

Queensland



# LOCAL GOVERNMENT ACT 1993

**Reprinted as in force on 7 July 1995  
(includes amendments up to Act No. 32 of 1995)**

**Reprint No. 3**

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# Information about this reprint

This Act is reprinted as at 7 July 1995. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current drafting practice (s 27)
- use conjunctives and disjunctives consistent with current drafting practice (s 28)
- use expressions consistent with current drafting practice (s 29)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 37 and 39)
- number and renumber certain provisions and references (s 43)
- correct minor errors (s 44)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A Table of previous reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in the reprint, including—**
  - **Table of changed names and titles**
  - **Table of changed citations and remade laws**
  - **Table of obsolete and redundant provisions**
  - **Table of corrected minor errors**
  - **Table of renumbered provisions**
- **editorial changes made in earlier reprints.**

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# LOCAL GOVERNMENT ACT 1993

[as amended by all amendments that commenced on or before 7 July 1995]

## An Act to provide for local government, and for related purposes

### CHAPTER 1—PRELIMINARY

#### PART 1—INTRODUCTION

##### Short title

1. This Act may be cited as the *Local Government Act 1993*.

#### PART 2—OBJECTS

##### Objects of this Act

3. The objects of this Act include—
  - (a) providing a legal framework for an effective, efficient and accountable system of local government; and
  - (b) recognising a jurisdiction of local government sufficient to allow a local government to take autonomous responsibility for the good rule and government of its area with a minimum of intervention by the State; and
  - (c) providing for community participation in the local government system; and
  - (d) defining the role of participants in the local government system;

and

- (e) establishing an independent process for ongoing review of certain important local government issues.

## PART 3—INTERPRETATION

### Definitions

4. In this Act—

**“Aboriginal local government”** means a body that has the function of local government under the *Community Services (Aborigines) Act 1984*.

**“additional territorial unit”**, of a local government, has the meaning given by section 23 (Exercise of jurisdiction outside its local government area—the “additional territorial units”).

**“appeal tribunal”** means an appeal tribunal established under this Act to hear an appeal about the decision about which the expression is used.

**“appointer”**, of a local government employee, means—

- (a) for the chief executive officer—the local government; or
- (b) for a senior executive officer appointed by the local government—the local government; or
- (c) for another employee—the chief executive officer.

**“approved inspection program”** see section 690.

**“area”** means—

- (a) for a local government—its basic territorial unit; or
- (b) for a joint local government—its territorial unit.

**“authorised person”**—

- (a) in chapter 3 (Interaction with the State), part 2 (Intervention by the State)—means a person who is appointed under section 116 (Inquiries, investigations and inspections by authorised persons);

and

- (b) in chapter 10 (Rates and charges), part 3 (Categorisation of land for differential rating), division 2 (Entry on land for categorisation)—has the meaning given by section 576 (Meaning of “authorised person” for division); and
- (c) in chapter 11 (Provisions aiding local government), part 5 (Enforcement of local government Acts)—has the meaning given by section 674 (Definitions).

**“basic territorial unit”**, of a local government, has the meaning given by section 22 (Exercise of jurisdiction for its local government area—the “basic territorial unit”).

**“budget meeting”**, of a local government, means a meeting of the local government at which it adopts its budget for a financial year.

**“certified copy”**, of a local government’s local law or local law policy, means a copy of the local law or local law policy certified by the local government’s chief executive officer to be the local law or local law policy as made by the local government.

**“cleansing services”** includes services for the removal of nightsoil, refuse or recyclable material.

**“combined form”** means a form that—

- (a) gives information required by this Act and other Acts about a change of ownership of land; and
- (b) may be given to the registrar of titles.

**“commission”** means the Local Government Grants Commission.

**“commissioner”** means the Local Government Commissioner.

**“community titles Act”** means—

- the *Building Units and Group Titles Act 1980*
- the *Integrated Resort Development Act 1987*
- the *Mixed Use Development Act 1993*
- another Act prescribed by regulation.

**“company limited by shares”** has the same meaning as in the Corporations Law.

**“component local government”** means a local government entitled to be represented on a joint local government, either in its own right or as a member of a group of local governments.

**“conclusion”**, of a local government election, has the meaning given by section 6 (Meaning of “conclusion” of local government election).

**“consultation period”**—

- (a) for a proposed local law—means the period mentioned in section 476 (Step 3—consult with public about proposed law); and
- (b) for a proposed local law policy—means the period mentioned in section 485 (Step 2—consult with public about proposed policy).

**“continuing candidate”**, for a counting of votes, means a candidate who has not been excluded at a previous count of votes.

**“councillor”**, of a local government, includes the local government’s mayor.

**“cut-off day”**, for the voters roll for an election, means the day to which the voters roll for the election must be compiled under section 225 (Cut-off day for voters roll).

**“decision maker”**, for the categorisation of land for a differential general rate, has the meaning given by section 579(2)(c)(i) (Notice to owner of categorisation).

**“declaration envelope”** means an envelope on which there is a declaration to be made by an elector.

**“declaration form”** means a form on which there is a declaration to be made by an elector.

**“declaration vote”** means a vote for which a declaration envelope must be completed.

**“declaration voter”** means a person mentioned in any of the following sections—

- section 289 (Who may cast a declaration vote)
- section 290 (Who must cast a declaration vote in ordinary elections)

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- section 291 (Declaration voting for postal ballot elections).

**“deputy commissioner”** means a deputy local government commissioner.

**“differential general rate”** means a rate (other than a special rate) made and levied equally on the unimproved value of all rateable land in a local government area included in a category decided by the local government in levying the rate.

**“dispose”** of land or goods includes sell the land or goods.

**“division”**, of a local government area, means a division of the area established for the election of councillors or a councillor.

**“effective value”** of land for a financial year (the **“relevant financial year”**), for the purpose of calculating the land’s unimproved value to make and levy rates for a financial year (the **“current financial year”**), means—

- (a) if the relevant financial year is a financial year other than the current financial year—the unimproved value of the land decided under the *Valuation of Land Act 1944* effective on the last day of the financial year; or
- (b) if the relevant financial year is the current financial year—the unimproved value of the land decided under the *Valuation of Land Act 1944*.

**“elect”** includes re-elect.

**“election”** means an election of councillors, or a councillor, of a local government.

**“election matter”** means anything able to, or intended to—

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

**“election period”**, for an election, means the period—

- (a) starting on the day when public notice of the holding of the election is given under section 248(1) (Calling for nominations); and
- (b) ending on the close of the poll in the election.

**“elector”** means a person entitled to vote under this Act.

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**“electoral officer”**, for an election, means the returning officer or a presiding or issuing officer.

**“electoral paper”** means a ballot paper or declaration envelope or form.

**“electoral roll”** means a roll kept under the *Electoral Act 1992*.

**“encumbrance”** includes any of the following that affects land—

- (a) a mortgage, lien or charge;
- (b) a caveat;
- (c) an agreement;
- (d) a judgment, writ or process;
- (e) an interest adverse to the interest of the land’s owner;

but does not include an easement.

**“enterprise”** includes any business, undertaking and activity.

**“enterprise power”** has the meaning given by section 410(2) (Engagement in or help to enterprises).

**“exhausted ballot paper”**, for a count of votes, means a ballot paper on which there is not recorded a vote for a continuing candidate.

**“facility”** includes work.

**“ferry”** includes a punt and floating pontoon.

**“foreshore”** means the land lying between high-watermark and low-watermark at ordinary spring tides.

**“fresh election”** means an election under chapter 5 (Local government elections), part 7 (Fresh elections).

**“general charge”** means a charge mentioned in section 570 (General charges).

**“general rate”** means a rate (other than a separate rate) made and levied by a local government equally on the unimproved value of all rateable land in its area.

**“government entity”** has the same meaning as in the *Government Owned Corporations Act 1993*.

**“holding”** means land held from the State for a leasehold interest.

**“improved land”** means land, or the part of land, that is—

- (a) the site or curtilage of a building; or
- (b) a garden, lawn, yard or court; or
- (c) a park, plantation, planted walk or avenue; or
- (d) a nursery for trees; or
- (e) land under cultivation.

**“infringement notice”**, for an infringement notice offence, means a notice under the *Justices Act 1886*, section 98C.

**“infringement notice offence”** means an offence to which the *Justices Act 1886*, part 4A applies.

**“institution”** means any of the following—

- (a) a hospital;
- (b) a convalescent home;
- (c) a nursing home;
- (d) a home for the aged;
- (e) a hostel for the aged or infirm;
- (f) a prison or other place of confinement;
- (g) another place prescribed by regulation as an institution.

**“interim development control provisions”** has the meaning given by the *Local Government (Planning and Environment) Act 1990*.

**“interim local law”** has the meaning given by section 463 (Meaning of “interim local law”).

**“issuing officer”** means a person appointed to issue ballot papers, declaration envelopes or declaration forms to electors, and includes a returning officer and presiding officer.

**“joint local government”** means a joint local government established under this Act.

**“joint local government area”** means a part of the State that is established as a joint local government area under this Act.

**“jurisdiction of local government”** has the meaning given by section 25

(Jurisdiction of local government).

**“keeper of the register”** has the meaning given by section 731 (Access to register of interests).

**“land”** includes—

- (a) freehold land; and
- (b) a holding; and
- (c) a mining claim.

**“land record”**, of a local government, means the record of rateable land in its area it is required to keep under section 590 (Land record to be kept).

**“levee bank”** means an embankment or structure by which—

- (a) water is prevented or reduced from flowing into or from land; or
- (b) the flooding of land is prevented or reduced.

**“limited partner”** has the same meaning as in the *Partnership (Limited Liability) Act 1988*.

**“local governing body”** has the meaning given by the *Local Government (Financial Assistance) Act 1986* (Cwlth).

**“local government”** means a local government established under this Act.

**“local government Act”** means an Act under which a local government may exercise the jurisdiction of local government, and includes, for example, this Act, the *Local Government (Planning and Environment) Act 1990*, a local law, a planning scheme or interim development control provisions.

**“local government area”** means a part of the State that is established as a local government area under this Act.

**“Local Government Association”** means the Local Government Association of Queensland (Incorporated).

**“Local Government Finance Standards”** means the standards in force under section 416 (Issue of standards).

**“local government matter”** means a matter about local government.

**“local law”** has the meaning given by section 461 (Meaning of “local

law”).

“**local law policy**” has the meaning given by section 464 (Meaning of “local law policy”).

“**material personal interest**” of a person has the meaning given by section 7 (Meaning of “material personal interest”).

“**member**” includes—

- (a) for a joint local government—the president and deputy president of the joint local government; or
- (b) for a local government committee—the chairperson and deputy chairperson of the committee; or
- (c) for the commission—the chairperson and deputy chairperson.

“**merit**”, of an applicant, includes the applicant’s abilities, knowledge and skills relevant to the position concerned.

“**minimum general rate levy**” means an amount fixed as the minimum amount payable as a general rate or differential general rate for all or any rateable land in a local government area.

“**mining claim**” means a mining claim to which the *Mineral Resources Act 1989* applies.

“**mining lease**” means a mining lease to which the *Mineral Resources Act 1989* applies.

“**misconduct**”, of a local government employee, means—

- (a) disgraceful or improper conduct that shows unfitness to be or to continue as a local government employee; or
- (b) behaviour that does not satisfy a standard of behaviour generally expected of local government employees; or
- (c) a contravention of a provision of this or another Act setting out what the employee must or must not do (whether or not the Act provides for a penalty for contravening the provision).

“**mobile polling booth**” means a place declared by a returning officer as a mobile polling booth for a ballot in a poll.

“**model local law**” has the meaning given by section 462 (Meaning of “model local law”).

**“nomination day”** means the day specified as the nomination day for an election—

- (a) in a notice under section 248 (Calling for nominations); or
- (b) in a gazette notice under section 262 (Extension of times).

**“notice of realignment”** means a notice under section 498(3) (Realignment of roads).

**“open to inspection”** has the meaning given by section 8 (Meaning of “open to inspection”).

**“ordinary polling booth”** means a place, or part of a place, a returning officer arranges to be used on polling day to enable electors in general to vote.

**“ordinary voting hours”** means the hours between 8 a.m. and 6 p.m.

**“overdue rate”** has the meaning given by section 612 (Meaning of “overdue rate”).

**“owner”** of land has the meaning given by section 5 (Meaning of “owner” of land).

**“pensioner”** means a person receiving a pension, allowance or benefit prescribed by regulation.

**“perform work”** includes take action to comply with a local government Act.

**“permissible company”** has the meaning given by section 411 (Specific enterprise powers).

**“place”** includes a vehicle.

**“planning scheme”** has the meaning given by the *Local Government (Planning and Environment) Act 1990*.

**“political party”** means an organisation registered as a political party under the *Electoral Act 1992*.

**“polling booth”** means—

- (a) an ordinary polling booth; or
- (b) a mobile polling booth; or
- (c) the place declared as a polling booth to enable an elector to cast a

declaration vote under section 298 (Declaration voting before polling day).

**“polling day”**, for an election, means the day—

- (a) specified in a notice under section 257 (Procedure if number of candidates exceeds number required); or
- (b) fixed by notice under section 259 (Procedure on death of candidate when poll to be conducted); or
- (c) fixed by a notice under section 262 (Extension of times); or
- (d) fixed by a notice under section 288 (Adjournment of poll).

**“postal ballot election”** means an election for a local government area, a division of a local government area or a part of a local government area for which the Governor in Council has directed that the poll be conducted by postal ballot.

**“public office”**, of a local government, means the premises kept as its public office under section 37 (Site of public office).

**“rate”** means a rate or charge mentioned in section 559(1) (Power to make and levy rates and charges), and includes any interest accrued, or premium owing, on a rate or charge mentioned in the section.

**“rateable land”** has the meaning given by section 553 (What land is rateable?).

**“rating category”** has the meaning given by section 579(2)(a) (Notice to owner of categorisation).

**“referable local government matter”** has the meaning given by section 65 (Meaning of “referable local government matter”).

**“registrar of titles”** means a public official or authority responsible for registering title to land and dealings affecting land.

**“remuneration”**, of a councillor or member of a committee of a local government, includes—

- (a) any fees or allowances, or reimbursement of expenses, paid to the councillor or member by the local government; and
- (b) any benefit or entitlement provided to the councillor or member by the local government.

**“required number”**, in chapter 8 (Local laws and local law policies), means the number decided by the Minister.

**“reviewable local government matter”** has the meaning given by section 64 (Meaning of “reviewable local government matter”).

**“road”** means—

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d);

but does not include a State-controlled road under the *Transport Infrastructure Act 1994*.

**“senior executive officer”**, of a local government, means an employee of the local government—

- (a) who reports directly to the chief executive officer; and
- (b) whose position ordinarily would be considered to be a senior position in the local government’s corporate structure.

**“separate charge”** means a charge made and levied by a local government equally on all rateable land in its area.

**“separate rate”** means a rate made and levied by a local government equally on the unimproved value of all rateable land in its area.

**“sign”** a thing includes the making of a mark on the thing before someone else who signs the thing as witness.

**“special charge”** means a charge made and levied by a local government on some, but not all, rateable land in its area.

**“special rate”** means a rate made and levied by a local government on the unimproved value of some, but not all, rateable land in its area.

**“State interest”**, for a local law or local law policy, a provision of a local law or local law policy, or a provision of a proposed local law, is—

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- (a) an interest that, in the Governor in Council or Minister's opinion, affects an economic, social or environmental interest of the State or a region; or
- (b) an interest in ensuring there is an efficient, effective and accountable system of local government; or
- (c) an interest prescribed by regulation.

**“State land”** means unallocated State land within the meaning of the *Land Act 1994*.

**“State office”**, of the department, means the department's address prescribed by regulation.

**“structure”** means anything built or constructed, whether or not attached to land.

**“territorial unit”**—

- (a) for a local government—has the meaning given by section 24 (Territorial unit of local government); or
- (b) for a joint local government—means its joint local government area.

**“time share scheme”**, for a structure, means a scheme or arrangement that is to operate for at least 3 years during which time the participants in the scheme or arrangement are, or may become, entitled to use, occupy or possess the structure, or part of the structure, for 2 or more periods.

**“Torres Strait Islander local government”** means a body that has the function of local government under the *Community Services (Torres Strait) Act 1984*.

**“unimproved value”** of land for a financial year—

- (a) if the relevant local government has made a resolution under section 555 (Local government may decide to average land values for rating purposes) for the financial year—means the averaged value of the land calculated under chapter 10 (Rates and charges), part 1 (General), division 2 (Averaging of valuations); or
- (b) for a mining claim—is the amount specified under section 566 (Unimproved value of mining claims); or
- (c) in any other case—has the meaning given by the *Valuation of*

*Land Act 1944.*

**“utility charge”** means a charge for the supply by a local government of water, gas, sewerage or cleansing services to any land or structure.

**“valuation authority”** means the chief executive within the meaning of the *Valuation of Land Act 1944*.

**“voters roll”**, for an election, is the roll compiled by the returning officer of persons entitled to vote at the election.

**“voting hours”**, for voting at a mobile polling booth or declaration voting at a place under section 298 (Declaration voting before polling day), means the hours when electors may enter the booth or place to vote at an election.

**“watercourse”** means a river, creek or channel where water flows naturally.

**Meaning of “owner” of land**

**5.(1)** An **“owner”** of land is—

- (a) a registered proprietor of freehold land; or
- (b) a purchaser of land to be held as freehold land that is being purchased from the State under an Act; or
- (c) a lessee of land held from the State, and a manager, overseer or superintendent of the lessee who lives on the land; or
- (d) a holder of—
  - (i) a mining claim or lease; or
  - (ii) an area mentioned in the *Mineral Resources Act 1989*, schedule 2, section 5; or
- (e) a lessee under the *Petroleum Act 1923*; or
- (f) a lessee of land held from a government entity or local government; or
- (g) the holder of—
  - (i) an occupation permit under an Act, a stock grazing permit under an Act or a permit prescribed by regulation; or

- (ii) a permit to occupy under the *Land Act 1994*.
- (iii) a permission to occupy from the Primary Industries Corporation; or
- (h) a licensee under an occupation licence or road licence under the *Land Act 1962*; or
- (i) for land on which there is a structure subject to a time share scheme—the person notified to the local government concerned as the person responsible for the administration of the scheme as between participants in the scheme; or
- (j) another person who—
  - (i) is entitled to receive the rent for the land; or
  - (ii) would be entitled to receive the rent for the land if it were leased at a rack-rent.<sup>1</sup>

(2) However, an owner does not include the State or a government entity except so far as it is liable under an Act to pay a rate.

### **Meaning of “conclusion” of local government election**

**6.** The “conclusion” of the election of a councillor is—

- (a) if the councillor is elected at an election of all councillors of the local government—the day on which the last declaration of a poll conducted in the election is published as required by this Act; or
- (b) if the councillor is elected at a by-election and—
  - (i) a poll is conducted—the day on which the declaration of the poll is published as required by this Act; or
  - (ii) a poll is not conducted—the day after the nomination day for the by-election; or
- (c) if, because the number of candidates nominated for election is the same or less than the number of councillors to be elected, the councillor is elected (other than at a by-election) and—

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<sup>1</sup> Rack-rent of land is a rent for the land that is the highest possible rent for the land. It implies that the land is leased commercially.

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- (i) 1 or more polls are conducted in the local government area—the day on which the last declaration of a poll conducted in the local government area is published as required by this Act; or
- (ii) no poll is conducted in the local government area—6 p.m. on the day that a poll would otherwise have been required under this Act to be conducted.

**Meaning of “material personal interest”**

**7.(1)** A person has a **“material personal interest”** in an issue if the person has, or should reasonably have, a realistic expectation that, whether directly or indirectly, the person or an associate stands to gain a benefit or suffer a loss depending on the issue’s outcome.

**(2)** An **“associate”** is any of the following persons—

- (a) a spouse or other member of the person’s household;
- (b) an entity (other than a government entity) of which the person or the person’s nominee is a member;
- (c) a partner of the person;
- (d) an employer (other than a government entity) of the person;
- (e) a person prescribed by regulation.

**(3)** However, a person does not have a material personal interest in an issue—

- (a) if the issue is about—
  - (i) the remuneration of councillors or members of a local government committee; or
  - (ii) salary, wages or other remuneration of local government employees; or
  - (iii) the terms on which goods, services or facilities are to be offered by the local government for use or enjoyment of the public in its area; or
  - (iv) the making of a rate or the levying of a rate or a general charge by the local government; or

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- (v) a planning scheme of general application in the local government's area; or
  - (vi) provision of superannuation entitlements or accident insurance for councillors or employees of the local government; or
- (b) if the interest is merely—
- (i) as an elector, ratepayer or resident of the local government's area; or
  - (ii) as a user of goods, services or facilities supplied, or to be supplied, by the local government (whether under a contract or otherwise) as a member of the public in common with other members of the public; or
  - (iii) as a member of a non-profit, charitable or religious organisation involving no personal gain or loss to the person; or
  - (iv) as a member of another entity in which the member does not have personal financial interest; or
- (c) merely because the person—
- (i) is an employee of the State or a government entity; or
  - (ii) is a candidate for election or appointment as mayor or deputy mayor of the local government or chairperson, deputy chairperson, member or delegate member of any of its committees; or
  - (iii) may become entitled to benefits under a policy of accident insurance, public liability or professional indemnity insurance held, or to be held, by the local government.

**Meaning of “open to inspection”****8.(1) If a document is “open to inspection”—**

- (a) if it is a document of a local government—it must be held in the local government's public office; and
- (b) if it is a document of another entity—it must be held in an office of the entity that is open to the public.

(2) If a person is authorised under this Act to inspect the document, the person may, free of charge and at any time when the office in which the document is held is open for business—

- (a) inspect the document; and
- (b) make copies of, or take extracts from, the document.

(3) The following persons are authorised to inspect the document—

- (a) if this Act specifies a description of person who may inspect the document—the person and the person’s agents;
- (b) in another case—all persons.

(4) The person (the “**custodian**”) who has the custody of the document is not required to supply any facility or service to a person in making a copy of, or taking an extract from, the document.

(5) However, if the custodian supplies a facility or service to a person in making a copy or extract, the custodian may charge a reasonable fee for the facility or service.

## **PART 4—APPLICATION OF ACT TO BRISBANE CITY COUNCIL**

### **Act applies only so far as expressly provided**

**9.(1)** This Act applies to the Brisbane City Council only so far as is expressly provided by this or another Act.

(2) The provisions of this Act that apply to the Brisbane City Council include the following—

- chapter 2 (The local government system)
  - part 1 (Local governments), divisions 2 (Roles of local governments) and 3 (Jurisdiction of local governments)
  - part 2 (Joint local governments)
  - part 3 (Joint action by local governments)

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- chapter 3 (Interaction with the State)
  - part 1 (Review of local government matters)
  - part 3 (Local Government Grants Commission)
- chapter 4 (Local government councillors)
  - part 1 (Membership of local governments)
  - part 3 (Entitlements and obligations), division 2 (Obligations of councillors)
  - part 4 (Vacancies in membership of local governments)
- section 244 (Qualification for nomination)
- section 245 (Prohibition of dual candidature)
- section 246 (Leave to local government employee to contest election)
- chapter 6 (General operation of local governments)
  - part 4 (Enterprises)
- chapter 8 (Local laws and local law policies)
- chapter 9 (Local government infrastructure)
- chapter 10 (Rates and charges)
  - part 1 (General), division 2 (Averaging of valuations)
  - part 7 (Recovery of rates)
- chapter 11 (Provisions aiding local government)
- chapter 15 (Transitional and savings provisions, repeals and amendments)
  - part 1 (Transitional and savings provisions)
    - division 3 (Local laws and local law policies)
    - section 806 (Saving of averaged land values for rating purposes)
    - section 807 (Saving of proceedings to recover overdue rates)
    - section 808 (Saving of action to sell or acquire land for

overdue rates)

- section 816 (Transitional regulations).

(3) If the Brisbane City Council is or is to become a component local government in a joint local government, this Act applies to the Brisbane City Council as a component local government as if it were a local government established under this Act.

### **How local government Acts apply to Brisbane City Council**

**10.** If a provision of a local government Act (other than the *City of Brisbane Act 1924*) applies to the Brisbane City Council—

- (a) a reference in the provision—
  - (i) to a local government area includes a reference to the City of Brisbane; and
  - (ii) to a local government includes a reference to the Brisbane City Council; and
  - (iii) to a division of a local government area includes a reference to a ward of the City of Brisbane; and
  - (iv) to the chief executive officer of a local government includes a reference to the town clerk of the Brisbane City Council; and
  - (v) to the operating fund of a local government includes a reference to the City Fund; and
  - (vi) to a local government Act includes the *City of Brisbane Act 1924*; and
- (b) the provision applies with all necessary changes and any changes prescribed by regulation.

## **PART 5—APPLICATION OF ACT TO JOINT LOCAL GOVERNMENTS**

### **Act applies except so far as application displaced**

**11.(1)** This Act applies to a joint local government except so far as its application is displaced by a contrary intention.

**(2)** The provisions of this Act that apply only to a joint local government include the following—

- chapter 2 (The local government system)
  - part 2 (Joint local governments)
- section 115 (Abolition of joint local government and its area)
- chapter 4 (Local government councillors)
  - part 5 (Membership of joint local governments)
- chapter 7 (Financial operation and accountability of local governments)
  - part 10 (Joint local governments)
- section 728(3) (Concurrent employment of local government employees).

**(3)** Other provisions that affect the application of this Act to a joint local government include the following—

- section 62 (Local government does not include joint local government in part)
- section 64(3) to (5) (Meaning of “reviewable local government matter”).

### **How Act applies to joint local governments**

**12.(1)** A reference in this Act—

- (a) to a local government area includes a reference to a joint local government area; and
- (b) to a local government includes a reference to a joint local

government; and

- (c) to the mayor of a local government includes a reference to the president of a joint local government; and
- (d) to the deputy mayor of a local government includes a reference to the deputy president of a joint local government; and
- (e) to a councillor of a local government includes a reference to a member of a joint local government; and
- (f) to the chief executive officer of a local government includes a reference to the chief executive officer of a joint local government.

(2) This Act applies to a joint local government with all necessary changes and any changes prescribed by regulation.

## **PART 6—APPLICATION OF ACT TO ABORIGINAL AND TORRES STRAIT ISLANDER LOCAL GOVERNMENTS**

### **Act applies only so far as expressly provided**

**13.(1)** This Act applies to an Aboriginal or Torres Strait Islander local government only so far as is expressly provided by this or another Act.

(2) The provisions of this Act that apply to an Aboriginal or Torres Strait Islander local government include the following—

- chapter 2 (The local government system)
  - part 2 (Joint local governments)
  - part 3 (Joint action by local governments)
- chapter 3 (Interaction with the State)
  - part 3 (Local Government Grants Commission).

(3) If an Aboriginal or Torres Strait Islander local government is or is to become a component local government in a joint local government, this Act applies to the Aboriginal or Torres Strait Islander local government as a component local government as if it were a local government established

under this Act.

### **How Act applies to Aboriginal and Torres Strait Islander local governments**

**14.** If a provision of this Act applies to an Aboriginal or Torres Strait Islander local government—

- (a) a reference in the provision—
  - (i) to a local government area includes a reference to an Aboriginal or Torres Strait Islander local government's area; and
  - (ii) to a local government includes a reference to an Aboriginal or Torres Strait Islander local government; and
  - (iii) to the chief executive officer of a local government includes a reference to the clerk of an Aboriginal Council or Island Council; and
- (b) the provision applies with all necessary changes and any changes prescribed by regulation.

## **CHAPTER 2—THE LOCAL GOVERNMENT SYSTEM**

### **PART 1—LOCAL GOVERNMENTS**

#### *Division 1—Local government areas*

#### **Areas**

**15.** The local government area is the fundamental geographical basis of Queensland's local government system.

**Declaration of local government areas**

**16.(1)** A regulation may declare a part of the State to be a local government area.

**(2)** The regulations may not declare more than 1 local government area for a part of the State.

**Local government required for each local government area**

**17.** There must be a local government for each local government area.

**Declaration of classes of local government areas**

**18.(1)** A regulation may declare the class of a local government area.<sup>2</sup>

**(2)** The class of a local government area may be 1 of the following—

- city
- town
- shire.

**(3)** A local government area may be declared to be a city or town only if it satisfies the criteria prescribed by regulation.

*Division 2—Roles of local governments***Application to Brisbane City Council**

**19.** This division applies to the Brisbane City Council.

**Roles of local government**

**20.** In exercising its jurisdiction of local government, a local government has—

- (a) a law-making role for local laws; and

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<sup>2</sup> This is a reviewable local government matter and requires a report and recommendation by the commissioner before implementation.

- (b) an executive role for—
  - (i) adoption and implementation of policy; and
  - (ii) administration of local government; and
  - (iii) enforcement of its local laws.

### *Division 3—Jurisdiction of local governments*

#### **Application to Brisbane City Council**

**21.** This division applies to the Brisbane City Council.

#### **Exercise of jurisdiction for its local government area—the “basic territorial unit”**

**22.(1)** A local government may exercise the jurisdiction of local government for all parts of its local government area.

**(2)** Its local government area is its “**basic territorial unit**”.

#### **Exercise of jurisdiction outside its local government area—the “additional territorial units”**

**23.** A local government also may exercise the jurisdiction of local government for any place (an “**additional territorial unit**”) outside its basic territorial unit that is put under its control or acquired by it.

#### **Territorial unit of local government**

**24.** The “**territorial unit**” of a local government consists of its basic territorial unit and any additional territorial units.

#### **Jurisdiction of local government**

**25.** Each local government has jurisdiction (the “**jurisdiction of local government**”) to make local laws for, and otherwise ensure, the good rule and government of, its territorial unit.

**Law-making matters included in jurisdiction of local government**

**26.(1)** A local government's jurisdiction of local government includes jurisdiction to make local laws with respect to any matter—

- (a) required or permitted to be prescribed under this or another Act; or
- (b) necessary or convenient to be prescribed or exercised for carrying out or giving effect to its local laws.

**(2)** To avoid any doubt, a local law may be made—

- (a) making it an offence to contravene a local law; and
- (b) fixing a penalty for an offence against a local law (including different penalties for successive offences against a local law) of not more than 850 penalty units.

**Limitation on exercise of jurisdiction for basic territorial unit**

**27.** A local government may not exercise the jurisdiction of local government for a part of its basic territorial unit to the extent to which another local government may exercise the jurisdiction of local government for the part.

**Limitation on exercise of jurisdiction for additional territorial units**

**28.** A local government may exercise the jurisdiction of local government for an additional territorial unit only for the purpose for which the place was put under its control or acquired by it.

**Local laws and policies apply to additional territorial units only if expressly applied**

**29.** A local government's local law or local law policy applies to an additional territorial unit of the local government only if the local law or local law policy expressly states that it applies to the additional territorial unit.

**General limitations on exercise of jurisdiction**

**30.(1)** A local government has no jurisdiction to make a local law—

- (a) that the Parliament could not validly make; or
- (b) purporting to exclude or limit the future repeal or amendment of the law.

**(2)** A local government also has no jurisdiction to do anything else that the State cannot do.

**Inconsistency with State law**

**31.** If a State law and a local law (whether made before or after the State law) are inconsistent, the State law prevails over the local law to the extent of the inconsistency.

*Division 4—Composition of local governments***Membership of local governments**

**32.** A local government consists of a mayor and other councillors.

**Number of councillors**

**33.** A local government consists of the number of councillors, at least 5, prescribed by regulation.<sup>3</sup>

*Division 5—Names, legal status and general powers of local governments***Local government name**

**34.** A local government may be called either—

- (a) ‘Council of the ... (*insert City/Town/Shire*) of ... (*insert name of*

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<sup>3</sup> This is a reviewable local government matter and requires a report and recommendation by the commissioner before implementation.

local government area)'; or

- (b) '... (*insert name of local government area*) ... (*insert City/Town/Shire*) Council'.

### **Local governments are bodies corporate etc.**

**35.** A local government—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its name.

### **General powers**

**36.(1)** A local government has, in the exercise of its jurisdiction, all the powers of an individual.

**(2)** A local government may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) make charges for services and facilities it supplies; and
- (d) do other things necessary or convenient to be done in the exercise of its jurisdiction.

**(3)** A local government also has the powers given to it under this or another Act.

**(4)** A local government may exercise its powers inside and outside its territorial unit.

**(5)** A local government may exercise its powers outside the State and outside Australia.

***Division 6—Other provisions about local governments*****Site of public office**

**37.(1)** A local government must keep premises for use as its public office.

**(2)** The public office must be in the local government's area or within a reasonable distance outside its area.

**Local government's seal**

**38.(1)** A local government's common seal must include its name.

**(2)** The seal must be kept in the custody directed by the local government and may be used only as authorised by it.

**(3)** The attaching of the seal to a document must be witnessed as authorised by the local government.

**(4)** Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

**PART 2—JOINT LOCAL GOVERNMENTS*****Division 1—Extended application of part*****Application of part to Brisbane City Council**

**39.** This part applies to the Brisbane City Council.

**Application of part to Aboriginal and Torres Strait Islander local governments**

**40.** This part applies to all Aboriginal and Torres Strait Islander local governments.

*Division 2—Consultation***Consultation before exercise of powers under part**

**41.** Before the Governor in Council exercises a power under this part, the Minister must consult with the local governments that would be affected by the exercise of the power and take any views expressed by them into account.

*Division 3—Joint local government areas***Declaration of joint local government areas**

**42.** A regulation may declare a part of the State consisting of the whole or parts of 2 or more local government areas to be a joint local government area.

*Division 4—Establishment of joint local governments***Establishment**

**43.(1)** A regulation may establish a joint local government for a joint local government area.

**(2)** A regulation may establish 2 or more joint local governments for a joint local government area, or part of a joint local government area, if the joint local governments have different jurisdictions.

**Matters about establishment etc.**

**44.** A regulation may, for a joint local government (the “**joint body**”)—

- (a) specify its name; and
- (b) provide for the election or appointment of a president and deputy president of the joint body; and
- (c) fix the time and place for holding the first meeting of the joint body; and

- (d) specify the proportion of the cost of the operations of the joint body that must be contributed by each of its component local governments; and
- (e) specify that the first budget of the joint body be for a specified part of a financial year; and
- (f) provide for its initial local laws; and
- (g) provide for any other matter for which—
  - (i) it is necessary or convenient to provide for its establishment or operation; and
  - (ii) this Act does not make provision or adequate provision.

### *Division 5—Jurisdiction of joint local governments*

#### **Jurisdiction generally**

**45.** A joint local government has the jurisdiction of local government that it is given by regulation.

#### **Jurisdiction exclusive**

**46.(1)** A component local government may not exercise the jurisdiction of local government within its joint local government's area about a matter within the joint local government's jurisdiction.

**(2)** However, the component local government may exercise jurisdiction as a delegate of the joint local government.

**(3)** The component local government also may make and levy a rate on land for a matter within its jurisdiction, even though—

- (a) the land is within the joint local government's area; and
- (b) the purpose relates to a matter within the joint local government's jurisdiction.

***Division 6—Membership of joint local governments*****Members**

**47.** A joint local government consists of representatives of the local governments that are its component local governments.

**Number of representatives etc.**

**48.(1)** A regulation may specify the number of representatives to which each component local government is entitled, either in its own right or as a member of a group of local governments, on its joint local government.

**(2)** A regulation also may specify that a particular councillor of a component local government must be a member of the joint local government.

***Division 7—Legal status and general powers of joint local governments*****Joint local governments are bodies corporate etc.**

**49.** A joint local government—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its name.

**General powers**

**50.(1)** A joint local government has, in the exercise of its jurisdiction, all the powers of an individual.

**(2)** A joint local government may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) make charges for services and facilities it supplies; and
- (d) do other things necessary or convenient to be done in the exercise

of its jurisdiction.

(3) A joint local government also has the powers given to it under this or another Act.

(4) A joint local government may exercise its powers inside and outside its territorial unit.

(5) A joint local government may exercise its powers outside the State and outside Australia.

### **Restriction on power to make or levy rate**

51. A joint local government cannot make or levy a rate on land.

### **Delegation to component local governments**

52.(1) A joint local government may delegate its powers about a component local government's area to the component local government.

(2) Subsection (1) does not limit by implication the persons to whom the joint local government may make a delegation.

### ***Division 8—Other provisions about joint local governments***

#### **Joint local government's seal**

53.(1) A joint local government's common seal must include its name.

(2) The seal must be kept in the custody directed by the joint local government and may be used only as authorised by it.

(3) The attaching of the seal to a document must be witnessed as authorised by the joint local government.

(4) Judicial notice must be taken of the imprint of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

**Adjustments between joint local government and component local governments**

- 54.** A regulation may make provision with respect to—
- (a) transferring assets and liabilities—
    - (i) to a joint local government—from its component local governments; or
    - (ii) from a joint local government to a local government that has ceased to be a component local government of it; and
  - (b) deciding, adjusting or settling anything in dispute between—
    - (i) a joint local government and any of its component local governments; or
    - (ii) a joint local government and a local government that has ceased to be a component local government of it.

**PART 3—JOINT ACTION BY LOCAL GOVERNMENTS***Division 1—Extended application of part***Application of part to Brisbane City Council**

- 55.** This part applies to the Brisbane City Council.

**Application of part to Aboriginal and Torres Strait Islander local governments**

- 56.** This part applies to all Aboriginal and Torres Strait Islander local governments.

***Division 2—Joint action*****Joint responsibility for boundary works**

**57.(1)** The cost of planning, constructing, maintaining and managing a bridge, road or other work that is to be, or is, built along the boundary between 2 or more local government areas, and partly in each of the areas, is the joint responsibility of the local governments of the areas.

**(2)** The local governments must enter into the arrangements, and make the contracts, that are necessary for the proper performance of the responsibility.

**Extension of operations outside local government area**

**58.** A local government may, under arrangements entered into by it with another local government, extend the operation of a facility, service or activity supplied or undertaken by it into the other local government's area.

**Cooperation between local governments**

**59.(1)** Local governments may enter into arrangements, and make contracts, between themselves for exercising the jurisdiction of local government in their areas.

**(2)** The local governments may establish joint standing committees to exercise the jurisdiction of local government for matters to which the arrangement or contract relates.

**(3)** A joint standing committee must consist of councillors from the local governments.

**(4)** This section does not limit by implication the powers of a local government.

**Interstate cooperation**

**60.(1)** If a local government's area borders another State or a Territory, the local government may—

- (a) enter into arrangements, and make contracts, with a person (the

**“responsible person”**) responsible for any jurisdiction of local government in an adjoining part of the other State or the Territory; or

- (b) acquire and hold land in the adjoining part and construct any facility on the land; or
- (c) contribute to the cost of the responsible person exercising its jurisdiction of local government.

(2) The local government that holds property in another State or a Territory for any purpose under subsection (1) may dispose of the property when it is no longer required for the purpose.

(3) This section does not limit by implication the powers of a local government.

## **CHAPTER 3—INTERACTION WITH THE STATE**

### **PART 1—REVIEW OF LOCAL GOVERNMENT MATTERS**

#### *Division 1—Preliminary*

##### **Application of part to Brisbane City Council**

**61.** This part applies to the Brisbane City Council.

##### **Local government does not include joint local government in part**

**62.** In this part—

**“local government”** does not include a joint local government.

**Types of local government matters**

**63.** A local government matter is—

- (a) a reviewable local government matter; or
- (b) a referable local government matter; or
- (c) a combination of reviewable and referable local government matters whether or not the matters can be separately identified as reviewable or referable local government matters.

**Meaning of “reviewable local government matter”**

**64.(1)** The following are “**reviewable local government matters**”—

- (a) creating a new local government area, including, for example, creating a new local government area from—
  - (i) 2 or more local government areas that are abolished; or
  - (ii) a local government area that is abolished and a part of another local government area; or
  - (iii) a part of a local government area that is excluded from the local government area; or
  - (iv) a part of the State that is not part of a local government area;
- (b) naming a new local government area;
- (c) changing the external boundaries of a local government area by excluding part of the local government area and including the part in another local government area;
- (d) changing the name of a local government area;
- (e) including in a local government area a part of the State that is not part of a local government area;
- (f) abolishing a local government area and merging the local government area with another local government area;
- (g) dividing, redividing and abolishing divisions of a local government area;
- (h) changing the boundaries of divisions of a local government area by—

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- (i) excluding part of a division and including the part in another division of the local government area; or
  - (ii) creating a new division of the local government area;
  - (i) assigning and reassigning councillors of a local government to divisions of its area;
  - (j) deciding and changing the class of a local government area;
  - (k) deciding and changing the composition of a local government;
  - (l) anything else relating to local government declared by regulation to be a reviewable local government matter.
- (2) A reviewable local government matter includes—
- (a) any aspect of a matter mentioned in subsection (1); and
  - (b) a particular proposal about a matter, or an aspect of a matter, mentioned in subsection (1).
- (3) A reviewable local government matter does not include a matter relating to—
- (a) the creation, naming, abolition or area of a joint local government; or
  - (b) the composition of a joint local government.
- (4) A matter (the “**relevant matter**”) relating to a local government area, the whole or part of which is in a joint local government’s area, may be a reviewable local government matter although its implementation would, apart from subsection (5), affect a matter mentioned in subsection (3)(a) or (b).
- (5) If the relevant matter is a reviewable local government matter, implementation of the relevant matter does not affect the existence or extent of a joint local government’s area or the composition of a joint local government.
- (6) In this section—
- “**local government area**” includes a proposed local government area.

**Meaning of “referable local government matter”**

**65.(1)** A “referable local government matter” is a local government matter—

- (a) that is not a reviewable local government matter; or
- (b) so far as it is not a reviewable local government matter.

**(2)** A referable local government matter may be, but is not required to be, referred to the commissioner before implementation.

***Division 2—The Local Government Commissioner******Subdivision 1—Establishment*****Local Government Commissioner**

**66.** There is to be a Local Government Commissioner.

***Subdivision 2—Functions of commissioner*****Reviewable local government matters**

**67.** The commissioner must examine, and report and make recommendations to the Minister on, each reviewable local government matter referred to the commissioner by the Minister.

**Referable local government matters**

**68.** The commissioner also must examine, and report and make recommendations to the Minister on, each referable local government matter referred to the commissioner by the Minister.

***Subdivision 3—References to commissioner*****Minister may refer matters**

**69.** The Minister may refer to the commissioner any local government matter.

**Examples of permissible references**

**70.(1)** A reference to the commissioner may, for example, deal with—

- (a) both a reviewable local government matter and a referable local government matter; or
- (b) a local government matter that includes a reviewable local government matter.

**(2)** A reference need not separately identify a reviewable local government matter dealt with in, or included in a local government matter dealt with in, the reference.

**(3)** A reference may deal with any local government matter in—

- (a) general or specific terms; or
- (b) a combination of general and specific terms.

**(4)** A reference may specify a local government matter in any way.

**(5)** A reference may, for example, specify a local government matter by—

- (a) naming the local governments the reference directly affects; or
- (b) describing in a suitable way the geographical area to which the reference relates; or
- (c) specifying with reasonable certainty things that are, or are not, included in the reference.

***Examples of suitable ways of describing a geographical area—***

1. By reference to real property descriptions.

2. By reference to a map or plan held by an entity, or to a particular entry in a register kept by an entity, if the map, plan or register is available for inspection by the public.

3. By reference to a region of the State that is identified, or can be decided, with reasonable certainty.

4. By reference to areas of named local governments.

5. By reference to a part of the area of a named local government that is identified, or can be decided, with reasonable certainty.

(6) A reference may make the reference of a local government matter contingent on a recommendation the commissioner proposes to make on another local government matter.

### **References of reviewable local government matters to be tabled etc.**

**71.** The Minister must—

- (a) table a copy of each reference of a reviewable local government matter given to the commissioner in the Legislative Assembly within 7 sitting days; and
- (b) give a copy of the reference to each local government mentioned in the reference.

### **References of referable local government matters may be tabled etc.**

**72.** The Minister may—

- (a) table a copy of a reference of a referable local government matter given to the commissioner in the Legislative Assembly; and
- (b) give a copy of the reference to the local governments the Minister considers appropriate.

### **Request by commissioner for reference**

**73.(1)** The commissioner may ask the Minister to refer a reviewable local government matter to the commissioner.

(2) The request must include reasons for the request.

(3) As soon as possible after receiving the request, the Minister must—

- (a) refer the matter to the commissioner; or
- (b) advise the commissioner that the matter will not be referred.

(4) The Minister must table a copy of the request, and the reference or advice, in the Legislative Assembly within 7 sitting days after giving the reference or advice.

### *Division 3—Reports on reviewable local government matters*

#### *Subdivision 1—Report necessary before implementation*

#### **Report must be obtained before implementation of reviewable local government matter**

74. A report and recommendation from the commissioner must be obtained before any action is taken to implement a reviewable local government matter.

#### *Subdivision 2—Making of reports by commissioner*

#### **Commissioner must have regard to prescribed principles and criteria**

75.(1) When considering a reviewable local government matter, the commissioner must have regard to the principles and criteria that may be prescribed by regulation.

(2) If the matter relates to the external boundaries of a local government area, the commissioner also must have regard to the need to ensure the provision of efficient and effective local government in the area.

#### **Assessment of impact of certain proposals**

76.(1) If the commissioner proposes to recommend to the Minister that a reviewable local government matter mentioned in section 64(1)(a), (c), (e) or (f) (Meaning of “reviewable local government matter”) be implemented, the commissioner must examine, and report and make recommendations to the Minister on—

- (a) the apportionment of assets and liabilities between the local governments concerned; and

- (b) the application of existing local laws; and
- (c) the preservation of—
  - (i) valuations of rateable land affected by the change; and
  - (ii) rates levied on rateable land affected by the change; and
  - (iii) any existing debentures issued by the local governments; and
- (d) the rationalisation of staff of the local governments because of the change; and
- (e) anything else prescribed by regulation.

(2) In this section—

“**local law**” includes a planning scheme and interim development control provisions.

### **Public notice of proposed recommendation to implement reviewable local government matter**

**77.(1)** If the commissioner proposes to recommend in a report that a reviewable local government matter be implemented, the commissioner must first give public notice, by advertisement published at least once in—

- (a) the gazette; and
- (b) a newspaper circulating generally in local government areas that would be affected by the matter if it were implemented.

(2) The notice must specify—

- (a) the general effect of the proposed recommendation; and
- (b) that particulars of the proposed recommendation, including reasons, views and any relevant maps, are open to inspection at—
  - (i) the office of the commissioner at Brisbane; and
  - (ii) the public office of each local government that would be affected by the matter if it were implemented; and
- (c) that submissions about the proposed recommendation—
  - (i) may be made, in writing, to the commissioner at a specified address; and

- (ii) must specify the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
  - (d) a specified day on or before which the particulars may be inspected and submissions made.
- (3) The specified day must not be earlier than 30 days after—
- (a) the publication of the advertisement in the gazette; or
  - (b) the publication, or first publication, of the advertisement in the newspaper;

whichever is the later.

(4) As soon as practicable after the publication of the advertisement in the gazette, the commissioner must give a copy of the particulars mentioned in subsection (2)(b) to each local government that would be affected by the matter if it were implemented.

(5) The particulars are open to inspection at the local government's public office until the day after the specified day.

### **Commissioner's role when submissions received**

**78.(1)** The commissioner must consider all submissions properly made about a proposed recommendation that a reviewable local government matter be implemented.

(2) The commissioner may amend the proposed recommendation to take account of the submissions.

(3) However, the commissioner may substantially amend the proposed recommendation only if the commissioner gives public notice of the amended proposed recommendation under section 77 (Public notice of proposed recommendation to implement reviewable local government matter).

### **Requirements of commissioner's report**

**79.** The commissioner's report to the Minister on a reference of a reviewable local government matter must—

- (a) include reasons for the recommendations and views contained in

- the report; and
- (b) include a summary of the submissions made to the commissioner on the matter; and
  - (c) be accompanied by copies of the submissions.

#### ***Division 4—Inquiries by commissioner***

##### ***Subdivision 1—General***

#### **Commissioner may decide to hold inquiry**

**80.(1)** In considering a reference that deals with a reviewable local government matter, the commissioner may decide to hold an inquiry under this division.

- (2)** This division may apply to a reference whether or not it deals with—
- (a) both a reviewable local government matter and a referable local government matter; or
  - (b) a local government matter that includes a reviewable local government matter.

#### **Notice of decision to hold inquiry**

**81.** Before starting the inquiry, the commissioner must—

- (a) publish in a newspaper circulating in the areas of the local governments concerned a notice outlining the processes to be followed in the inquiry; and
- (b) give a copy of the notice to the local governments.

##### ***Subdivision 2—Conduct of inquiries***

#### **Extended meaning of “commissioner” in subdivision**

**82.** In this subdivision—

“**commissioner**” includes a deputy commissioner holding an inquiry on a direction given by the commissioner.

### **Commissioner’s duties on inquiry**

**83.** When conducting an inquiry, the commissioner—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

### **Commissioner may decide procedures**

**84.(1)** The commissioner—

- (a) is not bound by the rules of evidence; and
- (b) may inform himself or herself in any way the commissioner considers appropriate; and
- (c) may decide the procedures to be followed at an inquiry.

**(2)** However, the commissioner must comply with this subdivision and any procedural rules prescribed by regulation.

### **Public may attend**

**85.** The commissioner must allow members of the public to attend an inquiry.

### **Commissioner’s powers on inquiry**

**86.(1)** In conducting an inquiry, the commissioner may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and
- (c) adjourn the inquiry; and
- (d) permit a document to be amended; and

- (e) disregard any defect, error, omission or insufficiency in a document; and
- (f) permit or refuse to permit a person (including a legal practitioner enrolled in Queensland or elsewhere) to represent someone else at the inquiry.

(2) The commissioner may administer an oath or affirmation to a person appearing as a witness before the inquiry.

### **Notice to witness**

**87.(1)** The commissioner may, by written notice given to a person, require the person to attend an inquiry at a specified time and place to give evidence or produce specified documents.

