106 to:

- omit the definitions of ‘candidate’s disclosure period’, ‘gifts register’, ‘group’s disclosure period’ and ‘political activity’; and
- insert the definitions of ‘disclosure period’, ‘fundraising contribution’, ‘recipient’ and ‘source’;
- replace the definitions of ‘electoral expenditure’ and ‘third party’;
- omit the reference to the subsections (1) and (2) for the definition of ‘gift’; and



- include a reference to a loan for the definition for ‘relevant details’.

**Clause 221 Insertion of new s 106A (Meaning of *disclosure period*)**

*Clause 221* inserts new section 106A to provide that the disclosure period for an election, for a candidate in an election is the period that starts:

- if the candidate was a candidate in an election held within 5 years before the polling day for the election – 30 days after the polling day for the earlier election; or
- otherwise on the earlier of the following days –
  - the day the person announces or otherwise publicly indicated the person’s intention to be a candidate in the election;
  - the day the person nominates as a candidate in the election;
  - the day the person otherwise indicates the person’s intention to be a candidate in the election, including, for example, by accepting a gift made for the purpose of the election.

The disclosure period for an election, for a group of candidates for an election, is the period that starts 30 days after the polling day for the last quadrennial election.

The disclosure period for an election, for a third party to whom section 118A or 125A applies is the period that starts 30 days after the polling day for the last quadrennial election.

A disclosure period for an election ends 30 days after the polling day for the relevant election.

However, a regulation may prescribe another day on which a disclosure period starts or ends.

**Clause 222 Replacement of s 107 (Meaning of *gifts*)**

*Clause 222* amends section 107 to provide that a gift is the disposition of property, or provision of service, for no consideration or inadequate consideration, including uncharged interest on a loan and any part of a fundraising contribution that exceeds \$200.

Uncharged interest on a loan is the amount that would have been payable, if the loan had been made on terms requiring the payment of interest at the generally prevailing interest rate for a loan of that kind, or any interest had not been waived, or any interest payments were not capitalised.

However, a gift does not include:

- the transmission of property under a will; or
- a fundraising contribution of \$200 or less or the first \$200 of a fundraising contribution that exceeds \$200; or
- an amount paid to a political party as a subscription for a person’s membership of, or affiliation with, the party; or
- the provision of voluntary labour; or
- the incidental or ancillary use of a volunteer’s vehicle or equipment or if the vehicle or equipment is ordinarily available for a volunteer’s personal use.

The amendments also provide that a reference to a gift in part 6 does not include a gift made in a private capacity to a person for their personal use if the person has not used, does not use and does not intend to use the gift solely or substantially for a purpose related to an election.

**Clause 223 Insertion of new s 107A (Meaning of *fundraising contribution*)**

*Clause 223* inserts new section 107A to provide that a fundraising contribution is an amount paid by a person as a contribution, entry fee or other payment to entitle the person or another person to participate in, or otherwise obtain a benefit from, a fundraising venture or function, regardless of whether or not the payment raises funds for an entity.

New section 107A also provide that fundraising contribution includes, but not limit to, an amount paid for a raffle ticket and an item at a fundraising auction.

**Clause 224 Amendment of s 108 (Meaning of *value of gifts*)**

*Clause 224* amends section 108(d) to provide that the value of a gift, that is a fundraising contribution, is the gross amount of the contribution, regardless of anything received in consideration for the contribution.

**Clause 225 Replacement of s 109 (Meaning of *relevant details for gifts*)**

*Clause 225* replaces section 109 to provide the relevant details for a gift or loan includes their value, when they were made and the terms of the loan. Other relevant details include:

- if the person making the gift or loan has an interest in a local government matter that is greater than that of other persons in the local government area, details of that fact and the nature of the person's interest;
- for a gift or loan made by an individual, their name and residential or business address, their occupation and, if relevant, the industry in which they are employed, carry on a business or are otherwise engaged;
- for a gift or loan made by a corporation, the corporation's name, names and residential or business addresses of the directors or members of the executive committee, however described, of the corporation and, if relevant, the same details for the holding company and a description of the type of business the corporation carries on;
- for a gift or loan made on behalf of the members of an unincorporated association, the association's name and, the names and residential or business addresses of the members of the executive committee, however described, of the association unless the organisation is a registered industrial organisation.
- for a gift or loan made out of a trust fund or out of the funds of a foundation, the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation and the name or other description of the trust account or foundation and, if the gift is given, or loan is made, out of a trust fund of a lawyer or accountant under the instructions of a person who is in substance the giver of the gift or lender, the name and residential or business address of the person.
- for all other gifts or loans, the name and residential or business address of the person who made the gift or loan.

