Queensland

Local Government Act 2009

Current as at [Not applicable]

Indicative reprint note

This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

The point-in-time date for this indicative reprint is the introduction date for the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021—11 March 2021.

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Local Government Act 2009

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Local Government Act 2009

An Act to provide a system of local government in Queensland, and for related purposes

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Local Government Act 2009*.

2 Commencement

(1) Amendments 20 and 21 of the *Local Government Act 1993* in schedule 1 commence on assent.

(2) The following provisions commence immediately before the repeal of the*Local Government Act 1993* under section 289—

(a) section 284;

(b) the remaining amendments of the *Local Government Act 1993* in schedule 1;

(c) schedule 2.

(3) Chapter 9, part 1 commences on 1 July 2009.

(4) The remaining provisions of the Act commence on a day to be fixed by proclamation.

3 Purpose of this Act

The purpose of this Act is to provide for—

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(a) the way in which a local government is constituted and the nature and extent of its responsibilities and powers; and

(b) a system of local government in Queensland that is accountable, effective, efficient and sustainable.

Note—

The system of local government consists of a number of local governments. See the *Constitution of Queensland 2001*, section 70 (System of local government).

4 Local government principles underpin this Act

(1) To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires—

(a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and

(b) any action that is taken under this Act to be taken in a way that—

(i) is consistent with the local government principles; and

(ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.

(2) The ***local government principles*** are—

(a) transparent and effective processes, and decision-making in the public interest; and

(b) sustainable development and management of assets and infrastructure, and delivery of effective services; and

(c) democratic representation, social inclusion and meaningful community engagement; and

(d) good governance of, and by, local government; and

(e) ethical and legal behaviour of councillors, local government employees and councillor advisors.

5 Relationship with City of Brisbane Act 2010

Although the Brisbane City Council is a local government, the *City of Brisbane Act 2010*, rather than this Act, provides for—

(a) the way in which the Brisbane City Council is constituted and the nature and extent of its responsibilities and powers; and

(b) a system of local government in Brisbane.

Note—

See the *City of Brisbane Act 2010*, section 5.

6 Definitions

The dictionary in schedule 4 defines particular words used in this Act.

Chapter 2 Local governments

Part 1 Local governments and their constitution, responsibilities and powers

7 What this part is about

This part explains—

(a) what a local government is; and

(b) what a local government area is; and

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(c) the responsibilities and powers of a local government, its councillors and its employees.

8 Local government's responsibility for local government areas

(1) A ***local government*** is an elected body that is responsible for the good rule and local government of a part of Queensland.

Note—

This is provided for in the *Constitution of Queensland 2001*, section 71 (Requirements for a local government).

(2) A part of Queensland that is governed by a local government is called a ***local government area***.

Note—

The Brisbane City Council is the local government for the City of Brisbane. For the local government area of the Brisbane City Council, see the *City of Brisbane Act 2010*, section 7.

(3) A local government area may be divided into areas called ***divisions***.

(4) A regulation may—

(a) describe the boundaries of a local government area; or

(b) describe the boundaries of any divisions; or

(c) fix the number of councillors for a local government and any divisions of the local government area; or

(d) name a local government area; or

(e) classify a local government area as a city, town, shire or region.

9 Powers of local governments generally

(1) A local government has the power to do anything that is necessary or convenient for the good rule and local government of its local government area.

Note—

Also, see section 262 (Powers in support of responsibilities) for more information about powers.

(2) However, a local government can only do something that the State can validly do.

(3) When exercising a power, a local government may take account of Aboriginal tradition and Island custom.

(4) A local government may exercise its powers—

(a) inside the local government area; or

(b) outside the local government area (including outside Queensland)—

(i) with the written approval of the Minister; or

(ii) as provided in section 10(5).

(5) When a local government is exercising a power in a place that is outside its local government area, the local government has the same jurisdiction in the place as if the place were inside its local government area.

(6) Subsections (7) and (8) apply if a local government is a component local government for a joint local government.

(7) Despite subsection (1), a local government may not, within the joint local government's area, exercise a power for which the joint local government has jurisdiction.

(8) However, the local government may exercise the power as a delegate of the joint local government.

10 Power includes power to conduct joint government activities

(1) A local government may exercise its powers by cooperating with 1 or more other local, State or Commonwealth governments to conduct a joint government activity.

(2) A ***joint government activity*** includes providing a service, or operating a facility, that involves the other governments.

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(3) The cooperation with another government may take any form, including for example—

(a) entering into an agreement; or

(b) creating a joint local government entity, or joint government entity, to oversee the joint government activity.

(4) A joint government activity may be set up for more than 1 purpose.

Example—

Three local governments may create a joint local government entity to manage an aerodrome that services each of their local government areas, and may also enter into an agreement to sell water in bulk to 1 of the local governments.

(5) A local government may exercise a power in another government's area for the purposes of a joint government activity, in the way agreed by the governments.

(6) However, if the power is to be exercised under a local law, the local law must expressly state that it applies to the other government's area.

Note—

See section 29 for more information about making local laws.

11 Local governments are bodies corporate etc.

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.

12 Responsibilities of councillors

(1) A councillor must represent the current and future interests of the residents of the local government area.

(2) All councillors of a local government have the same responsibilities, but the mayor has some extra responsibilities.

(3) All councillors have the following responsibilities—

(a) ensuring the local government—

(i) discharges its responsibilities under this Act; and

(ii) achieves its corporate plan; and

(iii) complies with all laws that apply to local governments;

(b) providing high quality leadership to the local government and the community;

(c) participating in council meetings, policy development, and decision-making, for the benefit of the local government area;

(d) being accountable to the community for the local government's performance.

(4) The mayor has the following extra responsibilities—

(a) leading and managing meetings of the local government at which the mayor is the chairperson, including managing the conduct of the participants at the meetings;

(b) leading, managing, and providing strategic direction to, the chief executive officer in order to achieve the high quality administration of the local government;

(c) directing the chief executive officer of the local government under section 170;

(d) conducting a performance appraisal of the chief executive officer, at least annually, in the way that is decided by the local government (including as a member of a committee, for example);

(e) ensuring that the local government promptly provides the Minister with the information about the local

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government area, or the local government, that is requested by the Minister;

(f) being a member of each standing committee of the local government;

(g) representing the local government at ceremonial or civic functions.

(5) A councillor who is not the mayor may perform the mayor's extra responsibilities only if the mayor delegates the responsibility to the councillor.

(6) When performing a responsibility, a councillor must serve the overall public interest of the whole local government area.

13 Responsibilities of local government employees

(1) All employees of a local government have the same responsibilities, but the chief executive officer has some extra responsibilities.

(2) All employees have the following responsibilities—

(a) implementing the policies and priorities of the local government in a way that promotes—

(i) the effective, efficient and economical management of public resources; and

(ii) excellence in service delivery; and

(iii) continual improvement;

(b) carrying out their duties in a way that ensures the local government—

(i) discharges its responsibilities under this Act; and

(ii) complies with all laws that apply to local governments; and

(iii) achieves its corporate plan;

(c) providing sound and impartial advice to the local government;

(d) carrying out their duties impartially and with integrity;

(e) ensuring the employee's personal conduct does not reflect adversely on the reputation of the local government;

(f) improving all aspects of the employee's work performance;

(g) observing all laws relating to their employment;

(h) observing the ethics principles under the *Public Sector Ethics Act 1994*, section 4;

(i) complying with a code of conduct under the *Public Sector Ethics Act 1994*.

(3) The chief executive officer has the following extra responsibilities—

(a) managing the local government in a way that promotes—

(i) the effective, efficient and economical management of public resources; and

(ii) excellence in service delivery; and

(iii) continual improvement;

(b) managing the other local government employees through management practices that—

(i) promote equal employment opportunities; and

(ii) are responsive to the local government's policies and priorities;

(c) establishing and implementing goals and practices in accordance with the policies and priorities of the local government;

(d) establishing and implementing practices about access and equity to ensure that members of the community have access to—

(i) local government programs; and

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(ii) appropriate avenues for reviewing local government decisions;

(e) the safe custody of—

(i) all records about the proceedings, accounts or transactions of the local government or its committees; and

(ii) all documents owned or held by the local government;

(f) complying with requests from councillors under section 170A—

(i) for advice to assist the councillor carry out his or her role as a councillor; or

(ii) for information, that the local government has access to, relating to the local government.

Part 2 Councillors for divisions of local government areas

14 What this part is about

(1) This part is about the number of electors that are to be in each division of a local government area, to ensure democratic representation.

(2) This part does not apply to an indigenous regional council.

15 Number of councillors for divisions

(1) Each division of a local government area must have a reasonable proportion of electors for each councillor elected, or to be elected, for the division.

(2) A ***reasonable proportion of electors*** for a councillor of a division is the number of electors that is worked out by dividing the total number of electors in the local government

area (as nearly as can be found out) by the total number of councillors (other than the mayor) currently elected, or to be elected, for the local government, plus or minus—

(a) for a local government area with more than 10,000 electors—10%; or

(b) for any other local government area—20%.

Examples—

1 If the total number of electors in the local government area is 15,000, and the number of councillors (other than the mayor) is 5, the reasonable proportion of electors is 3,000 (i.e. 15,000 divided by 5) plus or minus 10%, i.e. between 2,700 and 3,300 electors.

2 If the total number of electors in the local government area is 5,000, and the number of councillors (other than the mayor) is 5, the reasonable proportion of electors is 1,000 (i.e. 5,000 divided by 5) plus or minus 20%, i.e. between 800 and 1,200 electors.

(3) When changing a division, including changing the number of councillors elected, or to be elected, for the division, the reasonable proportion of electors for a councillor of a division must be worked out as near as practicable to the time when the change is to happen.

16 Review of divisions and councillors

A local government must, no later than 1 March in the year before the year of the quadrennial elections—

(a) review whether each division of its local government area has a reasonable proportion of electors for each councillor elected for the division; and

(b) give the electoral commissioner and the Minister notice of the results of the review.

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Part 3 Changing a local government area, name or representation

Division 1 Introduction

17 What this part is about

(1) This part is about making a local government change.

(2) A ***local government change*** is a change of—

(a) the boundaries of a local government area; or

(b) any divisions of a local government area, other than the City of Brisbane; or

(c) the number of councillors for a local government or divisions of a local government area; or

(d) the name of a local government area; or

(e) the classification of a local government area (from a town to a city, for example).

(3) In summary, the process for making a local government change is as follows—

- *assessment*—the change commission assesses whether a proposed local government change is in the public interest
- *implementation*—the Governor in Council implements the local government change under a regulation.

(4) The ***change commission***, which conducts the assessment phase of the process, is an independent body that is created under this Act.

Note—

See division 3 for the creation of the change commission.

Division 2 The process for change

18 Who may start the change process

Only the Minister may propose a local government change to the change commission.

19 Assessment

(1) The change commission is responsible for assessing whether a local government change proposed by the Minister is in the public interest.

(2) In doing so, the change commission must consider—

(a) whether the proposed local government change is consistent with a Local Government Act; and

(b) the views of the Minister about the proposed local government change; and

(c) any other matters prescribed under a regulation.

(3) The change commission may conduct its assessment in any way that it considers appropriate, including, for example, by—

(a) asking for submissions from any local government that would be affected by the proposed local government change; or

(b) holding a public hearing (in the way set out in chapter 7, part 1) to ask the public for its views about the proposed local government change.

(4) However, the Minister may direct the change commission in writing to conduct its assessment of the proposed local government change in a particular way.

(5) Despite subsection (3), the change commission must comply with the Minister's direction.

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(6) The change commission must let the public know the results of its assessment and the reasons for the results, by publishing notice of the results—

(a) in a newspaper that is circulating generally in the local government area; and

(b) in the gazette; and

(c) on the electoral commission's website.

(7) The change commission must also give the results of its assessment to the Minister.

(8) The change commission may recommend that the Governor in Council implement the change commission's assessment.

20 Implementation

(1) The Governor in Council may implement the change commission's recommendation under a regulation.

(2) The regulation may provide for anything that is necessary or convenient to facilitate the implementation of the local government change.

(3) For example, the regulation may provide for—

(a) holding, postponing or cancelling a local government election; or

(b) the transfer of assets and liabilities from a local government to another local government.

(4) 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 change.

(5) A ***State tax*** is a tax, charge, fee or levy imposed under an Act, other than a duty under the *Duties Act 2001*.

21 Decisions under this division are not subject to appeal

A decision of the change commission under this division is not subject to appeal.

Note—

See section 244 for more information.

Division 3 The change commission

22 Change commission is established

(1) The Local Government Change Commission (the ***change commission***) is established.

(2) The change commission is made up of—

(a) the electoral commissioner; or

(b) any combination of the following persons that the electoral commissioner nominates—

(i) the electoral commissioner;

(ii) the deputy electoral commissioner;

(iii) a casual commissioner.

23 Casual commissioners

(1) The Governor in Council may appoint the number of casual commissioners that the Governor in Council considers appropriate.

(2) The Governor in Council must appoint a qualified person to be a casual commissioner.

(3) A person is qualified to be a casual commissioner if the person—

(a) has—

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(i) extensive knowledge of and experience in local government, public administration, law, public finance or community affairs; or

(ii) other qualifications and experience that the Governor in Council considers appropriate; but

(b) is not—

(i) a member of an Australian Parliament; or

(ii) a nominee for election as a member of an Australian Parliament; or

(iii) a councillor; or

(iv) a nominee for election as a councillor; or

(v) a person who has accepted an appointment as a councillor; or

(vi) a member of a political party; or

(vii) a person who has a conviction for an indictable offence that is not an expired conviction.

(4) A casual commissioner may be appointed for a term of not longer than 3 years.

(5) A casual commissioner holds office on the conditions (including about fees and allowances, for example) that the Governor in Council decides.

(6) A casual commissioner may resign by a signed notice of resignation given to the Minister.

24 Conflict of interests

(1) This section applies if—

(a) a person on the change commission has a direct or indirect financial interest in a matter being considered, or about to be considered, by the change commission; and

(b) the interest could conflict with the proper performance of the person's responsibilities for the matter.

(2) The person must not take part, or take any further part, in the consideration of the matter.

Maximum penalty—35 penalty units.

(3) As soon as practicable after the person becomes aware that this section applies to the matter, the person must—

(a) if the person is the electoral commissioner—direct the deputy electoral commissioner to constitute the change commission in the electoral commissioner's place; or

(b) otherwise—inform the electoral commissioner.

Maximum penalty—35 penalty units.

(4) If subsection (3)(b) applies, the electoral commissioner must take the person's place.

25 Annual report of change commission

(1) The electoral commissioner must prepare a report about the change commission's operations during each financial year.

(2) The report must include details of the following directions given to the change commission by the Minister during the financial year for which the report is prepared—

(a) a direction given under section 19(4);

(b) a direction given under the *City of Brisbane Act 2010*, section 21(4).

(3) The electoral commissioner must give a copy of the report to the Minister, before the end of the first October after the financial year.

(4) The electoral commissioner must include the report in the annual report of the electoral commission (that is prepared under the Electoral Act, section 18).

(5) The electoral commissioner must ensure that the public can inspect copies of the report—

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(a) at the electoral commission's office in Brisbane; and

(b) on the electoral commission's website.

Chapter 2A Joint local governments

Part 1 Preliminary

25A What this chapter is about

(1) This chapter explains what a joint local government is and its responsibilities and powers.

Note—

For other flexible forms of cooperation between local governments, see section 10.

(2) A ***joint local government*** is an entity that, within a joint local government area, takes over particular responsibilities from its component local governments.

(3) A ***joint local government area*** is a part of the State that consists of the whole or parts of 2 or more local government areas of component local governments.

(4) A ***component local government*** is 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.

(5) In this chapter ***local government*** includes the Brisbane City Council.

Part 2 Establishment and operation of joint local governments

25B Constitution of joint local governments

(1) Before establishing a joint local government, the proposed component local governments must reach agreement about the constitution of the joint local government.

(2) The ***constitution*** of a joint local government is a document setting out the following—

(a) the name of the joint local government;

(b) the responsibilities to be transferred to the joint local government from its component local governments;

(c) the boundaries of the joint local government area;

(d) the number of members of the joint local government to which each component local government is entitled;

(e) the process for appointing members;

(f) the proportion of the cost of the operations of the joint local government that must be contributed by each of its component local governments;

(g) the recovery of the cost of the operations of the joint local government;

(h) another matter—

(i) for which it is necessary or convenient to provide for the joint local government's establishment or operation; but

(ii) for which this Act does not make provision or adequate provision.

(3) The boundaries of a joint local government area may not be beyond the boundaries of its component local governments.

(4) Only a councillor of a component local government may be a member of a joint local government.

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(5) The members of a joint local government are not entitled to any additional remuneration or allowances for being members of the joint local government.

25C Establishment of joint local governments

(1) A joint local government is established for an area if 2 or more local governments approve, by resolution, the constitution for the joint local government.

(2) Two or more joint local governments may be established for the same joint local government area, or part of a joint local government area, if the joint local governments are to have different functions.

(3) Each component local government must ensure the public may inspect or purchase a copy of an approved constitution for the joint local government at the component local government's public office.

25D Joint local governments are bodies corporate etc.

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.

25E Powers of joint local governments generally

(1) A joint local government has the same powers as a local government to do anything that is necessary or convenient for performing its responsibilities.

Notes—

1 For the powers of a local government, see sections 9 and 262.

2 A joint local government only has the responsibilities given to it by its component local governments under its constitution. See section 25B(2).

(2) In exercising a power under subsection (1), a joint local government has the same limitations and obligations that its component local governments would have under this or another Act in exercising the power.

Example—

If a component local government must comply with particular requirements before exercising a power under an Act, a joint local government must also comply with the requirements before exercising the same power.

(3) For the purpose of subsections (1) and (2), a reference to a local government in this or another Act is taken to include a reference to a joint local government.

(4) A joint local government may exercise its powers in its own name.

25F Restriction on power to make or levy rates and charges

(1) A joint local government can not make or levy any rates or charges on land.

(2) A component local government of a joint local government may make or levy rates and charges 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 for the rates or charges relates to a matter within the joint local government's jurisdiction.

25G Limitation on powers of a component local government

(1) A component local government may not, within a joint local government area, exercise a power for which the joint local government has jurisdiction.

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

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25H Chairperson and deputy chairperson

A joint local government must appoint a chairperson and deputy chairperson from its members, by resolution, at—

(a) the first meeting of the joint local government; and

(b) at its first meeting after each quadrennial election after the meeting mentioned in paragraph (a).

25I Disbursement from operating fund of joint local government for purposes other than exclusive jurisdiction

(1) A joint local government may make a disbursement from its operating fund for any purpose that—

(a) is not within the exclusive jurisdiction of the joint local government; but

(b) is within the jurisdiction of its component local governments.

(2) However, the disbursement may be made only if—

(a) the joint local government has, by resolution, decided the amount of the disbursement is not required for exercising its exclusive jurisdiction; and

(b) the component local governments approve the purpose for which the disbursement is to be made.

(3) The approval may be given for the purpose for disbursements in more than 1 financial year.

(4) A disbursement under this section may be made—

(a) to a component local government or another entity; or

(b) directly by the joint local government.

25J Winding up joint local governments

(1) A joint local government may, by resolution, decide to wind up the joint local government.

(2) If a joint local government acts under subsection (1), the joint local government must cease to carry out activities except so far as is required for winding up the joint local government.

Chapter 3 The business of local governments

Part 1 Local laws

Division 1 Introduction

26 What this part is about

(1) This part is about local laws.

(2) A ***local law*** is a law made by a local government.

(3) Unless there is a contrary intention, a reference in this Act to a ***local law*** includes a reference to—

(a) an interim local law; and

(b) a subordinate local law; and

(c) a local law that incorporates a model local law.

(4) An ***interim local law*** is a local law that has effect for 6 months or less.

(5) A ***subordinate local law*** is a local law that—

(a) is made under a power contained in a local law; and

(b) provides for the detailed implementation of the broader principles contained in the local law.

(6) A subordinate local law is called that because it is subordinate to the local law under which it is made, so that if there is any

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inconsistency between the subordinate local law and the local law, the local law prevails to the extent of the inconsistency.

(7) The Minister may approve, by gazette notice, a local law as being suitable for incorporation by all local governments into their local laws.

(8) This type of local law is a ***model local law***.

27 Interaction with State laws

If there is any inconsistency between a local law and a law made by the State, the law made by the State prevails to the extent of the inconsistency.

Division 2 Making, recording and reviewing local laws

28 Power to make a local law

(1) A local government may make and enforce any local law that is necessary or convenient for the good rule and local government of its local government area.

(2) However, a local government must not make a local law—

(a) that sets a penalty of more than 850 penalty units for each conviction of failing to comply with a local law, including each conviction when there is more than 1 conviction for a continuing offence or repeat offence; or

(b) that purports to stop a local law being amended or repealed in the future; or

(c) about a subject that is prohibited under division 3.

29 Local law making process

(1) A local government may decide its own process for making a local law to the extent that the process is not inconsistent with this part.

(2) A local government makes a local law by passing a resolution to make the local law.

(3) If a local government proposes to make a local law about a matter (the ***new local law***) and there is an existing local law about the same matter that would be inconsistent with the new local law, the local government must amend or repeal the existing local law so that there is no inconsistency.

Note—

The new local law may include the amendment or repeal of the inconsistent law in the same instrument.

(4) An interim local law must include a provision stating when the law expires.

(5) A local government must ensure its local laws are drafted in compliance with the guidelines issued by the Parliamentary Counsel under the *Legislative Standards Act 1992*, section 9 for local laws and subordinate local laws.

(6) To remove any doubt, it is declared that a local government does not have to carry out any public consultation before making either of the following—

(a) an interim local law;

(b) a local law that only incorporates a model local law and does not contain an anti-competitive provision.

29A State interest check

(1) This section applies if a local government proposes to make a local law other than the following—

(a) a local law that incorporates a model local law;

(b) a subordinate local law.

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(2) However, this section also applies to a local law that incorporates a model local law if the local law includes more than—

(a) the model local law; or

(b) any amendment or repeal of an existing local law that would be inconsistent with the model local law.

(3) A local government must consult with relevant government entities about the overall State interest in the proposed local law before making the local law.

29B Publication of local laws

(1) A local government must let the public know that a local law has been made by the local government, by publishing a notice of making the local law—

(a) in the gazette; and

(b) on the local government's website.

(2) The notice must be published within 1 month after the day when the local government made the resolution to make the local law.

(3) The notice in the gazette must state—

(a) the name of the local government; and

(b) the date when the local government made the resolution to make the local law; and

(c) the name of the local law; and

(d) the name of any existing local law that was amended or repealed by the new local law.

(4) The notice on the local government's website must state—

(a) the name of the local government; and

(b) the date when the local government made the resolution to make the local law; and

(c) the name of the local law; and

(d) the name of any existing local law that was amended or repealed by the new local law; and

(e) if the local law incorporates a model local law—that fact; and

(f) if the local law is an interim local law—that fact, and the date on which the interim local law expires; and

(g) if the local law is a subordinate local law—the name of the local law that authorises the subordinate local law to be made; and

(h) the purpose and general effect of the local law; and

(i) if the local law contains an anti-competitive provision—that fact; and

(j) that a copy of the local law may be—

(i) inspected and purchased at the local government's public office; and

(ii) viewed by the public on the department's website.

(5) As soon as practicable after the notice is published in the gazette, the local government must ensure a copy of the local law may be inspected and purchased by the public at the local government's public office.

(6) A copy of a local law must cost no more than the cost to the local government of making the copy available for purchase.

(7) Within 14 days after the notice is published in the gazette, the local government must give the Minister—

(a) a copy of the notice; and

(b) a copy of the local law in electronic form.

30 Expiry of interim local law revives previous law

(1) This section applies if—

(a) an interim local law amends or repeals a local law; and

(b) the interim local law expires; and

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(c) the interim local law is not made (either with or without change) as a local law.

(2) When the interim local law expires—

(a) the local law is revived in its previous form; and

(b) any subordinate local law or provision of a subordinate local law, that stopped having effect because the local law was amended or repealed, is revived in its previous form.

(3) The ***previous form*** of a local law, subordinate local law, or provision of a subordinate local law is the form it was in immediately before the interim local law commenced.

(4) This section does not affect anything that was done or suffered under the interim local law before it expired.

(5) This section applies despite the *Acts Interpretation Act 1954*, section 19.

31 Local law register

(1) A local government must keep a register of its local laws, in the way that is required under a regulation.

(2) The public may inspect the register at the local government's public office.

(3) The department's chief executive must keep a database of all local governments' local laws and ensure a copy of the database may be viewed by the public on its website.

32 Consolidated versions of local laws

(1) A local government may prepare and adopt a consolidated version of a local law.

(2) A ***consolidated version*** of a local law is a document that accurately combines a local government's local law, as it was originally made, with all the amendments made to the local law since the local law was originally made.

(3) When the local government adopts the consolidated version of the local law, the consolidated version is taken to be the local law, in the absence of evidence to the contrary.

(4) Within 7 days after the local government adopts the consolidated version of the local law, the local government must give a copy of the consolidated version to the Minister.

Division 3 Local laws that can not be made

34 What this division is about

This division specifies the subjects that a local government must not make a local law about.

35 Network connections

(1) A local government must not make a local law that regulates network connections.

(2) A ***network connection*** is an installation that has the sole purpose of connecting a home or other structure to an existing telecommunications network.

(3) A local law, to the extent that it is contrary to this section, has no effect.

36 Election advertising

(1) A local government must not make a local law that—

(a) prohibits or regulates the distribution of how-to-vote cards; or

(b) prohibits the placement of election signs or posters.

(2) A ***how-to-vote card*** includes a how-to-vote card under the Electoral Act.

(3) An ***election sign or poster*** is a sign or poster that is able, or is intended, to—

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(a) influence a person about voting at any government election; or

(b) affect the result of any government election.

(4) A ***government election*** is an election for a local, State or Commonwealth government.

(5) A local law, to the extent that it is contrary to this section, has no effect.

37 Development processes

(1) A local government must not make a local law that establishes an alternative development process.

(2) An ***alternative development process*** is a process that is similar to or duplicates all or part of the development assessment process under the Planning Act.

(3) However, if a local law already contains a provision that establishes an alternative development process, the council may amend or repeal the provision at any time.

(4) A local law has no effect to the extent that it is contrary to this section.

(5) This section does not apply to a local government's local law about any of the following matters unless the matter is covered by the local government's planning scheme, the Planning Act or another instrument made under that Act—

(a) advertising devices;

(b) gates and grids;

(c) roadside dining.

38 Anti-competitive provisions

(1) A local government must not make a local law that contains an anti-competitive provision unless the local government has complied with the procedures prescribed under a regulation for the review of anti-competitive provisions.

(2) A local law, to the extent that it is contrary to this section, has no effect.

(3) This section does not apply to an interim local law.

38AA Swimming pool safety

(1) A local government must not make a local law that regulates—

(a) the construction or maintenance of barriers for a regulated pool; or

(b) a matter for ensuring the safety of persons using a regulated pool and prescribed under the Building Act, section 231D(1), definition *pool safety standard*, paragraph (b).

(2) If a local law that is in force before the commencement of this section contains a provision that regulates a matter mentioned in subsection (1), the local government—

(a) must not amend the provision after the commencement; and

(b) must repeal the provision by 1 January 2017.

(3) A local law, to the extent that it is contrary to this section, has no effect.

(4) In this section—

barriers, for a regulated pool, includes any of the following—

(a) the fencing for the pool;

(b) the walls of a building enclosing the pool;

(c) another form of barrier mentioned or provided for in the pool safety standard under the Building Act.

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Division 4 Action by the Minister about particular local laws

38AB Suspending or revoking particular local laws

(1) This section applies if the Minister reasonably believes a local law—

(a) is contrary to any other law; or

(b) is inconsistent with the local government principles; or

(c) does not satisfactorily deal with the overall State interest.

(2) The Minister, by gazette notice, may—

(a) suspend the local law, for a stated period or indefinitely; or

(b) revoke the local law.

(3) The gazette notice must state—

(a) how the local law is contrary to another law, is inconsistent with the local government principles or does not satisfactorily deal with the overall State interest; and

(b) if the local law has been suspended—how the local law may be amended so that it—

(i) is no longer contrary to the other law; or

(ii) is no longer inconsistent with the local government principles; or

(iii) satisfactorily deals with the overall State interest.

(4) If the Minister suspends a local law, the local law stops having effect for the period stated in the gazette notice.

(5) If the Minister revokes the local law—

(a) the local law stops having effect on the day stated in the gazette notice; or

(b) if no day is stated in the gazette notice—the local law is taken to never have had effect.

(6) The State is not liable for any loss or expense incurred by a person because a local law is suspended or revoked under this section.

(7) A decision of the Minister under this section is not subject to appeal.

Note—

See section 244 for more information.

Division 5 Miscellaneous

38A Local law about seizing and disposing of personal property

(1) This section applies if—

(a) a local government has made a local law about seizing and disposing of personal property; and

(b) personal property is seized under the local law.

(2) If the personal property is sold or disposed of, the proceeds of sale or disposal must be applied in the following order—

(a) in payment of the reasonable expenses incurred in selling or disposing of the property;

(b) in payment of the prescribed fee for seizing and holding the property;

(c) if there is an amount owing to an entity under a security interest registered for the property under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;

(d) the balance to the owner of the property.

(3) A secured party can not enforce any security interest in the proceeds of sale or disposal against an entity to whom an amount is payable under subsection (2)(a) or (b).

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(4) In this section—

personal property has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 10.

secured party has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 10.

38B Owners' liability for party houses

(1) A local government may make a local law that makes the owner of a residential property liable to a penalty because of excessive noise regularly emitted from the property.

(2) The ***owner*** of a residential property includes a tenant if the tenant has a right of exclusive occupation of the property under a lease.

(3) A ***residential property*** is a property of a type that would ordinarily be used, or is intended to be used, as a place of residence or mainly as a place of residence.

(4) To remove any doubt, it is declared that—

(a) the local law may fix the number of times that excessive noise must be emitted from a property before the owner becomes liable to the penalty; and

(b) a property is not precluded from being a residential property merely because the property is rented on a short-term basis.

(5) In a proceeding about a contravention of the local law—

(a) a noise abatement direction given to a person at a property is evidence of excessive noise being emitted from the property; and

(b) a copy of information recorded in the register of enforcement acts under the *Police Powers and Responsibilities Act 2000* about the giving of a noise abatement direction is evidence of the matters stated in it.

(6) A ***noise abatement direction*** is a direction given to a person by a police officer under the *Police Powers and Responsibilities Act 2000*, section 581(3).

(7) Despite subsection (5), a defendant may, with the leave of the court, require the prosecution to call any person involved in the giving of the noise abatement direction to give evidence at the hearing.

(8) The court may give leave only if the court is satisfied that—

(a) an irregularity may exist in relation to the information or the giving of the noise abatement direction; or

(b) it is in the interests of justice that the person be called to give evidence.

(9) The chief executive officer may ask the police commissioner to give the chief executive officer information about noise abatement directions given to persons in the local government area.

(10) The police commissioner must comply with the request.

Part 2 Beneficial enterprises and business activities

Division 1 Beneficial enterprises

39 What this division is about

(1) This division is about beneficial enterprises that are conducted by a local government.

(2) This division does not apply to a business unit of a local government.

(3) A ***beneficial enterprise*** is an enterprise that a local government considers is directed to benefiting, and can

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reasonably be expected to benefit, the whole or part of its local government area.

(4) A local government is ***conducting*** a beneficial enterprise if the local government is engaging in, or helping, the beneficial enterprise.

40 Conducting beneficial enterprises

(1) A local government may conduct a beneficial enterprise.

(2) To conduct the beneficial enterprise, the local government—

(a) may participate with an association, other than by being an unlimited partner of a partnership; and

(b) must not, either directly or by participating with an association, participate with an unlimited corporation; and

(c) must not enter into an agreement that does not limit the liability of the local government, as between the parties to the agreement, to the amount committed by the local government under the agreement.

Note—

Under the *Statutory Bodies Financial Arrangements Act 1982*, a local government may need the Treasurer's approval before entering into particular financial arrangements.

(3) An ***association*** is—

(a) a partnership; or

(b) a corporation limited by shares but not listed on a stock exchange; or

(c) a corporation limited by guarantee but not listed on a stock exchange; or

(d) another association of persons that is not a corporation.

(4) An ***unlimited corporation*** means a corporation whose members have no limit placed on their liability.

(5) A local government ***participates*** with an association or unlimited corporation if the local government—

(a) forms, or takes part in forming, an association or unlimited corporation; or

(b) becomes a member of an association or unlimited corporation; or

(c) takes part in the management of an association or unlimited corporation; or

(d) acquires or disposes of shares, debentures or securities of an association or unlimited corporation.

41 Identifying beneficial enterprises

A local government's annual report for each financial year must contain a list of all the beneficial enterprises that the local government conducted during the financial year.

Division 2 Business reform, including competitive neutrality

43 What this division is about

(1) This division is about the application of the National Competition Policy Agreements in relation to the significant business activities of a local government.

(2) This includes the application of the competitive neutrality principle if, in the circumstances, the public benefit (in terms of service quality and cost) outweighs the costs of implementation.

(3) Under the ***competitive neutrality principle***, an entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is in the public sector.

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(4) A ***significant business activity*** is a business activity of a local government that—

(a) is conducted in competition, or potential competition, with the private sector (including off-street parking, quarries, sporting facilities, for example); and

(b) meets the threshold prescribed under a regulation.

(5) However, a ***significant business activity*** does not include a business activity that is—

(a) a building certifying activity; or

(b) a roads activity; or

(c) related to the provision of library services.

Note—

A building certifying activity or roads activity is dealt with under section 47.

44 Ways to apply the competitive neutrality principle

(1) The competitive neutrality principle may be applied by—

(a) commercialisation of a significant business activity; or

(b) full cost pricing of a significant business activity.

(2) ***Commercialisation*** involves creating a new business unit, that is part of the local government, to conduct the significant business activity on a commercial basis.

(3) ***Full cost pricing*** involves pricing the significant business activity on a commercial basis, but without creating a new business unit.

(4) A regulation may provide for—

(a) matters relating to commercialisation or full cost pricing; or

(b) any other matter relating to the application of the competitive neutrality principle to the significant business activities of a local government.

45 Identifying significant business activities

A local government's annual report for each financial year must—

(a) contain a list of all the business activities that the local government conducted during the financial year; and

(b) identify the business activities that are significant business activities; and

(c) state whether or not the competitive neutrality principle was applied to the significant business activities, and if the principle was not applied, the reason why it was not applied; and

(d) state whether any of the significant business activities were not conducted in the preceding financial year, i.e. whether there are any new significant business activities.

46 Assessing public benefit

(1) This section applies to a new significant business activity that is identified in the annual report of a local government.

(2) The local government must conduct a public benefit assessment of the new significant business activity.

(3) A ***public benefit assessment*** is an assessment of whether the benefit to the public (in terms of service quality and cost) of applying the competitive neutrality principle in relation to a significant business activity outweighs the costs of applying the competitive neutrality principle.

(4) The local government must conduct the public benefit assessment before the end of the financial year in which the significant business activity is first identified in the annual report.

(5) The local government must prepare a report on the public benefit assessment that contains its recommendations about the application of the competitive neutrality principle in relation to the significant business activity.

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(6) At a meeting of the local government, the local government must—

(a) consider the report; and

(b) decide, by resolution, whether or not to apply the competitive neutrality principle in relation to the significant business activity.

(7) Any resolution that the competitive neutrality principle should not be applied must include a statement of the reasons why it should not be applied.

(8) The local government must give the Minister a copy of—

(a) the report; and

(b) all resolutions made in relation to the report.

(9) If the local government decides not to apply the competitive neutrality principle in relation to the significant business activity, the local government must, within 3 years after making the decision, repeat the process in this section.

(10) Subsection (9) also applies to a decision that was made before the commencement of this section.

47 Code of competitive conduct

(1) This section is about the code of competitive conduct.

(2) The ***code of competitive conduct*** is the code of competitive conduct prescribed under a regulation.

(3) A local government must apply the code of competitive conduct to the conduct of the following business activities of the local government—

(a) a building certifying activity;

(b) a roads activity, other than a roads activity for which business is conducted only through a sole supplier arrangement.

(4) A ***building certifying activity*** is a business activity that—

(a) involves performing building certifying functions (within the meaning of the Building Act, section 10); and

(b) is prescribed under a regulation.

(5) A ***roads activity*** is a business activity (other than a business activity prescribed under a regulation) that involves—

(a) constructing or maintaining a State-controlled road, that the State put out to competitive tender; or

(b) submitting a competitive tender in relation to—

(i) constructing or maintaining a road in the local government area, that the local government put out to competitive tender; or

(ii) constructing or maintaining a road in another local government area, that the other local government put out to competitive tender.

(6) The local government must start to apply the code of competitive conduct—

(a) for a building certifying activity—from the start of the financial year after the financial year in which the building certifying activity is first conducted; or

(b) for a roads activity—from when the roads activity is first conducted.

(7) A local government must decide each financial year, by resolution, whether or not to apply the code of competitive conduct to a business activity prescribed under a regulation.

(8) If the local government decides not to apply the code of competitive conduct to the business activity, the resolution must state reasons for not doing so.

(9) Subsection (7) does not prevent the local government from applying the code of competitive conduct to any other business activities.

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48 Competitive neutrality complaints

(1) A local government must adopt a process for resolving competitive neutrality complaints.

(2) A ***competitive neutrality complaint*** is a complaint that—

(a) relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle; and

(b) is made by an affected person.

(3) An ***affected person*** is—

(a) a person who—

(i) competes with the local government in relation to the business activity; and

(ii) claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by the local government; or

(b) a person who—

(i) wants to compete with the local government in relation to the business activity; and

(ii) claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed by the local government.

(4) A regulation may provide for the process for resolving competitive neutrality complaints.

(5) A local government does not have to resolve a competitive neutrality complaint relating to a business activity prescribed under a regulation.

Part 3 Roads and other infrastructure

Division 1 Roads

59 What this division is about

(1) This division is about roads.

(2) A ***road*** is—

(a) an area of land that is dedicated to public use as a road; or

(b) an area of land that—

(i) is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; and

(ii) is open to, or used by, the public; or

(c) a footpath or bicycle path; or

(d) a bridge, culvert, ford, tunnel or viaduct.

(3) However, a ***road*** does not include—

(a) a State-controlled road; or

(b) a public thoroughfare easement.

60 Control of roads

(1) A local government has control of all roads in its local government area.

(2) This control includes being able to—

(a) survey and resurvey roads; and

(b) construct, maintain and improve roads; and

(c) approve the naming and numbering of private roads; and

(d) name and number other roads; and

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(e) make a local law to regulate the use of roads, including—

(i) the movement of traffic on roads, subject to the *Transport Operations (Road Use Management) Act 1995*; and

(ii) the parking of vehicles on roads, subject to the *Transport Operations (Road Use Management) Act 1995* (including the maximum time that a vehicle may be parked in a designated rest area that adjoins a road, for example); and

(iii) by imposing obligations on the owner of land that adjoins a road (including an obligation to fence the land to prevent animals going on the road, for example); and

(f) make a local law to regulate the construction, maintenance and use of—

(i) public utilities along, in, over or under roads; and

(ii) ancillary works and encroachments along, in, over or under roads; and

(g) realign a road in order to widen the road; and

(h) acquire land for use as a road.

(3) Nothing in subsection (1) makes a local government liable for the construction, maintenance or improvement of a private road.

(4) A ***private road*** is a road over land that is owned by a person who may lawfully exclude other persons from using the road.

61 Notice of intention to acquire land to widen a road

(1) If a local government wants to acquire land in order to widen a road, the local government must give the owner of the land a notice of intention to acquire land.

(2) A ***notice of intention to acquire land*** informs the owner in general terms of this section and section 62.

(3) However, a local government can not, without the consent of the Planning and Environment Court, serve notice of intention to acquire land on an owner of land after the owner has applied to the local government—

(a) for approval to subdivide the land; or

(b) for approval, consent or permission—

(i) to erect or use a structure on the land; or

(ii) to use the land for any other purpose.

(4) The court may consent to the notice of intention to acquire land being served only if the court is satisfied that the purpose of the notice is to enable the local government to make, in good faith, a reasonable widening of the road.