(2) A person who is given a notice must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the commissioner until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to appear as a witness before an inquiry is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the commissioner.

### **Duty of witness at inquiry**

**88.(1)** A person appearing as a witness at an inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the commissioner; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the commissioner; or
- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under section 87(1) (Notice to witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

### **Contempt of commissioner**

**89.** A person must not—

- (a) insult the commissioner in an inquiry; or
- (b) deliberately interrupt an inquiry; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the commissioner is conducting an inquiry; or
- (d) do anything that would be a contempt of court if the commissioner were a judge acting judicially.

Maximum penalty—50 penalty units.

### **Change of person holding inquiry**

**90.** An inquiry is not affected by a change in the person holding the inquiry.

### ***Division 5—Provisions about commissioner and deputy commissioners***

#### **Deputy commissioners**

**91.** There may be 1 or more deputy commissioners to help the commissioner.

#### **Role of deputy commissioners**

**92.(1)** A deputy commissioner is to hold the inquiries, and perform the other duties, that the commissioner directs.

(2) The deputy commissioner, or, if there are 2 or more deputy commissioners, the deputy commissioner who is directed by the Minister, is to act as the commissioner—

- (a) during any vacancy, or all vacancies, in the office of the commissioner; or
- (b) during any period, or all periods, when the commissioner is absent from duty or Australia or cannot, for another reason, perform the functions of the office; or
- (c) for any matter, or all matters, in which the commissioner has a potential conflict of interest.

### **Appointment of commissioners**

**93.(1)** The commissioner and deputy commissioners are to be appointed by the Governor in Council.

**(2)** The Governor in Council may appoint a person as the commissioner or a deputy commissioner only if, in the Governor in Council's opinion, the person has had appropriate experience in local government or other relevant experience.

**(3)** A person who is a member of a political party may not be appointed as the commissioner or a deputy commissioner.

**(4)** The commissioner must only be appointed on a full-time basis.

**(5)** A deputy commissioner may be appointed on a full-time or part-time basis.

**(6)** The commissioner or a deputy commissioner is to be appointed for a term of not longer than 5 years.

**(7)** The *Public Service Management and Employment Act 1988* does not apply to the appointment of the commissioner or a deputy commissioner.

### **Accrued entitlements as officer of the public service**

**94.** If an officer of the public service is appointed as the commissioner or a deputy commissioner on a full-time basis, the person—

- (a) keeps the entitlements that have accrued to the person because of employment in the public service; and
- (b) continues to accrue entitlements as if the person were continuing to serve as an officer of the public service.

**Terms of appointment**

**95.(1)** The commissioner or a deputy commissioner is entitled to be paid the remuneration and allowances that the Governor in Council decides.

**(2)** The commissioner or a deputy commissioner holds office on other terms not provided in this Act as the Governor in Council decides.

**Leave of absence**

**96.** The Minister may give leave of absence to the commissioner or a deputy commissioner on the terms decided by the Minister.

**Resignation**

**97.** The commissioner or a deputy commissioner may resign by giving a signed notice of resignation to the Minister.

**Conflict of interests**

**98.(1)** This section applies if the commissioner or a deputy commissioner—

- (a) has a direct or indirect financial interest in an issue; or
- (b) could reasonably be otherwise regarded as having a conflict of interest in an issue.

**(2)** As soon as practicable after the person becomes aware of the application of this section to the issue, the person must inform the Minister.

**(3)** The person must not take part, or take further part, in any consideration of the issue.

**Termination of appointment**

**99.(1)** The Governor in Council may terminate the appointment of the commissioner or a deputy commissioner for misbehaviour or physical or mental incapacity.

**(2)** The Governor in Council must terminate the appointment of the commissioner or a deputy commissioner if the person—

- (a) nominates for election to an Australian Parliament; or
- (b) becomes a member of a political party; or
- (c) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (d) if appointed on a full-time basis—
  - (i) is absent for 14 consecutive days, or 28 days in 1 year, without the Minister's leave or a reasonable excuse; or
  - (ii) engages in paid employment outside the duties of the office without the Minister's approval; or
- (e) contravenes section 98 (Conflict of interests) without reasonable excuse.

(3) The Governor in Council must terminate the appointment of the commissioner or a deputy commissioner if the person nominates for election to a local government or accepts appointment as a local government councillor.

### **Acting deputy commissioner**

**100.** The Governor in Council may appoint a person to act as a deputy commissioner during any period, or all periods, when a deputy commissioner—

- (a) is absent from duty or Australia; or
- (b) is acting as the commissioner; or
- (c) can not, for another reason, perform the office's duties.

### **Notice of appointment**

**101.** Notice of the appointment of a person as, or to act as, the commissioner or a deputy commissioner must be published in the gazette.

**Staff and administrative support**

**102.(1)** The commissioner is attached to the Electoral Commission.

(2) The Electoral Commission must ensure that the commissioner has the staff and administrative support services required to carry out the commissioner's functions effectively and efficiently.

**Annual report**

**103.(1)** As soon as practicable, but no later than 4 months, after the end of each financial year, the commissioner must give to the Minister a report of the commissioner's operations for the year.

(2) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after receiving it.

**Reports on reviewable local government matters to be tabled etc.**

**104.(1)** In this section—

“**report**” means a report on a reference of a reviewable local government matter.

(2) The Minister must table a copy of a report in the Legislative Assembly within 7 sitting days after receiving it.

(3) The Minister also must ensure that copies of the report are open to inspection, and available for purchase, at—

- (a) the department's State office; and
- (b) the public office of each local government that would be directly affected by the report's implementation.

(4) The price of a copy of a report must not be more than—

- (a) the cost of having the copy printed and made available for purchase; and
- (b) if the copy is supplied to a purchaser by post—the cost of postage.

**Other reports may be tabled etc.**

**105.** The Minister also may table a copy of, or make available for inspection or purchase, a report of the commissioner other than a report mentioned in section 103 (Annual report) or 104 (Reports on reviewable local government matters to be tabled etc.).

***Division 7—Implementing reviewable local government matters*****Implementation of reviewable local government matter**

**106.(1)** A reviewable local government matter may be implemented by regulation.

**(2)** A regulation may provide for—

- (a) holding, postponing or cancelling an election for a local government area or a division of a local government area; or
- (b) appointing a returning officer for an election; or
- (c) recovering unpaid rates; or
- (d) exempting a local government from the requirement to prepare and adopt a corporate or operational plan, and the application of this Act because of the exemption; or
- (e) the application of budgets; or
- (f) giving or keeping records; or
- (g) matters the commissioner is required to examine, and report and make recommendations to the Minister on, under section 76(1)(a) to (e) (Assessment of impact of certain proposals); or
- (h) the giving of directions by the Governor in Council or the Minister about a matter; or
- (i) the transfer of assets and liabilities; or
- (j) any other matter for which—
  - (i) it is necessary or convenient to provide to implement the reviewable local government matter; and
  - (ii) this Act does not make provision or adequate provision.

(3) A regulation under subsection (2)(a) applies despite the following provisions—

- section 218 (Date of later triennial elections)
- section 219 (Date of by-elections).

(4) Chapter 5 (Local government elections) applies to an election for the implementation of a reviewable local government matter with all necessary changes and any changes prescribed by regulation as if the election were an election of the appropriate type.

(5) In this section—

“**division**” includes a proposed division.

“**local government area**” includes a proposed local government area.

### **Requirement before implementation**

**107.(1)** A reviewable local government matter may be implemented under section 106 (Implementation of reviewable local government matter) only if the commissioner has complied with this Act in relation to the matter.

(2) For the purposes of subsection (1), strict compliance with this Act is not necessary and substantial compliance is sufficient.

(3) A reviewable local government matter may be implemented only if the Governor in Council is informed that—

- (a) proper regard has been had to a report and recommendation of the commissioner on the matter; and
- (b) section 104 (Reports on reviewable local government matters to be tabled etc.) has been, or will be, complied with in relation to the report.

(4) The implementation of a reviewable local government matter—

- (a) may be different, but not substantially different, to the implementation of the matter recommended by the commissioner; and
- (b) may include, not include, or include in a different way, the implementation of a referable local government matter

recommended by the commissioner.

### **Liability for State taxes**

**108.(1)** A local government is not liable to pay a State tax in relation to a transfer or other arrangement made to implement a local government matter under this division.

**(2)** In this section—

“**State tax**” means stamp duty or another tax, fee, duty, levy or charge imposed under an Act.

## **PART 2—INTERVENTION BY THE STATE**

### *Division 1—Powers of intervention*

#### **Procedures before exercise of certain powers**

**109.(1)** Before the Governor in Council or Minister exercises a power under this division in relation to a local government, the Minister must give written notice of the proposed exercise of the power to the local government.

**(2)** However, notice need not be given if—

- (a) the power is proposed to be exercised at the local government’s request; or
- (b) in the Minister’s opinion, giving notice—
  - (i) is likely to defeat the purpose of the proposed exercise of the power; or
  - (ii) would serve no useful purpose.

**(3)** The notice must state—

- (a) the reasons for the proposed exercise of power; and
- (b) a time within which the local government may make submissions

to the Minister about the proposed exercise of power.

(4) Reasons stated in the notice are the only reasons that can be relied on in support of the exercise of the power.

(5) The Minister must have regard to all submissions made by the local government within the specified time.

(6) If—

- (a) the proposed exercise of power is to proceed despite submissions of the local government; or
- (b) no submissions of the local government are received by the Minister within the specified time;

the power may be exercised without further notice to the local government.

### **Revocation and suspension of resolutions and orders**

**110.(1)** The Governor in Council may, by regulation—

- (a) revoke, or suspend the operation of, a resolution of a local government or an order issued by a local government to give effect to a resolution; and
- (b) end the suspension of the resolution or order.

(2) The suspension may be for a specified period or indefinite.

### **Effect of revocation or suspension**

**111.(1)** A resolution or order of a local government that is revoked by regulation—

- (a) ceases to have effect on the day specified by the regulation; or
- (b) if no day is specified—is taken never to have had effect.

(2) A resolution or order of a local government whose operation is suspended by a regulation does not have effect while it is suspended.

(3) The State is not legally liable for any loss or expense incurred by a person because of the revocation or suspension by regulation of a local government's resolution or order.

**Overruling local laws and local law policies etc.**

**112.(1)** The Governor in Council may, by regulation, declare that a local law or local law policy, or a provision of a local law or local law policy, ceases to have effect, if the Governor in Council is of the opinion that it is necessary to make the declaration to protect State interests.

**(2)** The Governor in Council may, by regulation, later declare that the local law, local law policy or provision again has effect, if the Governor in Council is of the opinion that it is no longer necessary for the declaration under subsection (1) to continue to have effect to protect State interests.

**Dissolution of local government**

**113.(1)** The Governor in Council may, by regulation, dissolve a local government if the Minister is satisfied that the local government—

- (a) has acted unlawfully or corruptly; or
- (b) has acted in a way that puts at risk its capacity to exercise properly its jurisdiction of local government ; or
- (c) is incompetent or cannot properly exercise its jurisdiction of local government.

**(2)** Subsection (1) is subject to the *Constitution Act 1867*, section 55 (Manner of appointing persons to exercise powers, authorities, duties and functions of local government).

**(3)** On dissolution of the local government—

- (a) the local government's councillors go out of office; and
- (b) an administrator must be appointed; and
- (c) the local government continues in existence as a body corporate and is constituted by the administrator.

**Exclusion of part of local government area from Act**

**114.(1)** The Governor in Council may, by regulation, declare that this Act does not apply to a specified part of a local government's area.

**(2)** On the making of the declaration, the local government's local laws and local law policies cease to apply to the specified part of its area.

(3) The Governor in Council may, by regulation, later declare that this Act again applies to the specified part of the local government's area.

(4) On the making of the declaration, the local government's local laws and local law policies again apply to the specified part of its area.

(5) Subsections (2) and (4) do not limit by implication the effect of a declaration under this section.

(6) In this section—

“**local law**” includes a planning scheme and interim development control provisions.

### **Abolition of joint local government and its area**

**115.(1)** The Governor in Council may, by regulation, abolish a joint local government and its area.

(2) A regulation may provide for—

- (a) the apportionment of the joint local government's assets and liabilities among its component local governments; and
- (b) any other matter for which it is necessary or convenient to make provision on the dissolution of the joint local government.

### *Division 2—Inquiries, investigations and inspections*

#### **Inquiries, investigations and inspections by authorised persons**

**116.(1)** The chief executive of the department may appoint an officer of the department or another appropriately qualified person (an “**authorised person**”) to conduct an inquiry, investigation or inspection about—

- (a) the functioning of local government in the State; or
- (b) any matter relevant to the administration of this Act.

(2) However, subsection (1) does not permit the chief executive to appoint a person to conduct an inquiry, investigation or inspection about a reviewable local government matter.

(3) A local government must cooperate fully with an inquiry,

investigation or inspection by a person appointed under subsection (1).

### **Reports on inquiries, investigations and inspections**

**117.(1)** When an authorised person has completed the inquiry, investigation or inspection for which the person was appointed, the authorised person must, as quickly as possible, give the chief executive of the department a written report on the inquiry, investigation or inspection.

**(2)** The Minister may table a copy of the report in the Legislative Assembly.

### **Chief executive may request information from local government**

**118.(1)** The chief executive of the department may, by written notice, request a local government to give to the chief executive information in writing about anything within its jurisdiction of local government.

**(2)** The request must specify a reasonable time within which the information must be given to the chief executive.

**(3)** The local government must comply with the request.

Maximum penalty for subsection (3)—35 penalty units.

## *Division 3—Conduct of inquiries*

### **Authorised person's duties on inquiry**

**119.** When conducting an inquiry, an authorised person—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

### **Authorised person may decide procedures**

**120.(1)** The authorised person—

- (a) is not bound by the rules of evidence; and

(b) may inform himself or herself in any way the authorised person considers appropriate; and

(c) may decide the procedures to be followed at the inquiry.

(2) However, the authorised person must comply with this division and any procedural rules prescribed by regulation.

### **Public may attend**

**121.** The authorised person must allow members of the public to attend the inquiry.

### **Authorised person's powers on inquiry**

**122.(1)** In conducting the inquiry, the authorised person may—

(a) act in the absence of a person who has been given reasonable notice; and

(b) receive evidence on oath or affirmation or by statutory declaration; and

(c) adjourn the inquiry; and

(d) permit a document to be amended; and

(e) disregard any defect, error, omission or insufficiency in a document; and

(f) permit or refuse to permit a person (including a legal practitioner enrolled in Queensland or elsewhere) to represent someone else at the inquiry.

(2) The authorised person may administer an oath or affirmation to a person appearing as a witness before the inquiry.

### **Notice to witness**

**123.(1)** The authorised person may, by written notice given to a person, require the person to attend at a specified time and place to give evidence or produce specified documents.

(2) A person who is given a notice must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the authorised person until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to appear as a witness before an inquiry is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the authorised person.

### **Duty of witness at inquiry**

**124.(1)** A person appearing as a witness at the inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the authorised person; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the authorised person; or
- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under section 123(1) (Notice to witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

### **Contempt of authorised person**

**125.** A person must not—

- (a) insult the authorised person in the inquiry; or
- (b) deliberately interrupt an inquiry; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the authorised person is conducting the inquiry; or
- (d) do anything that would be a contempt of court if the authorised person were a judge acting judicially.

Maximum penalty—50 penalty units.

### **Change of authorised person**

**126.** An inquiry is not affected by a change in the authorised person holding the inquiry.

## *Division 4—Administrators*

### **When administrator may be appointed**

**127.** If a local government is dissolved under section 113 (Dissolution of local government), the Governor in Council must, by gazette notice, appoint a person as administrator of the local government.

### **Jurisdiction, powers and duties of administrator**

**128.(1)** The administrator of a local government has all the jurisdiction, powers and duties of the local government concerned.

**(2)** However—

- (a)** a regulation may limit the jurisdiction, powers and duties of the administrator; and
- (b)** the administrator does not have a duty of a local government appropriate only to a body of persons.

**(3)** If the mayor of a local government is required or permitted by law to exercise a power, the administrator is required or permitted to exercise the power instead of the mayor.

**(4)** This Act and other Acts apply to the administrator, with all necessary changes and any changes prescribed by regulation, as if the administrator were the local government.

### **Title of administrator**

**129.** For the purpose of exercising the jurisdiction of local government, the title of an administrator is ‘Administrator of the ... (name of the local

government).’.

### **Committee to help administrator**

**130.(1)** When an administrator is appointed, the Minister may appoint a committee of persons to help the administrator in exercising the jurisdiction of local government of the local government concerned.

(2) A person may be appointed as a member of a committee for a limited time or indefinitely.

(3) The administrator is chairperson of the committee and must preside at every meeting of the committee at which the administrator is present.

(4) If, because of absence or incapacity, the administrator cannot perform the functions of chairperson of the committee, the other members of the committee must appoint a member to act as chairperson at meetings of the committee until the administrator is able to perform the functions.

### **Conditions of appointment as administrator or member of committee**

**131.(1)** An administrator or a member of a committee is entitled to the fees, allowances and expenses decided by the Governor in Council.

(2) The fees, allowances and expenses are payable by the local government concerned.

(3) An officer of the public service who is appointed as an administrator or as a member of a committee may hold the appointment as well as the public service office.

### **Recovery of amounts from local governments**

**132.(1)** The Governor in Council may direct a local government for which an administrator is appointed to pay to the Minister an amount specified in the direction as the costs and expenses of the administrator.

(2) The specified amount may include salary and allowances payable to an officer of the public service who is appointed as administrator or a member of a committee.

(3) The direction may specify a time for payment.

(4) The specified amount is a debt payable to the State.

### **Role of committee**

**133.(1)** An administrator appointed for a local government must ensure that every decision of the committee about the exercise of the jurisdiction of local government for the local government's area is implemented as soon as is practicable after the committee's decision is taken.

(2) However, if the administrator considers that implementing a decision of the committee would not be in the best interests of the area, the administrator must refer the issue to the Minister for decision.

(3) The referral must be made within 14 days after the administrator becomes aware of the committee's decision.

### **Decision by Minister on referral by administrator**

**134.(1)** If an issue is referred to the Minister by an administrator under section 133(2) (Role of committee), the Minister may cause the chief executive of the department to make the inquiries, investigations and inspections that the Minister considers appropriate.

(2) The Minister's decision on the issue is taken to be the decision of the committee and is final and binding on the administrator and the committee.

(3) The administrator must ensure the Minister's decision is implemented as quickly as practicable.

### **Procedures of committee**

**135.(1)** In this section—

**“relevant provision”** means a provision of this Act that deals with any of the following matters for a local government—

- (a) the times of its meetings;
- (b) the quorum at its meetings;
- (c) notice of its meetings;
- (d) adjournment of its meetings;

- (e) entitlements of members to vote at its meetings;
- (f) disability of a member to vote because of material personal interest;
- (g) registers of interests;
- (h) minutes of its proceedings;
- (i) revocation or amendment of its resolutions;
- (j) a matter prescribed by regulation.

(2) A relevant provision applies to a committee appointed to help an administrator as if—

- (a) the committee were a local government; and
- (b) the administrator, or person acting as chairperson of the committee, were the mayor of the local government.

### **Termination of administrator's appointment**

**136.(1)** The appointment of an administrator—

- (a) may be terminated by the Governor in Council for any reason; or
- (b) ceases on the conclusion of a fresh election of the councillors of the local government concerned.

(2) It is the intention of the Parliament that a fresh election of the councillors of the local government should be held as soon as possible after the appointment of an administrator for the local government.

### **Termination of appointment of committee member etc.**

**137.(1)** The appointment of all members or any member of a committee to help an administrator may be terminated by the Minister, for any reason, by written notice signed by the Minister and given to the members or member.

(2) A committee appointed to help an administrator ceases to exist on the conclusion of a fresh election of councillors of the local government concerned.

## **PART 3—LOCAL GOVERNMENT GRANTS COMMISSION**

### *Division 1—Extended application of part*

#### **Application of part to Brisbane City Council**

**138.** This part applies to the Brisbane City Council.

#### **Application of part to Aboriginal and Torres Strait Islander local governments**

**139.** This part applies to all Aboriginal and Torres Strait Islander local governments.

### *Division 2—Commission membership*

#### **Local Government Grants Commission and its members**

**140.(1)** The Local Government Grants Commission is established.

**(2)** The commission is to consist of 5 members.

**(3)** The 5 members of the commission are to comprise—

- (a)** 4 persons with knowledge of local government; and
- (b)** an officer of the department.

**(4)** The chairperson of the commission is to be a member mentioned in subsection (3)(a), and the deputy chairperson of the commission is to be the member mentioned in subsection (3)(b).

#### **Appointments**

**141.(1)** The members and chairperson of the commission are to be appointed by the Governor in Council.

**(2)** A member of the commission is to be appointed for a term of not longer than 3 years.

(3) A member is entitled to be paid the remuneration, fees and allowances decided by the Governor in Council.

(4) Payment for a member (as a member or in an additional or other capacity) may differ according to class or rate of payment from payment for another member.

(5) A member holds office on other terms not provided in this Act as are decided by the Governor in Council.

(6) If a provision of another Act—

- (a) requires the holder of an office to devote all of the person's time to the duties of the office; or
- (b) prohibits the holder of an office from engaging in employment outside the duties of the office;

the provision does not disqualify the holder of the office from—

- (c) holding the office and the office of member of the commission at the same time; and
- (d) accepting and retaining the remuneration, fees and allowances payable under this section.

### **Vacation of and removal from office**

**142.(1)** The office of a member of the commission becomes vacant if the member—

- (a) resigns by signed notice of resignation given to the Minister; or
- (b) is convicted of an indictable offence; or
- (c) is removed from office under subsection (2); or
- (d) if the member is the officer of the department mentioned in section 140(3)(b) (Local Government Grants Commission and its members)—stops being an officer of the department.

(2) The Governor in Council may remove a member from office if the member—

- (a) engages in misbehaviour; or
- (b) becomes incapable of performing the duties of a member because

- of physical or mental incapacity; or
- (c) is incompetent; or
  - (d) uses the office for party political purposes; or
  - (e) does anything else that, in the Governor in Council's opinion, is a reasonable and sufficient justification for removal from office.

### **Acting members**

**143.(1)** The Governor in Council may appoint a person to act in the office of the member if the member is absent or unable to discharge the functions of the office (whether because of illness or otherwise).

**(2)** The acting member for the chairperson of the commission is the chairperson of the commission while acting.

**(3)** The acting member for the deputy chairperson of the commission is the deputy chairperson of the commission while acting.

### *Division 3—Role of commission*

#### **Commission makes recommendations to Minister**

**144.(1)** The commission must make recommendations to the Minister about the allocation of the amount (the “**financial assistance amount**”) the State is entitled to receive from the Commonwealth under the *Local Government (Financial Assistance) Act 1986* (Cwlth) (the “**Commonwealth Act**”) for financial assistance for local government purposes.

**(2)** The commission must also make recommendations to the Minister about a matter referred to it by the Minister about the finances of 1 or more local governing bodies.

**(3)** In making recommendations under subsection (1), the commission must comply with the Commonwealth Act.

### *Division 4—Recommendations, allocation and distribution*

**Preparing recommendations**

**145.(1)** In preparing its recommendations, the commission may inform itself in the way it considers appropriate.

**(2)** The commission must accept and consider any submission made to it by a local governing body or association of local governing bodies.

**Commission's recommendations to Minister**

**146.(1)** When the commission makes a recommendation to the Minister under section 144(1) (Commission makes recommendations to Minister), the Minister may—

- (a) accept the recommendation; or
- (b) refer the recommendation back to the commission and ask it—
  - (i) to reconsider its recommendation or a part of it; or
  - (ii) to consider a matter raised by the Minister about the recommendation.

**(2)** The Minister must give the commission reasons for asking it to do something under subsection (1)(b).

**(3)** After doing what it is asked to do under subsection (1)(b), the commission must consider whether any change should be made to its recommendation, and resubmit its recommendation to the Minister with or without change.

**(4)** A member of the commission may submit a minority recommendation to the Minister.

**Allocation of amount after recommendations**

**147.** In allocating the financial assistance amount, the Minister must—

- (a) have regard to the commission's recommendations about the allocation; and
- (b) comply with the Commonwealth Act.

**Recommendations to be tabled**

**148.** When the Minister has allocated the financial assistance amount among local governing bodies, the following must be tabled in the Legislative Assembly—

- (a) the commission's recommendations;
- (b) particulars of the allocation of the financial assistance amount.

**Distribution of financial assistance amount**

**149.** When the financial assistance amount is received from the Commonwealth, it must be distributed among local governing bodies as allocated by the Minister.

*Division 5—Inquiries by commission**Subdivision 1—General***Commission may decide to hold inquiry**

**150.** In considering a matter about which it is to make recommendations, the commission may decide to hold an inquiry under this division.

**Notice of decision to hold inquiry**

**151.** Before starting the inquiry, the commission must—

- (a) publish in a newspaper circulating generally in the State a notice outlining the processes to be followed in the inquiry; and
- (b) give a copy of the notice to all local governing bodies likely to be concerned in the inquiry.

*Subdivision 2—Conduct of inquiries*

**Extended meaning of “commission” in subdivision**

**152.** In this subdivision—

“**commission**” includes a member or members of the commission holding an inquiry on a direction given by the commission.

**Commission’s duties on inquiry**

**153.** When conducting an inquiry, the commission—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of issues raised in the inquiry.

**Commission may decide procedures**

**154.(1)** The commission—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate; and
- (c) may decide the procedures to be followed at an inquiry.

**(2)** However, the commission must comply with this subdivision and any procedural rules prescribed by regulation.

**Public may attend**

**155.** The commission must allow members of the public to attend an inquiry unless in the commission’s opinion it is in the public interest not to allow members of the public to attend the inquiry.

**Commission’s powers on inquiry**

**156.(1)** In conducting an inquiry, the commission may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or by statutory declaration; and

- (c) adjourn the inquiry; and
- (d) permit a document to be amended; and
- (e) disregard any defect, error, omission or insufficiency in a document; and
- (f) permit or refuse to permit a person (including a legal practitioner enrolled in Queensland or elsewhere) to represent someone else at the inquiry.

(2) The commission may administer an oath to a person appearing as a witness before the inquiry.

### **Notice to witness**

**157.(1)** The commission may, by written notice given to a person, require the person to attend an inquiry at a specified time and place to give evidence or produce specified documents.

(2) A person who is given a notice must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the commission until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to appear as a witness before an inquiry is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the commission.

### **Duty of witness at inquiry**

**158.(1)** A person appearing as a witness at an inquiry must not—

- (a) fail to take an oath or make an affirmation when required by the commission; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the commission; or
- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under section 157 (Notice to

witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

### **Contempt of commission**

**159.** A person must not—

- (a) insult a member of the commission in an inquiry; or
- (b) deliberately interrupt an inquiry; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the commission is conducting an inquiry; or
- (d) do anything that would be a contempt of court if the commission were a judge acting judicially.

Maximum penalty—50 penalty units.

### **Change of member**

**160.** An inquiry is not affected by a change in the member or members of the commission holding the inquiry.

## *Division 6—Commission proceedings*

### **Time and place of meetings**

**161.(1)** Meetings of the commission are to be held at the times and places it decides.

(2) However, the chairperson (or, in the absence of the chairperson, the deputy chairperson) of the commission may at any time call a meeting by giving the other members of the commission at least 7 days written notice of the meeting.

(3) The chairperson (or, in the absence of the chairperson, the deputy

chairperson) of the commission must call a commission meeting if asked by the Minister.

### **Quorum at meetings**

**162.** Business may be conducted at a commission meeting only if at least 3 members of the commission are present.

### **Presiding member**

**163.** At a meeting—

- (a) the chairperson (or, in the absence of the chairperson, the deputy chairperson) of the commission presides; or
- (b) in the absence of the chairperson and deputy chairperson, the member chosen by the members present as chairperson for the meeting presides.

### **Voting at meetings**

**164.** At a meeting—

- (a) a question is to be decided by a majority of the members of the commission present and voting; and
- (b) each member (including the member presiding) has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

### **Way business to be conducted**

**165.** The commission must conduct its business in the way prescribed by regulation or, in the absence of a regulation, may conduct its business as it considers appropriate.

**Cooperation by departments etc.**

**166.(1)** This section applies to the following entities—

- (a) a government entity;
- (b) a local governing body.

**(2)** An entity must—

- (a) cooperate with the commission in performing its role; and
- (b) give the commission all information it reasonably requires to perform its role.

**Assistance to the commission**

**167.** The chief executive of the department must make available to the commission the staff assistance it needs to perform its role effectively.

## **CHAPTER 4—LOCAL GOVERNMENT COUNCILLORS**

### **PART 1—MEMBERSHIP OF LOCAL GOVERNMENTS**

#### *Division 1—Extended application of part*

**Application of part to Brisbane City Council**

**168.** This part applies to the Brisbane City Council.

#### *Division 2—Qualifications and disqualifications*

**General qualifications for membership**

**169.(1)** A person is qualified to become a councillor of a local government if the person lives in the local government's area and is an elector.

**(2)** This section is subject to the following sections—

- section 170 (General disqualifications)
- section 171 (Disqualification and vacation of office for certain offences).

**General disqualifications**

**170.** A person is not qualified to become a councillor if—

- (a) the person is an undischarged bankrupt under the *Bankruptcy Act 1966* (Cwlth); or
- (b) the person has executed a deed of arrangement under the *Bankruptcy Act 1966* (Cwlth), part X and the terms of the deed have not been fully complied with; or
- (c) the person's creditors have accepted a composition under the *Bankruptcy Act 1966* (Cwlth), part X and a final payment has not been made under the composition; or
- (d) the person is in prison; or
- (e) the person is not entitled to be elected as a member of the Legislative Assembly under the *Electoral Act 1992*, section 176 or under another law; or
- (f) the person is a member of an Australian Parliament.

**Disqualification and vacation of office for certain offences**

**171.(1)** This section applies if a person is found guilty of an offence against any of the following provisions—

- section 194 (Penalty for contravening exclusion from meeting)
- section 195 (Registers of interests)
- section 326 (False, misleading or incomplete electoral documents)

- section 341 (Influencing voting)
- section 343(a) or (b) (Voting if not entitled).

(2) The person is not qualified to become a local government councillor for 3 years after the conviction and, if the person is a local government councillor, the person vacates the office—

- (a) if the person appeals against the conviction—on the appeal being dismissed, struck out or discontinued; or
- (b) if the person does not appeal against the conviction—at the end of the time fixed by law within which an appeal must be started.

(3) A court may, by order, direct that this section does not apply to a person if the court is satisfied that it would be just to give the direction.

### **Review of lawfulness of membership of local government**

**172.(1)** This section applies to an application for review under the *Judicial Review Act 1991* of—

- (a) the lawfulness of the election or appointment of a councillor; or
- (b) the continued eligibility of a person to act as a councillor.

(2) For the purposes of the *Judicial Review Act 1991*, any elector of the local government is a person who may make the application.

(3) However, subsection (2) does not limit the persons who may make the application.

### **Termination of membership of Legislative Assembly on becoming councillor**

**173.** If a member of the Legislative Assembly is elected or appointed as a councillor, the person is taken to have resigned as a member of the Legislative Assembly on the day the person becomes a councillor.

### **Termination of local government employment on becoming councillor**

**174.(1)** If a local government employee is elected or appointed as a councillor, the person is taken to have resigned as an employee on the day the person becomes a councillor.

(2) In this section—

“**local government employee**” does not include—

- (a) a person employed under a Commonwealth funded community development project for Aborigines or Torres Strait Islanders; or
- (b) a person prescribed by regulation.

### *Division 3—Term of office*

#### **Duration of membership**

**175.(1)** If a councillor is elected at a triennial election, the councillor is elected until the next triennial election.

(2) If a councillor (the “**new councillor**”) is elected or appointed to fill a vacancy in the office of a councillor (the “**former councillor**”), the new councillor is elected or appointed for the balance of the former councillor’s term of office.

(3) If a councillor is elected at a fresh election, the councillor is elected for a term of office to—

- (a) if a declaration under section 355 (Extension of term of councillors) applies to the election—the triennial elections after the next triennial elections; and
- (b) in any other case—the next triennial elections.

(4) A councillor’s term of office starts—

- (a) if the councillor is elected—the day after the day of the conclusion of the councillor’s election; or
- (b) if the councillor is appointed—the day on which the councillor is appointed.

(5) A councillor’s term of office ends on the day—

- (a) the next relevant triennial election concludes; or
- (b) the local government is dissolved; or
- (c) the councillor’s office otherwise becomes vacant.

**Resignation from office as a councillor**

**176.(1)** A councillor may resign by signed notice of resignation given to the local government's chief executive officer.

**(2)** The resignation takes effect when it is given to the chief executive officer unless it is expressed to take effect on a future date.

**PART 2—COUNCILLORS' ROLES***Division 1—Councillors' roles generally***Councillors' role**

**177.(1)** A local government councillor—

- (a) represents the overall public interest of the local government's area and, if the councillor is a councillor for a division of the area, also represents the public interest of the division; and
- (b) takes part in deciding the facilities, services and enterprises that are appropriate for the area; and
- (c) takes part in formulating, adopting and reviewing—
  - (i) the local government's corporate plan and operational plans; and
  - (ii) the policies and goals of the local government; and
- (d) takes part in making decisions for achieving the goals and implementing the policies of the local government.

**(2)** In performing the role, a councillor—

- (a) must serve the overall public interest of the area and, if the councillor is a councillor for a division, the public interest of the division; and
- (b) if conflict arises between the public interest and the private interest of the councillor or another person—must give preference to the public interest.

(3) A councillor must ensure there is no conflict, or possible conflict, between the councillor's private interest and the honest performance of the councillor's role of serving the public interest.

### **Limitations on councillors' roles**

**178.(1)** A councillor who is not the mayor must not assume any part of the mayor's role without the mayor's prior approval.

(2) A councillor cannot direct, and must not attempt to direct, an employee of the local government about the way in which the employee's duties are to be performed.

### **Additional roles of mayor**

**179.(1)** The mayor of a local government—

- (a) presides at, and is responsible for the orderly conduct of, meetings of the local government at which the mayor is present; and
- (b) ensures the carrying out of the local government's decisions; and
- (c) exercises the powers, and performs the duties, given to the mayor by the local government; and
- (d) ensures the appropriate representation of the local government at civic or ceremonial functions.

(2) In performing the role mentioned in subsection (1)(b), the mayor may identify to the chief executive officer of the local government the officer's duty in carrying out policies and decisions of the local government.

## ***Division 2—Deputy mayor and acting mayor***

### **Deputy mayor of local government**

**180.** A local government must appoint a deputy mayor from its councillors, by resolution, at—

- (a) its first meeting after the conclusion of each of the triennial elections; and

- (b) its first meeting after the conclusion of a fresh election of all of its councillors; and
- (c) its first meeting after the deputy mayor's office as councillor otherwise becomes vacant.

### **Office of deputy mayor may be declared vacant**

**181.(1)** A local government may, by resolution, declare that the office of deputy mayor is vacant.

(2) The resolution may be passed only if written notice of the resolution has been given to the councillors at least 14 days before the meeting.

(3) If a local government declares that the office is vacant, it must immediately appoint a deputy mayor from its councillors.

### **Additional role of deputy mayor**

**182.** The deputy mayor of a local government acts in the office, and performs the role, of the mayor during—

- (a) a vacancy in the office of mayor; or
- (b) the absence or temporary incapacity of the mayor.

### **Appointment of acting mayor**

**183.** A local government may, by resolution, appoint from its councillors an acting mayor, if at any time—

- (a) vacancies exist in the offices of mayor and deputy mayor; or
- (b) a vacancy exists in the office of mayor and the deputy mayor is prevented, by absence or temporary incapacity, from acting in the office; or
- (c) the mayor and deputy mayor are prevented, by absence or temporary incapacity, from performing the role of mayor.

**Role of acting mayor**

**184.** The acting mayor of a local government acts in the office of the mayor while the circumstances in which the person was appointed as acting mayor continue.

**PART 3—ENTITLEMENTS AND OBLIGATIONS***Division 1—Entitlements of councillors and committee members***Remuneration for service on local government and advisory committees**

**185.(1)** A local government may, by resolution, authorise the payment or provision of remuneration to a person who is—

- (a) a councillor of the local government; or
- (b) a member of an advisory committee of the local government who is not a councillor.

**(2)** The resolution must specify—

- (a) the purpose for which the remuneration is to be paid or provided; and
- (b) the persons entitled to remuneration; and
- (c) the amount or value of the remuneration or the basis on which it is calculated.

**(3)** The basis on which remuneration is calculated may vary according to—

- (a) the purpose for which the remuneration is paid or provided; or
- (b) whether or not the person entitled to the remuneration is a councillor of the local government.

**(4)** The resolution must specify—

- (a) the principles or remuneration system on which the remuneration

is based; and

(b) the reasons for adopting the principles or system.

(5) A resolution under this section operates for no longer than 6 months after the next triennial elections.

### **Superannuation benefits for councillors**

**186.(1)** In this section—

“**audit**”, of a superannuation scheme, means an audit required under the Commonwealth Superannuation Act.

“**Commonwealth Superannuation Act**” means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

“**scheme**” means a voluntary superannuation scheme for councillors.

“**standard permanent employee**” has the meaning given by section 761.

(2) A local government may—

- (a) establish and amend a scheme; or
- (b) join in establishing and amending a scheme; or
- (c) take part in a scheme.

(3) However, a local government may not establish or take part in a scheme—

- (a) under which the contribution to the scheme payable by the local government for its councillors (expressed as a percentage of payment in the nature of salary) is more than—
  - (i) for the year starting 1 July 1995—11%; or
  - (ii) for the year starting 1 July 1996—11.5%; or
  - (iii) for each later year—12%;<sup>4</sup> or

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<sup>4</sup> The percentages mentioned in the paragraph represent local governments’ liability for standard permanent employees under section 743M(2)(b) (Local governments’ liability for permanent employees) less standard permanent employees’ liability under section 743N(b) (Permanent employees’ liability for contributions).

- (b) under which the proportion of contribution to the scheme payable by the local government for its councillors is more or less than the proportion of contribution to the Local Government Superannuation Scheme payable by the local government for its standard permanent employees; or
- (c) under which the local government is required to contribute to the scheme for a person who has ceased to be a councillor; or
- (d) that does not meet the requirements of the Commonwealth Superannuation Act.

(4) If a local government acts under subsection (2), it may pay an amount from its operating fund by way of a subsidy or contribution to the scheme.

(5) An audit of a superannuation scheme established by a local government (whether alone or with another local government) must be carried out by the Auditor-General.

### **Insurance of councillors**

**187.(1)** A local government may enter into a contract of insurance with the Workers' Compensation Board, or another insurer, to provide insurance cover for injury (within the meaning of the *Workers' Compensation Act 1990*) suffered by a councillor.

(2) For the purpose of the insurance cover, the definition "injury" in the *Workers' Compensation Act 1990* is interpreted as if the reference to employment were a reference to performance of the councillor's role.

(3) A local government may enter into a contract of insurance with an insurer other than the Workers' Compensation Board only if the entitlements to compensation under the contract are, as far as practicable, the same as the entitlements provided under a contract of insurance with the board.

(4) For the purpose of the insurance cover, a councillor's role includes, for example, attendance—

- (a) at the meetings of the local government or its committees that the councillor is entitled or asked to attend, or at which the councillor has business for a resident of the local government's area; and

- (b) at inspections or deputations, conferences and meetings at which the councillor's attendance is permitted by the local government; and
- (c) at official functions organised for the local government; and
- (d) on residents of the area for the purpose of local government business.

### **Indemnity for councillors**

**188.(1)** A councillor does not incur civil liability for an act or omission done honestly and without negligence under this Act.

**(2)** A liability that would, apart from this section, attach to a councillor attaches instead to the local government.

### *Division 2—Obligations of councillors*

#### **Application to Brisbane City Council**

**189.** This division applies to the Brisbane City Council.

#### **Councillor's declaration of office**

**190.(1)** A person elected or appointed as a councillor, before acting in the office, must make a declaration of office in the following form—

‘I, ....., having been elected/appointed as a councillor of the Council of the City/Town/Shire of ....., declare that I will faithfully and impartially fulfil the duties of the office to the best of my judgment and ability.’.

**(2)** The chief executive officer of the local government is authorised to take the declaration.

**(3)** The chief executive officer must keep a record of the taking of the declaration.

**(4)** The person ceases to hold office as a councillor if the person does not make the declaration within 1 month after being elected or appointed or a longer period that the Minister may allow.

**Acting as councillor without authority**

**191.** A person must not act as a councillor if the person knows that—

- (a) the person is not qualified to be a councillor; or
- (b) the person's office as a councillor has been vacated.

Maximum penalty—85 penalty units.

**Exclusion from meeting of councillor with material personal interest**

**192.(1)** A councillor who has a material personal interest in an issue to be considered at a meeting of the local government, or any of its committees—

- (a) must disclose the interest to the meeting; and
- (b) must not be present at or take part in the meeting while the issue is being considered or voted on.

**(2)** A councillor who is barred from a meeting under subsection (1) must not be in the chamber where the meeting is being conducted, including any area set apart for the public.

**Removal of disability**

**193.(1)** The Minister may, by signed notice, relieve a councillor of a local government of a disability to which the councillor is subject under section 192 (Exclusion from meeting of councillor with material personal interest) if—

- (a) because of the number of councillors subject to the disability, conduct of a meeting of the local government or committee would be obstructed if relief were not given; or
- (b) it appears to the Minister to be in the interests of the local government's area that relief be given.

**(2)** The Minister may give the relief subject to conditions specified in the notice.

**(3)** A councillor does not contravene section 192 by taking part in a meeting, or being in the chamber where the meeting is being conducted, if—

- (a) the councillor is a person to whom relief is given under subsection (1); and
- (b) the councillor is complying with the conditions on which the relief is given.

### **Penalty for contravening exclusion from meeting**

**194.** A councillor of a local government who contravenes section 192 (Exclusion from meeting of councillor with material personal interest) is liable to a maximum penalty of—

- (a) if the councillor voted on the issue with an intention to gain an advantage for the councillor or anyone else—200 penalty units;
- (b) in any other case—85 penalty units.

### **Registers of interests**

**195.(1)** The chief executive officer of a local government must keep—

- (a) a register of interests of each local government councillor; and
- (b) a register of interests of the persons who, under a regulation, are related to the councillor.

**(2)** A register—

- (a) must relate to only 1 person; and
- (b) must contain the financial and non-financial particulars prescribed by regulation.

**(3)** If a councillor knows—

- (a) of an interest that the chief executive officer must record in a register of interests kept under subsection (1) in relation to the councillor or a person who, under a regulation, is related to the councillor (a “**related person**”); or
- (b) that particulars of an interest recorded in a register kept under subsection (1) in relation to the councillor or a related person are no longer correct;

the councillor must tell the chief executive officer of the interest, or the

correct particulars, in accordance with the regulations.

Maximum penalty for subsection (3)—85 penalty units.

### **Access to registers**

**196.(1)** A register of councillor's interests is open to inspection.

**(2)** A register of other persons' interests is not open to inspection other than by—

- (a) a councillor of the local government; and
- (b) a person permitted by law to have access to information in the register, or the person's agent.

**(3)** A person seeking access to a register must apply in writing to the chief executive officer.

**(4)** The chief executive officer must record—

- (a) the name and home or business address of each person given access to the register; and
- (b) the day the access is given.

**(5)** The chief executive officer must advise a councillor of any access given to the councillor's register and any register of a person who, under a regulation, is related to a councillor.

**(6)** A person must not knowingly disclose information obtained from the register—

- (a) if it is not a true copy, or a fair summary, of the particulars in the register; or
- (b) for information from a register of other persons' interests—to a person other than—
  - (i) a councillor or the chief executive officer; or
  - (ii) a person mentioned in subsection (2)(b).

Maximum penalty for subsection (6)—85 penalty units.

**Queries on contents of register**

**197.(1)** A person who suspects on reasonable grounds that a register does not contain particulars that should be in the register may inform the chief executive officer of the local government.

(2) The chief executive officer must immediately inform the councillor concerned.

(3) The councillor must, within 30 days of being informed—

- (a) establish whether the register should be amended to make it a true record of fact; and
- (b) if the register should be amended—give the chief executive officer the appropriate particulars in writing.

(4) If the councillor establishes that the register does not need to be amended, the councillor must—

- (a) complete a statutory declaration to the effect that the particulars in the register are a true record of fact; and
- (b) give the statutory declaration to the chief executive officer.

**Improper use of information by councillors**

**198.(1)** A person who is or has been a local government councillor must not make improper use of information acquired as a councillor—

- (a) to gain, directly or indirectly, a financial advantage for the person or someone else; or
- (b) to harm the local government.

(2) A person who is or has been a local government councillor must not release information that the person knows, or should reasonably know, is information that—

- (a) is confidential to the local government; and
- (b) the local government wishes to keep confidential.

Maximum penalty—35 penalty units.

## **PART 4—VACANCIES IN MEMBERSHIP OF LOCAL GOVERNMENTS**

### **Application of part to Brisbane City Council**

**199.** This part applies to the Brisbane City Council.

### **When councillor’s office becomes vacant**

**200.(1)** A person’s office as a local government councillor becomes vacant if the person—

- (a) ceases to be qualified to become a councillor under part 1 (Membership of local governments), division 2 (Qualifications and disqualifications); or
- (b) without the local government’s leave, is absent from 3 or more consecutive ordinary meetings of the local government over at least 3 months; or
- (c) on a review under the *Judicial Review Act 1991*, is found to be unlawfully elected or appointed, or ineligible to continue to act as, a councillor of the local government; or
- (d) resigns as a councillor; or
- (e) becomes a local government employee; or
- (f) otherwise ceases to hold the office before the end of the councillor’s term of office.

**(2)** In this section—

**“local government employee”** does not include—

- (a) a person employed under a Commonwealth funded community development project for Aborigines or Torres Strait Islanders; or
- (b) a person prescribed by regulation.

### **Filling of earlier vacancies by by-election**

**201.(1)** This section applies if a person’s office as a local government councillor becomes vacant before 1 March (the **“cut-off date”**) in the year

before the year in which the next triennial elections for the local government are to be held.

(2) The vacancy must be filled by a by-election.

### **Filling of later vacancies by appointment**

**202.(1)** This section applies if the office of a person (the “**former councillor**”) as a local government councillor becomes vacant on or after the cut-off date.

(2) The local government must fill the office by appointing a person (the “**new councillor**”) to the office.

(3) The new councillor must be—

- (a) a qualified person; and
- (b) if the former councillor was, at the last filling of the office, a candidate endorsed by, or a nominee of, a political party—the political party’s nominee.

(4) If the former councillor held office as mayor of the local government, the local government must fill that office by appointing—

- (a) an existing councillor as mayor; or
- (b) another qualified person as mayor.

(5) If the former councillor held office as mayor and was, at the last filling of the office, a candidate endorsed by, or a nominee of, a political party, the person appointed under subsection (4) must be the political party’s nominee.

(6) If the former councillor held office as mayor, the local government may act under subsection (3) for the vacancy only if it has already appointed an existing councillor as mayor.

(7) If a vacancy that should be filled under this section is not properly filled within 2 months after the vacancy happens, the Governor in Council may appoint a qualified person to fill the vacancy.

(8) In this section—

“**qualified person**” means a person who—

- (a) is qualified to become a councillor of the local government; and

- (b) has been an elector for the local government for at least 30 days before the person is appointed.

### **Duty to seek political party's nominee for appointment to vacancy**

**203.(1)** This section applies if there is a vacancy in the office of a local government councillor and the vacancy is to be filled by the nominee of a political party.

(2) Within 14 days after the vacancy happens, the chief executive officer of the local government must, by written notice given to the political party, request the party to inform the officer of the full name and address of its nominee to fill the vacancy.

(3) The notice may be given to the political party by giving it to the party's registered officer under the *Electoral Act 1992*.

### **Duty to seek other nominees for appointment to vacancy**

**204.(1)** This section applies if there is a vacancy in the office of a local government councillor and the vacancy is not to be filled by the nominee of a political party.

(2) Within 14 days after the vacancy happens, the chief executive officer must—

- (a) by notice published in a newspaper circulating generally in the local government's area, invite nominations from persons qualified to fill the vacancy; and
- (b) by written notice to each person who was a candidate for the office at the last election—
- (i) inform the person of the vacancy; and
- (ii) ask the person to indicate in writing whether the person is willing to accept the office if appointed.

(3) If persons qualified to fill the vacancy nominate for appointment or indicate a willingness to accept the office if appointed, the local government must fill the vacancy by appointment from among the persons.

## **PART 5—MEMBERSHIP OF JOINT LOCAL GOVERNMENTS**

### **Election of members**

**205.(1)** Each component local government or group of component local governments of a joint local government must elect the number of representatives to which the local government or group is entitled on the joint local government.

**(2)** The representatives must be elected from—

- (a) for a component local government—its councillors; or
- (b) for a group of local governments—the councillors of the local governments in the group.

**(3)** This section is subject to any regulation made for the joint local government under section 48(2) (Number of representatives etc.).

### **When members are to be elected**

**206.** The election of the members of a joint local government must be held—

- (a) before the first meeting of the joint local government; and
- (b) within 1 month after each of the later triennial elections of local governments.

### **Delegate members**

**207.(1)** Each component local government or group of component local governments must elect 1 person as a delegate representative on the joint local government.

**(2)** The delegate representative must be elected from—

- (a) for a component local government—its councillors; or
- (b) for a group of local governments—the councillors of the local governments in the group.

**(3)** In the absence of a representative of a component local government or

group of component local governments, the delegate representative may act as the representative.

### **Filling of casual vacancies**

**208.(1)** If a vacancy happens in the office of a representative or delegate representative of a component local government or group of component local governments, the component local government or group must, within 2 months after the vacancy happens, elect a new representative or new delegate representative to fill the vacancy.

