Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019

Explanatory Notes

Short title

The short title of the Bill is the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 (the Bill).

Policy objectives and the reasons for them

Chapter 2 – Amendments relating to funding and expenditure for State elections

The key policy objective of Chapter 2 (Amendments relating to funding and expenditure for State elections) of the Bill is to improve the actual and perceived integrity and public accountability of State elections and ensure public confidence in State electoral and political processes. In particular, the Bill aims to:

- secure the actual and perceived integrity of the State electoral and political processes by reducing the risk that a single person or entity can have an improper, corrupting or undue influence on political parties, candidates and third parties involved in electoral campaigning;
- level the playing field for electoral campaigning and ensure that an individual person or entity has a reasonable opportunity to communicate to influence voting in an election without being "drowned out" by the communication of others; and
- increase the public funding available to eligible political parties and candidates to provide for proper public discussion and campaigning.

Chapter 3 – Amendments relating to signage at State elections

The policy objectives of Chapter 3 (Amendments relating to signage at State elections) of the Bill are to:

- reduce the ability for signage concentrated around the entrances to pre-poll voting offices and ordinary polling booths, or the grounds in which they are located, by a particular party, candidate (or third party engaged in campaigning) to 'crowd out' the opportunities for parties and candidates to communicate with voters;
- ensure that the areas around pre-poll voting offices and ordinary polling booths are more neutral environments for voters, while still allowing reasonable communication with voters for those candidates seeking election and (as applicable) their endorsing registered political parties;
- prevent damage to structures at venues used as polling booths on polling day caused by affixing election material; and

- ensure that the ordinary use of premises to be used as polling booths on polling day, and premises nearby, are not interfered with by the set up of electoral material early on polling day or in the days leading up to the election.

Chapter 4 – Amendments relating to dishonest conduct of Ministers

The policy objective of Chapter 4 (Amendments relating to dishonest conduct of Ministers) of the Bill is to improve the integrity and accountability of Ministers by amending the *Integrity Act 2009* and the *Parliament of Queensland Act 2001* to create a new offence in each Act. The introduction of these new offences gives effect to the Government's commitment to accept recommendations proposed by the Crime and Corruption Commission (CCC) on 6 September 2019.

As a result of their consideration of the matter, the CCC made five recommendations involving areas for improvement to ensure conflicts of interest are declared and to reduce risks of corruption (CCC recommendations). Recommendations three and four sought the creation of new criminal offences relating to conflicts of interest, while the remaining three recommendations involved strengthening Cabinet processes to ensure conflicts of interest are managed more effectively.

Recommendation three proposed a criminal offence be created when a member of Cabinet does not declare a conflict that does, or may, conflict with their ability to discharge their responsibilities.

Recommendation four sought the creation of a criminal offence to apply when a member of Cabinet fails to comply with the requirements of the Register of Members' Interests, and the Register of Members' Related Persons Interests, by not informing the Clerk of the Parliament of the particulars of an interest, or the change to an interest, within one month. It recommended a suitable penalty should apply, including possible removal from office, if the Member's lack of compliance was intentional.

Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters

The policy objective of Chapter 5 (Amendments relating to dishonest conduct for councillors and other local government matters) 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 Bill implements further reforms to improve transparency, integrity and consistency in the local government system, decision-making and local government elections.

In relation to the local government system and decision-making, the Bill will amend the *City of Brisbane Act 2010* (COBA) and/or the *Local Government Act 2009* (LGA) to:

- introduce a new offence that applies if a councillor dishonestly contravenes particular obligations in regard to conflicts of interest or registers of interests;

- clarify and further strengthen how councillors' conflicts of interest are managed;
- introduce new requirements relating to councillors' registers of interests to align with the requirements applying to State Members of Parliament for statements of interests;
- provide for greater alignment between COBA and the LGA in the process for filling a vacancy in the office of a mayor or councillor in a single-member division and provide for filling a vacancy in the office of a councillor in a multi-member division or undivided local government by appointment of the runner-up or a subsequent runner-up in the last quadrennial election;
- enable councillors of Brisbane City Council (BCC) and other local governments prescribed by regulation to appoint councillor advisors to assist in performing their responsibilities under the COBA or LGA and provide for councillor advisors' employment conditions and statutory obligations, including appropriate offences and penalties;
- provide for the chief executive officer of a local government to make guidelines about local government employees providing administrative support to councillors and allow councillors to direct employees in accordance with the guidelines;
- provide further administrative arrangements in relation to the dissolution of a local government; and
- limit the involvement of BCC's councillors in the appointment of BCC employees.

In relation to local government elections, the Bill amends the *Local Government Electoral Act 2011* (LGEA) to:

- provide for responsibility for compliance in the absence of an agent for a political party or a group of candidates; and
- provide for minor technical and clarifying amendments in relation to voting and counting of votes, bank statements provided to the Electoral Commission Queensland (the commission) and reminder notices issued by the commission.

Achievement of policy objectives

Chapter 2 – Amendments relating to funding and expenditure for State elections

Chapter 2 of the Bill will achieve its objectives of improving the actual and perceived integrity and public accountability of State elections by:

- capping the giving and acceptance of political donations to registered political parties and their associated entities, candidates and third parties involved in electoral campaigning;
- capping electoral expenditure for registered political parties and their associated entities, candidates and third parties involved in electoral campaigning;
- requiring registered political parties, candidates and registered third parties to maintain dedicated State campaign accounts to support the integrity of, and compliance with, the donations and expenditure caps;

- increasing public election funding for eligible registered political parties and candidates to decrease reliance on private donations;
- increasing policy development funding from $3 million to $6 million per annum, allowing independent members to receive policy development payments, making modification to the distribution of policy development payments and basing the entitlement on the most recent general election results at the time of making the payment; and
- introducing arrangements to support the election funding and disclosure reforms, including registration requirements for third parties and clarification of accountabilities of agents and electoral participants.

Chapter 3 – Amendments relating to signage at State elections

Chapter 3 of the Bill will achieve the stated policy objectives by:

- creating an offence of 10 penalty units for the display of unpermitted signage during voting hours within 100 metres of the entry to a pre-poll voting office or an ordinary polling booth, or a designated entry to the ground, with a candidate (or endorsing registered political party) being permitted to display up to two signs of a specified size; and
- creating an offence of 10 penalty units for displaying an election sign or setting up other items to be used for a purpose related to an election within 100m of a building to be used as an ordinary polling booth, the grounds in which a polling booth is located or within 100m of any entrance to the grounds.

Chapter 4 – Amendments relating to dishonest conduct of Ministers

Chapter 4 of the Bill will give effect to CCC recommendations three and four.

The *Integrity Act 2009* will be amended to create a criminal offence for a Minister who knowingly fails to disclose a conflict of interest with the intent to dishonestly gain a benefit to themselves or another person, or cause detriment to another person. The amendment is intended to capture a Minister's responsibility to bring all conflicts of interest to the attention of the relevant body or person (Cabinet, a Cabinet committee or the Premier), even if the conflict arises out of an interest already recorded in the Register of Members' Interests.

In addition, the *Parliament of Queensland Act 2001* will be amended to create a new offence where a Minister intentionally fails to comply with section 69B(1), (2) or (4) (which deal with the obligations on Members of Parliament to register their interests with the Clerk of Parliament) with dishonest intent to obtain a benefit for themselves or another person, or cause detriment to another. The offence only applies to Ministers and reflects the decision-making nature of Cabinet, the higher obligation on Ministers to uphold the standards of integrity and ensure there is public confidence in government.

Each of the new offences have a maximum penalty of 2 years imprisonment or 200 penalty units. A member of Parliament may also face the additional consequence of losing their seat in circumstances where they are convicted of either offence and are sentenced to more than one year imprisonment, as provided in section 72(1)(i) of the

Parliament of Queensland Act 2001. Charges for both of the new criminal offences will not be able to be laid without the consent of the Director of Public Prosecutions.

Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters

Local government system and decision-making

Dishonest conduct of councillors

The Bill introduces new dishonest conduct of councillor offences into the LGA and COBA that apply if a councillor fails to comply with particular conflict of interest or register of interests requirements ('relevant integrity provisions') with the intent to dishonestly gain a benefit for the councillor or someone else, or to dishonestly cause a detriment to someone else (new section 201D LGA and new section 198D COBA). The relevant integrity provisions are particular requirements relating to conflict of interest and register of interests. A maximum penalty of 200 penalty units or two years' imprisonment will apply and the offences will be prescribed as serious integrity offences.

A councillor is automatically suspended if the councillor is charged with a serious integrity offence. On conviction for a serious integrity offence, a person automatically stops being a councillor and will be disqualified from being a councillor for seven years (section 153 LGA and section 153 COBA). If a councillor fails to comply with the requirements in other circumstances, the conduct will amount to misconduct.

The dishonest conduct of councillor offences will also be prescribed as 'conduct provisions' under the LGA. Under the LGA, investigators have a function of investigating whether an offence has been committed against a conduct provision. Investigators help the Independent Assessor perform the Assessor's functions under chapter 5A of the LGA.

Councillor's conflict of interest

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 amends the COBA and LGA by omitting these divisions and inserting new provisions into the COBA and LGA regarding conflicts of interests of councillors.

The new process provides that where a councillor has a prescribed conflict of interest in a matter, the councillor must not participate in a decision relating to the matter unless the Minister has approved the councillor's participation in the decision and must inform a local government meeting or the chief executive officer of the interest, including prescribed particulars, as appropriate.

If a councillor has a declarable conflict of interest, the councillor must stop participating and not further participate in the decision and must inform a local government meeting or the chief executive officer of the declarable conflict of interest, including the prescribed particulars. Unless the councillor voluntarily decides not to participate in the

decision, eligible councillors must, by resolution, decide whether a councillor with a declarable conflict of interest may participate in the decision and may also impose conditions on the councillor's participation.

The Bill also provides for:

- the procedure for deciding a matter if there is no quorum due to conflicts of interest;
- the Minister to give approval for a councillor with a conflict of interest to participate in a decision in certain circumstances;
- a duty for a councillor to report another councillor's prescribed conflict of interest or declarable conflict of interest;
- an offence where a councillor takes retaliatory action against a councillor who has complied with this duty;
- an offence where a councillor with a conflict of interest influences another person who is participating in a decision relating to the matter; and
- requirements about keeping records about conflicts of interest.

Councillors' registers of interests

The LGA section 171B and the COBA section 173B currently 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 Bill introduces new obligations on councillors in relation to registers of interests to align with State MPs statements of interests, including appropriate offences and penalties for non-compliance. Councillors will be required to report on their interests (and the interests of a person related to the councillor) at the start of their term and at the end of each financial year and will continue to report on any new or changed interests within 30 days.

Filling vacancies in the office of a councillor

To increase consistency amongst local governments, the Bill amends the LGA to provide for greater alignment with the process for filling vacancies in the COBA:

- in relation to when a vacancy must be filled; and
- by providing that a vacancy in the office of a mayor or councillor of a single-member division that arises in the first 36 months after the last quadrennial election must be filled by a by-election.

The Bill also amends the LGA to provide for a process to fill a vacancy in the office of a councillor of an undivided local government or a local government divided into multi-member divisions that arises in the first 36 months after the last quadrennial elections. The vacancy must be filled by appointing a runner-up, or a by-election if this is not possible.

For any vacancy that arises more than 36 months after the start of the local government's term, the local government must fill the vacancy by appointing another councillor (for the office of mayor), or a qualified person (for the office of a councillor).

Engagement of advisors to assist councillors

There is a growing trend, particularly in larger local governments, for the appointment of 'political staff' predominately to assist mayors and to undertake a range of duties including management of the mayor's office, administrative support, media activities, event management, policy development and in some cases political activities. It is understood the appointment of such staff varies from local government to local government with some engaged as local government employees and others as contractors.

To acknowledge the political nature of these appointments and their unique status in the local government context, the Bill amends the COBA and the LGA to provide that BCC and local governments (to be prescribed by regulation) under the LGA may contract persons as councillor advisors to assist councillors in performing responsibilities under the respective Acts; and to provide appropriate employment conditions, statutory obligations and offences and penalties. The same obligations that apply to councillors in relation to registers of interests are also to apply to councillor advisors, including the dishonest conduct offences for dishonestly contravening the register of interests obligations.

Councillors to direct designated local government employees in accordance with guidelines

It is current practice for many local governments to provide administrative support to mayors and councillors which, in most cases, is provided by employees of the local government. Currently, both the LGA and COBA include prohibitions on councillors giving direction to employees of the local government. The current prohibitions on councillors to give directions to local government employees may be perceived as restricting the ability of councillors to ask these employees to undertake routine administrative functions such as typing, organising meetings and copying documents. Similarly, mayors often work closely with local government employees with expertise in media, communications and policy development and some routine requests of the mayor to these employees may be interpreted as giving directions contrary to the COBA and the LGA.

The Bill amends the LGA and COBA to provide that a councillor may give a direction to a local government employee who provides administrative support to the councillor in accordance with guidelines made by the chief executive officer.

Dissolution of a local government – further administrative arrangements

Chapter 5, part 1 of the LGA is about the powers of the State to intervene in local government matters and to seek to suspend or dismiss a councillor or dissolve a local government. The *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* applies chapter 5, part 1 of the LGA to the BCC.

Section 123 provides that the Minister may recommend that the Governor in Council dissolve a local government and appoint an interim administrator to act in place of the councillors until the conclusion of a fresh election of councillors. The Bill amends the

LGA to provide that the Minister may recommend that an interim administrator be appointed until the conclusion of the earlier of a fresh election of councillors to be held on a stated date, or the next quadrennial election, therefore negating the possibility of having to hold two elections in a short period of time if a local government is dissolved.

The Bill also provides further administrative arrangements in relation to the dissolution of a local government.

Appointment of BCC employees

Under the LGA, the chief executive officer appoints all local government employees, including employees who report directly to the chief executive officer and whose position ordinarily would be considered to be a senior position in the local government's corporate structure (senior executive employees). However, COBA provides that BCC appoints employees who are employed on a contractual basis and classified by the council as 'senior executive service' (senior contract employees). This may include managers who do not report directly to the chief executive officer.

To limit the involvement of BCC councillors in the appointment of BCC employees and to provide for better alignment with the LGA, the Bill amends the COBA to provide that BCC will be responsible only for appointing senior executive employees and that the chief executive officer of BCC will be responsible for appointing all other employees.

Further, the mayor of BCC may give a direction only to the chief executive officer or senior executive employees (as opposed to senior contract employees) which must not be inconsistent with a resolution, or a document adopted by resolution, of the council.

Local government elections

The Bill amends the LGEA to provide that, if a political party or group of candidates does not have an agent for a period, the executive committee of the party or each candidate of the group is respectively responsible for compliance with the obligations of the agent under the LGEA. The Bill also makes a number of minor technical and clarifying amendments to the LGEA.

Alternative ways of achieving policy objectives

There are no alternative methods for achieving the policy objectives.

Estimated cost for government implementation

Chapter 2 – Amendments relating to funding and expenditure for State elections
Chapter 3 – Amendments relating to signage at State elections

The Bill will increase the policy development payments funding pool from $3 million to $6 million per annum from January 2021, with $4.5 million being available in the 2020-21 financial year).

The Bill will also increase election funding entitlements effective for the 2020 State general election from $3.14 to $6.00 per formal first preference vote for registered political parties and from $1.57 to $3.00 per formal first preference votes for candidates. In addition, the eligibility threshold for both registered political parties and candidates will decrease from 6 per cent to 4 per cent of formal first preference votes. This is expected to result in an additional cost in the order of $10 million, noting that this figure has been calculated based on the 2017 State general election, does factor in the drop in the eligibility threshold but does not factor in other variables such as voter turnout, rate of informal voting and the actual expenditure of qualifying parties and candidates to which the election funding entitlement is limited.

The Bill will expand the role of the commission in relation to compliance, monitoring and enforcement of Part 11 of the *Electoral Act 1992* (Electoral Act), resulting in additional costs for staffing and systems changes and to facilitate and enforce new signage restrictions. Any costs will be considered through normal budgetary processes.

Chapter 4 – Amendments relating to dishonest conduct of Ministers

Any costs arising from the offences created in the *Integrity Act 2009* and the *Parliament of Queensland Act 2001* will be met from existing agency resources.

Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters

The Department of Local Government, Racing and Multicultural Affairs (DLGRMA) will deliver a comprehensive implementation package and information strategy to assist local governments. It is proposed that information and training about the reforms will be provided to local governments both before and after the 2020 local government elections. Costs to the State Government in implementing the measures in the Bill are primarily associated with staff time in conducting this training and preparing guidance materials and it is not anticipated that additional funds will be required. Any costs will be considered through normal budgetary processes.

Consistency with fundamental legislative principles

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

Chapter 2 – Amendments relating to funding and expenditure for State elections

Rights and liberties of individuals

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

Freedom of expression, and political communication

Donation caps

Chapter 2 of the Bill (new part 11, division 6 of the Electoral Act) imposes caps on the amount of political donations that donors may make, and defined recipients (political parties and their associated entities, candidates and third parties involved in electoral campaigning) may receive. Donation caps limit gifts that can be received from and given by a single donor during the relevant donations cap period for the relevant type of recipient. This has the effect of restricting funding sources for electoral expenditure.

The donation caps are potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals, because they impact on the rights to freedom of expression and to take part in public affairs and elections.

The impacts on these rights are legitimate and proportionate. They serve a genuine public interest of securing the actual and perceived integrity of the State electoral and political processes by reducing the risk that a single person or entity can have an improper, corrupting or undue influence on political parties, candidates and third parties involved in electoral campaigning. Those impacted are limited to those who freely choose to be directly involved with the electoral process (as recipients of political donations) or provide resourcing to those who are (as political donors). In addition, those wishing to receive information and ideas from the recipients of political donations will have increased confidence that those communicating with them, and seeking election, have not been subject to undue influence. The High Court has held the capping of political donations is a measure that preserves and enhances the system of representative government.[1] In formulating the donations caps, regard has been given to donations caps in interstate jurisdictions, as well as comparative international jurisdictions.

Increases to election funding to be made available to eligible registered political parties and candidates, along with decreases in the threshold of formal first preference votes required for eligibility for such funding, complement the donation caps to reduce the need for political donations as a funding source for eligible recipients. The increase in the pool of funding available for policy development payments and the extension of those payments to elected independent members will also complement the donation caps, notwithstanding those payments cannot be used for the purpose of electoral expenditure.

Expenditure caps

Chapter 2 of the Bill (new part 11, division 9 of the Electoral Act) imposes caps on electoral expenditure for political parties and their associated entities, candidates and third parties involved in electoral campaigning. These caps apply for the defined capped expenditure period, which for an ordinary general election is 12 months prior to polling day to close of polls. Expenditure for the caps is limited to specific kinds of expenditure with a purpose of influencing voting: designing, producing, printing, broadcasting or

[1] *McCloy v New South Wales* [2015] HCA 34 at [47]

publishing an advertisement or other election material; direct distribution costs for an advertisement; and carrying out opinion polls or research. In respect of third parties engaged in electoral campaigning, relevant electoral expenditure must also have a dominant purpose of influencing voting in the election.

The expenditure caps are potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals, because they impact on the rights to freedom of expression and to take part in public affairs and elections.

The impacts on these rights are legitimate and proportionate. They serve a genuine public interest in levelling the playing field for electoral campaigning and ensuring that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without 'drowning out' the communication of others. Limiting the ability of an individual or entity to 'drown out' the communication of others therefore supports the rights to freedom of expression for both those wishing to impart information and ideas, and those wishing to receive information and ideas. Those whose communications are restricted through the expenditure caps are limited to those who are directly involved with the electoral process in the form of seeking election, endorsing candidates for election or communicating with a dominant purpose of influencing voting at an election. The expenditure caps have been formulated by indexing previous expenditure cap amounts as provided by the *Electoral Reform and Accountability Amendment Act 2011*. Regard has also been given to interstate and international jurisdictions' expenditure cap amounts and the relevant types of expenditure that those caps will capture.

Imposition of presumed responsibility

Whether legislation has sufficient regard to the rights and liberties of individuals includes whether, for example, legislation makes a person responsible for actions or omissions over which the person may have no control.

Chapter 2 of the Bill (new part 11, division 9, subdivision 4 of the Electoral Act) provides for the aggregation of electoral expenditure in certain circumstances, and takes some expenditure incurred by one electoral participant to be incurred by another.

Specifically, provisions are included which provide that:

- electoral expenditure incurred by or for a registered political party is taken to be incurred for its endorsed candidate for a by-election; and
- where an elected member is a member of a registered political party and is not contesting as a candidate for the next election, their electoral expenditure (including past expenditure) will be taken to be incurred by the party.

These provisions are potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect rights and liberties of individuals, because they make a person responsible for actions of others over which they may have had no control.

These provisions are reasonably necessary to prevent parties from incurring additional expenditure for a by-election, or allowing elected members not contesting to incur

expenditure that benefits their party or candidates endorsed by that party which is not appropriately attributed.