(5) After a local government gives an owner a notice of intention to acquire land, the owner must not erect, place, re-erect, replace or repair any structure, or part of a structure, on the land without the local government's permission.

(6) The local government must lodge a copy of a notice of intention to acquire land with the registrar of titles for registration on the instrument of title to the land.

(7) The registrar of titles may register the notice of intention to acquire land even if the instrument of title is not produced.

62 Compensation for a notice of intention to acquire land

(1) This section applies to a person who is served with a notice of intention to acquire land, if the person would be entitled to claim compensation for the acquisition of land.

(2) The person is entitled to compensation from the local government for injurious affection to the person's interest in the land because of the notice of intention to acquire land.

(3) However, the compensation is not payable until—

(a) the land is sold for the first time after the notice of intention to acquire land was served; or

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Not authorised—indicative only

(b) after being served with the notice of intention to acquire land, the owner of the land offers the land for sale in good faith, but can not sell the land for a fair and reasonable price.

(4) The compensation must be assessed in accordance with the following principles—

(a) the amount of compensation must represent the difference between—

(i) the market value of the interest in the land immediately after service of the notice of intention to acquire land; and

(ii) what would be the market value of the interest in the land, at that time, if the notice had not been served;

(b) any benefit that may accrue, because of the realignment of the road, to land adjacent to the land that is affected by the realignment of the road, 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 that is affected by the realignment of the road has, since the service of the notice of intention to acquire land, become or ceased to be separate from other land.

(5) A claim for compensation must be made—

(a) within 3 years after the entitlement to compensation arose; and

(b) to the chief executive officer in the approved form.

(6) The claim is taken to have been properly made when the claimant has given the local government all the information that the local government reasonably requires to decide the claim.

(7) If, within 30 days after the claim is made, the local government has not given the claimant notice of its decision

on the claim, the local government is taken to have refused compensation on the 31st day after the claim is made.

63 Appeal on a claim for compensation

(1) A person who is aggrieved by the decision of a local government on a claim for compensation may appeal against the decision to the Land Court.

(2) The appeal must be started within 30 days after—

(a) notice of the decision is given to the claimant; or

(b) the decision is taken to have been made.

(3) However, the Land Court may extend the period if satisfied in all the circumstances that it is reasonable to do so.

(4) In order to award compensation, the Land Court must be satisfied—

(a) if the land has been sold—

(i) the seller took reasonable steps to obtain a reasonable price for the land; and

(ii) the seller sold the land in good faith; and

(iii) the sale price is less than the seller might reasonably have expected to receive had there been no notice of intention to acquire land; or

(b) if a local government refused the owner permission to erect, place, re-erect, replace or repair any structure, or part of a structure, on the land—the permission was applied for in good faith.

64 Acquisition of land instead of compensation

(1) After a notice of intention to acquire land is served, but before the land is sold, the local government may acquire the land instead of paying compensation for injurious affection.

Not authorised—indicative only

Not authorised—indicative only

(2) If, after a notice of intention to acquire land is served, the land is cleared of all structures—

(a) the local government may acquire the land; and

(b) if required by the owner of the land, the local government must acquire the land.

(3) The acquired land must be dedicated for public use as a road within 3 months after its acquisition.

(4) Compensation for the acquisition of the land, if not agreed between the parties, must be assessed as at the date of the acquisition.

65 What is to happen if a realignment is not carried out

(1) This section applies if a local government decides not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land.

(2) This section does not apply to a realignment of road that is necessary to comply with the requirements of a local government under a planning scheme in its application to particular developments in the local government area.

(3) The local government must serve notice of its decision not to proceed on all owners of land who were served with a notice of intention to acquire land in connection with that road or part of that road.

(4) With regard to any of the notices of intention to acquire land that were lodged with the registrar of titles in connection with that road or part of that road, the local government must—

(a) for any notice of intention to acquire land that has not been registered—withdraw the notice of intention to acquire land; and

(b) for any notice of intention to acquire land that has been registered—lodge with the registrar of titles for registration a notice of its decision not to proceed with the realignment of the road, or part of the road.

(5) The notice of the local government's decision must inform the owners in general terms of this section and section 66.

66 Compensation if realignment not carried out

(1) This section applies if—

(a) a local government decides not to proceed with the realignment of a road or part of a road after giving a notice of intention to acquire land; and

(b) structural improvements have been made on land that adjoins 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 under a regulation, to claims for compensation under this section.

(6) The local government's decision not to proceed with the realignment of a road, or part of a road, does not give rise to an entitlement to compensation to, or a cause of action by, any owner or occupier of land or other person other than under this section.

67 Acquiring land for use as a footpath

(1) A local government may acquire land that adjoins a road for use as a footpath.

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Not authorised—indicative only

(2) The acquisition of land may be subject to a reservation, in favour of the owner of the land, of any of the following rights that the local government decides (at or before the acquisition) is appropriate—

(a) a right to the ownership, possession, occupation and use of any existing structure, room or cellar—

(i) at a specified height above the level of the new footpath; or

(ii) at a specified depth below the level of the new footpath;

(b) a right—

(i) to erect a structure (in accordance with law) at a specified height above the new footpath; and

(ii) to the ownership, possession, occupation and use of the structure;

(c) a right of support for a structure mentioned in paragraph (a) or (b).

(3) The right mentioned in subsection (2)(a) is subject to the local government's right to enter, and make structural alterations to, the structure, room or cellar that the local government considers necessary.

68 Notice to local government of opening or closing of roads

(1) This section applies if an application is made under the Land Act for the opening or closing of a road in a local government area by someone other than the local government.

(2) The Land Act Minister, or the applicant for the application, must give notice of the application to the local government.

(3) The ***Land Act Minister*** is the Minister administering the Land Act.

(4) 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 closing of the road.

(5) An objection must fully state the reasons for the objection.

(6) The Land Act Minister must have regard to any objections properly made by the local government.

(7) If the Land Act Minister decides the road should be opened or closed, the Land Act Minister must give notice to the local government—

(a) of the decision; and

(b) if the decision is contrary to the local government's objection, the reasons for the decision.

69 Closing roads

(1) A local government may close a road (permanently or temporarily) to all traffic, or traffic of a particular class, if there is another road or route reasonably available for use by the traffic.

(2) Also, the local government may close a road to all traffic or traffic of a particular class—

(a) during a temporary obstruction to traffic; or

(b) if it is in the interests of public safety; or

(c) if it is necessary or desirable to close the road for a temporary purpose (including a fair, for example).

(3) The local government must publish notice of the closing of the road, in the way that the local government considers appropriate (including on its website, for example).

(4) The local government may do everything necessary to stop traffic using the road after it is closed.

(5) If a road is closed to traffic for a temporary purpose, the local government may permit the use of any part of the road (including for the erection of any structure, for example) on the conditions the local government considers appropriate.

Not authorised—indicative only

Not authorised—indicative only

70 Temporary roads

(1) This section applies if—

(a) a local government wants to remake or repair a road; and

(b) it is not reasonably practicable to temporarily close the road to traffic while the roadworks are conducted.

(2) The local government may make a temporary road, through land that adjoins the road, to be used while the road is being remade or repaired.

(3) However, a local government employee or contractor may enter the land only if—

(a) the owner or occupier of the land has agreed, in writing, that the local government employee or contractor may enter the land; or

(b) the local government has given the owner or occupier of the land at least 3 days notice that states—

(i) the nature of the roadworks that are to be conducted; and

(ii) the proposed route of the temporary road; and

(iii) an approximate period when the temporary road is expected to remain on the land.

(4) Subsection (3) does not apply if the roadworks must be urgently conducted, but the local government must give the owner or occupier of the land oral notice of the matters mentioned in subsection (3)(b).

(5) The owner of the land may give the chief executive officer a notice that claims compensation for physical damage caused by the local government entering, occupying or using the land under this section.

(6) Compensation is not payable unless the chief executive officer receives the claim—

(a) within 1 year after the occupation or use has ended; or

(b) at a later time allowed by the chief executive officer.

(7) The compensation equals—

(a) the amount agreed between the person and local government; or

(b) if the person and local government can not agree, the amount that is decided by a court.

(8) However, the compensation must not be more than the compensation that would have been awarded if the land had been acquired.

71 Road levels

(1) The owner or occupier of land that adjoins a road may give notice to the local government requiring it to advise the owner or occupier of the permanent level that is fixed or to be fixed for the road.

(2) If the local government has not, within 6 months after receiving the notice, given 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.

(3) 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 that adjoins the road is injuriously affected by the change;

the local government must pay the owner or occupier, or their successor in title, compensation.

(4) The compensation equals—

(a) the amount that is agreed between the owner or occupier, or their successor in title, and the local government; or

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Not authorised—indicative only

(b) if the owner or occupier, or their successor in title, and the local government can not agree—the amount that is decided by the Planning and Environment Court.

72 Assessment of impacts on roads from certain activities

(1) This section applies if—

(a) a regulation prescribes an activity for this section; and

(b) a local government considers that the conduct of the activity is having, or will have, a significant adverse impact on a road in the local government area; and

(c) the activity is not for—

(i) a coordinated project under the *State Development and Public Works Organisation Act 1971*; or

(ii) development categorised under the local government's planning scheme as assessable development for the Planning Act; or

(iii) a road being built under the Land Act, section 110.

(2) The local government may require the entity that is conducting the activity to provide information, within a reasonable time, that will enable the local government to assess the impact of the activity on the road.

(3) After assessing the impact of the activity on the road, the local government may decide to do 1 or more of the following—

(a) give the entity a direction about the use of the road to lessen the impact;

(b) require the entity—

(i) to carry out works to lessen the impact; or

(ii) to pay an amount as compensation for the impact.

(4) The local government may require the works to be carried out or the amount to be paid before the impact commences or intensifies.

(5) The amount of compensation is a debt payable to the local government and may be recovered in a court.

(6) A regulation for this section—

(a) must contain a process under which the local government's decision may be reviewed; and

(b) may contain a process for enforcing the decision.

73 Categorisation of roads

A local government must categorise the roads in its local government area according to the surface of the road.

74 Roads map and register

(1) A local government must prepare and keep up-to-date—

(a) a map of every road, including private roads, in its local government area; and

(b) a register of the roads that shows—

(i) the category of every road; and

(ii) the level of every road that has a fixed level; and

(iii) other particulars prescribed under a regulation.

(2) The register of roads may also show other particulars that the local government considers appropriate.

(3) The public may inspect the map and register at the local government's public office.

(4) On application and payment of a reasonable fee fixed under a resolution or local law, a person may obtain—

(a) a copy of a map or register of roads; or

(b) a certificate signed by an employee of the local government who is authorised for the purpose—

(i) about the category, alignment and levels of roads in its area; or

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Not authorised—indicative only

(ii) about the fact that the alignment or level of a road in its area has not been fixed.

75 Unauthorised works on roads

(1) This section applies to a road in a local government area.

(2) A person must not, without lawful excuse (including under another Act, for example), or the written approval of the local government—

(a) carry out works on a road; or

(b) interfere with a road or its operation.

Maximum penalty—200 penalty units.

(3) ***Works*** do not include the maintenance of ancillary works and encroachments, or landscaping, that does not interfere with the road or its operation.

(4) An approval may be subject to the conditions decided by the local government.

(5) A person must not contravene a condition that applies to a person under subsection (4).

Maximum penalty—40 penalty units.

(6) If a person carries out works in contravention of this section, the local government may—

(a) dismantle or alter the works; or

(b) fix any damage caused by the works.

(7) If the local government dismantles or alters the works, or fixes any damage caused by the works, the person must pay the local government the reasonable costs incurred by the local government in doing so.

Division 2 Stormwater drains

76 What this division is about

(1) This division is about stormwater drains and stormwater installations.

(2) A ***stormwater drain*** is a drain, channel, pipe, chamber, structure, outfall or other works used to receive, store, transport or treat stormwater.

(3) A ***stormwater installation*** for a property—

(a) is any roof gutters, downpipes, subsoil drains or stormwater drain for the property; but

(b) does not include any part of a local government's stormwater drain.

77 Connecting stormwater installation to stormwater drain

(1) A local government may, by notice, require the owner of a property to connect a stormwater installation for the property to the local government's stormwater drain in the way, under the conditions and within the time stated in the notice.

(2) The way, condition and time stated in the notice must be reasonable in the circumstances.

(3) A person must not connect a stormwater installation for a property to a local government's stormwater drain unless—

(a) the local government has required the owner of the property to do so by a notice under subsection (1); or

(b) the local government has given its approval for the connection.

Maximum penalty—165 penalty units.

(4) The local government may impose conditions on its approval for the connection, including conditions about the way the connection must be made.

Not authorised—indicative only

Not authorised—indicative only

(5) If a person connects a stormwater installation under a requirement or approval of the local government, the person must comply with the requirement or approval, unless the owner has a reasonable excuse.

Maximum penalty for subsection (5)—165 penalty units.

78 No connecting sewerage to stormwater drain

(1) The owner of a property must not connect the sewerage installation for property, or allow the sewerage installation for the property to be connected, to any part of—

(a) the stormwater installation for the property; or

(b) the stormwater drain of the local government.

Maximum penalty—165 penalty units.

(2) A ***sewerage installation*** is any of the following—

(a) an on-site sewage facility within the meaning given in the Plumbing and Drainage Act;

(b) a sewer for a property or building unit;

(c) sanitary plumbing i.e. any apparatus, fittings, fixtures or pipes that carry sewage to a sanitary drain;

(d) sanitary drainage i.e. any apparatus, fittings or pipes for collecting and carrying discharges—

(i) from fixtures (that are directly connected to a sanitary drain) to an on-site sewerage facility or a sewerage treatment system; or

(ii) from sanitary plumbing to an on-site sewerage facility or a sewerage treatment system.

Examples of apparatus, fittings or pipes for sanitary drainage—

- disconnector gullies
- bends at the foot of stacks or below ground level
- pipes above ground level that are installed using drainage principles

- for an on-site sewerage facility—a pipe (other than a soil or waste pipe) used to carry sewage to or from the facility

(3) The owner of a property who becomes aware that the sewerage installation for the property is connected to any part of—

(a) the stormwater installation for the property; or

(b) the stormwater drain of the local government;

must, as soon as reasonably practicable, take all necessary steps to disconnect the facility, drainage or sewer from the stormwater installation or drain.

Maximum penalty—165 penalty units.

(4) If the sewerage installation for property is connected to any part of—

(a) the stormwater installation on the property; or

(b) the stormwater drain of the local government;

the local government may, by notice, require the owner of the property to perform the work stated in the notice, within the time stated in the notice.

(5) The time stated in the notice must—

(a) be a time that is reasonable in the circumstances; and

(b) be at least 1 month after the notice is given to the owner.

(6) However, the time stated in the notice may be less than 1 month but must not be less than 48 hours if the work stated in the notice—

(a) is required to stop a serious health risk continuing; or

(b) relates to a connection that is causing damage to the local government's stormwater drain.

(7) The work stated in the notice must be work that is reasonably necessary for fixing or otherwise dealing with the sewerage installation, including for example—

(a) work to remedy a contravention of this Act; or

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Not authorised—indicative only

(b) work to disconnect something that was connected to a stormwater drain without the local government's approval.

(8) The owner must comply with the notice, unless the owner has a reasonable excuse.

Maximum penalty for subsection (8)—165 penalty units.

79 No trade waste or prohibited substances in stormwater drain

(1) A person must not put trade waste into a stormwater drain.

Maximum penalty—1,000 penalty units.

(2) ***Trade waste*** is waterborne waste from business, trade or manufacturing property, other than—

(a) stormwater; and

(b) a prohibited substance.

(3) A person must not put a prohibited substance into a stormwater drain.

Maximum penalty—1,000 penalty units.

(4) A ***prohibited substance*** is—

(a) a solid or viscous substance in a quantity, or of a size, that can obstruct, or interfere with the operation of, a stormwater drain; or

Examples for paragraph (a)—

- ash, cinders, sand, mud, straw and shavings
- metal, glass and plastics
- paper and plastic dishes, cups and milk containers
- rags, feathers, tar and wood
- whole blood, paunch manure, hair and entrails
- oil and grease
- cement-laden wastewater, including wash down from exposed aggregate concrete surfaces

(b) a flammable or explosive solid, liquid or gaseous substance; or

(c) sewage, including human waste; or

(d) a substance that, given its quantity, is capable alone, or by interaction with another substance put into a stormwater drain, of—

(i) inhibiting or interfering with the stormwater drain; or

(ii) causing damage or a hazard to the stormwater drain; or

(iii) causing a hazard for humans or animals; or

(iv) creating a public nuisance; or

(v) creating a hazard in waters; or

(vi) contaminating the environment in places where stormwater is discharged or reused; or

Example for paragraph (d)—

a substance with a pH lower than 6.0 or greater than 10.0, or having another corrosive property

(e) a substance that has a temperature of more than—

(i) if the local government has approved a maximum temperature for the substance—the approved maximum temperature; or

(ii) otherwise—38ºC.

(5) If—

(a) a person puts a prohibited substance in a local government's stormwater drain; and

(b) the prohibited substance causes damage to the stormwater drain;

the local government may perform work to fix the damage, and may recover the reasonable costs for the work from the person who put the prohibited substance in the stormwater drain.

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Not authorised—indicative only

(6) The costs for the work are in addition to any penalty imposed for the offence.

80 Interference with path of stormwater

(1) A person must not restrict or redirect the flow of stormwater over land in a way that may cause the water to collect and become stagnant.

Maximum penalty—165 penalty units.

(2) However, this section does not apply to water collected in a dam, wetland, tank or pond, if no offensive material is allowed to accumulate.

Division 3 Other matters

80A Malls

(1) A local government may establish a mall in its local government area.

(2) The local government must comply with the procedures prescribed under a regulation for establishing a mall.

(3) The regulation may also provide for any other matter connected with managing, promoting or using a mall, including, for example—

(a) removal of vehicles from a mall; and

(b) review of a decision relating to the removal of a vehicle from a mall; and

(c) matters relating to an advisory committee for a mall.

(4) A person is not entitled to compensation on account of injurious affection to any right or interest of a business, commercial or industrial nature because of the establishment, modification or closing of a mall by a local government.

(5) However, the local government may, by resolution, decide to pay compensation to the person.

(6) The Land Act, chapter 4, part 4 does not apply to a road that is a mall.

80B Ferry services

(1) A local government has the exclusive right to provide a ferry service across a watercourse if the land that forms both banks of the watercourse is in its local government area.

(2) A ***watercourse*** is a river, creek or channel where water flows naturally.

(3) A local government may—

(a) lease the right to provide a ferry service across a watercourse that it has the exclusive right to provide a ferry service across; and

(b) make local laws for managing and regulating the use of ferries operated or leased by it.

(4) A regulation may—

(a) declare another watercourse that a local government has the exclusive right to provide a ferry service across; and

(b) provide for any other matter connected with the provision of ferry services (including declaring the approaches to a ferry as being under the control of a local government, for example).

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Not authorised—indicative only

Part 4 The business of indigenous local governments

Division 1 Introduction

81 What this part is about

This part contains provisions that relate only to the following local governments—

(a) Aurukun Shire Council;

(b) Mornington Shire Council;

(c) an indigenous local government.

Division 2 Managing trust land

82 What this division is about

(1) This division contains provisions that apply to a trustee council.

(2) A ***trustee council*** is any of the following local governments if the local government is a trustee of trust land—

(a) Aurukun Shire Council;

(b) Mornington Shire Council;

(c) an indigenous local government.

(3) ***Trust land*** is the land described in a deed of grant in trust that is issued under the Land Act.

(4) The provisions of this division—

(a) do not affect the status that any land has under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*; and

(b) are additional to the provisions that apply to the land under the Land Act and any other law.

83 Trustee business must be conducted separately

(1) A trustee council must conduct its trustee business separately from its other local government business.

(2) ***Trustee business*** is any business that relates to trust land.

(3) So, the trustee council must—

(a) maintain separate accounts and records for trustee business; and

(b) in its capacity as trustee council, formally advise itself, in its capacity as indigenous regional council, of matters relating to trustee business; and

(c) hold separate meetings for trustee business from meetings for other local government business.

84 Meetings about trust land generally open to the public

(1) All meetings relating to trust land must be open to the public, unless the trustee council decides, by resolution, that the meeting be closed to the public.

(2) The trustee council may do so only to allow the trustee council to discuss business for which public discussion would be likely to—

(a) prejudice the interests of the trustee council or someone else; or

(b) enable a person to gain a financial advantage.

(3) For example, a meeting may be closed to the public to allow the trustee council to discuss—

(a) the appointment, discipline or dismissal of local government employees; or

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Not authorised—indicative only

(b) industrial matters affecting local government employees; or

(c) starting or defending legal proceedings; or

(d) that part of the budget that relates to the trust land; or

(e) contracts proposed to be made by the trustee council.

(4) A resolution to close a meeting to the public must specify the general nature of the matters to be discussed while the meeting is closed to the public.

(5) The trustee council must not make a resolution (other than a procedural resolution) in a meeting that is closed to the public.

85 Community forum input on trust change proposals

(1) This section applies if—

(a) a trustee council is an indigenous regional council; and

(b) the trustee council wants to consider a trust change proposal; and

(c) a community forum has been established for the division of the local government where the trust land is located.

(2) A ***trust change proposal*** is a proposal to make a decision—

(a) to put an improvement (including a structure, for example) on trust land; or

(b) to create an interest in trust land (including a lease or mortgage, for example); or

(c) that the trustee council has decided, by resolution, must be dealt with as a trust change proposal.

(3) The trustee council must give the community forum an opportunity to give input about the trust change proposal.

Note—

See division 3 for more information about community forums.

(4) The trustee council must give the community forum a notice that gives the community forum—

(a) reasonably sufficient information about the trust change proposal; and

(b) reasonably sufficient time;

to allow the community forum to give input about the trust change proposal.

(5) The trustee council must have regard to any input that is received from the community forum within the time specified in the notice.

(6) If the trustee council proposes to make a decision that is contrary to the community forum's input, the trustee council must give notice of the reasons for the proposed decision to the community forum.

(7) If the community forum advises the trustee council that it does not support the trustee council's proposed decision, the trustee council must take reasonable steps to let the community know.

(8) If the trustee council proposes to make a decision that is contrary to the community forum's input, the decision has effect only if—

(a) the decision is approved by a majority of the councillors (other than the mayor), regardless of how many councillors take part in any meeting about the decision; and

(b) the councillor for the division of the local government area in which the trust land is situated does not vote against approving the decision.

85A Trust change decisions if no community forum

(1) This section applies if—

(a) a trustee council, that is an indigenous regional council, proposes to make a trust change decision; and

(b) a community forum has not been established for the division of the local government where the trust land is located.

Not authorised—indicative only

Not authorised—indicative only

(2) A ***trust change decision*** is a decision—

(a) to put an improvement (including a structure, for example) on trust land; or

(b) to create an interest in trust land (including a lease or mortgage, for example); or

(c) that the trustee council has decided, by resolution, must be dealt with as a trust change proposal within the meaning of section 85(2).

(3) The trust change decision has effect only if—

(a) the decision is approved by a majority of the councillors (other than the mayor), regardless of how many councillors take part in any meeting about the decision; and

(b) the councillor for the division of the local government area in which the trust land is located does not vote against approving the decision.

86 Grouping of trust land not available

The chief executive under the Land Act must not approve the grouping of trust land under the Land Act, section 62, if any of the trust land is the subject of a community deed of grant in trust.

Division 3 Community forums

87 Community forums

(1) This section applies if an indigenous regional council establishes a community forum for the council or, if the council is divided, any of its divisions.

(2) A ***community forum*** is a body established by an indigenous regional council to be responsible for meeting with the local community to discuss issues relating to—

(a) trust land; and

(b) planning; and

(c) the delivery of services; and

(d) culture.

(3) The ***local community*** is the community living in the local government area or division for which the community forum is established.

(4) A community forum is made up of—

(a) a chairperson, who is the councillor for the division; and

(b) at least 3, but not more than 7, appointed members.

(5) The indigenous regional council must publish the following information in a newspaper circulating generally in its local government area—

(a) the name of the community forum;

(b) the names of the members of the community forum.

(6) The indigenous regional council must decide all matters necessary for the operation of its community forums.

88 Members of a community forum

(1) This section is about the members of a community forum.

(2) A person is appointed as a member of a community forum (other than as chairperson)—

(a) by a resolution of the indigenous regional council for the forum; and

(b) under a merits based selection process conducted by the indigenous regional council for the forum after a call for expressions of interest in appointment is advertised in a newspaper circulating generally in the council's local government area.

(3) A person is not qualified to be appointed as a member if the person is the mayor of the indigenous regional council.

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(4) A person stops being a member if the person—

(a) resigns by signed notice of resignation given to the indigenous regional council for the community forum; or

(b) completes a term of office and is not re-appointed.

89 Payments to appointed members of a community forum

(1) An appointed member of a community forum is not entitled to be paid any remuneration.

(2) However, an indigenous regional council may authorise—

(a) the payment of the expenses incurred, or to be incurred, by the appointed members of a community forum; or

(b) the provision of facilities to the appointed members of a community forum.

Part 5 Caretaker period arrangements

90A Caretaker period

(1) The ***caretaker period*** for a local government is the period during an election for the local government that—

(a) starts on the day when public notice of the holding of the election is given under the Local Government Electoral Act, section 25(1); and

(b) ends at the conclusion of the election.

(2) There is no caretaker period during a by-election or fresh election.

90B Prohibition on major policy decision in caretaker period

(1) A local government must not make a major policy decision during a caretaker period for the local government.

(2) However, if the local government considers that, having regard to exceptional circumstances that apply, it is necessary to make the major policy decision in the public interest, the local government may apply to the Minister for approval to make the decision.

(3) The Minister may give the approval if the Minister is satisfied that, having regard to exceptional circumstances that apply, it is necessary for the local government to make the major policy decision in the public interest.

(4) The Minister's approval may be given on conditions with which the local government must comply.

90C Invalidity of major policy decision in caretaker period without approval

(1) A major policy decision made by a local government during a caretaker period for the local government is invalid to the extent the local government—

(a) does not have the Minister's approval under section 90B to make the decision; or

(b) does not comply with any conditions of the Minister's approval under section 90B(4).

(2) A contract is void if it is the subject of a major policy decision that is invalid.

(3) A person who acts in good faith in relation to a major policy decision of a local government, or in relation to a contract that is the subject of a major policy decision, but who suffers loss or damage because of any invalidity of the decision under subsection (1) or because the contract is void under subsection (2), has a right to be compensated by the local government for the loss or damage.

(4) The person may bring a proceeding to recover the compensation in a court of competent jurisdiction.

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90D Prohibition on election material in caretaker period

(1) A local government or a controlled entity of a local government must not, during a caretaker period for the local government, publish or distribute election material.

(2) ***Election material*** is anything able to, or intended to—

(a) influence an elector about voting at an election; or

(b) affect the result of an election.

Examples—

a fact sheet or newsletter that raises the profile of a councillor

(3) The prohibition under subsection (1) does not apply to making a how-to-vote card available under the *Local Government Electoral Act 2011*, section 179(6).

(4) In this section—

control means the capacity of an entity to dominate decision-making, directly or indirectly, in relation to the financial and operating policies of another entity so as to enable the other entity to operate with the first entity in pursuing the first entity's objectives.

controlled entity, of a local government, means an entity subject to the control of either or both of the following—

(a) the local government;

(b) another entity subject to the control of the local government.

Chapter 4 Finances and accountability

Part 1 Rates and charges

91 What this part is about

(1) This part is about rates and charges.

(2) ***Rates and charges*** are levies that a local government imposes—

(a) on land; and

(b) for a service, facility or activity that is supplied or undertaken by—

(i) the local government; or

(ii) someone on behalf of the local government (including a garbage collection contractor, for example).

92 Types of rates and charges

(1) There are 4 types of rates and charges—

(a) general rates (including differential rates); and

(b) special rates and charges; and

(c) utility charges; and

(d) separate rates and charges.

(2) ***General rates*** are for services, facilities and activities that are supplied or undertaken for the benefit of the community in general (rather than a particular person).

Example—

General rates contribute to the cost of roads and library services that benefit the community in general.

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(3) ***Special rates and charges*** are for services, facilities and activities that have a special association with particular land because—

(a) the land or its occupier—

(i) specially benefits from the service, facility or activity; or

(ii) has or will have special access to the service, facility or activity; or

(b) the land is or will be used in a way that specially contributes to the need for the service, facility or activity; or

(c) the occupier of the land specially contributes to the need for the service, facility or activity.

Examples—

Special rates and charges could be levied—

- for the cost of maintaining a road in an industrial area that is regularly used by heavy vehicles
- for the cost of replacing the drainage system in only part of the local government area
- on land that is used only by businesses that would benefit from the promotion of tourism in the local government area.

(4) ***Utility charges*** are for a service, facility or activity for any of the following utilities—

(a) waste management;

(b) gas;

(c) sewerage;

(d) water.

(5) ***Separate rates and charges*** are for any other service, facility or activity.

93 Land on which rates are levied

(1) Rates may be levied on rateable land.

(2) ***Rateable land*** is any land or building unit, in the local government area, that is not exempted from rates.

(3) The following land is exempted from rates—

(a) unallocated State land within the meaning of the Land Act;

(b) land that is occupied by the State or a government entity, unless—

(i) the government entity is a GOC or its subsidiary (within the meaning of the *Government Owned Corporations Act 1993*) and the government entity is not exempt from paying rates; or

(ii) the land is leased to the State or a government entity by someone who is not the State or a government entity;

(c) land in a state forest or timber reserve, other than land occupied under—

(i) an occupation permit or stock grazing permit under the Forestry Act; or

(ii) a lease under the Land Act;

(d) Aboriginal land under the *Aboriginal Land Act 1991*, or Torres Strait Islander land under the *Torres Strait Islander Land Act 1991*, other than a part of the land that is used for commercial or residential purposes;

(e) the following land under the Transport Infrastructure Act—

(i) strategic port land that is occupied by a port authority, the State, or a government entity;

(ii) strategic port land that is occupied by a wholly owned subsidiary of a port authority, and is used in connection with the Cairns International Airport or Mackay Airport;

(iii) existing or new rail corridor land;

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(iv) commercial corridor land that is not subject to a lease;

(f) airport land, within the meaning of the *Airport Assets (Restructuring and Disposal) Act 2008*, that is used for a runway, taxiway, apron, road, vacant land, buffer zone or grass verge;

(g) land that is owned or held by a local government unless the land is leased by the local government to someone other than another local government;

(h) land that is—

(i) primarily used for showgrounds or horseracing; and

(ii) exempted from rating by resolution of a local government;

(i) land that is exempted from rating, by resolution of a local government, for charitable purposes;

(j) land that is exempted from rating under—

(i) another Act; or

(ii) a regulation, for religious, charitable, educational or other public purposes.

(4) The land mentioned in subsection (3)(f) stops being exempted land when either of the following events first happens—

(a) a development permit under the Planning Act comes into force for the land for a use that is not mentioned in subsection (3)(f);

(b) development within the meaning of the Planning Act (other than reconfiguring a lot) starts for a use that is not mentioned in subsection (3)(f).

94 Power to levy rates and charges

(1) Each local government—

(a) must levy general rates on all rateable land within the local government area; and

(b) may levy—

(i) special rates and charges; and

(ii) utility charges; and

(iii) separate rates and charges.

(1A) Without limiting subsection (1), a local government may categorise rateable land, and decide differential rates for rateable land, according to whether or not the land is the principal place of residence of the owner.

(2) A local government must decide, by resolution at the local government's budget meeting for a financial year, what rates and charges are to be levied for that financial year.

94A Regulation-making power for additional decisions about levying of rates and charges for 2020–2021 financial year

(1) A regulation may provide for a local government to decide, by resolution made other than at the local government's budget meeting for the 2020–2021 financial year, what rates and charges are to be levied for a relevant part of that financial year.

(2) For this section, a ***relevant part*** of the 2020–2021 financial year is a period—

(a) starting on a day not earlier than the day the resolution is made; and

(b) ending on 30 June 2021.

(3) A decision mentioned in subsection (1) made under the regulation is an ***extraordinary decision***.

(4) Without limiting subsection (1), the regulation may also make provision about requirements—

(a) for the annual budget of the local government for the 2020–2021 financial year to be amended to take account

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of an extraordinary decision of the local government; and

(b) for any amended annual budget to be adopted.

(5) The *Statutory Instruments Act 1992*, section 49(1) applies to the tabling of the regulation as if the reference in that provision to 14 sitting days were a reference to 14 days.

(6) Subsections (1) to (5) do not limit section 94(2).

(7) Subsection (8) applies if a local government makes an extraordinary decision in relation to a relevant part of the 2020–2021 financial year.

(8) To the extent a relevant decision previously made by the local government would otherwise be inconsistent with the extraordinary decision, the relevant decision ceases to have effect in relation to the relevant part of the 2020–2021 financial year.

(9) This section expires on 30 June 2021.

(10) In this section—

2020–2021 financial year means the financial year ending on 30 June 2021.

relevant decision means—

(a) a decision made under section 94(2); or

(b) an extraordinary decision.

94B Additional decisions about levying of rates and charges for 2021–2022 financial year

(1) A local government may decide, by resolution made other than at the local government's budget meeting for the 2021–2022 financial year, what rates and charges are to be levied for a relevant part of that financial year.

(2) For this section, a ***relevant part*** of the 2021–2022 financial year is a period—

(a) starting on a day not earlier than the day the resolution is made; and

(b) ending on 30 June 2022.

(3) A decision made under subsection (1) is an ***extraordinary decision***.

(4) The local government must, at the meeting at which the extraordinary decision is made, amend the annual budget for the 2021–2022 financial year to take account of the extraordinary decision.

(5) An amendment of the annual budget under subsection (4) is of no effect if the amendment—

(a) does not comply with the requirements prescribed by regulation for preparing an annual budget; or

(b) is inconsistent with the extraordinary decision.

(6) The local government must adopt the annual budget as amended in compliance with this section.

(7) Subsection (1) does not limit section 94(2).

(8) To the extent a relevant decision previously made by the local government would otherwise be inconsistent with the extraordinary decision, the relevant decision ceases to have effect in relation to the relevant part of the 2021–2022 financial year.

(9) This section expires on 30 June 2022.

(10) In this section—

2021–2022 financial year means the financial year ending on 30 June 2022.

relevant decision means—

(a) a decision made under section 94(2); or

(b) an extraordinary decision.

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95 Overdue rates and charges are a charge over rateable land

(1) This section applies if the owner of rateable land owes a local government for overdue rates and charges.

(2) The overdue rates and charges are a charge on the land.

(3) The local government may register the charge over the land by lodging the following documents with the registrar of titles—

(a) a request to register the charge over the land, in the appropriate form;

(b) a certificate signed by the chief executive officer that states there is a charge over the land for overdue rates and charges.

(4) After the charge is registered over the land, the charge has priority over any other encumbrances over the land, other than encumbrances in favour of—

(a) the State; or

(b) a government entity.

(5) If the overdue rates and charges are paid, the local government must lodge the following documents with the registrar of titles—

(a) a request to release the charge over the land, in the appropriate form;

(b) a certificate signed by the chief executive officer that states the overdue rates and charges have been paid.

(6) This section does not limit any other remedy that the local government has to recover the overdue rates and charges (including selling the land, for example).

96 Regulations for rates and charges

A regulation may provide for any matter connected with rates and charges, including for example—

(a) concessions; and

(b) the categorisation of land for rates and charges; and

(c) the process for recovering overdue rates and charges, including by the sale of the land to which the rates and charges relate.

Part 2 Fees

97 Cost-recovery fees

(1) A local government may, under a local law or a resolution, fix a cost-recovery fee.

(2) A ***cost-recovery fee*** is a fee for—

(a) an application for the issue or renewal of a licence, permit, registration or other approval under a Local Government Act (an ***application fee***); or

(b) recording a change of ownership of land; or

(c) giving information kept under a Local Government Act; or

(d) seizing property or animals under a Local Government Act; or

(e) the performance of another responsibility imposed on the local government under the Building Act or the Plumbing and Drainage Act.

(3) A local law or resolution for subsection (2)(d) or (e) must state—

(a) the person liable to pay the cost-recovery fee; and

(b) the time within which the fee must be paid.

(4) A cost-recovery fee must not be more than the cost to the local government of taking the action for which the fee is charged.

(5) However, an application fee may also include a tax—

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(a) in the circumstances and for a purpose prescribed under a regulation; and

(b) if the local government decides, by resolution, that the purpose of the tax benefits its local government area.

(6) The local law or resolution that fixes an application fee that includes a tax must state the amount, and the purpose, of the tax.

(7) If an application fee that includes a tax is payable in relation to land, the tax applies only in relation to land that is rateable land.

(8) A local government may fix a cost-recovery fee by resolution even if the fee had previously been fixed by a local law.

98 Register of cost-recovery fees

(1) A local government must keep a register of its cost-recovery fees.

(2) The register must state the paragraph of section 97(2) under which the cost-recovery fee is fixed.

(3) Also, the register must state—

(a) for a cost-recovery fee under section 97(2)(a)—the provision of the Local Government Act under which the licence, permit, registration or other approval is issued or renewed; or

(b) for a cost-recovery fee under section 97(2)(c)—the provision of the Local Government Act under which the information is kept; or

(c) for a cost-recovery fee under section 97(2)(d)—the provision of the Local Government Act under which the property or animals are seized; or

(d) for a cost-recovery fee under section 97(2)(e)—the provision of the Building Act or the Plumbing and Drainage Act under which the responsibility is imposed.

(4) The public may inspect the register at the local government's public office.

99 Fees on occupiers of land below the high-water mark

(1) This section applies to the occupier (other than the State or a government entity) of a structure that is on land that—

(a) is not rateable land, and therefore not subject to rates; and

(b) is in, or is adjoining, a local government area; and

(c) is below the high-water mark.

(2) The ***high-water mark*** is the ordinary high-water mark at spring tides.

(3) The local government for the local government area may, by resolution, levy a fee on the occupier of the structure for the use of the local government's roads and other infrastructure.

(4) For subsection (3), ***fee*** includes a tax.

100 Fees on residents of particular local government areas

(1) This section applies to the following local governments—

(a) Aurukun Shire Council;

(b) Mornington Shire Council;

(c) an indigenous local government.

(2) A local government may, by resolution, levy a fee on residents of its local government area.

(3) The local government may exempt a resident from paying the fee, if another amount is payable to the local government in relation to the property in which the resident resides.

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Part 3 Financial planning and accountability

101 Statutory Bodies Financial Arrangements Act applies to local governments

(1) A local government is a statutory body for the Statutory Bodies Financial Arrangements Act.

(2) Part 2B of that Act sets out the way in which that Act affects a local government's powers.

104 Financial management systems

(1) To ensure it is financially sustainable, a local government must establish a system of financial management that—

(a) ensures regard is had to the sound contracting principles when entering into a contract for—

(i) the supply of goods or services; or

(ii) the disposal of assets; and

(b) complies with subsections (5) to (7).

(2) A local government is ***financially sustainable*** if the local government is able to maintain its financial capital and infrastructure capital over the long term.

(3) The ***sound contracting principles*** are—

(a) value for money; and

(b) open and effective competition; and

(c) the development of competitive local business and industry; and

(d) environmental protection; and

(e) ethical behaviour and fair dealing.

(4) A ***contract for the supply of goods or services*** includes a contract about carrying out work.

(5) The system of financial management established by a local government must include—

(a) the following financial planning documents prepared for the local government—

(i) a corporate plan that incorporates community engagement;

(ii) a long-term asset management plan;

(iii) a long-term financial forecast;

(iv) an annual budget including revenue statement;

(v) an annual operational plan; and

(b) the following financial accountability documents prepared for the local government—

(i) general purpose financial statements;

(ii) asset registers;

(iii) an annual report;

(iv) a report on the results of an annual review of the implementation of the annual operational plan; and

(c) the following financial policies of the local government—

(i) investment policy;

(ii) debt policy;

(iii) revenue policy.

(6) A local government must ensure the financial policies of the local government are regularly reviewed and updated as necessary.

(7) A local government must carry out a review of the implementation of the annual operational plan annually.

(8) To remove any doubt, it is declared that subsection (1)(a) does not require equal consideration to be given to each of the sound contracting principles.

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105 Auditing, including internal auditing

(1) Each local government must establish an efficient and effective internal audit function.