**(2)** The representative or delegate representative must be elected from—

- (a) for a component local government—its councillors; or
- (b) for a group of local governments—the councillors of the local governments in the group.

**(3)** This section is subject to any regulation made for the joint local government under section 48(2) (Number of representatives etc.).

### **Returning officer for elections**

**209.** The returning officer for an election of a representative or delegate representative of a group of component local governments in a joint local government is—

- (a) the joint local government's chief executive officer; or
- (b) if there is no chief executive officer of the joint local government—a person appointed by the Minister for the purpose.

### **Appointment of representatives on default**

**210.** If a component local government or group of component local governments fails to elect the number of representatives in a joint local government to which it is entitled at or within the time it is required to elect them, the Governor in Council may, by gazette notice, appoint a number of councillors of the component local government or group of component local governments necessary to make up the required number of representatives.

**President and deputy president**

**211.(1)** A joint local government must appoint a president and deputy president from its members, by resolution, at—

- (a) the first meeting of the joint local government; and
- (b) at its first meeting after each of the later triennial elections of local governments.

**(2)** For the purpose of electing the president, the chief executive officer or someone else appointed by the Minister is to preside (without entitlement to vote).

**(3)** This section applies subject to any regulation made for the joint local government under section 44(b) (Matters about establishment etc.).

**Presiding at meetings**

**212.(1)** The president of a joint local government presides at meetings of the joint local government at which the president is present.

**(2)** If the president is not present at a meeting, the deputy president is to preside.

**Overriding duty of joint local government member**

**213.** In taking part in the exercise of a joint local government's jurisdiction, a member of the joint local government must act in the best interests of—

- (a) the whole of its area; and
- (b) the responsible exercise of the joint local government's jurisdiction in its area.

**CHAPTER 5—LOCAL GOVERNMENT  
ELECTIONS**

## **PART 1—GENERAL**

### **Triennial elections**

**214.** Councillors of a local government are to be elected once every 3 years.

### **Types of elections**

**215.(1)** A triennial or fresh election of the mayor of a local government is an election for the whole of the local government's area.

**(2)** A triennial or fresh election for another councillor of a local government is—

- (a) if the local government's area does not have divisions—an election for the whole of the area; or
- (b) if the local government's area has divisions—an election for each division of the area.

**(3)** A by-election to fill a vacancy in the office of a local government councillor is an election for its area, or the division of its area, for which the councillor was elected.

### **Elections to be held on a Saturday**

**216.** Every local government election must be held on a Saturday.

### **Date of next triennial elections**

**217.(1)** Triennial elections are to be held on 26 March 1994.

**(2)** However, a regulation may fix a different date for the elections.

### **Date of later triennial elections**

**218.(1)** Later triennial elections are to be held in every third year on the last Saturday in March.

**(2)** However, a regulation may fix a different date for a particular year.

**Date of by-elections**

**219.(1)** A by-election to fill a vacancy in the office of a local government councillor is to be held on the date fixed by the returning officer for the election.

(2) The date fixed must be within 2 months after the vacancy happens.

**PART 2—RETURNING OFFICERS****Chief executive officer is returning officer**

**220.(1)** The chief executive officer of a local government is the returning officer for every election of a councillor of the local government.

(2) This section is subject to section 221 (Appointment of returning officer if chief executive officer cannot act).

**Appointment of returning officer if chief executive officer cannot act**

**221.(1)** If the chief executive officer cannot perform the duties of the returning officer for an election because of other duties of office, the officer must appoint someone else as returning officer for the election.

(2) If the chief executive officer believes the officer cannot properly perform the duties of returning officer for an election because of a possible conflict of interest, the officer must ask the Minister to appoint someone else as returning officer for the election.

(3) The Minister may appoint another person as returning officer for the election.

**Returning officer's duty for by-election**

**222.** As soon as practicable after fixing the day for holding a by-election, the returning officer must—

(a) publish, in a newspaper circulating generally in the local government area and in the other ways that the officer may

consider appropriate, notice of—

- (i) the day fixed; and
  - (ii) the cut-off day for the voters roll for the by-election; and
- (b) take the steps required by this Act for holding the by-election.

### **PART 3—VOTERS ROLL**

#### **Returning officer must compile voters roll**

**223.** The returning officer for a local government election must compile the roll of persons entitled to vote at the election (the “**voters roll**”).

#### **Qualification for enrolment on voters roll**

**224.** A person is entitled to vote at a local government election if the person is an elector under the *Electoral Act 1992* for an electoral district, or a part of an electoral district, included—

- (a) for an election for the whole of the local government’s area—in the area; or
- (b) for an election for a division of the local government’s area—in the division.

#### **Cut-off day for voters roll**

**225.** A voters roll must be compiled to 1 of the following dates—

- (a) for a triennial election for a local government area, or a division of a local government area, in which a postal ballot is to be taken in any part of the area or division—31 December in the year before the year of the election;
- (b) for another triennial election—31 January in the year of the election;
- (c) for a by-election to fill a vacancy in the office of a local

government councillor—at least 5 days, and not more than 7 days, after the publication in a newspaper, under section 222 (Returning officer's duty for by-election), of notice of the day of the by-election.

### **Use of electoral roll when practicable**

**226.(1)** The voters roll for an election for a local government must consist of the persons enrolled on an electoral roll for an electoral district, or a part of an electoral district, included—

- (a) for an election for the whole of the local government's area—in the area; or
- (b) for an election for a division of the local government's area—in the division.

**(2)** However, the returning officer may make the changes to the electoral roll, compiled to the cut-off day for the voters roll, that are necessary because the boundaries of the area or its divisions are not identical with the boundaries of the electoral district.

### **Requirements of voters roll**

**227.(1)** A voters roll for an election must—

- (a) show the names of all persons entitled to vote at the election; and
- (b) be in the form of the electoral roll used for elections of the Legislative Assembly.

**(2)** The returning officer must not include in a voters roll an elector's address that, under the *Electoral Act 1992*, is excluded from the publicly available part of an electoral roll.

### **Voters roll to be open to inspection and purchase**

**228.(1)** A voters roll for an election is open to inspection.

**(2)** Copies of the voters roll must be available for purchase at the local government's public office.

**(3)** The price of a copy of the voters roll must be no more than the cost to

the local government of having the copy available for purchase and, if the copy is posted to the purchaser, the postage cost.

### **Electoral registrars to help returning officers**

**229.** An electoral registrar under the *Electoral Act 1992* must give a returning officer the assistance that the returning officer reasonably requires to compile a voters roll for a local government election.

## **PART 4—VOTING**

### **Compulsory voting**

**230.** Voting at an election for a local government is compulsory and each elector is entitled to 1 vote only.

### **System of voting**

**231.** The system of voting at an election for a councillor is—

- (a) for a local government area divided into single-member divisions—optional-preferential voting; and
- (b) in any other case—first-past-the-post voting.

## **PART 5—DIVISION OF LOCAL GOVERNMENT AREAS**

### **Equitable division of local government areas**

**232.(1)** For each divided local government area and each local government area, or proposed local government area, that is proposed to be divided, there must be a quota of voters for each councillor to be elected for a division of the area.

(2) The quota is worked out by dividing the total number of electors, as nearly as can be found out, by the number of councillors (other than the mayor) of the local government.

### **Quota to be complied with in division of local government area and assignment of councillors**

**233.(1)** The quota worked out for a local government area or proposed local government area under section 232 (Equitable division of local government areas) must be complied with in dividing the area and the assignment of councillors to the divisions.

(2) However, a margin of allowance may be adopted if necessary, but the quota must not be departed from—

- (a) for a local government area with more than 10 000 electors—by more than 10%; or
- (b) for another local government area—by more than 20%.

(3) If the commissioner takes action under chapter 3 (Interaction with the State), part 1 (Review of local government matters) that requires a quota of electors to be worked out, the quota must be worked out as near as practicable to the time public notice about the action is given under section 77 (Public notice of proposed recommendation to implement reviewable local government matter).

### **Disclosure of compliance or noncompliance with quota requirements**

**234.(1)** Not later than 1 March (the “**information date**”) in the year before the year of the triennial elections for local governments, each local government whose area is divided must inform the Minister, in writing, whether each division of its area is consistent with the basis specified in section 233 (Quota to be complied with in division of local government area and assignment of councillors).

(2) The information must be based on the roll of electors in each division available as near as practicable to the information date.

**Matter of area's division referred to commissioner**

**235.** The Minister must refer the matter of the division of a local government's area to the commissioner if—

- (a) the local government informs the Minister that a division of its area is not consistent with the basis specified in section 233 (Quota to be complied with in division of local government area and assignment of councillors); or
- (b) the local government fails to inform the Minister as required by section 234 (Disclosure of compliance or noncompliance with quota requirements) about its area; or
- (c) the Minister suspects that information given under section 234 is incorrect.

**PART 6—CONDUCT OF ELECTIONS***Division 1—Preliminary***Conduct of elections**

**236.** An election must be conducted under this part.

**Chief executive of department may approve forms**

**237.** The chief executive of the department may approve forms for the purposes of this part.

*Division 2—Electoral officers***Returning officer**

**238.** The returning officer for an election is responsible for its proper conduct.

**Presiding officers**

**239.(1)** The returning officer—

- (a) may be presiding officer at a polling booth; and
- (b) must appoint an adult as presiding officer at each polling booth other than the booth where the returning officer is the presiding officer.

**(2)** A presiding officer at a polling booth is responsible for the proper conduct of the poll at the booth and for carrying out the other duties for the election that are required by the returning officer.

**(3)** If a person is unable to act as presiding officer at a polling booth, the returning officer, or someone else with the returning officer's approval, may appoint an adult as presiding officer at the booth while the person is unable to act.

**(4)** An appointment under subsection (1) or (3) must be in the approved form.

**Issuing officers**

**240.(1)** The returning officer, or a presiding officer with the returning officer's approval, may appoint adults to—

- (a) give ballot papers, declaration envelopes and declaration forms to electors; and
- (b) perform the other duties for the election that are required by the presiding officer.

**(2)** The appointment must be in the approved form.

**Declaration by issuing officers**

**241.** An issuing officer must make a declaration in the approved form before acting as an issuing officer.

**Returning officer may act through authorised issuing officer**

**242.** If—

- (a) a returning officer is required under this part to do anything; and
- (b) the returning officer authorises an issuing officer to do the thing; and
- (c) the issuing officer does the thing;

the thing is taken to have been done by the returning officer.

### **Supply and use of voters rolls**

**243.(1)** The returning officer must give to the presiding officer at each polling booth enough copies of the voters roll certified in the approved form by the returning officer.

**(2)** An issuing officer must use a certified copy of the voters roll for taking the ballot in the election.

### ***Division 3—Candidates for election or appointment***

#### **Qualification for nomination**

**244.(1)** A person who is qualified under chapter 4 (Local government councillors), part 1 (Membership of local governments), division 2 (Qualifications and disqualifications), to become a councillor of a local government may nominate for election or appointment to a local government.

**(2)** A person is not disqualified from nominating because the person is a member of the Legislative Assembly or a local government employee.

**(3)** This section applies to the Brisbane City Council.

#### **Prohibition of dual candidature**

**245.(1)** A person cannot, at the same time, be a candidate—

- (a) for election as mayor of a local government and as another councillor of the local government; or
- (b) for election as a councillor of a local government for more than 1 division of the local government's area.

(2) If, at noon on the nomination day, a person is nominated as a candidate in contravention of subsection (1), each of the nominations is of no effect.

(3) This section applies to the Brisbane City Council.

### **Leave to local government employee to contest election**

**246.(1)** A local government employee who nominates as a candidate for election as a local government councillor is entitled to leave of absence for a period of not more than 2 months to contest the election.

(2) A local government employee may use any entitlement to accrued leave with pay as leave to which the employee is entitled under subsection (1).

(3) Unless leave is taken under subsection (2), the local government employee is not entitled to payment of salary or wages for any period of leave taken under subsection (1).

(4) This section applies to the Brisbane City Council.

### **Endorsed candidates must identify endorsement**

**247.** A person whose candidature for election to a local government is endorsed by a political party must include that fact in the form of nomination.

## ***Division 4—Nominations of candidates for election***

### **Calling for nominations**

**248.(1)** The returning officer must publish notice of the election in a newspaper circulating generally in the local government area, or division of the local government area, for which the election is to be held.

(2) The notice must—

- (a) be in the approved form; and
- (b) specify a day as the nomination day—

- (i) not less than 10, or more than 21, days after the day of publication of the notice; and
  - (ii) not less than 21, or more than 42, days before the day on which the election is to be held; and
  - (c) specify a place of nomination; and
  - (d) invite nominations of candidates for the election.
- (3)** The place of nomination must be—
- (a) the local government's public office; or
  - (b) a place in its area convenient generally to persons in its area.

### **Who may nominate**

**249.** A candidate for election as a councillor of a local government must be a person who is qualified under section 244 (Qualification for nomination) to nominate for the election.

### **How and when nomination is given**

**250.(1)** A person who wishes to be a candidate for election must be nominated by—

- (a) the registered officer under the *Electoral Act 1992* of a political party that has endorsed the person as a candidate for the election; or
  - (b) at least 6 electors for the local government area, or division of the local government area, for which the election is to be held.
- (2)** A nomination must be—
- (a) in the approved form; and
  - (b) given to the returning officer after the nominations are invited for the election but before noon on the nomination day.

### **Deposit to accompany nomination**

**251.(1)** Before noon on the nomination day, the person nominating as a candidate must deposit, in cash or by bank cheque, with the returning

officer—

- (a) \$150; or
- (b) if another amount is prescribed by regulation—the amount.

(2) The deposit must be held in the trust fund of the local government until it is refunded, or becomes the property of the local government, under this part.

### **Certificate of returning officer**

**252.(1)** If the returning officer is satisfied a person has been properly nominated for election, the returning officer must—

- (a) certify the nomination, in the approved form; and
- (b) give a copy of the certificate to the candidate.

(2) A person is properly nominated for election if—

- (a) sections 249 (Who may nominate) to 251 (Deposit to accompany nomination) have been complied with, or have been substantially complied with apart from a mere formal defect or error in the nomination; and
- (b) section 245 (Prohibition of dual candidature) does not apply to the person's nomination; and
- (c) the nomination has not been withdrawn.

(3) The returning officer is not obliged to look beyond—

- (a) the form of nomination and payment of the deposit; and
- (b) the voters roll; and
- (c) documentary evidence produced by the nominee or a nominator that the nominee or a nominator is an elector for the election.

(4) If a nomination is wrongly certified by the returning officer, the certification, or the issue of a copy of the certificate, does not validate the nomination.

**Display of nominations**

**253.** As soon as practicable after receipt of a nomination, the returning officer must display a copy of the nomination in a conspicuous position at the place of nomination and, if that place is not the local government's public office, at the public office.

**Termination of candidature before noon on nomination day**

**254.(1)** A person nominated as a candidate for election may withdraw the person's agreement to the nomination by signed notice given to the returning officer before noon on the nomination day.

**(2)** If this happens—

- (a) the nomination is of no effect; and
- (b) the person's deposit must be refunded to the person.

**Death of candidate**

**255.** If a person nominated as a candidate for election dies before noon on the nomination day—

- (a) the nomination is of no effect; and
- (b) the person's deposit must be refunded to the person's personal representative.

**Procedure if number of candidates not more than number required**

**256.(1)** If the number of candidates properly nominated for election does not exceed the number required to be elected—

- (a) the nominees are taken to have been elected; and
- (b) the returning officer must, as soon as practicable after the nomination day, publish a notice in the approved form in a newspaper circulating generally in the local government area, or division of the local government area, for which the election was to be held, that the nominees are taken to have been elected.

**(2)** If—

- (a) no-one is nominated as a candidate for an election; or
- (b) the number of candidates nominated is less than the number required to be elected;

the Governor in Council may, by gazette notice, appoint as councillors of the local government, the number of persons necessary to constitute fully the local government.

(3) Each person appointed as a councillor must be qualified to be elected as a councillor of the local government for the local government area, or division of the local government area, for which the election was to be held.

(4) The persons appointed are taken to have been properly elected as councillors of the local government.

### **Procedure if number of candidates exceeds number required**

**257.(1)** If the number of candidates properly nominated for election exceeds the number required to be elected, a poll must be conducted under this part.

(2) The returning officer must give public notice that a poll will be conducted.

(3) The notice must—

- (a) be in the approved form; and
- (b) specify—
  - (i) the day the poll will be conducted; and
  - (ii) the names of all candidates properly nominated for election in the order decided under section 273 (Order of listing of candidates' names); and
  - (iii) the location of all ordinary polling booths to be used for taking the ballot in the poll; and
  - (iv) that the ordinary voting hours are from 8 a.m. to 6 p.m.; and
- (c) be displayed in a conspicuous position at the place of nomination and, if that place is not the local government's public office, displayed at the public office; and
- (d) be published in a newspaper circulating generally in the local

government area, or division of the local government area, for which the poll will be conducted.

(4) Display of a notice under subsection (3)(c) must—

- (a) start as soon as practicable after noon on the nomination day; and
- (b) continue until the close of the poll.

### **Supply of voters roll**

**258.(1)** If a poll is to be conducted in the election, the returning officer must give a copy of the voters roll to each candidate as soon as practicable after the nomination day.

(2) The copy of the roll must be certified by the returning officer in the approved form.

### **Procedure on death of candidate when poll to be conducted**

**259.(1)** If a poll is to be conducted and a candidate dies after noon on the nomination day but before the polling day—

- (a) for a candidate as mayor—the proceedings for the election of the mayor must start again; and
- (b) for a candidate as councillor (other than mayor) if the local government's area is undivided—the proceedings for the election of the councillors must start again; and
- (c) for a candidate as a councillor for a division of local government's area—the proceedings for the election of councillors for the division must start again.

(2) The deceased candidate's deposit must be refunded to the candidate's personal representative.

(3) The deposits of other candidates must be refunded to the candidates.

(4) Despite subsection (1), the Governor in Council may, by gazette notice, direct that proceedings for holding an election of all councillors of the local government start again.

(5) If proceedings are started again, the Governor in Council must, by gazette notice, fix a new polling day for the election.

**Disposal of deposits generally**

**260.(1)** As soon as practicable after the declaration of the result of a poll, each candidate's deposit must be refunded to the candidate if—

- (a) the candidate is elected; or
- (b) if the system of voting at the election is optional-preferential voting—the number of first preference votes received by the candidate is more than 4% of the total number of formal first preference votes cast in the election; or
- (c) if the system of voting at the election is first-past-the-post voting—the number of votes received by the candidate is more than 4% of the total number of formal votes cast in the election.

**(2)** All other candidates' deposits become the property of the local government and must be paid into its operating fund.

**If successful candidate dies**

**261.** If a candidate who is successful at the election dies before the final result of the poll is declared, the candidate must be declared elected to the office for which the person was a candidate.

**Extension of times**

**262.(1)** This section applies if—

- (a) a nomination day is specified under section 248 (Calling for nominations) for the election; or
- (b) a polling day is specified under section 257 (Procedure if number of candidates exceeds number required) for the election.

**(2)** The Governor in Council may, by gazette notice, fix a later day as the nomination or polling day.

**(3)** The returning officer must publish a notice in a newspaper circulating generally in the local government area, or division of the local government area, for which the election is to be held giving any necessary directions to candidates for election, and to electors, about the procedures to be followed.

***Division 5—Ballots*****Poll by ballot**

**263.** A poll must be conducted by ballot taken under this part.

**Direction that poll be conducted by postal ballot**

**264.(1)** If the local government's area includes a large rural sector, the Governor in Council may, by gazette notice, direct that a poll be conducted by postal ballot.

**(2)** The direction may be given for—

- (a) the whole of its area; or
- (b) 1 or more divisions of its area; or
- (c) a part of its area marked on a map.

**(3)** The map is open to inspection.

***Division 6—Polling booths*****Polling booths—general**

**265.(1)** A place on or from which liquor may lawfully be sold cannot be used as a polling booth.

**(2)** However, a civic or cultural centre, community hall or similar place under the local government's control, may be used as a polling booth if—

- (a) the floor area for taking the ballot is designated in the notice of the conduct of the poll under section 257 (Procedure if number of candidates exceeds number required); and
- (b) the local government ensures that no liquor will be sold or supplied in that area during the taking of the ballot.

**(3)** The returning officer—

- (a) may arrange for a polling booth within or outside the local government area, or division of the local government area, to be

used in an election; and

- (b) may arrange for 2 or more polling booths at any place if the number of electors likely to vote at the place is greater than could conveniently vote in 1 booth at the place; and
- (c) must ensure that each polling booth is provided with enough ballot boxes, ballot papers and materials to enable electors to mark the ballot papers.

### **Provision of ordinary polling booths**

**266.(1)** For the purpose of taking a ballot in the election, the returning officer must arrange for places, or parts of places, to be used on polling day as ordinary polling booths to enable electors in general to vote.

**(2)** The returning officer may—

- (a) less than 3 days before polling day, arrange for an ordinary polling booth to be used; or
- (b) less than 6 days before polling day, cancel arrangements for the use of an ordinary polling booth;

only if it is necessary because of circumstances beyond the returning officer's control.

**(3)** If, after publication of the notice under section 257 (Procedure if number of candidates exceeds number required), the returning officer arranges for the use of an ordinary polling booth, the officer must give public notice—

- (a) of the location of the booth; and
- (b) that the ordinary voting hours of the booth are from 8 a.m. to 6 p.m.

**(4)** If the returning officer cancels arrangements for the use of an ordinary polling booth, the officer must give public notice of the cancellation.

**(5)** Notice under subsection (3) or (4) must be given in the way that the returning officer considers is the best way to inform electors generally.

**Declaration of mobile polling booths**

**267.(1)** If the returning officer is satisfied residents in an institution should be able to vote at the institution in a poll, the returning officer may arrange for the whole or a part of the institution to be available as a mobile polling booth to enable residents in the institution to vote there in the poll.

**(2)** If the returning officer is satisfied a part of the local government area or division of the local government area does not have enough electors to justify the use of an ordinary polling booth in the part, the returning officer may arrange for the whole or part of any place in the part to be available as a mobile polling booth to enable electors in the part to vote in the poll.

**(3)** If the returning officer acts under subsection (1) or (2), the officer must fix the times, during the period starting 11 days before the polling day and ending at 6 p.m. on the polling day, when the mobile polling booth may be used for voting.

**(4)** The returning officer must, by notice published in a newspaper circulating generally in the relevant part of the local government area—

- (a)** declare the whole or part of the relevant institution or place as a mobile polling booth for the election; and
- (b)** specify the times at which votes may be cast at the booth.

**(5)** The notice must be in the approved form.

**(6)** The returning officer also must give written notice to the candidates for election of the declaration of the mobile polling booth and the times at which votes may be cast at the booth.

**(7)** On the declaration of a mobile polling booth for an election, the electors resident in the relevant institution or the electors resident in the part of the local government area in which the booth is situated, may vote in the election at the booth during the times specified for the booth in the notice published under subsection (4).

**Duty of person in charge of institution**

**268.(1)** If the returning officer arranges for the whole or part of an institution to be used as an ordinary polling booth, the person in charge of the institution must allow electors and issuing officers to have access to the booth whenever votes may be cast at the booth.

(2) If the returning officer declares the whole or part of an institution as a mobile polling booth, the person in charge of the institution must allow residents in the institution and issuing officers to have access to the booth whenever votes may be cast at the booth.

### **Privacy of voting**

**269.** The returning officer must ensure that each polling booth is provided with enough voting compartments, or other adequate facilities, to allow the casting of votes in private.

### *Division 7—Ballot boxes, papers and other documents*

#### **Ballot boxes generally**

**270.(1)** A ballot box used in a poll must be under the scrutiny and effective control of an issuing officer.

(2) A ballot box must—

- (a) have an opening of a size sufficient to allow folded ballot papers and declaration envelopes to be put in the box; and
- (b) be open to inspection by issuing officers, candidates for election at the poll, and scrutineers properly appointed for the poll, before the box is locked or sealed for receipt of ballot papers.

#### **Requirements of ballot papers**

**271.(1)** If a poll is to be conducted, the returning officer must arrange for the printing of all ballot papers to be used in taking the ballot in the poll.

(2) A ballot paper must—

- (a) be in the approved form; and
- (b) be of material that, when folded, the vote cast by the elector on the paper is effectively concealed; and
- (c) be attached to a butt that—
  - (i) is not part of the ballot paper; and

- (ii) is perforated to allow the ballot paper to be easily detached from the butt; and
  - (iii) is numbered in regular arithmetical sequence, starting with the numeral 1 and proceeding by intervals of one whole numeral, so that each butt for the local government area, or division of the local government area, for which the poll is conducted has a unique number; and
  - (d) show the name of each candidate for election as required by subsection (3); and
  - (e) if the names of 2 or more candidates are so similar as to be likely to cause confusion to electors—contain an appropriate description or addition, in the returning officer’s opinion, to distinguish the persons’ names; and
  - (f) if a candidate endorsed by a political party was nominated under section 250(1)(a) (How and when nomination is given)—contain, printed adjacent to the candidate’s name, the name of the political party as it would be required to be shown in a ballot paper under the *Electoral Act 1992*.
- (3) A ballot paper must—
- (a) contain the name of each candidate once only by showing first the surname followed by the given name or names; and
  - (b) show the names of the candidates in the order decided under section 273 (Order of listing of candidates’ names).
- (4) A ballot paper must not contain anyone else’s name.

### **Separate ballot papers for separate polls**

**272.(1)** This section applies if a poll for election of mayor of the local government is to be conducted when a poll for election of another councillor of the local government is conducted.

(2) One ballot paper must be used in both polls, unless the local government, by resolution, instructs the returning officer that separate ballot papers be printed for use in the polls.

(3) The returning officer must comply with the instruction.

**Order of listing of candidates' names**

**273.(1)** The order in which names of candidates for election are to be listed on ballot papers and notices under section 257 (Procedure if number of candidates exceeds number required) is to be decided under this section.

(2) The order must be decided by the returning officer as soon as practicable after noon on the nomination day.

(3) The returning officer must, in the presence of 2 witnesses—

- (a) write the name of each candidate on a separate sheet of paper; and
- (b) ensure that each piece of paper is of the same kind, shape, size and colour; and
- (c) put each separate piece of paper in a separate envelope and, if it is necessary to fold the piece of paper to make it fit in the envelope, fold each piece of paper in the same way to make each the same size and thickness; and
- (d) ensure that each envelope is opaque and of the same kind, shape, size and colour; and
- (e) after each piece of paper has been placed in an envelope, seal the envelope; and
- (f) put all the envelopes in a container and shuffle them; and
- (g) draw out the envelopes, 1 at a time; and
- (h) as each envelope is drawn out, open it and record the name of the candidate shown on the piece of paper in the envelope.

(4) The order in which the names are recorded is the order in which the names are to appear on the ballot paper and notices under section 257 (Procedure if number of candidates exceeds number required).

(5) The returning officer must—

- (a) give written notice to each candidate of the day, time and place at which the order of candidates' names will be decided; and
- (b) allow the candidate, or the candidate's representative, to be present.

**Distribution of ballot papers**

**274.(1)** The returning officer must ensure a sufficient number of ballot papers is available at all polling booths.

**(2)** The returning officer must prepare a delivery note in the approved form in triplicate for each parcel of ballot papers supplied by the returning officer to presiding officers at polling booths.

**(3)** The approved form must—

- (a) show details of the number of ballot papers supplied; and
- (b) show the range of numbers of the ballot papers; and
- (c) include a form of acknowledgment of receipt of the ballot papers.

**(4)** Two copies of the delivery note must be included in the parcel of ballot papers.

**(5)** As soon as practicable after a presiding officer receives a parcel of ballot papers, the presiding officer must—

- (a) check the contents against the details shown in the delivery note; and
- (b) complete the particulars prescribed by the delivery note; and
- (c) sign the form of acknowledgment included in the delivery note.

**(6)** If there is a discrepancy between the details shown in the delivery note and the contents of the parcel, the presiding officer must cause a countercheck to be made by—

- (a) if another presiding officer is available—the other presiding officer; or
- (b) if another presiding officer is not available—a responsible person.

**(7)** A discrepancy confirmed by a countercheck must be noted in the form of acknowledgment and the form must be signed by the presiding officer and the person who made the countercheck.

**(8)** The presiding officer must return 1 copy of the delivery note to the returning officer and retain the other copy of the delivery note until it is given to the returning officer with the sealed parcels of ballot papers under section 308 (Preliminary counting by presiding officer).

**Correction of errors etc.**

**275.** Any error, omission or delay in respect of any voters roll, ballot papers or other document to be used in a poll may be corrected by procedures directed by the Governor in Council, by gazette notice.

***Division 8—Scrutineers*****Candidates' entitlement to scrutineers**

**276.** A candidate for election is entitled to have 1 scrutineer present for each issuing officer at a polling booth or at a place for examination of declaration envelopes or counting of votes—

- (a) before and at all times when electors may vote in the booth; and
- (b) at all times during the examination or counting.

**Appointment of scrutineers**

**277.(1)** A candidate for election may, in the approved form, appoint adults as scrutineers for the candidate.

**(2)** On appointment, a scrutineer must make a declaration in the approved form before the returning officer or a presiding officer.

**Proof of identification**

**278.** A scrutineer must—

- (a) carry evidence of identification and of the person's appointment as a scrutineer; and
- (b) on demand, produce the evidence to an issuing officer.

**Powers of scrutineers**

**279.(1)** A scrutineer for a candidate for election is entitled to be present—

- (a) in a polling booth—before taking the ballot in the poll starts to inspect ballot boxes; and

- (b) in a polling booth and any office of the presiding officer at the booth—when electors may vote in the booth; and
  - (c) in a polling booth or other place—to watch the examination of declaration envelopes and counting of votes.
- (2) A scrutineer may—
- (a) object to an issuing officer's decision on a person's entitlement to vote at the election; and
  - (b) object to the acceptance or rejection of a ballot paper by the returning or presiding officer; and
  - (c) record details of persons who vote at the election at a polling booth and remove the record from the booth.

### *Division 9—Voting generally*

#### **Who may vote**

**280.(1)** Only electors may vote in a ballot taken in a poll.

(2) The returning officer must not vote in the election.

#### **When votes may be cast at an ordinary polling booth or mobile polling booth**

**281.(1)** Voting at an ordinary polling booth must take place between 8 a.m. and 6 p.m. on polling day.

(2) However, an elector who is in an ordinary polling booth at 6 p.m. on polling day, for the purpose of voting in the poll, must be allowed to vote.

(3) Voting at a mobile polling booth must take place during the times fixed for the booth by the returning officer.

(4) However, an elector who is in a mobile polling booth at the time of the close of voting at the booth, for the purpose of voting in the poll, must be allowed to vote.

**Procedure for voting at a polling booth**

**282.(1)** Subject to sections 284 (Arrangements for electors with disability) and 286 (Arrangements for electoral visitor voting), an elector, other than a declaration voter, must vote at a polling booth under the procedures set out in this section.

(2) The elector must enter a polling booth for the local government area, or division of the local government area, during voting hours at the booth.

(3) In the polling booth, the elector must give the elector's full name and address to an issuing officer.

(4) If the elector—

- (a) has a ballot paper and declaration envelope for the election; and
- (b) does not intend to cast a declaration vote;

the elector must return the ballot paper and declaration envelope to the issuing officer.

(5) The issuing officer must give a ballot paper to a person asking for it if the issuing officer is satisfied the person is entitled to vote at the election.

(6) The issuing officer may ask a person questions to decide whether the person is entitled to vote at the election.

(7) If, because of the answers to the questions—

- (a) the issuing officer is satisfied the person is an elector mentioned in section 290(a), (b) or (c) (Who must cast a declaration vote in ordinary elections); or
- (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;

the person may only cast a declaration vote.

(8) The issuing officer must place a mark, in ink, on the officer's copy of the voters roll against the name of each person given a ballot paper by the officer.

(9) An issuing officer who gives a ballot paper to a person must, if asked by a scrutineer, keep a record of the objection by the scrutineer to the entitlement of the person to vote.

(10) On being given the ballot paper, the elector must, without delay—

- (a) go alone into an unoccupied voting compartment in the polling booth; and
- (b) there, in private, mark a vote on the ballot paper in accordance with division 11 (Marking of ballot papers); and
- (c) fold the ballot paper, concealing the vote, and put it in the appropriate ballot box in the polling booth; and
- (d) leave the polling booth.

### **Duties of issuing officer for returned papers**

**283.(1)** An issuing officer must—

- (a) record in the approved form the giving of a ballot paper to a person who has returned a ballot paper and declaration envelope to the officer under section 282(4) (Procedure for voting at a polling booth); and
- (b) attach to the form all ballot papers and declaration envelopes returned to the officer; and
- (c) give the form and the attached documents to the presiding officer.

**(2)** The presiding officer must set aside the form and attached documents in the officer's custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

### **Arrangements for electors with disability**

**284.(1)** This section applies if an elector cannot enter a polling booth because of illness, disability or advanced pregnancy, but is able to come to a place (the “**voting place**”) close to the polling booth.

**(2)** The issuing officer may perform the issuing officer's functions, and the elector may vote at the voting place, as if it were the polling booth.

**(3)** However, the issuing officer must—

- (a) before taking any action under subsection (2), inform the scrutineers present of the proposed action; and
- (b) allow 1 scrutineer for each candidate to be present at the voting place; and

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- (c) ensure that after the ballot paper is marked, it is—
    - (i) folded to conceal the vote; and
    - (ii) put in an envelope or, if the vote is a declaration vote, a declaration envelope; and
  - (d) seal the envelope; and
  - (e) if—
    - (i) the vote is a declaration vote—put the sealed declaration envelope in the appropriate ballot box inside the polling booth; or
    - (ii) if the vote is not a declaration vote—open the envelope inside the polling booth in the presence of any scrutineers, ensuring the ballot paper remains folded, and put the folded ballot paper in the appropriate ballot box.
- (4) The issuing officer must ensure that, as far as practicable—
- (a) for a declaration vote—section 294 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
  - (b) for another vote—section 282 (Procedure for voting at a polling booth) is complied with when the elector votes.
- (5) Subsections (2) and (3) apply to all types of voting under this division.

**Arrangements for electors at institutions**

**285.(1)** If a polling booth is an institution or part of an institution, an issuing officer may visit electors resident in the institution, or part of the institution, for the purpose of enabling them to vote.

(2) Before taking action under subsection (1), the issuing officer must inform the scrutineers present of the proposed action.

(3) When visiting an elector in an institution, the issuing officer must—

- (a) take to the elector—
  - (i) a ballot paper or a declaration form, ballot paper and declaration envelope; and

- (ii) a ballot box; and
- (iii) anything else necessary to enable the elector to vote; and
- (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (4) The issuing officer must ensure that, as far as practicable—
  - (a) for a declaration vote—section 294 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
  - (b) for another vote—section 282 (Procedure for voting at a polling booth) is complied with when the elector votes.

### **Arrangements for electoral visitor voting**

- 286.(1)** The following electors are entitled to be electoral visitor voters—
- (a) electors who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;
  - (b) electors who, because they are caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth.
- (2) An elector who is entitled to be an electoral visitor voter may apply to the returning officer to vote as an electoral visitor voter.
- (3) The application must be in the approved form.
- (4) If the application is received not later than 6 p.m. on the Thursday before polling day, the returning officer must direct an issuing officer to visit the elector to enable the elector to vote.
- (5) As soon as practicable after the returning officer has directed an issuing officer to visit electors, the returning officer must inform each candidate for election of—
- (a) the place from which the issuing officer proposes to start making visits; and
  - (b) the time or times on the day or days when the issuing officer proposes to start making visits.
- (6) The issuing officer must visit an elector at a reasonable hour before 6 p.m. on polling day.

- (7) When visiting an elector, the issuing officer must—
- (a) take to the elector—
    - (i) a ballot paper or a declaration form, ballot paper and declaration envelope; and
    - (ii) a ballot box; and
    - (iii) anything else necessary to enable the elector to vote; and
  - (b) if a scrutineer wishes—be accompanied by the scrutineer.
- (8) The issuing officer must ensure that, as far as practicable—
- (a) for a declaration vote—section 294 (How declaration vote may be cast at a polling booth) is complied with when the elector votes; or
  - (b) for another vote—section 282 (Procedure for voting at a polling booth) is complied with when the elector votes.

### **Help for electors in voting**

**287.(1)** If an elector satisfies an issuing officer that the elector cannot vote without help, the elector may be accompanied into an unoccupied voting compartment in a polling booth, or be otherwise helped, by someone chosen by the elector.

- (2) The person may help the elector in any of the following ways—
- (a) if asked by the elector—stating the names of candidates;
  - (b) acting as interpreter;
  - (c) explaining the ballot paper and the requirements of division 11 (Marking of ballot papers) about its marking;
  - (d) marking, or helping to mark, the ballot paper in the way the elector wishes;
  - (e) folding the ballot paper and putting it into a ballot box or a declaration envelope;
  - (f) sealing a declaration envelope or putting it into a ballot box.
- (3) Subsections (1) and (2) apply to all types of voting.
- (4) This section applies despite any of the following provisions—

- section 282(10) (Procedure for voting at a polling booth)
- section 294 (How declaration vote may be cast at a polling booth)
- section 297 (Casting a declaration vote by post).

### **Adjournment of poll**

**288.(1)** If the conduct of a poll is, or is likely to be, obstructed or interrupted from any cause, the returning officer may adjourn the conduct of the poll generally or at a particular polling booth.

**(2)** If the conduct of a poll at a particular polling booth is, or is likely to be, obstructed or interrupted from any cause, the presiding officer at the booth may adjourn the conduct of the poll at the booth.

**(3)** If a poll is adjourned under subsection (1) or (2), the returning officer must fix a day (not later than 34 days after the day on which the poll is adjourned) for conducting the adjourned poll.

**(4)** The returning officer must give public notice of the day fixed—

- (a) in a newspaper circulating generally in the relevant part of the local government area; and
- (b) in other ways the returning officer considers appropriate.

### ***Division 10—Declaration voting***

#### **Who may cast a declaration vote**

**289.** The following electors may cast a declaration vote—

- (a) an elector who, during ordinary voting hours on polling day, will not be within 8 km, by the nearest practicable route, from a polling booth;
- (b) an elector who, during ordinary voting hours on polling day, will be working or travelling under conditions that prevent voting at a polling booth;
- (c) an elector who, because of illness, disability or advanced pregnancy, will be prevented from voting at a polling booth;

- (d) an elector who, because the elector is caring for a person who is ill, has a disability or is pregnant, will be prevented from voting at a polling booth;
- (e) an elector who, because of membership of a religious order or because of religious beliefs, will be prevented from voting at a polling booth for all, or most, of the ordinary voting hours on polling day;
- (f) an elector who, on polling day, will be serving a sentence of imprisonment, or under other detention;
- (g) an elector whose address has been omitted from a voters roll—
  - (i) because of the *Electoral Act 1992*, section 58; or
  - (ii) under an arrangement under the *Electoral Act 1992*, section 62 because of the *Electoral Act 1918* (Cwlth), section 104.

### **Who must cast a declaration vote in ordinary elections**

**290.** In an election (other than a postal ballot election), the following persons must cast a declaration vote—

- (a) an elector whose name is not on the voters roll apparently because of an official error;
- (b) an elector who is not enrolled on the voters roll, but is entitled to be enrolled, because of the *Electoral Act 1992*, section 64(1)(a)(ii);
- (c) an elector who appears, from a record apparently made in error, to have already voted in the election;
- (d) a person who is given a ballot paper and declaration envelope for voting because an issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election.

### **Declaration voting for postal ballot elections**

**291.** An elector in a postal ballot election must cast a declaration vote.

**How declaration vote is cast**

**292.** Subject to section 282 (Procedure for voting at a polling booth), an elector who may or must make a declaration vote must cast the vote by—

- (a) if the elector cannot enter a polling booth because of illness, disability or advanced pregnancy—going to a place close to a polling booth and voting at that place; or
- (b) going to a polling booth in the local government area, or division of the local government area, during voting hours at the booth and following the procedures set out in section 294 (How declaration vote may be cast at a polling booth); or
- (c) going to the local government’s public office before polling day and following the procedures set out in section 298 (Declaration voting before polling day); or
- (d) if the elector is an elector mentioned in section 289 (Who may cast a declaration vote) or an elector for a postal ballot election—using the ballot paper and declaration envelope given to the elector by the returning officer, and following the procedures set out in section 297 (Casting a declaration vote by post).

**Distribution of ballot papers to electors who may or must cast declaration vote**

**293.(1)** An elector mentioned in section 289 (Who may cast a declaration vote) may apply to the returning officer, or a presiding officer for the election, for a ballot paper and a declaration envelope.

**(2)** The application must be in the approved form.

**(3)** The returning officer or presiding officer must, as soon as practicable, give a ballot paper and the approved declaration envelope to the applicant if—

- (a) the application is received by the officer not later than 6 p.m. on the Thursday before polling day; and
- (b) the officer is satisfied the applicant is entitled to vote and make the application.

**(4)** If the returning officer or presiding officer is satisfied the applicant is

an elector mentioned in section 290 (Who must cast a declaration vote in ordinary elections), the officer—

- (a) must not give a ballot paper to the applicant; but
- (b) must give to the applicant an approved declaration form.

(5) If the returning officer or presiding officer is satisfied the applicant has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper and the approved declaration envelope to the applicant.

(6) The things given to an applicant under subsection (3) or (5) must be accompanied by an unsealed prepaid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(*insert* City, Town or Shire) of (*insert* name of local government area)’.

### **How declaration vote may be cast at a polling booth**

**294.(1)** An elector who must cast a declaration vote, other than an elector for a postal ballot election, may cast the vote by—

- (a) entering a polling booth in the local government area, or division of the local government area, during voting hours at the booth; and
- (b) completing the declaration form given to the elector by an issuing officer.

(2) If the issuing officer is satisfied the elector has properly completed the declaration form, the officer must give a ballot paper and the approved declaration envelope to the elector.

(3) On being given the ballot paper and the declaration envelope, the elector must, without delay—

- (a) sign the appropriate declaration on the declaration envelope before the issuing officer and have the officer sign the envelope as witness; and
- (b) go alone into an unoccupied voting compartment in the polling booth; and
- (c) there, in private, mark a vote on the ballot paper in accordance with division 11 (Marking of ballot papers); and

- (d) fold the ballot paper, put it in the envelope and seal the envelope; and
- (e) put the sealed envelope in the appropriate ballot box in the polling booth; and
- (f) leave the polling booth.

### **Distribution of ballot papers to electors for postal ballot election**

**295.(1)** For a postal ballot election, the returning officer must post a ballot paper and approved declaration envelope to each elector for the postal ballot election as soon as practicable after the nomination day.

**(2)** However, if—

- (a) the issuing officer is satisfied a person is an elector mentioned in section 290(a), (b) or (c) (Who must cast a declaration vote in ordinary elections); or
- (b) the issuing officer suspects, on reasonable grounds, that the person is not entitled to vote at the election;

the officer—

- (c) must not give a ballot paper and declaration envelope to the elector; and
- (d) must give to the elector an approved declaration form.

**(3)** If the returning officer is satisfied the elector has properly completed the declaration form, the officer must, as soon as practicable, give a ballot paper and the approved declaration envelope to the elector.

**(4)** The things posted to electors under subsection (1) or (3) must be accompanied by an unsealed prepaid post envelope addressed to the returning officer and bearing the words ‘Ballot paper—(*insert* City, Town or Shire) of (*insert* name of local government area).’.

### **Record of ballot papers given to postal voters**

**296.** The issuing officer who gives a ballot paper and declaration envelope under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote) or 295 (Distribution of ballot papers to

electors for postal ballot election) must—

- (a) keep a record of the ballot paper and envelope given; and
- (b) sign the record.

### **Casting a declaration vote by post**

**297.(1)** An elector who has received a ballot paper and declaration envelope under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote) or 295 (Distribution of ballot papers to electors for postal ballot election) must, before 6 p.m. on polling day—

- (a) sign the declaration on the declaration envelope in the presence of an adult, and have the adult sign the envelope as witness; and
- (b) in private, mark a vote on the ballot paper in accordance with division 11 (Marking of ballot papers); and
- (c) fold the ballot paper, put it in the declaration envelope and seal the envelope; and
- (d) put the sealed declaration envelope containing the ballot paper in the prepaid post envelope mentioned in section 293(6) or 295(4) and post or give the envelope to the returning officer for the election.

**(2)** On receipt of the sealed envelope, the returning officer must put it in the appropriate ballot box.

### **Declaration voting before polling day**

**298.(1)** The returning officer must declare 1 of the following places as a polling booth to enable electors entitled to cast a declaration vote under section 289 (Who may cast a declaration vote) to cast a vote at the election before polling day—

- (a) the local government's public office, or a part of the public office;
- (b) another office used by the local government to receive rate payments;
- (c) if the returning officer is satisfied it is impracticable for a place mentioned in paragraph (a) or (b) to be used as a polling

booth—another convenient place in the local government area.

(2) An elector mentioned in subsection (1) may, at any time during the relevant election period when the public office is open for the conduct of business, ask an issuing officer at the public office for a ballot paper.

(3) Subject to section 282(5) to (7) (Procedure for voting at a polling booth), the issuing officer must comply with the request.

(4) An elector who wishes to vote under subsection (1)—

- (a) must complete and sign the approved application form; and
- (b) must comply with section 282; and
- (c) need not complete a declaration envelope.

(5) If an elector is an elector who must cast a declaration vote under section 290 (Who must cast a declaration vote in ordinary elections), the elector—

- (a) must complete and sign the approved application form and declaration form; and
- (b) on being given a ballot paper and the approved declaration envelope, must comply with section 294(3) (How declaration vote may be cast at a polling booth) without delay.

(6) In subsection (2)—

**“relevant election period”** means the period—

- (a) not earlier than—
  - (i) 14 days before polling day; or
  - (ii) the longer period that the returning officer fixes and notifies in a newspaper circulating in the local government area, or division of the local government area; and
- (b) not later than 6 p.m. on the day before polling day.

### *Division 11—Marking of ballot papers*

**Optional-preferential voting**

**299.(1)** For an election of a councillor if the local government area is divided into single-member divisions, a vote is validly cast if the elector votes in accordance with subsection (2) or (3).

(2) An elector may vote by marking on a ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of the candidate whom the elector prefers.

(3) Instead of voting in accordance with subsection (2), an elector may vote by—

- (a) marking on a ballot paper the numeral 1, or a tick or a cross, in the square opposite the name of a candidate to record the elector's first preference for the candidate; and
- (b) marking—
  - (i) the numeral 2 in another square; or
  - (ii) the numerals 2, 3, and so on (in regular arithmetical sequence by intervals of 1 whole numeral) in other squares; to record the order of the elector's preferences for 1 or more (but not necessarily all) of the other candidates.

**First-past-the-post voting**

**300.(1)** For an election other than one mentioned in section 299 (Optional-preferential voting), a vote is validly cast if the elector votes in accordance with this section.

(2) For an election of mayor, the elector must mark on the ballot paper the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers.

(3) For an election of other councillors, the elector must mark on the ballot paper—

- (a) if 1 candidate is to be elected—the numeral 1, or a tick or cross, in the square opposite the name of the candidate whom the elector prefers; or
- (b) if 2 or more candidates are to be elected—

- (i) the numeral 1, or a tick or a cross, in the square opposite the name of 1 candidate for whom the elector wishes to vote; and
- (ii) the numeral 2, or the numerals 2, 3 and so on (in regular arithmetical sequence by intervals of 1 whole numeral), as the case may be, in the squares opposite the names of the other candidate or candidates for whom the elector wishes to vote, up to the number of candidates to be elected.

### *Division 12—Replacement ballot papers*

#### **Use of replacement ballot papers**

**301.(1)** If, while voting at a polling booth or voting under section 284 (Arrangements for electors with disability) or 286 (Arrangements for electoral visitor voting), a ballot paper given to an elector is accidentally defaced or destroyed, an issuing officer must give to the elector a replacement ballot paper for use in the poll.

**(2)** However, before a replacement ballot paper can be given—

- (a) the ballot paper it replaces (the “**replaced ballot paper**”) must not have been already put in a ballot box in use in the poll; and
- (b) the elector must declare, in the approved declaration form, before the issuing officer that—
  - (i) the replaced ballot paper has been accidentally defaced or destroyed; and
  - (ii) the elector has not voted in the election; and
- (c) if the replaced ballot paper has been accidentally defaced—the elector must give the defaced ballot paper to the issuing officer; and
- (d) if the replaced ballot paper has been accidentally destroyed—the elector must give to the issuing officer, if practicable, the remains of the ballot paper; and
- (e) the issuing officer must put the defaced ballot paper, or any remains of the destroyed ballot paper, in an envelope, seal the

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envelope and set it aside in the officer's custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

(3) If a ballot paper given to an elector under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote), or 295 (Distribution of ballot papers to electors for postal ballot election) is lost in transit or is accidentally defaced or destroyed, the returning officer for the election must, before 6 p.m. on polling day, give to the elector a replacement ballot paper and the approved declaration envelope for use in the election.

(4) However, before a replacement ballot paper can be given—

- (a) the elector must declare, in the approved declaration form, before the issuing officer or an adult witness that—
  - (i) the ballot paper it replaces (the “**replaced ballot paper**”) has not been received by the elector or has been accidentally defaced or destroyed; and
  - (ii) the elector has not voted in the election; and
- (b) if the replaced ballot paper has been accidentally defaced—the elector must put the defaced ballot paper into the elector's original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
- (c) if the replaced ballot paper has been accidentally destroyed—the elector must, if practicable, put the remains of the destroyed ballot paper into the elector's original declaration envelope or a replacement declaration envelope, seal the envelope and give the envelope to the issuing officer; and
- (d) the issuing officer must set aside the elector's declaration envelope in the officer's custody for separate identification under section 308(1)(g)(ii) (Preliminary counting by presiding officer).