The relevant details for a gift or loan that is made by an entity that is not the source of the gift or loan, is that fact and the other relevant details listed for the entity that is the source of the gift or loan.

**Clause 226 Insertion of new s 112A (When expenditure is incurred)**

*Clause 226* inserts new section 112A to provide that for part 6 expenditure is incurred for goods or services, when they are delivered or provided.

Expenditure is incurred for advertising when the advertisement is broadcasted or published and for production of distribution of material for an election when the material is distributed.

The amendments also provide that a regulation may prescribe when expenditure of another kind is incurred.

**Clause 227 Amendment of section 113A (Meaning of political donation)**

*Clause 227* amends section 113A to provide that a reference in this section to a gift includes a fundraising contribution to the extent the amount of the contribution forms part of proceeds of the fundraising venture or function to which the contribution relates. Also, a reference in this section to a gift includes amounts paid by a person to a political party to the extent the total amount exceeds \$1000 in a calendar year for an amount paid as a subscription for their membership of or affiliation with the party.

**Clause 228 Omission of pt 6, div 2 (Disclosure periods)**

*Clause 228* omits part 6, division 2 as new section 106A provides for the disclosure period.

**Clause 229 Replacement of pt 6, div 3, hdg (Disclosure by candidates)**

*Clause 229* amends the heading of pt 6, div 3 to state ‘Gifts and loans’ and insert a heading for subdivision 1 (Disclosure of gifts and prohibited gifts).

**Clause 230 Insertion of new s 118A (Gifts to third parties to enable political expenditure)**

*Clause 230* inserts new section 118A to provide that a third party must give the electoral commission a return about a gift by the disclosure date for the return, if the third party received a gift of a value of \$500 or more from an entity during the disclosure period for an election and the entity that is the source of the gift intended it to be used, wholly or in part, by the recipient to incur or reimburse political expenditure and the third party used it for either of these purpose for the election.

The third party must give the electoral commission a return about the gift by the disclosure date for the return and it must be in the approved form and state the relevant details for the gift.

The third party must also give the electoral commission a return, in the approved form, within the required period for the election that states the total value of all gifts received by the party during the disclosure period and the number of entities that made the gifts.

The value of a gift made to the third party by an entity includes the value of all other gifts made to the third party by the same entity during the disclosure period.

This section also provides a definition for ‘political expenditure’.

**Clause 231 Amendment of s 119 (Particular gifts not to be received)**

*Clause 231* amends the heading of section 119 to state ‘Receiving anonymous gifts prohibited’.

The amendments consequentially amend and renumbers section 119 to omit section 119(3), as new section 122C will provide for the recovery of prohibited gifts or loans.

**Clause 232 Insertion of new pt 6, div 3, sdiv 2 hdg**

*Clause 232* inserts new heading for subdivision 2 (Disclosure of loans and prohibited loans).

**Clause 233 Amendment of s 120 (Loans to candidates or groups of candidates)**

*Clause 233* amends section 120 to replace the list of details that the return by a candidate, or agent for a group of candidates must comply with for a loan that is \$500 or more with a reference to relevant details for the loan. The relevant details are now prescribed under amended section 109.

**Clause 234 Amendment of s 121 (Particular loans not to be received)**

*Clause 234* consequentially amends and renumbers section 121 to omit section 121(4), as new section 121C will provide for the recovery of prohibited gifts or loans.

**Clause 235 Insertion of new pt 6, div 3, sdiv 3**

*Clause 235* inserts new part 6, division 3, subdivision 3 (Other provisions about gifts and loans).