In circumstances where an expenditure cap is exceeded as a result of an aggregation a person will not be responsible if they did not know, or could not reasonably have known, about the expenditure that is added because of the aggregation. This limits the potential adverse impact on individuals due to the actions of others over which they may have had no control.

Chapter 2 of the Bill (new part 11, division 2 of the Electoral Act) also requires the appointment of an agent by a registered political party and a registered third party who is not an individual. In circumstances where the entity does not have an agent, the Bill makes each member of the executive committee (however described) of the entity responsible for the obligations of the agent under part 11 of the Electoral Act as if it applied to the member of the executive committee.

A registered political party and a registered third party (that is not an individual) are required to appoint an agent and provide written notice of a new appointment and when the appointment of an agent ends. This arrangement is consistent with the existing arrangement for agents that apply in relation to registered political parties. It is expected that the circumstances and timeframe in which the members of an executive committee will be responsible would be limited. It is a practical necessity to provide this arrangement to ensure that failure to comply with obligations of an agent under part 11 can be enforced and remove the incentive to avoid appointing an agent to in turn avoid anyone being held responsible for these obligations.

Multiple processes arising from single act

Whether legislation has sufficient regard to the rights and liberties of individuals includes whether, for example, legislation subjects a person to more than one court or tribunal process arising out of a single act or omission without sufficient justification.

Chapter 2 of the Bill provides for the recovery of unlawful political donations and electoral expenditure. These provisions are potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect rights and liberties of individuals, because they may have the effect of subjecting a person to the recovery of a debt in addition to a criminal offence, arising out of a single act by that person.

Specifically, the Bill provides that:

- if a person accepts a political donation in excess of the caps applying to registered political parties, candidates or third parties, the amount or value by which the donation exceeded the cap is payable to the State; and
- if a person incurs expenditure in contravention of the expenditure caps for registered political parties, candidates or third parties (registered or unregistered), twice the amount of that expenditure is payable to the State.

The provisions are reasonably necessary:

- to deter a situation where a donation is unlawfully received or at least to ensure the recipient does not benefit financially from having done so; and

- to deter a situation where electoral expenditure is unlawfully incurred, potentially influencing voting in an election and therefore providing an unfair advantage to an election participant.

The amount recovered is proportionate to the extent of the offending. Both of these measures also provide an administratively simpler option in circumstances where pursuing a criminal prosecution may not be appropriate.

Right to privacy

The Bill provides for the publication of the register of third parties for an election on a website of the commission. The register may be kept in the way and form the commission considers appropriate.

This clause is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect rights and liberties of individuals, because it may require the publication of details an individual may reasonably expect to keep private (for example, the details of an individual who is a registered third party). The publication of the register by the commission improves transparency of State elections by allowing electors to obtain information about who is engaging in electoral expenditure, and who is responsible for communication with electors resulting from that expenditure. Safeguards to privacy are provided by requiring the street address of an individual, and the address of an individual who is a silent elector, to be deleted prior to publication of a register by the commission.

Proportionality of penalties and orders

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, consequences 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.

Chapter 2 of the Bill introduces various new offence and penalty provisions in the Electoral Act, namely:

- requiring a registered officer of the registered political party to notify of the withdrawal of the endorsement of a candidate – 40 penalty units;
- requiring election participants to keep a State campaign account – 200 penalty units;
- requiring persons only to pay certain amounts into a State campaign account – 200 penalty units;
- requiring persons not to repay certain loans other than from a State campaign account – 200 penalty units;
- requiring an election participant or person acting with their authority to ensure that non-donation loan amounts are withdrawn from the participant's State campaign account – 200 penalty units;
- requiring persons to ensure that returns on investments and redeemed investments in certain circumstances are paid into the State campaign account – 200 penalty units;
- requiring a person who receives a donor statement to ensure that the donation is paid into a State campaign account – 200 penalty units;

- requiring an election participant or person acting with its authority to keep records of political donations other than money – 20 penalty units;
- requiring a person to ensure that amounts received for the disposal of certain property other than money are paid into the State campaign account – 200 penalty units;
- requiring a person to ensure electoral expenditure is paid from the participant's State campaign account – 200 penalty units;
- requiring an agent of an election participant to notify details of, and changes of details for, State campaign accounts – 20 penalty units;
- requiring a person not to make a political donation in excess of the donation caps – 200 penalty units;
- requiring an election participant or person acting with their authority to provide a receipt containing certain information to a donor – 20 penalty units;
- requiring a person not to accept political donations in excess of the donation cap – 200 penalty units;
- requiring a registered political party that receives a gift from an entity requiring a return to give the entity a notice stating this requirement – 20 penalty units;
- requiring an election participant or a person acting with its authority not to exceed the electoral expenditure cap for the election participant – the greater of twice the amount by which the electoral expenditure exceeded the expenditure cap or 200 penalty units;
- requiring an unregistered third party not to incur electoral expenditure exceeding $1,000 - the greater of twice the amount by which the electoral expenditure exceeded the expenditure cap or 200 penalty units;
- requiring the agent of a third party to give the commission notice, in the approved form and within 30 days, if a relevant detail for a registered third party changes – 20 penalty units;
- requiring an election participant or person authorised by the participant to make specified records – 20 penalty units;
- requiring an election participant, or a person authorised by the participant, to make specified records relating to electoral expenditure - 20 penalty units;
- requiring a person to make records relating to the printing, publishing or broadcast of advertisements or other election material – 20 penalty units;
- requiring publishers and broadcasters to make certain records – 20 penalty units; requiring particular records to be kept for five years – 20 penalty units;
- requiring registered political parties to notify of endorsement of candidates – 40 penalty units; and
- requiring the agent of an election participant to take all reasonable steps to ensure that the participant, and persons authorised to act for the participant, are aware of and comply with their obligations – 200 penalty units.

Chapter 2 of the Bill extends the application of the existing offence concerning knowing participation in a scheme to circumvent the prohibited donor ban to schemes to circumvent donation caps and expenditure caps. This offence has a maximum penalty of 1,500 penalty units or 10 years imprisonment.

These offences provided are proportionate and relevant to the actions to which they applied, taking into account comparable existing offences, including those already in place under the Electoral Act.

Reversal of onus of proof

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification (section 4(3)(d) LSA).

The Bill provides for exceptions and reasonable excuse provisions for various new offences provisions. The effect of these provisions is to reverse the onus of proof to the defendant.

The offences acknowledge that persons may have different responsibilities and delegated authorities within organisations and therefore may not be able to directly take action to remedy the offence themselves but may take reasonable steps to ensure others remedy the offence. The offences also acknowledge a person should not be held liable for an offence triggered by the actions of others where the person did not know, or could not reasonably be expected to know, about the other persons' actions. Similarly, the offences acknowledge that there are likely to be a range of matters that are peculiarly within the knowledge of the defendant. It is in these circumstances that the defendant would be better-positioned than the prosecution to meet the evidential burden. The 'reasonable excuse' provisions ensure liability would not be unjustly imposed, given the complexity and unpredictability of the situations likely to arise.

Extension of prosecution period

The Bill provides that various new offences will be able to be prosecuted within four years of the offence. This is consistent with the current prosecution period for offences against section 307 (Offences) of the Electoral Act and is necessary to ensure the ECQ has sufficient time to detect possible offences while conducting its compliance and monitoring activities between elections. The four year period corresponds with the fixed four year terms in place for the Legislative Assembly.

Chapter 3 – Amendments relating to signage at State elections

Rights and liberties of individuals

Freedom of expression, and political communication

Chapter 3 of the Bill creates an offence for the display of unpermitted signage during voting hours within 100 metres of the entry to a pre-poll voting office or an ordinary polling booth and any designated entry to the grounds where the office or booth is located, with a candidate (or endorsing registered political party) being permitted to display up to two signs of a specified size within these restricted areas.

The signage restrictions are potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals, because they impact on the rights to freedom of expression and to take part in public affairs and elections. This is because it prevents unpermitted signage within the restricted areas.

The impacts on these rights are legitimate and proportionate. They serve a genuine public interest in reducing the ability for signage concentrated in the areas subject to the restriction to 'crowd out' the opportunities for registered political parties and candidates to communicate with voters. Limiting the ability of an individual or entity to 'crowd out' the communication of others supports freedom of expression for both those wishing to impart information and ideas, and those wishing to receive information and ideas. The restrictions are intended to provide a more neutral environment for voters, while allowing reasonable signage in closest proximity to a pre-poll voting office or ordinary polling booth to be focused on the direct voting choices to be exercised by electors (namely for candidates and, where applicable, the parties that endorse them) rather than a broader class of persons and entities. The need for signs to be accompanied by a person is necessary to ascertain which candidate or party the signs are being displayed for where that may not be clear, including circumstances where an ECQ returning officer may need to take action. The restrictions will also prevent damage to structures at venues used as polling booths on polling day caused by affixing election material to them.

Signage outside the restricted areas for all electoral participants, including third parties engaged in electoral campaigning, will not be restricted under the Electoral Act. In addition, appropriate safeguards are included to ensure that private residences and lawfully occupied property used for purposes unrelated to the election within the restricted areas are excluded. Certain types of items, including clothing that is worn, are not subject to the restriction, leaving open other forms of communication with voters within the restricted areas. These features ensure that the policy objective is supported while impacting in a proportionate manner on those engaging in electoral communication.

Chapter 3 of the Bill also creates an offence for the display of an election sign or setting up other items to be used for a purpose related to an election before 6am within 100 metres of a building to be used as an ordinary polling booth, the grounds in which a polling booth is located or within 100 metres of any entrance to the grounds.

This restriction is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals, because it impacts on the rights to freedom of expression and to take part in public affairs and elections. This is because it limits the period of time over which election material can be displayed at polling places (and thereby limits the time over which it can be set up). This may have the practical effect of potentially requiring more individuals to carry out these activities, which may divert resources from other communication activities on polling day.

The impacts on these rights are legitimate and proportionate. They serve a genuine public interest in ensuring that the ordinary use of premises to be used as polling booths on polling day, and premises nearby, are not interfered with by the setting up of electoral material in the period preceding and early morning of polling day.

Proportionality of penalties and orders

The new restrictions on signage and set up times for election material have offences for contravention with a maximum penalty of 10 penalty units. These offences provided are

proportionate and relevant to the actions to which they apply, taking into account comparable existing offences, including those already in place under the Electoral Act.

Chapter 4 – Amendments relating to dishonest conduct of Ministers

Rights and liberties of individuals

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

The Bill (chapter 4) introduces two criminal offences: one in the *Integrity Act 2009* and one in the *Parliament of Queensland Act 2001*.

Both offences criminalise conduct by Ministers which is dishonest and done with an intention to obtain a benefit (either for the Minister themselves or another person) or to cause a detriment.

To the extent to which rights and liberties of an individual may be curtailed by the introduction of offences into the *Integrity Act 2009* and the *Parliament of Queensland Act 2001*, they are justified on the basis that they ensure Ministers of the Parliament are held accountable for: dishonest conduct with the intention of gain for the Minister or another person; or to cause detriment to another person. Further, the creation of offences of this nature were recommended by the CCC to help ensure that conflicts of interest are declared and in order to reduce the risk of corruption.

The maximum penalty of 2 years imprisonment or 200 penalty units for each offence is reasonable and not disproportionate in order to ensure integrity in State Government decision making. The Bill also contains a safeguard against inappropriate prosecution by providing that the consent of the Director of Public Prosecutions is required in order to charge either of the new offences.

Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters

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)).

Proportionality of penalties and orders

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.

Dishonest conduct of councillor or councillor advisor

The Bill (chapter 5) inserts new offences that apply if a councillor or councillor advisor contravenes a relevant integrity provision with intent to dishonestly obtain a benefit for

the councillor, councillor advisor or someone else or to dishonestly cause a detriment to someone else (new section 201D LGA and new section 198D COBA). The relevant integrity provisions are particular requirements in relation to conflicts of interest and registers of interests for councillors and particular requirements in relation to registers of interests for councillor advisors. The maximum penalty that applies for these offences is 200 penalty units or 2 years imprisonment. In addition, the offences will be prescribed as serious integrity offences. On conviction of a serious integrity offence, a person automatically stops being a councillor and will be disqualified from being a councillor for seven years (section 153 LGA and section 153 COBA).

These penalties are substantial but appropriate to reflect the serious nature of intentional dishonest conduct by a councillor in relation to conflicts of interest or a register of interests and intentional dishonest conduct by a councillor advisor in relation to a register of interests. They are reasonable and proportionate to ensure integrity in local government decision-making and to reflect the local government principles that decision-making must be in the public interest and supported by transparent and effective processes, and that behaviour of councillors and councillor advisors must be ethical and legal.

Failure to comply with the relevant integrity provisions will also amount to misconduct for a councillor and, for a councillor advisor, the matter may be dealt with as an internal local government disciplinary matter which may result in disciplinary action being taken against the councillor advisor as provided for in the advisor's contract of employment.

Under the LGA, the Councillor Conduct Tribunal may make a range of orders or recommendations to discipline a councillor for misconduct. Section 150AQ of the LGA provides that, in deciding what disciplinary action to take, the Tribunal may consider any previous misconduct of the councillor and any allegation made in the hearing that was admitted or not challenged provided the Tribunal is reasonably satisfied the allegation is true. This provides that any order or recommendation imposed by the Tribunal is appropriate and proportionate in light of past behaviour and cooperation during the hearing.

Councillor conflicts of interest

The Bill (chapter 5) inserts the following new offences in relation to conflicts of interests:

- section 150EM(2) LGA/section 177J(2) 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 to apply are 200 penalty units or 2 years imprisonment and the offences will be prescribed as integrity offences. 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 relating to material personal interests are also prescribed as integrity offences;
- section 150ES(5) LGA/section 177P(5) COBA: a councillor must comply with a decision of eligible councillors that the councillor must not participate in a

decision on the matter or must leave the place where the meeting is held while the matter is voted on or 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(5) LGA/section 177E(5) COBA) in relation to conflicts of interests; and

- 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).

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.

Prohibited use of inside information – councillor advisors

The Bill provides for the appointment of councillor advisors to assist councillors in performing their responsibilities under the COBA and the LGA.

The Bill (chapter 5, new section 198F of the COBA and new section 201F of the LGA) inserts two offences relating to the prohibited use of inside information for councillor advisors, each with a maximum penalty of 1,000 penalty units or 2 years imprisonment. The offences also apply to a person who is or who has been a councillor, replacing the existing offences in COBA section 173A and the LGA section 171A. The new offences will be prescribed as integrity offences as is currently the case for the offences in COBA section 173A and LGA section 171A.

The sections apply to a person (the *insider*) who is, or has been, a councillor advisor if the insider acquired inside information as a councillor advisor and knows, or ought reasonably to know, that the inside information is not generally available to the public. The offences prohibit the insider from causing:

- the purchase or sale of an asset if knowledge of the inside information would be likely to influence a reasonable person in deciding whether or not to buy or sell the asset; and
- the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.

Councillor advisors will potentially have access to commercially sensitive information while assisting councillors in performing their responsibilities and it is considered appropriate and reasonable that they be held to the same high standard as councillors in relation to the use of inside information. The offences/penalties are considered reasonably justified and proportionate to deter councillor advisors from using inside information to dishonestly gain a financial benefit for themselves or someone else and are equivalent to the prohibited use of inside information offences and penalties that

currently apply to councillors under the COBA section 173A and the LGA section 171A.

Misuse of information – councillor advisors

Currently, section 197 of the COBA and section 200 of the LGA provide it is an offence for a person who is, or has been, a local government employee to:

- use information acquired as a local government employee to gain (directly or indirectly) an advantage for the person or someone else; or cause detriment to the local government; and
- release information that the person knows, or should reasonably know, is information that is confidential to the local government, and the local government wishes to keep confidential.

The offences carry maximum penalties of 100 penalty units or 2 years imprisonment.

Chapter 5 of the Bill amends section 197 of the COBA and section 200 of the LGA respectively, to extend these two offences and related penalties to councillor advisors.

Because councillor advisors will have access to confidential and sensitive information while assisting councillors in performing their responsibilities, it is considered appropriate and reasonable that they be subject to the same offences and penalties that currently apply to local government employees in relation to the misuse of information acquired as a local government employee.

Imposition of presumed responsibility

Whether legislation has sufficient regard to the rights and liberties of individuals includes whether, for example, legislation makes a person responsible for actions or omissions over which the person may have no control.

The Bill (chapter 5) provides for responsibility for compliance in the absence of an agent, if the LGEA imposes an obligation on the agent of a political party or group of candidates. If the political party does not have an agent for a period, each member of the executive committee of the party is responsible for compliance with the obligation during the period, as if the obligation were imposed on the member of the committee. The imposition of responsibility is considered justified as it is consistent with the obligations on members of the executive committee under the *Electoral Act 1992*.

If no agent is recorded for a group of candidates in the register of group agents for a period, each member of the group is responsible for compliance with the obligation during the period, as if the obligation were imposed on the member. This amendment is justified as it is consistent with the obligations under existing section 43(5) of the LGEA, which is repealed by the Bill, with the obligations on members of a group relocated in a new provision with the obligations on members of an executive committee, in line with drafting practice.

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)).

Chapter 5, part 1 of the LGA provides for powers of the State to intervene in local government matters, including to suspend every councillor of a local government for a stated period and appoint an interim administrator to act in place of the councillors for that period or dissolve a local government and appoint an interim administrator to act in place of the councillors until the conclusion of a fresh election of councillors. Decisions of the Minister under chapter 5, part 1 of the LGA are not subject to appeal.

The Bill (chapter 5) inserts an additional power for the Minister to recommend that the Governor in Council dissolve a local government and appoint an interim administrator to act in place of the councillors until the conclusion of a fresh election of councillors, to be held on a stated date; or the conclusion of the next quadrennial election, whichever is the earlier. This is considered appropriate so as to avoid the significant additional costs of holding a fresh election if a quadrennial election is to be held within a reasonable period of time after a dissolution.

Also, chapter 5 of the Bill provides that the Minister may appoint a person to act as the interim administrator. The Minister's power to make this appointment is to be limited to circumstances where there is a vacancy in the office of the interim administrator or where the interim administrator is absent or cannot perform the duties of interim administrator. The appointment cannot be for more than 6 months in a 12-month period. This will ensure that the duties of the interim administrator can be fulfilled at all times while the interim administrator is acting in place of councillors of a local government.

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

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)).

Regulation - Local governments permitted to contract councillor advisors and the number and functions and key responsibilities of councillor advisors

Chapter 5 of the Bill (new section 197A of the LGA) provides that a regulation may prescribe the local governments that may resolve to allow a councillor to appoint one or more qualified persons as councillor advisors to assist the councillor in performing responsibilities under the LGA. In addition, new sections 194A of the COBA and 197A

of the LGA provide that a regulation may prescribe the number of councillor advisors each councillor may appoint and limit the functions and key responsibilities that may be provided for in a councillor advisor's contract of employment.

At this time, it is intended that only the larger local governments be able to resolve to allow a councillor to appoint councillor advisors. As such, it is considered appropriate for a regulation to prescribe these local governments, including the maximum number of advisors a councillor may appoint and their functions and key responsibilities. This will facilitate the addition/removal of local governments from the prescribed list and any changes to councillor advisor numbers and their functions and responsibilities considered necessary as the circumstances of individual local governments evolve. Further, a regulation when made, will sufficiently subject the exercise of the delegated legislative power to Parliamentary scrutiny.

Code of conduct for councillor advisors

The Bill (chapter 5, new section 197C of the LGA) provides that the Minister must make a code of conduct that sets out standards of behaviour for councillor advisors in performing their functions under the COBA/LGA. The contract of employment for a councillor advisor will require compliance with the code of conduct.

The councillor advisor code of conduct will contain detailed information which would become unnecessarily complex to include in legislation and it is considered appropriate to delegate the making of the councillor advisor code of conduct to the Minister responsible for making the code of conduct for councillors under section 150D of the LGA. This will ensure consistency between the standards of behaviour for councillors and their advisors. Further, the Bill requires the councillor advisor code of conduct to be published on the department's website but does not require the code to be approved by regulation and tabled in the Legislative Assembly in the same way the code of conduct for councillors must be. This is considered appropriate given that the code of conduct relates to the contractual obligations of councillor advisors and not to elected representatives.

Guidelines about providing administrative support to councillors

Chapter 5 of the Bill provides that the chief executive officer of a local government may make guidelines about the provision of administrative support by local government employees to councillors. The guidelines must include:

- when a councillor may be provided with administrative support by a local government employee;
- how and when a councillor may give a direction to a local government employee in relation to the provision of administrative support; and
- a requirement that a councillor may give a direction to a local government employee only if the direction relates directly to administrative support to be provided by the local government employee under the guidelines.

A direction purportedly given by a councillor to a local government employee is of no effect if the direction does not comply with the guidelines.