(2) Each large local government must also establish an audit committee.

(3) A ***large local government*** is a local government that belongs to a class prescribed under a regulation.

(4) An ***audit committee*** is a committee that—

(a) monitors and reviews—

(i) the integrity of financial documents; and

(ii) the internal audit function; and

(iii) the effectiveness and objectivity of the local government's internal auditors; and

(b) makes recommendations to the local government about any matters that the audit committee considers need action or improvement.

107 Insurance

(1) A local government must maintain the following insurance—

(a) public liability insurance;

(b) professional indemnity insurance.

(2) The insurance must be for at least the amount required under a regulation.

(3) A local government may enter into a contract of insurance with WorkCover Queensland, or another insurer, to cover its councillors.

(4) For that purpose, a councillor's role includes attending—

(a) meetings of the local government or its committees that the councillor is entitled or asked to attend; and

(b) meetings for a resident of the local government area; and

(c) conferences, deputations, inspections and meetings at which the councillor's attendance is permitted by the local government; and

(d) official functions organised for the local government.

Part 4 Councillor's financial accountability

108 What this part is about

This part is about councillors' financial accountability.

109 Councillor's discretionary funds

(1) A councillor must ensure that the councillor's discretionary funds are used in accordance with the requirements prescribed under a regulation.

(2) ***Discretionary funds*** are funds in the local government's operating fund that are—

(a) budgeted for community purposes; and

(b) allocated by a councillor at the councillor's discretion.

110 Councillors liable for improper disbursements

(1) This section applies if—

(a) a local government disburses local government funds in a financial year; and

(b) the disbursement—

(i) is not provided for in the local government's budget for the financial year; and

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(ii) is made without the approval of the local government by resolution.

(2) The local government must give the public notice of the disbursement in a newspaper that is circulating generally in the local government area, within 14 days after the disbursement is made.

(3) If the disbursement is not made for a genuine emergency or hardship, the councillors who knowingly agree to the disbursement are jointly and severally liable to pay the local government—

(a) the amount of the disbursement; and

(b) interest on the amount of the disbursement, at the rate at which interest accrues on overdue rates, calculated from the day of the disbursement to the day of repayment; and

(c) any fees, charges, penalties or other expenses incurred by the local government in relation to the disbursement.

(4) Those amounts may be recovered as a debt payable to the local government.

111 Councillors liable for loans to individuals

(1) A local government must not, either directly or indirectly, make or guarantee a loan to an individual.

(2) ***Guarantee a loan*** includes provide a security in connection with a loan.

(3) The councillors who knowingly agree to loan the money are jointly and severally liable to pay the local government—

(a) the amount of the loan; and

(b) interest on the amount of the loan, at the rate at which interest accrues on overdue rates, calculated from the day of the borrowing to the day of repayment; and

(c) any fees, charges, penalties or other expenses incurred by the local government in relation to the loan.

(4) Those amounts may be recovered as a debt payable to the local government.

112 Councillors liable for improper borrowings

(1) This section applies if a local government borrows money—

(a) for a purpose that is not for the good rule and government of the local government area; or

(b) in contravention of this Act or the Statutory Bodies Financial Arrangements Act.

(2) The councillors who knowingly agree to borrow the money are jointly and severally liable to pay the local government—

(a) the amount borrowed; and

(b) interest on the amount borrowed, at the rate at which interest accrues on overdue rates, calculated from the day of the borrowing to the day of repayment; and

(c) any fees, charges, penalties or other expenses incurred by the local government in relation to the borrowing.

(3) Those amounts may be recovered as a debt payable to the local government.

(4) This section applies despite—

(a) the fact that a security was issued for the borrowing; or

(b) the Statutory Bodies Financial Arrangements Act.

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Chapter 5 Monitoring and enforcing the Local Government Acts

Part 1 Local governments

Division 1 Introduction

113 What this part is about

(1) The purpose of this part is to allow the Minister or the department's chief executive, on behalf of the State—

(a) to gather information, including under a direction, to monitor and evaluate whether—

(i) a local government or councillor is performing their responsibilities properly; or

(ii) a local government or councillor is complying with laws applying to the local government or councillor, including the Local Government Acts; or

(iii) it is otherwise in the public interest for the Minister or the department's chief executive to take remedial action under this part; and

(b) to take remedial action.

(2) ***Remedial action*** is action to improve a local government's or councillor's performance or compliance, or that is in the public interest, taken under division 2A or 3.

113A Meaning of *local government* and application of local government principles

(1) In this part, a ***local government*** includes the Brisbane City Council.

(2) Also, the local government principles apply as if a reference in the principles to a councillor or local government employee included a reference to a councillor or council employee under the *City of Brisbane Act 2010*.

114 Decisions under this part are not subject to appeal

A decision of the Minister under this part is not subject to appeal.

Note—

See section 244 for more information.

Division 2 Monitoring and evaluation

115 Gathering information

To monitor and evaluate a local government's or councillor's performance and compliance, or whether it is in the public interest to take remedial action in relation to the local government or councillor, the department's chief executive may—

(a) examine the information contained in the local government's records and operations; or

(b) otherwise carry out an investigation into—

(i) the local government's or councillor's performance and compliance; or

(ii) whether it is in the public interest to take the remedial action.

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Division 2A Remedial action initiated by chief executive

116 Recommendation to Minister

(1) This section applies if the department's chief executive believes—

(a) a local government or councillor is not performing their responsibilities properly; or

(b) a local government or councillor is not complying with laws applying to the local government or councillor, including the Local Government Acts; or

(c) it is otherwise in the public interest for the Minister to take remedial action.

(2) The department's chief executive may make recommendations to the Minister about what remedial action to take.

(3) The Minister may take the remedial action the Minister considers appropriate in the circumstances.

(4) If the Minister takes remedial action, the Minister may publish the following information—

(a) the way in which the local government or councillor—

(i) is not performing their responsibilities properly; or

(ii) is not complying with laws applying to the local government or councillor, including the Local Government Acts;

(b) the reason it is in the public interest for the Minister to take remedial action;

(c) the remedial action the Minister has taken.

(5) The Minister may—

(a) publish the information in a newspaper circulating generally in the local government area; or

(b) direct the local government to publish the information on the local government's website.

117 Advisors

(1) This section applies if the department's chief executive believes—

(a) a local government is not performing its responsibilities properly; or

(b) a local government is not complying with laws applying to the local government, including the Local Government Acts; or

(c) it is otherwise in the public interest for the department's chief executive to appoint an advisor for a local government.

(2) The department's chief executive may, by gazette notice, appoint an advisor for the local government.

(3) An ***advisor*** is responsible for—

(a) helping the local government to build its capacity—

(i) to perform its responsibilities properly; or

(ii) to comply with laws applying to the local government, including the Local Government Acts; and

(b) performing other related duties as directed by the department's chief executive.

(4) The local government must cooperate fully with the advisor.

118 Financial controllers

(1) This section applies if the department's chief executive believes—

(a) a local government is not performing its responsibilities properly; or

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(b) a local government is not complying with laws applying to the local government, including the Local Government Acts; or

(c) it is otherwise in the public interest for the department's chief executive to appoint a financial controller for a local government.

(2) The department's chief executive may, by gazette notice, appoint a financial controller for the local government.

(3) A ***financial controller*** is responsible for—

(a) implementing financial controls as directed by the department's chief executive; and

(b) performing other related duties as directed by the department's chief executive.

(4) The local government must cooperate fully with the financial controller.

(5) If a financial controller is appointed, a payment from an account kept by the local government with a financial institution may be made only by—

(a) a cheque countersigned by the financial controller; or

(b) an electronic funds transfer authorised by the financial controller.

(6) If the financial controller reasonably believes a decision, resolution or order to make a payment is financially unsound, the financial controller must—

(a) refuse to make a payment; and

(b) advise the department's chief executive about why the decision, resolution or order is financially unsound.

(7) A decision, resolution or order is ***financially unsound*** if the decision, resolution or order—

(a) may cause the local government to become insolvent; or

(b) will result in unlawful expenditure by the local government; or

(c) will result in a disbursement from a fund that is not provided for in the local government's budget; or

(d) will result in expenditure from grant moneys for a purpose other than the purpose for which the grant was given.

119 Costs and expenses of advisors and financial controllers

(1) The department's chief executive may direct a local government for which an advisor or financial controller is appointed to pay the Minister a stated amount for—

(a) the salary and allowances payable to the advisor or financial controller; and

(b) the costs and expenses of the advisor or financial controller.

(2) The direction may state a time for payment.

(3) The stated amount is a debt payable to the State.

Division 3 Remedial action by Minister

120 Precondition to remedial action

(1) This section applies if the Minister proposes to exercise a power under this division.

(2) The Minister must give the local government or councillor in question a notice of the proposal to exercise the power, before the power is exercised, unless—

(a) the local government or councillor asked the Minister to exercise the power; or

(b) if the Minister proposes to exercise a power under section 122 or 123—the conduct tribunal has made a recommendation under section 150AR to suspend or dismiss a councillor; or

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Not authorised—indicative only

(c) the Minister considers that giving notice—

(i) is likely to defeat the purpose of the exercise of the power; or

(ii) would serve no useful purpose.

(3) The notice must state—

(a) the power that the Minister proposes to exercise; and

(b) the reasons for exercising the power; and

(c) any remedial action that the local government or councillor should take; and

(d) a reasonable time within which the local government or councillor may make submissions to the Minister about the proposal to exercise the power.

(4) The 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 that are made by the local government or councillor within the time specified in the notice.

(6) If—

(a) the Minister receives no submissions from the local government or councillor within the time specified in the notice; or

(b) the submissions from the local government or councillor do not contain reasonable grounds to persuade the Minister not to exercise the power;

the Minister may exercise the power without further notice to the local government or councillor.

121 Removing unsound decisions

(1) This section applies if the Minister believes—

(a) a decision of the local government is contrary to any law or inconsistent with the local government principles; or

(b) it is otherwise in the public interest to suspend or revoke a decision of the local government.

(2) A ***decision*** is—

(a) a resolution; or

(b) an order to give effect to a resolution; or

(c) a planning scheme; or

(d) a part of a decision mentioned in paragraphs (a) to (c).

(3) The Minister, by a gazette notice, may—

(a) suspend the decision, for a specified period or indefinitely; or

(b) revoke the decision.

(4) The gazette notice must state—

(a) either—

(i) how the decision is contrary to a law or inconsistent with the local government principles; or

(ii) why it is otherwise in the public interest to suspend or revoke the decision; and

(b) if the decision has been suspended, how the decision may be amended so it is no longer—

(i) contrary to the law or inconsistent with the local government principles; or

(ii) in the public interest to suspend the decision.

(5) If the Minister suspends the decision, the decision stops having effect for the period specified in the gazette notice.

(6) If the Minister revokes the decision—

(a) the decision stops having effect on the day specified in the gazette notice; or

(b) if no day is specified in the gazette notice—the decision is taken to never have had effect.

Not authorised—indicative only

Not authorised—indicative only

(7) The State is not liable for any loss or expense incurred by a person because a local government's decision is suspended or revoked under this section.

122 Removing a councillor

(1) This section applies if—

(a) the conduct tribunal recommends under section 150AR that a councillor be suspended or dismissed; or

(b) the Minister reasonably believes that a councillor has seriously or continuously breached the local government principles; or

(c) the Minister reasonably believes that a councillor is incapable of performing their responsibilities; or

(d) the Minister reasonably believes it is otherwise in the public interest that a councillor be suspended or dismissed.

(2) The Minister may recommend that the Governor in Council—

(a) if the conduct tribunal recommends that a councillor be suspended or dismissed—suspend or dismiss the councillor; or

(b) if the proposal in the Minister's notice under section 120 was to suspend the councillor for a stated period—suspend the councillor for a period that is no longer than the stated period; or

(c) if the proposal in the Minister's notice under section 120 was to dismiss the councillor or dissolve the local government—suspend or dismiss the councillor.

(3) The Governor in Council may give effect to the Minister's recommendation under a regulation.

123 Suspending or dissolving a local government

(1) This section applies if—

(a) the conduct tribunal recommends under section 150AR that every councillor be suspended or dismissed; or

(b) the Minister reasonably believes that a local government has seriously or continuously breached the local government principles; or

(c) the Minister reasonably believes that a local government is incapable of performing its responsibilities; or

(d) the Minister reasonably believes it is otherwise in the public interest that every councillor be suspended or dismissed.

(2) If the proposal in the Minister's notice under section 120 was to suspend every councillor for a stated period, the Minister may recommend that the Governor in Council—

(a) suspend every councillor for a period that is no longer than the stated period; and

(b) appoint an interim administrator to act in place of the councillors until the stated period ends.

(3) Also, the Minister may recommend that the Governor in Council—

(a) dissolve the local government; and

(b) appoint an interim administrator to act in place of the councillors until the earlier of—

(i) the conclusion of a fresh election of councillors to be held on a stated date; or

(ii) the conclusion of the next quadrennial election.

(4) The Governor in Council may give effect to the Minister's recommendation under a regulation.

(5) A regulation dissolving a local government has effect in accordance with the requirements of the *Constitution of Queensland 2001*, chapter 7, part 2.

Not authorised—indicative only

Not authorised—indicative only

124 Interim administrator acts for the councillors temporarily

(1) This section applies if an interim administrator is appointed to act in place of the councillors of a local government.

(2) The interim administrator has all the responsibilities and powers of—

(a) the local government; and

(b) the mayor.

(3) However, a regulation may limit the responsibilities and powers of the interim administrator.

(4) The interim administrator must exercise power under the name of 'interim administrator of the (name of the local government)'.

(5) This Act and other Acts apply to the interim administrator, with all necessary changes, and any changes prescribed under a regulation, as if the interim administrator were the local government.

(6) The Governor in Council may direct a local government for which an interim administrator is appointed to pay to the Minister an amount specified in the direction for the costs and expenses of—

(a) the interim administrator; and

(b) an advisory committee mentioned in subsection (10); and

(c) a committee appointed for the interim administrator under chapter 6, part 7.

(7) The specified amount may include the salary and allowances payable to an officer of the public service who is appointed as interim administrator.

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

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

(10) The Minister may create an advisory committee to give the interim administrator advice about the performance of the local government's responsibilities.

124A Minister may appoint acting interim administrator

(1) This section applies if—

(a) an interim administrator is appointed to act in place of the councillors of a local government; and

(b) during the interim administrator's term—

(i) there is a vacancy in the office of the interim administrator; or

(ii) the interim administrator is absent or can not perform the duties of interim administrator.

(2) The Minister may appoint a person to act as the interim administrator.

(3) Subject to any regulation made under section 124 for the interim administrator, the powers and responsibilities of the acting interim administrator may be limited by the Minister under the acting interim administrator's instrument of appointment.

(4) The person can not be appointed for more than 6 months in a 12-month period.

(5) The Minister must publish, by gazette notice, the name of the acting interim administrator.

Not authorised—indicative only

Not authorised—indicative only

Part 2 The public

Division 1 Powers of authorised persons

Subdivision 1 Introduction

125 What this division is about

(1) This division is about the powers that may be used by an authorised person.

(2) An ***authorised person*** is a person who is appointed under this Act to ensure that members of the public comply with the Local Government Acts.

Note—

See chapter 6, part 6 for more information about the appointment of authorised persons.

(3) The powers of an authorised person include the power, in certain circumstances—

(a) to ask a person for their name and address; and

(b) to enter a property, including private property.

(4) ***Private property*** is a property that is not a public place.

(5) A ***public place*** is a place, or that part of a place, that—

(a) is open to the public; or

(b) is used by the public; or

(c) the public is entitled to use;

whether or not on payment of money.

Example—

A person uses a room at the front of their home as a business office. While the business office is open to the public it is a public place. However, the home is private property and not part of the public place.

(6) An ***occupier*** of a property includes a person who reasonably appears to be the occupier of, or in charge of, the property.

(7) Force must not be used to enter a property under this division, other than when the property is entered under a warrant that authorises that use of force.

126 Producing authorised person's identity card

(1) An authorised person may exercise a power under this division, in relation to a person, only if the authorised person—

(a) first produces his or her identity card for the person to inspect; or

(b) has his or her identity card displayed so it is clearly visible to the 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 person's inspection at the first reasonable opportunity.

Subdivision 2 Power to require a person's name and address

127 Power to require a person's name and address

(1) This section applies if an authorised person—

(a) finds a person committing an infringement notice offence; or

(b) finds a person in circumstances that lead the authorised person to suspect, on reasonable grounds, that the person has just committed an infringement notice offence; or

Not authorised—indicative only

Not authorised—indicative only

(c) has information that leads the authorised person to suspect, on reasonable grounds, that a person has just committed an infringement notice offence.

(2) An ***infringement notice offence*** is an offence prescribed under the *State Penalties Enforcement Act 1999* to be an infringement notice offence.

(3) The authorised person may require the person to state the person's name and address.

(4) If the authorised person does so, the authorised person must also warn the person that it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(5) The authorised person may require the person to give evidence of the person's name or address if the authorised person suspects, on reasonable grounds, that the person has given a false name or address.

(6) The person must comply with an authorised person's requirement under subsection (3) or (5), unless the person has a reasonable excuse.

Maximum penalty—35 penalty units.

(7) However, the person does not commit an offence under subsection (6), if the person is not proved to have committed the infringement notice offence.

Subdivision 3 Powers to enter property etc.

128 Entering a public place that is open without the need for permission

(1) This section applies if an authorised person wants to enter a public place to ensure that the public place complies with the Local Government Acts.

(2) The authorised person may enter the public place, without the permission of the occupier of the place, if the place is not closed to the public (by a locked gate, for example).

129 Entering private property with, and in accordance with, the occupier's permission

(1) An authorised person may enter private property, that is not closed to entry by the public (by a locked gate, for example), in order to ask the occupier of the property for permission to stay on the property and exercise powers under a Local Government Act.

(2) When asking the occupier for permission, the authorised person must inform the occupier—

(a) of the purpose of entering the property; and

(b) that any thing or information that the authorised person finds on the property may be used as evidence in court; and

(c) that the occupier is not obliged to give permission.

(3) If the occupier gives permission, the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission.

(4) The document must state—

(a) that the authorised person informed the occupier—

(i) of the purpose of entering the property; and

(ii) that any thing or information that the authorised person finds on the property may be used as evidence in court; and

(iii) that the occupier was not obliged to give the permission; and

(b) that the occupier gave the authorised person permission to enter the property and exercise powers under a Local Government Act; and

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Not authorised—indicative only

(c) the date and time when the occupier gave the permission.

(5) If the occupier signs the document, the authorised person must immediately give a copy of the document to the occupier.

(6) If, in any proceedings—

(a) a question arises as to whether the occupier of a property gave permission to allow an authorised person to stay on the property under this Act; and

(b) a document that confirms the occupier gave permission is not produced in evidence;

the court may assume that the occupier did not give the permission, unless the contrary is proved.

(7) If the occupier gives permission, the authorised person may stay on the property and exercise the powers that the occupier has agreed to be exercised on the property.

(8) However, the right to stay on the property—

(a) is subject to any conditions that the occupier imposes (including about the times when the property may be entered, for example); and

(b) may be cancelled by the occupier at any time.

130 Entering private property with, and in accordance with, a warrant

(1) An authorised person may enter private property with, and in accordance with, a warrant.

(2) An authorised person must apply to a magistrate for a warrant.

(3) The application for the warrant must—

(a) be in the form approved by the department's chief executive; and

(b) be sworn; and

(c) state the grounds on which the warrant is sought.

(4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information that the magistrate requires about the application, in the way that the magistrate requires.

Example—

The magistrate may require additional information in support of the application to be given by statutory declaration.

(5) The magistrate may issue the warrant only if the magistrate is satisfied that there are reasonable grounds for suspecting—

(a) there is a particular thing or activity that may provide evidence of an offence against a Local Government Act (the ***evidence***); and

(b) the evidence is at the place, or may be at the place within the next 7 days.

(6) The warrant must state—

(a) the evidence for which the warrant is issued; and

(b) that the authorised person may, with necessary and reasonable help and force, enter the property and exercise an authorised person's powers under this Act; and

(c) the hours of the day or night when the property may be entered; and

(d) the day (within 14 days after the warrant's issue) when the warrant ends.

(7) The magistrate must keep a record of the reasons for issuing the warrant.

(8) A warrant is not invalidated by a defect in the warrant, or in compliance with section 131, unless the defect affects the substance of the warrant in a material particular.

(9) As soon as an authorised person enters private property under a warrant, the authorised person must do, or make a reasonable attempt to do, the following things—

Not authorised—indicative only

Not authorised—indicative only

(a) inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the warrant authorises the authorised person to enter the property without the permission of the occupier;

(b) give any occupier a reasonable opportunity to allow the authorised person to immediately enter the property without using force.

(10) However, the authorised person does not need to comply with subsection (9) if the authorised person believes that immediate entry to the property is required to ensure the warrant is effectively executed.

131 Warrants—applications made electronically

(1) An authorised person may make an electronic application for a warrant if the authorised person considers it necessary because of—

(a) urgent circumstances; or

(b) special circumstances (including the authorised person's remote location, for example).

(2) An ***electronic application*** is an application made by phone, fax, radio, email, videoconferencing or another form of electronic communication.

(3) The authorised person must prepare an application for the warrant that states the grounds on which the warrant is sought, before applying for the warrant.

(4) However, the authorised person may apply for the warrant before the application is sworn.

(5) The magistrate may issue the warrant only if the magistrate is satisfied that—

(a) it was necessary to make the application electronically; and

(b) the way that the application was made was appropriate in the circumstances.

(6) If the magistrate issues the warrant, and it is reasonably practicable to send a copy of the warrant to the authorised person (by fax or email, for example), the magistrate must immediately do so.

(7) If it is not reasonably practicable to send a copy of the warrant to the authorised person—

(a) the magistrate must—

(i) inform the authorised person of the date and time when the magistrate signed the warrant; and

(ii) inform the authorised person of the terms of the warrant; and

(b) the authorised person must write on a warrant form—

(i) the magistrate's name; and

(ii) the date and time when the magistrate signed the warrant; and

(iii) the terms of the warrant.

(8) The copy of the warrant sent to the authorised person, or the warrant form properly completed by the authorised person, authorises the authorised person to enter the property, and to exercise the powers, mentioned in the warrant that was signed by the magistrate.

(9) The authorised person must, at the first reasonable opportunity, send the magistrate—

(a) the sworn application; and

(b) if the authorised person completed a warrant form—the completed warrant form.

(10) When the magistrate receives those documents, the magistrate must attach them to the warrant that was signed by the magistrate, and give the warrant to the clerk of the court.

Not authorised—indicative only

Not authorised—indicative only

(11) 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 any proceedings before the court, whether the exercise of power was authorised by a warrant; and

(b) the warrant is not produced in evidence.

132 Entering under an application, permit or notice

(1) This section applies if an authorised person wants to enter a property—

(a) to inspect the property in order to process an application made under any Local Government Act; or

(b) to inspect a record that is required to be kept for a budget accommodation building under the Building Act, chapter 7; or

(c) to find out whether the conditions on which a permit or notice was issued have been complied with; or

(d) to inspect work that is the subject of, or was carried out under, a permit or notice.

(2) A ***permit*** is an approval, authorisation, consent, licence, permission, registration or other authority issued under any Local Government Act.

(3) A ***notice*** is a notice issued under any Local Government Act.

(4) The authorised person may enter the property without the permission of the occupier of the property—

(a) at any reasonable time during the day; or

(b) at night, if—

(i) the occupier of the property asks the authorised person to enter the property at that time; or

(ii) the conditions of the permit allow the authorised person to enter the property at that time; or

(iii) the property is a public place and is not closed to the public.

(5) However, the authorised person—

(a) must, as soon as the authorised person enters the property, inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and

(b) may enter a home that is on the property only if the occupier of the relevant part of the property accompanies the authorised person.

133 Entering property under an approved inspection program

(1) An authorised person may enter a property (other than a home on the property) without the permission of the occupier of the property, at any reasonable time of the day or night, under an approved inspection program.

(2) An ***approved inspection program*** is a program, approved by a local government, under which an authorised person may enter and inspect properties in the local government area to ensure the Local Government Acts are being complied with.

Example of an approved inspection program—

a program to ensure that swimming pools are fenced in accordance with a local law

(3) The local government must give, or must make a reasonable attempt to give, the occupier of the property a notice that informs the occupier of the following—

(a) the local government's intention to enter the property;

(b) the reason for entering the property;

(c) an estimation of when the property will be entered.

Not authorised—indicative only

Not authorised—indicative only

Example—

A local government may give the notice to an occupier of a property by dropping a flyer in the letterbox for the property.

(4) The local government must give, or make a reasonable attempt to give, the notice to the occupier within a reasonable time before the property is to be entered.

(5) The authorised person—

(a) must, as soon as the authorised person enters the property, inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and

(b) may enter a budget accommodation building on the property only to monitor compliance with the Building Act, chapter 7.

134 Approving an inspection program

(1) A local government may, by resolution, approve the following types of inspection programs—

(a) a systematic inspection program;

(b) a selective inspection program.

(2) A ***systematic inspection program*** allows an authorised person to enter and inspect all properties, or all properties of a certain type, in the local government area.

(3) A ***selective inspection program*** allows an authorised person to enter and inspect those properties in the local government area that have been selected in accordance with objective criteria specified in the resolution.

(4) The resolution must state—

(a) the purpose of the program; and

(b) when the program starts; and

(c) for a systematic inspection program that allows a type of property to be entered and inspected—a description of the type of property; and

(d) for a selective inspection program—the objective criteria for selecting the properties to be entered and inspected; and

(e) the period (of not more than 3 months or another period prescribed under a regulation) over which the program is to be carried out.

(5) The local government must give the public notice of the approval of an inspection program, at least 14 days, but not more than 28 days, before the approved inspection program starts.

(6) The notice must be published—

(a) in a newspaper that is circulating generally in the local government area; and

(b) on the local government's website.

(7) The notice must state the following—

(a) the name of the local government;

(b) the purpose and scope of the program, in general terms;

(c) when the program starts;

(d) the period over which the program is to be carried out;

(e) that the public may inspect a copy of the resolution that approved the program at the local government's public office until the end of the program;

(f) that a copy of the resolution that approved 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 resolution that approved the program.

Not authorised—indicative only

Not authorised—indicative only

(8) The price of a copy of the resolution that approved the program must be no more than the cost to the local government of making the copy available for purchase.

(9) From the time when the notice is published in the newspaper until the end of the program—

(a) the public may inspect a copy of the resolution that approved the program at the local government's public office; and

(b) copies of the resolution that approved the program must be available for purchase at the local government's public office at the price stated in the notice.

134A Entry by authorised person, at reasonable times, to inspect regulated pools

(1) At all reasonable times, an authorised person may enter a property (other than a home on the property) without permission of the occupier of the property to inspect a regulated pool, and barriers or fencing for the pool, for compliance with—

(a) if, under the Building Act, the owner of the pool must ensure the pool complies with the pool safety standard or a part of the standard—the pool safety standard or part; or

(b) if paragraph (a) does not apply—a provision of a law that regulates—

(i) the construction or maintenance of barriers or fencing for the pool; or

(ii) another matter relating to the safety of persons using the pool.

(2) However, the authorised person must, as soon as the authorised person enters the property—

(a) inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the authorised person is authorised under this Act to enter the property without the permission of the occupier; and

(b) produce his or her identity card for the occupier of the property to inspect.

(3) In this section—

pool safety standard see the Building Act, section 231D.

135 General powers after entering a property

(1) This section explains the powers that an authorised person has after entering a property, other than entering a property—

(a) to ask the occupier of the property for permission to stay on the property; or

(b) under section 132, 133 or 134A.

(2) The authorised person may—

(a) search any part of the property; or

(b) inspect, test, photograph or film anything that is in or on the property; or

(c) copy a document that is in or on the property; or

(d) take samples of or from anything that is in or on the property; or

(e) take into or onto the property any persons, equipment and materials that the authorised person reasonably requires for exercising the authorised person's powers; or

(f) require the occupier of the property, or a person in or on the property, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (e).

(3) An authorised person may exercise a power under subsection (2) only if exercising the power is necessary for the purpose related to the entry of the property.

Not authorised—indicative only

Not authorised—indicative only

(4) If a person is required to give reasonable help under subsection (2)(f), the person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—8 penalty units.

(5) 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.

136 Authorised person to give notice of damage

(1) This section applies if—

(a) something is damaged by—

(i) an authorised person, when the authorised person exercises a power under this division; or

(ii) a person who is authorised by an authorised person to take action under this division, when the person takes the action; or

(b) the authorised person considers, on reasonable grounds, that the damage is more than trivial damage.

(2) The authorised person must immediately give notice of the particulars of the damage to the person who appears to be the owner of the thing that was damaged.

(3) However, if for any reason it is not practicable to do so, the authorised person must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the thing was damaged.

(4) The ***owner*** of a thing includes a 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 that in the notice.

137 Compensation for damage or loss caused after entry

(1) If a person incurs damage or loss because of the exercise, or purported exercise, of a power under this division, the local government must pay the person compensation.

(2) The compensation equals—

(a) the amount agreed between the person and local government; or

(b) if the person and local government can not agree, the amount that is decided by a court.

(3) The person may claim the compensation in—

(a) any proceedings for compensation; or

(b) any proceedings brought against the person for an offence against any Local Government Act.

(4) A court may order compensation to be paid only if the court is satisfied it is just to do so in all the circumstances.

(5) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

(6) The court may make any order about costs that the court considers just.

Division 2 Powers of other persons

138 What this division is about

(1) This division is about the powers that may be used—

(a) to enable a local government to perform its responsibilities; or

(b) to ensure that a person complies with this Act, and the other Local Government Acts, including by complying with a remedial notice.

Not authorised—indicative only

Not authorised—indicative only

(2) This division explains the circumstances in which a person is authorised to enter a property under this division, namely—

(a) in a potentially dangerous situation, to take urgent action; or

(b) to take action in relation to local government facilities on the property (including water or sewerage pipes, for example); or

(c) with (and in accordance with) the permission of the occupier of the property; or

(d) with (and in accordance with) a court order; or

(e) with (and in accordance with) a reasonable entry notice.

(3) The following persons may enter a property under this division—

(a) if the occupier of the property is not the owner of the property—the owner or the owner's employee;

(b) a local government worker.

(4) A ***local government worker*** is an employee, or agent, of the local government who is authorised by the local government to act under this division.

Note—

Not every employee or agent of the local government would ordinarily be authorised to act under this division.

(5) However, the local government may authorise an employee or agent to act under this division only if the employee or agent is appropriately qualified or trained to exercise a power or perform a responsibility under this division.

(6) Force must not be used to enter a property under this division, unless the property is entered under a court order that specifically authorises the use of that force.

138AA Notices for this division

(1) A ***remedial notice*** is a notice that requires the owner or occupier of a property to take action under a Local Government Act in relation to the property (including fencing a pool, for example).

(2) A remedial notice may only be given by a local government to the person who, under a Local Government Act, is required to take the action stated in the notice.

(3) A ***reasonable entry notice*** is a notice about a proposed entry of a property that—

(a) informs the owner or occupier of the property of—

(i) who is to enter the property; and

(ii) the reason for entering the property; and

(iii) the days and times when the property is to be entered; and

(b) is given to the owner or occupier of the property at least 7 days before the property is proposed to be entered.

(4) A remedial notice and a reasonable entry notice may not be combined unless—

(a) the owner of the property is also the occupier of the property; or

(b) the occupier of the property is the person who, under a Local Government Act, is required to take the action stated in the remedial notice.

(5) A notice given under this division in contravention of this section is of no effect.

138A Identity card for use under this division

(1) A local government is not required to give a local government worker an identity card unless the worker is exercising a power of entry under this division.

Not authorised—indicative only

Not authorised—indicative only

(2) This section does not stop a single identity card being issued to a person for this Act and for another purpose.

(3) A person who stops being a local government worker must return the person's identity card to the local government within 21 days after stopping being a local government worker, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

139 Entry with, and in accordance with, permission of occupier

(1) Any person may enter a property with the permission of the occupier of the property.

(2) However, the right to enter the property—

(a) is subject to any conditions that the occupier imposes (including about the times when the property may be entered, for example); and

(b) may be cancelled by the occupier at any time.

140 Entry by an owner, with reasonable entry notice, under a remedial notice

(1) This section applies if—

(a) a local government gives a remedial notice to the owner of a property; and

(b) the owner is not the occupier of the property.

(2) After the owner gives a reasonable entry notice to the occupier of the property, the owner or the owner's agent may—

(a) enter the property at the times stated in the reasonable entry notice; and

(b) take the action that is required under the remedial notice.

(3) If the occupier asks to inspect the remedial notice, the owner must allow the occupier to inspect the remedial notice.

(4) This section does not affect any rights that the owner has apart from this section.

141 Occupier may discharge owner's obligations

(1) This section applies if—

(a) the owner of a property fails—

(i) to take the action in relation to the property that is required under a remedial notice; or

(ii) to pay money that is payable in relation to the property under a Local Government Act (including rates, for example); and

(b) the occupier of the property is not the owner of the property.

(2) The occupier of the property may—

(a) take the action that is required, and recover the amount that the occupier properly and reasonably incurs in taking the action as a debt payable by the owner; or

(b) pay the money that is payable, and recover the money as a debt payable by the owner.

(3) For example, if the occupier is the owner's tenant, the occupier may deduct the money from any rent that the occupier owes the owner, without being in breach of the tenancy agreement.

142 Entry by a local government worker, with reasonable entry notice, under a remedial notice

(1) This section applies if—

(a) a local government gives a remedial notice to the owner or the occupier of a property (the ***responsible person***); and

Not authorised—indicative only

Not authorised—indicative only

(b) the responsible person fails to take the action required under the remedial notice.

(2) After giving a reasonable entry notice to the occupier of the property, a local government worker may—

(a) enter the property (other than a home on the property) without the permission of the occupier; and

(b) take the action that is required under the remedial notice.

(3) However, the local government worker must, as soon as the local government worker enters the property—

(a) inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the local government worker is authorised under this Act to enter the property without the permission of the occupier; and

(b) produce his or her identity card for the occupier of the property to inspect.

(4) The local government may recover the amount that the local government properly and reasonably incurs in taking the action as a debt payable by the person who failed to take the action.

(5) Interest is payable on the debt at the same rate that interest is payable on overdue rates levied by the local government.

(6) The local government must give the person who failed to take the action notice of the amount of the debt.

(7) Subsection (8) applies if the person who failed to take the action is the owner of the property.

(8) If the debt is not paid within 30 days after the date of the notice, the local government may recover the debt as if the debt were overdue rates.

143 Entry by a local government worker, with reasonable entry notice, to take materials

(1) This section applies if, in the circumstances, a local government has no other reasonably practicable way of obtaining materials other than by removing the materials from relevant land.

(2) ***Relevant land*** means land, other than protected land, that is—

(a) within the local government area; or

(b) if the local government has the written approval of the Minister, under section 9(4)(b)(i), to exercise its powers outside its local government area—outside its local government area; or

(c) if the local government may exercise a power in another local government's area for the purpose of a joint government activity—within the other local government's area.

(3) ***Protected land*** is land that is—

(a) the site of, or curtilage around, a home or other structure; or

(b) a court, lawn, park, planted walk or avenue or yard; or

(c) under cultivation (including a garden, nursery or plantation, for example); or

(d) a state forest or timber reserve under the Forestry Act; or

(e) a protected area under the *Nature Conservation Act 1992*; or

(f) the wet tropics area under the *Wet Tropics World Heritage Protection and Management Act 1993*.

(4) After giving a reasonable entry notice to the owner and the occupier of the rateable land, a local government worker may—

(a) enter the land without the permission of the occupier of the land; and

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Not authorised—indicative only

(b) search for materials that the local government requires to perform its responsibilities; and

(c) remove the materials from the land.

Example—

A local government may remove dirt from the land for use in mopping up an oil spill on a neighbouring road to prevent the oil entering a stormwater drain.

(5) However, the local government worker must, as soon as the local government worker enters the property—

(a) inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the local government worker is authorised under this Act to enter the property without the permission of the occupier; and

(b) produce his or her identity card for the occupier of the property to inspect.

(6) The local government worker must not search for, or remove materials from, within 50m of any structure or works on the land (including a home, bridge, dam or wharf, for example).

144 Entry by a local government worker, at reasonable times, to repair etc. facilities

(1) At all reasonable times, a local government worker may enter a property (other than a home on the property) without the permission of the occupier of the property—

(a) to investigate the future installation of local government facilities on, over or under the property; or

(b) to install local government facilities on, over or under the property; or

(c) to inspect, maintain, operate, repair, replace or remove local government facilities, that are on, over or under the property, for their routine operations.

(2) ***Local government facilities*** are facilities that are installed by a local government (including sewerage pipes, for example).

(3) However, the local government worker must, as soon as the local government worker enters the property—

(a) inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the local government worker is authorised under this Act to enter the property without the permission of the occupier; and

(b) produce his or her identity card for the occupier of the property to inspect.

145 Entry by a local government worker, at any time, for urgent action

(1) A local government worker may enter a property (other than a home on the property), at any time without the permission of the occupier of the property, in a potentially dangerous situation to take urgent action for local government purposes.

Example—

A local government worker may enter a property to cut down a tree that was blown over in a storm and is in danger of falling and injuring someone or damaging property.

(2) However, the local government worker must, as soon as reasonably practicable after the local government worker enters the property—

(a) inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the local government worker is authorised under this Act to enter the property without the permission of the occupier; and

(b) produce his or her identity card for the occupier of the property to inspect.

Not authorised—indicative only

Not authorised—indicative only

146 Entry with, and in accordance with, a court order

(1) A person may enter a property with, and in accordance with, a court order made under this section.

(2) The person must apply to a magistrate for the court order.

(3) The application must—

(a) be in the form approved by the department's chief executive; and

(b) be sworn; and

(c) state the grounds on which the court order is sought.

(4) The person must, as soon as practicable, give a copy of the application to—

(a) if the person is not the owner of the property—the owner of the property; and

(b) the occupier of the property.

(5) The magistrate may refuse to consider the application until the person gives the magistrate all the information that the magistrate requires about the application in the way that the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

(6) If the magistrate is satisfied that entry to the property is necessary to allow the person to take action under any of the Local Government Acts, the magistrate may make the court order.

(7) The court order must—

(a) direct the occupier of the property to allow the person to enter the property and take all action that is necessary under any Local Government Act; and

(b) state the hours of the day or night when the property may be entered; and

(c) state the day (within 14 days after the court order is made) when the court order ends.

(8) If the person who applied for the court order is a local government worker, the court order may authorise the local government worker to use necessary and reasonable help and force to enter the property.

(9) The magistrate must record the reasons for making the court order.

(10) As soon as the person enters the property under the court order, the person must do, or make a reasonable attempt to do, the following things—

(a) inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the person is authorised under the court order to enter the property without the permission of the occupier;

(b) if the court order authorises the person to use force to enter the property—give the occupier a reasonable opportunity to allow the person to immediately enter the property without using force.

147 Compensation for damage or loss caused

(1) A local government worker who enters a property—

(a) must not cause, or contribute to, damage to any structure or works on the property; and

(b) must take all reasonable steps to ensure that the worker causes as little inconvenience, and does as little other damage, as is practicable in the circumstances.

(2) If a person incurs damage or loss because of the exercise, or purported exercise, of a power under this division (including the loss of the value of materials removed from a property, or the reduction in the value of the property, for example), the local government must pay the person compensation.

Not authorised—indicative only

Not authorised—indicative only

(3) The compensation equals—

(a) the amount agreed between the person and local government; or

(b) if the person and local government can not agree, the amount that is decided by a court.

(4) The court may make any order about costs that the court considers just.

148 Limitation of time in absence of notice of work done

(1) This section applies if work is done on a property without an approval that is required under a Local Government Act.

(2) For the purposes of any limitation of time for taking any proceedings or doing anything else about the work, the work is taken to have been done when a local government worker first finds out about the work.

Part 3 Investigation of local government records

Division 1 Introduction

148A What this part is about

This part is about investigations conducted by the department or a local government into the accuracy of the local government's registers or records that are required to be kept under this Act.

Division 2 Investigations by department

148B Producing authorised officer's identity card

(1) This section applies if the department's chief executive directs an authorised officer to exercise a power under this division.