**Section 121A When an entity is the *source* of a gift or loan**

New section 121A provides that an entity is the source of a gift (the ultimate gift) or loan (the ultimate loan) made to another entity (ultimate recipient) if the gift or loan is given from one entity to another entity (first recipient), with the main purpose being to directly or indirectly enable the first recipient or the other person to make the ultimate gift or ultimate loan to the ultimate recipient and the first recipient or the other person makes the ultimate gift or ultimate loan to the ultimate recipient.

### **Section 121B Donor must disclose source of gift or loan**

New section 121B (Donor must disclose source of gift or loan) provides that when an entity makes a gift or loan of a value of \$500 or more to a candidate, a group of candidates or a registered political party for an election, or a gift mentioned in section 118A(1) (Gifts to third parties to enable political expenditure) to a third party, it must give a notice to the recipient.

The notice must state the relevant details of the gift or loan relating to the entity and if the entity is not the source of the loan, that fact and the relevant details relating to the source of the gift or loan. The maximum penalty for non-compliance is 20 penalty units.

### **Section 121C Recovery of prohibited gifts or loans**

New section 121C provides that the State may recover the amount of a gift or loan received by a person, if they were received in contravention of section 119 (Receiving anonymous gifts prohibited) or section 121 (Particular loans not to be received).

The amount may be recovered as a debt due to the State from the recipient or the members of a group or a group's agent if the recipient is a group. If the amount is recoverable from two or more people, those persons are jointly and severally liable for the amount.

An action in court to recover an amount due to the State may be brought in the name of the electoral commission and any process in the action to be served on the State may be served on the electoral commission.

### **Clause 236 Insertion of new pt 6, div 3, sdiv 4 hdg**

*Clause 236* inserts new subdivision heading for part 6, div 3, subdivision 4 (Notification obligations).

### **Clause 237 Replacement of s 122 (Electoral commission to give reminder notice to candidates)**

*Clause 237* amends section 122 to replace section 122 with new sections 122 (Requirement to notify the public about disclosure obligations) and 122A (Requirement to notify third party of obligation to give return under s 125A).

### **Section 122 Requirement to notify the public about disclosure obligations**

Section 122 provides that if a candidate, agent for a group of candidates, or third party for an election is required to give a return to the electoral commission, the candidate, agent or third party must take reasonable steps to notify the public that the candidate, agent or third party is required to give the return to the electoral commission and state the relevant details for the gift or loan in the return. A maximum penalty of 1 penalty unit for non-compliance applies.

The notification must also include a fair summary of the provisions under which the requirement arises.

### **Section 122A Requirement to notify third party of obligation to give return under s 125A**

Section 122A provides that if a candidate or group of candidates receives a gift of a value of \$500 or more and comprised of expenditure incurred by a third party for an election under section 125A(1) (Expenditure returns – political expenditure by third party) or a third party for an election receives a gift from another third party for the election under section 118A(1) (Gifts to third parties to enable political expenditure), a notice must be given to the third party who gave the gift.

The notice must be given within 7 business days after they receive the gift that states the third party may be required to give a return about the gift under section 125A. The maximum penalty for non-compliance is 20 penalty units.

### **Clause 238 Replacement of pt 6, div 4 (Disclosure by third parties)**

*Clause 238* replaces part 6, division 4.

### **Section 123 Meaning of *electoral expenditure***

New section 123 provides that electoral expenditure is expenditure incurred (whether or not incurred during the election period) on, or a gift in kind given, that consists of:

- broadcasting a political advertisement;
- publishing a political advertisement in a journal;
- publishing a political advertisement on the internet, even if it is on an internet site located outside of Queensland; and
- displaying a political advertisement at a theatre or other place of entertainment; and
- producing and distributing these advertisements.

An electoral expenditure also includes producing and distributing other material that advocates a vote for or against a candidate, group of candidates or registered political party and is required under section 177 (Author of election material must be named) to include the name and address of the author of the material or of the person authorising the material and is used during the election period.