It is considered appropriate to delegate the power to make the guidelines to the chief executive officer of a local government as the guidelines will set out procedural and administrative matters only which are not appropriate to deal with in legislation. The chief executive officer manages the local government's employees and the day-to-day operation of the local government and is best placed to determine when and how administrative support may be provided to councillors.

Consultation

Chapter 2 – Amendments relating to funding and expenditure for State elections

A wide array of stakeholders were consulted with during the drafting of Chapter 2 of the Bill. These stakeholders ranged from registered political parties, peak bodies and professional associations as well groups who are likely to be classified as 'third parties' under the terms of the Bill. Comments were received from stakeholders on the proposed operation of the Bill at round table briefings.

Chapter 3 – Amendments relating to signage at State elections

Consultation with the community was commenced on the Queensland Government's 'Get Involved' website on whether the regulation of election signage should be changed before being discontinued.

Chapter 4 – Amendments relating to dishonest conduct of Ministers

The Attorney-General has consulted with the Chairperson of the CCC and the Integrity Commissioner on the proposals relating to the new offences in the *Integrity Act 2009* and *Parliament of Queensland Act 2001*.

No consultation with the community has occurred in relation to the creation of the new offences in the Bill.

Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters

The Local Government Association of Queensland (LGAQ) and Local Government Managers Australia (LGMA) were consulted on the proposed amendments contained in the Bill.

In March 2019, DLGRMA distributed an information paper outlining certain proposed legislative amendments contained in the Bill.

DLGRMA officer engagement included attending Regional Organisations of Councils meetings and a range of other meetings with stakeholders, including councils and community organisations.

The LGAQ and the LGMA are broadly supportive of the proposed 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

Chapter 1 Preliminary

Clause 1 Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019*.

Clause 2 Commencement

Clause 2 provides that the Bill, when enacted, commences on a day to be fixed by proclamation, excluding certain stated provisions which are to commence on assent.

Chapter 2 Amendments relating to funding and expenditure for State elections

Part 1 Amendment of Electoral Act 1992

Clause 3 Act amended

Clause 3 provides that part 1 amends the *Electoral Act 1992* (the Electoral Act).

Clause 4 Amendment of s 2 (Definitions)

Clause 4 omits redundant definitions and inserts new definitions which are relied on in part 11. In particular, the clause inserts a new definition of 'candidate, in relation to an election' which, for the purposes of part 11, includes an elected member and other person who has announced or otherwise indicated an intention to be a candidate in an election, such as through a public indication or by accepting a gift made to the individual for an electoral purpose. New definitions relevant to the donation and expenditure caps are also inserted. The clause also relocates the definitions from section 2 into schedule 1 (Dictionary).

Clause 5 Amendment of s 89 (Deposit to accompany nomination)

Clause 5 amends section 89 to provide that a deposit accompanying a nomination must be returned to the person who paid the deposit, or someone else with the person's written authority, if the candidate receives at least 4% (a reduction from the current 6%) of the formal first preference votes polled in the election for the relevant electoral district.

Clause 6 Insertion of new s 91A

Clause 6 inserts new section 91A (Withdrawal of endorsement of candidate). This section requires the registered officer of a registered political party that withdraws

endorsement of a person nominated as a candidate to provide written notice of the withdrawal to the commission. If the notification is given to the commission before noon on the cut-off day for the nomination of candidates, the nomination of the person is of no effect. If the notification is given to the commission after that time, the nomination remains valid and ballot papers printed in accordance with section 102, despite the notice, will be taken to comply with that section. The commission must give the candidate a notice about the contents, time of notification and consequence of a notification received under this section.

Clause 7 Amendment of s 197 (Definitions)

Clause 7 omits redundant or relocated definitions from, inserts new definitions into, and amends existing definitions in, section 197. The main changes are the insertion of definitions relevant to the donation and expenditure caps. The clause moves the definition of 'disposition of property' to schedule 1. It also excludes loans by a financial institution from the definition of 'loan'.

Clause 8 Insertion of new s 197A

Clause 8 inserts new section 197A (Meaning of *participant* in an election) which provides that a 'participant' in an election means a candidate in an election, a registered political party, a registered third party or a third party that is not registered for the election that incurs electoral expenditure for an election. In the case of a person who becomes a candidate because they indicate an intention to become a candidate by incurring electoral expenditure, or becomes a third party that is not registered for an election by incurring electoral expenditure, it is when they enter the transaction, regardless of when the amount of expenditure is invoiced or paid, the obligation to pay for the expenditure arises, or the goods or services for which the expenditure is incurred are delivered or provided. The section also clarifies that a reference to an election participant in a provision about an election is a reference to a participant in the election.

Clause 9 Insertion of new s 199

Clause 9 inserts new section 199 (Meaning of *electoral expenditure*). Electoral expenditure, which includes the giving of a gift in kind, must be incurred for, or related to, any of the purposes specified in section 199(1) and be of a kind specified in section 199(2). For a third party, a purpose in section 199(1) must be the dominant purpose for which the expenditure is incurred. There are exceptions where expenditure is incurred: substantially for or related to the election of members of Parliament of another State or Territory or Commonwealth or local government councillors; on factual advertising about a matter that relates mainly to the administration of a registered political party; or is of a kind prescribed by regulation. In addition, electoral expenditure incurred by or for an elected member does not include expenditure of a kind for which the member is entitled to receive a stated allowance or entitlement.

Clause 10 Amendment of s 200 (Meaning of *fundraising contribution*)

Clause 10 inserts section 200(4) which excludes from the meaning of 'fundraising contribution' an amount that relates to the venture or function that is paid under a

sponsorship arrangement. The meaning of 'sponsorship arrangement' is provided by new section 200A.

Clause 11 Insertion of new ss 200A and 200B

Clause 11 inserts new sections 200A and 200B.

New section 200A (Meaning of *sponsorship arrangement*) provides that a sponsorship arrangement establishes a relationship of sponsorship, approval or association between a person and a registered political party that confers a right to associate the person, or person's goods or services, with the party, a fundraising or other venture or event (or a program or event associated with this).

New section 200B (Meaning of *gifted* for electoral expenditure) provides that electoral expenditure will be gifted to a participant in an election if the expenditure benefits the participant, the person has received no consideration, or inadequate consideration, from the participant for incurring the expenditure, and they are not invoiced for the expenditure, and either: the expenditure is incurred with the participant's authority or consent, the participant accepted election material resulting from the expenditure or another circumstance prescribed by regulation happens in relation to the expenditure. Where expenditure is incurred under an arrangement between two or more election participants, the amount gifted to any one of the participants is the amount equal to the total amount divided by the number of participants who are parties to the arrangement.

Clause 12 Replacement of s 201 (Meaning of *gift*)

Clause 12 omits and replaces section 201 (Meaning of *gift*) to expand the existing definition to include: an amount of gifted electoral expenditure; an amount (other than the amount of a loan) paid to or for the benefit of a registered political party by a federal or interstate branch or division or a related political party; an amount forgiven on a loan; an amount paid, or service provided, by the person to a registered political party under a sponsorship arrangement.

It also excludes a gift made by a person to an individual in a private capacity for personal use that is not intended to be used by the recipient for an electoral purpose. However, if any part of the gift is used for an electoral purpose, the recipient will be taken to accept that part of the gift at the time it is used for an electoral purpose. It also excludes an amount paid to a political party as a subscription for a person's membership of, or affiliation with the party (except to the extent that the amount is paid under a sponsorship arrangement) or an amount that is a compulsory levy imposed by the registered political party under its constitution on elected members.

Clause 13 Insertion of new ss 201B and 201C

Clause 13 inserts new section 201B (Meaning of *value* of gift) and new section 201C (Application to unincorporated body).

New section 201B provides the meaning of the value of a gift as the amount stated in, or worked out, under the section. The value is an amount of a gift of money; the market value of property or the value of property decided under any relevant principles

prescribed by regulation; the amount that would reasonably be charged for the provision of a service if provided on a commercial basis or the value of the service decided under any relevant principles prescribed by regulation; the amount of gifted electoral expenditure; or the gross amount of a fundraising contribution or sponsorship arrangement. The value of a gift of uncharged interest is based on the amount of interest that would have been payable on the loan if it was calculated annually, as simple interest, at the official cash rate (the Reserve Bank of Australia's cash rate target) for the day the loan was made plus 3% a year, less any amount of interest paid on the loan. The value of an amount forgiven on a loan is the total amount the debtor is no longer required to pay. If consideration is given for a gift made, other than a fundraising contribution, the value of the gifts is reduced by the amount or value of the consideration given.

New section 201C provides that references to state things done by a person includes a person acting on behalf of an unincorporated body, under the body's actual or apparent authority, or a person making a gift or loan for the benefit of members of an unincorporated body.

Clause 14 Amendment of s 203 (Electoral committee to be treated as part of candidate)

Clause 14 amends section 203(1) so that divisions 6 (Political donations and caps on political donations) and 9 (Electoral expenditure) apply as if an electoral committee for a registered political party for an electoral district were the candidate endorsed by the party for the electoral district. Divisions 3 (Management of political donations and electoral expenditure) and 4 (Election funding) will also apply in this way for electoral committees. It also replaces references in section 203 to electorate with electoral district which is the appropriate term used in the Electoral Act.

Clause 15 Insertion of new s 204

Clause 15 inserts new section 204 (Associated entity to be treated as part of registered political party for particular purposes) which specifies how divisions 3 (Management of political donations and electoral expenditure), 4 (Election funding), 6 (Political donations and caps on political donations) and 9 (Electoral expenditure) apply if a registered political party has an associated entity. These divisions will apply as if: the party and associated entity together constitute the recipient party; a gift made to or received by the party or the entity were a gift made to the recipient party; and the State campaign account of the party were the State campaign of the recipient party.

Clause 16 Insertion of new pt 11, div 1A

Clause 16 inserts new division 1A (Provisions about the source of indirect gifts and loans).

New section 205A (Who is the *source* of an indirect gift of loan) specifies the circumstances in which an entity is the source of a gift or loan. This provides that where a first person or entity provides a gift or loan through an intermediary with the main purpose of enabling that intermediary to make an ultimate gift or loan, the first person or entity is considered to be the 'source' of the gift or loan. When the ultimate gift or

ultimate loan is made to the intended recipient the gift or loan is taken not to have been made to, or accepted by, the first recipient, and to have been made to, and accepted by, the intended recipient. This section replaces section 260A, which is omitted.

Clause 17 Replacement of pt 11, div 2 (Agents)

Clause 17 omits and replaces part 11, division 2 (Agents) and inserts part 11, division 3 (Managing political donations and electoral expenditure).

New section 206 (Agent of registered political party) specifies that a registered political party must appoint a person to be the agent of the party for part 11.

New section 207 (Agent of candidate) provides that a candidate in an election may appoint an agent for part 11 for the election, with the candidate taken to be their own agent when no appointment is in force. A person's appointment as a candidate's agent continues until their obligations end under part 11, unless the appointment ends earlier under section 212.

New section 208 (Agent of registered third party) requires a registered third party for an election who is not an individual to appoint an agent for part 11, and allows a registered third party for an election who is an individual to appoint an agent. If no appointment of an agent is in force for a registered third party who is an individual, the third party is taken to be their own agent. A person's appointment as a registered third party's agent continues until their obligations end under part 11, unless the appointment ends earlier under section 212.

New section 209 (Agent of unregistered third party) allows an unregistered third party for an election to appoint a person to be the third party's agent for part 11. If no appointment of an agent is in force for an unregistered third party who is an individual, the individual will be taken to be their own agent. A person's appointment as an unregistered third party's agent continues until their obligations end under part 11, unless the appointment ends earlier under section 212.

New section 210 (Requirements for registration) provides that the appointment of a person as an agent has no effect unless the stated conditions relating to the person are met and the commission is given written notice of the appointment that complies with the stated requirements. A person is not eligible to be appointed or hold office as an agent if they have been convicted of an offence against part 11.

New section 211 (Register of agents) provides that the commission must keep a register of agents which must include the name and address of each person appointed as an agent of a registered political party, candidate, or third party for part 11. An entry in the register about a person appointed as an agent is evidence that the person is the agent.

New section 212 (Registration of agent) provides for when the appointment of an agent takes effect and ends, when the name and address of a person can be removed from the register of agents, and the content of a written notice that must be given to the commission if a person's appointment as an agent ends within 28 days of this occurring.

New section 213 (Responsibility for action in absence of agent) provides that where a registered political party or third party who is not an individual does not have an agent and an obligation is imposed on the agent, each member of the executive committee (however described) will be responsible as if part 11 applied to the member of the committee.

A new heading for part 11, division 3 (Managing political donations and electoral expenditure) is inserted.

New section 214 (Application of division) provides that division 3 of part 11 applies to candidates in the election, a registered political party and a third party registered or required to be registered for the election.

New section 215 (Requirement to keep State campaign account) requires a participant in an election to keep a separate bank account which is the participant's State campaign account, until the stated obligations applying for the election end. Failure to keep a separate account is an offence with a maximum penalty of 200 penalty units.

New section 216 (Payments into State campaign account) provides requirements for payments into a State campaign account. Section 216(1) requires a person to not pay an amount into the account of a registered political party or candidate unless it is an amount of one of the kinds specified. Section 216(2) requires a person not to pay an amount that is a gift or loan of money into the participant's State campaign account unless it is a political donation made and received in compliance with divisions 6 and 8. Contravention of either of these provisions is an offence with a maximum penalty of 200 penalty units. No offence will be committed if the person or another person, on becoming aware an amount was paid into a State campaign account in contravention of section 216(1) or 216(2), takes all reasonable steps to ensure the amount is withdrawn from the account within five business days.

New section 217 (Requirements for loan amounts paid into State campaign account) provides requirements for loans to registered political parties or candidates which are paid into their State campaign account. A person must not pay an amount payable under the loan unless the person pays the amount from the participant's State campaign account. If a loan is received and deposited into the account and then is subsequently forgiven, the amount of the loan forgiven must be withdrawn from the account, except to the extent that the amount is a political donation (that is, a donor statement must be provided and the amount forgiven must comply with an applicable donation cap). Contravention of these requirements are offences with a maximum penalty of 200 penalty units. A person will not commit an offence if the person has a reasonable excuse.

New section 218 (Return on investment must be paid into State campaign account) provides for amounts paid from the State campaign account of a registered political party or candidate to be invested or such amounts that are reinvested, resulting in a return on the amount invested. A person must pay a return on the investment into the election participant's State campaign account within five business days of receiving the amount or becoming aware that the amount is a return on the investment. Failure to do this is an offence with a maximum penalty of 200 penalty units. A person will not commit an offence if the person reinvests the amount or has a reasonable excuse.

New section 219 (Political donations of money must be paid into State campaign account) requires a person to ensure that a political donation made to or for the benefit of an election participant is paid into the participant's State campaign account within five business days after a donor statement for the donation is received. Contravention of this provision is an offence with a maximum penalty of 200 penalty units. A person will not commit an offence if the person has a reasonable excuse.

New section 220 (Requirement to keep records about political donations of other property) provides for record keeping requirements in relation to political donations of property other than money made to or for the benefit of an election participant. The election participant, or person acting with the participant's authority, must keep a record about the political donation, that includes the information specified in section 220(3), for at least five years after the disposal of the property. Contravention of this provision is an offence with a maximum penalty of 20 penalty units. A person will not commit an offence if the person has a reasonable excuse.

New section 221 (Proceeds from disposal of political donation of other property) provides, for a political donation of property other than money that is received and then disposed of by or for the election participant, a person who receives an amount for the disposal of the property must ensure the amount is paid into the participant's State campaign account within five business days after the amount is received. Contravention of this provision is an offence with a maximum penalty of 200 penalty units. A person will not commit an offence if the person has a reasonable excuse.

New section 221A (Electoral expenditure must be paid from State campaign account) provides that, if a person knows, or ought reasonably to know, that an amount is for electoral expenditure incurred by or for the election participant, the person must ensure the amount is paid from the participant's State campaign account. Contravention of this provision is an offence with a maximum penalty of 200 penalty units. A person will not commit an offence if they reimburse the amount from the State campaign account within six weeks after the amount was paid.

New section 221B (Notice of State campaign account) requires the agent of a person who becomes a candidate in an election, of a third party who is registered or incurs electoral expenditure or of an election participant whose State campaign account details change to notify the commission about the details of the participant's State campaign account within five business days, unless the agent has a reasonable excuse. Contravention is an offence with a maximum penalty of 20 penalty units.

Clause 18 Amendment of s 222 (Interpretation)

Clause 18 omits and inserts section 222(1), which provides that for, division 4 (Election funding), electoral expenditure is taken to have been incurred for an election if the expenditure is incurred during the capped expenditure period for the election.

Clause 19 Amendment of s 223 (Entitlement to election funding - registered political parties)

Clause 19 amends the threshold for entitlement to election funding for registered political parties in relation to an endorsed candidate to at least 4% of the total number of formal first preference votes given for the candidate.

Clause 20 Amendment of s 224 (Entitlement to election funding – candidates)

Clause 20 amends section 224 (Entitlement to election funding – candidates) to change the threshold for entitlement to election funding for candidates to at least 4% of the total number of formal first preference votes given for the candidate.

Clause 21 Amendment of s 225 (Election funding amount)

Clause 21 amends section 225 (Election funding amount) to change the election funding amount for the financial year starting on 1 July 2020 to $6.00 for a registered political party and to $3.00 for a candidate.

Clause 22 Replacement of pt 11, div 5 (Policy development payments)

Clause 22 omits and replaces part 11, division 5 (Policy development payments) and inserts new part 11, division 6 (Political donations and caps on political donations).

New section 239 (Entitlement to policy development payment – registered political party) specifies the circumstances in which an eligible registered political party is entitled to a policy development payment for a 6-month period (1 January to 30 June or 1 July to 31 December, as defined in amended section 197). The political party must have been registered on polling day for the most recent general election, and be registered on the last day of the period. The commission must be satisfied that at least one elected member was endorsed by the party for the last general election, the elected member claimed to be a candidate endorsed by the political party, and the elected member is a member of the political party on the last day of the 6-month period. There will be no entitlement if the registered political party has given the commission written notice that it does not wish to receive policy development payments and has not withdrawn this in writing.

New section 240 (Entitlement to policy development payment – independent member) specifies the circumstances in which an elected member is entitled to a policy development payment for a 6-month period (1 January to 30 June or 1 July to 31 December, as defined in amended section 197). The commission must be satisfied that the elected member is an independent member (an independent candidate in the most recent general election who is not a member of a registered political party). There will be no entitlement if the elected member has given the commission written notice that the member does not wish to receive policy development payments and has not withdrawn this in writing.

New section 241 (Amount of policy development payment) provides the formula for working out the amount of a policy development payment for a 6-month period for an eligible registered political party or independent member. The formula takes into

account the combined vote and seat ratio, using the vote ratio under section 242 and the seat ratio under section 243.

New section 242 (Meaning of *vote ratio* for eligible registered political party or independent member) specifies how the vote ratio for a 6-month period is calculated for eligible registered political parties and for an independent member. For an eligible registered political party, the vote ratio will be the total number of formal first preference votes given to each candidate who was endorsed by that party that polled at least 4% of the total number of formal first preference votes in the most recent general election, divided by the total number of relevant first preference votes, as defined in section 242(3). For an independent member, the vote ratio will be the total number of formal first preference votes given to the member in the most recent general election, divided by the total number of relevant first preference votes, as defined in section 242(3).

New section 243 (Meaning of *seat ratio* for eligible registered political party or independent member) specifies how the seat ratio is calculated for an eligible registered political party, and for an independent member, for a 6-month period. For an eligible registered political party, the seat ratio will be the number of eligible seats held by a registered political party, divided by 93. The number of eligible seats held will be the number of elected members who were endorsed by the registered political party at the most recent election, less the number of any of those elected members who were independent members on the last day of the 6-month period. For an independent member, the seat ratio will one divided by 93.

New section 244 (Payment of policy development payment) provides that the commission must decide whether the registered political party or independent member is entitled to a policy development payment, and the amount of those payments, after the end of a 6-month period. The commission must provide a notice of its decision and pay the policy development payment within one month after the end of the 6-month period. For part 11, division 5 a person who is elected at a general election is taken to have been elected on the day after the Legislative Assembly was last dissolved before the general election was held.

New section 245 (Application for reconsideration of decision about policy development payment) provides that the agent of a registered political party or elected member may apply to the commission for reconsideration of a decision made by the commission under section 244(1)(a), (b) or (c). The application must be in the approved form, state the reasons for the application and be made within one month after the notice about the decision is given. The commission must reconsider the decision and decide to affirm or vary the decision, or set aside the decision and make a substitute decision, and must give the agent notice of this decision and the reasons for it.

New section 246 (Recalculation of policy development payment) provides that, where the commission varies a decision or makes a substitute decision under section 245 for a 6-month period, the policy development payment for each eligible registered political party and independent member who is entitled must be recalculated. An underpayment must be paid as soon as practicable after the recalculation, and an overpayment is payable to the State and may be recovered as a debt due to the State. The commission

must give each registered political party and elected member a notice about the recalculation complying with the requirements in section 246(6).