(2) The authorised officer may exercise the power, in relation to a person, only if the officer—

(a) first produces his or her identity card for the person to inspect; or

(b) has his or her identity card displayed so it is clearly visible to the person.

148C Making of inquiries for department

(1) This section applies if the department's chief executive suspects or believes, on reasonable grounds, that information included in a register or record of a local government is incorrect because of an error or omission.

(2) An authorised officer, if directed by the department's chief executive, may make all inquiries the chief executive considers to be reasonable to find out whether and to what extent the register or record is incorrect.

148D Power to require information or document for department investigation

(1) This section applies if the department's chief executive suspects or believes, on reasonable grounds, that—

(a) either or both of the following apply—

(i) information included in a register or record of a local government is incorrect because of an error or omission;

(ii) an offence against this Act has been committed relating to a register or record; and

Not authorised—indicative only

Not authorised—indicative only

(b) a person—

(i) is able to give information about the error, omission or offence; or

(ii) holds a document relating to the error, omission or offence.

(2) The department's chief executive or, if directed by the chief executive, an authorised officer may require the person to give the information or produce the document.

(3) When making the requirement, the department's chief executive or authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(4) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) If the person is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information or producing the document might tend to incriminate the person.

(6) It is a defence in a prosecution under subsection (4) that the information or document sought by the department's chief executive or authorised officer is not relevant to the error, omission or offence.

(7) If the person produces the document to the department's chief executive or authorised officer, the chief executive or officer—

(a) may keep the document to take an extract from it or make a copy of it; and

(b) must return the document to the person as soon as practicable after taking the extract or making the copy.

Division 3 Investigations by local government

148E Producing authorised person's identity card

(1) This section applies if the chief executive officer directs an authorised person to exercise a power under this division.

(2) The authorised person may exercise the power, in relation to another person, only if the authorised person—

(a) first produces his or her identity card for the other person to inspect; or

(b) has his or her identity card displayed so it is clearly visible to the other person.

148F Making of inquiries for local government

(1) This section applies if the chief executive officer suspects or believes, on reasonable grounds, that information included in a register or record of the local government is incorrect because of an error or omission.

(2) The chief executive officer or, if directed by the chief executive officer, an authorised person may make all inquiries the chief executive officer considers to be reasonable to find out whether and to what extent the register or record is incorrect.

148G Power to require information or document for local government investigation

(1) This section applies if the chief executive officer suspects or believes, on reasonable grounds, that—

(a) either or both of the following apply—

(i) information included in a register or record of the local government is incorrect because of an error or omission;

Not authorised—indicative only

Not authorised—indicative only

(ii) an offence against this Act has been committed relating to a register or record; and

(b) a person—

(i) is able to give information about the error, omission or offence; or

(ii) holds a document relating to the error, omission or offence.

(2) The chief executive officer or, if directed by the chief executive officer, an authorised person may require the person to give the information or produce the document.

(3) When making the requirement, the chief executive officer or authorised person must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(4) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) If the person is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information or producing the document might tend to incriminate the person.

(6) It is a defence in a prosecution under subsection (4) that the information or document sought by the chief executive officer or authorised person is not relevant to the error, omission or offence.

(7) If the person produces the document to the chief executive officer or authorised person, the chief executive or authorised person—

(a) may keep the document to take an extract from it or make a copy of it; and

(b) must return the document to the person as soon as practicable after taking the extract or making the copy.

148H Referral to department

(1) This section applies if, because of inquiries made under this division, the chief executive officer concludes on reasonable grounds that an offence has been committed under this Act relating to a register or record.

(2) The chief executive officer must report the chief executive officer's conclusion, including the reasons for the conclusion, to the department's chief executive.

(3) Subsection (2) does not limit any duty the chief executive officer may have under the *Crime and Corruption Act 2001* to notify the Crime and Corruption Commission of any complaint, information or matter that the chief executive officer reasonably suspects involves, or may involve, corrupt conduct under that Act.

148I Chief executive officer not subject to direction

The chief executive officer is not subject to direction by the mayor in acting under this division.

Part 4 Offences

149 Obstructing local government officials

(1) A person must not obstruct a local government official in the exercise of a power under this Act or a local law, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) A ***local government official*** is any of the following persons—

(a) the mayor;

(b) the chief executive officer;

(c) an authorised person.

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Not authorised—indicative only

(3) A person must not obstruct a local government worker in the exercise of a power under part 2, division 2, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

Notes—

1 Local government workers are only those employees and agents of a local government who are authorised to act under chapter 5, part 2, division 2.

2 In particular circumstances a local government worker may enter a property and carry out work or obtain materials in compliance with chapter 5, part 2, division 2.

(4) If a person has obstructed a local government official or local government worker and the official or worker decides to proceed with the exercise of the power, the official or worker must warn the person that—

(a) it is an offence to obstruct the official or worker, unless the person has a reasonable excuse; and

(b) the official or worker considers the person's conduct an obstruction.

(5) A person must not pull down, damage, deface or destroy a board or anything else that is displaying a local law, order, notice or other matter authorised by a local government.

Maximum penalty for subsection (5)—35 penalty units.

150 Impersonating authorised persons

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

150A Duty to make documents available

A person who has charge of a document owned or held by a local government must not obstruct the viewing or copying of the document by another person who is authorised to view or copy the document under this Act.

Maximum penalty—10 penalty units.

Chapter 5A Councillor conduct

Part 1 Preliminary

Division 1 Introductory matters

150B Overview of chapter

(1) This chapter is about—

(a) setting appropriate standards for the behaviour of councillors; and

(b) dealing with the conduct of councillors at local government meetings that does not meet the standards; and

(c) investigating and dealing with complaints about the conduct of councillors; and

(d) disciplinary action that may be taken against councillors who engage in inappropriate conduct or misconduct; and

(e) the entities that investigate and deal with complaints about the conduct of councillors.

(2) This chapter provides—

(a) that the conduct of councillors at local government meetings that does not meet appropriate standards of behaviour is generally to be dealt with by the chairperson of the meeting; and

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(b) that complaints about the conduct of councillors are to be made, or referred, to the assessor for investigation; and

(c) that the assessor, after investigating a councillor's conduct—

(i) may refer the suspected inappropriate conduct of a councillor to the local government to be dealt with; or

(ii) may apply to the conduct tribunal to decide—

(A) whether the councillor engaged in misconduct, or inappropriate conduct that is connected to misconduct; and

(B) if the conduct tribunal decides the councillor engaged in misconduct or inappropriate conduct, the action to be taken to discipline the councillor; and

(d) that the assessor is to notify the Crime and Corruption Commission about suspected corrupt conduct as required under the *Crime and Corruption Act 2001*.

150C Definitions for chapter

In this chapter—

assessor means the Independent Assessor appointed under section 150CV.

behavioural standard means a standard of behaviour for councillors set out in the code of conduct approved under section 150E.

conduct includes—

(a) failing to act; and

(b) a conspiracy, or attempt, to engage in conduct.

inappropriate conduct see section 150K.

investigation policy, of a local government, see section 150AE(1).

local government includes the Brisbane City Council.

misconduct see section 150L.

model procedures see section 150F.

referral notice see section 150AC.

unsuitable meeting conduct see section 150H.

150CAAApplication of local government principles

In this chapter, the local government principles apply as if a reference in the principles to a councillor or local government employee included a reference to a councillor or council employee under the *City of Brisbane Act 2010*.

Division 2 Code of conduct

150D Minister to make code of conduct

(1) The Minister must make a code of conduct that sets out the standards of behaviour for councillors in performing their functions as councillors under this Act or the *City of Brisbane Act 2010*.

Notes—

1 See section 4 which requires the Minister, in making a code of conduct under this section, to do so in a way that is consistent with, and provides results that are consistent with, the local government principles. See also section 150CAA in relation to the application of the local government principles.

2 Also, see the obligations imposed on councillors under chapter 6, part 2, division 5 or the *City of Brisbane Act 2010*, chapter 6, part 2, division 5 which apply to councillors in performing their functions as councillors under this Act or the *City of Brisbane Act 2010*.

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(2) The code of conduct may also contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.

150E Approval and publication of code of conduct

(1) The code of conduct does not take effect until it is approved by a regulation.

(2) The approved code of conduct must be—

(a) tabled in the Legislative Assembly with the regulation approving the code; and

(b) published on the department's website.

Part 2 Conduct at local government meetings

Division 1 Requirement for meeting procedures

150F Department's chief executive to make model procedures

(1) The department's chief executive must make procedures (the ***model procedures***) for the conduct of meetings of a local government and its committees.

(2) Without limiting subsection (1), the model procedures must state—

(a) how the chairperson of a local government meeting may deal with a councillor's unsuitable meeting conduct; and

(b) how the suspected inappropriate conduct of a councillor referred to the local government by the assessor must be dealt with at a local government meeting.

(3) The department's chief executive must publish the model procedures on the department's website.

150G Adopting meeting procedures

(1) A local government must either—

(a) adopt the model procedures; or

(b) prepare and adopt other procedures for the conduct of its meetings and meetings of its committees.

(2) If the local government prepares and adopts procedures under subsection (1)(b)—

(a) the procedures must not be inconsistent with the model procedures; and

(b) if there is an inconsistency, the local government is taken to have adopted the model procedures to the extent of the inconsistency.

Division 2 Unsuitable meeting conduct

150H What is *unsuitable meeting conduct*

The conduct of a councillor is ***unsuitable meeting conduct*** if the conduct—

(a) happens during a local government meeting; and

(b) contravenes a behavioural standard.

150I Chairperson may deal with unsuitable meeting conduct

(1) This section applies if, at a local government meeting, the chairperson of the meeting reasonably believes the conduct of a councillor during the meeting is unsuitable meeting conduct.

(2) The chairperson may make 1 or more of the following orders—

(a) an order reprimanding the councillor for the conduct;

(b) an order requiring the councillor to leave the place at which the meeting is being held, including any area set

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Not authorised—indicative only

aside for the public, and stay away from the place for the rest of the meeting;

(c) if the councillor fails to comply with an order to leave and stay away from the place—an order that the councillor be removed from the place.

(3) If the chairperson makes an order under subsection (2), the chairperson must ensure details of the order are recorded in the minutes of the meeting or, if minutes are not required for the meeting, in another way prescribed by regulation.

Note—

See also sections 150DX and 150DY about recording orders made by the chairperson of a local government meeting under this section in the councillor conduct register.

150J Unsuitable meeting conduct that becomes inappropriate conduct

If the conduct of a councillor at a local government meeting is inappropriate conduct under section 150K(2), the local government—

(a) is not required to notify the assessor about the conduct; and

(b) may deal with the conduct under section 150AG.

Part 3 Dealing with inappropriate conduct, misconduct and corrupt conduct

Division 1 Preliminary

150K What is *inappropriate conduct*

(1) The conduct of a councillor is ***inappropriate conduct*** if the conduct contravenes—

(a) a behavioural standard; or

(b) a policy, procedure or resolution of the local government.

(2) Also, the conduct of a councillor is ***inappropriate conduct*** if—

(a) the conduct contravenes an order of the chairperson of a local government meeting for the councillor to leave and stay away from the place at which the meeting is being held; or

(b) it is part of a course of conduct at local government meetings leading to orders for the councillor's unsuitable meeting conduct being made on 3 occasions within a period of 1 year.

(3) For subsection (2)(b), the conduct that led to the orders being made, taken together, is the inappropriate conduct.

(4) However, inappropriate conduct does not include conduct that is—

(a) unsuitable meeting conduct, to the extent the conduct is not conduct mentioned in subsection (2); or

(b) misconduct; or

(c) corrupt conduct.

150L What is *misconduct*

(1) The conduct of a councillor is ***misconduct*** if the conduct—

(a) adversely affects, directly or indirectly, the honest and impartial performance of the councillor's functions, or the exercise of the councillor's powers; or

(b) is or involves—

(i) a breach of the trust placed in the councillor, either knowingly or recklessly; or

(ii) a misuse of information or material acquired in, or in connection with, the performance of the

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Not authorised—indicative only

councillor's functions, whether the misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person; or

(c) contravenes any of the following—

(i) an order of the local government or the conduct tribunal;

(ii) the acceptable requests guidelines of the local government under section 170A or the *City of Brisbane Act 2010*;

(iii) a policy of the local government about the reimbursement of expenses;

(iv) section 150R(2), 150EK, 150EL, 150EQ, 150EW, 150EZ, 170(3), 171(3), 201A, 201B or 201C;

(v) the *City of Brisbane Act 2010*, section 170(3), 173(3), 177H, 177I, 177N, 177T, 177W, 198A, 198B or 198C.

(2) Also, the conduct of a councillor is ***misconduct*** if the conduct—

(a) is part of a course of conduct leading to the local government deciding to take action under section 150AG to discipline the councillor for inappropriate conduct on 3 occasions within a period of 1 year; or

(b) is of the same type stated in an order of the local government that if the councillor engages in the same type of conduct again, it will be dealt with as misconduct.

(3) For subsection (2)(a), the conduct that led to the 3 occasions of disciplinary action, taken together, is the misconduct.

(4) It does not matter if the conduct happened outside the State.

150M Application to former councillors

(1) This chapter applies in relation to a person who was, but is no longer, a councillor if the person was a councillor when

conduct the subject of a complaint or investigation is alleged to have happened.

(2) For subsection (1), a reference in this chapter to a councillor includes a reference to the person.

150N Duty to notify Crime and Corruption Commission about suspected corrupt conduct not affected

To remove any doubt, it is declared that nothing in this part limits the assessor's duty under section 38 of the *Crime and Corruption Act 2001* to notify the Crime and Corruption Commission about suspected corrupt conduct.

Division 2 Complaints about councillor conduct

150O Complaints about councillor conduct

(1) A person may make a complaint to the assessor about the conduct of a councillor.

(2) The complaint may be made to the assessor orally or in writing.

(3) Subsection (1) does not limit who a person can complain to about the conduct of a councillor.

Examples—

A person may complain to the Crime and Corruption Commission or the department's chief executive about a councillor's conduct.

150P Complaints about councillor conduct must be referred to assessor

(1) This section applies if a government entity, other than the assessor, receives a complaint about the conduct of a councillor.

(2) The government entity must—

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Not authorised—indicative only

(a) refer the complaint to the assessor; and

(b) give the assessor all information held by the entity that relates to the complaint.

(3) However, subsection (2) does not apply if—

(a) the government entity has a duty to notify the Crime and Corruption Commission of the complaint under section 38 of the *Crime and Corruption Act 2001*; or

Note—

Sections 38 to 40 of the *Crime and Corruption Act 2001* state the duties of a public official to notify the Crime and Corruption Commission about corrupt conduct, subject to a direction by the Crime and Corruption Commission.

(b) the government entity has the power to investigate the complaint or the councillor's conduct under another law and decides to carry out the investigation under that law.

Example—

The police service receives and investigates a complaint alleging a councillor engaged in fraud.

(4) As soon as practicable after receiving the complaint, the assessor must, if the assessor has the contact details of the person who made the complaint, give the person a notice that states—

(a) the assessor has received the complaint from the government entity; and

(b) the assessor will deal with the complaint under this chapter.

(5) In this section—

government entity includes the following—

(a) a local government;

(b) a councillor;

(c) the chief executive officer of a local government;

(d) the chief executive officer under the *City of Brisbane Act 2010*.

150Q Further information about complaints

(1) This section applies if—

(a) a complaint about the conduct of a councillor was made or referred to the assessor under this division; and

(b) in the assessor's opinion, the complaint does not include sufficient information for the assessor to properly investigate the conduct; and

(c) the assessor has the contact details of the person who made the complaint.

(2) The assessor may give a notice to the person who made the complaint asking the person to give the assessor further information about the complaint within a stated reasonable period.

(3) The assessor may decide not to investigate the conduct if—

(a) the person does not comply with the notice; or

(b) the person complies with the notice but, in the assessor's opinion, there is still insufficient information to investigate the conduct.

(4) If the assessor decides not to investigate the conduct under subsection (3), the assessor must give the person who made the complaint a notice that states the assessor has decided not to investigate the conduct because there is insufficient information to do so.

Division 3 Local government duties to notify assessor about particular councillor conduct

150R Local government official must notify assessor about particular conduct

(1) This section applies if a local government official becomes aware of information indicating a councillor may have

Not authorised—indicative only

Not authorised—indicative only

engaged in conduct that would be inappropriate conduct or misconduct other than—

(a) conduct mentioned in section 150J; and

(b) by receiving a complaint to which section 150P applies.

(2) The local government official must give the assessor a notice about the councillor's conduct.

Note—

Contravention of subsection (2) by a councillor is misconduct that could result in disciplinary action being taken against the councillor—see section 150L(1)(c)(iv).

(3) The local government official must not give the notice—

(a) vexatiously; or

(b) other than in good faith.

Maximum penalty—85 penalty units.

(4) In this section—

local government official means—

(a) a councillor; or

(b) the chief executive officer of a local government; or

(c) the chief executive officer under the *City of Brisbane Act 2010*.

150S Local government must notify assessor about misconduct

(1) This section applies if a local government—

(a) in relation to a course of conduct by a councillor, decides under section 150AG to take action to discipline the councillor for inappropriate conduct on 3 occasions during a period of 1 year; or

(b) if the local government has previously made an order that a particular type of conduct engaged in by a councillor will be dealt with as misconduct—reasonably

suspects the councillor has engaged in the same type of conduct again.

(2) The local government must give the assessor—

(a) a notice about the councillor's conduct; and

(b) all information held by the local government that relates to the conduct.

Division 4 Investigation of councillor conduct

150T Assessor must investigate conduct of councillor

(1) The assessor must investigate the conduct of a councillor if the conduct is the subject of—

(a) a complaint made or referred to the assessor under division 2; or

(b) a notice given to the assessor under division 3; or

(c) information given to the assessor under section 150AF(4); or

(d) a referral made to the assessor by the conduct tribunal under section 150DLA; or

(e) a complaint referred to the assessor by the Crime and Corruption Commission.

Note—

The Crime and Corruption Commission may decide, under chapter 2, part 3 of the *Crime and Corruption Act 2001*, to refer a complaint to the assessor to deal with, whether or not in cooperation with the commission.

(2) However, subsection (1)(a) does not apply if the assessor decided, under section 150Q(3), not to investigate the conduct.

Not authorised—indicative only

Not authorised—indicative only

150U Assessor may initiate investigation

(1) This section applies if—

(a) the assessor is aware of information indicating a councillor may have engaged in conduct that would be inappropriate conduct or misconduct; and

Examples—

- a media report alleging a councillor has behaved inappropriately
- while investigating a councillor for alleged misconduct, the assessor receives information that indicates another councillor has engaged in the same conduct

(b) the assessor has not received a complaint about the conduct; and

(c) the assessor reasonably believes—

(i) it is in the public interest to investigate the information; and

(ii) the conduct is not likely to involve corrupt conduct.

(2) The assessor may, on the assessor's own initiative, investigate the conduct.

150V Investigative powers

(1) The assessor may exercise the assessor's powers as an investigator under part 4 for an investigation under section 150T or 150U.

(2) Subject to part 4, the assessor may—

(a) conduct an investigation in the way the assessor considers appropriate; and

(b) make any inquiries the assessor considers appropriate.

(3) However, the assessor must conduct the investigation in a way that ensures the investigation is kept confidential to the extent practicable.

150W Decision about conduct

(1) After investigating the conduct of a councillor, the assessor may decide to—

(a) if the conduct was the subject of a complaint made or referred to the assessor under division 2—dismiss the complaint about the conduct under section 150X; or

(b) if the assessor reasonably suspects the councillor's conduct is inappropriate conduct—refer the suspected inappropriate conduct to the local government to deal with; or

(c) if the assessor is reasonably satisfied the councillor's conduct is misconduct—make an application to the conduct tribunal about the conduct; or

(d) if the assessor is reasonably satisfied the councillor's conduct is inappropriate conduct and the conduct is connected to conduct of the councillor that the assessor is reasonably satisfied is misconduct—make an application to the conduct tribunal about the alleged misconduct and inappropriate conduct; or

(e) take no further action in relation to the conduct under section 150Y.

(2) However, if the conduct was referred to the assessor by the conduct tribunal under section 150DLA, the assessor may—

(a) if the assessor is reasonably satisfied the councillor's conduct is misconduct—make an application to the conduct tribunal about the conduct; or

(b) if the assessor is not reasonably satisfied the councillor's conduct is misconduct—give the conduct tribunal a notice stating the assessor is not reasonably satisfied the councillor's conduct is misconduct.

150X Decision to dismiss complaint

The assessor may decide to dismiss a complaint about the conduct of a councillor if the assessor is satisfied—

Not authorised—indicative only

Not authorised—indicative only

(a) the conduct—

(i) has already been, or is being, dealt with by another entity; or

(ii) does not constitute inappropriate conduct or misconduct; or

(b) the complaint—

(i) is frivolous or vexatious; or

(ii) was made other than in good faith; or

Examples—

a complaint made for a mischievous purpose, recklessly or maliciously

(iii) lacks substance or credibility; or

(c) dealing with the complaint—

(i) would not be in the public interest; or

(ii) would be an unjustifiable use of resources.

150Y Decision to take no further action

The assessor may decide to take no further action about the conduct of a councillor if—

(a) the conduct was not the subject of a complaint made or referred to the assessor under division 2; and

(b) the assessor is satisfied—

(i) the conduct does not constitute inappropriate conduct or misconduct; or

(ii) there is insufficient information to properly investigate the conduct or form an opinion about whether the conduct is, or may be, inappropriate conduct or misconduct; or

(iii) taking further action would be an unjustifiable use of resources.

150Z Notice about decision to dismiss complaint or take no further action

(1) This section applies if the assessor decides to—

(a) dismiss a complaint about the conduct of a councillor under section 150X; or

(b) take no further action about the conduct of a councillor under section 150Y.

(2) The assessor must give a notice about the decision to—

(a) for a decision to dismiss a complaint—the person who made the complaint, if the assessor has the person's contact details; and

(b) the councillor; and

(c) the local government.

(3) The notice must—

(a) for a decision to dismiss a complaint—state the date the complaint was made; and

(b) briefly summarise the conduct; and

(c) briefly state the decision and the reasons for the decision; and

(d) for a complaint dismissed because it is frivolous—advise the person who made the complaint that, if the person makes the same or substantially the same complaint to the assessor again, the person commits an offence punishable by a fine of up to 85 penalty units.

Note—

See section 150AU about the offence of making a frivolous complaint.

150AA Notice and opportunity for councillor to respond

(1) This section applies if, under section 150W, the assessor is considering making a decision to—

Not authorised—indicative only

Not authorised—indicative only

(a) refer a councillor's conduct to the local government to be dealt with; or

(b) make an application to the conduct tribunal about a councillor's conduct.

(2) Before making the decision, the assessor must give a notice to the councillor that—

(a) states the assessor received a complaint, notice or information about the councillor's conduct or, on the assessor's own initiative, investigated the councillor's conduct; and

(b) describes the nature of the conduct; and

(c) states the assessor is considering making a decision to—

(i) refer the conduct to the local government to be dealt with; or

(ii) make an application to the conduct tribunal about the conduct; and

(d) states that the councillor may give a statement or information to the assessor about—

(i) the conduct; and

(ii) why the assessor should not make the decision; and

(e) states the reasonable period in which the councillor may provide the statement or information.

(3) The assessor must consider any statement or information given to the assessor by the councillor under the notice before making a decision under section 150W.

Division 5 Referral of conduct to local government

150AB Application of division

This division applies if the assessor—

(a) reasonably suspects a councillor has engaged in inappropriate conduct; and

(b) decides, under section 150W(1)(b), to refer the conduct to the local government to deal with under this division.

150AC Referral of suspected inappropriate conduct

(1) The assessor refers the councillor's conduct to the local government to deal with by giving a notice (a ***referral notice***) to the local government.

(2) The referral notice must—

(a) include details of the conduct and any complaint received about the conduct; and

(b) state why the assessor reasonably suspects the councillor has engaged in inappropriate conduct; and

(c) include information about the facts and circumstances forming the basis for the assessor's reasonable suspicion.

(3) The referral notice may be accompanied by a recommendation from the assessor about how the local government may investigate or deal with the conduct, including, for example—

(a) the conduct should be referred to another entity for consideration; or

(b) additional information is required about the conduct; or

(c) the conduct should be dealt with by mediation.

(4) A recommendation made under subsection (3) may be inconsistent with the local government's investigation policy.

150AD Notice about referral

As soon as practicable after referring the councillor's conduct to the local government, the assessor must give the councillor a notice that—

Not authorised—indicative only

Not authorised—indicative only

(a) states the assessor has referred the councillor's conduct to the local government to deal with under this division; and

(b) attaches a copy of the referral notice.

150AE Local government must adopt investigation policy

(1) A local government must adopt, by resolution, a policy (an ***investigation policy***) about how it deals with the suspected inappropriate conduct of councillors referred, by the assessor, to the local government to be dealt with.

(2) The policy must—

(a) include a procedure for investigating the suspected inappropriate conduct of councillors; and

(b) state the circumstances in which another entity may investigate the conduct; and

(c) be consistent with the principles of natural justice; and

(d) require councillors and persons who make complaints about councillors' conduct to be given notice about the outcome of investigations.

(3) The policy may allow the local government to ask the president of the conduct tribunal to—

(a) investigate the conduct of a councillor; and

(b) make recommendations to the local government about dealing with the conduct.

Note—

See section 150DU about paying the costs of a conduct tribunal member.

(4) The policy must be published on the local government's website.

150AF Investigating suspected inappropriate conduct

(1) The local government must investigate the councillor's conduct.

(2) The investigation must be conducted—

(a) in a way that is consistent with—

(i) any recommendation of the assessor made under section 150AC(3); and

(ii) to the extent the local government's investigation policy is not inconsistent with a recommendation of the assessor—the investigation policy; or

(b) in another way the local government, by resolution, decides.

(3) A resolution under subsection (2)(b) must state the decision and the reasons for the decision.

(4) If, in investigating the conduct, the local government obtains information indicating the councillor may have engaged in misconduct, the local government must—

(a) give the information to the assessor for further investigation under division 4; and

(b) take no further action in relation to the conduct.

150AG Decision about inappropriate conduct

(1) After conducting the investigation, the local government must decide—

(a) whether or not the councillor has engaged in inappropriate conduct; and

(b) if the local government decides the councillor has engaged in inappropriate conduct—what action the local government will take under section 150AH to discipline the councillor.

Not authorised—indicative only

Not authorised—indicative only

Note—

See section 257(2) or the *City of Brisbane Act 2010*, section 238(2) which limit delegation of the local government's power to make decisions under this section.

(2) In deciding what action to take, the local government may consider—

(a) any previous inappropriate conduct of the councillor; and

(b) any allegation made in the investigation that—

(i) was admitted, or not challenged; and

(ii) the local government is reasonably satisfied is true.

150AH Disciplinary action against councillor

(1) For section 150AG(1)(b), the local government may—

(a) order that no action be taken against the councillor; or

(b) make 1 or more of the following orders—

(i) an order that the councillor make a public admission that the councillor has engaged in inappropriate conduct;

(ii) an order reprimanding the councillor for the conduct;

(iii) an order that the councillor attend training or counselling to address the councillor's conduct, including at the councillor's expense;

(iv) an order that the councillor be excluded from a stated local government meeting;

(v) an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor;

Example—

The councillor is ordered to resign from an appointment representing the local government on a State board or committee.

(vi) an order that if the councillor engages in the same type of conduct again, it will be treated as misconduct;

(vii) an order that the councillor reimburse the local government for all or some of the costs arising from the councillor's inappropriate conduct.

(2) However, the local government may not make an order mentioned in subsection (1)(b)(iii), (iv), (v), or (vi) in relation to a person who is no longer a councillor.

Division 6 Application to conduct tribunal about misconduct and connected inappropriate conduct

150AI Application of division

This division applies if the assessor is reasonably satisfied a councillor has engaged in—

(a) misconduct; or

(b) inappropriate conduct that is connected to conduct of the councillor that the assessor is reasonably satisfied is misconduct.

150AJ Application to conduct tribunal about alleged misconduct

(1) The assessor may apply to the conduct tribunal to decide whether the councillor has engaged in—

(a) misconduct; or

Not authorised—indicative only

Not authorised—indicative only

(b) inappropriate conduct that is connected to conduct of the councillor that is alleged misconduct.

(2) The application must—

(a) be in writing; and

(b) include details of the alleged misconduct or inappropriate conduct and any complaint received about the misconduct or inappropriate conduct; and

(c) state why the assessor is reasonably satisfied the councillor has engaged in—

(i) misconduct; or

(ii) misconduct and inappropriate conduct that is connected to the alleged misconduct; and

(d) include information about the facts and circumstances forming the basis for the assessor's reasonable satisfaction.

(3) The assessor may make an application under subsection (1) about the alleged inappropriate conduct only if the application is also made about the connected alleged misconduct.

150AK Copy of application must be given to councillor

(1) The assessor must—

(a) write on a copy of the application the day, time and place of the hearing of the application; and

(b) give the copy of the application to the councillor.

(2) The assessor must make all reasonable attempts to give the copy of the application to the councillor at least 7 days before the hearing starts.

(3) If the assessor is unable to give the copy of the application to the councillor, the assessor may take other reasonable steps to ensure the councillor is aware of the day, time and place of the hearing, including, for example, by giving the copy to the local government to give to the councillor.

150AL Conduct tribunal must conduct hearing

The conduct tribunal must conduct a hearing about the application.

150AM Constitution of conduct tribunal

The conduct tribunal is to be constituted by—

(a) for hearing a matter about the conduct of a councillor—at least 2, but not more than 3, members of the conduct tribunal chosen by the president; or

(b) for dealing with an administrative or procedural matter related to hearing a matter about the conduct of a councillor—

(i) the president; or

(ii) not more than 3 members of the conduct tribunal chosen by the president.

150AN Role of the assessor

(1) The assessor is a party to the hearing.

(2) The onus of proof is on the assessor to prove the councillor engaged in—

(a) misconduct; and

(b) if the application also relates to alleged inappropriate conduct, inappropriate conduct.

150AO Respondent

The councillor is—

(a) the respondent to the application; and

(b) a party to the hearing.

Not authorised—indicative only

Not authorised—indicative only

150AP Conduct of hearing

(1) The hearing must be conducted in the way set out in chapter 7, part 1.

(2) The conduct tribunal may conduct the hearing from the documents brought before the conduct tribunal, without the parties or the witnesses appearing, if—

(a) the conduct tribunal considers it appropriate in all the circumstances; or

(b) the parties agree.

(3) The hearing may be about the conduct of more than 1 councillor, unless the conduct tribunal is satisfied doing so may prejudice the defence of any of the councillors.

(4) The standard of proof in the hearing is the balance of probabilities.

(5) The conduct tribunal must keep a written record of the hearing, in which it records—

(a) the statements of the councillor and all witnesses; and

(b) any reports relating to the councillor that are tendered at the hearing.

150AQ Deciding about misconduct and connected inappropriate conduct

(1) After conducting the hearing, the conduct tribunal must decide—

(a) whether or not the councillor has engaged in—

(i) if the application relates to alleged misconduct and inappropriate conduct—misconduct or inappropriate conduct (or both); or

(ii) if the application relates only to alleged misconduct—misconduct; and

(b) if the conduct tribunal decides the councillor has engaged in misconduct or inappropriate conduct—what

action the conduct tribunal will take under section 150AR to discipline the councillor.

(2) In deciding what action to take, the conduct tribunal may consider—

(a) any previous misconduct of the councillor; and

(b) if the application relates to inappropriate conduct—any previous inappropriate conduct of the councillor; and

(c) any allegation made in the hearing that—

(i) was admitted, or not challenged; and

(ii) the conduct tribunal is reasonably satisfied is true.

150AR Disciplinary action against councillor

(1) For section 150AQ(1)(b), the conduct tribunal may decide—

(a) that no action be taken against the councillor; or

(b) to make 1 or more of the following orders or recommendations—

(i) an order that the councillor make a public admission that the councillor has engaged in misconduct or inappropriate conduct (or both);

(ii) an order reprimanding the councillor for the conduct;

(iii) an order that the councillor attend training or counselling to address the councillor's conduct, including at the expense of the councillor;

(iv) an order that the councillor pay to the local government an amount that is not more than the monetary value of 50 penalty units;

(v) an order that the councillor reimburse the local government for all or some of the costs arising from the councillor's misconduct or inappropriate conduct (or both);

Not authorised—indicative only

Not authorised—indicative only

(vi) an order that the councillor is not to act as the deputy mayor, the chairperson of the council under the *City of Brisbane Act 2010* or the chairperson of a committee of the local government for the remainder of the councillor's term;

(vii) an order that the councillor is not to attend a stated number of local government meetings, up to a maximum of 3 meetings;

(viii) an order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor;

Example—

The councillor is ordered to resign from an appointment representing the local government on a State board or committee.

(ix) an order that the councillor forfeit an allowance, benefit, payment or privilege paid or provided to the councillor by the local government;

(x) an order that the councillor is to forfeit, for a stated period, access to equipment or a facility provided to the councillor by the local government;

(xi) a recommendation to the Minister that the councillor be suspended from office for a stated period or from performing particular functions of the office;

Examples of particular functions—

- attending council meetings or offices
- representing the council at public functions

(xii) a recommendation to the Minister that the councillor be dismissed from office.

(2) However, if the conduct tribunal decides under section 150AQ(1)(a)(i) that the councillor has engaged in misconduct and inappropriate conduct, the conduct tribunal, in deciding what action to take, must have regard to the action a local

government could have taken under section 150AH in relation to inappropriate conduct.

(3) Also, if the conduct tribunal decides under section 150AQ(1)(a)(i) that the councillor has only engaged in inappropriate conduct, the conduct tribunal may only take the action a local government could have taken under section 150AH in relation to inappropriate conduct.

(4) A recommendation mentioned in subsection (1)(b)(xi) may include a recommendation about the details of the suspension, including, for example, whether the councillor should be remunerated during the period of the suspension.

(5) However, the conduct tribunal may not make an order or recommendation mentioned in subsection (1)(b)(iii) or (vi) to (xii) in relation to a person who is no longer a councillor.

150AS Notices and publication of decisions and orders

(1) This section applies to a decision made by the conduct tribunal—

(a) under section 150AQ(1)(a) about whether or not a councillor has engaged in misconduct or inappropriate conduct (or both); or

(b) to take action mentioned in section 150AR(1)(b) to discipline the councillor for the misconduct or inappropriate conduct (or both).

(2) The conduct tribunal must—

(a) keep a written record of the decision and the reasons for the decision; and

(b) give a notice that states the decision and briefly states the reasons for the decision to—

(i) the assessor; and

(ii) the councillor; and

(iii) the local government; and

Not authorised—indicative only

Not authorised—indicative only

(iv) if the conduct tribunal's decision relates to the conduct of a councillor that was the subject of a complaint and the conduct tribunal has the contact details of the person who made the complaint—the person who made the complaint; and

(c) give a summary of the decision, including the reasons for the decision, to the department's chief executive for publication on the department's website.

(3) A notice about a decision, other than a decision to recommend the councillor's suspension or dismissal, given to the assessor or councillor under subsection (2)(b) must be a QCAT information notice for the decision.

(4) Also, a notice about a decision given to a local government under subsection (2)(b) must include the information about the decision that is required to be included in the councillor conduct register under section 150DY.

(5) The conduct tribunal must not—

(a) give another entity any information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*, unless giving the information is required or permitted by another Act; or

(b) if a decision relates to the conduct of a councillor that was the subject of a complaint—include in a summary of the decision to be published on the department's website—

(i) the name of the person who made the complaint; or

(ii) information that could reasonably be expected to result in identification of the person.

150AT Review by QCAT

A person who is entitled under section 150AS(3) to be given a QCAT information notice for a decision of the conduct tribunal may apply to QCAT, as provided under the QCAT Act, for a review of the decision.

Division 7 Offences

150AU Frivolous complaint

(1) This section applies to a person who has been given a notice under section 150Z that advises the person that if the person makes the same or substantially the same complaint to the assessor again the person commits an offence.

(2) The person must not make the same or substantially the same complaint to the assessor again, unless the person has a reasonable excuse.

Maximum penalty—85 penalty units.

(3) In this section—

make, a complaint to the assessor, means—

(a) make a complaint to the assessor under section 150O; or

(b) make a complaint to a government entity that is required, under section 150P, to refer the complaint to the assessor; or

(c) cause a complaint to be referred to the assessor.

150AV Other improper complaints

(1) A person must not—

(a) make a complaint about the conduct of a councillor to the assessor—

(i) vexatiously; or

(ii) other than in good faith; or

Examples—

a complaint made for a mischievous purpose, recklessly or maliciously

(b) counsel or procure another person to make a complaint mentioned in paragraph (a) to the assessor.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—85 penalty units.

(2) In this section—

make, a complaint to the assessor, means—

(a) make a complaint to the assessor under section 150O; or

(b) make a complaint to a government entity that is required, under section 150P, to refer the complaint to the assessor; or

(c) cause a complaint to be referred to the assessor.

150AWProtection from reprisal

(1) A councillor must not take detrimental action against a protected person in reprisal for a complaint or notification about the councillor's conduct.

Maximum penalty—167 penalty units or 2 years imprisonment.

(2) A councillor takes detrimental action in reprisal for a complaint or notification about the councillor's conduct if—

(a) the councillor takes, threatens to take, or attempts to take the action because—

(i) a protected person has made, or intends to make, a complaint or notification about the councillor's conduct; or

(ii) the councillor believes a protected person has made, or intends to make, a complaint or notification about the councillor's conduct; or

(b) the councillor incites, permits or conspires with another person to take or threaten to take the action for either of those reasons.

(3) In determining whether a councillor takes detrimental action in reprisal, it does not matter whether a reason stated in subsection (2)(a)(i) or (ii) is the only or main reason for taking the action, as long as it is a substantial reason.

(4) An offence against subsection (1) is an indictable offence that is a misdemeanour.

(5) In this section—

notification, about a councillor's conduct, means a notice about the conduct given under section 150R.

protected person means—

(a) a councillor; or

(b) a local government employee.

Part 4 Investigation and enforcement powers

Division 1 General provisions about investigators

Subdivision 1 Appointment

150AX Investigators

(1) This part provides for the appointment of investigators and gives investigators particular powers.

(2) The purpose of this part is to ensure the assessor has appropriately qualified persons available to help the assessor perform the assessor's functions under this chapter.

150AY Functions of investigators

An investigator has the following functions—

(a) to investigate the conduct of councillors under part 3 as directed by the assessor;

Not authorised—indicative only

Not authorised—indicative only

(b) to investigate whether an offence has been committed against any of the following provisions (each a ***conduct provision***)—

- section 150R(3), 150AU, 150AV, 150AW, 150BW, 150CA, 150CB, 150CI, 150CJ(3) or 150CK(5)
- section 150EM(2), 150ES(5), 150EY, 171(1), 201D or 201F(2) or (3)
- section 233A or 233B to the extent the offence involves obstructing or impersonating the assessor, an investigator or a member of the conduct tribunal
- the *City of Brisbane Act 2010*, section 173(1), 177J(2), 177P(5), 177V, 198D or 198F(2) or (3)
- section 234 to the extent the offence involves giving information to the assessor, a staff member of the Office of the Independent Assessor, an investigator or a member of the conduct tribunal;

(c) to enforce compliance with the conduct provisions;

(d) to investigate whether an occasion has arisen for the exercise of powers in relation to a conduct provision.

150AZ Assessor is an investigator

(1) The assessor is an investigator for this part.

(2) However, sections 150BB and 150BC do not apply to the assessor.

150BA Appointment and qualifications

(1) The assessor may, by instrument in writing, appoint any of the following persons as investigators—

(a) a staff member of the Office of the Independent Assessor;

(b) a public service employee;

(c) another person prescribed by regulation.

(2) However, the assessor may appoint a person as an investigator only if the assessor is satisfied the person is appropriately qualified.

150BB Appointment conditions and limit on powers

(1) An investigator holds office on the conditions stated in—

(a) the investigator's instrument of appointment; or

(b) a signed notice given to the investigator; or

(c) a regulation.

(2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers.

(3) In this section—

signed notice means a notice signed by the assessor.

150BC When office ends

(1) The office of a person as an investigator ends if—

(a) the term of office stated in a condition of office ends; or

(b) under another condition of office, the office ends; or

(c) the investigator resigns by signed notice given to the assessor.