Electoral expenditure also includes expenditure incurred on (whether or not incurred during the election period) or a gift in kind given that consists of carrying out an opinion poll or other research relating to the election, during the election period, if the dominant purpose is to promote or oppose, directly or indirectly the election of a candidate, group of candidates, or registered political party in relation to the election or otherwise influence voting at the election.

### **Section 124 Expenditure return—candidate, group of candidates or registered political party**

New section 124 provides that the following election participants, a candidate, a group of candidates, a registered political party or an associated entity, that incur electoral expenditure for

an election that totals \$500 or more must give a return to the electoral commission, for a group of candidates and a registered political party, their agent must give the return.

The return must be given to the electoral commission in the approved form by the disclosure date and state:

- the name and business address of the person who supplied the goods or service to which the expenditure relates;
- a description of the goods or service;
- the amount of the electoral expenditure;
- when the expenditure was incurred; and
- the purpose for incurring the expenditure.

For a candidate or group of candidates, the return must also be accompanied by a copy of a bank statement for the dedicated account of the candidate or group of candidates for the disclosure period.

New section 124 also provides a definition of ‘bank statement’.

### **Section 125 Summary expenditure return—candidate, group of candidates or registered political party**

New section 125 provides that a candidate, an agent of a group of candidates, an agent of a registered political party that endorsed a candidate and an associated entity must give the electoral commission a return, in the approved form, within the required period for the election. This only applies to an associated entity if section 124 (Expenditure return—candidate, groups of candidates or registered political party) applies to the entity for an election.

The return must state the total amount of electoral expenditure they incurred during the disclosure period. However, if no electoral expenditure was incurred during the disclosure period, then the return must state that fact.

### **Section 125A Expenditure returns—political expenditure by third party**

New section 125A provides that a third party must give the electoral commission a return if it incurs expenditure, during the disclosure period for an election, that totals \$500 or more and is comprised of electoral expenditure, or a gift made to or for the benefit of a political party, candidate or group of candidates, a member of the group or a person acting on behalf of the group. This includes circumstances where the third party gives a gift to another person on the understanding that they or another person, uses the gift (directly or indirectly) to incur the expenditures mentioned.

The third party must give a return for each amount of expenditure incurred by them by the disclosure date for the return in the approved form and it must state:

- the name and business address of the person who supplied the goods or service to which the expenditure relates;

- a description of the goods or service;
- the amount of the electoral expenditure;
- when the expenditure was incurred;
- the purpose for incurring the expenditure;
- if the expenditure was incurred to benefit, support or oppose a particular candidate, group of candidates or political party in the election, that fact and the name of the candidate, group of candidates or political party;
- if the expenditure was incurred to support or oppose a particular issue in the election, that fact and a description of the issue.

In addition, the third party must also give to the electoral commission a return that states the total amount of political expenditure they incurred during the disclosure period within the required period for the election in the approved form.

An amount of expenditure incurred by a third party for two or more elections is taken to have been incurred by them for each of the elections.

**Clause 239 Amendment of pt 6, div 6, hdg (Gifts register)**

*Clause 239* amends the heading of part 6, division 6 to state ‘Publication of returns’.

**Clause 240 Amendment of s 128 (Register of gifts)**

*Clause 240* omits section 128(1) and renumbers section 128 to provide that the electoral commission is no longer required to keep a register of gifts, however, it must publish all the returns and other documents that were previously required to be on the register on its website.

The electoral commission is also required to publish a return or other document within 5 days after it was given to the commission. However if publishing a return or other document would disclose any of the following information, the electoral commission must publish a copy of the return or document from which the information has been deleted: the address of a silent elector; a copy of, or extract from, a bank statement mentioned in section 124(3)(d); information prescribed by regulation.

**Clause 241 Amendment of s 129 (Access to gifts register)**

*Clause 241* consequentially amends the heading of section 129 to state ‘Access to published returns and other documents’ and replaces the reference to ‘the gifts register’ with ‘a return or other document published under section 128’ and omits section 129(2), as the electoral commission is no longer required to keep a gifts register as a consequence of the amendment of section 128 (Electoral commission must publish returns and other documents) in the Bill.