(5) The returning officer must record, in the approved form, the name and place of residence of each person to whom a replacement ballot paper is given.

(6) If a replacement ballot paper is used for voting—

- (a) the voting must take place under the appropriate provisions of division 9 (Voting generally) or 10 (Declaration voting); and

- (b) the vote cast must be dealt with under the appropriate provisions of division 14 (Counting of votes).

### *Division 13—Effect of ballot papers*

#### **Effect of ballot papers—optional-preferential voting**

**302.(1)** This section applies to the election if the system of voting is optional-preferential voting.

**(2)** For a ballot paper to have effect as recording a vote in the election—

- (a) the ballot paper—
  - (i) must be completed in accordance with section 299 (Optional-preferential voting); or
  - (ii) must contain writing or marking, other than marks mentioned in the section, indicating the elector’s intended preference, or intended order of preferences; and
- (b) the ballot paper must not contain any writing or mark (other than one permitted by this part) by which the elector can, in the returning officer’s opinion, be identified; and
- (c) the ballot paper must have been put into the appropriate ballot box as required by this part; and
- (d) for a ballot paper put into a declaration envelope as required by section 297 (Casting a declaration vote by post)—
  - (i) section 297(1) must have been complied with; and
  - (ii) if the elector is an elector mentioned in section 289 (Who may cast a declaration vote) and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the declarant must correspond to the signature of the relevant applicant under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote); and
  - (iii) if the declaration envelope is posted to the returning officer—it must be received by the returning officer within 10 days after polling day.

(3) If a ballot paper shows 2 or more squares in which the same numeral is marked, those numerals and any higher numerals marked in other squares must be disregarded.

(4) If a ballot paper shows a break in the sequence of numerals marked in the squares on the ballot paper to indicate preferences, the numeral that breaks the sequence and any higher numerals marked in other squares must be disregarded.

### **Effect of ballot papers—first-past-the-post voting**

**303.(1)** This section applies to the election if the system of voting is first-past-the-post voting.

(2) For a ballot paper to have effect as recording a vote in the election—

- (a) the ballot paper—
  - (i) must be completed in accordance with section 300 (First-past-the-post voting); or
  - (ii) must contain writing or marking indicating the elector's intended preference, or intention to vote for any particular candidate or candidates; and
- (b) the ballot paper must not contain any writing or mark (other than one authorised by this part) by which the elector can, in the returning officer's opinion, be identified; and
- (c) the ballot paper must have been put in the appropriate ballot box as required by this part; and
- (d) for a ballot paper put into a declaration envelope as required by section 297 (Casting a declaration vote by post)—
  - (i) section 297(1) must have been complied with; and
  - (ii) if the elector is an elector mentioned in section 289 (Who may cast a declaration vote) and the declaration on the envelope is witnessed by a person other than an issuing officer—the signature of the declarant must correspond to the signature of the relevant applicant under section 293 (Distribution of ballot papers to electors who may or must cast declaration vote); and

- (iii) if the declaration envelope is posted to the returning officer—it must be received by the returning officer within 10 days after polling day.

(3) If 2 or more candidates are to be elected, a ballot paper must not be rejected merely because it indicates the elector's intention to vote for a number of candidates greater than the number to be elected.

### **Posted vote presumed valid until contrary proved**

**304.** If a declaration envelope and ballot paper to which section 297 (Casting a declaration vote by post) applies is received by a returning officer by post, it must be presumed the provisions of section 297(1) have been complied with in relation to the declaration on the envelope until the contrary is proved.

### **Formal and informal ballot papers**

**305.(1)** A ballot paper that has effect to record a vote is a formal ballot paper.

(2) A ballot paper that has no effect to record a vote is an informal ballot paper.

### **Ballot paper partly formal and partly informal**

**306.(1)** This section applies if—

- (a) an election for mayor and an election for the other councillors of the local government are held at the same time and 1 ballot paper is used for both elections; and
- (b) the ballot paper, as completed for an election, is informal but, as completed for the other election, is formal.

(2) The informal part of the ballot paper must be rejected and the formal part of the ballot paper must be counted under division 14 (Counting of votes).

**Votes to be counted in accordance with this division**

**307.** Votes cast in an election are to be counted as required by this division.

**Preliminary counting by presiding officer**

**308.(1)** As soon as practicable after the end of ordinary voting hours on polling day, the presiding officer for a polling booth, at a place nominated by the presiding officer, in the presence of another issuing officer and any candidates and scrutineers who wish to attend, must—

- (a) open all ballot boxes used at the polling booth; and
- (b) identify, and keep in a separate parcel, all declaration votes; and
- (c) examine all ballot papers that are not in declaration envelopes, and—
  - (i) identify, and keep in a separate parcel, all informal ballot papers; and
  - (ii) if the system of voting is first-past-the-post voting—count the number of votes for each candidate marked on all formal ballot papers, and keep the ballot papers in a separate parcel;
  - (iii) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel all formal ballot papers on which a first preference vote is recorded for the same candidate; and
- (d) prepare a written statement in duplicate in the approved form that—
  - (i) sets out, in words and numerals, the number of votes for each candidate if subsection (1)(c)(ii) applies, or the number of first preference votes for each candidate if subsection (1)(c)(iii) applies; and
  - (ii) sets out the number of declaration envelopes and informal ballot papers; and
  - (iii) is signed by the presiding officer, and the issuing officer and any scrutineers who are present and wish to sign; and

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- (e) seal up in separate parcels all formal and informal ballot papers, declaration envelopes and unused ballot papers; and
- (f) endorse on each parcel a description of its contents, sign the endorsement and allow any scrutineers, who wish to do so, to countersign the endorsement; and
- (g) put into separate parcels—
  - (i) the voters roll and all books and papers used by the presiding officer in the poll with 1 copy of the statement prepared under paragraph (d); and
  - (ii) all ballot papers or remains of ballot papers set aside, under section 283(2) (Duties of issuing officer for returned papers) or 301(2)(e) or (4)(d) (Use of replacement ballot papers), for separate identification;  
and endorse on each parcel a description of its contents; and
- (h) endorse on each parcel—
  - (i) the name of the local government area, or division of the local government area, for which the election was held; and
  - (ii) the name of the polling booth from which the parcel has come; and
- (i) sign each endorsement.

**(2)** The presiding officer must then, if the officer is not the returning officer, give to the returning officer, or to a person nominated by the returning officer, as soon as practicable—

- (a) the parcels mentioned in subsection (1); and
- (b) the copy of the statement prepared under subsection (1)(d) (other than the copy mentioned in subsection (1)(g)); and
- (c) a reconciliation statement for all ballot papers given out at the presiding officer's polling booth and all votes put in ballot boxes at the booth.

**(3)** A person must give to a presiding officer a receipt for the things received by the person from the presiding officer under subsection (2).

**Preliminary processing of declaration votes by returning officer**

**309.(1)** After 8 a.m. on polling day, the returning officer may open all ballot boxes containing only declaration votes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

(2) As soon as practicable after 6 p.m. on polling day, the returning officer may open all other ballot boxes containing declaration votes and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

(3) As soon as practicable after receipt by the returning officer of a parcel of declaration votes from a polling booth, the returning officer may open the parcel and examine the declaration envelopes to decide whether the ballot papers in the envelopes are to be accepted for counting.

**Procedure for processing declaration envelopes**

**310.(1)** The returning officer must inform all candidates for election of the times when, and the places where, declaration envelopes will be examined by the returning officer and allow them, or their scrutineers, to attend at the processing of declaration votes.

(2) If the returning officer is satisfied—

- (a) a declaration envelope has been properly completed; and
- (b) the declarant on the envelope is entitled to cast a declaration vote in the election;

the returning officer must, before opening the envelope, place a mark in ink against the declarant's name on the voters roll.

(3) If a declaration envelope is accepted, the returning officer must take from the envelope the ballot paper without unfolding it, or allowing anyone else to unfold it, put it in a sealed ballot box and keep it there until it is dealt with in the official counting of votes.

(4) The returning officer must—

- (a) put all ballot papers (not in declaration envelopes) that are in a ballot box opened under section 309(2) (Preliminary processing of declaration votes by returning officer) into a sealed ballot box,

without unfolding them, or allowing anyone else to unfold them;  
and

- (b) keep them there until they are dealt with in the official counting of votes.

(5) If a declaration envelope is rejected, the returning officer must set it aside in the officer's custody for separate identification.

(6) The returning officer must seal up in separate parcels, and keep in the officer's custody for separate identification, all opened and unopened declaration envelopes.

### **Official counting of votes**

**311.(1)** As soon as practicable after close of the poll in an election, the returning officer must follow the procedures set out in this section, in the presence of candidates for election, or scrutineers, who wish to attend.

(2) First, the returning officer must ascertain from the presiding officers' statements under section 308(2) (Preliminary counting by presiding officer)—

- (a) if the system of voting is first-past-the-post voting—the number of votes cast for each candidate; or
- (b) if the system of voting is optional-preferential voting—the number of first preference votes cast for each candidate.

(3) Second, the returning officer must—

- (a) open all sealed parcels of ballot papers given to the returning officer under section 308(2); and
- (b) examine all ballot papers that are not in declaration envelopes and—
  - (i) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on formal ballot papers, and keep the ballot papers in a separate parcel; or
  - (ii) if the system of voting is optional-preferential voting—arrange all formal ballot papers under the names of the candidates by putting in a separate parcel the formal ballot papers on which a first preference vote is indicated for

the same candidate, and count the number of first preference votes for each candidate on the formal ballot papers.

(4) Third, the returning officer must—

- (a) open all other ballot boxes on hand; and
- (b) identify, and keep in a separate parcel, all informal ballot papers; and
- (c) examine all formal ballot papers and—
  - (i) if the system of voting is first-past-the-post voting—count the number of votes cast for each candidate on the ballot papers, and keep the ballot papers in a separate parcel; or
  - (ii) if the system of voting is optional-preferential voting—arrange the ballot papers under the names of the candidates by putting in a separate parcel the ballot papers on which a first preference vote is recorded for the same candidate, and count the number of first preference votes for each candidate on the ballot papers.

(5) Fourth, the returning officer must add together—

- (a) if the system of voting is first-past-the-post voting—the number counted under subsections (3)(b)(i) and (4)(c)(i); or
- (b) if the system of voting is optional-preferential voting—the number counted under subsections (3)(b)(ii) and (4)(c)(ii).

(6) Fifth, the returning officer must reapply subsections (4) and (5) as more declaration envelopes are received by the returning officer under section 297 (Casting a declaration vote by post) after close of the poll.

### **Treatment of ballot paper to which objection is made**

**312.(1)** If, while a presiding officer or returning officer is complying with section 308 (Preliminary counting by presiding officer) or 311 (Official counting of votes), a candidate or scrutineer objects to treatment of a ballot paper as informal, the officer must mark on the back of it ‘formal’ or ‘informal’ according to whether the officer’s decision is to treat it as formal or informal.

(2) If, while a presiding officer or returning officer, is complying with

section 308 or 311, a candidate or scrutineer objects to the counting of a vote for a particular candidate, the officer must mark on the back of the relevant ballot paper the name of the candidate for whom it is counted.

### **Counting of votes for optional-preferential system**

**313.(1)** This section applies to the counting of votes in an election in which the system of voting is optional-preferential voting.

**(2)** If, on final counting under section 311 (Official counting of votes), a majority of the first preference votes is for 1 candidate, that candidate is elected.

**(3)** If not, a second count must take place.

**(4)** On the second count—

- (a) the candidate who has the fewest first preference votes must be excluded; and
- (b) each ballot paper that records a first preference vote for the excluded candidate, and is not an exhausted ballot paper, must be transferred to the candidate next in the order of the elector's preference; and
- (c) the ballot paper must be counted as recording a vote for the candidate to whom it is transferred.

**(5)** If, on the second count, a candidate has a majority of the votes remaining in the count, the candidate is elected.

**(6)** If not, the process of—

- (a) excluding the candidate who has fewest votes; and
- (b) transferring each ballot paper that records a vote for the excluded candidate, and is not an exhausted ballot paper, to the continuing candidate next in order of the elector's preference; and
- (c) counting the ballot paper as recording a vote for the candidate to whom it is transferred;

must be repeated until 1 candidate has a majority of the votes remaining in the count.

**(7)** The candidate who under subsection (6) has a majority of the votes

remaining in the count is elected.

(8) If, 2 or more candidates have an equal number of votes and 1 of them must be excluded—

- (a) if there has been an earlier count—the candidate who had the fewest votes at the last count at which the candidates did not have an equal number of votes must be excluded; or
- (b) if there has not been an earlier count or the candidates had an equal number of votes at all earlier counts—the candidate whose name is on a slip chosen under subsection (9) must be excluded.

(9) For the purposes of subsection (8)(b), the returning officer must—

- (a) write the names of the candidates who have an equal number of votes on similar slips of paper; and
- (b) fold the slips, concealing the names; and
- (c) put the slips in an opaque container and shuffle them; and
- (d) raise the container so that its contents cannot be seen and choose a slip at random.

(10) If, after a count at which the candidate with fewest votes must be excluded, 2 candidates have an equal number of votes and are the only candidates not excluded, the returning officer must decide, by way of a casting vote, which candidate is elected.

(11) In casting a vote under subsection (10), the returning officer need not complete a ballot paper.

(12) Subsection (10) has effect despite section 280 (Who may vote).

### **Counting of votes for first-past-the-post system**

**314.(1)** This section applies to the counting of votes in an election in which the system of voting is first-past-the-post voting.

(2) If the election is for mayor of the local government, the candidate who receives the greatest number of votes is elected.

(3) If the election is for councillors (other than the mayor) of the local government—

- (a) if 1 person only is to be elected—the candidate who receives the

greatest number of votes is elected; and

- (b) if 2 or more persons are to be elected—the candidates elected are—
  - (i) the candidate who receives the greatest number of votes; and
  - (ii) the candidate who receives the next highest number of votes; and
  - (iii) the candidate who receives the next highest number of votes; and so on, up to the number of persons to be elected.

(4) If 2 or more candidates receive the same number of votes so that subsection (2) or (3)(a) or (b) cannot be applied, the returning officer must decide, by way of a casting vote, which candidate is elected.

(5) In casting a vote under subsection (4), the returning officer need not complete a ballot paper.

(6) Subsection (4) has effect despite section 280 (Who may vote).

### **Returning officer's duty after counting votes**

**315.(1)** When the result of the poll for the election is known, the returning officer must—

- (a) seal up all of the formal ballot papers, informal ballot papers, declaration envelopes, defaced ballot papers, remains of destroyed ballot papers, unused ballot papers, books and papers (other than the voters roll) of each presiding officer used in the poll; and
- (b) endorse on each parcel a description of its contents and sign the endorsement; and
- (c) allow any scrutineers, who wish to do so, to countersign the endorsement.

(2) The returning officer must then—

- (a) examine the voters rolls used in the election and marked by issuing officers to ascertain whether any elector has voted more than once; and
- (b) make a list in the approved form of the names and numbers on the voters roll of all electors who appear to have voted more than

once in the election, enclose the original of the list with the voters rolls in a sealed up parcel, and give a copy of the list to each person who was a candidate in the election.

### *Division 15—Actions following poll*

#### **Declaration of poll**

**316.(1)** As soon as practicable after the result of a poll for the election is known, the returning officer must, by notice in the approved form, declare—

- (a) the result of the poll; and
- (b) the names of each candidate who has been elected.

**(2)** The returning officer must—

- (a) display the notice in a conspicuous place in the local government's public office; and
- (b) publish the notice in a newspaper circulating generally in the local government area, or the division of the local government area, for which the election was held.

**(3)** The returning officer must not delay complying with subsection (1) or (2) merely because some ballot papers have not been received by the returning officer, if it is clear the votes recorded on the ballot papers could not affect the result of the election.

#### **Notice of final result of poll**

**317.(1)** The returning officer must give notice of the final result of the poll to each candidate as soon as practicable after—

- (a) all ballot papers used in the poll have been examined; and
- (b) all votes cast in the poll on ballot papers that appear to be formal have been counted.

**(2)** The notice must be in the approved form.

**List of electors failing to vote**

**318.(1)** The returning officer must make a list of the names and addresses, and the numbers shown on the voters roll, of all electors who—

- (a) have not been issued with ballot papers for the election; or
- (b) in the case of electors mentioned in section 289 (Who may cast a declaration vote) or electors for a postal ballot election—have not given their ballot papers to the returning officer.

**(2)** The returning officer must—

- (a) certify the list by declaration in the approved form; and
- (b) deposit the list with the local government; and
- (c) give a copy of the list to any person who—
  - (i) was a candidate in the election; and
  - (ii) applies to the returning officer for a copy of the list no later than 28 days after the final result of the poll is declared.

**(3)** The list is to be held in the local government's public office, in the chief executive officer's custody.

**Notice to elector failing to vote**

**319.(1)** The local government—

- (a) may cause notice under this section to be given to each elector shown on the list deposited under section 318 (List of electors failing to vote), at the elector's address shown on the list; and
- (b) if it does give notice—must record on the list, against the elector's name, the fact that notice has been given.

**(2)** The notice must—

- (a) show the elector's full name and address and number on the voters roll; and
- (b) state that—
  - (i) the elector appears to have failed to vote at the election; and
  - (ii) it is an offence to fail, without a valid and sufficient reason,

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to vote at an election; and

- (c) require the elector to—
  - (i) state, in a form included in or with the notice, whether the elector voted and, if not, the reason for failing to vote; and
  - (ii) sign the form and post or deliver it to the local government's chief executive officer so that it is received by a specified day, not earlier than 21 days after the elector receives the notice.

**(3)** The elector must comply with the notice.

**(4)** If—

- (a) the elector is absent, or unable, because of incapacity, to comply with the notice; and
- (b) someone else who has personal knowledge of the facts satisfies the requirements of the notice;

the elector is taken to have complied with the notice.

**Recording response to notice**

**320.** The local government must record against the name of an elector who is given a notice under section 319 (Notice to elector failing to vote) on the list made under section 318 (List of electors failing to vote) whether the elector—

- (a) has complied with the requirements of the notice; and
- (b) had a valid and sufficient reason for failing to vote at the election.

**Evidentiary value of list under s 318**

**321.** In a proceeding, a document purporting to be a list, or a copy of or extract from a list, made under section 318 (List of electors failing to vote), and to be certified by the local government's chief executive officer is evidence of the matters contained in the document.

**Disposal of material resulting from election**

**322.(1)** As soon as practicable after giving notice of the final result of the poll to candidates, the returning officer must—

- (a) destroy all unused ballot papers; and
- (b) seal up in packets all other parcels sealed up under section 315 (Returning officer's duty after counting votes); and
- (c) endorse on each packet—
  - (i) a description of its contents; and
  - (ii) the name of the local government area, or division of the local government area, for which the election was held; and
  - (iii) the polling day;and sign the endorsement; and
- (d) if the returning officer is not the local government's chief executive officer—give each packet to the chief executive officer.

**(2)** The chief executive officer must keep the packets in safe custody for 1 year.

**(3)** At the end of the year, the chief executive officer must—

- (a) destroy all ballot papers contained in the packets; and
- (b) dispose of the other contents of the packets in the way the officer considers appropriate.

**(4)** Each councillor of the local government may attend during the destruction of ballot papers by, or at the direction of, its chief executive officer to ensure the papers are destroyed.

**Ballot papers as evidence**

**323.** In a proceeding, a ballot paper apparently used at an election and identified by evidence as 1 of the ballot papers given to, or held by, the local government's chief executive officer under section 322 (Disposal of material resulting from election) is evidence of the vote or votes cast in the election as recorded on the ballot paper.

**Notice to Electoral Commission of certain declaration votes**

**324.** As soon as practicable after the election, the returning officer must give to the Electoral Commission notice of the names and addresses of all persons permitted to vote at the election whose names are not on the voters roll, apparently because of official error, if the error relates to the keeping of an electoral roll under the *Electoral Act 1992*.

***Division 16—Enforcement******Subdivision 1—Offences in general*****False or misleading statements**

**325.(1)** A person must not—

- (a) state something under this chapter that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made under this chapter anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**(2)** A complaint against a person for a contravention of subsection (1) is sufficient if it states that the statement was false or misleading to the person's knowledge.

**False, misleading or incomplete electoral documents**

**326.** A person must not give a document under this chapter containing information that the person knows is false, misleading or incomplete in a material particular without—

- (a) indicating that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Bribery**

**327.(1)** In this section—

**“election conduct”** of a person means—

- (a) the way in which the person votes at an election; or
- (b) the person’s nominating as a candidate for an election; or
- (c) the person’s support of, or opposition to, a candidate or a political party at an election.

**(2)** A person must not—

- (a) ask for or receive; or
- (b) offer, or agree, to ask for or receive;

property or a benefit of any kind (whether for the person or someone else) on the understanding that the person’s election conduct will be influenced or affected.

**(3)** A person must not, in order to influence or affect another person’s election conduct, give, or promise or offer to give, property or a benefit of any kind to anyone else.

Maximum penalty—85 penalty units or imprisonment for 2 years.

### **Providing money for illegal payments**

**328.** A person must not knowingly give money for—

- (a) any payment that is contrary to law relating to elections; or
- (b) replacing any money that has been spent in making a payment mentioned in paragraph (a).

Maximum penalty—85 penalty units or imprisonment for 2 years.

### **Improperly influencing electoral officers**

**329.** A person must not improperly influence an electoral officer in the performance of the officer’s duties under this Act.

Maximum penalty—35 penalty units or imprisonment for 1 year.

### **Interfering with election right or duty**

**330.** A person must not hinder or interfere with the free exercise or performance, by another person, of another right or duty under this Act that relates to an election.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Forging or uttering electoral papers**

**331.(1)** A person must not—

- (a) forge an electoral paper; or
- (b) utter a forged electoral paper knowing it to be forged.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**(2)** A person must not make someone else's signature on an electoral paper.

Maximum penalty—20 penalty units.

### **Wilful neglect etc. of electoral officers**

**332.** An electoral officer must not wilfully neglect or fail to perform a duty under this Act.

Maximum penalty—20 penalty units.

### **No record to be made of vote cast**

**333.** An electoral officer, or scrutineer, must not make a mark, memorandum or note on a voters roll or other list of voters or otherwise—

- (a) that indicates for whom a person has cast a vote; or
- (b) that would enable the officer or scrutineer to know or remember for whom a person has cast a vote.

Maximum penalty—10 penalty units.

***Subdivision 2—Offences about electoral advertising and information*****Responsibility for election matter**

**334.(1)** A person must not, during the election period for an election—

- (a) print, publish, distribute or broadcast; or
- (b) permit or authorise someone else to print, publish, distribute or broadcast;

any advertisement, handbill, pamphlet or notice containing election matter unless there appears, or is stated, at its end the particulars required by subsection (2).

Maximum penalty—20 penalty units.

**(2)** The particulars are—

- (a) in any case—the name and address (other than a post office box or facility) of the person who authorised the advertisement, handbill, pamphlet or notice; and
- (b) for an advertisement or notice printed except in a newspaper—the name and place of business of the printer.

**(3)** Subsection (1) does not apply to an advertisement that—

- (a) is printed, published or distributed on a car sticker, T-shirt, lapel badge, pen, pencil or balloon; or
- (b) is of a kind prescribed by regulation.

**Headline to electoral advertisements**

**335.** The proprietor of a newspaper commits an offence if—

- (a) an article, or a paragraph, containing matter about an election is printed in the newspaper; and
- (b) either—
  - (i) the insertion of the article or paragraph is, or is to be, paid for; or
  - (ii) any reward or compensation, or promise of reward or compensation, is, or is to be, made for the insertion of the

article or paragraph; and

- (c) the proprietor does not cause the word ‘advertisement’ to be printed as a headline to the article or paragraph in letters not smaller than 10 point or long primer.

Maximum penalty—10 penalty units.

### **Misleading voters**

**336.(1)** During an election period, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the election.

(2) A person must not, for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate.

(3) During an election period, a person must not print, publish, distribute or broadcast by television anything that purports to be a representation of a ballot paper for use in the election, if it is likely to induce an elector to vote other than in accordance with this part.

Maximum penalty—40 penalty units.

### *Subdivision 3—Offences about voting*

#### **Failure to vote**

**337.(1)** An elector must not—

- (a) fail to vote at an election without valid and sufficient reason; or
- (b) fail to comply with the requirements of a notice given to the elector under section 319 (Notice to elector failing to vote); or
- (c) purport to comply with the requirements of a notice given to the elector under section 319, make a statement the elector knows to be false or misleading in a material particular.

Maximum penalty—1 penalty unit.

(2) An elector’s belief that it is part of the elector’s religious duty not to vote at elections is valid and sufficient reason for the elector’s failure to vote

in a particular election.

(3) A complaint against a person for a contravention of subsection (1)(c) is sufficient if it states that the statement was false or misleading to the person's knowledge.

### **Leave to vote**

**338.(1)** This section applies if—

- (a) an employee who is an elector asks his or her employer, before polling day for an election, for leave of absence to vote at the election; and
- (b) the absence is necessary to enable the employee to vote at the election.

(2) The employer must allow the employee leave of absence for a reasonable period (not more than 2 hours) to enable the employee to vote at the election, unless the absence is reasonably likely to cause danger or substantial loss to the employer in relation to the employment concerned.

(3) The employer must not impose any penalty or disproportionate deduction of pay for the leave of absence.

(4) An employee must not ask for leave of absence under subsection (1) to vote at an election unless the employee genuinely intends to vote at the election.

Maximum penalty—10 penalty units.

### **Canvassing in or near polling booths**

**339.(1)** During an election period, a person must not do any of the things mentioned in subsection (2)—

- (a) inside a polling booth; or
- (b) within 6 m of an entrance to a building if—
  - (i) the building is, or is part of, a polling booth; and
  - (ii) either a ballot box is in the building for use in the election, or a person is in the building for the purpose of casting a vote in the election.

**(2)** The things are—

- (a) canvassing for votes; or
- (b) inducing an elector not to—
  - (i) vote in a particular way; or
  - (ii) vote at all in the election; or
- (c) loitering; or
- (d) obstructing the free passage of a person seeking to vote.

Maximum penalty—10 penalty units.

### **Interrupting voting etc.**

**340.** A person must not—

- (a) enter or remain in a polling booth other than under this Act; or
- (b) wilfully interrupt, obstruct or disturb any proceeding at an election; or
- (c) enter a voting compartment other than under this Act; or
- (d) prevent a scrutineer from entering or leaving a polling place—
  - (i) during voting hours for the polling place; or
  - (ii) while votes are being counted at the polling place; or
- (e) obstruct or wilfully mislead an electoral officer in the performance of a duty.

Maximum penalty—10 penalty units.

### **Influencing voting**

**341.** A person must not, by violence or intimidation, influence a person's vote at an election.

Maximum penalty—85 penalty units or imprisonment for 2 years.

**Party badges not to be worn in polling booths**

**342.** A person must not wear or display any badge or emblem of a political party in a polling booth.

Maximum penalty—1 penalty unit.

**Voting if not entitled**

**343.** A person must not, at an election—

- (a) vote in someone else's name (including a dead or fictitious person); or
- (b) vote more than once; or
- (c) cast a vote that the person knows the person is not entitled to cast; or
- (d) if the person knows someone else is not entitled to vote at the election, procure the other person to vote.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**Offences relating to ballot papers**

**344.(1)** A person must not—

- (a) wilfully fail to comply with section 282 (Procedure for voting at a polling booth) or 297 (Casting a declaration vote by post); or
- (b) take a ballot paper out of a polling booth other than under this part; or
- (c) place in a ballot box a ballot paper that has not been—
  - (i) given to an elector under this part; or
  - (ii) marked by the elector.

**(2)** A person must not, without lawful excuse, obtain possession of or have in the person's possession—

- (a) a ballot paper that has been marked by anyone else; or
- (b) a declaration form or envelope that has been signed by anyone else.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Failure to deliver or post documents for someone else**

**345.(1)** If a person is given, for delivery or posting to the returning officer—

- (a) an application by someone else to be treated as a declaration voter; or
- (b) a declaration form that appears to be completed;

the person must promptly deliver or post it to the returning officer.

**(2)** If a person is given, for delivery or posting to the returning officer, a declaration envelope that appears to be completed, the person must give or post it to the returning officer before 6 p.m. on polling day.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Breach of confidentiality of vote**

**346.(1)** A person must not examine a ballot paper used in the election to ascertain the candidates for whom an elector has voted.

**(2)** Subsection (1) does not apply to a proceeding in a court or a person in the performance of functions under this Act.

**(3)** If, in performing a function for an election, a person has ascertained the candidates for whom an elector has cast a vote, the person must not disclose, or assist in disclosing, that fact, unless the person is required by law to make the disclosure.

Maximum penalty—20 penalty units or imprisonment for 6 months.

### **Breaking seals on parcels**

**347.** A person must not wilfully open or break the seal of a parcel or packet sealed under this part unless the person is authorised under this Act or ordered by a court to open or break the seal.

Maximum penalty—20 penalty units or imprisonment for 6 months.

**Duty of witness to signing of declaration voting papers**

**348.** A person (the “**witness**”) must not sign a declaration envelope as witness under section 297 (Casting a declaration vote by post) unless—

- (a) the witness is satisfied of the identity of the elector who signs the declaration before the witness; and
- (b) the witness has seen the elector sign the declaration; and
- (c) either—
  - (i) the witness knows that the declaration made by the elector is true; or
  - (ii) the witness is satisfied that the declaration is true because of inquiries of the elector or otherwise.

Maximum penalty—20 penalty units or imprisonment for 6 months.

***Subdivision 4—Injunctions*****Injunctions to restrain contravention of chapter**

**349.(1)** An application may be made to the Supreme Court for an injunction if—

- (a) either—
  - (i) a person (the “**offending party**”) has engaged, is engaging or proposes to engage in conduct; or
  - (ii) a person (also the “**offending party**”) has failed, is failing or proposes to fail to do anything; and
- (b) the conduct or failure constituted, constitutes or would constitute a contravention of, or an offence against, this chapter.

**(2)** The application may be made by the returning officer or a candidate for election.

**(3)** The court may grant an interim injunction pending determination of the application.

**(4)** If a returning officer makes the application, the court must not require the officer or anyone else to give an undertaking about damages as a

condition of granting an interim injunction.

(5) On consideration of the application, the court may—

- (a) if subsection (1)(a)(i) applies—
  - (i) grant an injunction restraining the offending party from engaging in the conduct concerned; and
  - (ii) also require the offending party to do anything to prevent or remedy the contravention; or
- (b) if subsection (1)(a)(ii) applies—grant an injunction requiring the offending party to do the thing in question.

(6) The court may grant the injunction—

- (a) if the court is satisfied the offending party has engaged in the conduct, or failed to do the thing, mentioned in subsection (1)—whether or not it appears to the court that the offending party intends—
  - (i) to engage again or continue to engage in the conduct; or
  - (ii) to fail or continue to fail to do the thing; or
- (b) if it appears to the court that, if the injunction is not granted, it is likely the offending party will engage in the conduct, or fail to do the thing, mentioned in subsection (1), whether or not—
  - (i) the offending party has previously engaged in the conduct or failed to do the thing; or
  - (ii) there is imminent danger of substantial damage to any person if the offending party engages in the conduct or fails to do the thing.

(7) The court may refuse to grant an injunction if it appears to the court that application was not made to the court at the earliest possible opportunity.

(8) The court may discharge or vary the injunction or an interim injunction.

(9) The powers conferred on the court by this section are in addition to, and do not limit, other powers of the court.

## **PART 7—FRESH ELECTIONS**

### **Requirements for fresh election**

**350.(1)** A regulation may direct that a fresh election of councillors of a local government be held if the local government is dissolved under section 113 (Dissolution of local government).

**(2)** A regulation may direct that a fresh election of councillors of a local government, or a division of a local government, be held if action is taken to implement a reviewable local government matter under chapter 3 (Interaction with the State), part 1 (Review of local government matters).

**(3)** A direction may be given at the time of the dissolution or the action is taken as mentioned in subsection (2), or at a later time.

### **Time for fresh election**

**351.** The day on which a fresh election is to be held is a Saturday fixed by regulation made under section 350 (Requirements for fresh election).

### **Returning officer for fresh election**

**352.** The returning officer for a fresh election of councillors of a local government is the local government's chief executive officer or, if there is no chief executive officer, a person appointed by the Minister.

### **Voters roll for fresh election**

**353.** A voters roll for a fresh election must be compiled under the regulation directing the holding of the fresh election.

### **Other provisions of chapter apply**

**354.** The provisions of this chapter (other than this part) apply, with all necessary changes and any changes prescribed by regulation, to a fresh election as if the election were a triennial election.

**Extension of term of councillors**

**355.** In directing a fresh election, a regulation may declare that the councillors elected at the fresh election are elected for a term ending at the conclusion of the triennial elections after the next triennial elections.

**CHAPTER 6—GENERAL OPERATION OF  
LOCAL GOVERNMENTS****PART 1—PROCEEDINGS OF LOCAL  
GOVERNMENTS***Division 1—What meetings are held***Post-election meetings**

**356.** A local government must hold a meeting within 14 days after the conclusion of the triennial elections and each fresh election of its councillors.

**Agenda of post-election meetings**

**357.** The matters a local government must consider at a meeting mentioned in section 356 (Post-election meetings) include—

- (a) the day and time for holding other meetings; and
- (b) the appointment of its deputy mayor; and
- (c) the appointment of its standing committees.

**Other meetings**

**358.(1)** Other meetings of a local government are to be held at the times and places it decides.

- (2) However, it must meet—

- (a) for a city or town—at least once in each month; or
- (b) for a shire—at least once in each period of 3 months.

### *Division 2—Local government meetings*

#### **Place of meetings**

**359.(1)** All meetings of a local government must be held at its public office.

(2) However, a local government may, by resolution, fix another place for a particular meeting.

#### **Quorum at meetings**

**360.(1)** A quorum of a local government is a majority of its councillors.

(2) However, if the number of councillors is an even number, one-half of the number is a quorum.

#### **Procedure at meetings**

**361.(1)** Business may be conducted at a meeting of a local government only if a quorum is present.

(2) At a meeting—

- (a) voting must be open; and
- (b) a question is decided by a majority of the votes of the councillors present; and
- (c) each councillor present has a vote on each question to be decided and, if the votes are equal, the councillor presiding has a casting vote; and
- (d) if a councillor present fails to vote, the councillor is taken to have voted in the negative.

**Minutes must be kept**

**362.(1)** A local government must keep minutes of its proceedings.

(2) The minutes must be taken and confirmed under section 375 (Minutes).

**Adjournment of meetings**

**363.(1)** The majority of councillors present at a meeting of a local government may adjourn the meeting to a later hour of the same day or to a later day.

(2) If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting may be adjourned to a later hour or another day within 14 days after the day of adjournment, by—

- (a) a majority of the councillors present; or
- (b) if only 1 councillor is present—the councillor; or
- (c) if no councillors are present—the chief executive officer.

**Notice of meetings**

**364.(1)** Written notice of each meeting or adjourned meeting of a local government must be given to each councillor at least 2 days before the day of the meeting unless it is impracticable to give the notice.

(2) A notice must specify—

- (a) the day and time of the meeting; and
- (b) for a special meeting—the object of the meeting.

(3) The only business that may be conducted at a special meeting is the business specified in the notice of meeting.

**Repeal or amendment of resolutions**

**365.(1)** A resolution of a local government may be repealed or amended only if written notice of intention to propose the repeal or amendment is given to each councillor at least 5 days before the meeting at which the proposal is to be made.

(2) At the meeting to decide the proposal, the proposal is taken to have been defeated unless it is agreed to by—

- (a) if the number of councillors present at the meeting is more than the number present at the meeting at which the resolution was adopted—a majority of the councillors present; or
- (b) in any other case—a majority of all councillors.

### *Division 3—Committees and their meetings*

#### **Appointment of committees**

**366.** A local government may—

- (a) appoint, from its councillors, standing committees or special committees; and
- (b) appoint advisory committees; and
- (c) fix the quorum of each committee; and
- (d) appoint a chairperson of each committee.

#### **Advisory committees**

**367.(1)** An advisory committee—

- (a) must not be appointed as a standing committee; and
- (b) may include in its members persons who are not councillors.

(2) A member of an advisory committee who is not a councillor may vote on business before the committee.

#### **Delegate members of committees**

**368.(1)** A local government that appoints a committee may appoint 1 person as a delegate member of the committee.

(2) In the absence of a member of the committee, the delegate member may attend meetings of the committee and act as a member of the committee.

**Quorum**

**369.** A quorum of a committee is the number—

- (a) fixed by the local government; or
- (b) if a number is not fixed by the local government—fixed by the committee.

**Chairperson of committee**

**370.(1)** If the local government does not appoint a chairperson for a committee, the committee may appoint 1 of its members as chairperson.

**(2)** If the chairperson is not present at a meeting, the members present may appoint a chairperson for the meeting.

**Committee meetings**

**371.(1)** Meetings of a committee are to be held at the times and places it decides.

**(2)** At a meeting—

- (a) voting must be open; and
- (b) a question is decided by a majority of the votes of the members present; and
- (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote; and
- (d) if a member present fails to vote, the member is taken to have voted in the negative.

**Reports**

**372.** A committee must report to the local government as directed by the local government.

**Minutes must be kept unless committee exempted**

**373.(1)** A committee must keep minutes of its proceedings unless it is exempted under subsection (3).

(2) The minutes must be taken and confirmed under section 375 (Minutes).

(3) A local government may, by resolution, exempt a committee from the requirement to keep minutes of its proceedings if the committee's function is only to advise or recommend to the local government.

(4) If a committee is exempted under subsection (3), it must give to the local government a written report of its deliberations and its advice or recommendations.

***Division 4—Meetings generally*****Division applies to local governments and their committees**

**374.** This division applies to a meeting of a local government or a committee.

**Minutes**

**375.(1)** A local government's chief executive officer must ensure that minutes of each meeting are taken under the supervision of the person presiding at the meeting.

(2) Minutes of each meeting must include—

- (a) the names of councillors or committee members present at the meeting; and
- (b) if a division is called on a question—the names of all persons voting on the question and how they voted.

(3) At each meeting, the minutes of the previous meeting must be—

- (a) confirmed by the councillors or members present; and
- (b) signed by the person presiding at the later meeting.

**Meetings in public unless otherwise resolved**

**376.** A meeting is open to the public unless the local government or committee has resolved that the meeting be closed under section 377 (Closed meetings).

**Closed meetings**

**377.(1)** A local government or committee may resolve that a meeting be closed to the public if its councillors or members consider it necessary to close the meeting to discuss—

- (a) the appointment, dismissal or discipline of employees; or
- (b) industrial matters affecting employees; or
- (c) the local government's budget; or
- (d) rating concessions; or
- (e) contracts proposed to be made by it; or
- (f) starting or defending legal proceedings involving it; or
- (g) any action to be taken by the local government under the *Local Government (Planning and Environment) Act 1990*, including deciding applications made to it under that Act; or
- (h) other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.

**(2)** A resolution that a meeting be closed must specify the nature of the matters to be considered while the meeting is closed.

**(3)** A local government or committee must not make a resolution (other than a procedural resolution) in a closed meeting.

**Public notice of meetings**

**378.(1)** A local government must, at least once in each year, publish in a newspaper circulating generally in its area a notice of the days and times when its ordinary meetings, and the ordinary meetings of its standing committees, will be held.

(2) The local government must display in a conspicuous place in its public office a notice of the days and times when—

- (a) its meetings will be held; or
- (b) meetings of its committees will be held.

(3) The local government must immediately notify any change to the days and times mentioned in subsection (1) or (2) in the same way as the days and times were previously notified.

(4) A list of the items to be discussed at a meeting mentioned in subsection (2) must be open to inspection at the time the agenda for the meeting is made available to councillors.

(5) Subsection (4) does not affect the right to discuss or deal with, at any meeting, items arising after the agenda for the meeting is made available to councillors.

### **Public notice of resolution authorising remuneration etc.**

**379.(1)** A resolution authorising the payment or provision of remuneration to councillors of a local government may be passed only if notice has been given of the proposed resolution.

(2) Notice must be given by—

- (a) publishing, at least 4 weeks, and not more than 6 weeks, before the meeting, a notice setting out the proposed resolution, and the day and time of the proposed meeting, in a newspaper circulated generally in its area; and
- (b) putting a copy of the notice on display in a conspicuous place in its public office on the day on which the notice is published under paragraph (a); and
- (c) keeping the copy of the notice on display until after the meeting.

## ***Division 5—Records***

### **Safe custody of records**

**380.** The chief executive officer of a local government is responsible for

safe custody of—

- (a) all records about the proceedings, accounts or transactions of the local government or its committees; and
- (b) all documents owned or held by the local government.

### **Loss or destruction of records**

**381.(1)** If a document owned or held by a local government is lost or destroyed, the Governor in Council may make regulations for the purpose of repairing the loss.

(2) A regulation may, for example, provide that a copy of the document is effective for all purposes, including being admissible in evidence, as if it were the original.

### **Inspection of records by the public**

**382.(1)** A copy of the minutes of each meeting of a local government—

- (a) must be available for inspection at its public office within 10 days after the end of the meeting; and
- (b) when the minutes have been confirmed—must be available for purchase at the public office.

(2) The price of a copy of confirmed minutes must not be more than—

- (a) the cost to the local government of having the copy printed and made available for purchase; and
- (b) if the copy is supplied to a purchaser by post—the cost of postage.

### **Inspection of records by members**

**383.(1)** This section applies to local government records, whether or not they are open to inspection under section 382 (Inspection of records by the public).

(2) A councillor of the local government may inspect, and make a copy of or take an extract from, a record about its operations or the operations of any of its committees.

(3) A member of a committee may inspect, and make a copy of, a record about the committee's operations.

(4) This section is subject to section 726 (Requests to employees for help or advice).

### **Duty to make records available**

**384.** A person who has charge of a document owned or held by a local government must not obstruct or hinder the inspection or copying of the document under section 382 (Inspection of records by the public) or 383 (Inspection of records by members).

Maximum penalty—10 penalty units.

## ***Division 6—Miscellaneous***

### **Correspondence with local government**

**385.(1)** All correspondence with a local government about matters affecting it is taken to be addressed to the chief executive officer.

(2) The chief executive officer is responsible for taking the appropriate action for the correspondence.

### **Delegation by local government**

**386.(1)** A local government may, by resolution, delegate its powers under a local government Act.

(2) The delegation may be made to—

- (a) the mayor; or
- (b) a standing committee or joint standing committee; or
- (c) the chairperson of a standing committee or joint standing committee; or
- (d) the chief executive officer.

(3) However, a local government may not delegate a power if—

- (a) the power is to take disciplinary action against an employee appointed by it; or
- (b) an Act provides that the power must be exercised by resolution.

(4) All delegations made by a local government must be recorded in a register of delegations kept by its chief executive officer.

(5) The register must contain the particulars prescribed by regulation.

(6) The register is open to inspection.

### **Preservation of proceedings**

**387.** Proceedings of a local government or any of its committees or actions of a person acting as a councillor or member of a committee, are not invalid merely because of—

- (a) vacancies in the membership of the local government or committee; or
- (b) a defect or irregularity in the election or appointment of any councillor or committee member; or
- (c) the disqualification of a councillor or committee member from acting as a councillor or committee member.

## **PART 2—POLLS**

### **Authority to conduct poll**

**388.** A local government may conduct a poll of the electors in its area or a part of its area.

### **Subject matter of polls**

**389.** A poll may be conducted on any local government issue of concern to a local government area or part of a local government area.

**Poll must be on Saturday**

**390.** A poll must be conducted on a Saturday.

**Electoral provisions that apply to a poll**

**391.(1)** The provisions mentioned in subsection (2) apply (with any necessary changes and any changes prescribed by regulation) to a poll as if—

- (a) if the poll is conducted on the day of triennial elections—the poll were a triennial election; or
- (b) if the poll is conducted on any other day—the poll were a by-election.

**(2)** The relevant provisions are as follows—

- chapter 5 (Local government elections)
  - parts 2 (Returning officers) and 3 (Voters roll)
  - section 230 (Compulsory voting)
  - part 6 (Conduct of elections).

**Cases for and against question in poll**

**392.(1)** In every poll, a statement of the case for, and a statement of the case against, the question to be voted on in the poll is open to inspection.

**(2)** In every poll, the returning officer for the poll must ensure that the statements of the cases for and against the question to be voted on are given to each elector a reasonable time before the day of the poll.

**(3)** A regulation may make provision about how the statements of the cases for and against the question are to be prepared for the purposes of this section.

**Publication of poll result**

**393.** As soon as practicable after the result of a poll is decided, the returning officer for the poll must give public notice of the result, by

advertisement in a newspaper circulating generally in the local government area or part of the local government area.

### **Restrictions on conducting another poll on the same question**

**394.(1)** If a local government conducts a poll on a question in its area, it must not conduct another poll on the same, or substantially the same, question within 1 year of the poll.

**(2)** If a local government conducts a poll in part of its area, subsection (1) applies for that part.

**(3)** However, subsections (1) and (2) do not apply to a second poll held on the day of—

- (a) the next triennial elections; or
- (b) if the second poll is conducted only in part of the local government's area—a by-election for that part.

## **PART 3—CONTRACTS AND TENDERING**

### *Division 1—Preliminary*

#### **Principles governing the making of contracts**

**395.** In entering into contracts for the carrying out of work, or the supply of goods or services, a local government must have regard to the following principles—

- (a) open and effective competition;
- (b) value for money;
- (c) enhancement of the capabilities of local business and industry;
- (d) environmental protection;
- (e) ethical behaviour and fair dealing.

**Ways of entering into a contract**

**396.** A local government may make, vary or discharge a contract—

- (a) under seal; or
- (b) by a delegate under section 397 (Entering into a contract under delegation).

**Entering into a contract under delegation**

**397.(1)** A local government's delegate may make, vary or discharge a contract for the local government in the same way as if the contract were made, varied or discharged by an individual.

**(2)** However, subsection (1) applies only if—

- (a) the spending incurred for the local government because of the making, variation or discharge of the contract—
  - (i) has been provided for in an approved budget for the financial year when the making, variation or discharge happens; or
  - (ii) is incurred under section 436 (Spending of local government pending adoption of budget) but is within the limits stated in the resolution of the local government delegating the power under which the contract is made, varied or discharged; or
- (b) the contract has been entered into because of genuine emergency or hardship.

**(3)** This section does not affect another law that requires—

- (a) an approval, consent or permission to be obtained; or
- (b) a procedure to be complied with for the making, varying or discharging of a contract.

***Division 2—Purchasing*****When tenders are required**

**398.(1)** A local government must invite tenders before making a contract for the carrying out of work, or the supply of goods or services, involving a

cost of more than \$100 000 or, if a greater amount is prescribed by regulation, the greater amount.

(2) The invitation must—

- (a) be by an advertisement in a newspaper circulating generally in the local government's area; and
- (b) allow at least 21 days from the day of the advertisement for the submission of tenders.

(3) This section applies subject to the following sections—

- section 400 (Exceptions to the requirement to seek tenders or quotations)
- section 403 (Short listing after calling for expressions of interest).

### **When quotations are required**

**399.(1)** A local government must invite written quotations before making a contract for the carrying out of work, or the supply of goods or services, involving a cost of between \$10 000 and \$100 000 or, if another range of amounts is prescribed by regulation, the range of amounts.

(2) The invitation must be given to at least 3 persons who the local government considers can meet its requirements at competitive prices.

(3) This section applies subject to section 400 (Exceptions to the requirement to seek tenders or quotations).

### **Exceptions to the requirement to seek tenders or quotations**

**400.(1)** A local government may enter into a contract without complying with section 398 (When tenders are required) or 399 (When quotations are required) if—

- (a) it resolves that it is satisfied that there is only 1 supplier reasonably available to it; or
- (b) it resolves that a genuine emergency exists; or
- (c) it resolves to obtain second-hand goods; or
- (d) it resolves to purchase goods at an auction; or

- (e) the contract is made under an exemption to open competition in the Local Government Finance Standards; or
- (f) the contract is made with, or under an arrangement with or made by—
  - (i) the State, a government entity, the Brisbane City Council or another local government; or
  - (ii) another Australian government, an entity of another Australian government or a local government of another State or a Territory.

(2) A local government also may enter into a contract for the supply of services without complying with section 398 or 399 if—

- (a) the contract is made with a person on the panel mentioned in section 401 (Panel of suitable providers); or
- (b) it resolves that it is satisfied that the services to be supplied are of such a specialised or confidential nature that it would be impractical or disadvantageous to the local government to invite tenders or quotations.

### **Panel of suitable providers**

**401.(1)** A local government may compile a panel of the names of persons suitably qualified to provide a service.

(2) A panel must be compiled by—

- (a) inviting expressions of interest from persons to be included on the panel in the way provided for inviting tenders under section 398 (When tenders are required); and
- (b) selecting persons on the basis of the principles mentioned in section 395 (Principles governing the making of contracts).

### **Changes to tenders**

**402.(1)** This section applies if—

- (a) a local government invites tenders for a contract; and
- (b) the invitation to tender states that the local government might later

invite all tenderers to change their tenders.

(2) Before making a decision on the tenders, the local government may invite all the persons who have submitted a tender to change their tender to take account of a change in the tender specifications.

### **Short listing after calling for expressions of interest**

**403.(1)** A local government may invite expressions of interest under this section before inviting tenders if it resolves that it is satisfied that it would be in the public interest.

(2) The local government must record its reasons for making the resolution.

(3) Expressions of interest must be invited in the way provided for inviting tenders under section 398 (When tenders are required).

(4) The local government may prepare a short list from the persons who responded to the invitation and invite tenders from the persons on the short list.

(5) If a local government makes a contract after inviting tenders under subsection (4), section 398 does not apply to the contract.

### **Acceptance of tender or quotation**

**404.(1)** If a local government decides to accept a tender or quotation, it must accept the tender or quotation most advantageous to it.