(2) Subsection (1) does not limit the ways the office of a person as an investigator ends.

(3) In this section—

condition of office means a condition under which the investigator holds office.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 2 Identity cards

150BD Issue of identity card

(1) The assessor must issue an identity card to each investigator.

(2) This section does not prevent the issue of a single identity card to a person for this chapter and other purposes.

150BE Production or display of identity card

(1) In exercising a power in relation to a person in the person's presence, an investigator must—

(a) produce the investigator's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an investigator does not exercise a power in relation to a person only because the investigator has entered a place as mentioned in section 150BI(1)(b).

150BF Return of identity card

If the office of a person as an investigator ends, the person must return the person's identity card to the assessor within 21 days after the office ends, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Subdivision 3 Miscellaneous provisions

150BG References to exercise of powers

(1) This section applies if—

(a) a provision of this chapter refers to the exercise of a power by an investigator; and

(b) there is no reference to a specific power.

(2) The reference is to the exercise of all or any investigators' powers under this part or a warrant, to the extent the powers are relevant.

150BH Reference to document includes reference to reproductions from electronic document

A reference in this part to a document includes a reference to an image or writing—

(a) produced from an electronic document; or

(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Division 2 Entry of places by investigators

Subdivision 1 Power to enter

150BI General power to enter places

(1) An investigator may enter a place if—

(a) an occupier at the place consents under subdivision 2 to the entry and section 150BL has been complied with for the occupier; or

Not authorised—indicative only

Not authorised—indicative only

(b) it is a public place and the entry is made when the place is open to the public; or

(c) the entry is authorised under a warrant and, if there is an occupier of the place, section 150BS has been complied with for the occupier.

(2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

(3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

(4) In this section—

public place means a place, or part of a place—

(a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under paragraph (a)—

a beach, a park, a road

(b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

Examples of a place that may be a public place under paragraph (b)—

a saleyard, a showground

Subdivision 2 Entry by consent

150BJ Application of subdivision

This subdivision applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator entering the place under section 150BI(1)(a).

150BK Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an investigator may, without the occupier's consent or a warrant—

(a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

(b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

150BL Matters investigator must tell occupier

Before asking for the consent, the investigator must—

(a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and

(b) tell the occupier that—

(i) the occupier is not required to consent; and

(ii) the consent may be given subject to conditions and may be withdrawn at any time.

150BM Consent acknowledgement

(1) If the consent is given, the investigator may ask the occupier to sign an acknowledgement of the consent.

(2) The acknowledgement must state—

(a) the purpose of the entry, including the powers to be exercised; and

(b) that the occupier has been given an explanation about the purpose of the entry, including the powers to be exercised; and

(c) that the occupier has been told—

(i) that the occupier is not required to consent; and

Not authorised—indicative only

Not authorised—indicative only

(ii) that the consent may be given subject to conditions and may be withdrawn at any time; and

(d) that the occupier gives the investigator or another investigator consent to enter the place and exercise the powers; and

(e) the day and time the consent was given; and

(f) any conditions of the consent.

(3) If the occupier signs the acknowledgement, the investigator must immediately give a copy to the occupier.

(4) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

150BN Application for warrant

(1) An investigator may apply to a magistrate for a warrant for a place.

(2) The investigator must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the investigator 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 written application to be given by statutory declaration.

150BO Issue of warrant

(1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that a particular thing or activity that may provide evidence of an offence against a conduct provision—

(a) is at the place; or

(b) will be at the place within the next 7 days.

(2) The warrant must state—

(a) the place to which the warrant applies; and

(b) that a stated investigator may with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry to the place; and

(ii) exercise the investigator's powers; and

(c) particulars of the offence that the magistrate considers appropriate; and

(d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and

(e) the evidence that may be seized under the warrant; and

(f) the hours of the day or night when the place may be entered; and

(g) the magistrate's name; and

(h) the day and time of the warrant's issue; and

(i) the day, within 14 days after the warrant's issue, the warrant ends.

Not authorised—indicative only

Not authorised—indicative only

150BP Electronic application

(1) An application under section 150BN may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the investigator reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the investigator's remote location.

(2) The application—

(a) may not be made before the investigator prepares the written application under section 150BN(2); but

(b) may be made before the written application is sworn.

150BQ Additional procedure if electronic application

(1) For an application made under section 150BP, the magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under section 150BP; and

(b) the way the application was made under section 150BP was appropriate.

(2) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the investigator, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the investigator; or

(b) otherwise—

(i) the magistrate must tell the investigator the information mentioned in section 150BO(2); and

(ii) the investigator must complete a form of warrant, including by writing on it the information

mentioned in section 150BO(2) provided by the magistrate.

(3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(4) The investigator must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 150BN(2) and (3); and

(b) if the investigator completed a form of warrant under subsection (2)(b), the completed form of warrant.

(5) Despite subsection (3), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(6) This section does not limit section 150BN.

150BR Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in—

(a) the warrant; or

(b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant includes a duplicate warrant mentioned in section 150BQ(3).

Not authorised—indicative only

Not authorised—indicative only

150BS Entry procedure

(1) This section applies if an investigator named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.

(2) Before entering the place, the investigator must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing the investigator's identity card or another document evidencing the investigator's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the investigator is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the investigator immediate entry to the place without using force.

(3) However, the investigator need not comply with subsection (2) if the investigator reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

(4) In this section—

warrant includes a duplicate warrant mentioned in section 150BQ(3).

Division 3 General powers of investigators after entering places

150BT Application of division

(1) The powers under this division may be exercised if an investigator enters a place under section 150BI(1).

(2) However, if the investigator enters under section 150BI(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

Not authorised—indicative only

150BU General powers

(1) The investigator may do any of the following (each a ***general power***)—

(a) search any part of the place;

(b) inspect, examine or film any part of the place or anything at the place;

(c) take for examination a thing, or a sample of or from a thing, at the place;

(d) place an identifying mark in or on anything at the place;

(e) take an extract from, or copy, a document at the place, or take the document to another place to copy;

(f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

(g) take to, into or onto the place and use any person, equipment and materials the investigator reasonably requires for exercising the investigator's powers under this chapter;

(h) remain at the place for the time necessary to achieve the purpose of the entry.

(2) The investigator may take a necessary step to allow the exercise of a general power.

(3) If the investigator takes a document from the place to copy it, the investigator must copy the document and return it to the place as soon as practicable.

(4) If the investigator takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the investigator must produce the document and return the article or device to the place as soon as practicable.

(5) In this section—

Not authorised—indicative only

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

150BV Power to require reasonable help

(1) The investigator may make a requirement (a ***help requirement***) of an occupier of the place or a person at the place to give the investigator reasonable help to exercise a general power, including, for example, to produce a document or to give information.

(2) When making the help requirement, the investigator must give the person an offence warning for the requirement.

150BWOffence to contravene help requirement

(1) A person of whom a help requirement has been made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

Division 4 Seizure by investigators

Subdivision 1 Power to seize

150BX Seizing evidence at a place that may be entered only with consent or warrant

(1) This section applies if—

(a) an investigator is authorised to enter a place only with the consent of an occupier of the place or a warrant; and

(b) the investigator enters the place after obtaining the consent or under a warrant.

(2) If the investigator enters the place with the occupier's consent, the investigator may seize a thing at the place only if—

(a) the investigator reasonably believes the thing is evidence of an offence against a conduct provision; and

(b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.

(3) If the investigator enters the place under a warrant, the investigator may seize the evidence for which the warrant was issued.

(4) The investigator may also seize anything else at the place if the investigator reasonably believes—

(a) the thing is evidence of an offence against a conduct provision; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

Not authorised—indicative only

Not authorised—indicative only

150BY Seizure of property subject to security

(1) An investigator may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

(2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the investigator or a person acting under the direction or authority of the investigator.

Subdivision 2 Powers to support seizure

150BZ Power to secure seized thing

(1) Having seized a thing under this division, an investigator may—

(a) leave it at the place it was seized (the ***place of seizure***) and take reasonable action to restrict access to it; or

(b) move it from the place of seizure.

(2) For subsection (1)(a), the investigator may, for example—

(a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or

(b) for equipment—make it inoperable; or

Example—

make it inoperable by dismantling it or removing a component without which the equipment can not be used

(c) require a person the investigator reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an investigator could do under subsection (1)(a).

(3) When making a requirement of a person under subsection (2)(c), the investigator must give the person an offence warning for the requirement.

150CA Offence to contravene seizure requirement

A person must comply with a requirement made of the person under section 150BZ(2)(c), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

150CB Offence to interfere

(1) If access to a seized thing is restricted under section 150BZ, a person must not tamper with the thing or with anything used to restrict access to the thing without—

(a) an investigator's approval; or

(b) a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If access to a place is restricted under section 150BZ, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

(a) an investigator's approval; or

(b) a reasonable excuse.

Maximum penalty—50 penalty units.

Subdivision 3 Safeguards for seized things

150CC Receipt and information notice for seized thing

(1) This section applies if an investigator seizes anything under this division, unless—

(a) the investigator reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or

Not authorised—indicative only

Not authorised—indicative only

(b) because of the condition, nature and value of the thing it would be unreasonable to require the investigator to comply with this section.

(2) The investigator must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

(a) a receipt for the thing that generally describes the thing and its condition; and

(b) an information notice about the decision to seize it.

(3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

(4) The receipt and information notice may—

(a) be given in the same document; and

(b) relate to more than 1 seized thing.

(5) The investigator may delay giving the receipt and information notice if the investigator reasonably suspects giving them may frustrate or otherwise hinder an investigation by the investigator under this chapter.

(6) However, the delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep the place under observation.

150CD Access to seized thing

(1) Until a seized thing is returned, the investigator who seized the thing must allow an owner of the thing—

(a) to inspect it at any reasonable time and from time to time; and

(b) if it is a document—to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

(3) The inspection or copying must be allowed free of charge.

150CE Return of seized thing

(1) This section applies if a seized thing is not forfeited under subdivision 4.

(2) As soon as the assessor stops being satisfied there are reasonable grounds for retaining the thing, the assessor must return it to its owner.

(3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the assessor for its return.

(4) Within 30 days after receiving the application, the assessor must—

(a) if the assessor is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner a notice about the decision, including the grounds for retaining the thing; or

(b) otherwise—return the thing to the owner.

(5) For this section, there are reasonable grounds for retaining a seized thing if—

(a) the thing is being, or is likely to be, examined; or

(b) the thing is needed, or may be needed, for the purposes of—

(i) a proceeding for an offence against a conduct provision that is likely to be started or that has been started but not completed; or

(ii) an appeal from a decision in a proceeding for an offence against a conduct provision; or

(c) it is not lawful for the owner to possess the thing.

(6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.

Not authorised—indicative only

Not authorised—indicative only

(7) Nothing in this section affects a lien or other security over the seized thing.

(8) In this section—

examine includes analyse, test, measure, weigh, grade, gauge and identify.

Subdivision 4 Forfeiture

150CF Forfeiture by assessor decision

(1) The assessor may decide a seized thing is forfeited to the State if an investigator—

(a) after making reasonable inquiries, can not find an owner; or

(b) after making reasonable efforts, can not return it to an owner.

(2) However, the investigator is not required to—

(a) make inquiries if it would be unreasonable to make inquiries to find an owner; or

(b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example—

The owner of the thing has migrated to another country.

(3) Regard must be had to the thing's condition, nature and value in deciding—

(a) whether it is reasonable to make inquiries or efforts; and

(b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

150CG Dealing with property forfeited to State

(1) A thing becomes the property of the State if the thing is forfeited to the State under section 150CF(1).

(2) The assessor may deal with the thing as the assessor considers appropriate, including, for example, by destroying it or giving it away.

Division 5 Other information-obtaining powers of investigators

150CH Power to require information

(1) This section applies if an investigator reasonably believes—

(a) an offence against a conduct provision has been committed and a person may be able to give the investigator information about the commission of the offence; or

(b) a person has information reasonably necessary for the investigator to investigate the conduct of a councillor.

(2) The investigator may, by notice given to the person, require the person to give the investigator the information by a stated reasonable time.

(3) When making a requirement of a person under subsection (2), the investigator must give the person an offence warning for the requirement.

(4) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.

(5) In this section—

information includes a document.

Not authorised—indicative only

Not authorised—indicative only

150CI Offence to contravene information requirement

(1) A person of whom a requirement is made under section 150CH(2) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

150CJ Power to require attendance

(1) The investigator may require a person to—

(a) attend a meeting with the investigator at a stated reasonable time and place; and

(b) answer questions, related to the investigation of the conduct of a councillor or an offence against a conduct provision, asked by the investigator.

(2) When making a requirement of a person under subsection (1), the investigator must give the person an offence warning for the requirement.

(3) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(4) It is a reasonable excuse for an individual to fail to answer a question if answering the question might tend to incriminate the individual or expose the individual to a penalty.

150CK Notice about confidentiality

(1) This section applies if an investigator intends to, or does, exercise a power—

(a) under section 150CH requiring a person to give information to the investigator; or

(b) under section 150CJ requiring a person to attend a place and answer questions.

(2) The assessor may give a notice to the person stating that the fact of the person's attendance, or information given by the person, is confidential information.

(3) However, the assessor may give the notice to the person only if the assessor reasonably believes the notice is necessary—

(a) to prevent the commission of an offence; or

(b) to ensure the investigation of a councillor's conduct is kept confidential.

(4) If the assessor gives the notice, the notice is also confidential information.

(5) The person must not disclose the confidential information to another person, unless the disclosure is permitted under subsection (6) or the person has a reasonable excuse.

Maximum penalty—85 penalty units.

(6) The person may disclose the confidential information if—

(a) the disclosure was made before the person received the notice; or

(b) the disclosure is made to—

(i) obtain legal advice; or

(ii) obtain information to comply with the investigator's requirement; or

(iii) comply with another lawful obligation to disclose the information.

(7) However, disclosure by a person (the ***discloser***) under subsection (6)(b)(ii) is permitted only if the discloser informs another person to whom the disclosure is made that the information is confidential information under this section.

Not authorised—indicative only

Not authorised—indicative only

Division 6 Miscellaneous provisions relating to investigators

150CL Duty to avoid inconvenience and minimise damage

In exercising a power, an investigator must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 150CN.

150CM Notice about damage

(1) This section applies if—

(a) an investigator damages something when exercising, or purporting to exercise, a power; or

(b) a person (the ***assistant***) acting under the direction or authority of an investigator damages something.

(2) However, this section does not apply to damage the investigator reasonably considers is trivial or if the investigator reasonably believes—

(a) there is no-one apparently in possession of the thing; or

(b) the thing has been abandoned.

(3) The investigator must give a notice about the damage to a person who appears to the investigator to be an owner, or person in control, of the thing.

(4) However, if for any reason it is not practicable to comply with subsection (3), the investigator must—

(a) leave the notice at the place at which the damage happened; and

(b) ensure it is left in a conspicuous position and in a reasonably secure way.

(5) The investigator may delay complying with subsection (3) or (4) if the investigator reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the investigator.

(6) The delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place at which the damage happened.

(7) If the investigator believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the investigator or the assistant, the investigator may state the belief in the notice.

(8) The notice must state—

(a) particulars of the damage; and

(b) that the person who suffered the damage may claim compensation under section 150CN.

150CN Compensation

(1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an investigator, including a loss arising from compliance with a requirement made of the person under division 3, 4 or 5.

(2) The compensation may be claimed and ordered in a proceeding—

(a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

(b) for an offence against a conduct provision, or another offence relating to the conduct of a councillor, the investigation of which gave rise to the claim for compensation.

(3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

Not authorised—indicative only

Not authorised—indicative only

(4) In considering whether it is just to order compensation, the court must have regard to—

(a) any relevant offence committed by the claimant; and

(b) whether the loss arose from a lawful seizure or lawful forfeiture.

(5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

(6) Section 150CL does not provide for a statutory right of compensation other than as provided by this section.

(7) In this section—

loss includes costs and damage.

Division 7 Review

Subdivision 1 Internal review

150CO Who may apply for review

(1) This section applies to a person who is given, or is entitled to be given, an information notice under section 150CC about a decision to seize a thing (the ***original decision***).

(2) If the person is dissatisfied with the decision, the person may apply to the assessor for a review (an ***internal review***) of the decision.

150CP Application for review

(1) The application must be—

(a) made within 30 days after—

(i) if the person is given an information notice about the decision—the person is given the information notice; or

(ii) otherwise—the person otherwise becomes aware of the decision; and

(b) in writing; and

(c) supported by enough information to enable the assessor to decide the application.

(2) The assessor may extend the time for making the application if, within the 30-day period applying under subsection (1), the person asks the assessor to extend the time.

150CQ Review decision

(1) Unless the assessor made the original decision personally, the assessor must ensure the application is not dealt with by—

(a) the person who made the original decision; or

(b) a person in a less senior office in the Office of the Independent Assessor than the person who made the original decision.

(2) Within 90 days after the application is made, the assessor must review the original decision and make a decision (the ***review decision***)—

(a) confirming the original decision; or

(b) amending the original decision; or

(c) substituting another decision for the original decision.

(3) The assessor must make the review decision on the material that led to the original decision and any other material the assessor considers relevant.

(4) The assessor must, as soon as practicable after making the review decision, give the applicant notice of the review decision.

Not authorised—indicative only

Not authorised—indicative only

(5) If the review decision is not the decision sought by the applicant, the notice must be a QCAT information notice.

Subdivision 2 External review

150CR External review by QCAT

If the applicant is dissatisfied with a review decision made by the assessor, the applicant may apply, as provided under the QCAT Act, to QCAT for a review of the review decision.

150CS No power to stay decision

If a person applies to QCAT for a review of a review decision, QCAT may not—

(a) stay the operation of the review decision; or

(b) grant an injunction in the proceeding for the review.

Part 5 Administration

Division 1 Independent Assessor and Office of the Independent Assessor

Subdivision 1 Independent Assessor

150CT Establishment

There is to be an Independent Assessor.

150CU Functions

(1) The functions of the assessor are—

(a) to investigate and deal with the conduct of councillors if it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the assessor by the Crime and Corruption Commission, corrupt conduct; and

(b) to provide advice, training and information to councillors, local government employees and other persons about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct; and

(c) to prosecute offences against the conduct provisions; and

(d) to investigate other matters decided by the Minister; and

(e) another function related to a function mentioned in paragraph (a), (b), (c), (d) or (f) directed, in writing, by the Minister; and

(f) any other functions given to the assessor under this Act.

(2) The assessor is the public official responsible for dealing with a complaint about the corrupt conduct of a councillor for the purposes of consultation about, or a referral of, the complaint under the *Crime and Corruption Act 2001*.

150CV Appointment

(1) The Governor in Council may appoint a qualified person to be the Independent Assessor.

(2) The assessor is appointed under this Act and not the *Public Service Act 2008*.

150CWQualifications for appointment

(1) A person is qualified to hold the office of assessor if the person has extensive knowledge of, and experience in, any of the following areas—

(a) local government;

Not authorised—indicative only

Not authorised—indicative only

(b) investigations;

(c) law;

(d) public administration;

(e) public sector ethics.

(2) A person is not qualified to hold the office of the assessor if the person—

(a) has a conviction for an indictable offence, other than a spent conviction; or

(b) is an insolvent under administration; or

(c) is guilty of misconduct of a type that could warrant dismissal from the public service if the assessor were an officer of the public service.

150CX Term of office

Subject to this division, the assessor holds office for the term, of not more than 5 years, stated in the assessor's instrument of appointment.

150CY Conditions of appointment

The assessor—

(a) is to be paid the remuneration and allowances decided by the Governor in Council; and

(b) holds office on the terms and conditions decided by the Governor in Council, to the extent the terms and conditions are not provided for by this Act.

150CZ Preservation of rights

(1) This section applies if a public service officer is appointed as the assessor.

(2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the assessor were a continuation of service as a public service officer.

(3) At the end of the person's term of office or on resignation as the assessor, the person's service as the assessor is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

150DA Restriction on local government employment etc.

The assessor must not, without the Minister's approval in each particular case, hold office or be engaged in any way by a local government, whether or not for profit.

150DB Conflict of interest

(1) This section applies if the assessor has an interest that may conflict with a fair and impartial investigation into the conduct of a councillor.

(2) The assessor must not take part, or take further part, in consideration of the matter.

Maximum penalty—35 penalty units.

(3) As soon as practicable after the assessor becomes aware this section applies, the assessor must give a notice about the matter to the Minister.

Maximum penalty—35 penalty units.

(4) If the assessor gives a notice to the Minister about a conflict of interest in relation to a matter, the Minister must nominate a person to act as the assessor under section 150DD in relation to the matter.

150DC Vacancy of office

The office of the assessor becomes vacant if the person holding the office—

Not authorised—indicative only

Not authorised—indicative only

(a) completes a term of office and is not reappointed; or

(b) is not qualified under section 150CW to hold the office; or

(c) is removed from office by the Governor in Council for misbehaviour or physical or mental incapacity; or

(d) resigns from the office by signed notice given to the Minister.

150DD Acting assessor

(1) The Minister may appoint a person to act as the assessor during—

(a) a vacancy in the office of the assessor; or

(b) a period the assessor is absent, or can not perform the duties of the office, for any reason.

(2) The person can not be appointed for more than 6 months in a 12-month period.

(3) However, the person may be appointed only if the person is qualified under section 150CW to hold the office of the assessor.

150DE Assessor not subject to outside direction

The assessor is not subject to direction by another person about—

(a) the way the assessor's powers in relation to an investigation under this Act are to be exercised; or

(b) the priority given to investigations.

150DF Delegation

(1) The assessor may delegate any of the assessor's functions to an appropriately qualified staff member of the Office of the Independent Assessor.

(2) However, the assessor may not delegate the assessor's power to give a notice under section 150CK.

(3) In this section—

functions includes powers.

Subdivision 2 Office of the Independent Assessor

150DG Establishment

(1) An office called the Office of the Independent Assessor is established.

(2) The office consists of the assessor and the staff of the office.

150DH Function

The office's function is to help the assessor perform the assessor's functions.

150DI Staff

Staff of the office are employed under the *Public Service Act 2008*.

150DJ Control of office

(1) The assessor controls the office.

(2) Subsection (1) does not prevent the attachment of the office to the department for the purpose of ensuring the office is supplied with the administrative support services it requires to carry out its functions effectively and efficiently.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Councillor Conduct Tribunal

150DK Establishment

The Councillor Conduct Tribunal (the ***conduct tribunal***) is established.

150DL Functions

(1) The functions of the conduct tribunal are—

(a) at the request of a local government—

(i) to investigate the suspected inappropriate conduct of a councillor referred to the local government, by the assessor, to be dealt with by the local government; and

(ii) to make recommendations to the local government about dealing with the conduct; and

(b) another function related to a function mentioned in paragraph (a) or (c) directed, in writing, by the Minister; and

(c) any other functions given to the conduct tribunal under this Act.

(2) A member of the conduct tribunal chosen by the president may constitute the conduct tribunal to perform the functions mentioned in subsection (1)(a) for a particular request.

(3) Nothing in this section limits the president's duty under the *Crime and Corruption Act 2001* to notify the Crime and Corruption Commission about suspected corrupt conduct.

150DLAReferral of alleged misconduct to assessor

(1) This section applies if the conduct tribunal—

(a) at the request of a local government, is investigating the suspected inappropriate conduct of a councillor referred

to the local government, by the assessor, to be dealt with by the local government; and

(b) is reasonably satisfied the conduct is misconduct.

(2) The conduct tribunal must refer the conduct to the assessor for further investigation under part 3, division 4.

Note—

See also sections 150T and 150W(2).

150DM Membership of conduct tribunal

The members of the conduct tribunal are—

(a) the president; and

(b) the casual members.

150DN Appointment of president and casual members

(1) The Governor in Council may appoint a person to be the president of the conduct tribunal.

(2) The Governor in Council may appoint the number of casual members the Governor in Council considers appropriate.

(3) The Minister may recommend the appointment of a person as a member of the conduct tribunal only if the person is qualified under section 150DO to be a member.

150DO Qualifications for membership

(1) A person is qualified to be a member of the conduct tribunal only if the person has extensive knowledge of, and experience in, any of the following—

(a) local government;

(b) investigations;

(c) law;

(d) public administration;

Not authorised—indicative only

Not authorised—indicative only

(e) public sector ethics.

(2) However, a person is not qualified to be a member if the person—

(a) is a councillor; or

(b) is a nominee for election as a councillor; or

(c) accepts an appointment as a councillor; or

(d) is an employee of a local government; or

(e) is a contractor of a local government; or

(f) is a consultant engaged by a local government; or

(g) is a member of an Australian Parliament; or

(h) is a nominee for election as a member of an Australian Parliament; or

(i) is a member of a political party; or

(j) has a conviction for an indictable offence, other than a spent conviction; or

(k) is an insolvent under administration; or

(l) is a person prescribed by regulation for this subsection.

150DP Term of office

Subject to this division, a member holds office for the term, of not more than 4 years, stated in the member's instrument of appointment.

150DQ Conditions of appointment

A member—

(a) is to be paid the remuneration and allowances decided by the Governor in Council; and

(b) holds office on the terms and conditions decided by the Governor in Council, to the extent the terms and conditions are not provided for by this Act.

150DR Vacancy of office

The office of a member becomes vacant if the person holding the office—

(a) completes a term of office and is not reappointed; or

(b) is not qualified under section 150DO to hold the office; or

(c) is removed from office by the Governor in Council for misbehaviour or physical or mental incapacity; or

(d) resigns the office by signed notice given to the Minister.

150DS Acting president

(1) The Minister may appoint a casual member to act as the president during—

(a) a vacancy in the office of the president; or

(b) a period the president is absent, or can not perform the duties of the office because of a conflict of interest or for any other reason.

(2) The casual member can not be appointed for more than 3 months in a 12-month period.

150DSAProtection and immunity for members in performing particular functions

In performing a function of the conduct tribunal under chapter 5A, part 3, division 6 or chapter 7, part 1, a member of the tribunal has the same protection and immunity as a Supreme Court judge performing a judicial function.

Not authorised—indicative only

Not authorised—indicative only

150DT Conflict of interest

(1) This section applies if a member has an interest that may conflict with a fair and impartial hearing about or investigation of the conduct of a councillor.

(2) The member must not take part, or take further part, in consideration of the matter.

Maximum penalty—35 penalty units.

(3) As soon as practicable after the member becomes aware this section applies, the member must give a notice about the matter—

(a) if the member is the president—to the Minister; or

(b) otherwise—to the president.

Maximum penalty—35 penalty units.

(4) If the president gives the Minister a notice about a conflict of interest in relation to a matter, the Minister must nominate a casual member to act as the president under section 150DS in relation to the matter.

150DU Costs of conduct tribunal to be met by local government

(1) A local government must pay the costs of the conduct tribunal in relation to the conduct tribunal—

(a) conducting a hearing about the misconduct or inappropriate conduct of a councillor under part 3, division 6; or

(b) at the request of the local government, investigating the suspected inappropriate conduct of a councillor and making recommendations to the local government about dealing with the conduct.

(2) For subsection (1), the costs of the conduct tribunal include the remuneration, allowances and expenses paid to a member of the conduct tribunal conducting the hearing or investigation, or making the recommendations.

150DV Practice directions

(1) The president may issue practice directions for conducting a hearing.

(2) A practice direction must not be inconsistent with this Act or any requirements prescribed by regulation about procedures for a hearing.

(3) The practice directions must be published on the department's website.

150DWAssistance from departmental staff

The department's chief executive must make available to the conduct tribunal the help from public service employees employed in the department that the conduct tribunal needs to effectively perform its functions.

Part 6 Miscellaneous

Division 1 Councillor conduct register

150DX Local governments to keep and publish register

(1) A local government must keep an up-to-date register (a ***councillor conduct register***) about the following matters for the local government—

(a) orders made about the unsuitable meeting conduct of councillors at its local government meetings;

(b) decisions about the suspected inappropriate conduct of councillors referred to the local government under part 3, division 5;

(c) decisions about whether or not councillors engaged in misconduct or inappropriate conduct made by the conduct tribunal under part 3, division 6;

Not authorised—indicative only

Not authorised—indicative only

(d) complaints about the conduct of councillors dismissed by the assessor;

(e) decisions to take no further action in relation to the conduct of councillors investigated by the assessor.

(2) The local government must—

(a) publish the register on the local government's website; and

(b) ensure the public may inspect the register, or purchase a copy of an entry in the register, at the local government's public office.

(3) However, subsection (2) does not apply to information recorded in the register that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*.

150DY Content of register—decisions

(1) This section applies to each of the following decisions—

(a) a decision by a chairperson of a local government meeting to make an order against a councillor under section 150I(2) for unsuitable meeting conduct;

(b) a decision by the local government about the suspected inappropriate conduct of a councillor referred to the local government under part 3, division 5 and any action taken to discipline the councillor;

(c) a decision about the misconduct or inappropriate conduct of a councillor made by the conduct tribunal under part 3, division 6 and any action taken to discipline the councillor;

(d) a decision by the assessor to take no further action in relation to the conduct of a councillor after conducting an investigation.

(2) The councillor conduct register must include the following details for the decision—

(a) a summary of the decision and the reasons for the decision;

(b) the name of the councillor about whom the decision was made;

(c) the date of the decision.

Notes—

1 See section 150AS(2)(b) and (4) for the conduct tribunal's obligation to give the local government a notice about a decision of the conduct tribunal.

2 Also, see section 150Z for the assessor's obligation to give the local government a notice about a decision to take no further action.

(3) However, the name of the councillor whose conduct is the subject of the decision may be included in the entry in the register for the decision only if—

(a) the local government or conduct tribunal decided the councillor engaged in inappropriate conduct or misconduct; or

(b) the councillor agrees to the councillor's name being included.

(4) If a decision relates to the conduct of a councillor that was the subject of a complaint, a summary of the decision included in the register must not include—

(a) the name of the person who made the complaint; or

(b) information that could reasonably be expected to result in identification of the person.

150DZ Content of register—dismissed complaints

(1) The councillor conduct register must include the following particulars for each complaint about the conduct of a councillor dismissed by the assessor—

(a) the date the complaint was made;

(b) a summary of the complaint;

Not authorised—indicative only

Not authorised—indicative only

(c) a statement about why the complaint was dismissed.

Note—

See section 150Z for the assessor's obligation to give a notice about the dismissal of a complaint to the local government.

(2) However, the name of the councillor against whom the complaint was made is not to be included in the entry in the register for the complaint, unless the councillor agrees to the councillor's name being included.

(3) A summary of a complaint included in the register must not include—

(a) the name of the person who made the complaint; or

(b) information that could reasonably be expected to result in identification of the person.

Division 2 Other provisions

150EA Secrecy

(1) This section applies to a person who—

(a) is, or has been, the assessor, an investigator or a staff member of the Office of the Independent Assessor; and

(b) obtains confidential information in the course of performing, or because of, the person's functions under this Act.

(2) The person must not—

(a) make a record of the confidential information; or

(b) directly or indirectly disclose the confidential information to another person; or

(c) use the confidential information to benefit a person or cause detriment to a person.

Maximum penalty—100 penalty units.

(3) However, subsection (2) does not apply to a person if the record is made, or the confidential information is disclosed or used—

(a) in the performance of the person's functions under this Act; or

(b) with the consent of the person to whom the information relates; or

(c) as otherwise required or permitted by law.

(4) In this section—

confidential information means information, other than information that is publicly available—

(a) about a person's personal affairs or reputation; or

(b) that would be likely to damage the commercial activities of a person to whom the information relates.

150EB Annual report

(1) As soon as practicable after the end of each financial year, but no later than 3 months after the end of the financial year, the assessor must give the Minister a written report about the operation of the Office of the Independent Assessor during the year.

(2) Without limiting subsection (1), the report must include—

(a) a description of the following matters for the year—

(i) complaints made, or referred, to the assessor about the conduct of councillors;

(ii) complaints dismissed by the assessor;

(iii) investigations conducted by the office;

(iv) decisions made by the assessor to take no further action after conducting an investigation;

(v) suspected corrupt conduct notified to the Crime and Corruption Commission by the assessor;

Not authorised—indicative only

Not authorised—indicative only

(vi) suspected inappropriate conduct referred by the assessor to local governments to be dealt with;

(vii) decisions about whether councillors engaged in misconduct or inappropriate conduct made by the conduct tribunal; and

(b) details about the number of times each power under part 4 was exercised by the assessor and other investigators during the year; and

(c) details of other functions performed by the assessor during the year.

(3) The report must be prepared in a way that does not disclose the identity of a person who made a complaint about the conduct of a councillor or the identity of a person investigated.

(4) The Minister must ensure a copy of the report is tabled in the Legislative Assembly as soon as practicable after the report is given to the Minister.

150EC Approved forms

The assessor may approve forms for use under this chapter.

Chapter 5B Councillors' conflicts of interest

Part 1 Preliminary

150ED Purpose of chapter

The purpose of this chapter is to ensure that if a councillor has a personal interest in a matter, the local government deals with

the matter in an accountable and transparent way that meets community expectations.

150EE When does a person participate in a decision

Without limiting when a person participates in a decision, in this chapter, a reference to a councillor of a local government, or other person, participating in a decision includes a reference to the councillor or other person—

(aa) if the councillor or other person is wholly or partly responsible for making the decision—considering or discussing the matter to which the decision relates before the decision is made; and

(a) considering, discussing or voting on the decision in a local government meeting; and

(b) considering or making the decision under—

(i) an Act; or

(ii) a delegation; or

(iii) another authority.

150EF Personal interests in ordinary business matters of a local government

(1) This chapter does not apply in relation to a conflict of interest in a matter if the matter—

(a) is solely, or relates solely to, the making or levying of rates and charges, or the fixing of a cost-recovery fee, by the local government; or

(b) is solely, or relates solely to—

(i) making a planning scheme that applies to the whole of the local government area; or

(ii) amending a planning scheme, if the amendment applies to the whole of the local government area; or

Not authorised—indicative only

Not authorised—indicative only

(c) is solely, or relates solely to, a resolution required for the adoption or amendment of a budget for the local government; or

(d) is solely, or relates solely to—

(i) the remuneration or reimbursement of expenses of councillors or members of a committee of the local government; or

(ii) the provision of superannuation entitlements or insurance for councillors; or

(iii) a matter of interest to the councillor solely as a candidate for election or appointment as mayor, deputy mayor, councillor or member of a committee of the local government.

(2) Also, this chapter does not apply in relation to a councillor's conflict of interest in a matter relating to a corporation or association that arises solely because of a nomination or appointment of the councillor by the local government to be a member of the board of the corporation or association.

(2A) In addition, this chapter does not apply in relation to a councillor's conflict of interest in a matter if the councillor, close associate or related party of the councillor, or the donor mentioned in section 150EG(1)(a) or 150EH(1)(a) stands to gain a benefit or suffer a loss in relation to the matter that is no greater than the benefit or loss that a significant proportion of persons in the local government area stand to gain or lose.

(3) However, if a councillor decides to voluntarily comply with this chapter in relation to personal interests of the councillor in the matter—

(a) the personal interests are taken to be a declarable conflict of interest; and

(b) this chapter applies as if eligible councillors had, under section 150ER(2), decided the councillor has a declarable conflict of interest in the matter.

Note—

See section 150ES for requirements for dealing with a conflict of interest mentioned in this subsection.

Part 2 Prescribed conflicts of interest

150EG When councillor has *prescribed conflict of interest*—particular gifts or loans

(1) A councillor has a ***prescribed conflict of interest*** in a matter if—

(a) a gift or loan is given by an entity (the ***donor***) that has an interest in the matter in a circumstance mentioned in subsection (2); and

(b) the gift or loan is given during the relevant term for the councillor; and

(c) all gifts, loans or sponsored travel or accommodation benefits under section 150EH given by the donor to the councillor, or a close associate of the councillor, during the councillor's relevant term total $2,000 or more.

(2) For subsection (1)(a), the circumstances are—

(a) where—

(i) the donor gives the gift or loan to the councillor; and

(ii) the gift or loan is required to be the subject of a return under the Local Government Electoral Act, part 6; or

(b) where—

(i) the donor gives the gift or loan to a group of candidates for an election when the councillor is a member of the group, or a political party that endorses the councillor for an election; and

(ii) the councillor is a candidate in the election; and

Not authorised—indicative only

Not authorised—indicative only

(iii) the gift or loan is required to be the subject of a return under the Local Government Electoral Act, part 6 or the Electoral Act, part 11, division 11; or

(c) where the donor gives a gift to the councillor, or a close associate of the councillor, other than in a circumstance mentioned in paragraph (a) or (b).

(2A) Subsection (3) applies for gifts or loans given by a donor—

(a) to a group of candidates when the councillor is a member of the group; or

(b) to a political party that endorses the councillor.

(3) For working out the total gifts or loans given by the donor for subsection (1)(a), the amount of each gift or loan given to the group or political party must first be divided by—

(a) for a group of candidates for an election—the total number of candidates in the group stated in the record of the membership of the group under the *Local Government Electoral Act 2011*, section 41; or

(b) for a political party endorsing the candidate for an election—the total number of candidates endorsed by the political party in Queensland on the nomination day for the election under the *Local Government Electoral Act 2011*.

150EH When councillor has *prescribed conflict of interest*—sponsored travel or accommodation benefits

(1) A councillor has a ***prescribed conflict of interest*** in a matter if—

(a) a sponsored travel or accommodation benefit is given by an entity (the ***donor***) that has an interest in the matter to—

(i) the councillor; or

(ii) a close associate of the councillor; and

(b) the sponsored travel or accommodation benefit is given—

(i) during the relevant term for the councillor; and

(ii) while the councillor holds office as councillor; and

(c) all gifts, loans or sponsored travel or accommodation benefits given by the donor to the councillor or close associate during the councillor's relevant term total $2,000 or more.

(1A) Section 150EG(2A) and (3) applies for working out the total gifts or loans given by the donor for subsection (1)(c).

(2) In this section—

employment-related or upgraded, in relation to a person's travel or accommodation, means—

(a) the travel or accommodation is paid for by the State or a local government; or

(b) the travel or accommodation—

(i) is undertaken or used by the person in the course of the person's employment; and

(ii) is contributed to, whether financially or non-financially, by the person's employer; or

(c) if the person is a director of a corporation— the travel or accommodation—

(i) is undertaken or used by the person in the course of carrying out the person's duties as a director; and

(ii) is contributed to, whether financially or non-financially, by the corporation; or

(d) if the travel is airline travel—an upgrade to the travel is given by the provider of the travel for no charge; or

Example—

a free air travel upgrade to business class

Not authorised—indicative only

Not authorised—indicative only

(e) an upgrade to the accommodation is given by the provider of the accommodation for no charge.

Example—

a free accommodation upgrade to a larger room

sponsored travel or accommodation benefit, received by a person, means travel or accommodation undertaken or used by the person, other than employment-related or upgraded travel or accommodation, if—

(a) another entity contributes, whether financially or non-financially, to the cost of the travel or accommodation; and

(b) the other entity is not the person's spouse, other family member or friend.

150EI When councillor has *prescribed conflict of interest*—other

A councillor has a ***prescribed conflict of interest*** in a matter if—

(a) the matter is or relates to a contract between the local government and the councillor, or a close associate of the councillor, for—

(i) the supply of goods or services to the local government; or

(ii) the lease or sale of assets by the local government; or

(aa) a person who is being considered for appointment as the chief executive officer of the local government is a close associate of the councillor and the matter is or relates to the appointment of the person; or

(b) the chief executive officer is a close associate of the councillor and the matter is or relates to the appointment, discipline, termination, remuneration or other employment conditions of the chief executive officer; or

(c) the matter is or relates to an application made to the local government for the grant of a licence, permit, registration or approval or consideration of another matter under a Local Government Act, if—

(i) the application was made to the local government by the councillor or a close associate of the councillor; or

(ii) the councillor or a close associate of the councillor makes or has made a written submission to the local government in relation to the application before it is or was decided.

150EJ Who is a *close associate* of a councillor

(1) A person is a ***close associate*** of a councillor if the person is any of the following in relation to the councillor—

(a) a spouse;

(b) a parent, child or sibling;

(c) a partner in a partnership;

(d) an employer, other than a government entity;

(e) an entity, other than a government entity, for which the councillor is an executive officer or board member;

(f) an entity in which the councillor or a person mentioned in any of paragraphs (a) to (e) for the councillor has an interest, other than an interest of less than 5% in an entity that is a listed corporation under the Corporations Act, section 9.