**Clause 242 Amendment of s 130 (Queries on contents of gifts register)**

*Clause 242* consequentially amends the heading of section 130 to state ‘Queries on return’.



**Clause 243 Insertion of new s 130A (Electoral commission must give reminder notice about requirement for return)**

*Clause 243* inserts new section 130A to provide that if a person is required to give the electoral commission a return under division 3 and 4 and has not given the return to the electoral commission by the reminder day, the electoral commission must, as soon as practicable after the reminder day, give a person a written notice.

The notice must state that the person is required to give the return and the provision under which the return is required to be given and relevant provisions, or a general outline of them, that relate to the requirement to give the return.

New section 130A lists provisions that maybe relevant to the requirement to give the return and also provides a definition of ‘reminder day’.

**Clause 244 Amendment of s 131 (Inability to complete returns)**

*Clause 244* amends section 131 to provide that a person who is required to give a return under party 6 (Electoral funding and financial disclosure) or particulars under section 131(3) in relation to a gift or loan made to an election participant, is presumed to know that a gift or loan was made to an election participant and the identity of the entity that is the source of the gift or loan, unless the contrary is proven. Election participant means a candidate in an election; or a group of candidates for an election or a third party to which section 118A or 125A applies.

**Clause 245 Amendment of s 132 (Amendment of returns)**

*Clause 245* consequentially amends section 132(3) to provide that the electoral commission must publish an amended return stated in an application, under section 128, and the day and time the amendment was made.

**Clause 246 Insertion of new s 162A (Knowledge about gift or loan presumed)**

*Clause 246* inserts new section 162A to provide that for a proceeding for an offence against this Act relating to a gift or loan made to an election participant, the participant is presumed to know that the gift or loan was made to them and the identity of the entity that is the source of the gift or loan, unless the contrary is proven. For a gift or loan made to a group of candidates, the agent of the group is also presumed to know these matters, unless the contrary is proven. Election participant means a candidate in an election; or a group of candidates; or a third party to which section 118A or 125A applies; or an agent of a group of candidates.

**Clause 247 Amendment of s 179 (Giving of how-to-vote cards to electoral commission)**

*Clause 247* amends section 179 to provide that the electoral commission must also reject a how-to-vote card if it constitutes a group campaign activity relating to a candidate who is not a member of a group of candidates, in contravention of section 183.

**Clause 248 Replacement of s 183 (Offence for group of candidates to advertise or fundraise if particular requirements not complied with)**

*Clause 248* inserts new section 183 (Engaging in group campaign activities).

New section 183 prohibits a person from engaging in group campaign activity for an election unless the activity relates to candidates who are members of a registered group of candidates for the election, as stated in the record for the group published under section 41(4) or candidates who are endorsed by the same political party for the election. A maximum penalty of 100 penalty units for non-compliance applies and a proceeding against this offence must be brought within 4 years within the commission of the offence.

New section 183 also provides a definition of ‘group campaign activity’.

**Clause 249 Insertion of new s 195A (False or misleading information about gift)**

*Clause 249* inserts new section 195A to prohibit a person from publishing information about a gift that is made to, or received by, a candidate, group of candidates, registered political party, associated entity or a third party that they know is false or misleading in a material particular. The maximum penalty for non-compliance is 20 penalty units.

However, a person does not commit an offence if the information published is a true copy, or fair summary, of information in a return published by the electoral commission.

**Clause 250 Amendment of s 196 (Records to be kept)**

*Clause 250* amends the definition under section 196(2) for ‘relevant record’ to refer to new section 125A(1) (Expenditure returns—political expenditure by third party) which provides for the circumstances of incurring political expenditure.

**Clause 251 Insertion of new pt 11, div 4, sdiv 2**

*Clause 251* inserts new part 11, division 4, subdivision 2 (Transitional provisions commencing by proclamation).

**Section 216 Disclosure period for an election**

New section 216 provides that a reference in section 106A to an election held before the polling day for the election to which the section applies, or the last quadrennial election, includes an election held before the commencement.