A new heading for part 11, division 6 (Political donations and caps on political donations) is inserted.

New section 247 (Meaning of *donation cap period*) provides that, for a candidate in an election, a donation cap period starts 30 days after the polling day for the last general election, or, if the candidate was a candidate in a by-election in the intervening period, 30 days after the last by-election in which the candidate was a candidate. The donation cap period for a candidate in an election, ends 30 days after the polling day for the election. The donation cap period for a registered political party, or a third party in the next general election, is each period that starts 30 days after the polling day for the last general election, and ends 30 days after the polling day for the next general election.

New section 248 (Application to unregistered third party) provides that part 11, division 6 applies to a third party that is not registered and receives a political donation during the donation cap period for an election. In the division, to a reference a third party in an election is a reference to a third party that is registered or required to be registered under section 297 for the election, or has received a political donation during the donation cap period for the election.

New section 249 (Application to political donations made to third party in by-election) specifies how third parties are to be treated for the purposes of a by-election if they are a participant in a by-election that is held during the donation cap period. The political donation is taken to have been made to the third party as if they were a participant in the general election (even if it was made to them as a participant in the by-election).

New section 250 (Meaning of *political donation*) provides that a gift or loan made to or for the benefit of a registered political party or a candidate is a political donation, provided it is accompanied by a donor statement as required by section 251. A gift or loan made to or for the benefit of a third party to enable that third party to make a gift or loan to or for the benefit of a registered political party or a candidate, or to incur electoral expenditure (or reimburse the third party for doing this) is a political donation. It must also be accompanied by a donor statement as required by section 251. However, an amount of electoral expenditure gifted to a participant is a political donation whether or not it is accompanied by a donor statement.

New section 251 (Meaning of *donor statement*) specifies requirements that the donor statement about a gift or loan must be in writing, state the relevant particulars of the donor (who made the gift or loan, or made the first gift or loan under new section 205A) and name the recipient (which is the ultimate recipient under new section 205A), and be given to the recipient with the gift or loan or within 14 days after the gift or loan is made. The statement does not need to be signed by the donor or use a particular form of words to express the donor's purpose in making the gift or loan.

New section 252 (Amount of *donation cap*) specifies the amount of the donation cap for a registered political party is $4,000, for a candidate in the election is $6,000, and for a third party for the election is $4,000. The donation cap for an election participant will be adjusted and published by the commission, as required by section 251.

New section 253 (Adjustment of donation cap) provides for the adjustment of the donation cap 30 days after the polling day for each general election, to the greater of the CPI-indexed donation cap amount (worked out using the formula provided for in section 253(2)) or the amount immediately before it is adjusted. The amount of the donation cap for a donation cap period must be published by the commission on its website as soon as practicable after it is adjusted.

New section 254 (Caps on political donations made to registered political party) provides that a person must not, during a donation cap period, make a political donation to or for the benefit of a registered political party if the amount or value of the donation exceeds the party's donation cap by itself or when added to the other political donations made by the person to or for the benefit of the party during the donation cap period. Contravention of this provision is an offence with a maximum penalty of 200 penalty units.

New section 255 (Caps on political donations made to candidates) provides that a person must not, during the donation cap period for an election, make a political donation to, or for the benefit of, a candidate in the election if the amount or value of the donation exceeds the candidate's donation cap: by itself; when added to other donations made by the person to the candidate during the donation cap period; or when added to other donations made by the person to or for the benefit of the candidate or to other candidates endorsed by the same party at the time that the donation was made. Contravention of this provision is an offence with a maximum penalty of 200 penalty units.

New section 256 (Caps on political donations made to third parties) provides that a person must not, during a donation cap period for an election, make a political donation to, or for the benefit of, a third party in the election if the amount or value of the donation exceeds the third party's donation cap: by itself; or when added to the other donations made by the person to the candidate during the donation cap period to or for the benefit of the third party during the donation cap period.

In addition, a person must not, during a donation cap period, make a political donation to or for the benefit of a third party in the election if the person has made six or more other donations to or for the benefit of third parties in the election. Contravention of this provision is an offence with a maximum penalty of 200 penalty units.

New section 257 (Exceptions to ss 254, 255 and 256) provides that a person does not commit an offence against section 254, 255 or 256 if, within six weeks after the person makes the donation, the person either asks the recipient to refund or return the donation or the amount by which the amount or value of the donation cap exceeds a donation cap, or a refund or return occurs. Where a gift was given in a private capacity for the recipient's personal use in the circumstances covered by section 201(4), sections 254, 255 and 256 do not apply.

New section 258 (Requirement to notify donor about offence to exceed political donation cap) requires a participant in an election or person acting with their authority, to give a donor of a political donation a receipt, within 14 days after receiving it. The receipt must state the names of the participant that the donations is to or for the benefit

of and the donor and include a statement in the approved form that summarises the circumstances in which it is an offence under sections 254, 255 and 256 to make a political donation to or for the benefit of an election participant. Contravention of this provision is an offence with a maximum penalty of 20 penalty units. A person will not commit an offence if they have a reasonable excuse.

New section 259 (Cap on political donations to election participants that may be accepted) provides that the election participant, or a person acting with the participant's authority, must not accept a political donation to or for the benefit of a participant in an election during a donation cap period if the amount or value of the donation exceeds the participant's cap when added to other donations made by the same donor to or for the benefit of the participant during the donation cap period. The person must know, or ought reasonably to know that the donation would exceed the cap in that way. Contravention of this provision is an offence with a maximum penalty of 200 penalty units. A person does not commit an offence if the donation or the amount by which it exceeds the donation cap is refunded or returned to the donor or is withdrawn from the State campaign account of the election participant to whom the donation was made.

New section 259A (Recovery of unlawful political donations) provides for the recovery of an amount or value of a political donation accepted in excess of the cap as a debt payable by the identified person for the type of entity to the State.

Clause 23 Replacement of s 260A (Who is the *source* of a gift or loan)

Clause 23 omits and inserts new section 260A (How division applies to gift for personal use used for electoral purpose) which applies in relation to a gift to which section 201(5) applies (made in a private capacity for the recipient's personal use and the recipient does not intend to use it for an electoral purpose and all or part of the gift is used for an electoral purpose). The person who made the gift is not required to comply with a requirement to give the commission a return about the gift under the division. Specific requirements about the return that must be given by a person that received the gift are provided for in section 260A(3).

Clause 24 Relocation and renumbering of s 260B (Donor must disclose source of gift or loan)

Clause 24 relocates section 260B to part 11, division 1A and renumbers it as section 205B.

Clause 25 Amendment of s 262 (Loans to candidates)

Clause 25 amends section 262 to remove exclusions of 'exempt loans' made by a financial institutions. Loans by financial institutions are excluded from the definition of 'loan' in section 197.

Clause 26 Amendment of s 263 (Disclosure of gifts by third parties that incur expenditure for political purposes)

Clause 26 amends section 263 to improve its presentation, omit section 263(5) as its contents are addressed elsewhere in the Bill, and inserts new section 263(4) which

specifies when expenditure is incurred for a political purpose by a third party. The expenditure incurred must be electoral expenditure, a gift made to or for the benefit of a political party or candidate in the election, or a gift made to or for the benefit of another person to enable that person, or someone else, to use all or some of the gift for one of those purposes.

Clause 27 Amendment of s 265 (Gifts to political parties)

Clause 27 omits section 265(7) which requires gifts made to related political parties of registered political parties to be disclosed by the donor as if they were made to the registered political party.

The clause also omits spent provisions in section 265(12) to 265(15), and inserts new section 265(12) which requires a registered political party that receives a gift from an entity for which a return is required under section 265 to give a notice to the entity stating that the entity is required to give the commission a return about the gift.

Clause 28 Omission of pt 11, div 7, sdiv 3 (Disclosure of large gifts)

Clause 28 omits part 11, division 7, subdivision 3 (Disclosure of large gifts). This subdivision related to gifts to a registered political party of over $100,000 in special reporting periods of six months duration. In view of real time reporting of gifts under part 11, this subdivision is no longer required.

Clause 29 Replacement of pt 11, div 8, sdiv 3 (Loans from entities other than financial institutions)

Clause 29 omits and replaces part 11, division 8, subdivision 3 (Records to be kept about loans).

New section 272 (Requirement to keep record about loan received) clarifies the requirements to keep records about loans received by candidates and registered political parties, and places the obligation on the relevant agent. It also applies these requirements to associated entities, with the obligation being placed on the relevant financial controller. If the required records are not kept, the receipt of the loan is taken to have been unlawful and the amount of the loan is payable by those persons specified in section 272(5) to the State.

Clause 30 Amendment of s 274 (Meaning of *political donation*)

Clause 30 amends the meaning of political donation in section 274 to remove the reference to elected member which is included in the amended definition of 'candidate'. The clause also omit sections 274(2) and (3) as amended section 201 deals with these matters in the meaning of 'gift', and references to section 201 are updated to reflect the amendments to that provision.

Clause 31 Insertion of new pt 11, div 9

Clause 31 inserts new division 9 of part 11 (Caps on electoral expenditure) which concerns electoral expenditure.

New section 280 (Meaning of *capped expenditure period*) inserts a new definition of 'capped expenditure period' for an election. For a general election, the period starts one year before the next normal polling day, or on the day the writ is issued for an extraordinary general election (whichever is earlier). For a by-election the period starts on the day the writ for the by-election is issued. The period ends at 6pm on the polling day for the general election or by-election. Where the conduct of a poll is adjourned at a polling booth, the capped expenditure period ends on the day the adjourned poll is held.

New section 281 (When electoral expenditure is incurred) provides that, for part 11, electoral expenditure is incurred when the goods or services for which the expenses are incurred are delivered or provided, regardless of when the amount of the expenditure is invoiced or paid. Specific examples are provided to assist with, but not limit, interpretation of this section.

New section 281A (Electoral expenditure incurred for another election participant) covers circumstances where an election participant incurs electoral expenditure that benefits another election participant. If the expenditure is gifted to the person who benefits from it, it is incurred by the election participant who incurs the expenditure. However, if the person who benefits is invoiced for payment and they have provided their authority or consent, they accept election material resulting from the expenditure or another circumstance prescribed by the regulation happens, they will have incurred the expenditure. The time that the expenditure is incurred is determined in accordance with section 281.

New section 281B (When electoral expenditure of registered political party or third party relates to an electoral district) specifies the circumstances when electoral expenditure incurred by a registered political party or third party will relate to an electoral district. Electoral expenditure that is for advertising or other election material must be both communicated to electors in the district and not mainly communicated to electors outside the district. Electoral expenditure on an opinion poll or research by a third party or registered political party does not relate to an electoral district.

New section 281C (Amount of expenditure cap – registered political party and endorsed candidate) specifies the amount of the expenditure caps for a registered political party and endorsed candidate. The expenditure cap for a general election for a registered political party is $92,000 multiplied by the number of electoral districts in which the party has endorsed a candidate, with the cap for electoral expenditure that relates to an electoral district being $92,000. The expenditure cap for an endorsed candidate for a general election is $58,000 if one candidate is endorsed by the party for the electoral district, or that amount divided by the number of candidates endorsed concurrently by the party for the electoral district if there are two or more endorsed candidates. The expenditure cap for a by-election for a candidate endorsed by a registered political party is $87,000 if one candidate is endorsed by the party, or that amount divided by the number of candidates endorsed concurrently by the party for the by-election if there are two or more. These amounts will be subject to adjustment under section 281F.

New section 281D (Amount of expenditure cap – independent candidate) specifies the amount of the expenditure caps that apply for an independent candidate for a general

election or by-election. This amount will be $87,000, subject to adjustment in accordance with new section 281F.

New section 281E (Amount of expenditure cap – registered third party) specifies the amount of the expenditure caps that apply to registered third parties. These amounts are $1 million for a general election and $87,000 for an electoral district, or $87,000 for a by-election. These amounts are subject to adjustment in accordance with new section 281F.

New section 281F (Adjustment of expenditure caps for election participants) provides for the adjustment (for CPI) of an election participant's expenditure cap for an election 30 days after the polling day for a general election (worked out using the formula in section 281F(2)). The amount of an election participant's expenditure cap must be published by the commission on its website as soon as practicable after it is adjusted.

New section 281G (Cap on electoral expenditure during capped expenditure period) provides that an election participant, or person acting with the participant's authority, must not incur electoral expenditure for the benefit of the participant during a capped expenditure period if the amount of the expenditure exceeds the participant's expenditure cap: by itself; or when added to other electoral expenditure incurred by the participant or with the participant's authority during the capped expenditure period, in circumstances where the participant or person knows, or ought reasonably to know the amount would exceed the cap in that way. Contravention of this provision is an offence with a maximum penalty of the greater of 200 penalty units or the amount that is equal to twice the amount by which the expenditure exceeds the expenditure cap.

New section 281H (Electoral expenditure of unregistered third party restricted to $1,000) provides that an unregistered third party, or a person acting with the authority of the third party, must not incur electoral expenditure for the third party during the capped expenditure period for the election that exceeds $1,000 by itself, or when added to other electoral expenditure incurred by the third party or with the party's authority during the capped expenditure period in circumstances where the participant or person knows, or ought reasonably to know the amount would exceed the cap in that way. Contravention of this provision is an offence with a maximum penalty the greater of 200 penalty units or twice the amount by which the expenditure exceeded $1,000.

New section 281I (Expenditure cap exceeded because of aggregation of electoral expenditure) provides that a person who incurs electoral expenditure for an election participant does not commit an offence against section 281G if the expenditure exceeds the participant's expenditure cap because it is added to aggregated expenditure (that is taken to be incurred by the election participant even though it is incurred by another election participant), and the person did not know or could not reasonably have known about the aggregated expenditure.

New section 281J (Recovery of unlawful electoral expenditure) provides for the recovery of twice the amount or value of unlawful electoral expenditure incurred in contravention of section 281G or 281H as a debt payable by the identified person for the type of entity to the State.

New section 281K (Electoral expenditure incurred by elected members not contesting election) provides for circumstances where electoral expenditure incurred by or for an elected member during the capped expenditure period for the election is taken to have been incurred by or for the registered political party. This will apply if an elected member who is a member of a registered political party announces or otherwise publicly indicates the member's intention not to be a candidate in an election before the cut-off day for nomination of candidates for the election or does not become nominated as a candidate.

New section 281L (Electoral expenditure for candidate endorsed by registered political party for by-election) provides that electoral expenditure incurred by or for the registered political party during the expenditure cap period for the by-election is taken to be incurred by or for the candidate.

Clause 32 Amendment of pt 11, div 10, hdg (Disclosure of expenditure)

Clause 32 amends the heading for part 11, division 10.

Clause 33 Omission of ss 282 and 282A

Clause 33 omits sections 282 and 282A.

Clause 34 Replacement of s 283 (Returns of electoral expenditure)

Clause 34 omits and replaces section 283.

New section 283 (Returns of electoral expenditure) requires the agent of a registered political party, candidate or registered third party or third party required to be registered for an election to give returns, in the approved form and within 15 weeks after the polling day for an election, about the participant's electoral expenditure for the election. This includes the specific details required by section 283(2) about each item of expenditure. Electoral expenditure taken to be incurred under sections 281J or 281K, or in respect of an associated entity of a registered political party, must be included. If no relevant electoral expenditure was incurred, a return stating that fact must be given to the commission. A return must include all electoral expenditure incurred for an election, regardless of whether it was incurred during the capped expenditure period.

Clause 35 Amendment of s 284 (Returns by broadcasters)

Clause 35 amends section 284 (Returns by broadcasters) to provide that it applies to a broadcaster who broadcast an advertisement with the authority of a participant in an election during the capped expenditure period.

Clause 36 Amendment of s 285 (Returns by publishers)

Clause 36 amends section 285 (Returns by publishers) to provide that it applies to a publisher who published an advertisement relating to an election with the authority of a participant in an election during the capped expenditure period. It includes the meaning of 'journal' which has been relocated from section 197.

Clause 37 Omission of s 286 (Nil returns)

Clause 37 omits section 286 (Nil returns) which has been incorporated into section 283 (Returns of electoral expenditure).

Clause 38 Amendment of s 290 (Returns by registered political parties)

Clause 38 amends section 290 (Returns by registered political parties) to remove references to amounts received before the 2015 commencement of this provision, which are no longer relevant to current and future reporting periods, and to remove an exclusion of loans made by a financial institution. Loans by financial institutions are excluded from the definition of 'loan' in section 197. The section is also amended so that, if a registered political party receives a gift from an entity who is not a source of the gift, the agent of the party must include the relevant particulars of the entity that is the source of the gift in its return.

Clause 39 Amendment of s 291 (Amounts received)

Clause 39 amends section 291 (Amounts received) to clarify that it applies to a return for an associated entity under section 294(4) and improve its presentation. This is consistent with the existing arrangements for associated entities due to the operation of section 294(6), which is to be omitted. The section is also amended so that, if a registered political party or associated entity receives a sum that is a gift from an entity who is not a source of the gift, the relevant particulars of the entity that is the source of the gift must be given in the relevant return.

Clause 40 Amendment of s 292 (Amounts paid)

Clause 40 amends section 292 (Amounts paid) to clarify that it applies to a return for an associated entity under section 294(4). This is consistent with the existing arrangements for associated entities due to the operation of section 294(6), which is to be omitted.

Clause 41 Amendment of s 293 (Outstanding amounts)

Clause 41 amends section 293 (Outstanding amounts) to clarify that it applies to a return for an associated entity under section 294(4). This is consistent with the existing arrangements for associated entities due to the operation of section 294(6), which is to be omitted.

Clause 42 Replacement of s 294 (Returns by associated entities)

Clause 42 omits and replaces section 294 (Returns by associated entities) which provides for returns by associated entities. Associated entities will be required to provide returns about loans, in addition to the existing requirements for gifts, consistent with the arrangements applying to registered political parties. The section is also amended so that an associated entity must include the relevant particulars of the entity that is the source of the gift in a relevant return, where applicable.

Clause 43 Insertion of new pt 11, divs 12 and 12A

Clause 43 inserts new part 11, division 12 (Registration of third parties) and part 11, division 12A (Records to be kept).

New section 297 (Requirement for registration) requires a third party to be registered for an election under part 11 if electoral expenditure incurred by or with the authority of the third party during the capped expenditure period for the election exceeds $1,000. A third party does not commit an offence because they are not registered.

New section 298 (Register of third parties) requires the commission to keep up to date, and in the way and form the commission considers appropriate, a register of the third parties registered for the election under part 11. The commission must publish the register of third parties on the commission's website.

New section 299 (Application for registration) allows a third party that intends to incur electoral expenditure for an election to apply to the commission for registration for the election. The application must be in the approved form, be accompanied by the appointment of an individual as the third party's agent and be made to the commission in the period after polling day for the previous election, and before the polling day for the election.

New section 300 (Deciding application) requires the commission to decide to approve or refuse a third party's application as soon as practicable after receiving it. The commission must refuse the application if it was not made during the period required under section 299(2)(d) or otherwise only if it is incomplete or incorrect.

New section 301 (Registration) provides for what the commission must do if it decides to approve the application for registration by a third party. The commission must enter relevant details in the register of third parties kept for the election, and give the third party written notice that the registration has occurred.

New section 302 (Decision to refuse application) provides for what the commission must do if it decides to refuse the application for registration by a third party. The commission must give the third party notice of the decision as soon as practicable after making the decision. The notice must state that the commission has decided to refuse the application, the reason for the refusal, and if that reason is that the application is incomplete or incorrect, state that the application may be amended and resubmitted (within 30 days of receiving the notice). If the application is amended and resubmitted, it is taken to have been made on the day the original application was made.

New section 303 (Obligation to notify commission of change to details) requires the agent of a third party to give the commission notice, in the approved form and within 30 days, if a relevant detail of a registered third party changes. Contravention of this provision is an offence with a maximum penalty of 20 penalty units. A person will not commit an offence if the person has a reasonable excuse.

New section 304 (Cancellation of registration) requires the commission to cancel the registration of a third party for an election if the agent asks the Commission, in writing, to cancel the registration. The commission must also cancel the third party's registration

for the election if the commission is satisfied that the third party's obligations under part 11 in relation to the election have ended. If the commission cancels the registration, the commission must record the cancellation and the day of cancellation in the register and give the third party notice about the cancellation. The cancellation takes effect on the day the third party receives the notice or a later day stated in the notice.

New section 305 (Records to be kept by election participants) specifies the records that must be made and kept by a participant in an election, or a person authorised by the participant. Failure to comply with this requirement is an offence with the maximum penalty of 20 penalty units. The specific matters that records are required to be kept about are set out in section 305(2). These requirements apply for a gift, loan or political donation or electoral expenditure whether or not a return is required to be given to the commission about it.

New section 305A (Records to be kept about advertisements or other election matter) applies to a person who is required to give the commission a return about electoral expenditure under section 283, and electoral expenditure was incurred to print, publish or broadcast an advertisement or other election material. The person must make and keep records that comply with section 305A(3) and section 305C. Failure to comply with this requirement is an offence with the maximum penalty of 20 penalty units.