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

Not authorised—indicative only

Not authorised—indicative only

150EK Councillor must not participate in decisions

(1) If a councillor has a prescribed conflict of interest in a matter, the councillor must not participate in a decision relating to the matter.

Note—

Contravention of this section is misconduct that could result in disciplinary action being taken against a councillor—see section 150L(1)(c)(iv). Also, this section is a relevant integrity provision for the offence against section 201D—see section 201D(2), definition *relevant integrity provision*.

(2) However, the councillor does not contravene subsection (1) by participating in the decision under an approval given under section 150EV.

150EL Obligation of councillor with prescribed conflict of interest

(1) This section applies to a councillor if—

(a) the councillor may participate, or is participating, in a decision about a matter; and

(b) the councillor becomes aware the councillor has a prescribed conflict of interest in the matter.

(2) If the councillor first becomes aware the councillor has the prescribed conflict of interest in the matter at a local government meeting, the councillor must immediately inform the meeting of the prescribed conflict of interest, including the particulars stated in subsection (4).

(3) If subsection (2) does not apply, the councillor must—

(a) as soon as practicable, give the chief executive officer written notice of the prescribed conflict of interest, including the particulars stated in subsection (4); and

(b) give notice of the prescribed conflict of interest, including the particulars stated in subsection (4), at—

(i) the next meeting of the local government; or

(ii) if the matter is to be considered and decided at a meeting of a committee of the local government—the next meeting of the committee.

Note—

Contravention of subsection (2) or (3) is misconduct that could result in disciplinary action being taken against a councillor—see section 150L(1)(c)(iv). Also, this section is a relevant integrity provision for the offence against section 201D—see section 201D(2), definition *relevant integrity provision*.

(4) For subsections (2) and (3), the particulars for the prescribed conflict of interest are the following—

(a) for a gift, loan or contract—the value of the gift, loan or contract;

(b) for an application for which a submission has been made—the matters the subject of the application and submission;

(c) the name of any entity, other than the councillor, that has an interest in the matter;

(d) the nature of the councillor's relationship with the entity mentioned in paragraph (c);

(e) details of the councillor's, and any other entity's, interest in the matter.

150EM Dealing with prescribed conflict of interest at a meeting

(1) This section applies if a councillor gives a notice at, or informs, a meeting of the councillor's prescribed conflict of interest in a matter.

(2) The councillor must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on.

Maximum penalty—200 penalty units or 2 years imprisonment.

Not authorised—indicative only

Not authorised—indicative only

(3) However, the councillor does not contravene subsection (2) by participating in a decision or being present under an approval given under section 150EV.

Part 3 Declarable conflicts of interest

150EN What is a *declarable conflict of interest*

Subject to section 150EO, a councillor has a ***declarable conflict of interest*** in a matter if—

(a) the councillor has, or could reasonably be presumed to have, a conflict between the councillor's personal interests, or the personal interests of a related party of the councillor, and the public interest; and

(b) because of the conflict, the councillor's participation in a decision about the matter might lead to a decision that is contrary to the public interest.

150EO Interests that are not declarable conflicts of interest

(1) A councillor who has a conflict of interest in a matter does not have a ***declarable conflict of interest*** in the matter if—

(a) the conflict of interest is a prescribed conflict of interest in the matter; or

(b) the conflict of interest arises solely because—

(i) the councillor undertakes an engagement in the capacity of councillor for a community group, sporting club or similar organisation, and is not appointed as an executive officer of the organisation; or

(ii) the councillor, or a related party of the councillor, is a member or patron of a community group, sporting club or similar organisation, and is not

appointed as an executive officer of the organisation; or

(iii) the councillor, or a related party of the councillor, is a member of a political party; or

(iv) the councillor, or a related party of the councillor, has an interest in an educational facility or provider of a child care service as a student or former student, or a parent or grandparent of a student, of the facility or service; or

(c) the conflict of interest arises solely because of the religious beliefs of the councillor or a related party of the councillor; or

(e) the conflict of interest arises solely because the councillor, or a related party of the councillor, receives a gift, loan or sponsored travel or accommodation benefit from an entity, if—

(i) the gift, loan or benefit is given in circumstances that would constitute a prescribed conflict of interest under section 150EG or 150EH if the total gifts, loans and benefits given by the entity totalled $2,000 or more; and

(ii) the total gifts, loans and benefits given by the entity to the councillor or related party total less than $500 during the councillor's relevant term; or

(f) the conflict of interest relates to the appointment, discipline, termination, remuneration or other employment conditions of a councillor advisor for the councillor, if the conflict of interest arises solely because the councillor advisor is a related party, other than a close associate, of the councillor.

(2) For subsection (1)(e), for assessing whether the receipt of a gift, loan or sponsored travel or accommodation benefit in particular circumstances by a councillor or a related party of a councillor constitutes a declarable conflict of interest, a reference in section 150EG or 150EH to a close associate of a

Not authorised—indicative only

Not authorised—indicative only

councillor is taken to be a reference to a related party of the councillor.

(2A) Section 150EG(2A) and (3) applies for working out, under subsection (1)(e)(ii), the total gifts, loans and benefits given by the entity as if a reference in that section to a donor were a reference to the entity.

(3) In this section—

patron, of a community group, sporting club or similar organisation, means a person who, under a formal arrangement, provides public support to the group, club or organisation as its ambassador or representative.

sponsored travel or accommodation benefit see section 150EH.

150EP Who is a *related party* of a councillor

(1) A person is a ***related party*** of a councillor if the person is any of the following in relation to the councillor—

(a) an entity in which the councillor, or a person mentioned in paragraph (b), (c) or (d), has an interest;

(b) a close associate of the councillor, other than an entity mentioned in section 150EJ(1)(f);

(c) a parent, child or sibling of the councillor's spouse;

(d) a person who has a close personal relationship with the councillor.

(2) However, a parent, child or sibling of the councillor's spouse, or a person who has a close personal relationship with the councillor, is a related party of the councillor in relation to a matter only if the councillor knows, or ought reasonably to know, about the parent's, child's, sibling's or person's involvement in the matter.

Not authorised—indicative only

150EQ Obligation of councillor with declarable conflict of interest

(1) This section applies to a councillor if—

(a) the councillor may participate, or is participating, in a decision about a matter; and

(b) the councillor becomes aware the councillor has a declarable conflict of interest in the matter.

(2) If the councillor first becomes aware the councillor has the declarable conflict of interest at a local government meeting, the councillor—

(a) must stop participating, and must not further participate, in a decision relating to the matter; and

(b) must immediately inform the meeting of the declarable conflict of interest, including the particulars stated in subsection (4).

(3) If subsection (2) does not apply, the councillor—

(a) must stop participating, and must not further participate, in a decision relating to the matter; and

(b) as soon as practicable, must give the chief executive officer notice of the councillor's declarable conflict of interest in the matter, including the particulars stated in subsection (4); and

(c) must give notice of the declarable conflict of interest, including the particulars stated in subsection (4), at—

(i) the next meeting of the local government; or

(ii) if the matter is to be considered and decided at a meeting of a committee of the local government—the next meeting of the committee.

Note—

Contravention of subsection (2) or (3) is misconduct that could result in disciplinary action being taken against a councillor—see section 150L(1)(c)(iv). Also, this section is a relevant integrity provision for the offence against section 201D—see section 201D(2), definition *relevant integrity provision*.

Not authorised—indicative only

(4) For subsections (2) and (3), the particulars for the declarable conflict of interest are the following—

(a) the nature of the declarable conflict of interest;

(b) if the declarable conflict of interest arises because of the councillor's relationship with a related party—

(i) the name of the related party; and

(ii) the nature of the relationship of the related party to the councillor; and

(iii) the nature of the related party's interests in the matter;

(c) if the councillor's or related party's personal interests arise because of the receipt of a gift or loan from another person—

(i) the name of the other person; and

(ii) the nature of the relationship of the other person to the councillor or related party; and

(iii) the nature of the other person's interests in the matter; and

(iv) the value of the gift or loan, and the date the gift was given or loan was made.

(5) A councillor does not contravene subsection (2)(a) or (3)(a) if—

(a) the councillor has otherwise complied with this section; and

(b) either—

(i) a decision has been made under section 150ES(3)(a)(i) or (b)(i) that the councillor may participate in the decision despite having a declarable conflict of interest in the matter; or

(ii) the councillor is participating in the decision under an approval given under section 150EV.

150ER Procedure if meeting informed of councillor's personal interests

(1) This section applies if a local government meeting is informed that a councillor has personal interests in a matter by a person other than the councillor.

(2) The eligible councillors at the meeting must decide whether the councillor has a declarable conflict of interest in the matter.

150ES Procedure if councillor has declarable conflict of interest

(1) This section applies if a councillor has a declarable conflict of interest in a matter as notified at a meeting under section 150EQ(2) or (3) or decided by eligible councillors at a meeting under section 150ER(2).

(2) However, this section does not apply in relation to a decision about the matter if the councillor who has the declarable conflict of interest voluntarily decides not to participate in the decision.

(3) The eligible councillors at the meeting must, by resolution, decide—

(a) for a matter that would, other than for the councillor's declarable conflict of interest, have been decided by the councillor under an Act, delegation or other authority, whether the councillor—

(i) may participate in the decision despite the councillor's conflict of interest; or

(ii) must not participate in the decision, and must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the eligible councillors discuss and vote on the matter; or

(b) for another matter, whether the councillor—

(i) may participate in a decision about the matter at the meeting, including by voting on the matter; or

Not authorised—indicative only

Not authorised—indicative only

(ii) must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the eligible councillors discuss and vote on the matter.

(4) The eligible councillors may impose conditions on the councillor under a decision mentioned in subsection (3)(a)(i) or (b)(i).

Example—

The eligible councillors may decide that the councillor may participate in a decision about the matter by discussing it at the meeting under subsection (3)(b)(i), but may impose the condition that the councillor must leave the place at which the meeting is being held while the matter is voted on.

(5) The councillor must comply with—

(a) a decision under subsection (3)(a)(ii) or (b)(ii); or

(b) any conditions imposed on a decision under subsection (4).

Maximum penalty—100 penalty units or 1 year's imprisonment.

(6) However, the councillor does not contravene subsection (5) by participating in a decision or being present under an approval given under section 150EV.

150ET Decisions of eligible councillors

(1) A decision by eligible councillors may be made under section 150ER or 150ES, other than in relation to a matter mentioned in section 150EU, even if—

(a) the number of eligible councillors is less than a majority; or

(b) the eligible councillors do not form a quorum for the meeting.

(2) The councillor who is the subject of the decision may remain at the meeting while the decision is made, but can not vote or otherwise participate in the making of the decision, other than

by answering a question put to the councillor necessary to assist the eligible councillors to make the decision.

(3) If the eligible councillors can not make a decision under section 150ER or 150ES, the eligible councillors are taken to have decided under section 150ES(3)(a)(ii) or (b)(ii) that the councillor must leave, and stay away from, the place where the meeting is being held while the eligible councillors discuss and vote on the matter.

(4) A decision about a councillor under section 150ER or 150ES for a matter applies in relation to the councillor for participating in the decision, and all subsequent decisions, about the matter.

Part 4 Other matters

150EU Procedure if no quorum for deciding matter because of prescribed conflicts of interest or declarable conflicts of interest

(1) This section applies in relation to a meeting if—

(a) a matter in which 1 or more councillors have a prescribed conflict of interest or declarable conflict of interest is to be decided at the meeting; and

(b) there is less than a quorum remaining at the meeting after any of the councillors mentioned in paragraph (a) leave, and stay away from, the place where the meeting is being held.

(2) The local government must do 1 of the following—

(a) delegate deciding the matter under section 257, unless the matter can not be delegated under that section;

(b) decide, by resolution, to defer the matter to a later meeting;

(c) decide, by resolution, not to decide the matter and take no further action in relation to the matter.

Not authorised—indicative only

Not authorised—indicative only

(3) The local government must not delegate deciding the matter to an entity if the entity, or a majority of its members, have personal interests that are, or are equivalent in nature to, a prescribed conflict of interest or declarable conflict of interest in the matter.

(4) A councillor does not contravene section 150EK(1), 150EM(2), 150EQ(2)(a) or (3)(a) or 150ES(5) by participating in a decision, or being present while the matter is discussed and voted on, for the purpose of delegating the matter or making a decision under subsection (2)(b) or (c).

150EV Minister's approval for councillor to participate or be present to decide matter

(1) The Minister may, by signed notice given to a councillor, approve the councillor participating in deciding a matter in a meeting, including being present while the matter is discussed and voted on, if—

(a) the matter could not otherwise be decided at the meeting because of a circumstance mentioned in section 150EU(1); and

(b) deciding the matter can not be delegated under section 257.

(2) The Minister may give the approval subject to the conditions stated in the notice.

150EW Duty to report another councillor's prescribed conflict of interest or declarable conflict of interest

(1) This section applies if a councillor reasonably believes or reasonably suspects—

(a) another councillor who has a prescribed conflict of interest in a matter is participating in a decision in contravention of section 150EK(1); or

(b) another councillor who has a declarable conflict of interest in a matter is participating in a decision in contravention of section 150EQ(2)(a) or (3)(a).

(2) The councillor who has the belief or suspicion must—

(a) if the belief or suspicion arises in a local government meeting—immediately inform the person who is presiding at the meeting about the belief or suspicion; or

(b) otherwise—as soon as practicable, inform the chief executive officer of the belief or suspicion.

(3) The councillor must also inform the person presiding, or the chief executive officer, of the facts and circumstances forming the basis of the belief or suspicion.

Note—

Contravention of subsection (2) or (3) is misconduct that could result in disciplinary action being taken against a councillor—see section 150L(1)(c)(iv).

150EX Obligation of councillor if conflict of interest reported under s 150EW

(1) If, under section 150EW, a councillor (the ***informing councillor***) informs the person presiding at a local government meeting of a belief or suspicion about another councillor (the ***relevant councillor***), the relevant councillor must do 1 of the following—

(a) if the relevant councillor has a prescribed conflict of interest—comply with section 150EL(2);

(b) if the relevant councillor has a declarable conflict of interest—comply with section 150EQ(2);

(c) if the relevant councillor considers there is no prescribed conflict of interest or declarable conflict of interest—inform the meeting of the relevant councillor's belief, including reasons for the belief.

(2) If subsection (1)(c) applies—

Not authorised—indicative only

Not authorised—indicative only

(a) the informing councillor must inform the meeting about the particulars of the informing councillor's belief or suspicion; and

(b) the eligible councillors at the meeting must decide whether or not the relevant councillor has a prescribed conflict of interest or declarable conflict of interest in the matter.

(3) If the eligible councillors at the meeting decide the relevant councillor has a prescribed conflict of interest in the matter, section 150EM is taken to apply to the relevant councillor for the matter.

(4) If the eligible councillors decide the relevant councillor has a declarable conflict of interest in the matter, sections 150EQ(2) and 150ES are taken to apply in relation to the relevant councillor for the matter.

150EY Offence to take retaliatory action

A person must not, because a councillor complied with section 150EW—

(a) prejudice, or threaten to prejudice, the safety or career of the councillor or another person; or

(b) intimidate or harass, or threaten to intimidate or harass, the councillor or another person; or

(c) take any action that is, or is likely to be, detrimental to the councillor or another person.

Maximum penalty—167 penalty units or 2 years imprisonment.

150EZ Councillor with prescribed conflict of interest or declarable conflict of interest must not influence others

(1) This section applies to a councillor of a local government who has a prescribed conflict of interest or declarable conflict of interest in a matter.

(2) The councillor must not direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the local government relating to the matter.

Note—

Contravention of this section is misconduct that could result in disciplinary action being taken against a councillor—see section 150L(1)(c)(iv). Also, this section is a relevant integrity provision for the offence against section 201D—see section 201D(2), definition *relevant integrity provision*.

(3) A councillor does not contravene subsection (2) solely by participating in a decision relating to the matter, including by voting on the matter, if the participation is—

(a) permitted under a decision mentioned in section 150ES(3)(a)(i) or (b)(i); or

(b) approved under section 150EV.

(4) A councillor does not contravene subsection (2) solely because the councillor gives the chief executive officer the following information in compliance with this chapter—

(a) factual information about a matter;

(b) information that is required to be given to the local government about a matter, including in an application, to enable the local government to decide the matter.

150FA Records about prescribed conflicts of interest or declarable conflicts of interest—meetings

(1) Subsection (2) applies if a councillor gives notice to, or informs, a local government meeting that the councillor, or another councillor, has a prescribed conflict of interest or declarable conflict of interest in a matter.

(2) The following information must be recorded in the minutes of the meeting or, if minutes are not required for the meeting, in another way prescribed by regulation—

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Not authorised—indicative only

(a) the name of the councillor and any other councillor who may have a prescribed conflict of interest or declarable conflict of interest;

(b) the particulars of the prescribed conflict of interest or declarable conflict of interest;

(c) if section 150EX applies—

(i) the action the councillor takes under section 150EX(1); and

(ii) any decision made by the eligible councillors under section 150EX(2);

(d) whether the councillor participated in deciding the matter, or was present for deciding the matter, under an approval under section 150EV;

(e) for a matter to which the prescribed conflict of interest or declarable conflict of interest relates—the name of each eligible councillor who voted on the matter, and how each eligible councillor voted.

(3) Subsection (4) applies if the councillor has a declarable conflict of interest.

(4) In addition to the information mentioned in subsection (2), the following information must be recorded in the minutes of the meeting or, if minutes are not required for the meeting, in another way prescribed by regulation—

(a) for a decision under section 150ER(2)—the name of each eligible councillor who voted in relation to whether the councillor has a declarable conflict of interest, and how each eligible councillor voted;

(b) for a decision under section 150ES—

(i) the decision and reasons for the decision; and

(ii) the name of each eligible councillor who voted on the decision, and how each eligible councillor voted.

Chapter 6 Administration

Part 1 Introduction

151 What this chapter is about

(1) This chapter contains provisions about—

(a) persons who are elected or appointed to perform responsibilities under this Act; and

(b) bodies that are created to perform responsibilities under this Act.

(2) For example, this chapter contains provisions about—

(a) qualifications for election or appointment; and

(b) acting appointments; and

(c) conditions of appointment; and

(d) ending appointments.

Part 2 Councillors

Division 1 Qualifications of councillors

152 Qualifications of councillors

A person is qualified to be a councillor of a local government only if the person—

(a) is an adult Australian citizen; and

(b) resides in the local government's area; and

(c) is enrolled on an electoral roll kept under the Electoral Act, section 58; and

Not authorised—indicative only

Not authorised—indicative only

(d) is not disqualified from being a councillor because of a section in this division.

Note—

See the *Local Government Electoral Act 2011*, section 26 about who may be nominated as a candidate, or for appointment, as a councillor.

153 Disqualification for certain offences or if dismissed

(1) A person can not be a councillor—

(a) after the person is convicted of a treason offence, unless the person is pardoned of the treason offence; or

(b) for 10 years after the person is convicted of an electoral offence; or

(c) for 7 years after the person is convicted of a serious integrity offence; or

(d) for 4 years after the person is convicted of an integrity offence; or

(e) for the remainder of the term before the next quadrennial elections, if the person has been dismissed.

(2) A ***treason offence*** is an offence of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth.

(3) An ***electoral offence*** is—

(a) a disqualifying electoral offence under the Electoral Act; or

(b) an offence that would be a disqualifying electoral offence had the conviction been recorded after the commencement of the *Electoral and Other Acts Amendment Act 2002*.

(4) A ***serious integrity offence*** is an offence against—

(a) a provision of a law mentioned in schedule 1, part 1 if, for a circumstance stated for the offence (if any), the stated circumstance applies to the offence; or

(b) a provision of a law of another State or the Commonwealth that corresponds to a provision mentioned in paragraph (a).

(5) An ***integrity offence*** is an offence against a provision of a law mentioned in schedule 1, part 2 if, for a circumstance stated for the offence (if any), the stated circumstance applies to the offence.

(6) A person automatically stops being a councillor when the person is convicted of any of the following offences (each a ***disqualifying offence***)—

(a) a treason offence; or

(b) an electoral offence; or

(c) a serious integrity offence; or

(d) an integrity offence.

(7) A person is taken to have been convicted of an offence—

(a) if the person appeals the conviction—when the appeal is dismissed, struck out or discontinued; or

(b) if the person does not appeal the conviction—at the end of the time within which an appeal must by law be started.

(8) In this section—

dismissed means dismissed as a councillor—

(a) under section 122; or

(b) because of the dissolution of the local government under section 123.

154 Disqualification of prisoners

(1) A person can not be a councillor while the person is a prisoner.

(2) A ***prisoner*** is a person who—

(a) is serving a period of imprisonment; or

Not authorised—indicative only

Not authorised—indicative only

(b) is liable to serve a period of imprisonment, even though the person has been released from imprisonment (on parole or leave of absence, for example); or

(c) would be serving a term of imprisonment had the term of imprisonment not been suspended under the *Penalties and Sentences Act 1992*, section 144.

(3) A person automatically stops being a councillor when the person becomes a prisoner.

155 Disqualification because of other high office

(1) A person can not be a councillor while the person is a government member.

(2) A ***government member*** is—

(a) a member of a Parliament of the Commonwealth or a State (including Queensland); or

(b) a councillor of a local government of another State.

(3) A person automatically stops being a councillor when the person becomes a government member.

156 Disqualification during bankruptcy

(1) A person can not be a councillor while the person is a bankrupt.

(2) A person is a ***bankrupt*** if, under a bankruptcy law—

(a) the person is an undischarged bankrupt; or

(b) the person has executed a deed of arrangement, and the terms of the deed have not been fully complied with; or

(c) the person's creditors have accepted a composition, and a final payment has not been made under the composition.

(3) A ***bankruptcy law*** is—

(a) the *Bankruptcy Act 1966* (Cwlth); or

(b) a corresponding law of another jurisdiction, including a jurisdiction outside Australia.

(4) A person automatically stops being a councillor when the person becomes a bankrupt.

157 Judicial review of qualifications

(1) Any person who is entitled to vote in a local government election may apply for a judicial review of the eligibility, or continued eligibility, of a person to be a councillor on the basis that the person is disqualified under this division.

(2) This section does not limit the Judicial Review Act.

158 Acting as councillor without authority

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; or

(c) the person is suspended as a councillor.

Maximum penalty—85 penalty units.

158A Councillor must give notice of disqualification

(1) This section applies if a councillor becomes aware the councillor is not qualified to be a councillor under this division.

(2) The councillor must immediately give a notice that complies with subsection (3) to each of the following, unless the councillor has a reasonable excuse—

(a) the Minister;

(b) if the councillor is not the mayor of the local government—the mayor;

(c) the chief executive officer of the local government.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—100 penalty units.

(3) For subsection (2), the notice must state—

(a) details about why the councillor is not qualified to be a councillor under this division; and

(b) the day the councillor became disqualified.

Division 2 Councillor's term of office

159 When a councillor's term starts

A councillor's term starts on—

(a) if the councillor is elected—the day after the conclusion of the councillor's election; or

(b) if the councillor is appointed—the day on which the councillor is appointed.

160 When a councillor's term ends

A councillor's term ends—

(a) if the councillor is elected at a quadrennial election or at a fresh election—at the conclusion of the next quadrennial election; or

(b) if the councillor is elected at a fresh election and a declaration is also made under a regulation under section 160A—at the conclusion of the quadrennial election after the next quadrennial election; or

(c) if the councillor is elected or appointed to fill a vacancy in the office of another councillor—at the end of the other councillor's term; or

(d) when the councillor's office becomes otherwise vacant.

Note—

See section 162 for an explanation of when this happens.

160A Extension of term of councillors elected at fresh elections

A regulation may declare that the councillors elected at a fresh election are elected for a term ending at the conclusion of the quadrennial elections after the next quadrennial elections.

160B Compulsory leave without pay

A councillor must take leave without pay for the duration of the period for which the councillor is a candidate, within the meaning of the Electoral Act, for election as a member of the Legislative Assembly.

Division 3 Vacancies in councillor's office

161 What this division is about

(1) This division is about when a councillor's office becomes vacant, and the way in which the vacancy is to be filled.

(2) The way in which a vacancy is to be filled depends on—

(a) whether the vacancy is in the office of mayor or of another councillor; and

(b) whether the office becomes vacant during the beginning, middle or final part of the local government's term.

(3) The ***beginning*** of the local government's term is the period of 12 months that—

(a) starts on the day when the last quadrennial elections were held; and

(b) ends on the day before the first anniversary of the last quadrennial elections.

(4) The ***middle*** of the local government's term is the period of 24 months that—

Not authorised—indicative only

Not authorised—indicative only

(a) starts on the first anniversary of the last quadrennial elections; and

(b) ends on the day before the third anniversary of the last quadrennial elections.

(5) The ***final part*** of the local government's term is the period that—

(a) starts on the third anniversary of the last quadrennial elections; and

(b) ends on the day before the next quadrennial elections are held.

162 When a councillor's office becomes vacant

(1) A councillor's office becomes vacant if the councillor—

(a) ceases to be qualified to be a councillor under division 1; or

(b) is found, on a judicial review, to be ineligible to continue to be a councillor; or

(c) does not comply with section 169; or

(d) ceases to be a councillor under section 172; or

(e) is absent from 2 or more consecutive ordinary meetings of the local government over a period of at least 2 months, unless the councillor is absent—

(i) in compliance with an order made by the conduct tribunal, the local government or the chairperson of a meeting of the local government or a committee of the local government; or

(ii) with the local government's leave; or

(iii) while the councillor is suspended under section 122, 123 or 175K; or

(f) resigns as a councillor by signed notice of resignation given to the chief executive officer; or

(g) dies; or

(h) becomes a local government employee.

(2) A ***local government employee*** does not include—

(a) a person employed under a federally funded community development project for Aborigines or Torres Strait Islanders; or

(b) a person prescribed under a regulation.

163 When a vacancy in an office must be filled

(1) This section explains when a vacant office of a councillor (including the mayor) must be filled.

(2) If a councillor's office, other than a mayor's office, becomes vacant 3 months or more before quadrennial elections are required to be held, the local government must fill the vacant office.

(2A) If a mayor's office becomes vacant before quadrennial elections are required to be held, the local government must fill the vacant office.

(3) The local government must fill the vacant office within 2 months after the office becomes vacant.

(4) If the local government does not do so, the Governor in Council may appoint a qualified person to fill the vacant office.

(5) If a councillor's office, other than a mayor's office, becomes vacant within 3 months of when quadrennial elections are required to be held, the local government may decide not to fill the vacant office.

164 Filling vacancy in office of mayor

A vacancy in the office of mayor must be filled by—

Not authorised—indicative only

Not authorised—indicative only

(a) if the office becomes vacant during the beginning or middle of the local government's term—a by-election; or

(b) if the office becomes vacant during the final part of the local government's term—the local government appointing, by resolution, another councillor to the office.

165 Acting mayor

(1) The deputy mayor acts for the mayor during—

(a) the absence or temporary incapacity of the mayor; or

(b) a vacancy in the office of mayor.

(2) If—

(a) the office of mayor is vacant and the deputy mayor is prevented, by absence or temporary incapacity, from acting as the mayor; or

(b) the mayor and deputy mayor are both prevented, by absence or temporary incapacity, from performing the role of mayor; or

(c) the offices of both the mayor and deputy mayor are vacant;

the local government may, by resolution, appoint an acting mayor from its councillors.

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

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

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

166 Filling vacancy in office of another councillor

(1) A vacancy in the office of a councillor, other than the mayor, must be filled—

(a) if the office becomes vacant during the beginning of the local government's term—in the way decided by the local government under subsection (2); or

(b) if the office becomes vacant during the middle of the local government's term—by a by-election; or

(c) if the office becomes vacant during the final part of the local government's term—by following the procedure under section 166B.

(2) For subsection (1)(a), the local government must decide, by resolution, whether the vacancy is to be filled—

(a) by a by-election; or

(b) by following the procedure under section 166A.

166A Filling particular vacancies arising during beginning of local government's term

(1) This section applies if, under section 166(1)(a), a local government is to fill the vacant office of a councillor (the ***former councillor***) by following the procedure under this section.

(2) The chief executive officer must ask the electoral commission to comply with subsection (3).

(3) The electoral commission must—

(a) give a vacancy notice to the runner-up who is first in the order of priority; and

(b) if consent is not given by the runner-up on or before the deadline, give a vacancy notice to the runner-up who is next in the order of priority; and

(c) if consent is not given by the runner-up who is next in the order of priority on or before the deadline, repeat the

Not authorised—indicative only

Not authorised—indicative only

step mentioned in paragraph (b) until a runner-up consents to the appointment on or before the deadline for the runner-up.

(4) If a runner-up consents to the appointment on or before the deadline for the runner-up—

(a) the electoral commission must notify the chief executive officer that the runner-up has consented; and

(b) the local government must fill the vacant office by appointing the runner-up.

(5) If there are no runners-up remaining, the vacant office must be filled by a by-election.

(6) The electoral commission may agree to extend the day and time stated in a vacancy notice if the electoral commission considers it reasonable to do so in the circumstances.

(7) For deciding the order of priority, if 2 or more runners-up in a quadrennial election have an equal number of votes—

(a) the electoral commission must, in the presence of 2 witnesses, follow the process stated in the Local Government Electoral Act, section 98(7)(a) to (g) and (8) for the runners-up; and

(b) the runner-up whose name is recorded as mentioned in section 98(7)(g) of that Act is taken to be higher in the order of priority; and

(c) the process mentioned in paragraph (a) must be repeated until the order of priority for each runner-up has been decided.

(8) The electoral commission must allow each runner-up mentioned in subsection (7), or their representative, to be present for the process mentioned in that subsection.

(9) In this section—

deadline, in relation to a runner-up giving consent, means—

(a) the day and time stated in a vacancy notice given to the runner-up; or

(b) if the day and time is extended under subsection (6)—the day and time as extended.

order of priority, for runners-up in a quadrennial election, means the order of runners-up ranked according to the number of votes received by each runner-up in the election, starting with the runner-up who received the highest number of votes in the election.

runner-up, for a vacant office of a councillor, means a person who was a candidate for the office in the last quadrennial election, other than—

(a) the former councillor; or

(b) a person who holds office as a councillor (including as the mayor) when the office becomes vacant.

vacancy notice, in relation to a runner-up, means a notice stating—

(a) that the office of a councillor is vacant; and

(b) if the runner-up is qualified to be a councillor, the runner-up may consent to being appointed to the vacant office; and

(c) the day and time by which consent must be given to the electoral commission.

166B Filling particular vacancies arising during final part of local government's term

(1) This section applies if a local government is to fill the vacant office of a councillor (the ***former councillor***) under section 166(1)(c).

(2) The vacant office must be filled by the local government appointing, by resolution, a person who—

(a) is qualified to be a councillor; and

(b) if the former councillor was elected or appointed to office as a political party's nominee—is the political party's nominee.

Not authorised—indicative only

Not authorised—indicative only

(3) If subsection (2)(b) applies, the chief executive officer must request the political party to advise the full name and address of its nominee.

(4) The request must be made by a notice given to the political party's registered officer within 14 days after the office becomes vacant.

(5) If subsection (2)(b) does not apply, the chief executive officer must, within 14 days after the office becomes vacant, invite nominations—

(a) from any person who is qualified to be a councillor, by notice published—

(i) on the local government's website; and

(ii) in other ways the chief executive officer considers appropriate; and

(b) from each person who was a candidate for the office of the former councillor at the most recent quadrennial election, by notice.

(6) If the chief executive officer receives any nominations from qualified persons or candidates, the local government must fill the vacant office by appointing 1 of those persons or candidates.

Division 4 Councillors with other jobs

167 Councillors and local government jobs

(1) If a person becomes a councillor while the person is a local government employee, the person is taken to have resigned as a local government employee on the day before the person becomes a councillor.

(2) A ***local government employee*** includes an employee of a type of entity prescribed under a regulation.

(3) However, a ***local government employee*** does not include a person who—

(a) is employed under a federally funded community development project for Aborigines or Torres Strait Islanders; or

(b) is a member of a class of employees that is prescribed under a regulation.

Division 5 Obligations of councillors

169 Obligations of councillors before acting in office

(1) A councillor must not act in office until the councillor makes the declaration of office.

(2) The ***declaration of office*** is a declaration prescribed under a regulation.

(3) The chief executive officer is authorised to take the declaration of office.

(4) The chief executive officer must keep a record of the taking of the declaration of office.

(5) A person ceases to be a councillor if the person does not comply with subsection (1) within—

(a) 30 days after being appointed or elected; or

(b) a longer period allowed by the Minister.

170 Giving directions to local government staff

(1) The mayor may give a direction to the chief executive officer.

(2) However, a direction under subsection (1) must not be given if—

(a) it is inconsistent with a resolution, or a document adopted by resolution, of the local government; or

Not authorised—indicative only

Not authorised—indicative only

(b) it relates to the appointment of a local government employee under section 196(3); or

(c) it relates to disciplinary action by the chief executive officer in relation to a local government employee under section 197 or a councillor advisor; or

(d) it would result in the chief executive officer contravening a provision of an Act.

(3) No councillor, including the mayor, may give a direction to any other local government employee, except in accordance with guidelines made under section 170AA about the provision of administrative support to councillors.

Note—

Contravention of subsection (3) is misconduct that could result in disciplinary action being taken against a councillor. See sections 150L(1)(c)(iv), 150AQ and 150AR.

(4) The chief executive officer must—

(a) keep a record of each direction given to the chief executive officer; and

(b) make available to the local government each direction mentioned in paragraph (a).

170A Requests for assistance or information

(1) A councillor may ask a local government employee to provide advice to assist the councillor to carry out his or her responsibilities under this Act.

(2) A councillor may, subject to any limits prescribed under a regulation, ask the chief executive officer to provide information, that the local government has access to, relating to the local government.

Example of a limit prescribed under a regulation—

A regulation may prescribe the maximum cost to a local government of providing information to a councillor.

(3) If the advice or information requested under subsection (1) or (2) relates to a document, the requirement under subsection (9) to comply with the request includes a requirement to provide a copy of the document.

(4) Subsections (2) and (3) do not apply to information or a document—

(a) that is a record of the conduct tribunal; or

(b) that was a record of a former conduct review body; or

(c) if disclosure of the information or document to the councillor would be contrary to an order of a court or tribunal; or

(d) that would be privileged from production in a legal proceeding on the ground of legal professional privilege.

(5) A request of a councillor under subsection (1) or (2) is of no effect if the request does not comply with the acceptable requests guidelines.

(6) Subsection (5) does not apply to—

(a) the mayor; or

(b) the chairperson of a committee of a local government if the request relates to the role of the chairperson.

(7) The ***acceptable requests guidelines*** are guidelines, adopted by resolution of the local government, about—

(a) the way in which a councillor may ask a local government employee for advice to help the councillor carry out his or her responsibilities under this Act; and

(b) reasonable limits on requests that a councillor may make.

(8) In this section a ***local government employee*** includes a person prescribed under a regulation.

(9) The chief executive officer must comply with a request made to the chief executive officer under subsection (1) or (2)—

(a) within 10 business days after receiving the request; or

Not authorised—indicative only

Not authorised—indicative only

(b) if the chief executive officer reasonably believes it is not practicable to comply with the request within 10 business days—within 20 business days after receiving the request.

Maximum penalty—20 penalty units.

(10) If the chief executive officer forms the belief mentioned in subsection (9)(b), the chief executive officer must give the councillor notice about the belief and the reasons for the belief within 10 business days after receiving the request.

(11) In this section—

former conduct review body means a regional conduct review panel or the Local Government Remuneration and Discipline Tribunal under this Act as in force before the commencement of the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018*, section 18.

170AA Guidelines about provision of administrative support to councillors

(1) The chief executive officer of a local government may make guidelines about the provision of administrative support by local government employees to a councillor.

(2) The guidelines must include—

(a) when a councillor may be provided with administrative support by a local government employee; and

(b) how and when a councillor may give a direction to a local government employee in relation to the provision of administrative support; and

(c) a requirement that a councillor may give a direction to a local government employee only if the direction relates directly to administrative support to be provided by the local government employee to the councillor under the guidelines.

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

171 Use of information by councillors

(1) A person who is, or has been, a councillor must not use information that was acquired as a councillor to—

(a) gain, directly or indirectly, a financial advantage for the person or someone else; or

(b) cause detriment to the local government.

Maximum penalty—100 penalty units or 2 years imprisonment.

(2) Subsection (1) does not apply to information that is lawfully available to the public.

(3) A councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government.

Note—

Contravention of subsection (3) is misconduct that could result in disciplinary action being taken against a councillor. See sections 150L(1)(c)(iv), 150AQ and 150AR.

172 Failure to give particular returns under Local Government Electoral Act

(1) If a person who is elected as a councillor fails to give a summary return within the required period or a longer period allowed by the Minister, the person ceases to be a councillor on the day immediately after the required period or the longer period ends.

Note—

In particular circumstances, the required period may be taken to be extended—see section 173.

(2) However, subsections (3) to (5) apply if—

Not authorised—indicative only

Not authorised—indicative only

(a) under the Local Government Electoral Act, an agent was required to give the summary return for—

(i) a group of candidates of which the person was a member; or

(ii) a political party that endorsed the candidature of the person; and

(b) the agent fails to give the summary return within the required period.

(3) As soon as practicable after the date of the notice given to the person under the Local Government Electoral Act, section 130C that the agent has failed to give the summary return, the person must give the Minister a notice stating that—

(a) the agent failed to give the summary return within the required period; and

(b) the person intends to give the return under subsection (4).

(4) The person must give the summary return within—

(a) 30 days after the date of the notice of the agent's failure; or

(b) a longer period allowed by the Minister.

Note—

In particular circumstances, the period mentioned in paragraph (a) may be taken to be extended—see section 173.

(5) The person ceases to be a councillor if the person does not comply with subsection (4).

(6) In this section—

required period, for a summary return, means the period within which the summary return must be given under the Local Government Electoral Act.

summary return means a return required to be given under the following provisions of the Local Government Electoral Act—

(a) section 117(4);

(b) section 118(4);

(c) section 120(7);

(d) section 125(2).

173 Extension of time for giving summary return

(1) For section 172(1) or (4), a person who is elected as a councillor may make a written request to the Minister to allow a longer period for giving a summary return.

(2) The request must be made before the following period (the ***relevant period***) ends—

(a) for section 172(1), the required period;

(b) for section 172(4), the period mentioned in section 172(4)(a).

(3) If, when the relevant periods ends, the Minister has not decided the request, the relevant period is taken to be extended until the date of the notice of the Minister's decision.

(4) In this section—

required period see section 172(6).

summary return see section 172(6).

175 Post-election meetings

(1) A local government must hold a meeting within 14 days after—

(a) the conclusion of each quadrennial election; and

(b) the conclusion of a fresh election of its councillors.

(2) The local government must, by resolution, appoint a deputy mayor from its councillors (other than the mayor)—

(a) at that meeting; and

Not authorised—indicative only

Not authorised—indicative only

(b) at the first meeting after the office of the councillor who is the deputy mayor becomes vacant.

Division 7 Automatic suspension of councillors

175K Automatic suspension for certain offences

(1) A person is automatically suspended as a councillor when the person is charged with a disqualifying offence.

(2) Subsection (3) applies if, when a person is appointed or elected as a councillor, a proceeding for a disqualifying offence against the person has been started but has not ended.

(3) The person is automatically suspended as a councillor when the person's term as councillor starts.

175L When a person is charged with disqualifying offence and proceeding is started

For this division and division 8—

(a) a person is charged with a disqualifying offence when—

(i) a police officer arrests and charges the person for the offence; or

(ii) the person is served with a notice to appear for the offence; or

(iii) the person is served with a complaint for the offence under the *Justices Act 1886*; or

(iv) a charge for the offence is made against the person in a proceeding without a complaint under the *Justices Act 1886*; or

(v) an ex officio indictment against the person for the offence is presented to the Supreme Court or the District Court; and

(b) a proceeding for a disqualifying offence is started against a person when the person is charged with the offence.

175M Obligation to give notice if charged with disqualifying offence

(1) This section applies if—

(a) a councillor is charged with a disqualifying offence; or

(b) a proceeding for a disqualifying offence has been started, but has not ended, against a councillor when the councillor is appointed or elected.