A reference in section 106A to a nomination as a candidate in an election, or an announcement or other indication of a person’s intention to be a candidate in an election, includes a nomination, announcement or other indication made before the commencement.

### **Section 217 Disclosure obligations for councillors**

New section 217 applies to a person who, on the commencement, is a candidate for an election under part 6 if, immediately before the commencement, the person was a councillor; or another person who was not a candidate for the election.

For part 6, the disclosure period for the candidate is taken to start on the commencement.

Within 14 days after the commencement, the candidate must give a return under part 6 for any gifts or loans received by the candidate for the period starting 30 days after the polling day for the most recently held election for which the councillor was a candidate; and ending on the commencement.

However, subsection (3) does not apply in relation to a gift or loan that is the subject of a return given to the electoral commission under part 6 before the commencement.

Part 9, division 5 applies in relation to the candidate as if a reference in the division to part 6 included a reference to this section.

### **Section 218 Disclosure obligations for electoral expenditure**

New section 218 provides that for an election held after the commencement of this section, for the purpose of applying part 6, division 4, election participant includes a candidate, group of candidates, registered political party, an associated entity and a third party to which section 125A (Expenditure returns—political expenditure by third party) applies.

It is immaterial whether the election participant incurred electoral expenditure for the election before or after the commencement of this section. If the election participant's disclosure period for the election, under section 106A, started, other than for this section, before the introduction day for the Bill, the disclosure period for the election is taken to have started on the introduction day.

An election participant must give a return under part 6, division 4, within 14 days after the commencement of this section, for any electoral expenditure incurred by them during the period starting on the day the Bill was introduced into the Legislative Assembly and ending on the commencement.

Part 9, division 5 applies in relation to the election participant as if a reference in the division to part 6 includes a reference to this section.

### **Clause 252 Insertion of new sch 1 (Other matters nomination must contain)**

*Clause 252* inserts new schedule 1 to provide additional matters that a prospective candidate for an election is required to provide in their nomination.

## **Section 1 Definitions for schedule**

New section 1 provides definitions for ‘close associate’, ‘contractual arrangement’ and ‘contractual process’.

## **Section 2 Who is a *close associate***

New section 2 provides that a close associate of a candidate includes a person who in relation to the candidate is a spouse, a partner in a partnership, an entity other than a government entity, for which the candidate is an executive officer or board member.

## **Section 3 Membership of political party or trade or professional organisation**

New section 3 provides that if a candidate is, or has been within the previous year, a member of a registered political party or trade or professional organisation, the nomination must contain, for each party or organisation:

- the name and address of the party or organisation; and
- the date on which the candidate became a member and, if the candidate is no longer a member, the date of the candidate stopped being a member.

If the above does not apply to the candidate, the nomination must contain a statement that the candidate, and each close associate of the candidate, is not, and has not been within the previous year, a member of a registered political party or trade or professional organisation.

## **Section 4 Contractual arrangements**

New section 4 provides that if a candidate, or a close associate of the candidate, is, or has been within the previous year, a party to a contractual arrangement with the local government, the candidate’s nomination must contain, for each contractual arrangement:

- the nature of the arrangement; and
- if the arrangement is a medium-sized contractual arrangement or a large-sized contractual arrangement under the *Local Government Regulation 2012* or *City of Brisbane Regulation 2012*—a statement about that fact; and
- if a close associate of the candidate is a party to the arrangement:
  - the name and address of the close associate; and
  - the nature of the candidate’s relationship with the close associate.

If the above does not apply to the candidate, the nomination must contain a statement that the candidate, and each close associate of the candidate, is not, and has not been within the previous year, a party to a contractual arrangement with the local government.

## **Section 5 Contractual processes**

New section 5 provides that if a candidate, or a close associate of the candidate, is engaged in a contractual process with the local government, the nomination must contain, for each contractual process:

- the nature of the process; and
- if a close associate of the candidate is engaged in the process:
  - the name and address of the close associate; and
  - the nature of the candidate's relationship with the close associate.

If the above does not apply to the candidate, the nomination must contain a statement that the candidate, and each close associate of the candidate, is not engaged in a contractual process with the local government.