New section 305B (Records to be kept by broadcaster or publisher) applies to a broadcaster who is required to give the commission a return under section 284, or a publisher who is required to give the commission a return under section 285. The broadcaster must make and keep a record that complies with the record keeping requirements about the return and the matters required to be stated in the return. Failure to comply with this requirement is an offence with the maximum penalty of 20 penalty units.

New section 305C (Requirements related to keeping records) provides that a record about a matter must contain the information about the matter required by regulation, be accompanied by a copy of each document from which the information contained in the record is obtained, be accurate and be kept in a way required by regulation and that enables it to be conveniently and properly investigated or externally examined.

New section 305D (Record must be kept for 5 years) provides that a person who is required to make a record under part 11, division 12A must keep the record for five years after the day it is made. Failure to comply with this requirement is an offence with a maximum penalty of 20 penalty units.

New section 305E (Division does not limit other record-keeping provisions) provides that part 11, division 12A does not limit another provision of the Electoral Act about making or keeping a record.

Clause 44 Insertion of ss 306A and 306B

Clause 44 inserts new sections 306A and 306B.

New section 306A (Registered political party must notify endorsement of candidate) requires a political party to notify the commission within seven days of stated events

related to endorsement of candidates, including those related to endorsement or an elected member no longer being a member of the party. The commission must give the candidate a notice as soon as practicable about the notification.

New section 306B (Agent's obligation to ensure compliance) provides that the agent of a participant in an election must take all reasonable steps to ensure the participant and a person authorised to act for the participant are aware of the their obligations and comply with, and do not contravene the obligations. Failure to comply with this provision is an offence with a maximum penalty of 200 penalty units.

Clause 45 Amendment of s 307 (Offences)

Clause 45 amends section 307 (Offences) to provide that a person who gives a return that the person is required to give under part 11, division 7, 10, or 11 that is incomplete is guilty of an offence with a maximum penalty of 20 penalty units. The existing offence for failing to keep records under section 309 is omitted as its content is covered by new section 309A.

The clause also omits section 307(12) to (14) which are covered by new section 307AB.

Clause 46 Insertion of new ss 307AA and 307AB

Clause 46 inserts new sections 307AA and 307AB.

New section 307AA (Starting proceedings for an offence) provides that a proceeding for an offence against any of the stated provisions must start within 4 years after the offence was committed.

New section 307AB (Liability for a political donation or electoral expenditure offences committed by unincorporated body) specifies who is liable for offences committed by an unincorporated body. A liable person will only be liable where they authorised or permitted the conduct constituting the offence or was, directly or indirectly, knowingly concerned in the conduct constituting the offence. For a registered political party, the liable person is the registered officer, secretary or agent. For an associated entity, the liable person is financial controller. For a third party, the liable person is an officer, member or agent (however described) of the third party.

Clause 47 Amendment of s 307B (Schemes to circumvent prohibition on particular political donations)

Clause 47 amends section 307B, which provides for an offence in relation to schemes to circumvent the prohibition under division 8, subdivision 4 about political donations, so that it also applies to offences against part 11 relating to making or accepting political donations or incurring electoral expenditure. A person must not knowingly participate, directly or indirectly, in a scheme to circumvent these provisions. Contravention is an offence with a maximum penalty of 1,500 penalty units or 10 years imprisonment.

Clause 48 Amendment of s 308 (Recovery of payments)

Clause 48 amends section 308 (Recovery of payments) to extend it to the recovery of any amounts due to the State under the Act, and allow the commission to deduct an amount payable by a person to the State from another amount payable by the commission to the person, such as election funding or policy development payments.

Clause 49 Omission of s 309 (Records to be kept)

Clause 49 omits section 309. This section is replaced by new part 11, division 12A.

Clause 50 Amendment of s 316 (Publishing of returns)

Clause 50 amends section 316(3) to require the commission to delete details of an election participant's State campaign account prior to publishing the return.

Clause 51 Insertion of new s 388A

Clause 51 inserts new section 388A (Particular information may be made available for public inspection) which allows the commission to make information from a register, a candidate nomination form or a notice from a registered political party about the endorsement or proposed endorsement of a candidate, available for public inspection. However, the commission must not make restricted information available for public inspection. Restricted information is the address of an individual where the commission is informed that the individual is a silent elector or the equivalent in the Commonwealth or another State, the street address (but not the suburb, town, city or other locality, or State) of an individual, an individual's date of birth, an individual's contact details or an entity's bank account details.

Clause 52 Insertion of new pt 13, div 10

Clause 52 inserts new part 13, division 11 (Transitional provisions for Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act providing transitional provisions for the Act.

New section 436 (Definitions for division) provides definitions for the purposes of part 13, division 11. In particular, '2020 general election' means the general election held in 2020, and '2020 election' means the 2020 general election or a by-election held after commencement and before the 2020 general election.

New section 437 (Application of new s 201 to particular gifts) specifies the application of new section 201 to an amount forgiven on a loan, an amount or service paid under a sponsorship arrangement and gifts mentioned in section 201(4).

New section 438 (Appointment of agent) provides that the appointment of a person as the agent of a registered political party or a candidate in an election under part 11, division 2 as in force immediately before commencement is not affected by the Act.

New section 439 (Candidates for 2020 election) provides that an individual is a candidate in a 2020 election, even if the individual announced their intended candidacy

before commencement in a relevant way, stated in the amended definition of 'candidate' in schedule 1.

New section 440 (State campaign accounts) requires the agent of a participant in a 2020 election on the commencement to notify the commission of the election participant's State campaign account details within 14 days after the commencement, unless the agent has a reasonable excuse. Contravention of this provision is an offence with a maximum penalty of 20 penalty units. The section also provides that new sections 214, 215, 221A and 221B apply to an election participant for a 2020 election but the other provisions in part 11, division 3 do not apply to that participant. The section also provides that, despite new section 216, money held by the election participant before commencement, proceeds from the disposal of property held before commencement, a return on money invested before commencement, and proceeds from the disposal of property or a return on an investment that was made or acquired from such money or property after commencement will be permitted to be paid into the election participant's State campaign account.

New section 441 (Election funding for 2020 election) provides for the working out of election funding that relates to a 2020 election. Despite new section 281, new section 199 applies to expenditure incurred before commencement and previous section 222 continues to apply as if the amending Act had not been enacted. If a by-election is held before 1 July 2020, previous section 225 applies as if the amending Act had not been enacted. If an extraordinary general election is held before 1 July 2020, amended section 225 applies for working out an amount of election funding payable for the election as if the election were held in the financial year that starts on 1 July 2020.

New section 442 (Existing entitlements to policy development payments for 2019-2020 financial year) applies if a registered political party was entitled to a policy development payment for the 2019-2020 financial year. Previous part 11, division 5 continues to apply in relation to the instalment of the policy development payment thaent would have been payable to the registered political party on or before 31 July 2020. The commission must pay the relevant instalment on or before 31 July 2020, the agent of a registered political party may apply for a reconsideration under previous section 242 and previous sections 243 and 244 apply for the application. The registered political party is no longer entitled to be paid the instalment of the policy development payment that would have be payable before 31 January 2021 under previous part 11, division 5.

New section 443 (Commencement of policy development payments under new pt 11, div 5) provides that new part 11, division 5 does not apply to the 6-month period that started on 1 January 2020.

New section 444 (Caps for political donations do not apply to 2020 election) provides that new part 11, division 6 does not apply in relation to a 2020 election.

New section 445 (Electoral expenditure for 2020 election – caps) provides that the capped expenditure period for the 2020 general election is taken to have started on 30 March 2020 (or the day of the issue of the writ for an extraordinary general election if earlier), despite new section 280. New section 199 applies to expenditure incurred before commencement as if the expenditure were incurred after commencement.

New section 446 (Electoral expenditure for 2020 election – disclosure) provides that new section 283 does not apply in relation to electoral expenditure incurred for a 2020 election before the commencement.

New section 447 (Returns by associated entities) provides that new section 294 does not apply to a loan made to an associated entity before commencement.

New section 448 (Existing records) provides that previous section 309 continues to apply to a record that was required to be kept immediately before commencement.

Clause 53 Insertion of new sch 1

Clause 53 inserts new schedule 1 which contains a dictionary for the Electoral Act.

Part 2 Amendment of Electoral Regulation 2013

Division 1 Amendment of *Electoral Regulation 2013*

Clause 54 Regulation amended

Clause 54 provides that part 3, division 1 of the Bill amends the *Electoral Regulation 2013.*

Clause 55 Insertion of new s 11A

Clause 55 inserts new section 11A (Prescribed details for application for registration of the third party for an election – Act, s 299). This prescribes particular details that must be included in an application for registration by a third party for the election.

Part 3 Other amendments

Clause 56 Acts amended

Clause 56 provides that schedule 1 to the Bill amends the Acts it mentions (the Electoral Act, the *Local Government Electoral Act 2011* and the *Referendums Act 1997*). The schedule makes minor and consequential amendments to these Acts.

Chapter 3 Amendments relating to signage at State elections

Clause 57 Insertion of new pt 10, div 2A

Clause 57 provides that chapter 3 amends the Electoral Act.

Clause 58 Insertion of new pt 10, div 2A

Clause 58 inserts new part 10, division 2A (Offences relating to signage at polling booths).

New section 185A (Definitions for division) provides for definitions for certain terms used in part 10, division 2A.

New section 185B (Meaning of *election sign*) provides that an election sign is a sign, including a continuous sign as referred to section 185B(3), that contains anything that could influence an elector in relation to voting at an election or otherwise affect the result of an election, or is the colour or colours that are ordinarily associated with a registered political party, or is prescribed by regulation to be an election sign. An official sign, an item of clothing worn by a person, an umbrella or portable shade structure, a small thing (such as a label pin, badge, hat, pen or pencil or sticker), or another thing prescribed by the regulation, is not an election sign.

New section 185C (Meaning of *restricted signage area* for pre-poll voting office or ordinary polling booth) provides that a restricted signage area for a pre-poll voting office or ordinary polling booth is the area within 100 metres of the building in which the voting compartments are located. In addition, if the building is located in grounds and the commission has designated entrances to the grounds in which the office or booth is located under section 185D, in the grounds, on a boundary fence or another structure or feature that marks the boundary of the grounds, and within 100 metres of each designated entrance to the grounds will be part of the restricted signage area.

The restricted signage area will not include premises used as a residence, lawfully occupied by a person (other than the commission) for a purpose that is not related to the voting office or polling booth being used for the election, or used by a candidate in the election or a registered political party as an office.

New section 185D (Meaning of *designated entrance* to grounds) provides that a designated entrance includes an entrance to the grounds designated by the commission and indicated by an official sign displayed at the entrance. The commission must have regard to access routes and the need to ensure unobstructed access for electors to the voting office or polling booth in making the designation.

New section 185E (Meaning of *primary election* for a pre-poll voting office or ordinary polling booth) provides the commission may declare that the election for an electoral district being conducted at the pre-poll voting office or ordinary polling booth, other than the electoral district in which the voting office or polling booth is located, is a primary election being conducted at the voting office or polling booth. The election for the other electoral district will be a 'primary election' for that pre-poll voting office or polling booth, in addition to the election for the electoral district in which the voting office or polling booth is located. The commission must publish a declaration in the ways the commission considers appropriate including, for example, on the commission's website or displaying an official sign at the pre-poll voting office or ordinary polling booth to which the declaration relates.

New section 185F (Displaying election signs at pre-poll voting office or ordinary polling booth) provides that a person must not display an election sign in the restricted signage area of a pre-poll voting office or ordinary polling booth during voting hours unless the display of the sign is permitted under section 185F(2). Contravention of this provision is an offence with a maximum penalty of 10 penalty units. Under section 185F(2), the display of an election sign in a designated area (within 100 metres of the

building where voting compartments are located, or within 100 metres of each designated entrance) will be permitted if the sign is one of a maximum of two signs displayed by or for a candidate in a primary election being conducted at the voting office or polling booth, or a registered political party that has endorsed such a candidate. A permitted sign must be no larger than 900mmm by 600mm and be accompanied by a person who is responsible for it and is at the voting office or polling booth. A sign cannot be attached to a building, fence or other permanent structure (for example, by attaching with cable-ties to a fence). Signs for a candidate and the registered political party that endorsed them for the election are taken together in determining the maximum number of election signs. An A-frame sign is taken to be one sign. A member of the commission's staff may remove a sign considered to be displayed in contravention of these requirements.

New section 185G (Setting up to display election signs at ordinary polling booth) provides that, from the start of an election period and 6 am on polling day, a person must not display and election sign or set up a table, chair, umbrella or portable shade structure or other thing to be used for a purpose related to the election within 100 m of the building in which the voting compartments for an ordinary polling booth are to be located, and, if applicable, in the grounds in which the building is located, on a boundary fence or another structure or feature that marks the boundary, or within 100m of any entrance to the grounds. Contravention of this provision is an offence with a maximum penalty 10 penalty units. A member of the commission's staff may remove a sign displayed or other thing situated in contravention of these requirements.

Clause 59 Amendment of sch 1 (Dictionary)

Clause 59 inserts defined terms for part 10, division 2A into Schedule 1.

Chapter 4 Amendments relating to dishonest conduct of Ministers

Part 1 Amendment of Integrity Act 2009

Clause 60 Act amended

Clause 60 states that this part amends the *Integrity Act 2009*.

Clause 61 Amendment of long title

Clause 61 amends the long title to include that the Act will ensure Ministers and others appropriately manage conflicts of interest.

Clause 62 Insertion of new ch 3A

Clause 62 inserts new Chapter 3A (Managing conflicts of interest) into the *Integrity Act 2009.*

New section 40A (Conflicts of Interest) creates an indictable criminal offence for a Minister who knowingly fails to disclose a conflict of interest with the intent to

dishonestly gain a benefit to themselves or another person or cause detriment to another person.

New section 40A(1) provides that new section 40A applies if a Minister has an interest that conflicts or may conflict with the discharge of the Minister's responsibilities.

New section 40A(2) provides that a Minister must not with intent to dishonestly obtain a benefit for themselves or another person or cause detriment to another person fail to disclose the nature of that interest and conflict to the person and bodies identified in sub-subclauses (2)(a), (b) and (c). The maximum penalty for failing to comply with requirements of subclause (2) is 200 penalty units or two years imprisonment.

New section 40A(3) defines the terms 'benefit' and 'detriment' for the purposes of new section 40A.

New section 40B (Proceedings for offences) provides the procedural requirements for proceedings against a person for the new offence created by new section 40A (Conflicts of Interest).

New section 40B(1) provides that the new offence created by new section 40A (Conflicts of Interest) is a misdemeanour and therefore an indictable offence.

New subsection 40B(2) provides that proceedings for the new offence created by section 40A (Conflicts of Interest) can only be commenced with the consent of the Director of Public Prosecutions.

New section 40B(3) provides that the new offence created by section 40A (Conflicts of Interest) can be disposed of either summarily or upon indictment at the election of the prosecution.

New section 40B(4) provides if a defence application satisfies a Magistrate that there are exceptional circumstances justifying why the proceedings should not be decided summarily a Magistrate must not hear the proceedings for the new offence at section 40A (Conflicts of interest).

New section 40B(5) provides for the procedure that must be followed where the new section 40B(4) applies.

New section 40B(6) sets out what is required if a Magistrates Court deals with the new offence at section 40A (Conflicts of Interest).

New section 40B(7) defines the term 'Director of Public Prosecutions' for the purpose of new section 40B.

New section 40C (Use of information for investigation or prosecution) provides for the use of information for an investigation or prosecution.

New section 40C(1) sets out that this section applies to information given to the integrity commissioner under this act.

New section 40C(2) authorises the information to be recorded, used and disclosed for the purpose of the investigation or prosecution of an offence against the new section 40A (Conflicts of Interest) and allows the information to be given in a proceeding against a person for an offence against new section 40A (Conflicts of Interest) to the extent necessary to prosecute the person for the offence.

New section 40C(3) provides that new section 40C(2) applies despite section 24 and any other law, rule or practice to the contrary.

Clause 63 Omission of ch 4A, hdg (Declaration of interests by statutory office holders)

Clause 63 omits Chapter 4A heading (Declaration of interests by statutory office holders).

Clause 64 Amendment of s72B (Definition for ch 4A)

Clause 64 omits section 72B (Definition for ch4A) heading and 'chapter' and replaces it each with 'part'.

Clause 65 Relocation and renumbering of ss72B-72D

Clause 65 relocates and renumbers sections 72B to 72D to chapter 3A, part 2, sections 40D to 40F.

Clause 66 Amendment of s 85 (Annual reports of integrity commissioner)

Clause 66 omits a reference to section 72C and replaces it with a reference to section 40E.

Clause 67 Insertion of new ch 8, div 3

Clause 67 inserts a new Chapter 8, division 3 (Provision for Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2019.

New sections 102(1) and (2) set out that if, on the commencement, a Minister has an interest that conflicts or may conflict with the discharge of the Minister's responsibilities then new section 40A (Conflicts of Interest) applies in relation to the interest and the conflict.

New section 102(3) provides that a Minister does not contravene new section 40A (Conflicts of Interest) for a failure to disclose an existing interest or conflict within the first month after the commencement.

Clause 68 Amendment of sch 1 (Statutory office holders for section 72C)

Clause 68 amends Schedule 1 (Statutory office holders for section 72C) by omitting 72C from the heading and inserting 40E and omits 72C(1)(a) in the authorising provision and replaces it with 40E(1)(a).

Clause 69 Amendment of sch 2 (Dictionary)

Clause 69 omits 72B and inserts new section 40D next to the definition in Schedule 2 of relevant Minister.

Part 2 Amendment of Parliament of Queensland Act 2001

Clause 70 Act amended

Clause 70 states that this part amends the *Parliament of Queensland Act 2001*.

Clause 71 Amendment of s 47 (Other proceedings)

Clause 71 amends section 47 (Other proceedings) by omitting 'another Act' and inserts 'an Act' in section (1) and omits 'other' from section 47. This will provide that a person can be proceeded against for either contempt of Assembly or an offence against this or another Act, but is not liable to be punished twice for the same conduct.

Clause 72 Amendment of s 69B (Statement of interests)

Clause 72 amends sections 69B(1), (2) and (4) (Statement of interests) by inserting see also sections 69D and 47 after 'section 37'.

Clause 73 Insertion of new ss 69D-69F

Clause 73 inserts new sections 69D-69F after current section 69C (Registrar).

New section 69D (Dishonest disclosure or non-disclosure of interests) creates a criminal offence where a Minister intentionally fails to comply with current sections 69B(1), (2) or (4) of the *Parliament of Queensland Act 2001*, with dishonest intent to obtain a benefit for themselves or another person or cause detriment to another person.

New section 69D(1) provides that a Minister must not, with intent to dishonesty obtain a benefit for the Minister or another person, or to dishonestly cause a detriment to another person, contravene section 69B(1), (2) or (4). The maximum penalty for contravening subclause (2) is 200 penalty units or two years imprisonment.

New section 69D(2) provides definitions for the terms 'benefit' or 'detriment' for the purposes of new section 69D(1).

New section 69E (Proceedings for offences) provides the procedural requirements for proceedings against a person for the new offence created by new section 69D (Dishonest disclosure or non-disclosure of interests).

New section 69E(1) provides that the new offence created by new section 69D (Dishonest disclosure or non-disclosure of interests) is a misdemeanour and therefore an indictable offence.

New section 69E(2) provides that proceedings for the new offence created by section 69D (Dishonest disclosure or non-disclosure of interests) can only be commenced with the consent of the Director of Public Prosecutions.

New section 69E(3) provides that the new offence created by section 69D (Dishonest disclosure or non-disclosure of interests) can be disposed of either summarily or upon indictment at the election of the prosecution.

New section 69E(4) provides if a defence application satisfies a Magistrate that there are exceptional circumstances justifying why the proceedings should not be decided summarily a Magistrate must not hear the proceedings for the new offence at section 69D (Dishonest disclosure or non-disclosure of interests).

New section 69E(5) provides for the procedure that must be followed where the new section 69E(4) applies.

New section 69E(6) sets out what is required if a Magistrates Court deals with the new offence at section 69D (Dishonest disclosure or non-disclosure of interests).

New section 69E(7) defines the term 'Director of Public Prosecutions' for the purpose of the new section 69D (Dishonest disclosure or non-disclosure of interests).

New section 69F (Use of information for investigation or prosecution) provides for the use of information for an investigation or prosecution.

New section 69F(1) sets out that this section applies to evidence of anything said or done during proceedings in the Assembly and information given to the registrar under this part.

New section 69F(2) authorises the information to be recorded, used and disclosed for the purpose of the investigation or prosecution of an offence against the new section 69D (Dishonest disclosure or non-disclosure of interests) and allows the information to be given in a proceeding against a person for an offence against new section 69D (Dishonest disclosure or non-disclosure of interests) to the extent necessary to prosecute the person for the offence.