(2) The councillor must immediately give a notice that complies with subsection (3) to each of the following, unless the councillor has a reasonable excuse—

(a) the Minister;

(b) if the councillor is not the mayor of the local government—the mayor;

(c) the chief executive officer of the local government.

Maximum penalty—100 penalty units.

(3) For subsection (2), the notice must state—

(a) the provision of the law against which the councillor is charged; and

(b) the day the councillor was charged.

175N Effect of councillor's suspension

(1) This section applies while a councillor is suspended as a councillor.

(2) The councillor must not act as a councillor.

(3) If the councillor is the mayor or deputy mayor, the councillor is also suspended as mayor or deputy mayor.

Not authorised—indicative only

Not authorised—indicative only

(4) The councillor's obligations under division 5 are not affected.

(5) The Minister's power to exercise a power in relation to the councillor under chapter 5, part 1, division 3 is not affected.

(6) The councillor is entitled to be paid remuneration as a councillor.

(7) In this section—

remuneration, as a councillor, does not include an amount payable to a councillor for performing a particular responsibility, including, for example, attending a meeting of the local government or any of its committees.

175O When suspension of councillor ends

If a councillor is suspended under section 175K, the suspension ends when the earliest of the following happens—

(a) for each disqualifying offence to which the suspension relates—

(i) if the councillor is convicted of the offence and appeals the conviction—the conviction is set aside or quashed on appeal; or

(ii) if the councillor is convicted of the offence and does not appeal the conviction—the time within which an appeal must by law be started ends; or

(iii) the proceeding for the offence otherwise ends;

Note—

If the councillor is convicted of a disqualifying offence, the councillor's office becomes vacant. See section 162.

(b) the councillor's term ends under section 160;

(c) the councillor's office becomes vacant under section 162.

Division 8 Criminal history information

175P Criminal history report

(1) This section applies if the Minister—

(a) receives a notice from a councillor—

(i) under section 158A in relation to the conviction of the councillor for a disqualifying offence; or

(ii) under section 175M; or

(b) reasonably suspects a councillor has been charged with, or convicted of, a disqualifying offence.

(2) The Minister may ask the police commissioner for a written report about the criminal history of the councillor that includes a brief description of the circumstances of a conviction or charge mentioned in the criminal history.

(3) The police commissioner must comply with the request.

(4) However, the duty to comply applies only to information in the police commissioner's possession or to which the police commissioner has access.

(5) In this section—

criminal history, of a councillor, includes—

(a) a spent conviction; and

(b) every charge made against the councillor for an offence, in Queensland or elsewhere.

175Q Confidentiality of criminal history information

(1) This section applies to a person who possesses criminal history information because the person—

(a) is or was an officer, employee or agent of the department; or

Not authorised—indicative only

Not authorised—indicative only

(b) is or was a councillor, officer, employee or agent of a local government.

(2) The person must not, directly or indirectly, disclose criminal history information to any other person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

(3) The person is permitted to disclose the criminal history information to another person—

(a) to the extent necessary to perform the person's functions under this Act; or

(b) if the disclosure is authorised under an Act; or

(c) if the disclosure is otherwise required or permitted by law; or

(d) if the person to whom the information relates consents to the disclosure; or

(e) if the disclosure is in a form that does not identify the person to whom the information relates; or

(f) if the information is, or has been, lawfully accessible to the public.

(4) The person must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it is given.

(5) In this section—

criminal history information means the information contained in—

(a) a report given to the Minister under section 175P; or

(b) a notice given to the Minister, a councillor or the chief executive officer of a local government—

(i) under section 158A in relation to the conviction of a councillor for a disqualifying offence; or

(ii) under section 175M.

Part 3 Local Government Remuneration Commission

176 Establishment

The Local Government Remuneration Commission (the ***remuneration commission***) is established.

177 Functions

The functions of the remuneration commission are—

(a) to establish the categories of local governments; and

(b) to decide the category to which each local government belongs; and

(c) to decide the maximum amount of remuneration payable to the councillors in each of the categories; and

(d) to consider and make recommendations to the Minister about the following matters relating to councillor advisors—

(i) whether or not to prescribe a local government under section 197D(1)(a);

(ii) the number of councillor advisors each councillor of a local government may appoint;

(iii) the number of councillor advisors a councillor of the council under the *City of Brisbane Act 2010* may appoint; and

(e) another function relating to the remuneration of councillors directed, in writing, by the Minister.

178 Membership of remuneration commission

The commissioners of the remuneration commission are—

(a) the chairperson; and

Not authorised—indicative only

Not authorised—indicative only

(b) the casual commissioners.

179 Constitution of remuneration commission

The remuneration commission is constituted for a matter by—

(a) for performing a function of the remuneration commission—at least 2, but not more than 3, commissioners of the remuneration commission chosen by the chairperson; or

(b) for dealing with an administrative or procedural matter related to performing a function of the remuneration commission—

(i) the chairperson; or

(ii) not more than 3 commissioners of the remuneration commission chosen by the chairperson.

180 Appointment of chairperson and casual commissioners

(1) The Governor in Council may appoint a person to be the chairperson of the remuneration commission.

(2) The Governor in Council may appoint—

(a) a person to be a casual commissioner of the remuneration commission; and

(b) the number of casual commissioners the Governor in Council considers appropriate.

(3) The Minister may recommend the appointment of a person as a commissioner only if the person is qualified under section 181 to be a commissioner.

181 Qualifications to be commissioner

(1) A person is qualified to be a commissioner only if the person—

(a) has extensive knowledge of, and experience in, any of the following—

(i) local government;

(ii) community affairs;

(iii) industrial relations;

(iv) public administration;

(v) public finance; or

(b) has other knowledge and experience the Governor in Council considers appropriate.

(2) However, a person is not qualified to be a commissioner if the person—

(a) is a councillor; or

(b) is a nominee for election as a councillor; or

(c) accepts appointment as a councillor; or

(d) is an employee of a local government; or

(e) is a contractor of a local government; or

(f) is a consultant engaged by a local government; or

(g) is a member of an Australian Parliament; or

(h) is a nominee for election as a member of an Australian Parliament; or

(j) has a conviction for an indictable offence, other than a spent conviction; or

(k) is an insolvent under administration; or

(l) is a person prescribed by regulation.

182 Term of office

Subject to this part, a commissioner holds office for the term, of not more than 4 years, stated in the commissioner's instrument of appointment.

Not authorised—indicative only

Not authorised—indicative only

183 Conditions of appointment

A commissioner—

(a) is to be paid the remuneration and allowances decided by the Governor in Council; and

(b) holds office on the terms and conditions decided by the Governor in Council, to the extent the terms and conditions are not provided for by this Act.

184 Vacancy of office

The office of a commissioner becomes vacant if the person holding the office—

(a) completes a term of office and is not reappointed; or

(b) is not qualified under section 181 to hold the office; or

(c) is removed from office by the Governor in Council for misbehaviour or physical or mental incapacity; or

(d) resigns the office by signed notice given to the Minister.

185 Assistance from departmental staff

The department's chief executive must make available to the remuneration commission the help from public service employees employed in the department that the commission needs to effectively perform its functions.

Part 5 Local government employees, councillor advisors etc.

Division 1 Chief executive officer

194 Appointing a chief executive officer

(1) A local government must appoint a qualified person to be its chief executive officer.

(2) A person is qualified to be the chief executive officer if the person has the ability, experience, knowledge and skills that the local government considers appropriate, having regard to the responsibilities of a chief executive officer.

(3) A person who is appointed as the chief executive officer must enter into a written contract of employment with the local government.

(4) The contract of employment must provide for—

(a) the chief executive officer to meet performance standards set by the local government; and

(b) the chief executive officer's conditions of employment (including remuneration).

195 Appointing an acting chief executive officer

A local government may appoint a qualified person to act as the 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 can not, for another reason, perform the chief executive officer's responsibilities.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Other local government employees

196 Appointing other local government employees

(1) A local government must, by resolution, adopt an organisational structure that is appropriate to the performance of the local government's responsibilities.

(2) The local government may employ local government employees for the performance of the local government's responsibilities.

(3) The chief executive officer appoints local government employees.

197 Disciplinary action against local government employees

(1) The chief executive officer may take disciplinary action against a local government employee.

(2) A regulation may prescribe—

(a) when disciplinary action may be taken against a local government employee; and

(b) the types of disciplinary action that may be taken against a local government employee.

Division 2A Councillor advisors

197A Appointment and functions of councillor advisors

(1) A local government prescribed under section 197D(1)(a) may, by resolution, allow a councillor to appoint 1 or more appropriately qualified persons (each a ***councillor advisor***) to assist the councillor in performing responsibilities under this Act.

Examples of assistance—

administrative support, coordinating media activities, event management functions, policy development, office management

(1A) The resolution must state the number of councillor advisors, up to the maximum prescribed under section 197D(1)(b) for the local government, that the councillor may appoint.

(2) However, the councillor must not appoint a close associate of the councillor as a councillor advisor.

(3) If the councillor appoints a councillor advisor, the councillor advisor must enter into a written contract of employment with the local government.

(4) The contract of employment must provide for—

(a) the councillor advisor's conditions of employment, including remuneration, leave and superannuation entitlements; and

(b) the councillor advisor's functions and key responsibilities; and

(c) a requirement that the councillor advisor comply with the councillor advisor code of conduct made by the Minister under section 197C; and

(d) when disciplinary action may be taken, and the types of disciplinary action that may be taken, against the councillor advisor.

(5) The councillor advisor's functions and responsibilities can not include—

(a) carrying out or assisting in an activity relating to a councillor's campaign for re-election; or

Note—

A person who is appointed as a councillor advisor may carry out or assist in an activity mentioned in paragraph (a) other than in the person's capacity as a councillor advisor.

(b) directing a local government employee.

Not authorised—indicative only

Not authorised—indicative only

(6) The councillor who appointed the councillor advisor may give a direction to the councillor advisor.

197B When appointment ends

(1) A councillor advisor's appointment automatically ends on the day the councillor advisor is convicted of an offence against any of the following provisions—

(a) section 200(2) or (4);

(b) section 201D;

(c) section 201F(2) or (3);

(d) section 234(1).

(2) Also, a councillor advisor's appointment automatically ends 2 weeks after the day either of the following happens—

(a) the term of the councillor who appointed the councillor advisor ends;

(b) the councillor who appointed the councillor advisor is suspended.

197C Minister to make councillor advisor code of conduct

(1) The Minister must make a councillor advisor code of conduct that sets out standards of behaviour for councillor advisors in performing their functions for a local government or the council under this Act or the *City of Brisbane Act 2010*.

(2) The councillor advisor code of conduct—

(a) must be consistent with the local government principles; and

(b) may contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.

(3) The approved councillor advisor code of conduct must be published on the department's website.

197D Regulation may prescribe particular matters relating to councillor advisors

(1) A regulation may—

(a) prescribe a local government as a local government to which section 197A(1) applies; and

(b) prescribe the maximum number of councillor advisors each councillor may appoint; and

(c) limit the functions and key responsibilities that may be provided for in a councillor advisor's contract of employment.

(2) Before recommending to the Governor in Council the making of a regulation under subsection (1)(a) or (b), the Minister must ask the remuneration commission for its recommendation about the proposed regulation.

(3) The Minister must have regard to the recommendation of the remuneration commission in recommending the making of the regulation to the Governor in Council.

(4) The maximum number of councillor advisors prescribed under subsection (1)(b)—

(a) is the number of full-time equivalent councillor advisors a councillor may appoint; and

(b) does not prevent a councillor appointing more than 1 part-time councillor advisor to perform the role of 1 full-time councillor advisor.

Division 3 Common provisions

198 Concurrent employment of local government employees

(1) This section applies to all local government employees, including the chief executive officer.

Not authorised—indicative only

Not authorised—indicative only

(2) A local government employee may be employed by more than 1 local government at the same time, if each of the local governments agree.

199 Improper conduct by local government employees

(1) This section applies to the following persons—

(a) a local government employee;

(b) a contractor of the local government;

(c) another type of person prescribed by regulation.

(2) The person must not ask for, or accept, a fee or other benefit for doing something as a person mentioned in subsection (1)(a), (b) or (c).

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) However, subsection (2) does not apply to—

(a) remuneration paid by the local government; or

(b) a benefit that has only a nominal value.

(4) The person must not unlawfully destroy or damage property of the local government.

Maximum penalty—100 penalty units or 2 years imprisonment.

200 Use of information by local government employees and councillor advisors

(1) This section applies to a person who is, or has been, any of the following—

(a) a local government employee;

(b) a councillor advisor;

(c) a contractor of the local government;

(d) another type of person prescribed by regulation.

(2) The person must not use information acquired as a person mentioned in subsection (1)(a), (b), (c) or (d) to—

(a) gain (directly or indirectly) an advantage for the person or someone else; or

(b) cause detriment to the local government.

Maximum penalty—100 penalty units or 2 years imprisonment.

(3) Subsection (2) does not apply to information that is lawfully available to the public.

(4) The person 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—100 penalty units or 2 years imprisonment.

201 Annual report must detail particular information about local government employees and councillor advisors

(1) The annual report of a local government must state—

(a) the total of all remuneration packages that are payable for the year to the senior management of the local government; and

(b) the number of employees in senior management who are being paid each band of remuneration; and

(c) if the local government has resolved to allow a councillor to appoint councillor advisors—for each councillor—

(i) the number of councillor advisors appointed by the councillor for the year; and

(ii) the total remuneration payable to all councillor advisors appointed by the councillor for the year.

Not authorised—indicative only

Not authorised—indicative only

(2) The ***senior management***, of a local government, consists of the chief executive officer and all senior executive employees of the local government.

(3) Each ***band of remuneration*** is an increment of $100,000.

(4) To remove any doubt, it is declared that nothing in this section requires the exact salary of any employee in senior management to be separately stated in the annual report.

Part 5A Obligations of councillors and councillor advisors

201A Obligation of councillor or councillor advisor to inform chief executive officer of particulars of interests at start of term or on appointment

(1) This section applies if—

(a) a councillor, at the start of the councillor's term, has an interest that must, under a regulation, be recorded in a register of interests for the councillor or a person who is related to the councillor; or

(b) a councillor advisor, when the advisor is appointed, has an interest that must, under a regulation, be recorded in a register of interests for the advisor or a person who is related to the advisor.

(2) The councillor or councillor advisor must, in the approved form, inform the chief executive officer of the particulars required to be included in a register of interests under a regulation within 30 days after the day the councillor's term starts or the advisor is appointed.

Note—

Contravention of this section by a councillor is misconduct that could result in disciplinary action being taken against the councillor—see section 150L(1)(c)(iv). Also, this section is a relevant integrity provision for the offence against section 201D—see section 201D(2), definition *relevant integrity provision*.

(3) A person is ***related*** to a councillor if—

(a) the person is the councillor's spouse; or

(b) the person is totally or substantially dependent on the councillor and—

(i) the person is the councillor's child; or

(ii) the person's affairs are so closely connected with the affairs of the councillor that a benefit derived by the person, or a substantial part of it, could pass to the councillor.

(4) A person is ***related*** to a councillor advisor if—

(a) the person is the advisor's spouse; or

(b) the person is totally or substantially dependent on the advisor and—

(i) the person is the advisor's child; or

(ii) the person's affairs are so closely connected with the affairs of the advisor that a benefit derived by the person, or a substantial part of it, could pass to the advisor.

201B Obligation of councillor or councillor advisor to correct register of interests

(1) This section applies if—

(a) a councillor or councillor advisor, or a person who is related to the councillor or councillor advisor, acquires an interest that must be, but is not, recorded in a register of interests under a regulation; or

(b) there is a change to the particulars required to be included in a register of interests under a regulation for—

(i) a councillor or councillor advisor; or

(ii) a person who is related to the councillor or advisor.

Not authorised—indicative only

Not authorised—indicative only

(2) The councillor or councillor advisor must, in the approved form, inform the chief executive officer of the particulars required to be included in a register of interests under a regulation for the new interest or the change to the particulars within 30 days after the interest is acquired or the change happens.

Note—

Contravention of this section by a councillor is misconduct that could result in disciplinary action being taken against the councillor—see section 150L(1)(c)(iv). Also, this section is a relevant integrity provision for the offence against section 201D—see section 201D(2), definition *relevant integrity provision*.

201C Obligation of councillor or councillor advisor to inform chief executive officer annually about register of interests

Each councillor and councillor advisor must, within 30 days after the end of each financial year, inform the chief executive officer, in the approved form, of the following—

(a) if the councillor or councillor advisor, or a person related to the councillor or councillor advisor, has acquired an interest that must be, but is not, recorded in a register of interests under a regulation—the particulars of the interest that must be recorded in the register of interests under a regulation;

(b) if there has been a change to the particulars required to be included in a register of interests under a regulation for the councillor or councillor advisor, or a person who is related to the councillor or advisor—the change to the particulars;

(c) if paragraphs (a) and (b) do not apply—that there has been no interest acquired or change to the particulars for an interest.

Note—

Contravention of this section by a councillor is misconduct that could result in disciplinary action being taken against the councillor—see section 150L(1)(c)(iv). Also, this section is a relevant integrity

provision for the offence against section 201D—see section 201D(2), definition *relevant integrity provision*.

201D Dishonest conduct of councillor or councillor advisor

(1) A person who is a councillor or councillor advisor must not contravene a relevant integrity provision with intent to—

(a) dishonestly obtain a benefit for the person or someone else; or

(b) dishonestly cause a detriment to someone else.

Maximum penalty—200 penalty units or 2 years imprisonment.

(2) In this section—

benefit includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.

detriment, caused to a person, includes detriment caused to the person's property.

relevant integrity provision—

(a) for a councillor, means each of the following provisions—

(i) section 150EK;

(ii) section 150EL;

(iii) section 150EQ;

(iv) section 150EZ;

(v) section 201A;

(vi) section 201B;

(vii) section 201C;

(viii) section 234, if the information mentioned in that section is given under section 201A, 201B or 201C; or

Not authorised—indicative only

Not authorised—indicative only

(b) for a councillor advisor, means each of the following provisions—

(i) section 201A;

(ii) section 201B;

(iii) section 201C;

(iv) section 234, if the information mentioned in that section is given under section 201A, 201B or 201C.

201E Proceeding for offence against s 201D

(1) An offence against section 201D is a misdemeanour.

(2) A proceeding for an offence against section 201D may be started only with the written consent of the director of public prosecutions.

(3) A proceeding for an offence against section 201D may be taken, at the election of the prosecution—

(a) by way of summary proceeding under the *Justices Act 1886*; or

(b) on indictment.

(4) However, a magistrate must not hear an indictable offence against section 201D summarily if the magistrate is satisfied, on an application made by the defence, that because of exceptional circumstances the offence should not be heard and decided summarily.

Note—

For examples of exceptional circumstances, see the examples stated in the Criminal Code, section 552D(2).

(5) If subsection (4) applies—

(a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily; and

(b) the proceeding for the charge must be conducted as a committal proceeding; and

(c) a plea of the defendant at the start of the hearing must be disregarded; and

(d) the evidence already heard by the court is taken to be evidence in the committal proceeding; and

(e) the *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

(6) A Magistrates Court that summarily deals with a charge of an offence against section 201D—

(a) must be constituted by a magistrate; and

(b) has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

(7) In this section—

director of public prosecutions means the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1984*.

201F Prohibited conduct by councillor or councillor advisor in possession of inside information

(1) This section applies to a person (the ***insider***) who is, or has been, a councillor or councillor advisor if the insider—

(a) acquired inside information as a councillor or councillor advisor; and

(b) knows, or ought reasonably to know, the inside information is not generally available to the public.

(2) The insider must not cause the purchase or sale of an asset if knowledge of the inside information would be likely to influence a reasonable person in deciding whether or not to buy or sell the asset.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—1,000 penalty units or 2 years imprisonment.

(3) The insider must not cause the inside information to be provided to another person the insider knows, or ought reasonably to know, may use the information in deciding whether or not to buy or sell an asset.

Maximum penalty—1,000 penalty units or 2 years imprisonment.

(4) In this section—

cause, in relation to an action, includes the following—

(a) carry out the action;

(b) instigate the action;

(c) direct, or otherwise influence, another person to carry out or instigate the action.

corporate entity means a corporation owned by the local government.

inside information, in relation to a local government, means information about any of the following—

(a) the operations or finances of the local government (including any business activity of the local government) or any of its corporate entities;

(b) a proposed policy of the local government, including proposed changes to an existing policy;

(c) a contract entered into, or proposed to be entered into, by the local government or any of its corporate entities;

(d) a tender process being conducted by or for the local government or any of its corporate entities;

(e) a decision, or proposed decision, of the local government or any of its committees;

(f) the exercise of a power, under a Local Government Act, by the local government, a councillor or a local government employee;

(g) the exercise of a power, under an Act, by the State, a Minister, a statutory body or an employee of the State or statutory body, that affects the local government, any of its corporate entities or land or infrastructure within the local government's area;

(h) any legal or financial advice created for the local government, any of its committees or any of its corporate entities.

Part 6 Authorised persons

202 Appointing authorised persons

(1) The chief executive officer may appoint a qualified person to be an authorised person.

(2) A person is qualified to be an authorised person if the person—

(a) has the competencies—

(i) that the chief executive officer considers are necessary to perform the responsibilities that are required to be performed by the authorised person; or

(ii) prescribed under a regulation; and

(b) is either—

(i) an employee of the local government; or

(ii) another type of person prescribed under a regulation.

(3) Also, a person is qualified to be an authorised person of a local government (the ***adopting local government***) if—

(a) the person is an authorised person for another local government; and

Not authorised—indicative only

Not authorised—indicative only

(b) the adopting local government has, by resolution, decided that authorised persons of the other local government may be appointed as authorised persons of the adopting local government.

(4) The appointment of an authorised person must state the provisions of this Act for which the authorised person is appointed.

(5) An authorised person's appointment is subject to the conditions stated in—

(a) the document that appoints the authorised person; or

(b) a notice given to the authorised person by the chief executive officer; or

(c) a regulation.

203 End of appointment of authorised persons

(1) A person stops being an authorised person—

(a) at the end of the term of appointment stated in the document that appointed the authorised person; or

(b) if the authorised person gives the local government a signed notice of resignation; or

(c) if it is a condition of the authorised person's appointment that the authorised person hold another position at the same time—if the authorised person stops holding the other position.

(2) If it is a condition of the authorised person's appointment that the authorised person hold another position at the same time, a notice of resignation acts as a notice of resignation for both positions.

(3) This section does not limit the ways in which an authorised person's appointment ends.

204 Identity card for authorised persons

(1) The chief executive officer must give each authorised person an identity card.

(2) This section does not stop a single identity card being issued to a person for this Act and for another purpose.

(3) A person who stops being an authorised person must return the person's identity card to the chief executive officer, within 21 days after stopping being an authorised person, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

204A Authorised persons must disclose change in criminal history

(1) This section applies if there is a change in the criminal history of an authorised person (including acquiring a criminal history, for example).

(2) The authorised person must, as soon as practicable after the change, disclose to the chief executive officer the details of the change, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

204B Chief executive officer may obtain report from police commissioner

(1) The chief executive officer may ask the police commissioner to give the chief executive officer the following information about an authorised person—

(a) a written report about the person's criminal history;

(b) a brief description of the circumstances of a conviction mentioned in the person's criminal history.

(2) The police commissioner must comply with the request.

Not authorised—indicative only

Not authorised—indicative only

(3) However, the duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

204C Use of criminal history information

(1) This section is about the use of criminal history information.

(2) ***Criminal history information*** is information about the criminal history of an authorised person obtained under section 204A or 204B.

(3) The department's chief executive may make guidelines for dealing with criminal history information to ensure—

(a) natural justice is afforded to the authorised persons about whom the criminal history information relates; and

(b) only relevant criminal history information is considered in assessing the suitability of an authorised person to exercise a power under a Local Government Act; and

(c) decisions based on criminal history information are made consistently.

(4) The chief executive officer must comply with the guidelines.

(5) A person who has, or will have, a duty to disclose under section 204A may request a copy of the guidelines from the department.

(6) The chief executive officer must not use criminal history information for any purpose other than for assessing the suitability of an authorised person to exercise a power under a Local Government Act.

Maximum penalty for subsection (6)—100 penalty units.

Part 6A Authorised officers for the department

204D Appointing authorised officers

(1) The department's chief executive may appoint a person as an authorised officer for the department if the person has the necessary expertise or experience to perform the functions of the office.

(2) An authorised officer's appointment is subject to the conditions stated in—

(a) the document that appoints the officer; or

(b) a notice given to the officer by the department's chief executive; or

(c) a regulation.

204E End of appointment of authorised officers

(1) A person stops being an authorised officer—

(a) at the end of the term of appointment stated in the document that appointed the officer; or

(b) if the officer gives the department's chief executive a signed notice of resignation; or

(c) if it is a condition of the officer's appointment that the officer hold another position at the same time—if the officer stops holding the other position.

(2) If it is a condition of the authorised officer's appointment that the officer hold another position at the same time, a notice of resignation for the other position acts as a notice of resignation for both positions.

(3) This section does not limit the ways in which an authorised officer's appointment ends.

Not authorised—indicative only

Not authorised—indicative only

204F Identity card for authorised officers

(1) The department's chief executive must give each authorised officer an identity card.

(2) This section does not stop a single identity card being issued to a person for this Act and for another purpose.

(3) A person who stops being an authorised officer must return the person's identity card to the chief executive officer, within 21 days after stopping being an authorised officer, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

Part 7 Interim management

204G Definition for part

In this part—

local government includes the Brisbane City Council.

205 Interim management committee

(1) When an interim administrator is appointed for a local government, the Minister may appoint a committee of persons to help the interim administrator to perform the interim administrator's responsibilities.

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

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

(4) If, because of absence or incapacity, the interim administrator can not perform the responsibilities of chairperson of the committee, the other members of the committee must appoint another member to act as chairperson.

206 Conditions of appointment as interim administrator or member of committee

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

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

207 End of appointment of interim management

A person stops being an interim administrator, or a member of an interim management committee—

(a) if the person resigns by signed notice of resignation given to the department's chief executive; or

(b) if the Governor in Council, for any reason, cancels the person's appointment; or

(c) at the conclusion of the earlier of—

(i) a fresh election of the councillors of the local government; or

(ii) the next quadrennial election.

Part 8 The superannuation board

208 Superannuation board (LGIAsuper Trustee)

(1) The Queensland Local Government Superannuation Board under the 1993 Act continues in existence under this Act under the name LGIAsuper Trustee.

(2) LGIAsuper Trustee—

(a) is a body corporate; and

(b) may sue and be sued in its corporate name.

Not authorised—indicative only

Not authorised—indicative only

209 LGIAsuper Trustee's responsibilities

(1) LGIAsuper Trustee's primary responsibility is to act as the trustee of LGIAsuper.

(2) LGIAsuper Trustee may delegate its powers to—

(a) a committee of its directors; or

(b) an employee of LGIAsuper Trustee.

210 Board of directors

(1) LGIAsuper Trustee has a board of directors.

(2) The board of directors is responsible for how LGIAsuper Trustee performs its responsibilities.

(3) The board of directors must ensure LGIAsuper Trustee performs its responsibilities in a proper, effective and efficient way.

(4) The board of directors consists of the persons making up the board under the trust deed containing the rules that govern the operation of LGIAsuper.

(5) The directors must be appointed under the rules established to comply with the Commonwealth Super Act.

211 Seal of LGIAsuper Trustee

(1) LGIAsuper Trustee has a seal.

(2) Judicial notice must be taken of the seal on a document.

(3) A document marked with the seal must be presumed to have been properly sealed, unless the contrary is proved.

Chapter 7 Other provisions

Part 1 Way to hold a hearing

212 What this part is about

(1) This part sets out the way to hold a hearing under this Act.

(2) The person or other entity that is conducting the hearing is called the ***decision-maker*** in this part.

213 Procedures at hearing

(1) When conducting a hearing, the decision-maker must—

(a) observe natural justice; but

(b) act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing.

(2) For example, the decision-maker may—

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

(b) receive evidence by statutory declaration; or

(c) refuse to allow a person to be represented by a legal practitioner; or

(d) disregard the rules of evidence; or

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

(f) allow a document to be amended; or

(g) adjourn a hearing.

(3) However, the decision-maker must comply with any procedural requirements prescribed by regulation.

Not authorised—indicative only

Not authorised—indicative only

(4) A hearing is not affected by a change of the members of an entity that is the decision-maker.

214 Witnesses at hearings

(1) The decision-maker may require a person, by giving them a notice, to attend a hearing as a witness in order to—

(a) give evidence; or

(b) produce specified documents.

(2) The person must—

(a) attend at the time and place specified in the notice; and

(b) continue to attend until excused by the decision-maker; and

(c) take an oath or make an affirmation if required by the decision-maker; and

(d) answer a question that the person is required to answer by the decision-maker, unless the person has a reasonable excuse; and

(e) produce a document that the person is required to produce by the decision-maker, unless the person has a reasonable excuse.

Maximum penalty—35 penalty units.

(3) A person has a reasonable excuse for failing to answer a question or produce a document if answering the question or producing the document might tend to incriminate the person.

(4) A person who attends as a witness is entitled to—

(a) the witness fees that are prescribed under a regulation; or

(b) if no witness fees are prescribed, the reasonable witness fees decided by the decision-maker.

215 Contempt at hearing

A person must not—

(a) insult the decision-maker in a hearing; or

(b) deliberately interrupt a hearing; or

(c) take part in a disturbance in or near a place where the decision-maker is conducting a hearing; or

(d) do anything that would be a contempt of court if the decision-maker were a court.

Maximum penalty—50 penalty units.

Part 2 Superannuation

Division 1 Preliminary

216 What this part is about

(1) This part is primarily about superannuation for certain persons who are connected to a local government.

(2) This part also provides for other persons to become members of LGIAsuper.

216A Definitions for pt 2

In this part—

chosen fund, for an employee of a local government or local government entity, means—

(a) if the employee has given a direction under section 219(2)—the fund the subject of the direction; or

(b) otherwise—LGIAsuper.

defined benefit category means a defined benefit category under the trust deed.

Not authorised—indicative only

Not authorised—indicative only

defined benefit member means a person who is a member of LGIAsuper in a defined benefit category.

fund means a superannuation fund, superannuation scheme, approved deposit fund, or RSA, as defined under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

local government includes the Brisbane City Council.

local government entity means an entity, prescribed under a regulation, that—

(a) under an Act, exercises a power similar to a power that may be exercised by a local government in performing the local government's responsibilities; or

(b) under an Act, exclusively performs a responsibility in relation to the system of local government; or

(c) exclusively exercises, for a local government, a power that may be exercised by the local government in performing the local government's responsibilities; or

(d) helps a local government in the performance of the local government's responsibilities.

permanent employee—

(a) of a local government (other than the Brisbane City Council) or a local government entity—see section 216B; or

(b) of the Brisbane City Council—see section 216C.

relevant fund, for a permanent employee of a local government or local government entity, means—

(a) if the employee is a defined benefit member—

(i) in relation to the employee's membership in LGIAsuper in the defined benefit category—LGIAsuper; or

(ii) otherwise—the employee's chosen fund; or

(b) otherwise—the employee's chosen fund.

relevant trustee, for a permanent employee of a local government or local government entity, means the trustee (however named) of the relevant fund for the employee.

superannuation contributions, for a person, means—

(a) generally—superannuation contributions required to be made for the person under any of the following instruments—

(i) the Commonwealth Super Act;

(ii) another Act of the Commonwealth or an Act of the State;

(iii) an industrial instrument; and

(b) for a permanent employee of a local government or local government entity—the superannuation contributions mentioned in paragraph (a) made for the person as provided under this Act.

216B Who is *permanent employee* of a local government (other than the Brisbane City Council) or local government entity

(1) An employee of a local government other than the Brisbane City Council is a ***permanent employee*** of the local government if—

(a) the employee has been continuously employed by the local government for at least 1 year; or

(b) the employee has been continuously employed by the local government for less than 1 year, but has elected to be a permanent employee for this part by notice given to the local government.

(2) For subsection (1)—

(a) an employee is continuously employed by a local government for a period if, for the period, the employee is employed—

(i) by the local government; or

Not authorised—indicative only

Not authorised—indicative only

(ii) by the local government, and other local governments or local government entities, consecutively; but

(b) an employee is not continuously employed by a local government for a period if, during the period, the employee's employment as mentioned in paragraph (a) is broken by a period of 60 or more consecutive days during which the employee—

(i) was not employed by a local government or local government entity; and

(ii) was not in a position to accept an offer of employment by a local government or local government entity.

(3) An employee of a local government entity is a ***permanent employee*** of the local government entity if the local government entity declares the employee to be a permanent employee by notice given to the relevant trustee.

(4) However, an employee is not a permanent employee of a local government (other than the Brisbane City Council) or a local government entity if—

(a) the employee is employed by the local government or local government entity only to carry out work on a particular job or project; and

(b) the employee's employment is dependant on the time taken to carry out the job or project.

(5) Also, an employee is not a permanent employee of a local government (other than the Brisbane City Council) or a local government entity if the employee is employed by the local government or local government entity under a federally funded community development project for Aborigines or Torres Strait Islanders.

216C Who is *permanent employee* of the Brisbane City Council

An employee of the Brisbane City Council is a ***permanent employee*** of the Council if—

(a) the employee is employed other than on a temporary or casual basis, and the employee's employment is subject to an industrial instrument; or

(b) the employee is employed on contract, or for a specific time or for the duration of a specific function, and the Council declares the employee to be a permanent employee by notice given to the relevant trustee.

Division 2 LGIAsuper

217 LGIAsuper

(1) The Local Government Superannuation Scheme under the 1993 Act continues in existence under this Act under the name LGIAsuper.

(2) LGIAsuper Trustee must make a trust deed that contains—

(a) the rules that govern the operation of LGIAsuper; and

(b) the matters that, under the Commonwealth Super Act, are required to be contained in the governing rules of regulated superannuation funds within the meaning of that Act.

(3) In particular, the trust deed must provide for—

(a) the yearly contribution that a local government or local government entity must make for a permanent employee who is a defined benefit member, based on the advice of an actuary; and

Note—

See section 220(2) for the contribution a local government or local government entity must make for a permanent employee.

Not authorised—indicative only

Not authorised—indicative only

(b) the terms and conditions on which LGIAsuper Trustee must obtain advice from an actuary in relation to the funds that LGIAsuper Trustee administers.

(4) LGIAsuper Trustee may include particular other matters in the trust deed under section 220B or 220C.

(5) An ***actuary*** is an accredited member, or a fellow, of the Institute of Actuaries of Australia.

218 LGIAsuper membership open to everyone

LGIAsuper is open to membership by any person, subject to the requirements about membership in the trust deed.

219 LGIAsuper is default fund for particular employees

(1) Unless a prescribed employee gives a direction under subsection (2), the prescribed employee's employer must pay superannuation contributions payable for the employee into LGIAsuper.

(2) A prescribed employee may, by notice given to the prescribed employee's employer, direct the person's employer to pay superannuation contributions payable for the employee into a fund other than LGIAsuper.

Note—

See the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) for employer obligations relating to an employee's choice of fund.

(3) Subsection (2) does not apply in relation to a prescribed employee's membership in a defined benefit category.

(4) In this section—

prescribed employee means—

(a) an employee of a local government; or

(b) an employee of a local government entity; or

(c) an employee of LGIAsuper who is eligible for membership in LGIAsuper under the trust deed.

219A LGIAsuper Trustee may obtain details of salary changes for particular members

(1) LGIAsuper Trustee may, by notice, require each of the following to give LGIAsuper Trustee details of the salary of each of its permanent employees who are LGIAsuper members after any change to the salary of any of the employees—

(a) a local government other than the Brisbane City Council;

(b) a local government entity.

(2) The notice must state the day on which the details must be given to LGIAsuper Trustee.

(3) The local government or local government entity must comply with the notice.

Division 3 Superannuation contributions for particular employees

220 Amount of yearly contributions—particular employers

(1) This section applies to the following (each ***an employer***)—

(a) a local government;

(b) a local government entity.

(2) The yearly contribution an employer must make for a permanent employee of the employer to the relevant fund for the employee is—

(a) for the employee's membership (if any) in LGIAsuper in a defined benefit category—the amount stated, from time to time, in the trust deed; or

(b) for the employee's membership (if any) in LGIAsuper in the accumulation category under the trust deed, or the employee's membership in any other fund—the amount prescribed by a regulation.

Not authorised—indicative only

Not authorised—indicative only

(3) If an employer is required under an industrial instrument to make superannuation contributions for an employee, the superannuation contribution required under the industrial instrument is not in addition to the yearly contribution the employer is required to make under this section.

(4) An employer need not pay an amount as a yearly contribution to the extent that the amount can not be accepted by a regulated superannuation fund under the Commonwealth Super Act.

Note—

See the *Superannuation Industry (Supervision) Regulations 1994* (Cwlth), regulation 7.04.

(5) An employer must pay the yearly contribution within the time prescribed under a regulation.

(6) Subsection (2)(b) is subject to section 220B.

220A Amount of yearly contributions—permanent employees

(1) This section applies to a permanent employee (an ***employee***) of a local government or local government entity.

(2) An employee must make a yearly contribution to the relevant fund for the employee of the amount prescribed under a regulation.

(3) An employee need not make the yearly contribution under this section if a local government or local government entity for the employee makes the contribution, in accordance with the employee's remuneration agreement, as well as the yearly contribution that it is required to make under this Act.

(4) The local government or local government entity for an employee may (despite the provisions of any other Act) deduct all or part of the employee's contributions from—

(a) the employee's salary; or

(b) any money that the employee owes to it.

(5) If an employee is required under an industrial instrument to make superannuation contributions, the superannuation contribution required under the industrial instrument is not in addition to the yearly contribution the employee is required to make under this section.

(6) Subsection (2) is subject to sections 220B and 220C.

(7) Subsection (3) is subject to section 220B.

220B Reduction in contributions to prevent them exceeding concessional contributions cap

(1) Subsection (2) applies if the total of the following (the ***pre-agreement contributions***) would, but for subsection (2), be more than an employee's concessional contributions cap for a financial year—

(a) the yearly contribution by the employee's employer made under section 220(2) to the relevant fund for the employee;

(b) the yearly contribution by the employee made under section 220A(2) to the relevant fund for the employee.

(2) The employer and employee may agree in writing—

(a) to reduce the pre-agreement contributions to the amount equal to the employee's concessional contributions cap for the financial year; and

(b) if a yearly contribution made under section 220A(3) is part of the pre-agreement contributions—on the extent, if any, to which a contribution mentioned in subsection (1)(a) or (b) will be reduced to achieve the reduction.

(3) If the pre-agreement contributions are reduced under subsection (2)—

(a) the amount of the reduction must be paid by the employer to the employee as salary; and

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(b) no contribution is payable under section 220(2) by the employer because of salary paid under paragraph (a); and

(c) no contribution is payable under section 220A(2) by the employee because of salary paid under paragraph (a) other than to the extent, if any, to which the salary amount relates to a reduction of a yearly contribution under section 220A(3).

(4) In this section—

concessional contributions cap, for an employee, means the employee's concessional contributions cap within the meaning of the *Income Tax Assessment Act 1997* (Cwlth), section 292-20(2), subject to the *Income Tax (Transitional Provisions) Act 1997* (Cwlth)section 292-20(2).

221 Exemption from payment of yearly contributions on grounds of financial hardship

(1) This section applies to a permanent employee of a local government or local government entity, other than in relation to the employee's membership (if any) in LGIAsuper in a defined benefit category.

(2) An employee and the employee's employer may agree in writing—

(a) that the employee is exempt, on the grounds of the employee's financial hardship, from paying all or a stated part of the contributions payable under section 220A(2) by the employee; and

(b) on the period, of not more than 1 year, of the exemption.

(3) Subsection (2)(b) does not limit the number of times the employer and employee may agree to an exemption under subsection (1) for the employee.

(4) The employer or employee must give the relevant trustee a copy of the agreement within 2 months after the agreement is made.

222 Adjusting contributions if salary decreased

(1) This section applies if the salary of a permanent employee of a local government or local government entity decreases.

(2) The employee may, within 60 days after the decrease in salary takes effect, give the local government or local government entity notice that the employee wants to pay contributions as if the employee's salary had not decreased.