(2) In deciding the tender or quotation most advantageous to it, the local government must have regard to the principles mentioned in section 395 (Principles governing the making of contracts).

(3) However, a local government may decide not to accept any tender or quotation available to it.

***Division 3—Disposal of land or goods*****When tenders or auctions are required**

**405.(1)** This section applies to—

- (a) land (including an interest in land); or
- (b) goods with an apparent value of \$1 000 or, if a greater amount is prescribed by regulation, the greater amount.

**(2)** A local government may dispose of the land or goods only—

- (a) by auction; or
- (b) after inviting tenders in the way mentioned in section 398(2) (When tenders are required).

**(3)** If it invites tenders, sections 402 (Changes to tenders) and 404(1) and (3) (Acceptance of tender or quotation) apply.

**(4)** This section is subject to section 406 (Exemptions).

**Exemptions**

**406.(1)** A local government may dispose of land (including an interest in land) or goods without complying with section 405 (When tenders or auctions are required) if—

- (a) the disposal is to—
  - (i) the State; or
  - (ii) a government entity; or
  - (iii) another local government; or
  - (iv) a community organisation; or
  - (v) another Australian government, an entity of another Australian government or a local government of another State or a Territory; or
- (b) for land—the land would not be rateable land after the disposal; or
- (c) the Minister exempts the local government from complying with the section; or

- (d) the land or goods were previously offered for sale under section 405 and were not sold; or
- (e) the disposal is declared by regulation to be a disposal to which this division does not apply.

(1A) An exemption under subsection (1)(c) may be given subject to conditions.

(2) If subsection (1)(d) applies, the land or goods must not be sold for less than the highest bid or tender received.

(3) In this section—

“**community organisation**” means an entity that is a non-profit entity or otherwise exists for a public purpose.

## **PART 4—ENTERPRISES**

### *Division 1—Preliminary*

#### **Application to Brisbane City Council**

**407.** This part applies to Brisbane City Council.

#### **Matters relevant to good rule and government**

**408.(1)** A matter that, in a local government’s opinion, is directed to benefiting, and can reasonably be expected to benefit, its area, or a part of its area, is taken to be conducive to the good rule and government of its territorial unit.

(2) The matters that may be of benefit to a local government area include, for example—

- (a) promoting or contributing to economic development of a part of the area; and
- (b) promoting or attracting commerce, industry or tourism in or to a part of the area; and

- (c) promoting or providing opportunities for employment in a part of the area; and
- (d) promoting or helping the supply of services to a part of the area; and
- (e) helping the finances of the area's local government; and
- (f) helping the exercise of the jurisdiction of local government in the area.

### **Application of part**

**409.(1)** This part does not apply to an enterprise (an “**exempt enterprise**”) declared by regulation to be an exempt enterprise.

**(2)** However, if the exempt enterprise is undertaken as a joint venture with someone else, this part applies to the enterprise unless—

- (a) the local government is authorised to conduct the enterprise under another Act; or
- (b) the joint venture is with any of the following—
  - (i) the State;
  - (ii) a government entity;
  - (iii) another local government;
  - (iv) another Australian government, an entity of another Australian government or a local government of another State or a Territory.

### ***Division 2—Enterprise powers***

#### **Engagement in or help to enterprises**

**410.(1)** A local government may engage in or help an enterprise if the enterprise concerns a matter that, in its opinion, is directed to benefiting, and can reasonably be expected to benefit, its area or a part of its area.

**(2)** A local government may exercise a power under subsection (1) (the “**enterprise power**”) either alone or with another entity.

(3) A local government may do all things necessary or convenient to be done to exercise an enterprise power.

### **Specific enterprise powers**

**411.(1)** For the purpose of exercising an enterprise power, a local government may—

- (a) form or take part in forming—
  - (i) a company limited by shares that are not listed on a stock exchange (a **“permissible company”**); or
  - (ii) a partnership; or
  - (iii) an association of persons; or
- (b) be a member of a permissible company, acquire and dispose of shares, debentures and securities of a permissible company and take part in the management of a permissible company; or
- (c) be a member of a partnership or other association of persons and take part in the management of the business of a partnership or association of persons; or
- (d) commercially exploit its property rights (whether tangible or intangible).

(2) In subsection (1)—

**“association of persons”** does not include a company.

### *Division 3—Safeguards*

#### **Requirements for exercise of enterprise powers**

**412.(1)** A local government may exercise an enterprise power only by resolution.

(2) Before exercising an enterprise power, a local government must consult with, and have proper regard to the advice of, persons who, in its opinion, possess relevant competence about—

- (a) the end to which the exercise of the power is, or would be,

directed; and

- (b) the ways of achieving the end; and
- (c) the lawfulness of the exercise of the power.

### **Restrictions on exercise of enterprise powers**

**413.** In exercising, or before exercising, an enterprise power, a local government must not—

- (a) engage in or help enterprises in a financial year to an extent that requires the local government to commit in the year an amount that is more than the amount calculated under section 414 (Establishing enterprise powers limits); or
- (b) borrow or provide a guarantee for a borrowing; or
- (c) form, take part in forming, be a member of, or take part in the management of, a company other than a permissible company; or
- (d) be a member of a partnership other than as a limited partner; or
- (e) enter into an agreement or arrangement that does not restrict the liability of the local government, as between the parties, to the amount committed by the local government under the agreement or arrangement.

### **Establishing enterprise powers limits**

**414.(1)** The amount of commitment to enterprises in a financial year to which a local government is limited includes the value of all property committed by the local government to any enterprise.

**(2)** A regulation may prescribe for the purposes of this part—

- (a) the components of a local government's own source revenue; and
- (b) the percentage of its own source revenue by reference to which the maximum amount of commitment to enterprises in a financial year to which a local government is limited by section 413(a) (Restrictions on exercise of enterprise powers) is to be established.

**(3)** If, in a financial year, a local government does not commit to

enterprises an amount provided for in its budget for the purpose, the uncommitted amount may be carried forward to be committed to enterprises in a later financial year.

(4) However, if a maximum number of years for which local governments may carry forward uncommitted amounts under subsection (3) is prescribed by regulation, a local government must not exercise the power under the subsection for a financial year beyond the maximum number until the local government has lawfully applied the total amount carried forward by it.

(5) An amount carried forward under subsection (3), an accumulation of amounts carried forward under the subsection, or assets to the value of the amount or accumulation, may be committed (in whole or part) to enterprises by the local government in a financial year in addition to the amount of commitment permitted to the local government in the year under section 413(a).

(6) An amount carried forward under subsection (3) must be held in a reserve established by the local government in its operating fund until it is lawfully applied by it.

### **Register of enterprises**

**415.(1)** A local government that exercises an enterprise power must keep a register that includes a record of—

- (a) each enterprise engaged in, or helped by, the local government; and
- (b) the identity of any entity with which the local government has engaged in, or helped, an enterprise as a joint venture; and
- (c) particulars of the purpose to be achieved by the engagement or help; and
- (d) the value of property committed by the local government to each enterprise engaged in, or helped by, the local government; and
- (e) for each enterprise—the identity of the persons of relevant competence with whom the local government has consulted in exercising an enterprise power.

(2) Subsection (1)(d) is complied with if the value of property committed

to an enterprise is shown as the market value of the property when it is committed.

(3) The register is open to inspection.

(4) A local government must give to the chief executive of the department and the Auditor-General written notice of—

- (a) the establishment of a register as soon as practicable after it is established; and
- (b) each entry in the register as soon as practicable after it is made.

## **CHAPTER 7—FINANCIAL OPERATION AND ACCOUNTABILITY OF LOCAL GOVERNMENTS**

### **PART 1—LOCAL GOVERNMENT FINANCE STANDARDS**

#### **Issue of standards**

**416.(1)** The Minister may make standards (the “**Local Government Finance Standards**”) about—

- (a) the policies and principles to be complied with in financial management, including internal audit, by—
  - (i) local governments; or
  - (ii) the trustees of a superannuation scheme (a “**relevant superannuation scheme**”) established by a local government (whether alone or with other local governments); and
- (b) the content of financial statements and annual reports by—
  - (i) local governments; or
  - (ii) the trustees of a relevant superannuation scheme; and
- (c) any matter that is required or permitted to be prescribed by

standard.

(2) Before making a standard, the Minister must consult with the Auditor-General about the standard.

(3) The standards may include practice statements if the Minister considers a uniform standard of practice or procedure is necessary or desirable.

(4) In preparing standards, the Minister must have regard to relevant standards made by appropriate professional bodies.

(5) A standard made under subsection (1) is subordinate legislation.

### **Standards must be complied with**

**417.** Every local government, and the trustees of every relevant superannuation scheme, must comply with the Local Government Finance Standards.

## **PART 2—CORPORATE AND OPERATIONAL PLANS**

### **Preparation and adoption of corporate plan**

**418.(1)** A local government must, from time to time, prepare and, by resolution, adopt a corporate plan.

(2) The local government must ensure each corporate plan is prepared and adopted in enough time, before the start of the first financial year covered by the plan, to allow preparation and adoption of a budget for the financial year consistent with the plan.

### **Period of corporate plan**

**419.(1)** A corporate plan of a local government continues in force for the period specified in the plan or until the earlier adoption by the local government of a new corporate plan.

(2) The specified period for a corporate plan must be at least 3 years.

**Amendment of corporate plan**

**420.** A local government may, by resolution, amend its corporate plan at any time.

**Requirements of corporate plans**

**421.** A corporate plan or amendment of a corporate plan—

- (a) must comply with the Local Government Finance Standards; and
- (b) must be open to inspection for 30 days at least before the local government adopts the plan or amendment.

**Preparation and adoption of operational plan**

**422.(1)** A local government must, for each financial year, prepare and, by resolution, adopt an operational plan.

**(2)** The local government must ensure each operational plan is prepared and adopted in enough time, before the start of the financial year for which it is prepared, to allow preparation and adoption of a budget for the financial year consistent with the plan.

**(3)** When the plan is adopted by a local government, it becomes its operational plan for the financial year for which it is prepared.

**Amendment of operational plan**

**423.** A local government may, by resolution, amend an operational plan at any time before the end of the financial year for which it is prepared.

**Requirements of operational plan**

**424.** A local government's operational plan or an amendment of its operational plan must comply with the Local Government Finance Standards and its corporate plan.

**Compliance with corporate and operational plans**

**425.** A local government's exercise of the jurisdiction of local government must be consistent with its corporate plan and operational plan.

**Evaluation of activities**

**426.(1)** A local government must make assessments of its progress towards implementing its corporate and operational plans.

(2) The chief executive officer must present a written report on the assessments to a meeting of the local government at regular intervals, of not more than 3 months, decided by it.

**Copies of plans to be available for inspection and purchase**

**427.(1)** A local government must have its corporate and operational plans printed and a reasonable number of copies of the plans made.

(2) The local government must—

- (a) keep the plans open for inspection; and
- (b) make copies available for purchase at its public office at a price not more than the cost to the local government of producing the copy and, if a copy is supplied to a purchaser by post, the cost of postage.

**PART 3—FUNDS AND ACCOUNTING PROCEDURES****Funds**

**428.** A local government must establish and keep—

- (a) an operating fund; and
- (b) a trust fund.

**Reserves**

**429.(1)** A local government may establish specific reserves within its operating fund.

(2) It must keep separate accounting records for each reserve.

(3) Amounts held in a reserve that are no longer required may be applied for any purpose.

**Trust fund**

**430.(1)** A local government must credit to its trust fund—

(a) an amount paid to the local government—

(i) by way of deposit; or

(ii) in trust for a person; and

(b) an amount required by an Act to be paid to the trust fund.

(2) An amount credited to the trust fund must be applied—

(a) in payment to or for the person entitled to the amount according to law; or

(b) as required by the Act under which the amount was paid to the trust fund.

(3) An amount credited to the trust fund may, with the Minister's earlier agreement, be transferred to the operating fund if the purpose for which the amount was credited has ceased to exist.

(4) A local government must keep a separate account for its trust fund.

**Compliance with sound accounting principles and procedures**

**431.(1)** Payment to, and withdrawal from, funds kept by a local government must be consistent with sound accounting principles and procedures.

(2) A local government must establish and comply with—

(a) systems for managing its finances; and

(b) procedures for recording and reporting its financial operations and

position.

(3) The systems and procedures must comply with the Local Government Finance Standards.

## **PART 4—BUDGET**

### **Adoption of budget**

**432.(1)** A local government must adopt a budget for each financial year for its operating fund.

(2) The budget must be adopted—

- (a) after 31 May before the financial year; and
- (b) before—
  - (i) 1 September in the financial year; or
  - (ii) a later date fixed by the Minister.

### **Requirements of budgets**

**433.(1)** The adoption of a budget, or an amendment, that does not comply with this section is void.

(2) Each budget of a local government—

- (a) must be developed consistently with its corporate plan and operational plan; and
- (b) must be clearly linked with the matters specified in the plans; and
- (c) must comply with the Local Government Finance Standards.

(3) A local government may amend its budget for a financial year at any time before the year ends.

(4) A local government may incur, for a purpose of genuine emergency or hardship, spending that is not authorised by its budget.

**Content of operating fund budgets**

**434.(1)** A local government's budget developed for its operating fund must specify the following matters for the financial year—

- (a) its estimated costs in total, and for each of its significant activities;
- (b) the sources of funds necessary for spending provided for in the budget;
- (c) the local government's revenue policy.

**(2)** The budget also must specify the matters mentioned in subsection (1), in general terms, for the next 2 financial years.

**(3)** The budget must be the basis on which rates are to be made and levied by the local government for the financial year.

**Financial information to be presented to budget meeting**

**435.(1)** The chief executive officer of a local government must present to its budget meeting for a financial year a document about the financial operations and financial position of the local government for the previous financial year.

**(2)** If the budget meeting for a financial year is held in June, a document presented to the meeting under subsection (1)—

- (a) must relate to the financial operations of the local government for the financial year in which the meeting is held to the latest day to which the document can reasonably be compiled; and
- (b) must contain an estimate of the financial operations of the local government from that day to the end of the financial year in which the meeting is held.

**(3)** The document must comply with the Local Government Finance Standards.

**Spending of local government pending adoption of budget**

**436.** A local government may, in a financial year, incur spending before adoption of its budget for the year, but the spending must be provided for in the appropriate budget for the year.

**Councillors' liability for disbursements**

**437.(1)** This section applies if—

- (a) a local government makes a disbursement in a financial year from an operating fund; and
- (b) the disbursement is not provided for in the budget adopted for the fund for the year.

**(2)** The councillors who knowingly agreed to the disbursement are jointly and severally liable to repay to the local government—

- (a) the amount of the disbursement; and
- (b) interest on the amount, calculated from the day of the disbursement to the day of repayment, at the rate at which interest accrues on overdue rates.

**(3)** However, subsection (2) does not apply if the disbursement was made for a purpose of genuine emergency or hardship.

**(4)** An amount for which councillors are jointly and severally liable under subsection (2) may be recovered, as a debt payable to the local government, by—

- (a) the local government; or
- (b) a person appointed by the Minister for the purpose; or
- (c) an elector or ratepayer.

**(5)** An amount recovered by a person mentioned in subsection (4)(b) or (c) must be immediately paid to the local government.

**Budgets to be available for inspection and purchase**

**438.(1)** A local government must have its budget printed and a reasonable number of copies of the budget made.

**(2)** The local government must—

- (a) keep the budget open for inspection; and
- (b) make copies available for purchase at its public office at a price not more than the cost to the local government of producing the

copy and, if a copy is supplied to a purchaser by post, the cost of postage.

## **PART 5—BORROWING AND INVESTMENT**

### **Application of Statutory Bodies Financial Arrangements Act**

**439.** A local government is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

### **Borrowing or raising money as a statutory body**

**440.** A local government may enter into financial arrangements under the *Statutory Bodies Financial Arrangements Act 1982*, section 22.

### **Investing money as a statutory body**

**441.** A local government may invest money under the *Statutory Bodies Financial Arrangements Act 1982*, section 48.

### **Councillors' liability for unauthorised borrowings**

**442.(1)** If a local government borrows money—

- (a) without authority conferred under the *Statutory Bodies Financial Arrangements Act 1982*; or
- (b) for a purpose that is not a proper exercise of its jurisdiction; or
- (c) in contravention of this Act;

the councillors who knowingly agreed to the borrowing are jointly and severally liable to pay to the local government the amount borrowed and all interest, and other penalties incurred by the local government, for the borrowing.

**(2)** An amount for which councillors are jointly and severally liable under subsection (1) may be recovered, as a debt to the local government by—

- (a) the local government; or
  - (b) a person appointed by the Minister for the purpose; or
  - (c) an elector or ratepayer.
- (3) An amount recovered by a person mentioned in subsection (2)(b) or (c) must be immediately paid to the local government.
- (4) This section must be given effect despite—
- (a) the issue of a security for the borrowing by a local government; and
  - (b) the *Statutory Bodies Financial Arrangements Act 1982*, section 31(2).

## PART 6—ACCOUNTS

### Accounting records to be kept

**443.(1)** A local government must keep accounting records that present fairly its financial operations for a financial year and give a comparison with its budget for the year.

(2) The accounting records must be kept in a way that complies with the Local Government Finance Standards.

### Statements of account to be presented to local government

**444.(1)** The chief executive officer of a local government must present statements of its accounts to the local government.

- (2) The statements must be presented—
- (a) if the local government holds its ordinary meetings monthly or less frequently—to each meeting; or
  - (b) if the local government holds its ordinary meetings more frequently—to a meeting in each month.
- (3) Statements presented to a meeting must be for the period of the

financial year up to a day as near as practicable to the end of the previous month.

(4) A statement must be consistent with the Local Government Finance Standards.

### **Statements of accounts open to inspection**

**445.** The statements presented under section 444 (Statements of account to be presented to local government) are open to inspection.

## **PART 7—AUDIT**

### **General reporting provisions**

**446.(1)** The Auditor-General may prepare a report on any audit performed by the Auditor-General for the purposes of this Act.

(2) A copy of the report must be given to—

- (a) the Minister; and
- (b) the mayor and chief executive officer of the relevant local government.

(3) If the report is on an audit of the accounts of a scheme for superannuation benefits under section 186 (Superannuation benefits for councillors), a copy of the report also must be given to—

- (a) the trustees of the scheme; and
- (b) the mayor of the local government.

(4) The mayor must table a copy of any report at the next ordinary meeting of the local government.

## **PART 8—ANNUAL REPORT**

### **Annual report to be prepared and adopted**

**447.(1)** A local government must prepare an annual report for each financial year.

**(2)** The report must be presented to the local government for adoption, and must be adopted by it before 30 November in the year after the end of the financial year to which the report relates.

**(3)** However, the Minister may allow a longer period for a local government to comply with subsection (2).

### **Content of report about financial position of local government**

**448.** An annual report must contain—

- (a) the financial statements for the year as certified by the Auditor-General; and
- (b) the Auditor-General's certificate on the financial statements.

### **Content of report about implementing corporate and operational plans**

**449.** A local government's annual report also must contain an assessment of its performance in implementing its corporate and operational plans.

### **Content of report about other issues of public interest**

**450.** In addition, a local government's annual report must contain—

- (a) details of its revenue policy for the financial year; and
- (b) a list of all action taken under section 402(2) (Changes to tenders) during the year; and
- (c) a list of all resolutions made during the year under section 403(1) (Short listing after calling for expressions of interest); and
- (d) a list of the registers kept by it and open to inspection; and

- (e) its policy on rebates and concessions for rates levied, and particulars of all the rebates and concessions allowed; and
- (f) a copy of any resolution made during the year authorising the payment or provision of remuneration to councillors or members of committees of the local government; and
- (g) particulars of—
  - (i) the total remuneration paid or provided by it to each of its councillors during the year; and
  - (ii) the total superannuation contributions paid by it for each of its councillors during the year; and
- (h) details of the number of meetings attended by each councillor during the year; and
- (i) a statement of its activities during the year to implement its plan for equal opportunity in employment; and
- (j) particulars of other issues relevant to making an informed assessment of its operations and performance in the financial year; and
- (k) particulars of issues required by the Local Government Finance Standards.

### **Copies of report to be available for inspection and purchase**

**451.(1)** A local government must have the annual report adopted by it printed and a reasonable number of copies of the report made.

**(2)** The local government must—

- (a) keep the report open to inspection; and
- (b) make copies available for purchase at its public office at a price not more than the cost to the local government of producing the copy and, if a copy is supplied to a purchaser by post, the cost of postage.

## **PART 9—DUTIES ABOUT PROPERTY STOLEN OR UNACCOUNTED FOR**

### **Report of missing property**

**452.(1)** If a local government becomes aware that property of, or received by, it may have been stolen, the local government must immediately give written notice to—

- (a) the police officer in charge of the police station at, or nearest to, the place where the property is suspected to have been stolen; and
- (b) the Auditor-General.

**(2)** If a local government becomes aware that property of, or received by it, is missing, but the property is not suspected to have been stolen, the local government must immediately give written notice to the Auditor-General.

**(3)** Subsection (2) applies only to property that has a total value of at least—

- (a) \$1 000; or
- (b) if a greater amount is prescribed by regulation—the greater amount.

### **Local Government to take part in prosecution**

**453.(1)** A local government must not—

- (a) obstruct, attempt to obstruct or fail to take part in a prosecution for an offence committed in relation to property mentioned in section 452 (Report of missing property); or
- (b) deliberately withhold evidence relevant to the prosecution.

**(2)** The local government must not promise—

- (a) to do anything prohibited under subsection (1); or
- (b) to secure discontinuance of the prosecution.

## **PART 10—JOINT LOCAL GOVERNMENTS**

### **Contribution by component local governments**

**454.** Each component local government of a joint local government must pay to the operating fund of the joint local government the proportion prescribed by regulation of the amount required in each financial year for the operations of the joint local government.

### **Notice for contribution to joint local government**

**455.(1)** To inform a component local government of the amount required to be paid by it in a financial year, a joint local government may issue a contribution notice.

**(2)** The contribution notice must—

- (a) be signed by the president or deputy president, and bear the common seal of the joint local government; and
- (b) specify the amount of contribution payable by the component local government; and
- (c) require the component local government to pay the specified amount on or before a specified day (not earlier than 30 days after the notice is given to the component local government).

### **Results of failure to pay contribution**

**456.(1)** If a component local government liable to pay an amount specified by a contribution notice fails to pay the amount to the joint local government by the specified day or within a longer period allowed by the joint local government—

- (a) the unpaid amount bears interest at the rate decided by the joint local government; and
- (b) the joint local government may recover the unpaid amount (and interest).

**(2)** The rate of interest must not be more than—

- (a) the rate prescribed by regulation; or
- (b) if no rate is prescribed—15% a year.

### **Adoption of a budget by joint local government for part of a year**

**457.(1)** This section applies to a joint local government if a regulation specifies that its first budget must be for a specified part of a financial year.

(2) Section 432 (Adoption of budget) applies to the joint local government's first budget as if a reference to 'financial year' were a reference to the specified part of the financial year.

### **Disbursement of surplus in operating fund of joint local government**

**458.(1)** If at the end of a financial year there is a surplus in the operating fund of a joint local government, the surplus may be disbursed to any purpose within the jurisdiction of local government approved by all the component local governments.

(2) Despite section 437 (Councillors' liability for disbursements), a purpose to which the surplus is disbursed need not be a purpose within the jurisdiction of the joint local government.

## **CHAPTER 8—LOCAL LAWS AND LOCAL LAW POLICIES**

### **PART 1—PRELIMINARY**

#### *Division 1—Object and application*

#### **Object**

**459.(1)** A local government's jurisdiction to make laws is stated in chapter 2 (The local government system), part 1 (Local governments), division 3 (Jurisdiction of local governments).

(2) This chapter provides a common law-making process for all laws made by local governments.

(3) It also provides for local law policies to assist the detailed implementation of a local law's objects.

### **Application of chapter to Brisbane City Council**

**460.** This chapter applies to the Brisbane City Council.

### *Division 2—Local laws and related concepts*

#### **Meaning of “local law”**

**461.** A “**local law**” is a law made by a local government.

#### **Meaning of “model local law”**

**462.(1)** A “**model local law**” is a law about a matter within the jurisdiction of local government that is proposed by the Minister as suitable for adoption by local governments as a local law.

(2) A model local law must be gazetted.

#### **Meaning of “interim local law”**

**463.** An “**interim local law**” of a local government is a local law that the local government and Minister agree may be made using the process stated in part 2 (Making local laws and policies), division 2 (Making interim local laws) because of the nature of the law.

#### **Meaning of “local law policy”**

**464.** If—

- (a) a local law expressly states that a local government may make a policy about a matter; and
- (b) the local government makes a policy about the matter;

the policy is a “**local law policy**”.

## **PART 2—MAKING LOCAL LAWS AND LOCAL LAW POLICIES**

### *Division 1—Making model local laws*

#### **Model local law process**

**465.(1)** The process stated in this division or division 3 (Making other local laws) must be used to make a model local law.

(2) If a local government purports to make a model local law in contravention of subsection (1), the purported law is of no effect.

#### **Step 1—make a law**

**466.(1)** A local government makes a model local law if, by resolution, it—

- (a) adopts a model local law about a matter; and
- (b) if there is an existing local law about the matter that is inconsistent with what is adopted—amends or repeals the existing local law so that there is no inconsistency.

(2) The local government’s chief executive officer must certify the required number of copies of the local law to be the local law as made by the local government.

#### **Step 2—give public notice of law**

**467.(1)** A notice of the making of the model local law must be published in the gazette stating the following—

- (a) the name of the local government making the local law;
- (b) the name of the local law;

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- (c) the date of the local government's resolution making the local law;
- (d) the name of any existing local law amended or repealed by the new local law.

(2) The notice also may state the following—

- (a) that the local law is a model local law proposed by the Minister as suitable for adoption by local governments;
- (b) the purposes and general effect of the local law;
- (c) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office;
- (d) that a copy of the certified copy of the local law may be purchased at the local government's public office.

(3) If the local law is not notified within 1 year of the date of the local government's resolution making the local law (or a longer period decided by the Minister), the process stated in this division must be used again before the local law is notified in the gazette.

(4) On the day of notification (or as soon as practicable after the day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law.

***Division 2—Making interim local laws***

**Interim local law process**

**468.(1)** The process stated in this division must be used to make an interim local law.

(2) If a local government purports to make an interim local law in contravention of subsection (1), the purported law is of no effect.

**Step 1—propose a law**

**469.(1)** The local government must, by resolution, propose to—

- (a) make a law; and
- (b) get the Minister’s agreement to make the law as an interim local law.

**(2)** The proposed local law must include a sunset provision stating the law will expire—

- (a) 6 months after its commencement; or
- (b) at the end of a longer period gazetted by the Minister.

**Step 2—get Minister’s agreement to use interim local law process**

**470.(1)** The local government must—

- (a) advise the Minister of the proposed local law and state why it is necessary or desirable for the local law to be made on an interim basis; and
- (b) give the Minister information about the proposed local law required by the Minister or by regulation.

**(2)** If the Minister agrees the local law should be made on an interim basis, the Minister must advise the local government of this.

**(3)** The Minister’s agreement may be subject to conditions the Minister considers appropriate.

**(4)** Before proceeding to step 3, the local government must—

- (a) get an advice under subsection (2); and
- (b) agree to satisfy any condition imposed by the Minister; and
- (c) agree to immediately begin the process stated in division 3 (Making other local laws) to make the proposed interim local law as a local law under that division.

**(5)** The local government must satisfy any agreed conditions and begin the process stated in division 3 to make the proposed interim local law as a local law under that division.

**Step 3—make proposed law**

**471.(1)** The local government must, by resolution, make the proposed interim local law.

**(2)** The local government's chief executive officer must certify the required number of copies of the local law to be the local law as made by the local government.

**Step 4—give public notice of law**

**472.(1)** A notice of the making of the interim local law must be published in the gazette stating the following—

- (a) the name of the local government making the local law;
- (b) the name of the local law;
- (c) the date of the local government's resolution making the local law;
- (d) the name of any existing local law amended or repealed by the new local law.

**(2)** The notice also may state the following—

- (a) that the local law is an interim local law;
- (b) the purposes and general effect of the local law;
- (c) the date the local law will expire and that the Minister may extend this date by gazette notice;
- (d) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office;
- (e) that a copy of the certified copy of the local law may be purchased at the local government's public office.

**(3)** The notice must be published as soon as practicable after the resolution making the local law is made.

**(4)** On the day of notification (or as soon as practicable after the day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law.

### *Division 3—Making other local laws*

#### **Local law process**

**473.(1)** The process stated in this division must be used to make a local law (other than a model local law or interim local law).

**(2)** The process stated in this division also may be used to make a model local law.

**(3)** If a local government purports to make a local law in contravention of subsection (1), the purported law is of no effect.

#### **Step 1—propose a law**

**474.** The local government must, by resolution, propose to make a law.

#### **Step 2—ensure proposed law satisfactorily deals with any State interest**

**475.(1)** The local government must—

- (a) advise the Minister of the proposed local law; and
- (b) give the Minister information about the proposed local law required by the Minister or by regulation.

**(2)** If the Minister considers State interests are satisfactorily dealt with by the proposed local law, the Minister must advise the local government that it may proceed further in making the law.

**(3)** Alternatively, if the Minister considers State interests would be satisfactorily dealt with by the proposed local law if the local government satisfied particular conditions, the Minister—

- (a) may impose conditions on the local government that the Minister considers appropriate; and
- (b) must advise the local government that it may proceed further in

making the law if it—

- (i) satisfies any conditions about the content of the proposed local law; and
- (ii) agrees to satisfy any other conditions.

(4) If the Minister considers that the proposed local law only makes a minor amendment of an existing law (including, for example, the correction of a minor error), the advice of the Minister also may state that the local government may proceed to step 8 without satisfying steps 3 to 7.

(5) Steps 3 to 7 do not apply if the Minister's advice to the local government includes the statement mentioned in subsection (4).

(6) The advice of the Minister also may state that the local government may proceed without satisfying step 7 if the local government agrees to satisfy particular conditions.

(7) Before proceeding further in making a proposed local law, the local government must—

- (a) get an advice under subsection (2) or (3); and
- (b) satisfy any condition about the content of the proposed local law; and
- (c) agree to satisfy any other conditions.

### **Step 3—consult with public about proposed law**

**476.(1)** The local government must consult with the public about the proposed local law for at least 21 days (the “**consultation period**”).

(2) However, a longer consultation period may be—

- (a) fixed by a condition agreed by the Minister and the local government in step 2; or
- (b) prescribed by regulation.

(3) The consultation period begins on the day when the notice mentioned in subsection (4) is first published.

(4) A notice about the proposed local law must be—

- (a) published at least once in a newspaper circulating generally in the

local government's area; and

- (b) displayed in a conspicuous place in the local government's public office from the first day of the consultation period until the end of the last day of the consultation period.

(5) The notice must state the following—

- (a) the name of the local government proposing to make the local law;
- (b) the name of the proposed local law;
- (c) the purposes and general effect of the proposed local law;
- (d) the length of the consultation period and the first and last days of the period;
- (e) that a copy of the proposed local law is open to inspection at the local government's public office on or before the last day;
- (f) that a copy of the proposed local law may be purchased at the local government's public office on or before the last day at a stated price;
- (g) that written submissions by any person supporting or objecting to the proposed local law may be made and given to the local government on or before the last day stating—
  - (i) the grounds of the submission; and
  - (ii) the facts and circumstances relied on in support of the grounds.

(6) The price of a copy of the proposed local law must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

#### **Step 4—give public access to proposed law**

**477.** On the first day of the consultation period and until the end of the last day of the consultation period—

- (a) a copy of the proposed local law must be open to inspection at the local government's public office; and
- (b) copies of the proposed local law must be available for purchase at

the local government's public office at the price stated in the notice about the proposed local law.

### **Step 5—accept and consider all submissions**

**478.(1)** The local government must consider every submission properly made to it.

(2) A submission is properly made to the local government if it—

- (a) is the written submission of any person about the proposed local law; and
- (b) states—
  - (i) the grounds of the submission; and
  - (ii) the facts and circumstances relied on in support of the grounds; and
- (c) is given to the local government on or before the last day of the consultation period.

### **Step 6—decide whether to proceed with making proposed law**

**479.** After considering every submission properly made to it, the local government must, by resolution, decide whether to—

- (a) proceed with the making of the proposed local law as advertised (the “**advertised proposed law**”); or
- (b) proceed with the making of the proposed local law with amendments (the “**amended proposed law**”); or
- (c) not proceed with the making of the proposed local law.

### **Step 7—again ensure proposed law satisfactorily deals with any State interest**

**480.(1)** This step does not apply in the following cases—

- (a) if the local government got an advice under section 475(4) or (6) (Step 2—ensure proposed law satisfactorily deals with any State interest) and has satisfied any agreed conditions;

(b) if the local government decides not to proceed with the proposed local law;

(c) if a regulation states the step does not apply.

**(2)** The local government must—

(a) advise the Minister of its decision under step 6; and

(b) give the Minister information about the proposed local law required by the Minister or by regulation.

**(3)** If the Minister considers that State interests are satisfactorily dealt with by the proposed local law, the Minister must advise the local government it may proceed to step 8.

**(4)** Alternatively, if the Minister considers that State interests would be satisfactorily dealt with by the proposed local law if the local government satisfied particular conditions, the Minister—

(a) may impose conditions on the local government that the Minister considers appropriate; and

(b) must advise the local government that it may proceed to step 8 if it—

(i) satisfies any conditions about the content of the proposed local law; and

(ii) agrees to satisfy any other conditions.

**(5)** Before proceeding further in making a proposed local law, the local government must—

(a) get an advice under subsection (3) or (4); and

(b) satisfy any condition about the content of the proposed local law; and

(c) agree to satisfy any other conditions.

### **Step 8—make proposed law**

**481.(1)** The local government must, by resolution, make—

(a) the advertised proposed law; or

(b) the amended proposed law; or

- (c) the proposed law for which the local government received advice from the Minister that it could proceed to this step without satisfying steps 3 to 7.

(2) The local government's chief executive officer must certify the required number of copies of the local law to be the local law as made by the local government.

### **Step 9—give public notice of law**

**482.(1)** A notice of the making of the local law must be published in the gazette stating the following—

- (a) the name of the local government making the local law;
- (b) the name of the local law;
- (c) the date of the local government's resolution making the local law;
- (d) the name of any existing local law amended or repealed by the new local law.

(2) The notice also may state the following—

- (a) the purposes and general effect of the local law;
- (b) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office;
- (c) that a copy of the certified copy of the local law may be purchased at the local government's public office.

(3) If the local law is not notified within 1 year of the date of the local government's resolution making the local law (or a longer period decided by the Minister), the process stated in this division must be used again before the local law is notified in the gazette.

(4) On the day of notification (or as soon as practicable after the day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law.

***Division 4—Making local law policies*****Local law policy process**

**483.(1)** The process stated in this division must be used to make a local law policy.

(2) If a local government purports to make a local law policy in contravention of subsection (1), the purported policy is of no effect.

**Step 1—propose a policy**

**484.** The local government must, by resolution, propose to make a local law policy.

**Step 2—consult with public about proposed policy**

**485.(1)** The local government must consult with the public about the proposed local law policy for at least 21 days (the “**consultation period**”).

(2) However, a longer consultation period may be prescribed by regulation.

(3) The consultation period begins on the day when the notice mentioned in subsection (4) is first published.

(4) A notice about the proposed local law policy must be—

- (a) published at least once in a newspaper circulating generally in the local government’s area; and
- (b) displayed in a conspicuous place in the local government’s public office from the first day of the consultation period until the end of the last day of the consultation period.

(5) The notice must state the following—

- (a) the name of the local government proposing to make the local law policy;
- (b) the name of the proposed local law policy;
- (c) the name of—
  - (i) the local law allowing the policy to be made; or

- (ii) if this step is used under section 489A (Early commencement under local law policy making process)—the proposed authorising law;
- (d) the purposes and general effect of the proposed local law policy;
- (e) the length of the consultation period and the first and last days of the period;
- (f) that a copy of the proposed local law policy is open to inspection at the local government’s public office on or before the last day;
- (g) that a copy of the proposed local law policy may be purchased at the local government’s public office on or before the last day at a stated price;
- (h) that written submissions by any person supporting or objecting to the proposed local law policy may be made and given to the local government on or before the last day stating—
  - (i) the grounds of the submission; and
  - (ii) the facts and circumstances relied on in support of the grounds.

(6) The price of a copy of the proposed local law policy must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

### **Step 3—give public access to proposed policy**

**486.** On the first day of the consultation period and until the end of the last day of the consultation period—

- (a) a copy of the proposed local law policy must be open to inspection at the local government’s public office; and
- (b) copies of the proposed local law policy must be available for purchase at the local government’s public office at the price stated in the notice about the proposed local law policy.

### **Step 4—accept and consider all submissions**

**487.(1)** The local government must consider every submission properly

made to it.

- (2) A submission is properly made to the local government if it—
- (a) is the written submission of any person about the proposed local law policy; and
  - (b) states—
    - (i) the grounds of the submission; and
    - (ii) the facts and circumstances relied on in support of the grounds; and
  - (c) is given to the local government on or before the last day of the consultation period.

### **Step 5—make proposed policy**

**488.(1)** If, after considering every submission properly made to it, the local government decides to make the proposed local law policy (whether as advertised or with amendments), it must, by resolution, make the local law policy.

(2) However, the local government may substantially amend the proposed local law policy only if the local government again consults with the public under section 485 (Step 2—consult with public about proposed policy) and complies with steps 3 and 4.

(3) The local government’s chief executive officer must certify the required number of copies of the local law policy to be the local law policy as made by the local government.

### **Step 6—give public notice of policy**

**489.(1)** A notice of the making of the local law policy must be published in a newspaper circulating generally in the local government’s area stating the following—

- (a) the name of the local government making the local law policy;
- (b) the name of the local law policy;
- (c) the date of the local government’s resolution making the local law policy;

- (d) the name of any existing local law policy amended or repealed by the new local law policy.

(2) The notice also may state the following—

- (a) the name of the local law allowing the policy to be made;
- (b) the purposes and general effect of the local law policy;
- (c) that a certified copy of the local law policy is open to inspection at the local government’s public office and at the department’s State office;
- (d) that a copy of the certified copy of the local law policy may be purchased at the local government’s public office.

(3) On the day of notification (or as soon as practicable after the day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) the required number of certified copies of the local law policy.

(4) The local law policy commences—

- (a) on the day on which it is notified; or
- (b) if a later day or time is fixed in the policy—on that day or at that time.

(5) If the local law policy is notified on a day after the day or time fixed by the policy for its commencement, the policy is valid, but commences on the day on which it is notified.

### **Early commencement under local law policy making process**

**489A.(1)** The purpose of this section is to permit a local government to start the process for making a local law policy (the “**policy**”) even though the process for making the local law on which the policy is to be based (the “**proposed authorising law**”) has not finished.

(2) A local government may use steps 1 to 5 of the process for making the policy (other than actually making the policy) before the proposed authorising local law is made if—

- (a) in making the proposed authorising law, the local government has to satisfy division 3 (Making other local laws), steps 3 to 7; and

- (b) the notice about the policy under section 485 (Step 2—consult with public about proposed policy) is published no earlier than the notice about the proposed authorising law under section 476 (Step 3—consult with public about proposed law) is published.

## **PART 3—PUBLIC ACCESS TO LOCAL LAWS AND LOCAL LAW POLICIES**

### **Laws and policies available for inspection and purchase**

**490.(1)** On and from the day of publication of a notice of the making of a local law or local law policy (or as soon as practicable after the day)—

- (a) a certified copy of the local law or local law policy must be open to inspection at the local government’s public office and the department’s State office; and
- (b) copies of the certified copy of the local law or local law policy must be available for purchase at the local government’s public office.

**(2)** The price of a copy of a local law or a local law policy must be no more than the cost to the local government of having the copy available for purchase and, if the copy is posted to the purchaser, the postage cost.

### **Policy register**

**491.(1)** A local government must keep a register of its local law policies.

**(2)** The register must comply with the regulation.

**(3)** The register must be open to inspection at the local government’s public office.

## **PART 4—STATUS OF LOCAL LAWS AND LOCAL LAW POLICIES**

### **Effect of local laws**

**492.** On commencement, a local law made by a local government has the force of law.

### **Local law policy binding on local government**

**493.** A local government's local law policy is binding on the local government.

### **Proof of local laws and local law policies**

**494.(1)** In a proceeding, a certified copy of a local law or local law policy is evidence of the content of the local law or local law policy.

**(2)** All courts, judges and persons acting judicially must take judicial notice of a certified copy of a local law or local law policy.

**(3)** In a proceeding, a copy of the gazette or newspaper containing a notice about the making of a local law or local law policy is—

- (a) evidence of the matters stated in the notice; and
- (b) evidence that the local law or local law policy has been properly made.

### **Local law and local law policy presumed to be within jurisdiction**

**495.** In a proceeding, the competence of a local government to make a particular local law or local law policy is presumed unless the issue is raised.

## **CHAPTER 9—LOCAL GOVERNMENT INFRASTRUCTURE**

### **PART 1—EXTENDED APPLICATION OF CHAPTER**

#### **Application of chapter to Brisbane City Council**

**496.** This chapter applies to the Brisbane City Council.

### **PART 2—ROADS**

#### *Division 1—Control of roads*

#### **Local governments' control of roads**

**497.(1)** A local government has control of all roads in its area.

**(2)** Control of roads includes capacity to take all necessary steps for—

- (a) survey and resurvey of roads; and
- (b) construction, maintenance and improvement of roads; and
- (c) regulation of use of roads; and
- (d) regulation of movement of traffic and parking vehicles on roads.

**(3)** Subsection (2)(d) is subject to the *Traffic Act 1949*.

**(4)** Regulation of use of roads includes—

- (a) requiring, by local law, an owner of land adjoining a road to fence the land to prevent animals escaping from the land onto the road; and
- (b) specifying, by local law, the obligations of the owner of the land.

***Division 2—Realignment and widening of roads*****Realignment of roads**

**498.(1)** A local government may realign a road to widen it.

**(2)** A road may be realigned—

- (a)** by acquisition of land necessary for the purpose; or
- (b)** if a structure or part of a structure is on land affected by the realignment between the existing and proposed alignments—under a notice of realignment.

**(3)** A local government must serve a notice (the “**notice of realignment**”) on the owner of land affected by a realignment.

**(4)** The notice must inform the owner in general terms of this section and section 500 (Compensation for realignment of road).

**(5)** The local government must lodge a copy of the notice of realignment with the registrar of titles for the registration on the instrument of title to the land.

**Effect of notice of realignment**

**499.(1)** The owner of land that is the subject of a notice of realignment must not erect, place, re-erect, replace or repair any structure or part of a structure on the land between the existing and proposed alignments of the road without the permission of the local government.

**(2)** Despite service of the notice, land between the existing and proposed alignments of a road does not form part of the road until it has been acquired by the local government and dedicated to public use as a road.

**(3)** The registrar of titles may register the notice despite the non-production of a relevant instrument of title.

**Compensation for realignment of road**

**500.(1)** A person who would be entitled to claim compensation on acquisition by a local government of land affected by a notice of realignment situated between the existing and proposed alignments of a road is entitled

to compensation from the local government for injurious affection to the person's interest in the land because of—

- (a) service of the notice; or
- (b) refusal by the local government of permission mentioned in section 499(1) (Effect of notice of realignment).

(2) However, compensation is not payable on service of the notice until—

- (a) the land is first sold after service of the notice; or
- (b) the owner of the land has, after service of the notice, offered the land for sale in good faith, but cannot sell the land for a fair and reasonable price.

### **Claims for compensation**

**501.(1)** A claim for compensation must—

- (a) be made to the chief executive officer of the local government in a form approved by the chief executive officer; and
- (b) be made within 3 years after the entitlement to compensation arose.

(2) The claim is taken to have been properly made when the claimant has given the local government all information reasonably required by it to decide the claim.

(3) If, within 40 days after the claim is made, the local government has not given to the claimant written notice of its decision on the claim, it is taken to have refused compensation to the claimant on the 41st day after the claim is made.

### **Appeals**

**502.(1)** A claimant aggrieved by the decision of a local government made on a claim for compensation may appeal against the decision to the Planning and Environment Court.

(2) The appeal must be started within 30 days after notice of the decision is given to the claimant or the decision is taken to have been made.

**Assessment of compensation**

**503.** Assessment of compensation for injurious affection of an interest in land because of a notice of realignment must be consistent with the following principles—

- (a) the amount of compensation must represent the difference between the market value of the interest immediately after service of the notice and what would be the market value of the interest at that time if the notice had not been served;
- (b) any benefit that may accrue, because of the realignment, to land adjacent to the land affected by the realignment, and in which the claimant has an interest, must be taken into account;
- (c) the amount of compensation must not be increased because the land affected by the realignment has, since the service of the notice, become or ceased to be separate from other land.

**Award of compensation**

**504.** Before awarding compensation for injurious affection, the Planning and Environment Court must be satisfied—

- (a) if the land has been sold—
  - (i) the sale price is less than the seller might reasonably have expected to receive had there been no notice of realignment; and
  - (ii) the seller sold the land in good faith; and
  - (iii) the seller took reasonable steps to obtain a reasonable price for the land; or
- (b) if a local government has refused permission mentioned in section 499(1) (Effect of notice of realignment)—the permission was applied for in good faith.

**Acquisition of land instead of compensation**

**505.(1)** Unless land between the existing and proposed alignments of a road has been sold, a local government may acquire the land instead of paying compensation for injurious affection.

(2) If, after a notice of realignment is served, land between the existing and proposed alignments of a road has been cleared of all structures, a local government may, and, if required by the owner of the land, must, acquire the land.

(3) Land acquired under subsection (1) or (2) must be dedicated for public use as a road within 3 months after its acquisition.

(4) Compensation for the compulsory acquisition of land under subsection (1) or (2), if not agreed between the parties, must be assessed as at the date of the acquisition.

### **Notice of realignment not effective in certain circumstances**

**506.(1)** A local government cannot, without the consent of the Planning and Environment Court, serve notice of realignment on an owner of land after the owner has applied to it—

- (a) for its approval of subdivision of the land; or
- (b) for its approval, consent or permission—
  - (i) to erect or use a structure on the land; or
  - (ii) to use the land for any purpose.

(2) The court may consent to service of the notice only if it is satisfied the purpose of the notice is to enable the local government to make, in good faith, a reasonable widening of the road.

### **Realignment not carried out**

**507.(1)** This section does not apply to a realignment of road necessary to comply with the requirements of a local government under a planning scheme approved by the Governor in Council in its application to particular developments in the local government's area.

(2) A local government may, before a realignment of a road has been carried out, decide not to proceed with the realignment or with a part of it.

(3) The local government must serve notice of its decision on—

- (a) all owners of land who were served with notice of the realignment; and

(b) all owners of land that, after the realignment has been carried out in part, adjoins the realigned boundary of the road.

(4) The notice must inform the owners in general terms of this section and section 508 (Compensation if realignment not carried out).

(5) The local government must—

(a) withdraw all notices of realignment, or, if the decision relates to part only of a realignment, all notices of realignment for the part, lodged with the registrar of titles but not registered; and

(b) lodge with the registrar of titles a notice of its decision on all instruments of title on which notice of realignment has been registered, or, if the decision relates to part only of a realignment, on which notice of realignment for the part has been registered.

### **Compensation if realignment not carried out**

**508.(1)** This section applies if—

(a) a local government decides not to proceed with a realignment, or part of a realignment, of a road; and

(b) structural improvements are made on land adjoining the road on the basis of the proposed realignment being effected.

(2) The local government must pay the owner of the land reasonable compensation for the decrease in value of the land because of the decision.

(3) The amount of compensation is the difference between the value of the land before and after the decision.

(4) If the local government and the owner fail to agree on the amount of compensation, the amount is to be decided by the Land Court.

(5) The provisions of the *Acquisition of Land Act 1967* about the making, hearing and deciding of claims for compensation for land taken under that Act apply, with any necessary changes and any changes prescribed by regulation, to claims for compensation under this section.

(6) A decision by a local government not to proceed with a realignment, or part of a realignment, of a road does not give rise to an entitlement to compensation or a cause of action in any owner or occupier of land or other person other than under this section.

**Acquisition of land for use as footpath**

**509.(1)** A local government may widen a road by acquiring from the owner of land adjoining the road land for use as a footpath.

**(2)** The acquisition of land may be subject to a reservation in favour of the owner of any of the following rights as the local government decides, at or before the acquisition, to be appropriate—

- (a) a right to ownership, possession, occupation and use of any existing structure, room or cellar at a specified height above or depth below the level of the new footpath, subject to the local government's right to enter, and make structural alterations to, the structure, room or cellar as it considers to be necessary;
- (b) a right to erect a structure, in accordance with law, at a specified height above and extending over the new footpath and to the ownership, possession, occupation and use of the structure;
- (c) a right of support for a structure mentioned in paragraph (a) or (b).

***Division 3—Opening and closure of roads*****Notice to local government of opening or closure of roads**

**510.(1)** If an application is made under the *Land Act 1994* for the opening or closure of a road in a local government's area by a person (other than the local government), the Minister administering that Act must give written notice of the application to the local government.

**(2)** The notice must specify a date (no earlier than 1 month or later than 2 months after the local government is given the notice) on or before which the local government may object to the opening or closure of the road.

**(3)** An objection must state fully the reasons for the objection.

**(4)** The Minister must have regard to any objections properly made by the local government.

**(5)** If the Minister decides the road should be opened or closed, the Minister must give written notice to the local government of the decision

and, if the decision is contrary to the local government's objection, the reasons for it.

### **Limited closure of roads by local government**

**511.(1)** A local government may, by public notice, close a road, or part of a road, permanently or temporarily, to particular traffic, if there is another road, or route, reasonably available for use by the traffic.

**(2)** A local government may, by public notice, close a road to all traffic or particular traffic—

- (a) during a temporary obstruction to traffic; or
- (b) if it is necessary or desirable to close the road for—
  - (i) a temporary purpose; or
  - (ii) in the interests of public safety.