New subsection 69F(3) provides that new subsection 69F(2) applies despite section 24 and any other law, rule or practice to the contrary.

Chapter 5 – Amendments relating to dishonest conduct for councillors and other local government matters

Part 1 Amendment of City of Brisbane Act 2010

Clause 74 Act amended

Clause 74 provides that part 1 amends the *City of Brisbane Act 2010* (the City of Brisbane Act).

Clause 75 Amendment of s 4 (Local government principles underpin this Act)

Clause 75 amends section 4 to expressly provide that the local government principle of ethical and legal behaviour also applies to councillor advisors.

Clause 76 Amendment of s 14 (Responsibilities of councillors)

Clause 76 amends section 14 to provide that the mayor has the responsibility of directing the chief executive officer and senior executive employees (rather than senior contract employees) of the council under section 170 of the City of Brisbane Act (as amended by the Bill).

Clause 77 Amendment of s 160 (When a councillor's term ends)

Clause 77 amends section 160 to clarify that the declaration referred to in paragraph (b) is a declaration made under a regulation under section 160AA of the City of Brisbane Act. Section 160AA is inserted by the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* and commences on 30 March 2020.

Clause 78 Amendment of s 170 (Giving directions to council staff)

Clause 78 amends section 170(1) to replace the reference to senior contract employees with senior executive employees, providing that the mayor may give a direction to the chief executive officer or senior executive employees (rather than senior contract employees). Section 192 of the City of Brisbane Act (as amended by the Bill) provides that council must appoint qualified persons to be the council's senior executive employees as opposed to senior contract employees.

Amendments to section 170(2) provide that councillors, including the mayor, cannot give directions to any other council employees unless the direction is given in accordance with the guidelines made under new section 171A of the City of Brisbane Act about the provision of administrative support to councillors.

New section 170(3) provides that a direction given by the mayor to the chief executive officer or a senior executive employee must not be inconsistent with a resolution, or a document adopted by resolution, of the council. This is consistent with section 170(2) of the *Local Government Act 2009* (Local Government Act).

Clause 79 Insertion of new s 171A

Clause 79 inserts new section 171A (Guidelines about provision of administrative support to councillors) to provide that the chief executive officer may make guidelines about the provision of administrative support by council employees to councillors. A direction purportedly given by a councillor to a council employee is of no effect if the direction does not comply with the guidelines.

The guidelines must include:

- when a councillor may be provided with administrative support by a council employee; and

- how and when a councillor may give a direction to a council employee in relation to the provision of administrative support; and
- a requirement that a councillor may give a direction only if the direction relates directly to administrative support to be provided by the council employee under the guidelines.

Clause 80 Omission of ss 173A and 173B

Clause 80 omits section 173A as the offence relating to the use of inside information by a person who is or has been a councillor is inserted by clause 89 (new section 198F).

The amendments also omit section 173B as the obligation of councillors to correct their registers of interests is inserted by clause 89 (new section 198B).

Clause 81 Replacement of ch 6, pt 2, div 5A (Dealing with councillors' personal interests in council matters)

Clause 81 replaces chapter 6, part 2, division 5A to provide a new process for managing councillors' conflicts of interest.

A new heading for chapter 6, part 2, division 5A (Councillors' conflicts of interest) is inserted and a new heading for division 5A, subdivision 1 (Preliminary) is inserted.

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

New section 177B (When does a person participate in a decision) provides that in 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 council meeting and considering or making the decision under an Act, a delegation or another authority.

New section 177C (Personal interests in ordinary business matters of council) 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
- making a planning scheme that applies to the whole of 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.

A new heading for division 5A, subdivision 2 (Prescribed conflicts of interest) is inserted.

New section 177D (When councillor has *prescribed conflict of interest*—particular gifts or loans) 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 for 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 or the *Electoral Act 1992*, part 11, division 11 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.

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

New section 177E(2) provides definitions for 'employment-related or upgraded' and 'sponsored travel or accommodation benefit'. Employment-related or upgraded travel or accommodation is not included for the purpose of the definition of sponsored travel or accommodation benefit.

New section 177F (When councillor has *prescribed conflict of interest*—other) 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 for the grant of a licence, permit, registration, approval or consideration of another matter under a local government related law, if the councillor or a close associate of the councillor either made the application or makes or has made a written submission in relation to the application to the council before it is or was decided.

New section 177G (Who is a *close associate* of a councillor) 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 2001* (Cwlth), 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.

New section 177H (Councillor must not participate in decisions) 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 note states that contravention of this section is misconduct under section 150L(1)(c)(v) of the Local Government Act that could result in disciplinary action being taken against the councillor. The note also states that this section is a relevant integrity provision for the offence against section 198D (Dishonest conduct of councillor or councillor advisor).

However, the councillor does not contravene the requirement by being present under an approval given under section 177S (Minister's approval for councillor to participate or be present to decide matter).

New section 177I (Obligation of councillor with prescribed conflict of interest) applies to a councillor if the 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 the chief executive officer written notice of the prescribed conflict of interest, including relevant particulars, and must also give notice of the prescribed conflict of interest at the next meeting of the council or the next meeting of a committee, if the matter is to be considered and decided at a meeting of a committee.

A note states that contravention of subsection (2) or (3) is misconduct under section 150L(1)(c)(v) of the Local Government Act that could result in disciplinary action being taken against the councillor. The note also states that this section is a relevant integrity provision for the offence against section 198D (Dishonest conduct of councillor or councillor advisor).

The particulars for the prescribed conflict of interest are:
- for a gift, loan or contract—the value of the 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.

New section 177J (Dealing with prescribed conflict of interest at a meeting) 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 (Minister's approval for councillor to participate or be present to decide matter).

A new heading for division 5A, subdivision 3 (Declarable conflicts of interest) is inserted.

New section 177K (What is a *declarable conflict of interest*) 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.

New section 177L (Interests that are not declarable conflicts of interest) provides that a councillor who has a conflict of interest in a matter does not have a declarable conflict of interest in the 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 or patron 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 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 a benefit or suffer a loss in relation to the matter 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 a gift, loan or sponsored travel or accommodation benefit from an entity in circumstances that would constitute a prescribed conflict of interest if the total value was $2,000 or more during the councillor's relevant term, but the gifts, loans or sponsored travel or accommodation benefits total $500 or less during the councillor's relevant term; or
- the conflict of interest arises solely because the councillor advisor is a related party, other than a close associate, of the councillor and the conflict of interest relates to the employment conditions of a councillor advisor for the councillor (including appointment, discipline, termination or remuneration).

For the purpose of assessing whether receipt of a gift, loan or sponsored travel or accommodation benefit in particular circumstances by a councillor or a related party of the councillor is a declarable conflict of interest, a reference to a close associate of a councillor in section 177D or 177E is taken to be a reference to a related party of the councillor.

New section 177L(3) provides definitions for 'patron' and 'sponsored travel or accommodation benefit'.

New section 177M (Who is a *related party* of a councillor) provides that a related party of a councillor is any of the following:

- an entity in which the councillor or a person mentioned below has an interest;
- a close associate of the councillor (other than an entity mentioned in section 177G(1)(f));
- a parent, child or sibling of the councillor's spouse;
- a person who has a close personal relationship with the councillor.

A parent, child or sibling of the councillor's spouse and a person who has a close personal relationship with the councillor is a related party of a councillor, only if the councillor knows or ought reasonably to know of their involvement in the matter.

New section 177N (Obligation of councillor with declarable conflict of interest) applies to a councillor if the 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, and must, as soon as practicable, give notice of the declarable conflict of interest in the matter including the particulars below to the chief executive and 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 note states that contravention of subsection (2) or (3) is misconduct under section 150L(1)(c)(v) of the Local Government Act that could result in disciplinary action being taken against the councillor. The note also states that this section is a relevant integrity provision for the offence against section 198D (Dishonest conduct of councillor or councillor advisor).

The particulars for the declarable conflict of interest 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 section 177N(2)(a) or (3)(a) if the councillor has otherwise complied with section 177N and either a decision has been made under section 177P(3)(a)(i) or (b)(i) (Procedure if councillor has declarable conflict of interest) 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 (Minister's approval for councillor to participate or be present to decide matter).

New section 177O (Procedure if meeting informed of councillor's personal interests) applies 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.

New section 177P (Procedure if councillor has declarable conflict of interest) provides that if a councillor has a declarable interest in a matter under section 177N(2) or (3) or decided by eligible councillors at a meeting under 177O(2), unless the councillor

voluntarily decides not to participate in the decision, the eligible councillors must, by resolution, decide:

- for a matter that would (other than for the councillor's declarable 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 section 177P(3)(a)(i) or (b)(i).

The councillor must comply with a decision of the eligible councillors under section 177P(3)(a)(ii) or (b)(ii) or any conditions imposed on a decision under subsection (4). A maximum penalty of 100 penalty units or 1 year's imprisonment applies for non-compliance.

However, the councillor does not contravene this section by participating in a decision or being present under an approval given under section 177S (Minister's approval for councillor to participate or be present to decide matter).

New section 177Q (Decisions of eligible councillors) 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 (Procedure if meeting informed of councillor's personal interests) or 177P (Procedure if councillor has declarable conflict of interest) 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 cannot make a decision under section 177O or 177P, the eligible councillors are taken to have decided under section 177P(3)(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.

A new heading for division 5A, subdivision 4 (Other matters) is inserted.

New section 177R (Procedure if no quorum for deciding matter because of prescribed conflicts of interest or declarable conflicts of interest) applies in relation to a 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 council must do one of the following:

- delegate deciding the matter under section 238 (Delegation of council powers), unless it cannot be delegated under that section;
- decide, by resolution, to defer the matter to a later meeting;
- decide, by resolution, not to decide the matter and take no further action in relation to the matter.

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(5) by participating in a decision or being present while the matter is discussed and voted on, for the purpose of delegating the matter or deferring the matter to a later meeting.

New section 177S (Minister's approval for councillor to participate or be present to decide matter) 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) (Procedure if no quorum for deciding matter because of prescribed conflicts of interest or declarable conflicts of interest) and deciding the matter cannot be delegated under section 238 (Delegation of council powers). The Minister may also give the approval subject to the conditions stated in the notice.

New section 177T (Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest) 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), the councillor who has the belief or suspicion must immediately inform the person presiding over the meeting about the belief or suspicion (if the belief or suspicion arises in a council 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.

A note states that contravention of subsection (2) or (3) is misconduct under section 150L(1)(c)(v) of the Local Government Act that could result in disciplinary action being taken against the councillor.

New section 177U (Obligation of councillor if conflict of interest reported under s 177T) 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 177I(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 (Dealing with prescribed conflict of interest at a meeting) 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) (Obligation of councillor with declarable conflict of interest) and 177P (Procedure if councillor has declarable conflict of interest) are taken to apply to the relevant councillor for the matter.

New section 177V (Offence to take retaliatory action) provides that a person must not, because a councillor complied with section 177T (Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest):

- 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; or
- 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.

New section 177W (Councillor with prescribed conflict of interest or declarable conflict of interest must not influence others) prohibits a councillor who has a prescribed conflict of interest or declarable conflict of interest in a matter from directing, influencing, attempting to influence, or discussing the matter with, another person who is participating in a decision of the council relating to the matter.

A note states that contravention of this section, is misconduct under section 150L(1)(c)(v) of the Local Government Act that could result in disciplinary action being taken against the councillor. Also, the section is a relevant integrity provision for the offence against section 198D (Dishonest conduct of councillor or councillor advisor).

However, a councillor does not contravene subsection (2) 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(3)(a)(i) or (b)(i) or approved by the Minister under section 177S; or
- giving the chief executive officer, in compliance with division 5A, factual information about a matter or 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.

New section 177X (Records about prescribed conflicts of interest or declarable conflicts of interest–meetings) 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 prescribed conflict of interest or declarable conflict of interest;
- the particulars of the prescribed conflict of interest or declarable conflict of interest;
- if section 177U (Obligation of councillor if conflict of interest reported under s 177T) 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 prescribed conflict of interest or declarable conflict of interest relates – the name of each eligible councillor who voted on the matter, and how each eligible councillor voted.

The following additional information is required if the councillor has a declarable conflict of interest:

- 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;
- 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.

If minutes are not required for a meeting, the information must be recorded in another way prescribed by regulation.

Clause 82 Amendment of ch 6, pt 4 hdg (Council employees)

Clause 82 amends the heading for chapter 6, part 4 to indicate that part 4 is also relevant for councillor advisors and other staff, not only council employees.

Clause 83 Amendment of s 192 (Appointing senior contract employees)

Clause 83 amends section 192 to provide that the council must appoint qualified persons to be the council's senior executive employees as opposed to senior contract employees. The definition 'senior executive employee' (inserted into the Dictionary by clause 93 of the Bill) means an employee of the council who reports directly to the chief executive officer and whose position ordinarily would be considered to be a senior position in the council's corporate structure, equivalent to the definition 'senior executive employee' in the Local Government Act. In effect, the amendments provide that councillors of Brisbane City Council will be responsible for appointing senior executive employees who report directly to the chief executive officer and that the chief executive officer of Brisbane City Council will be responsible for appointing all other employees, including managers that do not report directly to the chief executive officer.

Also, clause 83 omits sections 192(3) and (4) relating to contracts of employment for senior contract employees as it is not considered necessary to expressly provide for these matters. The Local Government Act does not contain equivalent provisions in relation to senior executive employees.

Clause 84 Amendment of s 193 (Appointing other council employees)

Clause 84 consequentially amends section 193 to replace the reference to senior contract employees with senior executive employees, providing that the chief executive officer must appoint the council employees, other than senior executive employees.

Clause 85 Insertion of new ch 6, pt 4, div 2A

Clause 85 inserts new chapter 6, part 4, division 2A, sections 194A and 194B to provide for the appointment and conduct of councillor advisors.

A new heading for chapter 6, part 4, division 2A (Councillor advisors) is inserted.

New section 194A (Appointment and functions of councillor advisors) provides that the council may, by resolution, allow a councillor to appoint councillor advisors to assist the councillor in performing responsibilities under the Act. A councillor advisor must enter into a written contract of employment with the council. A councillor is expressly prohibited from appointing a 'close associate' of the councillor as a councillor advisor, such as a spouse, parent, child or sibling.

The contract of employment will be required to provide for:

- the councillor advisor's conditions of employment (including remuneration, leave and superannuation entitlements);
- the functions and key responsibilities of the councillor advisor;
- a requirement that the councillor advisor comply with the code of conduct made by the Minister under new section 197C of the Local Government Act;
- when and what types of disciplinary action may be taken against the councillor advisor.

A councillor who appoints a councillor advisor may give a direction to the councillor advisor, however a councillor advisor's functions and responsibilities cannot include

carrying out or assisting in an activity relating to a councillor's campaign for re-election, or directing a council employee.

A regulation may prescribe the number of councillor advisors each councillor may appoint and limit the functions and key responsibilities that may be provided for in a councillor advisor's contract of employment.

New section 194B (When appointment ends) provides that a councillor advisor's appointment automatically ends on the day the councillor advisor is convicted of any of the following offences:

- misuse of information by advisor (amended section 197(2) or (4));
- dishonest conduct of advisor (new section 198D);
- prohibited conduct by advisor in possession of inside information (new section 198F(2) or (3));
- advisor giving false or misleading information (section 215(1)).

Also, a councillor advisor's appointment automatically ends 2 weeks after the term of the councillor who appointed the councillor advisor ends or the councillor is suspended from office.

Clause 86 Amendment of s 196 (Improper conduct by council employees)

Clause 86 restructures section 196 to clarify the persons to whom the section applies. The amendments make it clear that the section does not apply to councillor advisors.

Clause 87 Amendment of s 197 (Use of information by council employees)

Clause 87 amends section 197 to apply the misuse of information offences and related penalties that currently apply to council employees to councillor advisors. A person who is, or has been, a councillor advisor must not use information acquired as an advisor to gain (directly or indirectly) an advantage for the person or someone else, or cause detriment to the council. Also, a person who is, or has been, a councillor advisor must not release information that the person knows, or should reasonably know, is information that is confidential to the council and the council wishes to keep confidential. The maximum penalties for these offences are 100 penalty units or 2 years imprisonment.

Clause 88 Amendment of s 198 (Annual report must detail remuneration)

Clause 88 amends section 198 to provide that the annual report of the council must include the number of councillor advisors appointed for each councillor for the year and the total remuneration payable to each councillor's advisors.

Clause 89 Insertion of new ch 6, pt 4A

Clause 89 inserts new chapter 6, part 4A, sections 198A-198F in relation to obligations of councillors and councillor advisors.

A new heading for chapter 6, part 4A (Obligations of councillors and councillor advisors) is inserted.

New section 198A (Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment) provides that if a councillor, at the start of the councillor's term or if a councillor advisor, when the advisor is appointed, has an interest that must be recorded in a register of interests under a regulation for the councillor, councillor advisor or a person who is related to the councillor or councillor advisor, the councillor or councillor advisor must, in the approved form, inform the chief executive officer of the particulars of the interest within 30 days after the day the councillor's term starts or the councillor advisor is appointed.

A note states contravention of this section by a councillor is misconduct under the Local Government Act that could result in disciplinary action being taken against the councillor (see section 150L(1)(c)(v)). The section is also a relevant integrity provision for the offence against section 198D (Dishonest conduct of councillor or councillor advisor).

A definition of a person 'related' to a councillor or councillor advisor is provided at subsection (3) and (4), respectively.

New section 198B (Obligation of councillor or councillor advisor to correct register of interests) provides that if a councillor or councillor advisor, or a person who is related to the councillor or councillor advisor, acquires an interest that must be recorded in a register of interests under a regulation or there is a change to the particulars required to be included in a register of interests under a regulation, the councillor or councillor advisor must, in the approved form, inform the chief executive officer of the particulars of the new interest or the change to the particulars within 30 days after the interest is acquired or the change happens.

A note states contravention of this section by a councillor is misconduct under the Local Government Act that could result in disciplinary action being taken against the councillor (see section 150L(1)(c)(v)). The section is also a relevant integrity provision for the offence against section 198D (Dishonest conduct of councillor or councillor advisor).

New section 198C (Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests) provides that a councillor or councillor advisor must, within 30 days after the end of each financial year, inform the chief executive officer in the approved form:

- if the councillor or councillor advisor, or a person related to the councillor or councillor advisor, has acquired an interest that must be, but is not, recorded in a register of interests under a regulation – the particulars of the interest that must be recorded in the register of interests; and
- if there has been a change to the particulars required to be included in a register of interests under a regulation for the councillor or councillor advisor, or a person who is related to the councillor or advisor – the change to the particulars; and
- if no new interest has been acquired or there has been no change to the particulars required to be included in a register of interests under a regulation – that there has been no interest acquired or change to the particulars for an interest.

A note states contravention of this section by a councillor is misconduct under the Local Government Act that could result in disciplinary action being taken against the councillor (see section 150L(1)(c)(v)). The section is also a relevant integrity provision for the offence against section 198D (Dishonest conduct of councillor or councillor advisor).

New section 198D (Dishonest conduct of councillor or councillor advisor) provides that a councillor or councillor advisor must not contravene a relevant integrity provision with intent to dishonestly obtain a benefit for the councillor, councillor advisor or someone else, or to dishonestly cause a detriment to someone else. A maximum penalty of 200 penalty units or 2 years imprisonment applies.

For a councillor a relevant integrity provision is each of the following:

- section 177H (Councillor must not participate in decisions);
- section 177I (Obligation of councillor with prescribed conflict of interest);
- section 177N (Obligation of councillor with declarable conflict of interest);
- section 177W (Councillor with prescribed conflict of interest or declarable conflict of interest must not influence others);
- section 198A (Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment);
- section 198B (Obligation of councillor or councillor advisor to correct register of interests);
- section 198C (Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests);
- section 215 (False or misleading information), if the information is given under section 198A, 198B or 198C.

For a councillor advisor a relevant integrity provision is each of the following:

- section 198A (Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment);
- section 198B (Obligation of councillor or councillor advisor to correct register of interests);
- section 198C (Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests);
- section 215 (False or misleading information), if the information is given under section 198A, 198B or 198C.

New section 198D also provides a definition for ‘benefit’ and ‘detriment’.

New section 198E (Proceeding for offence against s 198D) provides that an offence against section 198D is a misdemeanour, and a proceeding for an offence against section 198D may be started only with the written consent of the director of public prosecutions appointed under the *Director of Public Prosecutions Act 1984*.

A proceeding for an offence against section 198D may be taken, at the election of the prosecution, by way of summary proceeding or on indictment. However, a magistrate must not hear an indictable offence against section 198D summarily if satisfied, on an application made by the defence, that because of exceptional circumstances the offence should not be heard and decided summarily. In this event the court must stop treating

the proceeding as a proceeding to hear and decide the charge summarily and the proceeding must be conducted as a committal proceeding, a plea of the defendant at the start of the proceeding must be disregarded, the evidence already heard by the court is taken to be evidence in the committal proceeding and section 104 of the *Justices Act 1886* must be complied with for the committal proceeding.