### **Section 6 Particular applications or representations**

New section 6 provides that a nomination must contain particular information if a candidate, or a close associate of the candidate, made any of the following applications or representations, which have not been decided before the nomination is made:

- a development application under the *Planning Act 2016* for which the local government is the assessment manager under that Act;
- a development application under the repealed *Sustainable Planning Act 2009* for which the local government is the assessment manager under that Act;
- a change representation under the *Planning Act 2016* for which the local government is the assessment manager under that Act;
- a change representation under the *Planning Act 2016* for which the local government is the responsible entity under that Act;
- an extension application under the *Planning Act 2016* for which the local government is the assessment manager under that Act.

The nomination must contain the following information, for each application or representation:

- the nature of the process; and
- if a close associate of the candidate is engaged in the process:
  - the name and address of the close associate; and
  - the nature of the candidate's relationship with the close associate.

If the above does not apply to the candidate, the nomination must contain a statement that the candidate, and each close associate of the candidate, has not made an application or representation mentioned above.

### **Section 7 Training course approved under Act, s 26**

New section 7 provides that a candidate's nomination must contain a statement that the candidate has, within 6 months before the nomination day for the election, successfully completed a training course approved under section 26(2).

### **Clause 253 Amendment of sch 2 (Dictionary)**

*Clause 253* amends schedule 2 to:

- omit the definitions of ‘candidate’s disclosure period’, ‘close associate’, ‘contractual arrangement’, ‘contractual process’, ‘gifts register’, ‘group of candidates’, ‘group’s disclosure period’ and ‘political activity’;
- insert the definitions of ‘dedicated account’, ‘disclosure period’, ‘disposition of property’, ‘fundraising contribution’ and ‘group campaign activity’, ‘silent elector’, ‘source’;
- replace the definitions of ‘agent’, ‘candidate’ and ‘electoral expenditure’; and
- update the definition of ‘third party’ to replace the reference to section 123 with section 106.

*Clause 253* also amends the definitions for ‘formal ballot paper’, ‘how-to-vote card’ and ‘informal ballot paper’ to replace the reference to ‘optional-preferential’ with ‘full-preferential’, as the system of voting is being changed to ‘full-preferential’ under section 65 (System of voting).

## **Part 5 Amendment of Referendums Act 1997**

### **Clause 254 Act amended**

*Clause 254* states that this part amends the *Referendums Act 1997*.

### **Clause 255 Amendment of s 96AC (Application of division 1)**

*Clause 255* amends the definition under section 96AC(2) of ‘division’ to refer to schedule 2 of the *Local Government Electoral Act 2011* as the schedule has been renumbered in the Bill.

## **Part 6 Amendment of Right to Information Act 2009**

### **Clause 256 Act amended**

*Clause 256* states that this part amends the *Right to Information Act 2009*.

### **Clause 257 Amendment of s 21 (Requirement for publication scheme)**

*Clause 257* consequentially amends section 21 to omit subsection (4) as a result of the Bill removing the current right to information access exemption that applies to information of the Brisbane City Council’s Establishment and Coordination Committee.

### **Clause 258 Insertion of new ch 7, pt 6 (Transitional provision for Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019)**

*Clause 258* inserts new chapter 7, part 6 to provide a transitional provision for information of the Brisbane City Council’s Establishment and Coordination Committee that was exempt information before commencement.

**Section 206C Exempt information—BCC Establishment and Coordination Committee information**

New section 206C provides that information of the Brisbane City Council’s Establishment and Coordination Committee that was exempt information under schedule 3, former section 4A before commencement, continues to be exempt information for 10 years after the date the information was most recently considered by the committee before the commencement or for other information—the date the information was brought into existence. However, the continued exemption does not apply to the information if the information is officially published by decision of the Brisbane City Council after commencement.

**Clause 259 Amendment of sch 3 (Exempt information)**

*Clause 259* amends schedule 3 to omit section 4A removing the current right to information access exemption that applies to information of the Brisbane City Council’s Establishment and Coordination Committee. The amendment improves transparency around the decision-making of the Brisbane City Council and better aligns the regimes across all local governments in Queensland.

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