**(3)** Notice under subsection (1) or (2) may be published in the way the local government considers appropriate in each particular case.

**(4)** If a road, or part of a road, in a local government's area is closed to traffic under subsection (1) or (2), the local government may do everything necessary to stop traffic using the road or the part of the road.

## ***Division 4—Miscellaneous***

### **Temporary roads**

**512.(1)** A local government may, to remake or repair part of a road, make a temporary road through land adjoining the road, to be used while the part is being remade or repaired.

**(2)** However, the temporary road may be made only if it is not reasonably practicable to temporarily close the part of the road to traffic while it is remade or repaired.

### **Fixing road levels**

**513.(1)** The owner or occupier of land adjoining a road may give written

notice to the local government requiring it to advise the owner or occupier of the permanent level fixed or to be fixed for the road.

(2) If the local government has not, within 6 months after receiving the notice, given to the owner or occupier written advice about the permanent level of the road, the local government is taken to have fixed the apparent level of the road when the notice was given as the permanent level of the road.

### **Compensation for change in road level**

**514.(1)** This section applies if—

- (a) after a local government has fixed the permanent level of a road, the local government changes the level of the road; and
- (b) the owner or occupier of land adjoining the road is injuriously affected by the change.

(2) The owner or occupier, or the person's successor in title, is entitled to the reasonable compensation because of the injurious affection that is agreed between the local government and the person or, failing agreement, decided by the Planning and Environment Court.

### **Ancillary works and encroachments on roads**

**515.(1)** In this section—

**“ancillary works and encroachments”** means—

- (a) gates or grids; or
- (b) private railways; or
- (c) tramways, including sugar cane tramways; or
- (d) viaducts; or
- (e) cellars.

(2) A local government may, by local law, regulate the construction, maintenance and operation of ancillary works and encroachments in, on, along, across, under or over roads in its area.

(3) However, a local government cannot make a local law about a railway to which the *Transport Infrastructure Act 1994*, chapter 6<sup>5</sup> applies.

### **Categorisation of roads**

**516.** A local government must categorise roads in its area according to the surface of the road.

### **Roads map and register**

**517.(1)** A local government must prepare and keep up-to-date a map and a register of roads in its area.

(2) The map of roads must show every road in its area.

(3) The register of roads must show—

- (a) the category of every road in its area; and
- (b) the level of every road of which the level is fixed; and
- (c) other particulars prescribed by regulation.

(4) The register of roads also may show other particulars the local government considers appropriate.

(5) The map and register are open to inspection.

(6) On application and payment of a reasonable fee fixed by resolution or local law, a person may obtain—

- (a) a copy of, or an extract from, a map or register of roads; or
- (b) a certificate of an employee of the local government authorised for the purpose—
  - (i) about the category, alignment and levels of roads in its area; or
  - (ii) about the fact that the alignment or level of a road in its area has not been fixed.

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<sup>5</sup> Chapter 6 (Rail transport infrastructure)

## **PART 3—MALLS**

### **Purpose of part**

**518.** This part contains the provisions under which a mall may be established in a road.

### **Closure of roads to traffic**

**519.(1)** For the purpose of establishing a mall in a road, the Governor in Council may, by gazette notice, and a notice published in a newspaper circulating generally in the locality of the road, temporarily close a road to traffic for the proposed mall.

**(2)** The Governor in Council may, by gazette notice, amend or revoke the road closure.

**(3)** A notice of a road closure or amendment of a road closure must specify the day it becomes effective.

### **Provision of works for mall**

**520.(1)** A local government may undertake and provide the works necessary or desirable for establishing a mall in a road.

**(2)** The local government also may do everything incidental to undertaking or providing the works.

### **Establishment of mall**

**521.** The Governor in Council may, by gazette notice, nominate a day (the “**mall opening day**”) on which a road closed to traffic for a proposed mall is to reopen as a mall.

### **Closure of mall**

**522.** The Governor in Council may, by gazette notice, declare that a specified road ceases to be a mall on a specified day.

**Operation of mall**

**523.(1)** A local government may do everything necessary or desirable for the promotion, development, management, maintenance, cleaning, operation and use of a mall.

**(2)** A local government also may do everything incidental to its powers under subsection (1).

**(3)** The local government may permit the use of any part of the mall, including the erection of any structure, on the conditions it considers appropriate.

**(4)** The local government may exercise any of its powers in relation to the mall before the mall opening day if it is necessary or desirable for the mall's benefit immediately on its establishment.

**Control of vehicles and animals in malls**

**524.** A local government may, by local law, regulate the entry of vehicles and animals into, and the presence and use of vehicles and animals in, malls.

**No entitlement to compensation for mall**

**525.** A person has no entitlement at law to compensation for injurious affection to any right or interest of a business, commercial or industrial nature because of—

- (a) the existence of a mall; or
- (b) anything done under this part.

**PART 4—MARINE AND AQUATIC MATTERS****Ferry service in local government area**

**526.** A local government has the exclusive right to provide a ferry service

across a watercourse at a place where the land forming both banks of the watercourse is in its area.

### **Ferry service on boundary of local government areas**

**527.** If a watercourse is the boundary between 2 or more local government areas, the Governor in Council may, by regulation, declare that a specified local government has exclusive control of—

- (a) provision of a service by ferry across the watercourse at a place where it forms the boundary; and
- (b) all proper approaches to the ferry and the part of either bank of the watercourse that, in the Governor in Council's opinion, is necessary for the convenient construction and use of the ferry and the proper approaches to it.

### **Lease of ferries**

**528.** A local government may lease the right to operate a ferry, alone or with the land under its control that is required for the use of the ferry, for the period and on the terms it considers appropriate.

### **Local laws about ferries**

**529.** A local government may make local laws for managing and regulating the use of ferries operated or leased by it.

### **Harbours, jetties, breakwaters and ramps**

**530.(1)** A local government may construct, maintain, manage and regulate the use of—

- (a) harbours for small vessels in or over tidal waters; and
- (b) jetties, breakwaters and ramps in or over tidal waters.

**(2)** A local government may exercise powers under subsection (1) for a harbour or proposed harbour whether its waters are within or outside the limits of a port under the *Transport Infrastructure Act 1994*.

**(3)** A local government may occupy and use foreshore, tidal land or tidal

waters to undertake work in exercising the powers.

(4) While the local government occupies or uses foreshore, tidal land or tidal waters, the foreshore, land or waters are taken to be in its area.

(5) This section has effect subject to the *Transport Infrastructure Act 1994*.

### **Management and regulation of bathing reserves**

**531.(1)** In this section—

“**seashore**” means—

- (a) foreshore; or
- (b) State land above high-water mark at ordinary spring tides that is ordinarily covered by sand or shingle;

“**State land**” does not include land that is subject to a licence, permit or other authority granted under an Act by the State.

(2) The Governor in Council may, by gazette notice, place under the control of a local government as a bathing reserve—

- (a) a part of the seashore; and
- (b) land under the sea adjacent to that part of the seashore and seawards for a distance not more than 1 km beyond low-water mark at ordinary spring tides; and
- (c) sea above that part of the seashore and land.

(3) The local government may—

- (a) manage and regulate the use of the bathing reserve; or
- (b) construct and maintain enclosures, structures and facilities in the bathing reserve; or
- (c) provide, or authorise someone else to provide, life-saving services for the bathing reserve.

(4) While the bathing reserve is under the local government’s control, the bathing reserve is taken to be in its area.

**Control of foreshore**

**532.(1)** The Governor in Council may, by gazette notice, place foreshore under the control of—

- (a) the local government of the local government area adjoining the foreshore; or
- (b) if there is no local government area adjoining the foreshore—the local government of a local government area convenient to the foreshore.

**(2)** The local government may manage and regulate the use of the foreshore.

**(3)** While the foreshore is under the local government's control, the foreshore is taken to be in its area.

## **PART 5—LOCAL GOVERNMENT CONTROL OVER LEVEE BANKS**

### *Division 1—Jurisdiction of local governments*

#### **Limited exclusion of jurisdiction of local government**

**533.** The jurisdiction of a local government under this part to prohibit or regulate the construction and maintenance of levee banks does not extend to a part of its area included in an approved plan within the meaning of the *Soil Conservation Act 1986*.

### *Division 2—Control of levee banks*

#### **Regulation of levee banks etc.**

**534.(1)** A local government may, by a local law—

- (a) prohibit construction of levee banks without the local government's permission; and

- (b) regulate the construction and maintenance of levee banks; and
- (c) require changes to levee banks constructed before or after the commencement of this part, although their construction may have complied with the requirements and approval of the local government.

(2) A local law prohibiting construction of levee banks without the local government's permission must provide for—

- (a) particulars to be supplied by an applicant for the local government's permission; and
- (b) public notice of applications for the local government's permission to be given by advertisement at least twice in a newspaper circulating generally in the local government's area; and
- (c) submissions supporting or objecting to applications and the requirements applying to the submissions; and
- (d) procedures of the local government in considering and deciding applications; and
- (e) all other issues the local government considers necessary for properly disposing of applications.

### **Decision on application for permission**

**535.(1)** If a local government decides to give permission for a levee bank construction, it may decide the permission is subject to conditions.

(2) The decision on an application must—

- (a) be given to the applicant by written notice; and
- (b) be given to each person who made a submission on the application; and
- (c) if the decision is to give permission, but the permission is to be subject to conditions—specify the conditions.

**Issue of permit**

**536.(1)** A permission has effect only if a permit is issued setting out the terms of the permission.

(2) A permit must not be issued before the end of 30 days after notice of the decision is given under section 535(2) (Decision on application for permission).

(3) However, if an appeal is started within the 30 days mentioned in subsection (2), a permit may be issued only if—

- (a) the decision on appeal confirms the giving of permission, with or without conditions, or changed conditions, applying to the permission; or
- (b) the appeal is struck out or is discontinued.

(4) An issued permit is subject only to the conditions stated in the permit.

**Application for permission for existing levee banks**

**537.(1)** If, when a local law mentioned in section 534 (Regulation of levee banks etc.) commences, there is on land to which the local law applies a levee bank that, in the local government's opinion, affects or is likely to affect natural drainage to an extent that it causes or may cause damage to land or a public work, service or undertaking, the local government may, by written notice, require the owner of the land to apply to it within a specified reasonable period for permission to keep the levee bank or part of the levee bank.

(2) This part applies to an application made in response to a requirement under subsection (1) as if the application were an application for permission to construct the levee bank or part concerned.

(3) A person must not keep on the person's land, or allow another person to keep on the person's land, a levee bank or part of a levee bank to which a requirement under subsection (1) applies—

- (a) after the end of the period allowed by the request for applying for the local government's permission to keep the levee bank or part of the levee bank, if the application has not been properly made; or

- (b) after the local government's permission has been refused; or
- (c) in breach of the conditions stated in a permit issued by the local government.

Maximum penalty—50 penalty units.

(4) If a person convicted of an offence against subsection (3) continues to commit the offence, the person commits a continuing offence.

Maximum penalty—1 penalty unit for each day on which the offence is continued.

### *Division 3—Appeals*

#### **Appeal against local government's decision**

**538.(1)** An appeal tribunal for hearing and deciding appeals against decisions of a local government on an application is formed by the chief executive of the department within which the *Water Resources Act 1989* is administered or that chief executive's delegate.

(2) A person aggrieved by a decision of a local government on an application may appeal to an appeal tribunal.

(3) The appeal must be started within 30 days after the person aggrieved is given written notice of the decision.

(4) The appeal is started by the person filing a notice of appeal with the chief executive mentioned in subsection (1) and giving a copy of the notice to the local government.

(5) As soon as practicable after the appeal is started, the chief executive officer of the local government must inform the chief executive mentioned in subsection (1) of the persons, other than the appellant, who made the application and who made submissions on the application.

(6) The person who is to form the appeal tribunal on the appeal must inform the appellant, the local government, and the persons mentioned in subsection (5) of the day, time and place for hearing of the appeal.

**Decision on appeal**

**539.(1)** An appeal tribunal may—

- (a) dismiss an appeal and confirm the decision of the local government; or
- (b) allow the appeal, set aside the decision of the local government and substitute the decision it considers should have been made on the application.

**(2)** The decision of an appeal tribunal is taken to be the decision of the local government on the application.

**(3)** Section 536 (Issue of permit) does not apply to the issue of a permit on the decision of an appeal tribunal.

**Duties of appeal tribunal**

**540.** In hearing an appeal, the appeal tribunal—

- (a) must observe natural justice; and
- (b) must act as quickly as possible, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

**Appeal tribunal may decide procedures**

**541.(1)** An appeal is by way of rehearing.

**(2)** The appeal tribunal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate; and
- (c) may decide the procedures to be followed in the appeal.

**(3)** However, the appeal tribunal must comply with this division and any procedural rules prescribed by regulation.

**Appeal tribunal's powers**

**542.(1)** In hearing an appeal, the appeal tribunal may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or by statutory declaration; and
- (c) adjourn the appeal; and
- (d) permit a document to be amended; and
- (e) disregard any defect, error, omission or insufficiency in a document.

(2) The appeal tribunal may administer an oath to a person appearing as a witness before the tribunal.

### **Representation before appeal tribunal**

**543.** A party to an appeal may be represented by counsel, a solicitor or an agent appointed in writing.

### **Prosecution of appeal**

**544.(1)** An appeal must be prosecuted diligently.

(2) An appeal tribunal may strike out an appeal if it considers the appellant is not prosecuting the appeal diligently.

(3) An appeal may be discontinued by the appellant by written notice given to the appeal tribunal and to the respondent.

### **Notice to witness**

**545.(1)** The person forming the appeal tribunal may, by written notice given to a person, require the person to attend an appeal at a specified time and place to give evidence or produce specified documents.

(2) A person who is given a notice must—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the appeal tribunal until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to appear as a witness before an appeal is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the appeal tribunal.

### **Duty of witness at appeal**

**546.(1)** A person appearing as a witness at an appeal must not—

- (a) fail to take an oath or make an affirmation when required by the appeal tribunal; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the appeal tribunal; or
- (c) fail, without reasonable excuse, to produce a document that the person is required to produce by a notice under section 545(1) (Notice to witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

### **Contempt of appeal tribunal**

**547.** A person must not—

- (a) insult the person forming the appeal tribunal in an appeal; or
- (b) deliberately interrupt an appeal; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the appeal tribunal is conducting an appeal; or
- (d) do anything that would be a contempt of court if the person forming the appeal tribunal were a judge acting judicially.

Maximum penalty—50 penalty units.

**Change of person forming appeal tribunal**

**548.** An appeal is not affected by a change in the person forming the appeal tribunal.

**Costs of appeal**

**549.(1)** An appeal tribunal may make an order for payment of costs of an appeal as it considers just.

**(2)** Unless an appeal tribunal's order states otherwise, costs of proceedings on an appeal are on the scale applying to taxation of costs in the District Court.

**Recovery on orders of appeal tribunal**

**550.(1)** An order of an appeal tribunal for payment of costs must be in written form and a copy of the order must be given to—

- (a) the appellant or other person to whom an amount is ordered to be paid; and
- (b) the local government or other person by whom an amount is ordered to be paid.

**(2)** A document purporting to be a copy of an order of an appeal tribunal for payment of a stated amount of costs may be filed in the registry of a court having jurisdiction in an action for debt in the amount stated in the order, and enforced as an order of the court.

**(3)** If an order of an appeal tribunal for payment of costs does not state the amount to be paid, the costs payable may be recovered by action in a court of competent jurisdiction as a debt payable by the person by whom the costs are ordered to be paid to the person to whose benefit the order was made.

*Division 4—Effect of part***Effect of part on legal rights and remedies**

**551.** A permission given on an application under this part does not affect

a right or remedy a person had about a levee bank the subject of the permission.

*Division 5—Expiry of part*

**Expiry of part**

**552.** This part expires on 31 March 1997.

## CHAPTER 10—RATES AND CHARGES

### PART 1—GENERAL

*Division 1—Rateable land*

**What land is rateable?**

**553.(1)** All land is rateable land other than—

- (a) vacant State land; and
- (b) land occupied by the State or a government entity (other than a non-exempt GOC), except under a lease from a private person; and
- (c) land in a State forest or timber reserve, other than land occupied under an occupation permit or stock grazing permit under the *Forestry Act 1959* or under a lease under the *Land Act 1994*; and
- (d) Aboriginal land under the *Aboriginal Land Act 1991* or Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*, other than land used for commercial or residential purposes; and
- (e) the following land under the *Transport Infrastructure Act 1994*—
  - (i) strategic port land occupied by a port authority, the State, or a

government entity;

- (ii) existing or new rail corridor land;
- (iii) commercial corridor land that is not subject to a lease; and
- (f) land exempt from rating under an Act or a regulation made under this Act.

(2) A regulation under subsection (1)(e) may, for example, exempt from rating land used for religious, charitable, educational or public purposes.

(3) If part of a parcel of land mentioned in subsection (1)(d) is used for commercial or residential purposes and another part (the **“remainder”**) of the parcel is used for other purposes, the remainder is not rateable land, even though the other part of the parcel is rateable land.

(4) In this section—

**“non-exempt GOC”** means a GOC, or a subsidiary of a GOC, within the meaning of the *Government Owned Corporations Act 1993* other than a GOC or subsidiary that is exempt from rating under an Act in relation to the relevant land;

**“private person”** means a person other than the State or a government entity.

### *Division 2—Averaging of valuations*

#### **Application to Brisbane City Council**

554. This division applies to the Brisbane City Council.

#### **Local government may decide to average land values for rating purposes**

555.(1) A local government may decide by resolution that, for the purpose of making and levying rates for a financial year on rateable land in its area, the unimproved value of the land is to be its averaged value under this division.

(2) The resolution must specify whether the averaged value must be

calculated under section 556 (Averaging over 3 years) or section 557 (Averaging over 2 years).

### **Averaging over 3 years**

**556.(1)** If this section applies to a financial year, the averaged value of rateable land for the financial year is the lesser of—

- (a) the land's effective value for the financial year; or
- (b) the amount calculated as follows—
  - (i) if the land has effective values for the financial year and each of the previous 2 financial years—the average of the 3 effective values;
  - (ii) in any other case—an amount equal to the land's effective value for the financial year multiplied by the averaging factor.

**(2)** In subsection (1)—

**“averaging factor”**, for a financial year, means the number calculated, to 2 decimal places, using the formula—

$$\frac{\mathbf{T}}{\mathbf{3V}}$$

where—

**“T”** means the total of the effective values of all rateable land in the local government's area for the financial year and the previous 2 financial years;

**“V”** means the effective value of all rateable land in the local government's area for the financial year.

### **Averaging over 2 years**

**557.(1)** If this section applies to a financial year, the averaged value of rateable land for the financial year is the lesser of—

- (a) the land's effective value for the financial year; or
- (b) the amount calculated as follows—

- (i) if the land has effective values for the financial year and the previous financial year—the average of the 2 effective values;
- (ii) in any other case—an amount equal to the land’s effective value for the financial year multiplied by the averaging factor.

(2) In subsection (1)—

“**averaging factor**”, for a financial year, means the number calculated, to 2 decimal places, using the formula—

$$\frac{\mathbf{T}}{2\mathbf{V}}$$

where—

“**T**” means the total of the effective values of all rateable land in the local government’s area for the financial year and the previous financial year;

“**V**” means the effective value of all rateable land in the local government’s area for the financial year.

### **Information available to calculate “averaging factor”**

**558.** A local government may calculate the averaging factor using only the effective values of which it is aware at the time of making its resolution.

## **PART 2—MAKING AND LEVYING RATES AND CHARGES**

### **Power to make and levy rates and charges**

**559.(1)** A local government may, for a financial year, make and levy—

- (a) a general rate or differential general rates; and
- (b) minimum general rate levies; and

- (c) separate rates and charges; and
- (d) special rates and charges; and
- (e) utility charges.

(2) A local government also may fix general charges.

### **Making of rates and charges**

**560.** A rate or charge mentioned in section 559(1) (Power to make and levy rates and charges) may only be made for a financial year by resolution at the local government's budget meeting for the year.

### **General rate or differential general rates must be made each year**

**561.** A local government must make a general rate or differential general rates for each financial year.

### **Differential general rate**

**562.(1)** Before a differential general rate is made and levied, rateable land must be categorised into 2 or more categories under part 3 (Categorisation of land for differential rating).

(2) A differential general rate made and levied on rateable land in a category may be the same as or different to the differential general rate made and levied on land in another category.

(3) If a local government makes and levies a differential general rate for rateable land for a financial year, the local government must not make and levy a general rate for the land for the year.

(4) A differential general rate may be made and levied on a lot under a community titles Act as if it were a parcel of rateable land.

### **Minimum general rate levy**

**563.(1)** A local government may identify rateable land for the purpose of making and levying a minimum general rate levy in any way it considers appropriate.

(2) If a local government makes and levies a differential general rate, it may make and levy different minimum general rate levies on rateable land in different categories.

### **Minimum general rate levy on time shared property**

**564.(1)** This section applies to a local government levying a minimum general rate levy on—

- (a) rateable land where there is a structure wholly or partially subject to a time share scheme; or
- (b) a lot within the meaning of a community titles Act, where there is a structure wholly or partially subject to a time share scheme.

(2) The local government may decide that the minimum general rate levy is to be worked out using the formula—

$$L \times RU$$

where—

“**L**” means the minimum general rate levy that would, apart from this section, be payable for the rateable land or the lot;

“**RU**” means the number of units of the structure that are subject to the time share scheme and are available at any time for separate exclusive occupation.

### **Minimum general rate levy on mining tenements**

**565.(1)** A local government may decide that the minimum general rate levy on land mentioned in subsection (2) is different to the minimum general rate levy on other rateable land in its area.

(2) Subsection (1) applies to rateable land if the land is—

- (a) a mining claim; or
- (b) a mining lease granted for mining for minerals of not more than 2 ha; or
- (c) a mining lease granted for a purpose associated with mining for minerals of not more than 4 ha.

(3) A local government also may decide that different minimum general rate levies apply to—

- (a) a mining claim of not more than 900 m<sup>2</sup>; and
- (b) a mining claim of more than 900 m<sup>2</sup>; and
- (c) a mining lease mentioned in subsection (2).

### **Unimproved value of mining claims**

**566.** The unimproved value of a mining claim is—

- (a) for a mining claim of not more than 900 m<sup>2</sup>—\$150 or, if a greater amount is prescribed by regulation, the greater amount; or
- (b) for a mining claim of more than 900 m<sup>2</sup>—\$450 or, if a greater amount is prescribed by regulation, the greater amount.

### **Special rates and charges**

**567.(1)** A local government may make and levy a special rate or charge on rateable land if—

- (a) the rate or charge is for a service, facility or activity; and
- (b) in the local government's opinion, the land has or will specially benefit from, or has or will have special access to, the service, facility or activity.

(2) The special rate or charge may be made and levied on the bases the local government considers appropriate.

(3) Without limiting subsection (2), the amount of the special rate or charge may vary according to the extent to which, in the local government's opinion, the land has or will specially benefit from, or has or will have special access to, the service, facility or activity.

(4) The local government's resolution making the special rate or charge must identify the rateable land to which the rate or charge applies.

(5) The local government may identify parcels of rateable land to which the rate or charge applies in any way it considers appropriate.

(6) Subsection (1) is taken to have been complied with if the special rate

or charge is made and levied on—

- (a) all rateable land that, at the time of making and levying the rate or charge, could reasonably be identified as land on which the rate or charge may be made and levied; or
- (b) all rateable land on which the rate or charge may be made and levied, other than land accidentally omitted.

(7) To remove any doubt, it is declared that a local government may make and levy a special rate or charge under subsection (1) for a service, facility or activity whether or not the service, facility or activity is supplied by the local government itself.

### **Separate rates and charges**

**568.(1)** A local government may make and levy a separate rate or charge for a service, facility or activity.

(2) To remove any doubt, it is declared that a local government may make and levy a separate rate or charge for a service, facility or activity whether or not the service, facility or activity is supplied by the local government itself.

### **Utility charges**

**569.(1)** A local government may make and levy a utility charge on—

- (a) any land, whether vacant or occupied, and whether or not it is rateable land; or
- (b) a structure.

(2) A utility charge may be for—

- (a) supplying water, gas or sewerage services; or
- (b) occupied land or a structure—supplying cleansing services.

(3) A utility charge may be made and levied for supplying water or sewerage services while the facilities for supplying the services are being constructed.

(4) A utility charge may be made and levied on the bases a local government considers appropriate.

(5) Without limiting subsection (4), the amounts of utility charges may differ on the basis of—

- (a) the use made of particular land, or a particular structure or a class of land or structure; or
- (b) the unimproved value of particular land; or
- (c) any other circumstances peculiar to the supply of the relevant service to particular land, a particular structure or a class of land or structure.

(6) To remove any doubt, it is declared that a local government may make and levy a utility charge for a service whether or not the service is supplied by the local government itself.

### **General charges**

**570.(1)** A local government may, by local law or resolution, fix charges for services and facilities supplied by it, including for example—

- (a) supplying an entitlement, facility, service or thing; or
- (b) giving an approval, consent, licence, permission or registration; or
- (c) giving information; or
- (d) admitting a person to a structure or place; or
- (e) receiving an application; or
- (f) recording a change of ownership.

(2) A charge mentioned in subsection (1) is a general charge.

(3) A local government may fix a general charge by resolution despite the fact that a corresponding charge had previously been fixed by local law.

### **Register of charges**

**571.(1)** A local government must keep a register of its general charges.

(2) The register is open to inspection.

## **PART 3—CATEGORISATION OF LAND FOR DIFFERENTIAL RATING**

### *Division 1—Categorisation of land*

#### **Land must be categorised for differential general rates**

**572.** A local government may make and levy a differential general rate for a financial year only if all the rateable land in its area has been categorised under this part.

#### **Establishing criteria and categories**

**573.** Before making and levying a differential general rate for a financial year, a local government must decide by resolution—

- (a) the categories into which rateable land in its area is to be categorised; and
- (b) the criteria by which land is to be categorised.

#### **Identification of categories for parcels of land**

**574.(1)** After the categories and criteria have been decided, all rateable land in the local government's area must be categorised by—

- (a) the local government identifying the category in which each parcel of rateable land is included; or
- (b) the valuation authority, at the local government's request, identifying the category in which each parcel of rateable land is included.

**(2)** If the valuation authority identifies the category in which a parcel of rateable land is included, the valuation authority must give written notice to the local government of the category of the parcel.

**(3)** If the valuation authority cannot identify the category in which a parcel of rateable land is included, the valuation authority must give written notice to the local government.

(4) The category in which a parcel of rateable land is included may be identified in any way the valuation authority or local government considers appropriate.

### **Specification of categories for parcels of land**

**575.(1)** If a local government resolves to make and levy a differential general rate, the resolution must specify the categories in which rateable land is to be included.

(2) The rateable land included in a category may be identified in any way the local government considers appropriate.

(3) The accidental omission from categorisation of parcels of rateable land does not prevent the making and levying of the differential general rate.

### ***Division 2—Entry on land for categorisation***

#### **Meaning of “authorised person” for division**

**576.** In this division—

“authorised person” means—

- (a) a person authorised by a local government for this division; or
- (b) the valuation authority; or
- (c) a person authorised by the valuation authority for this division; or
- (d) a member of the Land Court; or
- (e) a person authorised by a member of the Land Court for this division.

#### **Purposes for which powers may be exercised**

**577.** An authorised person may exercise the powers mentioned in section 578 (Power of entry) only for the purpose of—

- (a) deciding the categories into which rateable land in a local government area is to be categorised or the criteria by which it is to be categorised; or

- (b) identifying the category in which a parcel of rateable land should be included; or
- (c) deciding an objection or appeal about the categorisation of land.

### **Power of entry**

**578.(1)** An authorised person may—

- (a) enter on land at any reasonable time; and
- (b) inspect the land and the uses made of the land; and
- (c) do anything reasonable and necessary to exercise powers under paragraphs (a) and (b).

**(2)** Before entering on the land, the authorised person must—

- (a) obtain the agreement of the occupier or, if there is no occupier, an owner of the land; or
- (b) give at least 14 days notice to the person mentioned in paragraph (a) of—
  - (i) the person's intention to enter on the land; and
  - (ii) the proposed purpose in entering on the land; and
  - (iii) the day and time when the person proposes to enter the land.

**(3)** In exercising a power under subsection (1), an authorised person must take all reasonable steps to ensure the person causes as little inconvenience, and does as little damage, as is practicable.

### ***Division 3—Notice of categorisation***

#### **Notice to owner of categorisation**

**579.(1)** If a local government resolves to make and levy a differential general rate on land, a rate notice given to the owner of the land must contain, or be accompanied by, a statement that complies with subsection (2).

**(2)** The statement must—

- (a) specify the categories of rateable land in its area (the “**rating categories**”) and the criteria by which land is categorised; and
- (b) specify the rating category in which the owner’s land is included; and
- (c) inform the owner—
  - (i) whether the rating category in which the land is included was identified by the local government or valuation authority (the “**decision maker**”); and
  - (ii) that the owner may object to the categorisation of the land by giving to the decision maker notice of objection, in the form approved by the decision maker, within 30 days after the date of issue of the rate notice or any further period the decision maker allows; and
  - (iii) that the sole ground on which the owner may object is that, having regard to the criteria decided by the local government by which rateable land is categorised, the land should have been included, as at the date of issue of the rate notice, in another of the rating categories; and
  - (iv) that giving a notice of objection will not, in the meantime, affect the levy and recovery of rates; and
  - (v) that, if the owner’s land is included in another rating category because of the objection, an adjustment of rates will be made.

#### *Division 4—Objections and appeals*

##### **Owner’s objection to categorisation**

**580.(1)** An owner of rateable land categorised under division 1 (Categorisation of land) may object to the categorisation of the land on the sole ground that, having regard to the criteria decided by the local government by which rateable land is categorised, the land should have been included, as at the date of issue of the relevant rate notice, in another rating category.

**(2)** The objection must be made by giving notice of the objection to the

decision maker.

(3) The notice of the objection must—

- (a) be given within 30 days after the date of issue of the rate notice or any further period the decision maker allows; and
- (b) be in the form approved by the decision maker; and
- (c) nominate the rating category in which the owner claims the land should have been included; and
- (d) specify the facts and circumstances on which the claim is based.

### **Decision on owner's objection**

**581.(1)** If the owner of rateable land objects to the categorisation of the land, a person authorised by the decision maker for the purpose must—

- (a) consider the categorisation of the land; and
- (b) consider the facts and circumstances on which the claim is based.

(2) The person may—

- (a) allow the objection; or
- (b) disallow the objection; or
- (c) decide that the land should be included in another rating category.

(3) The person must decide the objection, and give written notice of the decision to the owner, within 60 days after the end of the period within which the objection had to be made.

(4) The notice must include the reasons for the decision.

### **Effect of decision on objections**

**582.(1)** Unless it is set aside on appeal, the decision on an objection to the categorisation of land has effect under this section.

(2) If the decision allows the objection, the land is taken to be included, for the period for which the relevant rate notice is issued, in the category nominated by the objector in the notice of objection.

(3) If the decision disallows the objection, the land continues to be

included in the category specified in the relevant rate notice.

(4) If the decision is that the land should be in another rating category, the land must be included in the category for the period for which the relevant rate notice is issued.

### **Right of appeal against decision**

**583.** If the owner of rateable land is aggrieved by—

- (a) the decision on an objection to the categorisation of the land; or
- (b) the failure by the decision maker to allow a further period to give a notice of objection;

the owner may appeal to the Land Court against the decision or failure.

### **Where and how to start appeal**

**584.(1)** The appeal must be started by filing a notice of appeal in the Land Court registry.

(2) The notice of appeal must—

- (a) be filed within 30 days after the owner received notice of the decision or failure; and
- (b) be in a form approved by the Land Court.

(3) The owner must give a copy of the notice of appeal to the decision maker within 7 days after the notice of appeal is filed in the Land Court registry.

(4) Failure to comply with subsection (3) does not affect the making of the appeal or the jurisdiction of the Land Court to decide the appeal, but costs of any adjournment caused by the failure may be awarded against the owner of the land.

### **Constitution and procedure of Land Court**

**585.(1)** When exercising jurisdiction in an appeal under this division, the Land Court—

- (a) is constituted by 1 member; and

- (b) may sit in chambers; and
- (c) is not bound by rules of evidence.

(2) The appeal must be conducted as directed by the Land Court with a view to its prompt disposal.

### **Decision on appeal by Land Court**

**586.(1)** In deciding an appeal against a decision on an objection to the categorisation of land, the Land Court may—

- (a) set aside the decision and decide that the land should be included in a different rating category; or
- (b) disallow the appeal.

(2) In deciding an appeal against a failure to allow a further period to give a notice of objection, the Land Court may—

- (a) allow a further period to give the notice; or
- (b) disallow the appeal.

(3) If the Land Court sets aside the decision on the objection, the land is taken to be included in the category decided by the Land Court for the period for which the relevant rate notice is issued.

### **Levy and recovery of rate unaffected by objection or appeal**

**587.** The making of an objection, or the starting of an appeal, about the categorisation of land does not affect the levy and recovery of rates on the land.

## *Division 5—Late categorisation*

### **Late categorisation**

**588.** If rateable land in a local government area has been categorised and—

- (a) the decision maker is later satisfied, having regard to the criteria decided by the local government, that the land should be included

- in a different rating category; or
- (b) rateable land is not categorised by the decision maker because of accidental omission; or
  - (c) land later becomes rateable land; or
  - (d) land that was included in 2 or more parcels of rateable land, either in the same rating category or different rating categories, is later amalgamated into a single parcel;

the decision maker must decide that the land should be included in a specified rating category.

### **Time of effect of late categorisation**

**589.** A decision under section 588 (Late categorisation) has effect—

- (a) if the decision is made because of section 588(a)—for rates levied after the decision is made; or
- (b) if the decision is made because of section 588(b)—from the start of the relevant financial year; or
- (c) if the decision is made because of section 588(c)—from when the land became rateable land; or
- (d) if the decision is made because of section 588(d)—from the day of registration in the office of the registrar of titles of the survey plan of the amalgamation.

## **PART 4—LAND RECORD OF LOCAL GOVERNMENT**

### *Division 1—Land record*

#### **Land record to be kept**

**590.(1)** A local government must keep a record of every parcel of

rateable land in its area.

- (2) A land record must comply with the regulations.

### **Land record open to inspection**

**591.(1)** A land record is open to inspection.

(2) A person may inspect particulars of land in a land record free of charge if the person is, or is the agent of a person who is—

- (a) an owner, lessee or occupier of the land; or
- (b) an owner, lessee or occupier of adjoining land.

(3) For the purposes of subsection (2), the appointment of an agent must be evidenced in writing.

(4) A person may otherwise inspect a land record on payment of the fee decided by the local government.

### **Amendment of land record**

**592.(1)** The chief executive officer of a local government must ensure the particulars contained in its land record are amended whenever necessary to make the record comply with the regulations.

(2) If an amendment of a land record (other than an amendment made because of a general valuation of all rateable land in a local government area by the valuation authority) changes a rate that is or may be levied on land, the chief executive officer of the local government must immediately give written notice of the amendment to the owner of the land.

### **Resolution to remove valueless land from land record**

**593.(1)** A reference to a particular parcel of rateable land in the land record of a local government may be removed, on the local government's resolution, if—

- (a) rates levied on the land by the local government for at least 3 years are overdue; and
- (b) the overdue rates total more than the unimproved value of the land; and

- (c) the land is considered to be—
  - (i) valueless; or
  - (ii) of so little value that, if offered for sale, it would not realise the overdue rates.

(2) If a local government resolves to remove a reference to rateable land from its land record, the local government must acquire the land under part 7 (Recovery of rates), division 4 (Acquisition by local government of valueless land).

(3) This section does not apply to an interest in land held on a tenure that prohibits a corporation from holding an interest in the land.

### **Restoration of valueless land to land record**

**594.** If—

- (a) a local government gives a notice of intention to acquire land under section 648(1) (Local government must first give notice); and
- (b) before the end of 6 months after the giving of the notice to the owner of the land, the overdue rates for the land are paid to the local government;

the local government must restore reference to the land in the land record.

### *Division 2—Appeal against amendment of land record*

#### **Right of appeal**

**595.** A person aggrieved by an amendment of a land record, other than a removal of land under section 593 (Resolution to remove valueless land from land record), may appeal to a Magistrates Court against the amendment.

#### **Where and how to start appeal**

**596.(1)** An appeal must be made to the Magistrates Court nearest the relevant land.

(2) The appeal is started by—

- (a) filing a written notice of appeal with the clerk of the court of the Magistrates Court; and
- (b) giving a copy of the notice to the chief executive officer of the local government.

(3) The notice must state the grounds of the appeal.

### **Hearing procedures**

**597.(1)** The power to make rules of court under the *Magistrates Courts Act 1921* includes power to make rules of court for appeals to Magistrates Courts under this division.

(2) The procedure for an appeal to a Magistrates Court under this division is to be—

- (a) in accordance with the rules made under the *Magistrates Courts Act 1921*; or
- (b) in the absence of relevant rules, as directed by a magistrate.

(3) In deciding the appeal, the Magistrates Court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice; and
- (c) may hear the appeal in court or in chambers.

### **Powers of Magistrates Courts on appeal**

**598.** In deciding the appeal, the Magistrates Court may—

- (a) confirm the amendment; or
- (b) set aside the amendment and order the particulars previously contained in the land record be restored.

### **Appeal to District Court on question of law only**

**599.** A party aggrieved by a decision of the Magistrates Court may appeal to a District Court, but only on a question of law.

***Division 3—Notices of change in ownership*****Notice of sale of land**

**600.(1)** In this section—

**“vendor”**, for land that has been sold, means the person who was the land’s owner immediately before its sale.

**(2)** If land is sold, the vendor must give the local government concerned written notice of the sale within 30 days after it happens.

**(3)** The vendor complies with subsection (2) if—

- (a) the notice is given by the vendor’s agent in the sale; or
- (b) the vendor (or the vendor’s agent in the sale)—
  - (i) properly completes a combined form for the sale; and
  - (ii) files the form, together with the instrument of transfer of the land, with the registrar of titles within 30 days after the sale.

**Notice of surrender or forfeiture to State**

**601.(1)** A person who surrenders land, or an entitlement to occupy or use land, to the State must give to the local government written notice of the surrender within 30 days after the instrument of surrender is signed.

**(2)** If land, or an entitlement to occupy or use land, is forfeited to the State, written notice of the forfeiture must be given to the local government, within 30 days after the forfeiture takes effect—

- (a) for a forfeiture by action of the State—by the State; or
- (b) in any other case—by the person who makes the forfeiture.

**(3)** A notice under subsection (1) or (2) must state the description of the land.

**Notice of change in ownership**

**602.(1)** In this section—

**“required person”**, for land whose ownership has changed, means the

person who was the land's owner immediately before the change.

(2) If ownership of any land in a local government area changes, except as mentioned in section 600 (Notice of sale of land) or 601 (Notice of surrender or forfeiture to State), the required person must give written notice of the change to the local government within 30 days after the change happens.

(3) The notice must specify—

- (a) the date of the change; and
- (b) the nature of the change; and
- (c) the description of the land; and
- (d) the full name and address of the land's owner before the change; and
- (e) the full name and address of the land's owner after the change.

(4) The required person complies with subsection (2) if the notice is given by the person's agent in dealing with the land.

### **Result of failure to give notice of change in ownership**

**603.** If written notice is not given as required by a section of this division (other than under section 601(2)(a) (Notice of surrender or forfeiture to State)), the person who was owner of the land immediately before the change in ownership—

- (a) is liable for payment of all rates levied on the land, and all interest accrued, before the notice is given to the local government, as if no change in ownership had happened; and
- (b) commits an offence.

Maximum penalty—5 penalty units.

## **PART 5—LEVYING AND PAYMENT OF RATES**

### *Division 1—Levying of rates*

#### **Levying rates**

**604.(1)** A rate may be levied only by a rate notice given to—

- (a) for a utility charge on a structure or land that is not rateable land—the person at whose request the service is supplied; and
- (b) in any other case—the owner of the land on which the rate is levied.

**(2)** A rate notice must specify the date of its issue.

**(3)** A rate must be levied—

- (a) for a utility charge for supply of a water or gas service based on the quantity of water or gas supplied during a period as calculated by measurement at intervals—at the intervals the local government considers appropriate; and
- (b) in any other case—for the whole, a half or a quarter of the relevant financial year, as the local government considers appropriate.

**(4)** Except for a charge mentioned in subsection (3)(a), rates must be levied on all persons liable to pay them for the same period of a financial year.

**(5)** In this section—

**“person”** includes—

- (a) for a utility charge under subsection (1)(a)—any of the following—
  - (i) the Commonwealth;
  - (ii) a Commonwealth instrumentality, agency, authority or entity;
  - (iii) a division, branch or other part of a Commonwealth instrumentality, agency, authority or entity; and
- (b) in all cases—the State and a government entity.

**Rate may be levied or adjusted after end of financial year**

**605.** A local government may, in a financial year, levy a rate, or adjust a rate levy, even though its resolution for making the rate was made for an earlier financial year.

***Division 2—Payment of rates*****Person who is liable to pay rate**

**606.(1)** The owner for the time being of land is liable to pay a rate levied by a local government on the land.

**(2)** The person at whose request a service is supplied to a structure or land that is not rateable land is liable to pay a rate levied by a local government for supplying the service.

**(3)** If there is more than 1 owner or other person liable to pay a rate, all the owners or other persons are jointly and severally liable.

**(4)** In this section—

“**person**” has the same meaning as in section 604 (Levying rates).

**Liability to pay rate if change of ownership**

**607.** A local government may recover the whole amount of a rate payable for rateable land from the owner for the time being of the land.

**Continuing responsibility for rates on land that ceases to be rateable land**

**608.(1)** This section applies to land that ceases to be rateable land because of—

- (a) termination of the tenure of a holding; or
- (b) surrender or forfeiture of the land to the State; or
- (c) acquisition of the land by the State or the Commonwealth; or
- (d) exemption of the land from rating; or

(e) the property description of the land ceasing to exist.

(2) The owner of the land immediately before it ceased to be rateable land is taken to continue as the owner of the land, and the land is taken to continue to be rateable land, for the levy, collection or refund of a rate on the land for any period before it ceased to be rateable land.

### **Where rates can be paid**

**609.(1)** A rate is payable at the local government's public office.

(2) Payment of a rate may be accepted at—

- (a) another place used by the local government to receive rate payments; or
- (b) a place of business of a person appointed by the local government to receive rate payments.

### **Time within which rates must be paid**

**610.(1)** A local government must specify on a rate notice whether the rate must be paid within 30 days or 60 days after the day the notice is issued.

(2) A person liable to pay a rate must pay the rate within the specified time.

### **Payment by instalments**

**611.(1)** At its budget meeting, a local government may resolve that a rate may be paid by instalments on the terms specified in the resolution.

(2) The terms may provide for payment of a premium.

(3) The terms may provide for—

- (a) the application of section 614 (Overdue rates may bear interest) to the payment of the rate; or
- (b) the immediate payment of future instalments;

if the terms are not met.

***Division 3—Overdue rates*****Meaning of “overdue rate”**

**612.** An “overdue rate” is the amount of a rate payable to a local government that remains unpaid at the end of the period specified in the rate notice as the period within which the amount of the rate is payable, (including any amount of interest on the rate under section 614 (Overdue rates may bear interest)), but does not include the amount of a rate if the amount is being paid under—

- (a) the terms specified in a resolution under section 611 (Payment by instalments); or
- (b) the terms of an arrangement under section 627 (Remission, composition and settlement of rates); or
- (c) the terms of an arrangement under section 628 (Deferral of liability to pay rates).

**Recovery of overdue rates**

**613.** A local government may recover an overdue rate as a debt payable by the person liable under this part to pay the rate.

**Overdue rates may bear interest**

**614.(1)** An overdue rate bears interest—

- (a) at the percentage decided by the local government; and
- (b) after it becomes an overdue rate, from the day decided by the local government.

**(2)** The amount of interest is calculated—

- (a) on daily rests, applying the interest as compound interest; or
- (b) if an equal or lower amount will be obtained—in the way decided by the local government.

**(3)** The rate of interest must not be more than—

- (a) the percentage prescribed by regulation; or

(b) if no percentage is prescribed—15% a year.

(4) A decision of the local government about the rate of interest, and the date from which an overdue rate bears interest, must apply equally to all overdue rates.

#### ***Division 4—Discounts and other benefits for prompt payment of rates***

##### **Discount for payment within 30 days**

**615.(1)** If the full amount of a rate is paid within 30 days after the date of issue of the relevant rate notice, a local government may allow a discount.

(2) The discount must be a percentage of the rate that is not more than—

- (a) the percentage prescribed by regulation; or
- (b) if no percentage is prescribed—15%.

##### **Discount for payment within 60 days**

**616.(1)** If the full amount of a rate is paid after 30 days, but within 60 days, after the date of issue of the relevant rate notice, a local government may allow a discount.

(2) The discount must not be more than 50% of the discount it has decided to allow for payment within the 30 days.

##### **Discount when special circumstances prevent prompt payment**

**617.** A local government may allow a discount on a rate under section 615 (Discount for payment within 30 days) or 616 (Discount for payment within 60 days) if the local government is satisfied that the person liable to pay the rate was prevented, by circumstances beyond the person's control, from paying the rate within the period required by the section.

##### **No discount if other rates are overdue**

**618.** A discount is not allowable for a rate levied on land if there are other overdue rates for the land.

**Other benefits for prompt payment**

**619.** A local government may give, or join in giving, benefits (other than discounts) as inducements for the prompt payment of rates.

***Division 5—Changes to land that affect rates******Subdivision 1—General*****Different period starts on day of change**

**620.** For this division, the period after a change is taken to start on the day the change happens.

**Basis on which a rate is levied**

**621.(1)** Despite subdivision 2 (Changes affecting rates), a local government may levy a rate on rateable land on the basis of the relevant information of which it has been notified on or before the day it levies the rate.

**(2)** However, if a change mentioned in subdivision 2 happens, section 622 (Rate levied for a period in which a change takes effect) applies.

**Rate levied for a period in which a change takes effect**

**622.(1)** This section applies if—

- (a) a local government becomes aware that a change has happened to which a section of subdivision 2 applies; and
- (b) a rate has already been levied on the relevant land for the period in which the change takes effect.

**(2)** The local government must adjust the rate in accordance with the section.

**(3)** If the owner or occupier has already paid the rate at the time it is adjusted, the local government—

- (a) if the amount of the rate has decreased—must refund the overpaid

amount; or

- (b) if the amount of the rate has increased—may recover the underpaid amount.

### *Subdivision 2—Changes affecting rates*

#### **Change in unimproved value of land**

**623.(1)** This section applies if the unimproved value of rateable land changes.

(2) A rate levied on the land after the change must be calculated on the basis of—

- (a) for the period before the change—the previous unimproved value; and
- (b) for the period after the change—the new unimproved value.

#### **Land becomes or ceases to be rateable land**

**624.(1)** This section applies if land becomes or ceases to be rateable land.

(2) A rate levied on the land after the change must be calculated only on the proportion of the relevant period for which the land was rateable land.

#### **Land included in a new rating category**

**625.(1)** This section applies if land is included in a rating category under any of the following sections—

- section 582 (Effect of decision on objections)
- section 586 (Decision on appeal by Land Court)
- section 588 (Late categorisation).

(2) A rate levied on the land after its inclusion must be calculated on the basis of—

- (a) for the period before the inclusion—any previous categorisation that applied to the land; and

- (b) for the period after the inclusion—the new rating category.

### **Entitlement to occupy land is ended**

**626.(1)** This section applies if—

- (a) a person is entitled to occupy land—
- (i) that is a holding; or
  - (ii) under a licence or permission given by the State; and
- (b) the person loses the entitlement because of expiry, surrender or forfeiture of the relevant lease, licence or permission, or for some other reason.

(2) A rate levied on the land must be calculated only on the proportion of the relevant period for which the person was entitled to occupy the land.

## **PART 6—CONCESSIONS**

### **Remission, composition and settlement of rates**

**627.(1)** A local government may—

- (a) remit the whole or a part of unpaid rates; or
- (b) accept a composition or another arrangement for unpaid rates.

(2) If land for which unpaid rates are owing is free of encumbrance, the local government may accept a transfer to it of the land in full or part settlement of an owner's liability for the rates.

(3) The terms of an arrangement under this section may provide for—

- (a) the application of section 614 (Overdue rates may bear interest) to the payment of a rate; or
- (b) the immediate payment of the outstanding amount;

if the terms are not met.

(4) This section is subject to the following sections—

- section 629 (Resort to remission, composition, settlement or deferral requires justification)
- section 631 (Conditions on exercise of concession powers).

### **Deferral of liability to pay rates**

**628.(1)** A local government may enter into an arrangement to defer payment of a rate until a specified time.

(2) The deferment may be for the lifetime of an owner of the land if the owner is a pensioner.

(3) The arrangement may provide for payment of a premium because of deferment.

(4) The terms of the arrangement may provide for—

- (a) the application of section 614 (Overdue rates may bear interest) to the payment of the rate; or
- (b) the immediate payment of the deferred rate;

if the terms are not met.

(5) This section is subject to the following sections—

- section 629 (Resort to remission, composition, settlement or deferral requires justification)
- section 631 (Conditions on exercise of concession powers).

### **Resort to remission, composition, settlement or deferral requires justification**

**629.(1)** A local government may exercise a power under section 627 (Remission, composition and settlement of rates) or 628 (Deferral of liability to pay rates) only if—

- (a) it resolves that the case justifies the exercise of the power; or
- (b) the case is of a kind that has been accepted, by resolution of the local government, as justifying the exercise of the power.