A Magistrates Court that summarily deals with a charge an offence against section 198D must be constituted by a magistrate and has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

New section 198F (Prohibited conduct by councillor or councillor advisor in possession of inside information) provides that a person (the *insider*) who is, or has been, a councillor or councillor advisor must not use inside information acquired as a councillor or councillor advisor that the insider knows, or ought reasonably to know, is not generally available to the public to:

- cause the purchase or sale of an asset if knowledge of the inside information would likely influence a reasonable person in deciding whether or not to buy or sell the asset; or
- cause the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.

The maximum penalties for non-compliance are 1,000 penalty units or 2 years imprisonment, consistent with the prohibited use of inside information offence/penalties for councillors under repealed section 173A of the City of Brisbane Act.

New section 198F substantially replicates repealed section 173A of the City of Brisbane Act and relocates the substantive provisions to apply them to both councillors and councillor advisors.

The new section also provides definitions for ‘cause’, ‘corporate entity’ and ‘inside information’.

Clause 90 Amendment of s 215 (False or misleading information)

Clause 90 amends section 215 by inserting a note stating that in certain circumstances the section is a relevant integrity provision for the offence against section 198D (Dishonest conduct of councillor or councillor advisor).

Clause 91 Insertion of new ch 8, pt 11

Clause 91 inserts new chapter 8, part 11 to provide transitional provisions for existing senior contract employees of the Brisbane City Council, repealed integrity offence provisions and amendments relating to conflicts of interest.

A new heading for new chapter 8, part 11 (Transitional provisions for Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2019) is inserted.

New section 294 (Existing senior contract employees), subsections (1) and (2) provide that a person who was a senior contract employee immediately before the commencement is taken to be a senior executive employee on the commencement, provided the person reported directly to the chief executive officer and held a position that would ordinarily be considered to be a senior position in the council's corporate structure. The person's contract and conditions of employment continue.

New section 294(3) and (4) provide that a person who was a senior contract employee immediately before the commencement but is not taken to be a senior executive employee on the commencement is taken to have been appointed by the chief executive officer as a council employee under section 193 of the City of Brisbane Act, however section 193(4) does not apply in relation to the person's employment. The person's contract and conditions of employment continue.

New section 295 (Proceedings for repealed integrity offences) 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 Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.) a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence as if the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2019*, section 80 (Omission of ss 173A and 173B) and section 81 (Replacement of ch 6, pt 2, div 5A) 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(5); and a disqualifying offence for section 153(6).

The following offences are repealed integrity offences: section 173A(2) and (3) (Prohibited conduct by councillor in possession of inside information), section 173B(2) (Obligation of councillor to correct register of interests), section 177C(2) (Councillor's material personal interest at a meeting), section 177E(2) and (5) (Councillor's conflict of interest at a meeting), section 177H (Offence to take retaliatory action) and section 177I(2) and (3) (Offence for councillor with material personal interest or conflict of interest to influence others).

Section 296 (Continuation of Minister's approval for councillor to participate or be present to decide matter) applies to a notice given before the commencement by the Minister to a councillor under section 177F, if the notice is in force immediately before the commencement. The notice is taken to be a notice given under section 177S.

Clause 92 Amendment of sch 1 (Serious integrity offences and integrity offences)

Clause 92 amends schedule 1, part 1 to prescribe section 198D (Dishonest conduct of councillor or councillor advisor) as a serious integrity offence.

The amendments also amend schedule 1, part 2 to omit the following offences under the City of Brisbane Act as integrity offences – section 173A(2) or (3) (Prohibited conduct by councillor in possession of inside information), section 173B(2) (Obligation of councillor to correct register of interests), section 177C(2) (Councillor's material

personal interest at a meeting), section 177E(2) or (5) (Councillor's conflict of interest at a meeting), section 177H (Offence to take retaliatory action) and section 177I(2) or (3) (Offence for councillor with material personal interest or conflict of interest to influence others).

The amendments prescribe the following offences under this Act as integrity offences – section 177J(2) (Dealing with prescribed conflict of interest at a meeting), section 177V (Offence to take retaliatory action) and section 198F(2) or (3) (Prohibited conduct by councillor or councillor advisor in possession of inside information).

Clause 93 Amendment of sch 2 (Dictionary)

Clause 93 amends schedule 2 to:

- omit the definitions of 'conflict of interest', 'material personal interest', 'ordinary business matter', 'perceived conflict of interest', 'real conflict of interest' and 'senior contract employee';
- insert definitions for 'close associate', 'councillor advisor', 'council meeting', 'declarable conflict of interest', 'eligible councillor', 'executive officer', 'gift', 'group of candidates', 'interest', 'loan', 'prescribed conflict of interest', 'related', 'related party', 'relevant term' and 'senior executive employee';
- amend the definition of 'council employee' to refer to senior executive employee rather than senior contract employee.

Part 2 Amendment of Local Government Act 2009

Clause 94 Act amended

Clause 94 provides that part 2 amends the Local Government Act.

Clause 95 Amendment of s 4 (Local government principles underpin this Act)

Clause 95 amends section 4 to expressly provide that the local government principle of ethical and legal behaviour also applies to councillor advisors.

Clause 96 Amendment of s 12 (Responsibilities of councillors)

Clause 96 amends section 12 to provide that the mayor has the responsibility of directing the chief executive officer of the local government under section 170 of the Local Government Act. Section 170 of the Local Government Act provides that a direction by the mayor must not be inconsistent with a resolution, or a document adopted by resolution, of the local government.

Clause 97 Amendment of s 123 (Suspending or dissolving a local government)

Clause 97 amends section 123(3)(b) to provide that the Minister may recommend that the Governor in Council appoint an interim administrator to act in place of the councillors until the earlier of either the conclusion of a fresh election of councillors to be held on a stated date, or the conclusion of the next quadrennial election. The date for a fresh election must be included in the Minister's recommendation to the Governor in Council to dissolve the local government and appoint an interim administrator.

Current section 123(6) is being omitted as it is no longer necessary to state it is the Parliament's intention that a fresh election of councillors be held as soon as practicable after the Legislative Assembly ratifies the dissolution of a local government.

Clause 98 Amendment of s 124 (Interim administrator acts for the councillors temporarily)

Clause 98 amends section 124(6) to provide that the Governor in Council may direct a local government to not only pay to the Minister an amount specified in the direction for the costs and expenses of the interim administrator but also an amount for the costs and expenses of an advisory committee created by the Minister under section 124(10) and an interim management committee appointed by the Minister under chapter 6, part 7.

Clause 99 Insertion of new s 124A

Clause 99 inserts new section 124A (Minister may appoint acting interim administrator) to provide that the Minister may appoint a person to act as the interim administrator during a vacancy in the office of the interim administrator or during a period the interim administrator is absent or cannot perform the duties of the office. Subject to any regulation made under section 124, the Minister may limit the powers and responsibilities of an acting interim administrator. Under section 124(3), a regulation may limit the responsibilities and powers of the interim administrator.

The Minister cannot appoint the person for more than 6 months in a 12-month period. The Minister must publish, by gazette notice, the name of the acting interim administrator.

Clause 100 Amendment of s 150C (Definitions for chapter)

Clause 100 omits the definition 'local government meeting' from section 150C as the definition is being relocated to schedule 4 (Dictionary) so that it applies to the whole of the Local Government Act.

Clause 101 Amendment of s 150L (What is *misconduct*)

Clause 101 amends section 150L(c)(iv) to provide that the conduct of a councillor is misconduct if it contravenes the following additional sections of the Local Government Act*:*

- section 150EK (Councillor must not participate in decisions);
- section 150EL (Obligation of councillor with prescribed conflict of interest);
- section 150EQ (Obligation of councillor with declarable conflict of interest);
- section 150EW (Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest);
- section 150EZ (Councillor with prescribed conflict of interest or declarable conflict of interest must not influence others);
- section 201A (Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment);

- section 201B (Obligation of councillor or councillor advisor to correct register of interests);
- section 201C (Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests).

The following sections are currently prescribed for the purpose of misconduct and will continue to be prescribed:

- section 150R(2) (Local government official must notify assessor about particular conduct);
- section 170(3) (Giving directions to local government staff);
- section 171(3) (Use of information by councillors).

Amendments to section 150L(c)(v) provide the conduct of a councillor is misconduct if it contravenes the following additional sections of the City of Brisbane Act*:*

- section 177H (Councillor must not participate in decisions);
- section 177I (Obligation of councillor with prescribed conflict of interest);
- section 177N (Obligation of councillor with declarable conflict of interest);
- section 177T (Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest);
- section 177W (Councillor with prescribed conflict of interest or declarable conflict of interest must not influence others);
- section 198A (Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment);
- section 198B (Obligation of councillor or councillor advisor to correct register of interests);
- section 198C (Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests).

The following sections are prescribed for the purpose of misconduct by section 128 of the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* (to commence on 30 March 2020) and will continue to be prescribed:

- section 170(2) (Giving directions to local government staff);
- section 173(3) (Use of information by councillors).

Clause 102 Amendment of s 150R (Local government official must notify assessor about particular conduct)

Clause 102 amends section 150R(2) to insert a note that states contravention of this section by a councillor is misconduct that could result in disciplinary action being taken against the councillor.

Clause 103 Amendment of s 150AY (Functions of investigators)

Clause 103(1) amends section 150AY(b), second dot point, to provide that an investigator has the function of investigating whether an offence has been committed against the following new provisions of the Local Government Act:

- section 150EM(2) (Dealing with prescribed conflict of interest at a meeting);
- section 150ES(5) (Procedure if councillor has declarable conflict of interest);

- section 150EY (Offence to take retaliatory action);
- section 201D (Dishonest conduct of councillor or councillor advisor);
- section 201F(2) or (3) (Prohibited conduct by councillor or councillor advisor in possession of inside information).

The Local Government Act currently prescribes section 171(1) (Use of information by councillors) as a conduct provision and it will continue to be prescribed.

Clause 103(2) amends section 150AY(b), fourth dot point, to provide that an investigator has the function of investigating whether an offence has been committed against the following new provisions of the City of Brisbane Act:

- section 177J(2) (Dealing with prescribed conflict of interest at a meeting);
- section 177P(5) (Procedure if councillor has declarable conflict of interest);
- section 177V (Offence to take retaliatory action);
- section 198D (Dishonest conduct of councillor or councillor advisor);
- section 198F(2) or (3) (Prohibited conduct by councillor or councillor advisor in possession of inside information).

Section 133 of the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* prescribes section 173(1) (Use of information by councillors) as a conduct provision and it will continue to be prescribed.

Clause 104 Insertion of ch 5B

Clause 104 inserts new chapter 5B to provide a new process for managing councillors' conflicts of interest.

A new heading for chapter 5B (Councillors' conflicts of interest) is inserted and a new heading for chapter 5B, part 1 (Preliminary) is inserted).

New section 150ED (Purpose of chapter) provides that the purpose of the chapter is to ensure that if a councillor has a personal interest in a matter, the local government deals with the matter in an accountable and transparent way that meets community expectations.

New section 150EE (When does a person participate in a decision) provides that in chapter 5B, 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 local government meeting and considering or making the decision under an Act, a delegation or another authority.

New section 150EF (Personal interests in ordinary business matters of a local government) 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
- making a planning scheme that applies to the whole of 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 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.

A new heading for chapter 5B, part 2 (Prescribed conflicts of interest) is inserted.

New section 150EG (When councillor has *prescribed conflict of interest*–particular gifts or loans) 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 for 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 or the *Electoral Act 1992*, part 11, division 11 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.

New section 150EH (When councillor has *prescribed conflict of interest*–sponsored travel or accommodation benefits), subsection (1) provides that a councillor has a prescribed conflict of interest in a matter if a sponsored travel or accommodation 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 travel or accommodation benefits given to the councillor or close associate during the councillor's relevant term total $2,000 or more.

New section 150EH(2) provides definitions for 'employment-related or upgraded' and 'sponsored travel or accommodation benefit'. Employment-related or upgraded travel or accommodation is not included for the purpose of the definition of sponsored travel or accommodation benefit.

New section 150EI (When councillor has *prescribed conflict of interest*–other) 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 local government or the lease or sale of assets by the local government; 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 local government for the grant of a licence, permit, registration, approval or consideration of another matter under a Local Government Act, if the councillor or a close associate of the councillor either made the application or makes or has made a written submission in relation to the application to the local government before it is or was decided.

New section 150EJ (Who is a *close associate* of a councillor) 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 2001* (Cwlth), 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.

New section 150EK (Councillor must not participate in decisions) 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 note states that contravention of this section is misconduct under section 150L(1)(c)(iv) of the Local Government Act that could result in disciplinary action being taken against the councillor. The note also states that this section is a relevant integrity provision for the offence against section 201D (Dishonest conduct of councillor or councillor advisor).

However, the councillor does not contravene the requirement by being present under an approval given under section 150EV (Minister's approval for councillor to participate or be present to decide matter).

New section 150EL (Obligation of councillor with prescribed conflict of interest) applies to a councillor if the 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 the chief executive officer written notice of the prescribed conflict of interest, including relevant particulars, 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 note states that contravention of subsection (2) or (3) is misconduct under section 150L(1)(c)(iv) of the Local Government Act that could result in disciplinary action being taken against the councillor. The section is also a relevant integrity provision for the offence against section 201D (Dishonest conduct of councillor or councillor advisor).

The particulars for the prescribed conflict of interest 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;
- the 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.

New section 150EM (Dealing with prescribed conflict of interest at a meeting) 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 150EV (Minister's approval for councillor to participate or be present to decide matter).

A new heading for chapter 5B, part 3 (Declarable conflicts of interest) is inserted.

New section 150EN (What is a *declarable conflict of interest*) 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

participation in a decision about the matter might lead to a decision that is contrary to the public interest.

New section 150EO (Interests that are not declarable conflicts of interest) provides that a councillor who has a conflict of interest in a matter does not have a declarable conflict of interest in the 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 or patron 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 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 a benefit or suffer a loss in relation to the matter 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 the councillor, or a related party of the councillor receives a gift, loan or sponsored travel or accommodation benefit from an entity in circumstances that would constitute a prescribed conflict of interest if the total value was $2,000 or more during the councillor's relevant term, but the gifts, loans or sponsored travel or accommodation benefits total $500 or less during the councillor's relevant term; or
- the conflict of interest arises solely because the councillor advisor is a related party, other than a close associate, of the councillor and the conflict of interest relates to the employment conditions of a councillor advisor for the councillor (including appointment, discipline, termination or remuneration).

For the purpose of assessing whether receipt of a gift, loan or sponsored travel or accommodation benefit in particular circumstances by a councillor or a related party of the councillor is a declarable conflict of interest, a reference to a close associate of a councillor in section 150EG or 150EH is taken to be a reference to a related party of the councillor.

New section 150EO also provides definitions for 'patron' and 'sponsored travel or accommodation benefit'.

New section 150EP (Who is a *related party* of a councillor) provides that a related party of a councillor is any of the following:

- an entity in which the councillor or a person mentioned below has an interest;
- a close associate of the councillor (other than an entity mentioned in section 150EJ(1)(f));

- a parent, child or sibling of the councillor's spouse;
- a person who has a close personal relationship with the councillor.

A parent, child or sibling of the councillor's spouse and a person who has a close personal relationship with the councillor is a related party of a councillor, only if the councillor knows or ought reasonably to know of their involvement in the matter.

New section 150EQ (Obligation of councillor with declarable conflict of interest) applies to a councillor if the 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 including the particulars below to the chief executive officer and at the next meeting of the local government or at a meeting of a committee of the local government if the matter is to be considered and decided at the committee meeting.

A note states that contravention of subsection (2) or (3) is misconduct under section 150L(1)(c)(iv) of the Local Government Act that could result in disciplinary action being taken against the councillor. The note also states that this section is a relevant integrity provision for the offence against section 201D (Dishonest conduct of councillor or councillor advisor).

The particulars for the declarable conflict of interest 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 section 150EQ(2)(a) or (3)(a) if the councillor has otherwise complied with section 150EQ and either a decision has been made under section 150ES(3)(a)(i) or (b)(i) (Procedure if councillor has declarable conflict of interest) 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(Minister's approval for councillor to participate or be present to decide matter).

New section 150ER (Procedure if meeting informed of councillor's personal interests) applies 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.

New section 150ES (Procedure if councillor has declarable conflict of interest) provides that if a councillor has a declarable interest in a matter under section 150EQ(2) or (3) or decided by eligible councillors at a meeting under 150ER(2), unless the councillor voluntarily decides not to participate in the decision, the eligible councillors must, by resolution, decide:

- for a matter that would (other than for the councillor's declarable 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 section 150ES(3)(a)(i) or (b)(i).

The councillor must comply with a decision of the eligible councillors under section 150ES(3)(a)(ii) or (b)(ii) or any conditions imposed on a decision under subsection (4). A maximum penalty of 100 penalty units or 1 year's imprisonment applies for non-compliance.

However, the councillor does not contravene this section by participating in a decision or being present under an approval given under section 150EV (Minister's approval for councillor to participate or be present to decide matter).

New section 150ET (Decisions of eligible councillors) 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 (Procedure if meeting informed of councillor's personal interests) or 150ES (Procedure if councillor as declarable conflict of interest) 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 them necessary to assist the eligible councillors to make the decision.

If the eligible councillors cannot make a decision under section 150ER or 150ES, the eligible councillors are taken to have decided under section 150ES(3)(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 the councillor participating in the decision, and all subsequent decisions about the matter.

A new heading for chapter 5B, part 4 (Other matters) is inserted.

New section 150EU (Procedure if no quorum for deciding matter because of prescribed conflicts of interest or declarable conflicts of interest) applies in relation to a 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 local government must do one of the following:

- delegate deciding the matter under section 257 (Delegation of local government powers), unless it cannot be delegated under that section;
- decide, by resolution, to defer the matter to a later meeting;
- decide, by resolution, not to decide the matter and take no further action in relation to the matter.

The local government 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 150EK(1), 150EM(2), 150EQ(2)(a) or (3)(a) or 150ES(5) by participating in a decision or being present while the matter is discussed and voted on, for the purpose of delegating the matter or deferring the matter to a later meeting.

New section 150EV (Minister's approval for councillor to participate or be present to decide matter) 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) (Procedure if no quorum for deciding matter because of prescribed conflicts of interest or declarable conflicts of interest)and deciding the matter cannot be delegated under section 257 (Delegation of local government powers). The Minister may also give the approval subject to the conditions stated in the notice.

New section 150EW (Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest) 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), the councillor who has the belief or suspicion must

immediately inform the person 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.

A note states that contravention of subsection (2) or (3) is misconduct under section 150L(1)(c)(iv) of the Local Government Act that could result in disciplinary action being taken against the councillor.

New section 150EX (Obligation of councillor if conflict of interest reported under s 150EW) 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 (Dealing with prescribed conflict of interest at a meeting) 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 150EQ(2) (Obligation of councillor with declarable conflict of interest) and 150ES (Procedure if councillor has declarable conflict of interest) are taken to apply to the relevant councillor for the matter.

New section 150EY (Offence to take retaliatory action) provides that a person must not, because a councillor complied with section 150EW (Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest):

- 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; or
- 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.

New section 150EZ (Councillor with prescribed conflict of interest or declarable conflict of interest must not influence others) prohibits a councillor who has a prescribed conflict of interest or declarable conflict of interest in a matter from directing, influencing, attempting to influence, or discussing the matter with, another person who is participating in a decision of the local government relating to the matter.

A note states that contravention of this section, is misconduct under section 150L(1)(c)(iv) of the Local Government Act that could result in disciplinary action being taken against the councillor. Also, the section is a relevant integrity provision for the offence against section 201D (Dishonest conduct of councillor or councillor advisor).

However, a councillor does not contravene subsection (2) 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(3)(a)(i) or (b)(i) or approved by the Minister under section 150EV; or
- giving the chief executive officer, 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.

New section 150FA (Records about prescribed conflicts of interest or declarable conflicts of interest–meetings) 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 prescribed conflict of interest or declarable 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 prescribed conflict of interest or declarable 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.

If minutes are not required for a meeting, the information must be recorded in another way prescribed by regulation.

Clause 105 Amendment of s 160 (When a councillor's term ends)

Clause 105 amends section 160 to clarify that the declaration referred to in paragraph (b) is a declaration made under a regulation under section 160A of the Local Government Act.

Clause 106 Replacement of s 161 (What this division is about)

Clause 106 replaces section 161 of the Local Government Act. The new section provides for the 'term' of a local government to be the period starting on the day when the last quadrennial election was held and ending on the day before the next quadrennial election is held.

Clause 107 Amendment of s 163 (When a vacancy in an office must be filled)

Clause 107 amends section 163 to provide that, if the office of a councillor (other than the mayor) becomes vacant 3 months or more before quadrennial elections are required to be held the local government must fill the vacant office. If the office of a councillor (other than the mayor) becomes vacant within 3 months of when quadrennial elections are required to be held, the local government may decide not to fill the vacant office.