(2) However, the only circumstances or factors justifying the exercise of the power are—

- (a) that an owner of the land concerned is—
  - (i) a pensioner; or
  - (ii) an entity whose objects do not include the making of profit; or
  - (iii) an entity that provides assistance or encouragement for the arts or cultural development; and
- (b) that payment of the rate would cause the owner of land hardship; and
- (c) the assistance or encouragement of economic development of the whole or part of the area; and
- (d) the preservation, restoration or maintenance of structures or places of cultural, environmental, historic, heritage or scientific significance to the local government's area; and
- (e) circumstances and factors prescribed by regulation.

### **Remission for occupancy by pensioners**

**630.(1)** A local government may remit, wholly or partially, the payment of a rate if the land is occupied, but not owned, only by pensioners or by pensioners and other persons.

**(2)** If the land is occupied only by pensioners, the local government may remit the payment of a rate only if the owner of the land has given a binding undertaking to the local government that the benefit of the remission will be extended to each pensioner.

**(3)** If land is occupied by pensioners and other persons, the local government may remit the payment of a rate only—

- (a) for the part of the rate that, in its opinion, is fairly attributable to the parts of the land where a pensioner has rights to exclusive occupancy; and
- (b) if the owner of the land has given a binding undertaking to the local government that the benefit of the remission will be extended to each pensioner.

**(4)** This section is subject to section 631 (Conditions on exercise of concession powers).

**Conditions on exercise of concession powers**

**631.(1)** This section applies to a power under any of the following sections—

- section 627 (Remission, composition and settlement of rates)
- section 628 (Deferral of liability to pay rates)
- section 630 (Remission for occupancy by pensioners).

**(2)** A local government may exercise the power—

- (a) only on application of the owner of the land concerned, made in the form and way approved by the local government; and
- (b) for—
  - (i) a period resolved by the local government; or
  - (ii) without limit of time while the owner continues to be eligible for the benefit conferred by the exercise of the power.

**Limitation of increase in rate levied**

**632.(1)** When a local government resolves to make and levy a rate, it also may resolve that, for all or stated classes of land, the amount levied will not be more than—

- (a) the amount of the rate levied for the previous financial year; or
- (b) the amount of the rate levied for the previous financial year increased by a specified percentage.

**(2)** The resolution may specify different percentages for—

- (a) different land or classes of land; or
- (b) different rates.

**PART 7—RECOVERY OF RATES***Division 1—Extended application of part*

**Application of part to Brisbane City Council**

**633.** This part applies to the Brisbane City Council.

***Division 2—Recovery of overdue rates*****Recovery by court action**

**634.(1)** Overdue rates may be recovered—

- (a) by a proceeding in a Magistrates Court on the complaint of a person authorised by the local government for the purpose; or
- (b) by a proceeding for debt brought in a court of competent jurisdiction by the local government.

**(2)** A person against whom an order for payment of an amount is made in a proceeding under subsection (1) is not liable to imprisonment on default.

**(3)** An unsatisfied order or judgment made in a proceeding by or for a local government for recovery of an amount from a person is not a bar to recovery of the amount from any other person who is liable to pay the amount.

***Division 3—Sale of land for overdue rates*****Application of division**

**635.** This division applies if an overdue rate has remained unpaid for 3 years or, for a mining claim, 3 months.

**Power of sale**

**636.(1)** The local government may, under this division, sell the land on which the rate was levied.

**(2)** However, the local government may not sell land if the liability of the owner of the land to pay the overdue rate is the subject of a proceeding pending in a court.

(3) A decision to sell the land may only be made by resolution.

(4) This section is also subject to section 652 (Restrictions on local government dealing with land).

### **Local government must first give notice**

**637.(1)** As soon as practicable after a local government decides to sell land under this division, it must give the information mentioned in subsection (2), in writing, to—

- (a) the owner of the land; and
- (b) each encumbrancee, lessee or trustee who has given written notice to the local government of the person's interest in the land.

(2) The information is—

- (a) notice of intention to sell the land; and
- (b) the provisions, or a general outline of the provisions of, the following sections—
  - section 638 (Starting and ending of sale procedures)
  - section 639 (Procedures for sale)
  - section 640 (Reserve price at auction)
  - section 641 (Sale by agreement after auction)
  - section 642 (Unsold land acquired by local government)
  - section 643 (Application of proceeds of sale).

(3) The notice of intention to sell must comply with a regulation that may be made for this section.

### **Starting and ending of sale procedures**

**638.(1)** The local government must start the procedures for selling the land within the required period after giving the notice of intention to sell, unless the amount of the overdue rate has been paid to it.

(2) The required period is from 3 to 6 months after giving the notice or, for a mining claim, 1 to 6 months after giving the notice.

(3) The local government may only end, and must end, procedures for selling the land if the amount of the overdue rate, and all expenses incurred by it for the intended sale, are paid to it.

### **Procedures for sale**

**639.(1)** Land intended for sale under this division must first be offered for sale by auction.

(2) The local government must prepare a notice containing—

- (a) the time and place of the proposed auction; and
- (b) a full description of the land.

(3) At least 14 days but not more than 21 days before the day of the proposed auction, the local government must—

- (a) advertise the notice in a newspaper circulating generally in its area; and
- (b) attach a copy of the notice to a conspicuous part of the land; and
- (c) give a copy of the notice to—
  - (i) the owner of the land; and
  - (ii) each encumbrancee, lessee and trustee who has given written notice to the local government of the person's interest in the land.

(4) On the day it complies with subsection (3)(a), the local government must place a copy of the notice on display in a conspicuous place at its public office.

(5) The notice must be kept on display until the day of the auction.

(6) If the land is a lot under a community titles Act the copy mentioned in subsection (3)(b) may be attached to a conspicuous part of the common property for the lot if it is not practicable to attach it to a conspicuous part of the lot.

### **Reserve price at auction**

**640.(1)** A local government that offers land for auction under this

division must place a reserve price on the land.

(2) The reserve price must be at least—

- (a) the amount of the overdue rate for the land; or
- (b) the unimproved value of the land;

whichever is greater.

### **Sale by agreement after auction**

**641.(1)** If the reserve price is not reached at the auction, the local government may enter into negotiations with the highest bidder at the auction to sell the land by agreement.

(2) A sale of the land by agreement must be at a price greater than the highest bid for the land at the auction.

### **Unsold land acquired by local government**

**642.(1)** If land offered for auction under this division is not sold at auction and—

- (a) the local government does not enter into negotiations under section 641 (Sale by agreement after auction) with the highest bidder at the auction; or
- (b) the negotiations are unsuccessful;

the land is taken to have been sold at the auction to the local government at the reserve price, unless it is held on a tenure that the local government is not competent to hold.

(2) This section applies subject to section 652 (Restrictions on local government dealing with land).

### **Application of proceeds of sale**

**643.(1)** The local government must apply the proceeds of sale of land under this division, in priority to all encumbrances, as follows—

- (a) first, in payment of the expenses of the sale;
- (b) second, in payment of the overdue rate for the land;

- (c) third, in payment of other rates that may be payable to the local government by the person (the “**former owner**”) who was the owner of the land immediately before its sale;
- (d) fourth, in payment of other amounts that may be payable to the local government by the former owner.

(2) After application of the proceeds of sale under subsection (1), any remainder must be paid to the person who was entitled to the rents and profits of the land immediately before its sale.

(3) Any part of the proceeds of sale that remains unclaimed for 2 years must be paid to the Public Trustee as unclaimed money.

(4) Subsection (1) is subject to section 653 (Priority of State debts preserved).

### **Sale operates as a discharge**

**644.** After a sale of land under this division (including a sale taken to be to the local government under section 642 (Unsold land acquired by local government)), a proceeding for the recovery of rates for any period before the sale may not be started or continued.

### **Issue of title**

**645.(1)** On a sale of land under this division, other than a sale taken to be to the local government under section 642 (Unsold land acquired by local government), a local government must give to the registrar of titles a notice specifying—

- (a) that the land has been sold under this division; and
- (b) the full description of the land; and
- (c) the full name and address of the purchaser; and
- (d) the purchase price of the land.

(2) The notice must comply with the regulations that may be made for this section.

(3) On receiving the notice, the registrar of titles must register the purchaser for the interest held in the land by the owner of the land

immediately before the sale, free of all encumbrances.

(4) The registrar of titles may comply with subsection (3) despite non-production of a relevant instrument of title.

(5) This section is subject to section 652 (Restrictions on local government dealing with land).

### **Acquisition by local government of title to land**

**646.(1)** If land offered for sale under this division is taken to have been sold to it under section 642 (Unsold land acquired by local government), a local government must apply to the registrar of titles to be registered for the interest held by the owner of the land immediately before the sale, free of all encumbrances.

(2) The application must comply with the regulations.

(3) On receiving the application, the registrar of titles must register the local government for the interest held by the owner of the land immediately before the land was sold, free of all encumbrances.

(4) The registrar of titles may comply with subsection (3) despite non-production of a relevant instrument of title.

(5) This section is subject to section 652 (Restrictions on local government dealing with land).

### ***Division 4—Acquisition by local government of valueless land***

#### **Purpose of this division**

**647.(1)** This division states how a local government acquires land it has resolved to remove from its land record under section 593 (Resolution to remove valueless land from land record).

(2) This division applies subject to section 653 (Priority of State debts preserved).

**Local government must first give notice**

**648.(1)** As soon as practicable after the local government resolves to remove the land from its land record, it must give a written notice of its intention to acquire the land to—

- (a) the owner of the land; and
- (b) each encumbrancee, lessee or trustee who has given written notice to the local government of the person's interest in the land.

**(2)** The notice of intention to acquire must comply with a regulation that may be made for this section.

**Application to be registered as owner**

**649.(1)** If, at the end of 6 months after the day, or the last day, that the notice of intention to acquire is given, there is any overdue rate for the land, the local government may apply to the registrar of titles to be registered for the interest of the owner of the land, free of all encumbrances.

**(2)** If a local government makes an application under subsection (1), it must discharge all rates payable for the land.

**(3)** The application must comply with the regulations.

**(4)** On receiving the application, the registrar of titles must—

- (a) register the local government for the interest of the owner of the land, free of all encumbrances; and
- (b) give the local government an instrument of title to the land.

**(5)** The registrar of titles may comply with subsection (4) despite non-production of a relevant instrument of title.

***Division 5—Provisions about dealing with land under this part*****One instrument of title for conterminous land**

**650.** The registrar of titles may issue 1 instrument of title for 2 or more parcels of land acquired under this part if—

- (a) the local government asks; and

- (b) the parcels are conterminous.

### **Sale of land and title valid despite irregularities**

**651.(1)** A dealing by a local government with land under this part is valid, and effective to confer a paramount title to the land on a purchaser or on the local government, despite a failure to comply with a provision of this part.

**(2)** The purchaser of land dealt with under this part or the registrar of titles—

- (a) need not inquire whether this part has been fully complied with for a sale of land or an application for registration of title to land; and
- (b) is not affected by notice, actual or constructive, of a failure to comply with a provision of this part for the sale or application.

**(3)** A claim may not be made against a fund administered by the State about—

- (a) a dealing with land under this part; or
- (b) a registration of title by the registrar of titles purporting to give effect to a provision of this part.

**(4)** This section does not protect—

- (a) a person who commits fraud or wilful default; or
- (b) a local government that does not comply with a provision of this part;

from liability for loss caused by the fraud, default or noncompliance.

### **Restrictions on local government dealing with land**

**652.(1)** This section applies to land held on a tenure that—

- (a) requires the holder to have particular qualifications; or
- (b) requires the agreement or permission of a particular government entity before a person can lawfully hold an interest in the land.

**(2)** A local government may sell an interest in the land under this part

only to a person who has the required qualifications or has obtained the required agreement or permission.

(3) A local government may not acquire an interest in land held on a tenure that prohibits a corporation from holding an interest in the land.

### **Priority of State debts preserved**

**653.(1)** This section applies if—

- (a) a local government intends to deal with land under this part; and
- (b) the land is subject to an encumbrance that confers rights on the State or a government entity.

(2) The local government must give written notice of its intention to deal with the land, to the State or government entity, before dealing with the land.

(3) The local government may sell, or acquire, the land only—

- (a) subject to the encumbrance; or
- (b) free of the encumbrance to the extent, and subject to any conditions, agreed by the State or government entity.

### **Satisfaction of rates and charges on termination of tenure**

**654.(1)** If the tenure of a holding is terminated for the whole or part of the land, an amount received by the State from an incoming holder of the whole or part of the land may, after deduction of any amount payable to the State, be applied by the State towards satisfaction of a liability for rates payable to a local government for the land.

(2) If an amount is applied under subsection (1), only the remainder of the amount received by the State is payable to the former holder of the land.

## **CHAPTER 11—PROVISIONS AIDING LOCAL GOVERNMENT**

## **PART 1—EXTENDED APPLICATION OF CHAPTER**

### **Application of chapter to Brisbane City Council**

**655.** This chapter (other than sections 706 (Proof of voters roll) and 707 (Proof of proceedings of local government)) applies to the Brisbane City Council.

## **PART 2—POWERS UNDER THIS CHAPTER**

### **Powers of entry**

**655A.(1)** A power given under this chapter to enter a place may not be exercised using force.

**(2)** Subsection (1) does not apply if the entry is made under—

- (a) an order made under section 658 (Order on occupier who refuses entry), if the order authorises the use of necessary and reasonable help and force; or
- (b) a warrant issued under part 5 (Enforcement of local government Acts).

## **PART 3—RIGHT TO TAKE MATERIALS**

### **Taking materials from land**

**656.(1)** A local government may authorise its employees or agents—

- (a) to enter rateable land, other than—
  - (i) a protected area under the *Nature Conservation Act 1992*; or
  - (ii) the Wet Tropics Area within the meaning of the *Wet Tropics World Heritage Protection and Management Act 1993*; or

- (iii) a State forest or timber reserve under the *Forestry Act 1959*;  
or
  - (iv) improved land; and
- (b) to search for, dig, raise and gather on the land and remove from the land any materials necessary for the exercise of the local government's jurisdiction.
- (2)** A power under subsection (1) may—
- (a) be exercised on land in the local government's area or, with the Minister's approval, land outside its area; and
  - (b) be exercised only—
    - (i) with the agreement of the owner and occupier of the land; or
    - (ii) if the local government has given at least 7 days written notice to the owner and occupier.
- (3)** The notice must inform the owner and occupier of—
- (a) the intention to enter the land; and
  - (b) the purpose of the entry; and
  - (c) the days and times when the entry is to be made.
- (4)** In exercising a power under subsection (1), the authorised employee or agent must take all reasonable steps to ensure the employee or agent causes as little inconvenience, and does as little damage, as is practicable in the circumstances.
- (5)** Subsection (1) does not authorise—
- (a) causing, or contributing to, damage to any structure or works; or
  - (b) searching for, digging, raising or gathering materials, or removing materials from, within 50 m of a dwelling house, bridge, dam, wharf, jetty or other structure or works.
- (6)** If a person incurs loss or damage because of the exercise of a power under subsection (1), the person is entitled to be paid by the local government the reasonable compensation because of the loss or damage that is agreed between the local government and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(7) The court may make the order about costs it considers just.

(8) In this section—

“loss” includes the value of materials taken.

## **PART 4—EXECUTION OF LOCAL GOVERNMENT ACTS**

### *Division 1—Compliance with requirements of local government Acts*

#### **Owner’s right of entry to comply with notice or order**

**657.(1)** If an owner of land occupied by someone else is given a notice or order under a local government Act requiring work to be performed on the land or a structure on the land (the “order”), the owner and the owner’s employees and agents may, at reasonable times—

- (a) enter the land and, if necessary, the structure to comply with the order; and
- (b) perform work necessary to comply with the order.

**(2)** However, before entering the land or structure, the owner must—

- (a) give at least 7 days written notice to the occupier of—
  - (i) the intention to enter the land or structure; and
  - (ii) the purpose of the entry; and
  - (iii) the days and times when the entry is to be made; and
- (b) produce a copy of the order for inspection by the occupier.

**(3)** This section does not affect any rights the owner has apart from this section.

#### **Order on occupier who refuses entry**

**658.(1)** If an occupier of land or a structure refuses to permit a person

who is seeking—

- (a) to exercise the jurisdiction of local government; or
- (b) to exercise a power under a local government Act;

from entering the land or structure and performing work necessary for the purpose for which entry is sought, the person may make written application to a magistrate for an order under this section.

**(2)** The applicant must give written notice of the application to—

- (a) the occupier of the land or structure; or
- (b) if the applicant is not the owner—the owner and the occupier of the land or structure.

**(3)** The application must—

- (a) be in the form approved by the chief executive; and
- (b) be sworn; and
- (c) state the grounds on which the order is sought.

**(4)** The magistrate may refuse to consider the application until the person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

**(5)** If the magistrate is satisfied the entry sought is reasonable and necessary for the purpose, the magistrate may make an order under this section.

**(6)** The order must—

- (a) direct the occupier to permit the person to enter the land or structure and perform all work necessary for the purpose; and
- (b) state the hours of the day or night when entry may be made; and
- (c) state the day (within 14 days after the order is made) when the order ends.

**(7)** If the person is an employee or agent of a local government, the order may also authorise the person to use necessary and reasonable help and

force to enter the land or structure.

(8) The magistrate must record the reasons for making the order.

(9) The occupier must comply with the order.

Maximum penalty for subsection (9)—50 penalty units.

### **Protection of owner against occupier's obstruction**

**659.** An owner of land who fails to perform work in contravention of a local government Act because of an occupier's refusal to permit entry is not liable for the failure if the owner takes reasonable steps to enter the land to perform the work.

### **Discharge of obligations by occupier on failure of owner**

**660.(1)** If the owner of land occupied by someone else fails to perform work or pay an amount the owner is required under a local government Act to perform or pay, the occupier may perform the work or pay the amount.

(2) If the occupier performs the work or pays the amount, the amount incurred by the occupier in performing the work, or the amount paid by the occupier, is a debt payable to the occupier by the owner.

(3) If the occupier is a tenant of the owner, the occupier may deduct, from rent payable to the owner by the occupier, the amount payable to the occupier by the owner under subsection (2).

(4) The owner cannot terminate the tenancy of the occupier because of a deduction made from rent under subsection (3).

### **Performing work for owner or occupier**

**661.(1)** If the owner or occupier of land or a structure fails, or both the owner and occupier fail, to perform work required to be performed under a local government Act, a local government may, by its employees or agents, enter the land or structure and perform the work.

(2) The powers under subsection (1) may be exercised only if—

(a) both the owner and occupier agree to the entry; or

(b) the entry is under an order made under section 658 (Order on

occupier who refuses entry); or

- (c) urgent action is necessary for local government purposes, including, for example, the interests of public health or safety; or
- (d) reasonable notice has been given to the owner and occupier of the local government's intention to enter the land or structure and perform the work.

*Example for subsection (2)(d)—*

Entry to, and clearing of, an overgrown allotment because of the allotment owner's failure under a local law to clear the allotment.

(3) Subsections (2)(c) and (d) do not apply to the entry of a structure, or the part of a structure, used for residential purposes.

(4) The amount properly and reasonably incurred by the local government in performing the work is a debt payable to the local government by the person who failed to perform the work.

(5) If both the owner and occupier failed to perform the work, the amount incurred is payable by the owner and occupier jointly and severally.

### **Cost of work recoverable as a rate**

**662.(1)** The local government may recover the amount payable by the owner of land for the work performed by it as if the amount (together with interest on the amount under subsection (2))—

- (a) were an overdue rate properly levied by the local government for the land; and
- (b) became payable to the local government at the end of 30 days after the local government gave to the owner written notice of the amount payable by the owner for the work performed.

(2) The amount payable to the local government bears interest as if it were an amount of overdue rate payable to the local government.

### **Cost of work a charge over land**

**663.(1)** This section applies if an amount (including any interest on the amount) (the “**unpaid amount**”) is payable by the owner of land for work performed by a local government under section 661 (Performing work for

owner or occupier).

(2) The unpaid amount is a charge on the land.

(3) The local government may lodge a request to register the charge in the appropriate form over the land with the registrar of titles.

(4) The request must be accompanied by a certificate signed by the local government's chief executive officer stating there is a charge over the land under this section.

(5) A registered charge has priority over all encumbrances over the land other than—

- (a) encumbrances in favour of the State or a government entity; and
- (b) rates payable to the local government.

(6) The charge is in addition to any other remedy the local government has for recovery of the unpaid amount.

### **Limitation of time in absence of notice of work done**

**664.** If work on land or a structure is performed without an approval that is required under a local government Act, then, for any limitation of time for taking a proceeding or doing anything else about the work, the work is taken to have been performed when an employee or agent of the local government first finds out about the work.

### *Division 2—Entry on land*

#### **Entry on land for local government purposes**

**665.(1)** An employee or agent of a local government may enter land or a structure, at all reasonable times, if the entry is necessary for the exercise of the local government's jurisdiction, including for example—

- (a) to carry facilities into, through, across or under the land; or
- (b) to perform work on the land or structure; or
- (c) to inspect, operate, change, maintain, remove, repair or replace the local government's facilities on the land or structure.

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- (2) The powers under subsection (1) may be exercised only if—
- (a) the entry is made—
    - (i) to inspect, operate, change, maintain, remove, repair or replace the local government’s facilities on the land or structure for its routine operations; or
    - (ii) to investigate the future placement, removal, repair or replacement of facilities on the land or structure; or
  - (b) the owner and occupier of the land or structure agree to the entry; or
  - (c) urgent action is necessary for local government purposes, including, for example, the interests of public health or safety; or
  - (d) the entry is under an order made under section 658 (Order on occupier who refuses entry).

*Example for subsection (2)(c)—*

Entry to take urgent action under a local law about the safety and convenience of the public to remove a tree likely to fall and cause injury or damage.

(3) Subsection (2)(a) does not apply to the entry of a structure, or the part of a structure, used for residential purposes.

### **Compensation for loss or damage**

**666.(1)** This section applies if a person incurs loss or damage because of the exercise by a local government of a power under section 665 (Entry on land for local government purposes).

(2) The person is entitled to be paid by the local government the reasonable compensation because of the loss or damage that is agreed between the local government and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed.

(3) The court may make the order about costs it considers just.

### *Division 3—General*

**Obstructing execution of local government Act etc.**

**667.(1)** A person must not obstruct or hinder, or attempt to obstruct or hinder, a local government or any person in taking any action the local government or person is required or authorised to take under a local government Act.

Maximum penalty—50 penalty units.

(2) An occupier of land or a structure who obstructs a person as mentioned in section 658 (Order on occupier who refuses entry) may be proceeded against under that section or under this section, but cannot be proceeded against under both sections.

(3) A person must not destroy, pull down, damage or deface a board or anything else on which a local law, order, notice or other matter is displayed under authority of a local government.

Maximum penalty—35 penalty units.

(4) An occupier of land or a structure, when required by or for a local government to disclose the name of the owner of the premises, must not—

- (a) without reasonable excuse, fail to disclose the owner's name; or
- (b) knowingly state a false name.

Maximum penalty—35 penalty units.

**Police officer may require name and address**

**668.(1)** A police officer may require a person to state the person's name and address if the officer—

- (a) finds the person committing an offence against a local government Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the officer to suspect on reasonable grounds that the person has just committed an offence against a local government Act.

(2) When making the requirement, the police officer must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The police officer may require the person to give evidence of the correctness of the person's name or address if the officer suspects, on reasonable grounds, that the name or address given is false.

(4) A person must comply with a police officer's requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with the requirement.

Maximum penalty—35 penalty units.

(5) The person does not commit an offence against this section if—

- (a) the police officer required the person to state the person's name and address on suspicion of the person having committed an offence against a local government Act; and
- (b) the person is not proved to have committed the offence.

### **Direction power of police officers about malls**

**669.(1)** A police officer may give a person who is in a mall a direction to do or stop doing something if the police officer believes, on reasonable grounds, that it is necessary to give the direction to protect—

- (a) public safety or order; or
- (b) the rights of members of the public to enjoy the mall; or
- (c) the rights of persons to carry on lawful business in or in association with the mall.

(2) When giving the direction, the police officer must warn the person it is an offence not to comply with the direction.

(3) The person must comply with the direction, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—35 penalty units.

(4) This section has effect subject to the *Peaceful Assembly Act 1992*.

### **Power to arrest persons**

**670.(1)** This section applies to an offence against either of the following sections—

- section 668 (Police officer may require name and address)
- section 669 (Direction power of police officers about malls).

(2) A police officer may arrest a person if—

- (a) the officer—
  - (i) finds the person committing an offence to which this section applies; or
  - (ii) finds the person in circumstances that lead, or has information that leads, the officer to suspect on reasonable grounds that the person has just committed an offence to which this section applies; and
- (b) the officer believes on reasonable grounds that a proceeding by way of complaint and summons against the person would be ineffective.

## **Fines**

**671.(1)** If a proceeding for an offence against a local government Act about a local government matter is taken and a court imposes a fine for the offence, the fine must be paid to the operating fund of the local government.

(2) If a person other than the local government prosecutes the offence, subsection (1) does not apply to any part of the fine the court orders be paid to the person.

## **Proceedings for offences**

**672.(1)** An offence against this Act is a summary offence.

(2) A proceeding for an offence must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence;

whichever is the later.

**Attempt to commit offence**

**673.** A person who attempts to commit an offence against this Act commits an offence and, on conviction, is liable to the same penalties as if the person had committed the offence.

**PART 5—ENFORCEMENT OF LOCAL  
GOVERNMENT ACTS***Division 1—Interpretation***Definitions**

**674.** In this part—

**“authorised person”** means a person who is—

- (a) appointed under this part as an authorised person; and
- (b) other than in division 2—an authorised person for the provision in which the expression is used.

**“authorisation”** means an approval, consent, licence, permission, registration or other authority issued under a local government Act.

**“notice”** means a notice or direction issued under a local government Act.

**“occupier”** of a place includes a person who reasonably appears to be the occupier of, or in charge of, the place.

**“public place”** means any place that the public is entitled to use, is open to the public, or used by the public, whether or not on payment of money.

**“warrant”** means a warrant issued under this part.

**References to “local government” and “authorised person”**

**675.** In a provision of this part about—

- (a) a local government, a reference to an authorised person is a reference to an authorised person appointed by the local

government; and

- (b) an authorised person, a reference to a local government is a reference to the local government that appointed the authorised person.

### *Division 2—Authorised persons*

#### **Appointment**

**676.(1)** A local government may appoint any of the following persons as authorised persons under this part—

- (a) employees of the local government;
- (b) other persons prescribed under the regulations.

**(2)** An appointment of a person as an authorised person under this part must state the provisions of this part for which the person is appointed as an authorised person.

**(3)** A local government may appoint a person as an authorised person under this part only if—

- (a) the local government considers the person has the necessary expertise or experience for the appointment; or
- (b) the person has satisfactorily finished training approved by the local government for the appointment.

#### **Limitation on authorised person's powers**

**677.** An authorised person's powers may be limited in the person's instrument of appointment.

#### **Authorised person's appointment conditions**

**678.(1)** An authorised person holds office on the conditions stated in the instrument of appointment.

**(2)** An authorised person—

- (a) if the instrument provides for a term of appointment—ceases

holding office at the end of the term; and

- (b) may resign by signed notice of resignation given to the local government; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) under subsection (2)(b) if a term of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.

### **Authorised person’s identity card**

**679.(1)** A local government must give each authorised person an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person for the local government; and
- (d) include an expiry date.

(3) A person who ceases to be an authorised person must return the person’s identity card to the local government within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this part and for other provisions, Acts or purposes.

### **Production of identity card**

**680.(1)** An authorised person may exercise a power in relation to someone else (the “**other person**”) only if the authorised person—

- (a) first produces his or her identity card for the other person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

### **Offences**

**681.** A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

### *Division 3—Infringement notice offences*

#### **Power to require name and address**

**682.(1)** An authorised person may require a person (the “**other person**”) to state the other person's name and address if the authorised person—

- (a) finds the other person committing an infringement notice offence; or
- (b) finds the other person in circumstances that lead, or has information that leads, the authorised person to suspect on reasonable grounds the other person has just committed an infringement notice offence.

(2) When making the requirement, the authorised person must warn the other person it is an offence to fail to state the other person's name and address, unless the other person has a reasonable excuse.

(3) The authorised person may require the other person to give evidence of the correctness of the other person's name or address if the authorised person suspects, on reasonable grounds, that the name or address given is false.

(4) The other person must comply with the authorised person's requirement under subsection (1) or (3), unless the other person has a

reasonable excuse.

Maximum penalty—35 penalty units.

- (5) The other person does not commit an offence against this section if—
- (a) the authorised person required the other person to state the other person's name and address on suspicion of the other person having committed an infringement notice offence; and
  - (b) the other person is not proved to have committed the infringement notice offence.

#### *Division 4—Investigations about offences*

##### **Entry to places**

**683.(1)** An authorised person may enter a place under this division if—

- (a) its occupier agrees to the entry; or
- (b) the entry is permitted by a warrant.

(2) An authorised person, without the occupier's agreement or a warrant, may—

- (a) enter a public place when the place is open to the public; or
- (b) enter land to ask for the occupier's agreement to the authorised person entering the land or a building or structure on the land.

##### **Agreement to entry**

**684.(1)** This section applies if an authorised person seeks the agreement of an occupier of a place to an authorised person entering the place under this division.

(2) In seeking the agreement, the authorised person must inform the occupier—

- (a) of the purpose of the entry; and
- (b) that things or information obtained by the authorised person may be used in evidence in court; and

(c) that the occupier is not required to agree to the entry.

(3) If the agreement is given, the authorised person may ask the occupier to sign an acknowledgment of the occupier's agreement.

(4) The acknowledgment must—

(a) state the occupier was informed—

(i) of the purpose of the entry; and

(ii) that things or information obtained by the authorised person may be used in evidence in court; and

(iii) that the occupier was not required to agree to the entry; and

(b) state the occupier agreed to the authorised person entering the place and exercising powers under this division; and

(c) state the time and date the agreement was given.

(5) If the occupier signs an acknowledgment of agreement, the authorised person must immediately give a copy to the occupier.

### **Evidence of agreement**

**685.(1)** This section applies to a proceeding if—

(a) a question arises whether an occupier of a place agreed to the entry of the place by an authorised person under this division; and

(b) an acknowledgment of the occupier's agreement is not produced in evidence.

(2) In a proceeding to which this section applies, the court may assume the occupier did not agree to the entry, unless the contrary is proved.

### ***Division 5—Warrants***

#### **Warrants for entry**

**686.(1)** An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must—

- (a) be in the form approved by the chief executive; and
- (b) be sworn; and
- (c) state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue the warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against a local government Act; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

(5) The warrant must state—

- (a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours of the day or night when entry may be made; and
- (d) the day (within 14 days after the warrant’s issue) when the warrant ends.

(6) The magistrate must record the reasons for issuing the warrant.

### **Warrants—applications made otherwise than in person**

**687.(1)** An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person’s remote location.

(2) Before applying for the warrant, the authorised person must prepare

an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—

(a) the magistrate must—

(i) record on the warrant the reasons for issuing the warrant; and

(ii) tell the authorised person the date and time the warrant was signed; and

(iii) tell the authorised person the warrant's terms; and

(b) the authorised person must write on a form of warrant (the “**warrant form**”)—

(i) the magistrate's name; and

(ii) the date and time the magistrate signed the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the magistrate.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if a warrant form was completed by the authorised person—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Unless the contrary is proven, a court must presume that a power exercised by an authorised person was not authorised by a warrant issued under this section if—

- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
- (b) the warrant is not produced in evidence.

***Division 6—Monitoring authorisations and notices and processing applications***

**Monitoring authorisations and processing applications**

**688.(1)** An authorised person may enter a place at any reasonable time (other than at night)—

- (a) to inspect the place to process an application made under a local government Act; or
- (b) to find out whether the conditions on which an authorisation or notice was issued have been or are being complied with; or
- (c) to inspect work carried out under an authorisation or notice.

**(2)** In addition, an authorised person may enter a place at night for a purpose mentioned in subsection (1) if—

- (a) the place is a public place that is open to the public at the time of the entry; or
- (b) the entry is at a time asked by the occupier; or
- (c) the entry is in accordance with the times provided for in a lawfully imposed condition of an authorisation.

**Limitation on entry to residence**

**689.(1)** This section limits an authorised person’s powers of entry under this division.

**(2)** An authorised person may enter a building or other structure, or the part of a building or other structure, used for residential purposes only if the authorised person is accompanied by the occupier.

**(3)** Subsection (2) does not apply if the occupier has been given reasonable notice of the authorised person’s intention to enter, and—

- (a) the occupier is unavailable or unwilling to accompany the authorised person; or
- (b) the authorised person is unable for another reason to comply with the subsection.

### ***Division 7—Approved inspection programs***

#### **Approval of inspection program**

**690.(1)** A local government may by resolution approve a program (an “**approved inspection program**”) under which authorised persons may enter places to monitor compliance with a local government Act or an aspect of a local government Act.

*Examples of approved inspection programs—*

1. Monitoring compliance with requirements for swimming pool fencing under the *Building Act 1975*.

2. Monitoring compliance with limits provided under a local law about the number of dogs that may be kept at a place.

**(2)** An approved inspection program must be a selective inspection program or systematic inspection program.

**(3)** A selective inspection program provides for the selection, in accordance with the resolution, of places in the local government’s area, or a particular part of the area, to be entered and inspected.

**(4)** A systematic inspection program provides for all places, or all places of a particular type, in the local government’s area, or a particular part of the area, to be entered and inspected.

**(5)** An approved inspection program must state the following—

- (a) the purpose of the program;
- (b) when the program starts;
- (c) for a selective inspection program—
  - (i) objective criteria for selecting places to be entered and inspected; and
  - (ii) if the places are to be selected from a part of the local

- government's area—a description of the part;
- (d) for a systematic inspection program—
    - (i) if places in a part of the local government's area are to be entered and inspected—a description of the part; and
    - (ii) if a type of place is to be entered and inspected—a description of the type;
  - (e) the period (not more than 3 months or another period prescribed under the regulations) over which the program is to be carried out.

### **Notice of proposed inspection program**

**691.(1)** At least 14 days, but not more than 28 days, before an approved inspection program starts, the local government must give notice of the program.

**(2)** The notice must be published in a newspaper circulating generally in the local government's area.

**(3)** The notice must state the following—

- (a) the name of the local government;
- (b) in general terms, the purpose and scope of the program;
- (c) when the program starts;
- (d) the period over which the program is to be carried out;
- (e) that a copy of the program is open to inspection at the local government's public office until the end of the program;
- (f) that a copy of the program may be purchased at the local government's public office until the end of the program;
- (g) the price of a copy of the program.

**(4)** The price of a copy of the program must be no more than the cost to the local government of having the copy available for purchase, and, if the copy is posted to the purchaser, the postage cost.

**Access to program**

**692.** From the publication of the notice about an approved inspection program until the end of the program—

- (a) a copy of the program must be open to inspection at the local government's public office; and
- (b) copies of the program must be available for purchase at the local government's public office at the price stated in the notice.

**Power of entry under approved inspection program**

**693.(1)** An authorised person may enter a place under an approved inspection program at any reasonable time of the day or night.

**(2)** Subsection (1) does not apply to a building or other structure, or the part of a building or other structure, used for residential purposes.

*Division 8—Powers on entry***General powers after entering places**

**694.(1)** This section applies to an authorised person who enters a place under 1 of the following divisions—

- division 4 (Investigations about offences)
- division 6 (Monitoring authorisations and notices and processing applications)
- division 7 (Approved inspection programs).

**(2)** The authorised person may—

- (a) if the entry is under division 4—search any part of the place; or
- (b) inspect, test, photograph or film anything in or on the place; or
- (c) copy a document in or on the place; or
- (d) take samples of or from anything in or on the place; or
- (e) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power

under this division; or

- (f) require the occupier of the place, or a person in or on the place, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e).

(3) A person required to give reasonable help under subsection (2)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—8 penalty units.

(4) If the requirement is to be complied with by the person giving information or producing a document, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might incriminate the person.

(5) This section does not apply to an authorised person who enters a place under section 683(2)(b) (Entry to places) to get the occupier's agreement unless the agreement is given or the entry is otherwise authorised.

### *Division 9—Other enforcement matters*

#### **Authorised person to give notice of damage**

**695.(1)** This section applies if—

- (a) an authorised person damages anything in the exercise of a power under this part; or
- (b) a person who is authorised by an authorised person to take action under this part damages anything in taking the action.

(2) The authorised person must promptly give written notice of the particulars of the damage to the person who appears to be the thing's owner.

(3) However, if for any reason it is not practicable to comply with subsection (2), the authorised person must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the damage happened.

(4) In this section—

“owner” of a thing includes the person in possession or control of the thing.

(5) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the authorised person’s control, the authorised person may state this in the notice.

(6) This section does not apply to damage the authorised person believes, on reasonable grounds, is trivial.

### **Compensation**

**696.(1)** A person may claim compensation if the person incurs loss or expense because of the exercise or purported exercise of a power under this part, including, for example, in complying with a requirement made of the person under this part.

(2) Compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against a local government Act brought against the person making the claim for compensation.

(3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### *Division 10—Special provision for local laws about dogs*

#### **Local laws about dogs**

**697.(1)** A local law about dogs, or to the extent that it is about dogs, may give an authorised person power to enter a place (including a building or other structure, or the part of a building or other structure, used for residential purposes) at the time, with the help and using the force that is necessary and reasonable in the circumstances.

(2) However, the entry may only be for seizing a dangerous dog within

the meaning of the local law.

(3) The other provisions of this chapter do not limit subsections (1) and (2).

(4) Division 9 (Other enforcement matters) applies to the exercise of a power of entry under a local law made under subsection (1), or any other power exercised under a local law because of the entry, as if the power were exercised under this part.

(5) This division expires 2 years after it commences.

## **PART 6—LEGAL PROCESSES INVOLVING LOCAL GOVERNMENTS**

### **Authentication of documents made by local governments**

**698.** A document made by a local government—

- (a) is sufficiently authenticated if it is signed for the local government by—
  - (i) the local government’s mayor or chief executive officer; or
  - (ii) an employee of the local government authorised by the mayor or chief executive officer for the purpose; and
- (b) is not sufficiently authenticated if the only signature purporting to be for the local government is that of a person other than a person mentioned in paragraph (a).

### **Service of documents on local governments**

**699.** A document required or permitted to be served on a local government is properly served if it is given in a way authorised by law to the local government’s chief executive officer.

**Substituted service**

**700.(1)** If an owner of rateable land is known to be absent from the State, a local government may serve a document on the owner by serving it on the owner's agent in the State.

**(2)** If a local government does not know, or is uncertain about, the current address of the place of residence or business of a person, a document may be served on the person—

- (a) if the identity of the person is known—by addressing the document to the person and publishing notice of its substance once in the gazette and once in a newspaper circulating generally throughout the State; or
- (b) if the identity of the person is not known—by addressing the document to the 'owner' or 'occupier' of the land or premises identified in the address and publishing notice of its substance once in the gazette and once in a newspaper circulating generally throughout the State.

**Exemption from stating law in the case of substituted service**

**701.(1)** A provision of a local government Act requiring a document given to any person to contain or be accompanied by a statement of any relevant provision of law is taken to be complied with despite the absence of the statement if—

- (a) the document is served in a way permitted by section 700 (Substituted service); and
- (b) subsection (2) is complied with.

**(2)** A document served in circumstances mentioned in subsection (1) must contain a statement to the effect that particulars of the relevant provision of law may be obtained, free of charge, on application to the local government.

**Service on time share owners**

**702.** A document is taken to be properly served under a local government Act on the owners of a structure subject to a time share scheme if it is addressed to the 'owners' of the land or structure identified in the address

and served in a way authorised by law—

- (a) on the person named in the notice given to the local government under section 715 (Notice of time share scheme to local government) as the person responsible for administration of the scheme as between the participants in the scheme; and
- (b) at the address for service specified in the notice.

### **Acting for local government in legal proceedings**

**703.(1)** In a legal proceeding, the chief executive officer of a local government or other employee authorised in writing by the local government—

- (a) may give instructions and act as authorised agent for the local government; and
- (b) may sign all documents for the local government.

**(2)** A local government must pay the costs incurred by the chief executive officer or other employee of the local government in a legal proceeding.

**(3)** If the Attorney-General could take a proceeding on the relation of a local government to secure compliance with an Act, the local government is taken to sufficiently represent the public interest and may take the proceeding in its own name.

### **Judiciary not disqualified from adjudicating**

**704.** A judge, magistrate or justice is not disqualified from adjudicating in a proceeding to which a local government is a party merely because the judge, magistrate or justice is, or is liable to be, a ratepayer of the local government.

## **PART 7—EVIDENTIARY MATTERS**

**Constitution and limits of local government need not be proved**

**705.** It is not necessary for the plaintiff in a legal proceeding started by, for or against a local government to prove—

- (a) the local government's constitution; or
- (b) the limits of the local government's area; or
- (c) the limits of a division of the local government's area.

**Proof of voters roll**

**706.** In a proceeding, a document purporting to be a copy of the voters roll for a local government's area or a division of a local government's area, and to be certified by the chief executive officer of the local government, is evidence of the roll and of the matters contained in the roll.

**Proof of proceedings of local government**

**707.** In a proceeding—

- (a) an entry in a record kept by the chief executive officer of a local government purporting to record the proceedings of the local government, or of any of its committees, and to be signed by the mayor of the local government or chairperson of the committee, at the time the entry was made; or
- (b) a document purporting to be a copy of, or an extract from, the entry, under the local government's seal, and to be certified by the local government's current chief executive officer;

is evidence of the proceedings recorded by the entry and that the meeting at which the recorded proceedings happened was properly held.

**Evidentiary value of land record**

**708.** In a proceeding in which the liability for rates is relevant, an entry in the land record kept by a local government under this Act, or a document purporting to be a copy of or an extract from the entry, under the local government's seal and to be certified by the local government's chief executive officer is evidence—

- (a) of the matters contained in the entry; and
- (b) that the valuation and rate recorded in the entry were properly made; and
- (c) that the person recorded in the entry as owner of the land mentioned in the entry is liable for payment of the rates levied for the land.

### **Evidentiary value of copies and certificates**

**709.(1)** A copy of a document purporting to be made under authority of a local government or its mayor and purporting to be verified by the mayor or an employee authorised by it, is taken to be, or to evidence, a document made under the local government's authority or its mayor in the absence of evidence to the contrary.

**(2)** The copy of the document is evidence in a proceeding as if it were the original of the document.

**(3)** A certificate purporting to be signed by the chief executive officer of a local government about the state of, or a fact appearing from, a record of the local government is evidence in a proceeding of the matters contained in the certificate.

### **Proof of matters about roads**

**710.(1)** In this section—

**“appropriate officer”** of a local government means an employee of the local government responsible for a road register kept by the local government under this Act.

**(2)** In a proceeding—

- (a) a road register kept by a local government under this Act or a document purporting to be certified by the appropriate officer to be a copy of, or an extract from, an entry in the register is evidence of the categorisation and levels of a road in the local government's area; and
- (b) a certificate purporting to be that of the appropriate officer that the alignment or level of a road in the local government's area has not

been fixed is evidence of the matters contained in the certificate.

### **Proof of directions given to local government**

**711.** In a proceeding, a document purporting to be certified by or for the Minister as a true copy of a direction given to a local government by the Governor in Council or the Minister under this Act is evidence of the giving of the direction and of the matters contained in the direction.

### **Proof of orders for costs**

**712.** In a proceeding, a document purporting to be certified by the person who constitutes an appeal tribunal or a responsible person associated with the conduct of an appeal tribunal as a true copy of an order for payment of costs made by the appeal tribunal under this Act is evidence of the making of the order and of the matters contained in the order.

## **PART 8—GENERAL ADMINISTRATIVE MATTERS**

### **Ownership of things in local government's control**

**713.(1)** In this section—

**“roadway”** means the part of a road used by vehicles, bicycles or pedestrians, and includes—

- (a) a bridge, culvert, ferry, ford, tunnel or viaduct; and
- (b) works associated with the road, including, for example, gutters, stormwater drains, kerbing and channelling.

**(2)** The materials in wharves, jetties and other structures or works under the control of a local government, and in improvements to them, are the local government's property.

**(3)** If a local government, in exercise of the jurisdiction of local government, constructs a roadway or other structure or performs any works on someone else's land, the materials in the roadway, structure or works are the local government's property.

**(4)** Subsection (3) does not apply to the materials in—

- (a) an open drain other than any lining of the drain; or
- (b) a house drain or soil pipe within the meaning of the Standard Sewerage Law.
- (c) anything that is the outcome of work performed under section 661 (Performing work for owner or occupier).

### **Insurance against liability**

**714.** A local government must insure itself by way of—

- (a) public liability insurance; and
- (b) professional indemnity insurance;

in relation to its exercise of local government jurisdiction to a minimum amount prescribed by regulation.

### **Notice of time share scheme to local government**

**715.(1)** If a time share scheme is implemented for a structure on land, the owner of the land must, within 30 days after the implementation, give to the local government written notice of the implementation.

**(2)** The notice must—

- (a) include information about the number of parts of the structure that may at any time be occupied for residential purposes by a person to the exclusion of other occupants of the structure; and
- (b) specify the name and address for service of notices of the person responsible for administration (including maintenance of the structure and other property) of the scheme as between the participants in the scheme; and
- (c) be signed by or for the owner and person mentioned in paragraph (b).

**(3)** A time share scheme is taken to be implemented when any person becomes or agrees to become a participant in the scheme.

**Changes affecting time share schemes**

**716.(1)** If the address for service of a person (the “**previous nominated person**”) whose name and address for service are notified to a local government under section 715 (Notice of time share scheme to local government) changes, the person must immediately give to the local government written notice of the new address for service.

**(2)** If at any time after a notice has been given to a local government under section 715 another person becomes responsible for administration of the time share scheme as between the participants in the scheme, the previous nominated person and the person (the “**new nominated person**”) who has become responsible for the administration must immediately give to the local government notice of the name and address for service of notices of the new nominated person.

**Land registry searches free of charge**

**717.(1)** This section applies to any of the following persons—

- (a) the chief executive officer of a local government;
- (b) an employee of a local government who is authorised by the chief executive officer;
- (c) a solicitor or other agent acting for a local government;
- (d) an employee of a solicitor or agent mentioned in paragraph (c) who is authorised by the solicitor or agent.

**(2)** The person may conduct searches of registers or documents about land in the land registry in accordance with the practice of the registry without payment of a fee.

**CHAPTER 12—LOCAL GOVERNMENT STAFF****PART 1—CORPORATE STRUCTURE AND STAFF  
RESOURCES**

**Corporate structure**

**718.(1)** A local government must have a corporate structure appropriate for the conduct of its affairs.

**(2)** The corporate structure must be approved by the local government by resolution.

**Resources for staff**

**719.** A local government must, by resolution, decide the resources to be allocated to the employment of staff.

**PART 2—EMPLOYMENT OF STAFF AND  
PERSONNEL PRACTICES****Employment of staff**

**720.(1)** A local government—

- (a) must appoint and employ an individual as its chief executive officer; and
- (b) may employ other employees for the exercise of its jurisdiction of local government.

**(2)** The chief executive officer is to appoint the other employees of the local government.

**(3)** However, the local government may decide that it, rather than the chief executive officer, is to appoint employees to fill particular senior executive positions.

**(4)** In appointing employees, the chief executive officer must act consistently with—

- (a) the corporate structure approved by the local government; and
- (b) the resources the local government has decided to allocate to the employment of staff.

(5) The terms of employment of a local government's employees are to be decided by it.

(6) However, subsection (5) has effect subject to any relevant industrial award or agreement.

### **Personnel practices**

**721.(1)** A local government must comply with the following principles in its personnel practices—

- (a) processes for appointing persons to positions are to be directed towards ensuring proper assessment of merit of each applicant;
- (b) employees are to be treated fairly and equitably without resort to arbitrary action, irrelevant personal preference or coercion;
- (c) employees are to be given, as far as practicable, effective education, training and development directed to better organisational and individual performance.

(2) A regulation may require each local government to adopt and implement a plan for equal opportunity in employment.

## **PART 3—CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES**

### **Role of chief executive officer**

**722.(1)** The chief executive officer of a local government has the role of implementing the local government's policies and decisions.

(2) On a day-to-day basis, the chief executive officer's role includes managing the local government's affairs.

(3) The chief executive officer alone is responsible for—

- (a) organising the presentation of reports and reporting to the local government; and
- (b) conducting correspondence between the local government and

- other persons; and
  - (c) managing and overseeing the administration of the local government and its corporate plan; and
  - (d) coordinating the activities of all employees of the local government.
- (4)** The chief executive officer has—
- (a) all the powers necessary for performing the chief executive officer's role; and
  - (b) the powers the local government specifically delegates to the chief executive officer.

### **Delegation by chief executive officer**

**723.(1)** The chief executive officer of a local government may delegate the chief executive officer's powers (including powers delegated to the chief executive officer by the local government) to another employee of the local government.

- (2)** However, the chief executive officer may not delegate—
- (a) a power delegated by the local government if the local government has directed the chief executive officer not to further delegate the power; or
  - (b) a power under section 195 (Registers of interests) or 730 (Registers of interests).
- (3)** All delegations made by the chief executive officer must be recorded in a register of delegations kept by the chief executive officer.
- (4)** The register must contain the particulars prescribed by regulation.
- (5)** The register is open to inspection.
- (6)** In this section—

**“employee”** of a local government includes—

- (a) a person who contracts with it to provide services to it; and
- (b) a person prescribed by regulation.

**Selection of chief executive officer**

**724.(1)** In selecting a person to be its chief executive officer, a local government must have regard to—

- (a) the role of the chief executive officer; and
- (b) the extent of its resources and jurisdiction of local government.

**(2)** A local government must appoint as its chief executive officer a person with enough ability, experience, knowledge and skills to effectively perform the chief executive officer's role.

**Acting chief executive officer**

**725.** A local government may appoint a person to act as its chief executive officer during—

- (a) any vacancy, or all vacancies, in the position; or
- (b) any period, or all periods, when the chief executive officer is absent from duty or cannot, for another reason, perform the position's duties.

**Requests to employees for help or advice**

**726.(1)** A local government councillor may ask for help or advice from—

- (a) the chief executive officer; or
- (b) if the request is made under guidelines made by the chief executive officer—another employee of the local government.

**(2)** If a councillor asks for help or advice from another employee of the local government other than under guidelines made by the chief executive officer, the employee must tell the chief executive officer about the request as soon as is practicable.

**(3)** However, the mayor of the local government may ask for reasonable help or advice from any employee.

**(4)** In this section—

**“employee”** of a local government includes—

- (a) a person who contracts with the local government to provide services to it; and
- (b) a person prescribed by regulation.

### **Role of other local government employees**

**727.** The employees of a local government, under the chief executive officer's direction, help the chief executive officer to implement the local government's policies and decisions.

### **Concurrent employment of local government employees**

**728.(1)** An employee of a local government, other than its chief executive officer—

- (a) may hold more than 1 position under the local government; and
- (b) may, with the agreement of each of the local governments concerned, be employed by more than 1 local government.

**(2)** The chief executive officer of a local government may not—

- (a) hold more than 1 position under the local government; or
- (b) be employed by another local government.

**(3)** However, the chief executive officer of a component local government also may hold a position under the joint local government.

## **PART 4—OBLIGATIONS OF LOCAL GOVERNMENT EMPLOYEES**

### **Integrity of local government employees**

**729.** An employee of a local government must—

- (a) act with integrity in the position held by the employee; and
- (b) act in a way that shows a proper concern for the public interest.

**Registers of interests**

**730.(1)** The mayor of the local government must keep—

- (a) a register of interests of the chief executive officer; and
- (b) a register of interests of the persons who, under a regulation, are related to the chief executive officer.

**(2)** The chief executive officer must keep—

- (a) a register of interests of each senior executive officer; and
- (b) a register of interests of other employees of the local government decided by the local government; and
- (c) a register of interests of the persons who, under a regulation, are related to the persons mentioned in paragraphs (a) and (b).

**(3)** A register—

- (a) must relate to only 1 person; and
- (b) must contain the financial and non-financial particulars prescribed by regulation.

**(4)** If the chief executive officer knows—

- (a) of an interest that the mayor must record in a register of interests kept under subsection (1) in relation to the chief executive officer or a person who, under a regulation, is related to the chief executive officer (a “**related person**”); or
- (b) that particulars of an interest recorded in a register kept under subsection (1) about the chief executive officer or a related person are no longer correct;

the chief executive officer must tell the mayor of the interest, or the correct particulars, in accordance with the regulations.

Maximum penalty—85 penalty units.

**(5)** If another local government employee knows—

- (a) of an interest that the chief executive officer must record in a register of interests kept under subsection (1) in relation to the employee or a person who, under a regulation, is related to the employee (a “**related person**”); or

- (b) that particulars of an interest recorded in a register kept under subsection (1) about the employee or a related person are no longer correct;

the employee must tell the chief executive officer of the interest, or the correct particulars, in accordance with the regulations.

Maximum penalty—85 penalty units.

(6) In this section—

“**employee**” of a local government includes—

- (a) a person who contracts with the local government to provide services to it; and
- (b) a person prescribed by regulation.

### **Access to register of interests**

**731.(1)** A register kept by the mayor or chief executive officer (the “**keeper of the register**”) of a local government is not open to inspection other than by—

- (a) a councillor of the local government; or
- (b) the chief executive officer; or
- (c) a person permitted by law to have access to information in the register, or the person’s agent.

(2) A person seeking access to a register must apply in writing to the keeper of the register.

(3) The keeper of the register must record—

- (a) the name and home or business address of each person given access to the register; and
- (b) the day the access is given.

(4) The keeper of the register must advise—

- (a) if the keeper of the register is the mayor—the chief executive officer of any access given to the chief executive officer’s register and any register of a person who, under a regulation, is related to the chief executive officer; and

- (b) if the keeper of the register is the chief executive officer—an employee of any access given to the employee’s register and any register of a person who, under a regulation, is related to the employee.

(5) A person must not knowingly disclose information obtained from a register to a person other than a person mentioned in subsection (1)(a), (b) or (c).

Maximum penalty—85 penalty units.

### **Queries on content of register**

**732.(1)** A person who suspects on reasonable grounds that a register does not contain particulars that should be in the register may inform the keeper of the register.

(2) The keeper of the register must immediately inform the employee concerned.

(3) The employee must, within 30 days of being informed—

- (a) if the register needs to be amended—give the keeper of the register the appropriate particulars in writing; or
- (b) if the register does not need to be amended—
  - (i) complete a statutory declaration to the effect that the particulars in the register are a true record of fact; and
  - (ii) give the statutory declaration to the keeper of the register.

Maximum penalty—85 penalty units.

(4) In this section—

“**employee**” of a local government includes—

- (a) a person who contracts with the local government to provide services to it; and
- (b) a person prescribed by regulation.

### **Disclosure of employee’s interest in particular issues**

**733.(1)** An employee of a local government who has a material personal

interest in an issue to be, or being, dealt with by the employee in the course of the employee's duties—

- (a) must immediately inform the chief executive officer, in writing, of the interest; and
- (b) must not deal with, or further deal with, the issue except under the chief executive officer's written directions.

Maximum penalty—35 penalty units.

(2) If the employee mentioned in subsection (1) is the chief executive officer, the references in paragraphs (a) and (b) to the chief executive officer are taken to be references to the mayor.

(3) In this section—

“**employee**” of a local government includes—

- (a) a person who provides services to the local government under a contract; and
- (b) a person prescribed by regulation.

### **Improper conduct by local government employees**

**734.(1)** A local government employee must not ask for or accept a fee or another benefit (other than remuneration paid by the local government) for doing something as a local government employee.

Maximum penalty—35 penalty units.

(2) A person who is or has been a local government employee must not make improper use of information acquired as a local government employee—

- (a) to gain, directly or indirectly, an advantage for the person or someone else; or
- (b) to cause harm to the local government.

Maximum penalty—35 penalty units.

(3) A local government employee must not wilfully destroy or damage property or records of the local government.

Maximum penalty—35 penalty units.

(4) A person who is or has been a local government employee must not release information the person knows, or should reasonably know, is information that—

- (a) is confidential to the local government; and
- (b) the local government wishes to keep confidential.

Maximum penalty—35 penalty units.

(5) In this section—

“**employee**” of a local government includes—

- (a) a person who provides services to the local government under a contract; and
- (b) a person prescribed by regulation.

### **Indemnity for local government employees**

**735.(1)** A local government employee does not incur civil liability for an act or omission done honestly and without negligence under this Act.

(2) A liability that would, apart from this section, attach to a local government employee attaches instead to the local government.

## **PART 5—DISCIPLINARY ACTION**

### **Limitations on who may take disciplinary action**

**736.** Disciplinary action against an employee of a local government may be taken only by the appointer of the employee.

### **When disciplinary action may be taken**

**737.** The appointer of a local government employee may take disciplinary action against the employee if the appointer is satisfied the employee—

- (a) has engaged in misconduct; or
- (b) has been incompetent or neglected the employee’s duty.

**Types of disciplinary action**

**738.(1)** Disciplinary action against an employee of a local government may be—

- (a) dismissal; or
- (b) demotion; or
- (c) a deduction from salary or wages of an amount of not more than 2 penalty units; or
- (d) a written reprimand.

**(2)** Not later than 2 years after a local government takes disciplinary action against an employee, it must destroy any record it has of the disciplinary action taken.

**Deductions from salary or wages**

**739.** If disciplinary action taken against a local government employee consists of a deduction from the salary or wages of the employee, the local government may make the deduction—

- (a) if no appeal is brought against the disciplinary action—once the period for starting an appeal against the disciplinary action has ended; or
- (b) if an appeal is brought against the disciplinary action and the decision on the appeal confirms the deduction or changes the amount of the deduction—once notice of the decision is given to the employee; or
- (c) if an appeal is brought against the disciplinary action and the decision on appeal changes the disciplinary action to a deduction from the salary or wages of the employee—once notice of the decision is given to the employee; or
- (d) if an appeal is brought against the disciplinary action and the appeal is discontinued or struck out—once the appeal is discontinued or struck out.

**Suspension of employees**

**740.(1)** If it appears on reasonable grounds to the appointer of a local government employee that the employee is liable to disciplinary action under section 737 (When disciplinary action may be taken), the appointer may suspend the employee from duty.

(2) If disciplinary action is not taken against an employee who is suspended from duty within 14 days after the suspension happens, the suspension stops.

(3) Suspension of an employee from duty does not affect—

- (a) the continuity of the employee's service in employment with the local government; and
- (b) the entitlements previously accrued to the employee from employment with the local government; or
- (c) the accrual of entitlements to the employee during the period of suspension.

(4) A suspended employee must be paid the employee's full remuneration as at the start of the suspension for the period of suspension if—

- (a) the disciplinary action taken against the employee is other than dismissal; or
- (b) if the disciplinary action taken against the employee is dismissal—on an appeal under any Act, an order is made for the employee's reinstatement or re-employment; or
- (c) no disciplinary action is taken against the employee.

(5) A suspended employee must not be paid remuneration while the suspension is in force.

**Employee to be given notice of grounds for disciplinary action**

**741.(1)** A local government employee against whom disciplinary action is taken must, when the employee is given notice of the disciplinary action taken, be given written notice of—

- (a) the grounds on which the action is taken; and

(b) the particulars of conduct claimed to support the grounds.

(2) The grounds and particulars are taken to be the only grounds and particulars for the disciplinary action taken, and no other ground or particular of conduct can be advanced in any proceeding to support the disciplinary action.

## **PART 6—APPEALS ABOUT DISCIPLINARY ACTION**

### **Appeal against disciplinary action**

**742.(1)** A local government employee who is dissatisfied with disciplinary action taken against the employee may appeal to an appeal tribunal.

(2) However, an employee may not appeal to an appeal tribunal if the disciplinary action taken against the employee is dismissal.

(3) This section does not prevent an employee from seeking relief against a dismissal under the *Industrial Relations Act 1990*.

### **Formation of appeal tribunal**

**743.** An appeal tribunal for this part is formed by a person, appointed by the Minister, who is independent of the local government and the employee.

### **Secretary of appeal tribunals**

**744.(1)** The chief executive of the department is the secretary of each appeal tribunal formed under this part.

(2) A regulation may provide for—

- (a) how the chief executive is to help appeal tribunals to operate; and
- (b) how the chief executive is to advise parties of the results of appeals; and
- (c) certification by the chief executive of amounts payable by persons under this part; and

- (d) the use of the certificates in proceedings for the recovery of the amounts.

### **Expenses of tribunal**

**745.(1)** A person forming an appeal tribunal is entitled to be paid the salary, fees and allowances decided by the Governor in Council.

**(2)** A local government whose employee appeals under this part to an appeal tribunal must meet—

- (a) all expenses properly incurred by the appeal tribunal (including salaries, fees and allowances payable to the person forming the appeal tribunal); and
- (b) the cost to the department of providing the services of a secretary and other necessary administrative services to the appeal tribunal.

### **Grounds of appeal**

**746.** An appeal to an appeal tribunal may be brought on 1 or more of the following grounds—

- (a) there has been a failure to comply with procedures required by law for taking disciplinary action against the appellant;
- (b) the appellant is innocent of the matter claimed as grounds for the disciplinary action;
- (c) the grounds for the disciplinary action are unreasonable or insufficient;
- (d) the disciplinary action taken is excessive.

### **Decisions open to appeal tribunal**

**747.(1)** On an appeal the appeal tribunal may—

- (a) if the appeal is against demotion—allow the appeal and order reinstatement of the appellant in the position held by the appellant immediately before demotion, without loss of service; or
- (b) allow the appeal, set aside the disciplinary action taken and order the taking of the disciplinary action that, in the tribunal's opinion,

should be taken against the appellant; or

- (c) if the appeal is against disciplinary action other than demotion—allow the appeal and set aside the disciplinary action taken; or
- (d) dismiss the appeal and confirm the disciplinary action taken.

(2) If an appeal tribunal is satisfied that an appellant was not given written notice under section 741 (Employee to be given notice of grounds for disciplinary action), the tribunal must allow the appeal and order that the appellant be restored, in all respects, to a position no less favourable than the appellant would have been in if the disciplinary action had not been taken.

(3) In assessing whether disciplinary action is excessive, an appeal tribunal may have regard to the appellant's employment record.

### **Duties of appeal tribunal**

**748.** In hearing an appeal, the appeal tribunal—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

### **How to start an appeal**

**749.(1)** An appeal is started by—

- (a) filing a written notice of appeal with the chief executive of the department; and
- (b) giving a copy of the notice to the local government.

(2) The notice of appeal must be filed within 1 month after the employee is given notice of the disciplinary action taken.

(3) However, if an appeal is filed late—

- (a) the Minister still must appoint a person to form an appeal tribunal for the appeal; and
- (b) whether or not the appeal is heard is in the discretion of the appeal tribunal.

(4) The notice of appeal must state the grounds of appeal.

### **Appeal tribunal may decide procedures**

**750.(1)** The appeal tribunal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate; and
- (c) may decide the procedures to be followed before the appeal starts, and in the appeal.

(2) However, the appeal tribunal must comply with this part and any procedural rules prescribed by regulation.

### **Preliminary hearing of appeals**

**751.(1)** Without limiting section 750(1)(c) (Appeal tribunal may decide procedures), the appeal tribunal may conduct a preliminary hearing of an appeal to decide interlocutory and other preliminary matters.

(2) In a preliminary hearing, the appeal tribunal may—

- (a) make orders for the conduct of the appeal; or
- (b) require parties to make discovery or permit inspection of evidentiary material; or
- (c) require parties to file pleadings; or
- (d) give a party leave to be represented by counsel or a solicitor; or
- (e) strike out the appeal because it is frivolous or vexatious.

### **Appeal tribunal's powers**

**752.** In hearing an appeal, the appeal tribunal may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or by statutory declaration; and
- (c) adjourn the appeal; and

- (d) permit a document to be amended; and
- (e) disregard any defect, error, omission or insufficiency in a document; and
- (f) give a party leave to be represented by counsel or a solicitor.

### **Prosecution of appeal**

**753.(1)** An appeal must be prosecuted diligently.

**(2)** An appeal tribunal may strike out an appeal if it considers the appellant is not prosecuting the appeal diligently.

**(3)** An appeal may be discontinued by the appellant by written notice given to the appeal tribunal and to the respondent.

### **Notice to witness**

**754.(1)** The person forming the appeal tribunal may, by written notice given to a person, require the person to attend an appeal at a specified time and place to give evidence or produce specified documents.

**(2)** A person required to appear as a witness before an appeal tribunal is entitled to the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the appeal tribunal.

**(3)** Fees to which a witness is entitled under subsection (2) must be paid to the witness—

- (a) if the witness is called by the appellant to give evidence—by the appellant; and
- (b) if the witness is not called by the appellant—by the local government.

### **Duty of witness at appeal**

**755.(1)** A person appearing as a witness at an appeal must not—

- (a) fail to take an oath or make an affirmation when required by the appeal tribunal; or
- (b) fail, without reasonable excuse, to answer a question the person is

required to answer by the appeal tribunal; or

- (c) fail, without reasonable excuse, to produce a document the person is required to produce by a notice under section 754(1) (Notice to witness).

Maximum penalty—35 penalty units.

(2) It is a reasonable excuse for a person to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

### **Leave for attending an appeal**

**756.(1)** A local government must give leave of absence on full pay to an employee who—

- (a) gives evidence at an appeal; or
- (b) is the agent of the appellant at an appeal.

(2) The leave of absence must be for the period reasonably necessary for attending the appeal.

### **Contempt of appeal tribunal**

**757.** A person must not—

- (a) insult the person forming the appeal tribunal in an appeal; or
- (b) deliberately interrupt an appeal; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the appeal tribunal is conducting an appeal; or
- (d) do anything that would be a contempt of court if the person forming the appeal tribunal were a judge acting judicially.

Maximum penalty—50 penalty units.

### **Change of person forming appeal tribunal**

**758.** An appeal is not affected by a change in the person forming the appeal tribunal.

**Costs of appeal**

**759.(1)** An appeal tribunal may make an order for payment of costs of an appeal as it considers just.

(2) Unless an appeal tribunal's order states otherwise, costs of a proceeding on an appeal are on the scale that applies to taxation of costs in the District Court.

(3) In making an order for payment of costs, an appeal tribunal may order—

- (a) the local government to reimburse the appellant for some or all of the amounts payable by the appellant under section 754(3) (Notice to witness); or
- (b) the appellant to reimburse the local government concerned for some or all of the amounts payable by the local government under—
  - (i) section 754(3); or
  - (ii) if the appeal tribunal, having heard the evidence in the appeal, considers that the appeal was vexatious or frivolous—section 745(2) (Expenses of tribunal).

**Recovery on orders of appeal tribunal**

**760.(1)** An order of an appeal tribunal for payment of costs must be in written form and a copy of the order must be given to—

- (a) the appellant; and
- (b) the local government.

(2) A document purporting to be a copy of an order of an appeal tribunal for payment of a stated amount of costs may be filed in the registry of a court having jurisdiction in an action for debt in the amount stated in the order, and enforced as an order of the court.

(3) If an order of an appeal tribunal for payment of costs does not state the amount to be paid, the costs payable may be recovered by action in a court of competent jurisdiction as a debt payable by the person by whom the costs are ordered to be paid, to the person to whose benefit the order was made.

## CHAPTER 13—SUPERANNUATION

### PART 1—INTERPRETATION

#### Definitions

**761.** In this chapter—

“**approved scheme**” see section 781.

“**audit**”, of a superannuation scheme, means an audit required under the Commonwealth Superannuation Act.

“**board**” means the Queensland Local Government Superannuation Board.

“**Commonwealth Superannuation Act**” means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

“**contributory member**”, of the scheme, means a member who is required to make contributions for membership of the scheme.

“**election notice**”, for an employee of a local government, means a written notice given to the local government and board by the employee electing to become a permanent employee for this chapter.

“**eligible member**” see section 772(1).

“**employees’ scheme**” means the Local Government Employees’ Superannuation Scheme under the repealed Act.

“**local government**” includes a local government entity.

“**local government entity**” means an entity—

(a) that—

- (i) under an Act, exercises a power similar to a local government power; or
- (ii) under an Act, exclusively performs a function in relation to the system of local government; or
- (iii) exclusively exercises a local government power for a local government; and

(b) that is prescribed under the regulations to be a local government

entity for this chapter.

**“local government power”** means a power that may be exercised by a local government in exercising its jurisdiction of local government.

**“member”** means a member of the scheme.

**“non-contributory member”**, of the scheme, means a member who is not required to make contributions for membership of the scheme.

**“permanent employee”**, of a local government, see section 762.

**“prescribed number”**, of directors, see section 769(1).

**“relevant person”** means a person (other than an eligible member) who—

- (a) works for, or provides a service to, a local government; and
- (b) is prescribed under the regulations as a relevant person.

**“relevant persons scheme”** means a superannuation scheme providing superannuation, retirement or other similar benefits for relevant persons.

**“repealed Act”** means the *Local Government Superannuation Act 1985*.

**“salary”**, of an employee, means the employee’s salary under the trust deed.

**“scheme”** means the Local Government Superannuation Scheme.

**“special permanent employee”**, of a local government, means a permanent employee who, immediately before the commencement, was required under the repealed Act to make contributions for membership of the employees’ scheme at the rate of 5% of the employee’s salary.

**“standard permanent employee”**, of a local government, means a permanent employee who—

- (a) immediately before the commencement, was required under the repealed Act to make contributions for membership of the employees’ scheme at the rate of 6% of the employee’s salary; or
- (b) starts employment after the commencement.

**“trust deed”** see section 771(2).

**Meaning of “permanent employee”**

**762.(1)** A “permanent employee” of a local government (other than a local government entity) is an employee of the local government who—

- (a) has been continuously employed by the local government, or the local government and other local governments consecutively, for at least 1 year; or
- (b) has—
  - (i) been continuously employed by the local government, or the local government and other local governments consecutively, for less than 1 year; and
  - (ii) given an election notice to the local government and board.

**(2)** However, if an employee is solely employed by a local government to carry out work on a particular job or project and the employee’s employment is dependent on the time taken to carry out the job or project, the employee is not a permanent employee.

**(3)** For subsection (1), an employee is not continuously employed if—

- (a) the employee’s employment is broken by at least 60 consecutive days when the employee was not employed, and is not in a position to accept an offer of employment, by a local government; or
- (b) the board is satisfied the employee is no longer employed by a local government and has no intention of taking up employment with a local government.

**(4)** An employee of a local government entity is also a permanent employee if the entity declares the employee to be a permanent employee for this chapter by written notice given to the board.

## **PART 2—QUEENSLAND LOCAL GOVERNMENT SUPERANNUATION BOARD**

### *Division 1—Establishment, functions and powers of board*

#### **Establishment of board**

**763.** The board established under the repealed Act is continued in existence under the name, Queensland Local Government Superannuation Board.

#### **Legal status of board**

**764.(1)** The board—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

**(2)** Judicial notice must be taken of the imprint of the board's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is established.

#### **Board's functions**

**765.** The board's functions are—

- (a) to act as trustee of the scheme; and
- (b) to manage approved schemes; and
- (c) to act as trustee of, and establish and act as trustee of, relevant persons schemes.

#### **Board's powers**

**766.(1)** The board may do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

**(2)** Without limiting subsection (1), the board—

- (a) has the powers given to it by this chapter; and
  - (b) has, in the performance of its functions, all the powers of an individual.
- (3) It may, for example—
- (a) enter into contracts; and
  - (b) acquire, hold, deal with and dispose of property.

### *Division 2—Board of directors*

#### **Board of directors**

**767.** There is a board of directors of the board.

#### **Role of the board of directors**

**768.(1)** The board of directors is responsible for how the board performs its functions and exercises its powers.

(2) Without limiting subsection (1), it is the role of the board of directors to ensure the board performs its functions in a proper, effective and efficient way.

#### **Composition of board of directors**

**769.(1)** In this section—

**“prescribed number”** of directors means 3 or, if another number is prescribed under the regulations, the other number.

- (2) The board of directors is to consist of—
- (a) the prescribed number of directors appointed on the nomination of the Local Government Association; and
  - (b) the prescribed number of directors appointed on the nomination of members of the scheme; and
  - (c) if the trust deed provides for the appointment of an additional independent director and an independent director is

appointed—the appointed independent director.

(3) The directors must be appointed under rules established to comply with the Commonwealth Superannuation Act.<sup>6</sup>

### *Division 3—General*

#### **Delegation of board’s powers**

**770.** The board may delegate its powers to an employee of the board.

## **PART 3—LOCAL GOVERNMENT SUPERANNUATION SCHEME**

### *Division 1—Continuation and membership of scheme*

#### **Scheme continued**

**771.(1)** The Local Government Employees’ Superannuation Scheme established under the repealed Act is continued in existence under the name, Local Government Superannuation Scheme.

(2) Rules governing the operation of the scheme must be set out in a trust deed made by the board (the “**trust deed**”).

(3) Without limiting subsection (2), the trust deed must contain provision about matters that, under the Commonwealth Superannuation Act, must be contained in the governing rules of regulated funds within the meaning of that Act.

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<sup>6</sup> See sections 107 (Duty of trustee of employer-sponsored fund to establish procedure for appointing member representatives) and 108 (Duty of trustee of employer-sponsored fund to establish procedure for appointing independent trustee or independent member of board of directors of corporate trustee).

**Membership of scheme**

**772.(1)** The following persons are eligible to be members of the scheme (“eligible members”)—

- (a) a councillor of a local government;
- (b) an employee of a local government or the board;
- (c) a contractor of a local government;
- (d) a member of the governing body of a local government entity;
- (e) another person for whom a local government or the board is required under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) to contribute to a superannuation scheme;
- (f) another person prescribed under the regulations.

**(2)** An employee of a local government (other than a local government entity) or the board must be a member of the scheme.

***Division 2—Contributions for permanent employees*****Local governments’ liability for permanent employees**

**773.(1)** A local government that employs a permanent employee must pay to the scheme yearly contributions for the employee within the time stated in the trust deed.

**(2)** The yearly contributions for the employee are calculated at the following rates—

- (a) if the employee is a special permanent employee—
  - (i) for the year starting 1 July 1995—15% of the employee’s salary; or
  - (ii) for the year starting 1 July 1996—15.5% of the employee’s salary; or
  - (iii) for each later year—16% of the employee’s salary;
- (b) if the employee is a standard permanent employee—
  - (i) for the year starting 1 July 1995—17% of the employee’s salary; or

- (ii) for the year starting 1 July 1996—17.5% of the employee's salary; or
- (iii) for each later year—18% of the employee's salary.

(3) The yearly contributions include contributions required to be paid to the scheme for the member under an industrial agreement or award.

### **Permanent employees' liability for contributions**

**774.** A permanent employee of a local government for whom the local government is required to pay yearly contributions to the scheme must pay to the local government yearly contributions calculated at the following rate—

- (a) if the employee is a special permanent employee—5% of the employee's salary;
- (b) if the employee is a standard permanent employee—6% of the employee's salary.

### **Additional contributions to scheme**

**775.(1)** A member, or local government for a member, may make additional contributions to the scheme to secure additional benefits under the trust deed.

(2) Subsection (1) has effect subject to section 186.<sup>7</sup>

### **Contributions may be deducted from employees' salaries**

**776.(1)** A local government may deduct the amount of an employee's contributions or any part of them from the employee's salary or other amount owing to it by the employee.

(2) Subsection (1) applies despite any other Act.

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<sup>7</sup> Section 186 (Superannuation benefits for councillors)

**Adjustment of contributions because of change in salary**

**777.(1)** The board may, by written notice given to a local government, require the local government to give the board the salary details for each of the local government's permanent employees as at 1 January or 1 July in a stated year.

(2) The local government must comply with the notice.

(3) If a permanent employee's salary has changed, the board must—

- (a) calculate the yearly contributions payable for the employee based on the employee's new salary; and
- (b) give written notice of the amount of contributions payable for the employee to the local government.

(4) The contributions stated in the notice become payable for the employee from the time stated in the notice.

(5) However, if the employee's salary has decreased and the employee gives written notice to the board that the employee wants to pay contributions as if the employee's salary had not decreased, the board must calculate the yearly contributions payable for the employee based on the employee's former salary.

(6) The employee's notice must be given within the time stated in the trust deed.

***Division 3—Contributions for non-contributory members*****Local governments' liability for non-contributory members**

**778.(1)** A local government that employs a non-contributory member must pay to the scheme all superannuation contributions required to be paid to the scheme for the member under an industrial agreement or award.

(2) A local government (other than a local government entity) that employs a non-contributory member must pay to the scheme all superannuation contributions required to be paid for the member under an Act of the State or Commonwealth.

***Division 4—General*****Interest payable on outstanding contributions**

**779.(1)** If a local government does not pay an amount to the scheme within the time stated under the trust deed, interest is payable on the amount by the local government to the scheme.

(2) Interest is payable at the rate prescribed under the regulations and calculated on a daily basis.

(3) However, the board may waive the payment of interest.

**PART 4—MISCELLANEOUS****Prohibition on local governments establishing certain superannuation schemes**

**780.(1)** A local government must not establish or join in establishing a superannuation scheme for the benefit of its employees.<sup>8</sup>

(2) Subsection (1) does not apply to a local government entity.

**Management of other superannuation schemes**

**781.** With the Governor in Council's approval, the board may manage another superannuation scheme (an "**approved scheme**") for the scheme's trustee.

**Relevant persons superannuation schemes**

**782.** With the Governor in Council's approval, the board may—

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<sup>8</sup> For superannuation schemes for councillors, see section 186 (Superannuation benefits for councillors).

- (a) act as trustee of a relevant persons scheme; or
- (b) establish, and act as trustee of, a relevant persons scheme.

### **Auditor-General's role**

**783.** An audit of a superannuation scheme for which the board acts as trustee must be carried out by the Auditor-General.

### **Application of chapter to board's employees**

**784.** For eligible members who are board employees, this chapter applies to the board with all necessary changes and any changes prescribed under the regulations.

## **CHAPTER 14—GENERAL**

### **PART 1—LOCAL GOVERNMENT ASSOCIATION**

#### **Establishment of corporation**

**785.(1)** The Local Government Association of Queensland (Incorporated) is established under this Act.

**(2)** The Local Government Association—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its name.

**(3)** The Local Government Association has, in the performance of its objects and functions, all the powers of an individual.

**(4)** It may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property.

(5) Judicial notice must be taken of the imprint of the Local Government Association's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is established.

### **Rules**

**786.(1)** The Local Government Association may, by resolution, make rules with respect to—

- (a) all matters necessary or convenient for the management of the Association; and
- (b) payment to the Association by each local government that is a member of annual subscriptions and of levies fixed by an entity specified under the rule.

(2) A rule is not subordinate legislation.

(3) A rule has effect only if approved by the Governor in Council.

(4) If the Local Government Association makes a rule, it must give to the Minister a copy of its resolution making the rule and a statement of the reasons for the rule.

(5) If the Governor in Council approves the rule, notice of the approval and of the rule must be published in the gazette.

### **Litigation of common interest**

**787.(1)** A local government may contribute to the Local Government Association amounts towards expenses of litigation for matters of common interest to local governments.

(2) The Local Government Association may pay amounts towards expenses of litigation for matters of common interest to local governments.

### **When payments by local governments are payable**

**788.(1)** An amount payable for any purpose to the Local Government Association by a local government is payable within 30 days after a written

notice signed by the executive director of the Association specifying the amount payable is given to the chief executive officer of the local government.

(2) An unpaid amount is a debt payable by the local government to the Local Government Association.

### **Accounts**

**789.** The Local Government Association must keep—

- (a) full and accurate accounts of all amounts received or paid by it; and
- (b) an accurate record of the purposes for which the amounts have been received or paid.

### **Annual balance and audit**

**790.(1)** In each financial year, the Local Government Association must prepare an annual account as at the date fixed under its rules.

(2) The annual account must—

- (a) be prepared as soon as practicable after the date mentioned in subsection (1); and
- (b) show a true statement of the Local Government Association's receipts and payments during the previous year; and
- (c) show the balance of the account.

## **PART 2—MISCELLANEOUS**

### **Delegation by Minister**

**791.** The Minister may delegate the Minister's powers under this Act or another local government Act to an officer of the department.

**Delegation by chief executive of department**

**792.** The chief executive of the department may delegate the chief executive's powers under this Act or another local government Act to an officer of the department.

**Regulation making power**

**793.** The Governor in Council may make regulations under this Act.

**CHAPTER 15—TRANSITIONAL AND SAVINGS PROVISIONS, REPEALS AND AMENDMENTS****PART 1—TRANSITIONAL AND SAVINGS PROVISIONS***Division 1—Preliminary***Definitions**

**794.** In this part—

**“pre-existing law”** means—

- (a) a by-law or ordinance, made by a local government, as in force immediately before the commencement of chapter 8 (Local laws and local law policies); or
- (b) a by-law or ordinance made under section 800 (Status of proposed laws);

**“repealed Local Government Act”** means the *Local Government Act 1936* as in force immediately before it was repealed;

**“unamended City of Brisbane Act”** means the *City of Brisbane Act 1924* as in force immediately before it was amended by this Act.

**References to “commencement day”**

**795.** In this part, a reference in a provision to the “**commencement day**” is a reference to the day the provision commences.

**References to local authority etc.**

**796.(1)** A reference in an Act or document—

- (a) to a local authority is a reference to a local government; and
- (b) to the area of a local authority is a reference to the basic territorial unit of a local government, and includes a reference to the joint local government area of a joint local government; and
- (c) to a joint local authority board, joint local authority or joint board is a reference to a joint local government; and
- (d) to the area of a joint local authority board, joint local authority or joint board is a reference to the joint local government area of a joint local government; and
- (e) to the chairman or chairperson of a local authority is a reference to the mayor of a local government, and includes a reference to the president of a joint local government; and
- (f) to the deputy chairman or deputy chairperson of a local authority is a reference to the deputy mayor of a local government, and includes a reference to a deputy president of a joint local government; and
- (g) to the president, chairman or chairperson of a joint local authority board, joint local authority or joint board is a reference to the president of a joint local government; and
- (h) to the deputy president, deputy chairman or deputy chairperson of a joint local authority board, joint local authority or joint board is a reference to the deputy president of a joint local government; and
- (i) to an alderman, councillor or member of a local authority is a reference to a councillor of a local government, and includes a reference to a member of a joint local government; and
- (j) to the town clerk, shire clerk or clerk of a local authority (other than the Brisbane City Council) is a reference to the chief

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executive officer of a local government, and includes a reference to the chief executive officer of a joint local government; and

- (k) to the clerk of a joint local authority board, joint local authority or joint board is a reference to the chief executive officer of a joint local government; and
- (l) to a by-law or ordinance of a local government is a reference to a local law; and
- (m) to any fund (other than the trust fund) of a local authority (other than the Brisbane City Council) is a reference to the operating fund of a local government; and
- (n) to the director of local government is a reference to the chief executive of the department; and
- (o) to the *Local Government Act 1936* is taken to be a reference to this Act.

(2) Subsection (1) does not affect the application of the *Acts Interpretation Act 1954*, section 14H (References taken to be included in citation of law).

(3) The application of subsection (1) to a reference is not displaced, wholly or partly, merely because the reference is accompanied by a reference—

- (a) to the *Local Government Act 1936*, or a provision of that Act, as amended from time to time or as in force at a particular time; or
- (b) to a particular time.

### ***Division 2—Financial operation and accountability***

#### **Administration of sinking fund for liquidation of current borrowings**

**797.(1)** The corporation continued in existence by the repealed Local Government Act, section 28(15) under the name ‘Trustees of the Local Authorities Debt Redemption Fund’ (the “**Trustees**”) is continued in existence under the name ‘Trustees of the Local Governments Debt Redemption Fund’.

- (2) Its function is to administer sinking funds for the liquidation of

amounts borrowed by local governments before the commencement day.

(3) The repealed Local Government Act, section 28(15) continues to apply to the Trustees with any necessary changes and any changes prescribed by regulation.

### *Division 3—Local laws and local law policies*

#### **Application to Brisbane City Council**

**798.** This division applies to the Brisbane City Council.

#### **Status of pre-existing laws**

**799.** A by-law or ordinance, made by a local government, as in force immediately before the commencement of chapter 8 (Local laws and local law policies) is a local law (a “**pre-existing law**”).

#### **Status of proposed laws**

**800.(1)** If a notice under the repealed Local Government Act, section 31(27)(iii) has been published about a proposed by-law before the commencement of chapter 8 (Local laws and local law policies), the process stated in the repealed Local Government Act, section 31 may be used to make the by-law.

(2) If a notice under the unamended City of Brisbane Act, section 38(4) has been published about a proposed ordinance before the commencement of chapter 8, the process stated in the unamended City of Brisbane Act, section 38 may be used to make the ordinance.

(3) A by-law or ordinance made under this section is a local law (a “**pre-existing law**”).

#### **Review of pre-existing law**

**801.(1)** A local government must review its pre-existing laws to identify any provision of a pre-existing law that serves no useful purpose (a “**redundant provision**”).

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(2) After reviewing a pre-existing law, the local government must, by resolution, decide whether the pre-existing law contains any redundant provisions.

(3) On the day of its decision (or as soon as practicable after that day), the local government must advise the Minister of its decision.

(4) If the local government decides the pre-existing law does not contain any redundant provisions, a notice about the review must be published in the gazette stating the following—

- (a) the name of the local government;
- (b) the name of the pre-existing law reviewed;
- (c) that the pre-existing law was reviewed by it to identify any provision that serves no useful purpose but no provision was identified;
- (d) the date of the local government's resolution about the review.

(5) If the local government decides the pre-existing law contains a redundant provision, it must, by resolution, make a local law repealing the identified provision.

(6) A notice of the making of the local law must be published in the gazette stating the following—

- (a) the name of the local government making the local law;
- (b) the name of the local law;
- (c) the date of the local government's resolution making the local law.

(7) The notice may also state the following—

- (a) the name of the pre-existing law reviewed;
- (b) that the pre-existing law was reviewed by it to identify any provision that serves no useful purpose;
- (c) what provision of the pre-existing law was identified and repealed;
- (d) that a certified copy of the local law is open to inspection at the local government's public office and at the department's State office.

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(8) The local government's chief executive officer must certify the required number of copies of the local law to be the local law as made by the local government.

(9) On the day of notification about the review or the making of the law (or as soon as practicable after that day), the local government must give the Minister—

- (a) a copy of the notice; and
- (b) if a law is made—the required number of certified copies of the local law.

(10) Chapter 8 (Local laws and local law policies), part 2 (Making local laws and policies) does not apply to a local law made under this section.

**Repeal if no review of pre-existing law**

**802.** A pre-existing law for which a notice is not published under section 801 (Review of pre-existing laws) within 3 years of the commencement of chapter 8 (Local laws and local law policies) expires at the end of that period.

**Expiry of division**

**803.** This division expires 3 years after it commences.

*Division 4—Rates and charges***Saving of rates and charges**

**804.(1)** If—

- (a) a local government has, before the commencement day, made or levied a rate under the repealed Local Government Act; and
- (b) the rate has not been fully paid;

the rate is taken to have been made or levied under this Act.

(2) If a local government has, before the commencement day, fixed a

charge for services or facilities provided by it, the charge is taken to have been fixed under this Act.

### **Saving of categorisation of land for rating purposes etc.**

**805.(1)** If, before the commencement day and under the repealed Local Government Act, a local government has—

- (a) categorised land in its area for the purpose of making and levying rates; or
- (b) decided on categories for the land; or
- (c) adopted criteria for categorising the land; or
- (d) done, or omitted to do, anything else in relation to the categorisation of land that could be done under this Act;

the categorisation or other action is taken to have happened under this Act.

(2) Anything done, or omitted to be done, under the repealed Local Government Act by anyone else in relation to the categorisation of land (including, for example, any objection made to, or any appeal started against, the categorisation of land) is taken to have been done, or omitted to be done, under this Act.

(3) This Act applies to an act or omission mentioned in subsection (2) with any necessary changes and any changes prescribed by regulation.

### **Saving of averaged land values for rating purposes**

**806.(1)** This section applies if, before the commencement day and under the *Local Government (Averaging of Valuations) Act 1991*, a local government has decided by resolution that, for the purpose of making and levying rates for the financial year ending 30 June 1994, the rateable value of each parcel of rateable land in its area is to be the land's averaged rateable value within the meaning given by that Act.

(2) The resolution has effect as if it were made under section 555 (Local government may decide to average land values for rating purposes).

(3) This section applies to the Brisbane City Council.

**Saving of proceedings to recover overdue rates**

**807.(1)** This section applies if a local government has, before the commencement day and under the repealed Local Government Act, started a proceeding to recover an overdue rate.

(2) If, on the commencement day, the proceeding is not finished, it may be continued under the repealed Act.

(3) If, on the commencement day, the proceeding is finished but an order or judgment made in the proceeding is unsatisfied, the order or judgment may be satisfied under the repealed Act.

(4) This section applies to the Brisbane City Council.

**Saving of action to sell or acquire land for overdue rates**

**808.(1)** If—

- (a) a local government has, before the commencement day and under the repealed Local Government Act, taken action to acquire or sell land for unpaid rates; but
- (b) the local government has not yet acquired the land, or sold the land and applied the proceeds under that Act;

the acquisition or sale may be completed under the repealed Act.

(2) This section applies to the Brisbane City Council.

**Expiry of division**

**809.** This division expires 3 years after it commences.

*Division 5—Local government staff***Town clerk, shire clerk or clerk become chief executive officer**

**810.(1)** This section applies to a person who, immediately before the commencement day, was the town clerk, shire clerk or clerk of a local authority or Joint Local Authority Board under the repealed Local Government Act.

(2) On the commencement day, the person becomes the chief executive officer of the relevant local government or joint local government.

### **Filling of position**

**811.(1)** This section applies if, before the commencement day, applications for filling a position in a local authority under the repealed Local Government Act were sought by advertisement.

(2) The procedure for filling the position may be continued as if the repealed Local Government Act were still in force and this Act had not commenced.

### **Employees suspended before commencement of this section**

**812.(1)** This section applies to an employee of a local authority under the repealed Local Government Act who, immediately before the commencement day, was suspended from office.

(2) The employee may be dealt with as if the employee had been suspended under this Act, except that the local government concerned must either—

- (a) discontinue the disciplinary action against the employee; or
- (b) dismiss the employee.

### **Continuation of provisions for appeal against dismissal**

**813.(1)** Despite the repeal of the *Local Government Act 1936*, section 17B and schedule 4 of the repealed Local Government Act continue in force.

(2) In section 17B as continued in force by this section, a reference to schedule 4 is a reference to the repealed Local Government Act, schedule 4 as continued in force by this section.

(3) In schedule 4 as continued in force by this section, a reference to section 17B is a reference to the repealed Local Government Act, section 17B as continued in force by this section.

(4) Section 796 (References to local authority etc.) applies to the repealed

Local Government Act, section 17B and schedule 4 as continued in force by this section as if the section and the schedule were parts of an Act.

### **Expiry of division**

**814.** This division expires 2 years after it commences.

## ***Division 11A—Local Government Superannuation***

### ***Subdivision A—Interpretation***

#### ***Definition***

**798A.** *In this division*<sup>9</sup>—

**“relevant persons plan”** means the Local Government Superannuation (Relevant Persons) Plan established under the repealed Act.

#### ***Meaning of expressions used in ch 12A***

**798B.** *An expression that is not defined in this division, but is defined in chapter 12A, has the meaning given in chapter 12A.*

## ***Subdivision B—Local Government Superannuation Board***

### ***First board of directors***

**798C.** *The appointment, under the repealed Act, part 5 the first board of directors of the board starts on the commencement.*

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<sup>9</sup> This division is included for information purposes only. It has expired. See s 798M.

***Assets and liabilities of board***

**798D.** *The assets and liabilities of the board immediately before the commencement continue to be the assets and liabilities of the board.*

***Board's employees***

**798E.** *The continuation of the board under chapter 12A does not affect—*

- (a) the continuity of employment of a person who, immediately before the commencement, was an employee of the board and who continues to be an employee of the board; and*
- (b) the person's entitlements as an employee.*

***Continuation of board does not affect legal personality etc.***

**798F.(1)** *The change of name and continuation of the board under chapter 12A does not—*

- (a) affect the legal personality or identity of the board; or*
- (b) affect rights or obligations of the board or anyone else; or*
- (c) make legal proceedings by or against the board defective.*

**(2)** *If a legal proceeding might have been continued or started by or against the board before the commencement, the proceeding may be continued or started by or against the board after the commencement.*

***Subdivision C—Local Government Employee's Superannuation Scheme and relevant persons plan******Assets and liabilities of scheme***

**798G.** *The assets and liabilities of the scheme immediately before the commencement continue to be the assets and liabilities of the scheme.*

***Trust deed***

**798H.** *On the commencement, the trust deed made under the repealed Act, part 5 is the trust deed for the scheme.*

***Continuation of scheme does not affect members' entitlements***

**798I.** *The change of name and continuation of the scheme under chapter 12A does not affect members' entitlements accrued under the scheme.*

***Members of relevant persons plan become members of scheme***

**798J.** *On the commencement, a person who, immediately before the commencement, was a member of the relevant persons plan—*

- (a) ceases to be have any entitlement under the plan; and*
- (b) becomes a member of the scheme, with all the entitlements accrued under the plan immediately before the commencement continuing to be the member's entitlements under the scheme.*

***Assets and liabilities of relevant persons plan***

**798K.** *On the commencement—*

- (a) the assets and liabilities of the relevant persons plan become assets and liabilities of the scheme; and*
- (b) all rights, entitlements and obligations of the relevant persons plan under contracts and arrangements between the board and other persons become the rights, entitlements and obligations of the scheme.*

***Subdivision D—Miscellaneous******Local government entities***

**798L.** *An entity declared under the repealed Act, section 6 to be a local government for the repealed Act is taken to be a local government entity.*

***Expiry of division***

**798M.** *This division expires the day after the commencement.*

***Division 6—General*****Existing rules of Local Government Association**

**793.** The rules of the Local Government Association in force immediately before the commencement day are taken to have been made, and approved by the Governor in Council, under this Act on that day.

**Transitional regulations**

**794.(1)** A regulation may make provision with respect to any matter for which—

- (a) it is necessary or convenient to assist the transition from the operation of the *Local Government Superannuation Act 1985* (whether before or after its repeal) or the repealed Local Government Act to the operation of this Act; and
- (b) this Act does not make provision or sufficient provision.

**(2)** A regulation under subsection (1) may be given retrospective operation to a date not earlier than the date of assent.

**(3)** This section applies to the City of Brisbane.

**Expiry of division**

**795.** This division expires on 25 March 1996.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 June 1995. Future amendments of the Local Government Act 1993 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[x]	=	Reprint No.[x]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

Reprint No.	Amendments included	Reprint date
1	Act No. 1 of 1994	26 March 1994
2	Act No. 77 of 1994	3 April 1995

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of Table	Reprint No.
Obsolete and redundant provisions	2
Corrected minor errors	2

### 6 List of legislation

#### Local Government Act 1993 No. 70

date of assent 7 December 1993

ss 1–4, ch 4 pt 1, ch 5, ch 6 pt 2, s 689, ch 13 pt 2, ch 14 pt 1  
(ss 764–5, div 5, s 800) commenced on date of assent

ch 13 pt 3 commenced 24 February 1994 (see s 2(1A) and 1994 No. 1)  
s 395 commenced 1 July 1994 (see s 2(2))  
remaining provisions commenced on 26 March 1994 (see s 2(5))

as amended by—

**Local Government Legislation Amendment Act 1994 No. 1 pts 1, 3**

date of assent 24 February 1994  
commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–3 sch 2**

date of assent 10 May 1994  
ss 1–2 commenced on date of assent  
amds 4–8 commenced 26 March 1994 (see s 3 sch 2)  
remaining provisions commenced on date of assent

**Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 ss 1–2, 6 sch 2**

date of assent 14 September 1994  
ss 1–2 commenced on date of assent  
commenced 18 November 1994 (1994 SL No. 399)

**Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2**

date of assent 1 December 1994  
ss 1–2 commenced on date of assent  
not yet proclaimed into force

**Fire Service Legislation Amendment Act 1994 No. 71 pts 1, 3**

date of assent 1 December 1994  
ss 1–2 commenced on date of assent  
remaining provisions commenced 26 March 1994 (see s 2)

**Local Government Amendment Act 1994 No. 77**

date of assent 1 December 1994  
ss 1–3 sch 2 commenced on date of assent (see s 2)  
remaining provisions commenced 10 March 1995 (1995 SL No. 54)

**Land Act 1994 No. 81 ss 1–2, 527 sch 5**

date of assent 1 December 1994  
ss 1–2 commenced on date of assent  
remaining provision commenced 1 July 1995 (1995 SL No. 185)

**Local Government Legislation Amendment Act 1995 No. 11 pts 1, 4**

date of assent 5 April 1995  
ss 1–2, 8–9, 11, 13, 15 commenced on date of assent  
remaining provisions commenced 1 July 1995 (see s 2)

**Transport Infrastructure Amendment (Rail) Act 1995 No. 32 pt 1, s 23 sch**

date of assent 14 June 1995  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 1995 (see s 2(2) and 1995 SL No. 162  
s 2(3))

## **7 List of annotations**

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**Continuation of board does not affect legal personality etc.**

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**sdiv** ins 1995 No. 11 s 14  
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om R1 (see RA s 40)

## **8 List of forms**

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pubd gaz 25 March 1994 p 1151

**Form 2 version 1—Statement of interests of a councillor's related person**

pubd gaz 25 March 1994 p 1151

**Form 3 version 1—Notice of correct particulars for a statement of interests of a councillor or a councillor's related person**

pubd gaz 25 March 1994 p 1151

**Form 4 version 1—Statement of interests of a relevant employee**

pubd gaz 25 March 1994 p 1151

**Form 5 version 1—Statement of interests of a relevant employee’s related person**

pubd gaz 25 March 1994 p 1151

**Form 6 version 1—Notice of correct particulars for a statement of interests of a relevant employee or a relevant employee’s related person**

pubd gaz 25 March 1994 p 1151

**Form 7 version 1—Transfer (for the purposes of section 32 of the Local Government Regulation 1994)**

pubd gaz 31 March 1994 p 1267

**Form 8 version 1—General request (for the purposes of sections 33 and 35 of the Local Government Regulation 1994)**

pubd gaz 31 March 1994 p 1267

**9 Table of changed citations and remade laws**TABLE OF CHANGED CITATIONS AND REMADE LAWS  
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Old	New	Reference provision
Land Act 1962	Land Act 1994	Land Act 1994 s 511(h)

**10 Table of obsolete and redundant provisions**TABLE OF OBSOLETE AND REDUNDANT PROVISIONS  
under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
references to Queensland implied	Acts Interpretation Act 1954 s 35

**11 Table of corrected minor errors**TABLE OF CORRECTED MINOR ERRORS  
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Section	Description
271(2)(e)	om ‘must contain’ ins ‘contain’
569(2)(b)	om ‘for occupied’ ins ‘occupied’

808(1)(b)

om 'has not'

ins 'the local government has not'

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## **14 Provisions that have not commenced and are not incorporated into reprint**

**Building Units and Group Titles Act 1994 s 229 sch 2 reads as follows—**

### **LOCAL GOVERNMENT ACT 1993**

#### **1. Section 4, definition of “community titles Act”—**

*omit.*

#### **2. Section 4—**

*insert—*

‘ “community titles Act” means—

- the *Building Units and Group Titles Act 1994*
- the *Integrated Resort Development Act 1987*

- the *Mixed Use Development Act 1993*
- another Act prescribed under the regulations.’.