If a mayor's office becomes vacant before the quadrennial elections are required to be held, the local government must fill the vacant office.

The Local Government Act section 163(3) provides that the local government must fill the vacant office within 12 weeks after the office becomes vacant. For greater alignment with the City of Brisbane Act, the Bill changes the timeframe to 2 months.

Clause 108 Omission of s 164 (Filling a vacancy in the office of mayor)

Clause 108 omits section 164 of the Local Government Act.

Clause 109 Replacement of s 166 (Filling a vacancy in the office of another councillor)

Clause 109 replaces section 166 of the Local Government Act and inserts new section 166A and new section 166B.

New section 166 (Filling vacancy in office of mayor or other councillor of local government area divided into single-member divisions) provides for filling a vacancy in the office of mayor or councillor of a local government area divided into single-member divisions. It applies if a local government is to fill a vacant office of a mayor or councillor during the first 36 months of the local government's term. The vacant office must be filled by a by-election.

New section 166A (Filling other vacancies in office of councillor) provides for filling a vacancy in the office of a councillor of an undivided local government or a local

government divided into multi-member divisions. It applies if the vacant office becomes vacant during the first 36 months of the local government's term.

For section 166A, a 'runner-up' for a vacant office of a councillor means a person who was a candidate for the office in the last quadrennial election, other than the former councillor or a person who holds office as a councillor or mayor when the office becomes vacant.

The 'order of priority' for runners-up in a quadrennial election means the order of runners-up ranked according to the number of votes received by each runner-up in the election, starting with the runner-up who received the highest number of votes in the election. For deciding the order of priority if 2 or more runners-up in a quadrennial election have an equal number of votes, the electoral commission must, in the presence of 2 witnesses, follow the process stated in the *Local Government Electoral Act 2011* section 98(7)(a) to (g) and (8) for the runners-up. The runner-up whose name is recorded as mentioned in section 98(7)(g) is taken to be higher in the order of priority. The process must be repeated until the order of priority for each runner-up has been decided. The electoral commission must allow each runner-up, or their representative, to be present for the process.

If the section applies, the chief executive officer must ask the electoral commission to comply with subsection (3). Section 166A(3) requires the electoral commission to give a vacancy notice to the runner-up who is first in the order of priority. The notice must state that the office of the former councillor is vacant; and if the runner-up is qualified to be a councillor, the runner-up may consent to being appointed to the vacant office; and the day and time by which consent must be given to the electoral commission. The electoral commission may agree to extend the day and time stated in the vacancy notice if it considers it reasonable to do so in the circumstances.

If a runner-up consents to the appointment on or before the deadline, the electoral commission must notify the chief executive officer that the runner-up has consented; and the local government must fill the vacant office by appointing the runner-up.

If consent is not given by the runner-up on or before the deadline the electoral commission must give a vacancy notice to the runner-up who is next in the order of priority. If consent is not given by the runner-up who is next in the order of priority on or before the deadline, the electoral commission must repeat the step of giving the notice until a runner-up consents to the appointment. If there are no runners-up remaining, the vacant office must be filled by a by-election.

A definition of 'deadline', for giving consent, is provided.

New section 166B (Filling vacancy in office of mayor or other councillor during final part of local government's term) provides for filling a vacancy in the office of mayor or councillor during the final part of the local government's term. The 'final part' means the period starting 36 months after the start of the term of the local government and ending on the day before the next quadrennial election is held.

The vacant office must be filled by the local government appointing, by resolution, if the former councillor was the mayor, another councillor to the office or otherwise a

person who is qualified to be a councillor and, if the former councillor was elected or appointed to office as a political party's nominee, the political party's nominee.

If the person to be appointed must be the political party's nominee, the chief executive officer must request the political party to advise the full name and address of its nominee by notice given to the party's registered officer within 14 days of the office becoming vacant.

If the person to be appointed need not be a political party's nominee, the chief executive officer must, within 14 days after the office becomes vacant invite nominations from any person who is qualified to be a councillor by public notice and from each person who was a candidate for the office of the former councillor at the most recent quadrennial election by notice. Amendments provide that the public notice is published on the local government's website and in other ways the chief executive officer considers appropriate. If the chief executive officer receives any nominations from qualified persons or candidates, the local government must fill the vacant office by appointing one of those persons or candidates.

Clause 110 Amendment of s 170 (Giving directions to local government staff)

Clause 110 amends section 170(3) to provide that councillors, including the mayor, cannot give directions to any other local government employees unless the direction is given in accordance with the guidelines made under new section 170AA of the Local Government Act about the provision of administrative support to councillors.

Clause 111 Insertion of new s 170AA

Clause 111 inserts new section 170AA (Guidelines about provision of administrative support to councillors) to provide that the chief executive officer may make guidelines about the provision of administrative support by local government employees to councillors. A direction purportedly given by a councillor to a local government employee is of no effect if the direction does not comply with the guidelines.

The guidelines must include:

- when a councillor may be provided with administrative support by a local government employee;
- how and when a councillor may give a direction to a local government employee in relation to the provision of administrative support; and
- a requirement that a councillor may give a direction only if the direction relates directly to administrative support to be provided by the local government employee under the guidelines.

Clause 112 Omission of ss 171A and 171B

Clause 112 omits section 171A as the offence relating to the use of inside information by a person who is or has been a councillor is inserted by clause 119 (new section 201F).

The amendments also omit section 173B as the obligation of councillors to correct their register of interests is inserted by clause 119 (new section 201B).

Clause 113 Omission of ch 6, pt 2, div 5A (Dealing with councillors' personal interests in local government matters)

Clause 113 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 114 Amendment of ch 6, pt 5 hdg (Local government employees)

Clause 114 amends the heading for chapter 6, part 5 to indicate that part 5 is also relevant for councillor advisors and other staff, not only local government employees.

Clause 115 Insertion of new ch 6, pt 5, div 2A

Clause 115 inserts new chapter 6, part 5, division 2A to provide for the appointment, functions and conduct of councillor advisors.

A new heading for chapter 6, part 5, division 2A (Councillor advisors) is inserted.

New section 197A (Appointment and functions of councillor advisors) provides that a local government prescribed by regulation may, by resolution, allow a councillor to appoint councillor advisors to assist the councillor in performing responsibilities under the Act. A councillor advisor must enter into a written contract of employment with the local government. A councillor is expressly prohibited from appointing a 'close associate' of the councillor as a councillor advisor, such as a spouse, parent, child or sibling.

The contract of employment will be required to provide for:

- the councillor advisor's conditions of employment (including remuneration, leave and superannuation entitlements);
- the functions and key responsibilities of the councillor advisor;
- a requirement that the councillor advisor comply with the code of conduct made by the Minister under new section 197C of the Act;
- when and what types of disciplinary action may be taken against the councillor advisor.

A councillor who appoints a councillor advisor may give a direction to the councillor advisor, however a councillor advisor's functions and responsibilities cannot include carrying out or assisting in an activity relating to a councillor's campaign for re-election, or directing a local government employee.

A regulation may prescribe the number of councillor advisors each councillor may appoint and limit the functions and key responsibilities that may be provided for in a councillor advisor's contract of employment.

New section 197B (When appointment ends) provides that a councillor advisor's appointment automatically ends on the day the councillor advisor is convicted of any of the following offences:

- misuse of information by advisor (amended section 200(2) or (4));
- dishonest conduct of advisor (new section 201D);

- prohibited conduct by advisor in possession of inside information (new section 201F(2) or (3));
- advisor giving false or misleading information (section 234(1)).

Also, a councillor advisor's appointment automatically ends 2 weeks after the term of the councillor who appointed the councillor advisor ends or the councillor is suspended from office.

New section 197C (Minister to make councillor advisor code of conduct) provides that the Minister must make a councillor advisor code of conduct that sets out standards of behaviour for councillor advisors in performing their functions for a local government and that the approved code of conduct must be published on the department's website. The code of conduct may contain anything the Minister considers necessary for, or incidental to, the standards of behaviour and must be consistent with the local government principles under sections 4 of the City of Brisbane Act and the Local Government Act.

Clause 116 Amendment of s 199 (Improper conduct by local government employees)

Clause 116 restructures section 199 to clarify the persons to whom the section applies. The amendments make it clear that the section does not apply to councillor advisors.

Clause 117 Amendment of s 200 (Use of information by local government employees)

Clause 117 amends section 200 to apply the offences relating to use of information that currently apply to local government employees to councillor advisors. A person who is, or has been, a councillor advisor must not use information acquired as an advisor to gain (directly or indirectly) an advantage for the person or someone else, or cause detriment to the local government. Also, a person who is, or has been, a councillor advisor must not release information that the person knows, or should reasonably know, is information that is confidential to the local government and the local government wishes to keep confidential. The maximum penalties for these offences are 100 penalty units or 2 years imprisonment.

Clause 118 Amendment of s 201 (Annual report must detail remuneration)

Clause 118 amends section 201 to provide that the annual report of a local government that resolves to allow a councillor to appoint councillor advisors must include the number of councillor advisors appointed for each councillor for the year and the total remuneration payable to each councillor's advisors.

Clause 119 Insertion of new ch 6, pt 5A

Clause 119 inserts new chapter 6, part 5A in relation to obligations of councillors and councillor advisors.

A new heading for chapter 6, part 5A (Obligations of councillors and councillor advisors) is inserted.

New section 201A (Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment) provides that if a councillor, at the start of the councillor's term or if a councillor advisor, when the advisor is appointed, has an interest that must be recorded in a register of interests under a regulation for the councillor, councillor advisor or a person who is related to the councillor or councillor advisor, the councillor or councillor advisor must, in the approved form, inform the chief executive officer of the particulars of the interest within 30 days after the day a councillor's term starts or the councillor advisor is appointed.

A note states contravention of this section by a councillor is misconduct under the Local Government Act that could result in disciplinary action being taken against the councillor (see section 150L(1)(c)(iv)). The section is also a relevant integrity provision for the offence against section 201D (Dishonest conduct of councillor or councillor advisor).

A definition of a person 'related' to a councillor or councillor advisor is provided at subsection (3) and (4), respectively.

New section 201B (Obligation of councillor or councillor advisor to correct register of interests) provides that if a councillor or councillor advisor, or a person related to a councillor or councillor advisor, acquires an interest that must be recorded in a register of interests under a regulation or there is a change to the particulars required to be included in a register of interests under a regulation, the councillor or councillor advisor must, in the approved form, inform the chief executive officer of the particulars of the new interest or the change to the particulars within 30 days after the interest is acquired or the change happens.

A note states contravention of this section by a councillor is misconduct under the Local Government Act that could result in disciplinary action being taken against the councillor (see section 150L(1)(c)(iv)). The section is also a relevant integrity provision for the offence against section 201D (Dishonest conduct of councillor or councillor advisor).

New section 201C (Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests) provides that each councillor and councillor advisor must, within 30 days after the end of each financial year, inform the chief executive officer in the approved form:

- if the councillor or councillor advisor, or a person related to the councillor or councillor advisor, has acquired an interest that must be, but is not, recorded in a register of interests under a regulation—the particulars of the interest that must be recorded in the register of interests; and
- if there has been a change to the particulars required to be included in a register of interests under a regulation for the councillor or councillor advisor, or a person who is related to the councillor or advisor—the change to the particulars; and
- if no new interest has been acquired or there has been no change to the particulars required to be included in a register of interests under a regulation—that there has been no interest acquired or change to the particulars for an interest.

A note states contravention of this section by a councillor is misconduct that could result in disciplinary action being taken against the councillor (see section 150L(1)(c)(iv)). The section is also a relevant integrity provision for the offence against section 201D (Dishonest conduct of councillor or councillor advisor).

New section 201D (Dishonest conduct of councillor or councillor advisor) provides that a councillor or councillor advisor must not contravene a relevant integrity provision with intent to dishonestly obtain a benefit for the councillor, councillor advisor or someone else, or to dishonestly cause a detriment to someone else. A maximum penalty of 200 penalty units or 2 years imprisonment applies.

For a councillor, relevant integrity provision means each of the following provisions:

- Section 150EK (Councillor must not participate in decisions);
- Section 150EL (Obligation of councillor with prescribed conflict of interest);
- section 150EQ (Obligation of councillor with declarable conflict of interest);
- section 150EZ (Councillor with prescribed conflict of interest or declarable conflict of interest must not influence others);
- section 201A (Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment);
- section 201B (Obligation of councillor or councillor advisor to correct register of interests);
- section 201C (Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests);
- section 234 (False or misleading information), if the information is given under section 201A, 201B or 201C.

For a councillor advisor, relevant integrity provision means each of the following provisions:

- section 201A (Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment);
- section 201B (Obligation of councillor or councillor advisor to correct register of interests);
- section 201C (Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests);
- section 234 (False or misleading information), if the information is given under section 201A, 201B or 201C.

New section 201D also provides definitions for ‘benefit’ and ‘detriment’.

New section 201E (Proceeding for offence against s 201D) provides that an offence against section 201D is a misdemeanour. A proceeding for the offence may be started only with the written consent of the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1984*.

A proceeding for an offence against section 201D may be taken, at the election of the prosecution, by way of summary proceeding or on indictment. However, a magistrate must not hear an indictable offence against section 201D summarily if satisfied, on an application made by the defence, that because of exceptional circumstances the offence should not be heard and decided summarily. In this event the court must stop treating

the proceeding as a proceeding to hear and decide the charge summarily and the proceeding must be conducted as a committal proceeding, a plea of the defendant at the start of the proceeding must be disregarded, the evidence already heard by the court is taken to be evidence in the committal proceeding and section 104 of the *Justices Act 1886* must be complied with for the committal proceeding.

A Magistrates Court that summarily deals with an offence against this section must be constituted by a magistrate and has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

New section 201F (Prohibited conduct by councillor or councillor advisor in possession of inside information) provides that a person (the *insider*) who is, or has been, a councillor or councillor advisor must not use inside information acquired as a councillor or councillor advisor that the insider knows, or ought reasonably to know, is not generally available to the public to:

- cause the purchase or sale of an asset if knowledge of the inside information would likely influence a reasonable person in deciding whether or not to buy or sell the asset; or
- cause the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.

The maximum penalties for non-compliance are 1,000 penalty units or 2 years imprisonment, consistent with the prohibited use of inside information offence/penalties for councillors under repealed section 171A of the Local Government Act.

New section 201F substantially replicates repealed section 171A of the Local Government Act and relocates the substantive provisions to apply them to both councillors and councillor advisors.

The new section also provides definitions for ‘cause’, ‘corporate entity’ and ‘inside information’.

Clause 120 Amendment of s 207 (End of appointment of interim management)

Clause 120 consequentially amends section 207 to clarify that a person stops being an interim administrator or a member of an interim management committee at the conclusion of a fresh election of councillors of the local government or the next quadrennial election, whichever is the earlier.

Clause 121 Amendment of s 234 (False or misleading information)

Clause 121 amends section 234 by inserting a note stating that in certain circumstances the section is a relevant integrity provision for the offence against section 201D (Dishonest conduct of councillor or councillor advisor).

Clause 122 Amendment of s 242 (Proceedings for indictable offences)

Clause 122 amends section 242 to provide that this section does not apply to proceedings for a charge of an indictable offence against section 201D (Dishonest conduct of councillor or councillor advisor). Clause 119 provides for the proceedings for a charge against section 201D in new section 201E (Proceedings for offence against s 201D).

Clause 123 Insertion of new ch 9, pt 15

Clause 123 inserts chapter 9, part 15 to provide transitional provisions for repealed integrity offences and amendments relating to conflicts of interest.

A new heading for chapter 9, part 15 (Transitional provisions for Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2019) is inserted.

New section 333 (Proceedings for repealed integrity offences) provides that for an offence against a repealed integrity offence provision committed by a person before the commencement , without limiting the *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.), a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence as if the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2019*, section 112 (Omission of ss 171A and 171B) and section 113 (Omission of ch 6, pt 2, div 5A) 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(5); and a disqualifying offence for section 153(6).

The following offences are repealed integrity offences: section 171A(2) and (3) (Prohibited conduct by councillor in possession of inside information), section 171B(2) (Obligation of councillor to correct register of interests), section 175C(2) (Councillor's material personal interest at a meeting), section 175E(2) and (5) (Councillor's conflict of interest at a meeting), section 175H (Offence to take retaliatory action) and section 175I(2) and (3) (Offence for councillor with material personal interest or conflict of interest to influence others).

New section 334 (Continuation of Minister's approval for councillor to participate or be present to decide matter) provides that for a notice given before the commencement by the Minister to a councillor under section 175F, if the notice is in force immediately before the commencement, it is taken to be a notice given under section 150EV.

Clause 124 Amendment of sch 1 (Serious integrity offences and integrity offences)

Clause 124 amends schedule 1, part 1 to prescribe section 201D (Dishonest conduct of councillor or councillor advisor) as a serious integrity offence.

Amendments to schedule 1, part 2 omit the following offences under the Local Government Act as integrity offences – section 171A(2) or (3) (Prohibited conduct by councillor in possession of inside information), section 171B(2) (Obligation of councillor to correct register of interests), section 175C(2) (Councillor's material personal interest at a meeting), section 175E(2) or (5) (Councillor's conflict of interest at a meeting), section 175H (Offence to take retaliatory action) and section 175I(2) or (3) (Offence for councillor with material personal interest or conflict of interest to influence others).

The amendments also prescribe the following offences under the Local Government Act as integrity offences – section 150EM(2) (Dealing with prescribed conflict of interest at a meeting), section 150EY (Offences to take retaliatory action) and section 201F (Prohibited conduct by councillor or councillor advisor in possession of inside information).

Clause 125 Amendment of sch 4 (Dictionary)

Clause 125 amends schedule 4 to:

- omit the definitions of 'beginning', 'conflict of interest', 'final part', 'local government meeting', 'material personal interest', 'middle', 'ordinary business matter', 'perceived conflict of interest' and 'real conflict of interest'
- insert definitions for 'close associate', 'councillor advisor', 'declarable conflict of interest', 'eligible councillor', 'executive officer', 'gift', 'group of candidates', 'interest', 'loan', 'local government meeting', 'prescribed conflict of interest', 'related', 'related party', 'relevant term' and 'term'.

Part 3 Amendment of Local Government Electoral Act 2011

Clause 126 Act amended

Clause 126 provides that part 3 amends the *Local Government Electoral Act 2011* (the Local Government Electoral Act).

Clause 127 Amendment of s 43 (Register of group agents)

Clause 127 amends section 43 to remove subsection 43(5) as new section 112B, as inserted by this Bill, addresses who is responsible for the obligations and liability of an agent of a group of candidates under the Local Government Electoral Act where there is no agent recorded on the register for the group of candidates.

Clause 128 Amendment of s 86 (Formal and informal ballot papers—optional-preferential voting)

Clause 128 amends subsection 86(3) to clarify that if a ballot paper is sealed in a declaration envelope, the envelope must be signed and witnessed as required under part 4 of the Local Government Electoral Act.

Clause 129 Amendment of s 92 (Preliminary counting of ordinary votes)

Clause 129 amends subsection 92(11) to clarify that the subsection applies where the presiding officer is a person other than the returning officer.

Clause 130 Amendment of s 105 (Arrangements for fresh election)

Clause 130 amends section 105(1) to clarify the arrangements for a fresh election provided for under the section are to apply if:

- the Governor in Council gives effect to a recommendation by the Minister to dissolve a local government under section 123(3)(b)(i) of the Local Government Act (as amended by the Bill); or
- a fresh election is required under a regulation implementing a recommendation of the change commission under chapter 2, part 3 of the Local Government Act.

Clause 131 Insertion of new s 112B

Clause 131 inserts new section 112B (Responsibility for compliance in absence of agent) to provide that if the Local Government Electoral Act imposes an obligation on the agent of a registered political party or group of candidates, and the political party or group does not have an agent, then:

- for a political party, each member of the executive committee of the party, however described, is responsible for compliance with the obligation, for the period where there is no agent, as if it were imposed on the member of the committee
- for a group of candidates, each member of the group is responsible for compliance with the obligation, for the period where there is no agent recorded for the group in the register of group agents under section 43 of the Local Government Electoral Act, as if it were imposed on the member.

Clause 132 Amendment of s 124 (Expenditure return – candidate, group of candidates or registered political party)

Clause 132 omits the definition of bank statement from the Local Government Electoral Act section 124(5).

Clause 133 Amendment of s 125 (Summary expenditure return – candidate, group of candidates or registered political party)

Clause 133 relocates the definition of bank statement to the Local Government Electoral Act section 125.

Clause 134 Amendment of s 130B (Electoral commission must give reminder notice about requirement for return)

Clause 134 amends the Local Government Electoral Act section 130B to provide for the electoral commission to give reminder notices about summary returns which have not been received within 10 weeks of polling day or the day a poll would have been held, rather than about both real-time returns and summary returns.