(3) If the employee gives a notice under subsection (2), the local government or local government entity must calculate the yearly contributions payable for the employee based on the employee's salary before it was decreased.

224 Interest is payable on unpaid contributions

(1) This section applies if a local government or local government entity does not pay a superannuation contribution payable for an employee of the local government or local government entity within 14 days after the end of the employee's pay period for which the contribution is payable.

(2) The local government or local government entity must pay interest on the amount of the contribution to the relevant fund for the employee.

(3) Any interest that is payable—

(a) is to be paid at the rate prescribed under a regulation; and

(b) is to be calculated on a daily basis.

225 Local governments must not establish employee superannuation schemes

A local government (other than the Brisbane City Council) must not establish a superannuation scheme for its employees.

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Not authorised—indicative only

226 Super scheme for councillors

(1) A local government (other than the Brisbane City Council) may, for its councillors—

(a) establish and amend a superannuation scheme; or

(b) take part in a superannuation scheme.

Note—

For a similar power of the Brisbane City Council, see the *City of Brisbane Act 2010*, section 210.

(2) If it does so, the local government may pay an amount from its operating fund to the superannuation scheme as a contribution for its councillors.

(3) However, the local government must not make contributions to the superannuation scheme—

(a) of more than the proportion of a salary that is payable by the local government for its standard permanent employees under this part; or

(b) for a person who is no longer a councillor.

(4) A councillor of the local government may enter into an arrangement with the local government under which—

(a) the councillor agrees to forgo a percentage or amount of the remuneration that the councillor is entitled to as a councillor; and

(b) the local government agrees to contribute the percentage or amount to the superannuation scheme for the councillor.

(5) A ***superannuation scheme*** is a superannuation scheme that complies with the Commonwealth Super Act.

Part 3 Allocating Commonwealth funding to local governments

Division 1 Allocating Commonwealth funding

228 Allocating Commonwealth funding

(1) The ***grants commission*** is a body that is created under this Act to perform the responsibilities of a Local Government Grants Commission under the Local Government (Financial Assistance) Act.

(2) The grants commission and the Minister must comply with the Local Government (Financial Assistance) Act.

(3) The public hearings that the grants commission is required to hold under the Local Government (Financial Assistance) Act must be held in the way set out in part 1.

(4) If—

(a) the grants commission requires a local governing body to provide information to help the grants commission make a decision about funding under the Local Government (Financial Assistance) Act; and

(b) the local governing body does not make a submission by the date reasonably specified by the grants commission;

the grants commission can recommend that no funding be allocated to the local governing body.

(5) A ***local governing body*** is a local governing body within the meaning of the Local Government (Financial Assistance) Act.

(6) The Minister must not distribute to a local government an amount equal to notional GST if the local government has not paid the notional GST.

(7) ***Notional GST*** is an amount that a local government may pay under the *GST and Related Matters Act 2000*, section 5.

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Not authorised—indicative only

(8) The Minister must table the following in the Legislative Assembly—

(a) the grants commission's recommendations about the allocation of funding;

(b) a breakdown of how the funding was allocated between local governments.

229 Decisions under this division are not subject to appeal

A decision of the grants commission or the Minister under this division is not subject to appeal.

Note—

See section 244 (Decisions not subject to appeal) for more information.

Division 2 The grants commission

230 Grants commission is established

(1) The Local Government Grants Commission (the ***grants commission***) is established.

(2) The grants commission is made up of the following members—

(a) a chairperson;

(b) a deputy chairperson;

(c) 4 other members.

231 Members of grants commission

(1) The Governor in Council must appoint the members of the grants commission.

(2) The Governor in Council must ensure—

(a) the person who is appointed as the deputy chairperson is an officer of the department; and

(b) at least 1 member has knowledge of local government in relation to local government areas of indigenous regional councils and other indigenous local governments; and

(c) the other members have knowledge of local government.

(3) A member may be appointed for a term of not longer than 3 years.

(4) A member holds office on the conditions (including about fees and allowances, for example) that the Governor in Council decides.

(5) The Governor in Council may pay members different rates.

(6) A person may be a member of the grants commission at the same time as the person holds an office under another Act, even though the other 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.

(7) A person stops being a member of the grants commission if—

(a) the member resigns by signed notice of resignation given to the Minister; or

(b) the member is convicted of an indictable offence; or

(c) if the member is the deputy chairperson—the member stops being an officer of the department; or

(d) the Governor in Council cancels the member's appointment.

(8) The Governor in Council may cancel a member's appointment if the member—

(a) becomes incapable of performing duties because of physical or mental incapacity; or

(b) engages in misbehaviour; or

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Not authorised—indicative only

(c) is incompetent; or

(d) uses the office for party political purposes; or

(e) does anything else that the Governor in Council considers is a reasonable and sufficient justification for removal from office.

(9) The Governor in Council may appoint a person to act for a member of the grants commission if the member is—

(a) absent; or

(b) unable to carry out the member's responsibilities (including because of illness, for example).

232 Conflict of interests

(1) This section applies if—

(a) a member of the grants commission has a direct or indirect financial interest in a matter being considered, or about to be considered, by the grants commission; and

(b) the interest could conflict with the proper performance of the member's responsibilities for the matter.

(2) The person must not take part, or take further part, in any consideration of the matter.

Maximum penalty—35 penalty units.

(3) As soon as practicable after the member becomes aware that this section applies to the member, the member must inform the department's chief executive.

Maximum penalty—35 penalty units.

233 Staff assistance to the grants commission

The department's chief executive must make available to the grants commission the staff assistance that the grants commission needs to effectively perform its responsibilities.

Part 4 Offences and legal provisions

Division 1 Offences relating to State officials

233A Obstructing State officials

(1) A person must not obstruct a State official exercising a power under this Act, or a person helping a State official exercise a power, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If a person has obstructed a State official, or a person helping a State official, and the official decides to proceed with the exercise of the power, the official must warn the person that—

(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

(b) the official considers the person's conduct is an obstruction.

(3) In this section—

State official means the following persons—

(a) the Minister;

(b) the department's chief executive;

(c) an authorised officer;

(d) the assessor;

(e) an investigator;

(f) the president or a casual member of the conduct tribunal;

(g) a member of the change commission.

Not authorised—indicative only

Not authorised—indicative only

233B Impersonating particular persons

A person must not impersonate an authorised officer, the assessor or an investigator.

Maximum penalty—50 penalty units.

234 False or misleading information

(1) A person commits an offence if the person gives information for this Act (either orally or in a document), that the person knows is false or misleading in a material particular, to any of the following persons—

(a) the Minister;

(b) the department's chief executive;

(c) the chief executive officer;

(d) the chief executive officer under the *City of Brisbane Act 2010*;

(e) an authorised person;

(f) the change commission;

(g) the assessor or a member of the staff of the Office of the Independent Assessor;

(h) an investigator;

(i) the conduct tribunal;

(j) the remuneration commission;

(k) the grants commission.

Maximum penalty—100 penalty units.

Note—

In certain circumstances this section is a relevant integrity provision for the offence against section 201D—see section 201D(2), definition *relevant integrity provision*.

(2) However, the person does not commit an offence in relation to information in a document if, when the person gives the document to the other person—

(a) the person tells the other person that the document is false or misleading, and in what respect the document is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—the person gives the other person the correct information.

Division 2 Legal matters

235 Administrators who act honestly and without negligence are protected from liability

(1) A State administrator or local government administrator is not civilly liable for an act done, or omission made, honestly and without negligence under—

(a) this Act; or

(b) the *City of Brisbane Act 2010*; or

(c) the Local Government Electoral Act.

(2) A ***State administrator*** is—

(a) the Minister; or

(b) the department's chief executive; or

(c) an authorised officer; or

(d) the assessor; or

(e) an investigator; or

(f) a member of the conduct tribunal; or

(g) a member of the change commission; or

(h) a member of the grants commission; or

(i) a commissioner of the remuneration commission; or

(j) a person acting under the direction of a person mentioned in paragraph (a), (b), (c), (d) or (e); or

Not authorised—indicative only

Not authorised—indicative only

(k) an advisor or financial controller.

(3) A ***local government administrator*** is—

(a) a councillor; or

(b) a councillor under the *City of Brisbane Act 2010*; or

(c) the chief executive officer; or

(d) the chief executive officer under the *City of Brisbane Act 2010*; or

(e) an authorised person; or

(f) another local government employee; or

(g) an interim administrator.

(4) If subsection (1) prevents civil liability attaching to a State administrator, liability attaches instead to the State.

(5) If subsection (1) prevents civil liability attaching to a local government administrator, liability attaches instead to the local government.

(6) A joint local government, or any member of the joint local government, is not civilly liable for an act done under this Act, or omission made under this Act, honestly and without negligence.

(7) If subsection (6) prevents civil liability attaching to a member of a joint local government, liability attaches instead to the local government for which the member is a councillor.

(8) The protection given under this section is in addition to any other protection given under this Act or another Act or law, including, for example, the *Public Interest Disclosure Act 2010* and the *Public Service Act 2008*.

Note—

For protection from civil liability in relation to State employees—see the *Public Service Act 2008*, section 26C.

236 Who is authorised to sign local government documents

(1) The following persons may sign a document on behalf of a local government—

(a) the head of the local government;

(b) a delegate of the local government;

(c) a councillor or local government employee who is authorised by the head of the local government, in writing, to sign documents.

Note—

See section 257 for the local government's power to delegate.

(2) The ***head of the local government*** is—

(a) the mayor; or

(b) if all of the councillors have been suspended or the local government has been dissolved under section 123 and an interim administrator is appointed—the interim administrator; or

(c) if there are no councillors for any other reason and an interim administrator has not been appointed—the chief executive officer.

236A Who is authorised to sign joint local government documents

The following persons may sign a document on behalf of a joint local government—

(a) the chairperson of the joint local government;

(b) a delegate of the joint local government;

(c) a member of the joint local government, or a joint local government employee, who is authorised by the chairperson of the joint local government, in writing, to sign documents.

Not authorised—indicative only

Not authorised—indicative only

237 Name in proceedings by or against a local government

(1) Any proceedings by a local government must be started in the name of the local government.

(2) However, a local government may start a proceeding under the *Justices Act 1886* in the name of a local government employee who is a public officer within the meaning of that Act.

(3) Any proceedings against a local government must be started against the local government in its name.

237A Name in proceedings by or against a joint local government

(1) A proceeding by a joint local government must be started in the name of the joint local government.

(2) However, a joint local government may start a proceeding under the *Justices Act 1886* in the name of a joint local government employee who is a public officer within the meaning of that Act.

(3) A proceeding against a joint local government must be started against the joint local government in its name.

238 Service of documents on local governments

A document is properly served on a local government if it is given to the chief executive officer in a way that is authorised by law.

239 Substituted service

(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 the document on the owner's agent in the State.

(2) Subsection (3) applies if—

(a) a local government must serve a document on a person who owns or occupies a property; but

(b) the local government does not know, or is uncertain about, the person's current address.

(3) The local government may serve the document by—

(a) publishing a notice that contains a summary of the document in—

(i) a newspaper that is circulating generally throughout the State; and

(ii) the gazette; and

(b) publishing a notice that contains a copy of the document on the local government's website.

(4) The notice must be addressed to—

(a) if the local government knows the person's name—the person by name; or

(b) if the local government does not know the person's name—the 'owner' or 'occupier' at the property's address.

(5) In this section, a reference to a local government includes a reference to a joint local government.

239A Local Government Acts requiring a statement of a law

A provision of a Local Government Act, that requires a document to contain a statement of a relevant provision of law, is taken to be complied with if the document states that particulars of the relevant provision may be—

(a) obtained, free of charge, on application to the local government; or

(b) viewed at an identified website.

240 Acting for a local government in legal proceedings

(1) In any proceedings, the chief executive officer, or another employee authorised in writing by the local government—

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Not authorised—indicative only

(a) may give instructions and act as the 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 in any proceedings.

(3) If the Attorney-General could take proceedings on behalf of a local government to ensure compliance with a Local Government Act, the local government may take the proceeding in its own name.

(4) In any proceedings, the chairperson of a joint local government, or another employee authorised in writing by the joint local government—

(a) may give instructions and act as the authorised agent for the joint local government; and

(b) may sign all documents for the joint local government.

(5) A joint local government must pay the costs incurred by the chairperson or other employee in any proceedings.

241 Attempt to commit offence

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.

242 Proceedings for indictable offences

(1) Subject to subsection (2), a charge of an indictable offence against this Act must be heard and decided summarily.

(2) A Magistrates Court must not deal summarily with a charge mentioned in subsection (1) if satisfied, on an application made by the prosecution or the defence, that because of exceptional circumstances the charge should not be heard and decided summarily.

(3) If subsection (2) applies to a Magistrates Court—

(a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily and start treating the proceeding as a committal proceeding; and

(b) the defendant's plea at the start of the hearing must be disregarded; and

(c) the evidence already heard by the court must be taken to be evidence in the committal proceeding; and

(d) to avoid any doubt, it is declared that the *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

(4) This section does not apply to a charge of an indictable offence against section 201D.

243 Time to start proceedings in a summary way

Proceedings for an offence against this Act that are to be heard in a summary way under the *Justices Act 1886* must be started—

(a) within 1 year after the offence was committed; or

(b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was committed.

244 Decisions not subject to appeal

(1) This section applies if a provision of this Act declares a decision to be not subject to appeal.

(2) Unless the Supreme Court decides the decision is affected by jurisdictional error, the decision—

(a) is final and conclusive; and

(b) can not be challenged, appealed against, reviewed, quashed, set aside or called into question in another way, under the *Judicial Review Act 1991* or otherwise

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Not authorised—indicative only

(whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

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

(4) A person who, but for subsection (2), could have made an application under the *Judicial Review Act 1991* in relation to the decision may apply under part 4 of that Act for a statement of reasons in relation to the decision.

(5) In this section—

decision includes—

(a) conduct related to making the decision; and

(b) a failure to make a decision.

245 Judges and other office holders not disqualified from adjudicating

(1) A judge, magistrate, justice or presiding member of a tribunal is not disqualified from adjudicating in any proceedings to which a local government is a party only because the person is, or is liable to be, a ratepayer of the local government.

(2) A judge, magistrate, justice or presiding member of a tribunal is not disqualified from adjudicating in any proceedings to which a joint local government is a party only because the person is, or is liable to be, a ratepayer of a component local government for the joint local government.

246 Where fines are to be paid to

(1) This section applies if, in proceedings brought by a local government for an offence against a Local Government Act, the court imposes a fine.

(2) The fine must be paid to the local government's operating fund, unless the court ordered the fine to be paid to a person.

(3) In this section, a reference to a local government includes a reference to a joint local government.

247 Local government references in this Act

(1) In a provision of this Act about a local government—

(a) a reference to the mayor or another councillor is a reference to the mayor or another councillor of the local government; and

(aa) a reference to a councillor advisor is a reference to a councillor advisor appointed by the mayor or another councillor of the local government; and

(b) a reference to the chief executive officer or another employee is a reference to the chief executive officer or another employee of the local government; and

(c) a reference to an authorised person is a reference to an authorised person appointed by the local government; and

(d) a reference to a local government area is a reference to the local government area of the local government.

(2) In a provision of this Act, a reference to a local government is a reference to the local government that—

(a) in a provision about the mayor or another councillor—the mayor or other councillor was elected or appointed to; and

(b) in a provision about the chief executive officer or another employee—employs the chief executive officer or another employee; and

(c) in a provision about an authorised person—appointed the authorised person; and

(d) in a provision about a local government area—has jurisdiction over the local government area.

Not authorised—indicative only

Not authorised—indicative only

248 Evidence of local laws

(1) In any proceedings, a certified copy of a local law or consolidated version of a local law is evidence of the content of the local law or consolidated version of the local law.

(2) A ***certified copy*** of a local law or consolidated version of a local law is a copy that has been certified by—

(a) for a local law made by a local government—the chief executive officer to be the local law or consolidated version as made by the local government; or

(b) for a local law made by a joint local government—the chairperson of the joint local government to be the local law or consolidated version as made by the joint local government.

(3) In any proceedings, a copy of the gazette that contains a notice of making a local law is—

(a) evidence of the content of the notice; and

(b) evidence that the local law has been properly made.

(4) In any proceedings, the competence of a local government or joint local government to make a particular local law is presumed unless the matter is raised.

249 Evidence of proceedings

(1) This section applies to a document that—

(a) purports to be a copy of an entry in a record of the proceedings of—

(i) the local government; or

(ii) a committee of a local government; and

(b) purports to have been signed at the time when the entry was made by—

(i) the mayor; or

(ii) the chairperson of the committee; and

(c) is certified by the chief executive officer to be a true copy of the document.

(2) Also, this section applies to a document that—

(a) purports to be a copy of an entry in a record of the proceedings of a joint local government; and

(b) purports to have been signed at the time when the entry was made by the chairperson of the joint local government; and

(c) is certified by the chairperson to be a true copy of the document.

(3) The document is evidence—

(a) of the proceedings; and

(b) that the proceedings were properly held.

250 Evidentiary value of copies

(1) This section applies to a copy of a document that—

(a) purports to be made under the authority of a local government or its mayor; and

(b) purports to be verified by the mayor or an employee who is authorised by the local government.

(2) Also, this section applies to a copy of a document that—

(a) purports to be made under the authority of a joint local government or its chairperson; and

(b) purports to be verified by the chairperson or an employee who is authorised by the joint local government.

(3) The copy of the document is evidence in any proceedings as if the copy were the original of the document.

Not authorised—indicative only

Not authorised—indicative only

251 Evidentiary value of certificates

(1) This section applies to a certificate that—

(a) purports to be about the state of, or a fact in, a record of the local government; and

(b) purports to be signed by the chief executive officer.

(2) Also, this section applies to a certificate that—

(a) purports to be about the state of, or a fact in, a record of a joint local government; and

(b) purports to be signed by the chairperson of the joint local government.

(3) The certificate is evidence of the matters contained in the certificate.

252 Evidence of directions given to local government or joint local government

(1) This section applies to a document that—

(a) purports to be a direction that the Minister, or the department's chief executive, gave to a local government or a joint local government under this Act; and

(b) purports to be certified by or for the Minister, or the department's chief executive, to be a true copy of the direction.

(2) The document is evidence of—

(a) the giving of the direction; and

(b) the matters contained in the direction.

253 Evidence of complainant's knowledge of matter

In a complaint starting proceedings, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

254 Constitution and limits of local government need not be proved

It is not necessary for the plaintiff in any proceedings started by, for or against a local government to prove—

(a) the local government's constitution; or

(b) the boundaries of the local government area; or

(c) the boundaries of a division of the local government area.

Part 5 Delegation of powers

255 Delegation of Minister's powers

(1) The Minister may delegate the Minister's powers under this Act, or another Local Government Act, to an appropriately qualified person.

(2) However, the Minister must not delegate a power under section 38AB, 121, 122 or 123.

256 Delegation of department's chief executive's powers

The department's chief executive may delegate the chief executive's powers under this Act, or another Local Government Act, to an appropriately qualified person.

257 Delegation of local government powers

(1) A local government may, by resolution, delegate a power under this Act or another Act to—

(a) the mayor; or

(b) the chief executive officer; or

(c) a standing committee, or joint standing committee, of the local government; or

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(d) the chairperson of a standing committee, or joint standing committee, of the local government; or

(e) another local government, for the purposes of a joint government activity.

(2) However, a local government may only delegate a power to make a decision about a councillor's conduct under section 150AG to—

(a) the mayor; or

(b) a standing committee of the local government.

(3) Also, a local government must not delegate a power that an Act states must be exercised by resolution.

(4) A ***joint standing committee***, of the local government, is a committee consisting of councillors of the local government and councillors of 1 or more other local governments.

(5) A delegation to the chief executive officer under subsection (1) must be reviewed annually by the local government.

257A Delegation of joint local government's powers

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

(2) Also, a joint local government may, by resolution, delegate its powers under this Act or another Act to—

(a) the chairperson of the joint local government; or

(b) a mayor of its component local governments; or

(c) the chief executive officer of the joint local government or its component local governments; or

(d) a committee of members of the joint local government or of councillors of its component local governments; or

(e) the chairperson of a committee mentioned in paragraph (d).

(3) Despite subsections (1) and (2), a joint local government must not delegate a power that an Act states must be exercised by resolution.

258 Delegation of mayor's powers

(1) A mayor may delegate the mayor's powers to another councillor of the local government.

(2) However, the mayor must not delegate the power to give directions to the chief executive officer.

259 Delegation of chief executive officer powers

(1) A chief executive officer may delegate the chief executive officer's powers to an appropriately qualified employee or contractor of the local government.

(2) However, the chief executive officer must not delegate the following powers—

(a) a power delegated by the local government, if the local government has directed the chief executive officer not to further delegate the power;

(b) a power to keep a register of interests.

260 Local government delegations register

(1) The chief executive officer must establish a register of delegations that contains the particulars prescribed under a regulation.

(2) The chief executive officer must record all delegations by the local government, mayor or the chief executive officer in the register of delegations.

(3) The public may inspect the register of delegations.

Not authorised—indicative only

Not authorised—indicative only

Part 5A Provisions for 2020 quadrennial election

260AA Minister may give directions about filling vacancies in office of councillors

(1) This section applies—

(a) if the 2020 quadrennial election is not held in March 2020 under the *Local Government Electoral Act 2001*, part 9A; and

(b) until the day before the 2020 quadrennial election is held.

(2) Section 163(2) and (5) does not apply to a local government.

(3) The Minister may give a direction to the local government about whether or not a vacant office of a councillor (including the mayor) must be filled.

(4) If the vacant office must be filled, the Minister may, by notice to the local government, extend the period within which the local government must fill the vacancy under section 163(3).

(5) If the Minister extends the period under subsection (4), the Governor in Council may appoint a qualified person under section 163(4) to fill the vacant office only if the local government has not filled the vacancy within the extended period.

260AB Regulation-making power for 2020 quadrennial election

(1) This section applies if the 2020 quadrennial election is not held in March 2020.

(2) A regulation may make provision about a matter for which this Act does not make provision or sufficient provision as a result of the 2020 quadrennial election not being held in March 2020.

(3) The regulation may have retrospective operation to a day not earlier than the day of commencement.

(4) This section and the regulation expire 1 year after the day of commencement.

Part 5B Provisions for other elections affected by COVID-19 public health emergency

260AC Minister may give directions about filling vacancies in office of councillors

(1) This section applies if the office of a councillor (including the mayor) becomes vacant before the COVID-19 legislation expiry day.

(2) Section 163(2), (2A) and (5) does not apply in relation to the vacant office.

(3) The Minister may give a direction to the local government about whether or not the vacant office must be filled.

(4) If the Minister directs that the vacant office must be filled, the Minister may, by notice to the local government, extend the period within which the local government must fill the vacant office under section 163(3).

(5) However, the Minister may act under subsection (3) or (4) only if the Minister is satisfied that, after consulting the electoral commission and having regard to the purpose of the *Local Government Electoral Act 2011*, part 9B, it is in the public interest to do so.

(6) If the Minister extends the period under subsection (4), the Governor in Council may appoint a qualified person under section 163(4) to fill the vacant office only if the local government has not filled the vacancy within the extended period.

Not authorised—indicative only

Not authorised—indicative only

260AD Regulation-making power for elections affected by COVID-19 public health emergency

(1) This section applies if this Act does not make provision or sufficient provision about a matter in relation to an election to which the *Local Government Electoral Act 2011*, part 9B applies.

(2) A regulation may make provision about the matter.

(3) The regulation may have retrospective operation to a day not earlier than the day of commencement.

(4) This part and the regulation expire on the COVID-19 legislation expiry day.

Part 6 Other provisions

260A Criminal history report

(1) This section applies if the Minister is deciding whether a person is qualified to hold, or to continue to hold, the office of assessor, a member of the conduct tribunal or a commissioner of the remuneration commission.

(2) The Minister may ask the police commissioner for a written report about the criminal history of the person including a brief description of the circumstances of a conviction mentioned in the criminal history.

(3) However, the Minister may make the request only if the person has given the Minister written consent for the request.

(4) The police commissioner must comply with the request.

(5) However, the duty to comply applies only to information in the police commissioner's possession or to which the police commissioner has access.

(6) The Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

260B New convictions must be disclosed

(1) This section applies if a person who holds the office of the assessor, a member of the conduct tribunal or a commissioner of the remuneration commission is convicted of an indictable offence during the term of the person's appointment.

(2) The person must, unless the person has a reasonable excuse, immediately give the Minister a notice about the conviction.

Maximum penalty—100 penalty units.

(3) The notice must include the following information—

(a) the existence of the conviction;

(b) when the offence was committed;

(c) sufficient details to identify the offence;

(d) the sentence imposed on the person.

(4) The Minister must ensure the notice is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

261 Public office of a local government

(1) A local government must keep premises for use as a public office.

(2) The public office must be in, or as near as practicable to, the local government area.

262 Powers in support of responsibilities

(1) This section applies if a local government is required or empowered to perform a responsibility under a Local Government Act.

(2) The local government has the power to do anything that is necessary or convenient for performing the responsibilities.

(3) The powers include all the powers that an individual may exercise, including for example—

Not authorised—indicative only

Not authorised—indicative only

(a) power to enter into contracts; and

(b) power to acquire, hold, deal with and dispose of property; and

(c) power to charge for a service or facility, other than a service or facility for which a cost-recovery fee may be fixed.

263 Validity of local government proceedings

The proceedings of a local government or any of its committees, or the 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.

264 Special entertainment precincts

(1) This section is about establishing a special entertainment precinct.

(2) A ***special entertainment precinct*** is an area in which—

(a) amplified music that is played at premises in the area is regulated by a local law, and not by the *Liquor Act 1992*; and

(b) the requirements about noise attenuation under the Planning Act apply to certain types of development in the area.

(3) If a local government wants to establish a special entertainment precinct in its local government area, the local government must—

(a) amend the local government's planning scheme to identify the special entertainment precinct; and

(b) make a local law to regulate noise from amplified music from premises in the special entertainment precinct, in accordance with a permit that is issued for the premises.

(4) However, a local law under this section does not apply to—

(a) a major sports facility under the *Major Sports Facilities Act 2001*; or

(b) an activity that—

(i) is for a major event under the *Major Events Act 2014*; and

(ii) is being carried on by, or with the approval of, the major event organiser for the major event.

265 Materials in infrastructure are local government property

(1) The materials in the following things are the property of a local government—

(a) a road constructed by or for the local government;

Example of a road constructed for the local government—

a road constructed by a developer because of a condition attached to a development approval under the Planning Act

(b) any works relating to a road (including gutters, stormwater drains, kerbing and channelling, for example) that are constructed by or for the local government;

(c) a floating pontoon, jetty, or wharf that is—

(i) constructed by the local government; or

(ii) under the control of the local government.

(2) If a local government, in exercising a power of the local government, constructs a structure or carries out any works on someone else's land, the materials in the structure or works are the property of the local government.

Not authorised—indicative only

Not authorised—indicative only

(3) This section does not apply to the materials in—

(a) an open drain, other than any lining of the drain; or

(b) the outcome of action taken in accordance with a remedial notice under section 140.

(4) For subsection (1), it is irrelevant whether the thing mentioned in the subsection is on, over or under land that is owned by an entity other than the local government.

265A Land registry searches free of charge

(1) This section applies to any of the following persons—

(a) a chief executive officer;

(b) an employee of a local government who is authorised by a chief executive officer;

(c) a lawyer or other agent acting for a local government;

(d) an employee of a lawyer or agent mentioned in paragraph (c) who is authorised by the lawyer 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.

266 Approved forms

The department's chief executive may approve forms for use under this Act.

268 Process for administrative action complaints

(1) A local government must adopt a process for resolving administrative action complaints.

(2) An ***administrative action complaint*** is a complaint that—

(a) is about an administrative action of a local government, including the following, for example—

(i) a decision, or a failure to make a decision, including a failure to provide a written statement of reasons for a decision;

(ii) an act, or a failure to do an act;

(iii) the formulation of a proposal or intention;

(iv) the making of a recommendation; and

(b) is made by an affected person.

(3) An ***affected person*** is a person who is apparently directly affected by an administrative action of a local government.

(4) A regulation may provide for the process for resolving complaints about administrative actions of the local government by affected persons.

268A Advisory polls

A local government may, in the way decided by the local government, conduct a voluntary poll of the electors in its area or a part of its area on any issue of concern to the area or part.

269 Information for the Minister

(1) The Minister may, by notice, require a local government to give the Minister information about—

(a) the local government area; or

(b) the local government.

(2) The local government must comply with the notice.

270 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about—

Not authorised—indicative only

Not authorised—indicative only

(a) the processes of the conduct tribunal or remuneration commission; or

(b) corporate entities; or

(c) reviews of, or appeals against, decisions made under this Act; or

(d) a register of interests of the following—

(i) councillors;

(ii) other persons who are given responsibilities to perform under this Act;

(iii) persons who are related to a councillor or a person mentioned in subparagraph (ii); or

(e) the recording of conflicts of interest arising from the performance of a responsibility under this Act; or

(f) the regulation and management of local government assets and infrastructure; or

(g) a levy on the railway between Cairns and Kuranda; or

(h) a process for the scrutiny of a local government's budget; or

(i) meetings of a local government, its committees or other meetings of councillors (including informal meetings at which councillors discuss local government matters); or

(j) empowering a local government to make and adopt a policy about meetings mentioned in paragraph (i), other than meetings of the local government or its committees; or

(k) the financial planning and accountability of a local government, including the systems of financial management; or

(l) matters relating to a joint local government (including transferring assets and liabilities between a joint local government and a component local government); or

(m) matters relating to discretionary funds.

270A Regulation-making power for implementation of de-amalgamations

(1) A ***de-amalgamation*** of a local government area is the separation of the area into different local government areas, each to be governed by its own local government.

(2) The Governor in Council may implement a de-amalgamation of a local government area under a regulation.

(3) The regulation may provide for anything that is necessary or convenient to facilitate the implementation of the de-amalgamation of the local government area.

(4) For example, the regulation may provide for—

(a) holding, postponing or cancelling a local government election; or

(b) the transfer of assets and liabilities from a local government to another local government; or

(c) the recovery of the costs of the de-amalgamation of the local government area; or

(d) the temporary continuation of a local law for the affected part of a local government area.

(5) A local government is not liable to pay a State tax in relation to a transfer or other arrangement made to implement a de-amalgamation.

(6) A ***State tax*** is a tax, charge, fee or levy imposed under an Act.

Not authorised—indicative only

Not authorised—indicative only

Chapter 8 Transitionals, savings and repeals for Act No. 17 of 2009 and Act No. 23 of 2010

271 What this chapter is about

(1) This chapter is about the transition from the repealed LG Acts to this Act (including the transition of rights, liabilities and interests, for example).

(2) The ***repealed LG Acts*** are—

- the *Local Government Act 1993*
- the *Local Government (Community Government Areas) Act 2004*.

272 Local governments, including joint local governments

(1) A local government under the repealed LG Acts continues in existence as a local government under this Act.

(2) The following joint local governments continue in existence under this Act—

(a) the Esk–Gatton–Laidley Water Board;

(b) the Nogoa River Flood Plain Board.

(3) The joint local governments have—

(a) the same responsibilities that the joint local governments had immediately before the commencement of this section; and

(b) all powers of a local government under this Act, other than the power to levy rates on land.

(4) If the context permits—

(a) a reference in an Act or document to a local government includes a reference to the joint local governments; and

(b) a reference in an Act or document to a local government area includes a reference to the joint local government areas; and

(c) a reference in an Act or document to a councillor of a local government includes a reference to a member of the joint local governments.

(5) A reference in an Act or document to a joint local government may, if the context permits, be taken to be a reference to a local government.

(6) Despite subsection (2), a joint local government mentioned in the subsection (a ***continued entity***) may discontinue its existence.

(7) Any action taken by a continued entity in relation to discontinuing its existence before the authorisation had effect is, and is taken to always have been, as validly done as it would be if the authorisation had been in force when the action was taken (for example, the disposal of all assets).

(8) The ***authorisation*** is the power a joint local government may exercise under subsection (6).

273 Community governments

(1) A community government under the repealed *Local Government (Community Government Areas) Act 2004* continues in existence as a local government under this Act.

(2) Anything done by a community government has effect, on the commencement of this section, as if it had been done by a local government.

(3) A reference in an Act or document to a community government may, if the context permits, be taken to be a reference to a local government.

Not authorised—indicative only

Not authorised—indicative only

274 Local service committees

(1) The local service committee of the Yarrabah Shire Council continues in existence as if the *Local Government (Community Government Areas) Act 2004* was not repealed.

(2) On the commencement of this section—

(a) all other local service committees are dissolved; and

(b) the members of all other local service committees go out of office.

(3) No compensation is payable to a member because of subsection (2).

275 Local government owned corporation

(1) The local government owned corporation known as the Wide Bay Water Corporation continues in existence as a corporate entity under this Act.

(2) Subsection (1) does not stop the corporate entity from being wound up.

276 Local laws

(1) A local law under a repealed LG Act, that was in force immediately before the commencement of this section, continues in force as a local law made under this Act.

(2) A ***local law*** includes an interim local law, model local law, and subordinate local law.

(3) Subsection (4) applies if, before the commencement, a local government started, but did not complete, the relevant process for adopting a model local law or making another local law.

Note—

Under the 1993 Act a local government started the process for adopting a model local law by passing a resolution to propose to adopt the model local law and the local government started a process for making a local law (other than a model local law) by passing a resolution to propose to make the local law.

(4) The local government may proceed further in adopting or making the local law in accordance with the relevant process as if the repealed LG Act had not been repealed.

(5) The ***relevant process*** is the process under the 1993 Act, chapter 12, part 2, that applied to adopting a model local law or making another local law.

(6) A local law adopted or made under subsection (4) is taken to be a local law validly made under this Act.

277 Decisions

(1) A decision under a repealed LG Act, that was in force immediately before the commencement of this section, continues in force as if the decision were made under this Act.

(2) A ***decision*** includes an agreement, appointment, approval, authorisation, certificate, charge, consent, declaration, delegation, direction, dismissal, exemption, immunity, instruction, licence, memorandum of understanding, order, permit, plan, policy, protocol, rates, release, resolution, restriction, settlement, suspension and warrant, for example.

278 Proceedings and evidence

(1) If, immediately before the commencement of this section, proceedings for an appeal, a complaint or an offence could legally have been started under a repealed LG Act, the proceedings may be started under this Act.

(2) Proceedings for an appeal, a complaint or an offence under a repealed LG Act may be continued under the repealed LG Act, as if this Act had not commenced.

(3) Any document that was given evidentiary effect under a repealed LG Act continues to have the evidentiary effect as if the LG Act had not been repealed.

Not authorised—indicative only

Not authorised—indicative only

279 Super trust deed

A trust deed made by the board of directors of the super board, that was in force immediately before the commencement of this section, continues in force as a trust deed made by the board of directors of the super board under this Act.

280 Registers

(1) A register under a repealed LG Act continues as if it were made under this Act.

(2) A ***register*** includes—

(a) a register of delegations; and

(b) a register relating to enterprises; and

(c) a register of interests; and

(d) a register of regulatory fees; and

(e) a register of assets and gifts.

281 Remuneration schedule

The remuneration schedule for councillors, that was in force immediately before the commencement of this section, continues in force as the remuneration schedule for councillors under this Act until the tribunal prepares a remuneration schedule.

282 References to repealed LG Act

A reference in an Act or document to a repealed LG Act may, if the context permits, be taken to be a reference to this Act.

282A Continuation of implementation of reform

(1) The ***former commission*** is a Local Government Electoral and Boundaries Review Commission established under the 1993 Act, section 66.

(2) Subsection (3) applies if, before the commencement—

(a) a local government applied, under the 1993 Act, section 80, to the former commission for determination of a limited reviewable local government matter; and

(b) the former commission had not yet made a determination about the matter.

(3) The change commission must—

(a) determine the application; and

(b) comply with any requirements relating to the determination;

under the 1993 Act as if the 1993 Act had not been repealed.

(4) If the determination under subsection (3)(a) is to implement the matter, the Governor in Council must implement the matter under this Act.

(5) Subsections (6) and (7) apply if, before the commencement, the former commission—

(a) determined, under the 1993 Act, that a reviewable local government matter or limited reviewable local government matter be implemented; and

(b) had not yet complied with a requirement, under the 1993 Act, relating to the determination.

(6) The former commission must comply with the requirement as if the 1993 Act had not been repealed.

(7) The Governor in Council must implement the matter under this Act.

(8) To remove any doubt, it is declared that any change to a local government under this section is not a local government change for chapter 2, part 3.

Not authorised—indicative only

Not authorised—indicative only

283 Continuation of instruments to implement reform

(1) The following instruments are continued in force as if chapter 3, part 1B of the 1993 Act had not been repealed—

(a) the *Local Government Reform Implementation (Transferring Areas) Regulation 2007*;

(b) the *Local Government Reform Implementation Regulation 2008*;

(c) the *Local Government (Workforce Transition Code of Practice) Notice 2007*.

(2) The instruments expire—

(a) at the end of 31 December 2011; or

(b) at an earlier time fixed under a regulation.

286 Administration of sinking fund for liquidation of current borrowings

(1) The corporation continued in existence by the 1993 Act, under the name 'Trustees of the Local Governments Debt Redemption Fund' (the ***Trustees***) is continued in existence.

(2) The Trustees are responsible for administering the sinking funds for the liquidation of amounts borrowed by local governments before this section commences.

(3) The 1936 Act, section 28(15) continues to apply to the Trustees with any necessary changes, and any changes prescribed under a regulation.

(4) The Trustees are a statutory body for the Statutory Bodies Financial Arrangements Act.

(5) Part 2B of that Act sets out the way in which that Act affects the Trustees' powers.

287 Local Government Association

(1) On and from 1 July 2010—

(a) the Local Government Association of Queensland (Incorporated) (***LGAQ Inc.***) established under the 1993 Act stops being a public authority (however called) for the purposes of an Act (including the *Ombudsman Act 2001* and *Public Records Act 2002*, for example); and

(b) all rights, liabilities and interests of LGAQ Inc., that are in existence immediately before 1 July 2010, are taken to be the rights, liabilities and interests of LGAQ Ltd.

(2) The ***LGAQ Ltd.*** is the corporation prescribed under a regulation for this section.

(3) For example—

(a) an agreement with the LGAQ Inc. becomes an agreement with LGAQ Ltd.; and

(b) an interest in real or personal property of LGAQ Inc. becomes an interest of LGAQ Ltd.; and

(c) a proceeding that could be started or continued by or against LGAQ Inc. may be started or continued by or against LGAQ Ltd.; and

(d) a person who was employed by LGAQ Inc. is taken to be employed by LGAQ Ltd.

(4) This change of employer does not—

(a) affect an employee's employment conditions, benefits, entitlements or remuneration; or

(b) prejudice an employee's existing or accruing rights to—

(i) recreation, sick, long service or other leave; or

(ii) superannuation; or

(c) entitle a person to a payment or other benefit merely because the person is no longer employed by LGAQ Inc.; or

(d) interrupt a person's continuity of service; or

(e) constitute a retrenchment or redundancy.

Not authorised—indicative only

Not authorised—indicative only

(5) A reference in an Act or document to the LGAQ Inc. may, if the context permits, be taken to be a reference to LGAQ Ltd.

288 Continuing casual commissioners

(1) A person appointed as a review commissioner under the 1993 Act immediately before the commencement of this section is, on the commencement, taken to be appointed as a casual commissioner under section 23.

(2) The person—

(a) is appointed for a term that is the remainder of the term for which the person was appointed under the 1993 Act; and

(b) holds office on the conditions applying to the person under the 1993 Act.

289 Appeals against disciplinary action

(1) This section applies to a disciplinary appeal started by a local government employee under the 1993 Act, section 1158, but not decided before the commencement.

(2) A ***disciplinary appeal*** was, under the 1993 Act, an appeal to the appeal tribunal in relation to disciplinary action taken against a local government employee.

(3) Chapter 16, part 6 of the 1993 Act continues to apply to the appeal as if the provisions had not been repealed.

290 Superannuation for local government employees transferred to new water entities

(1) This section applies if employees of a local government are, or have been, transferred to a new water entity under—

(a) a transfer notice under the *South East Queensland Water (Restructuring) Act 2007*; or

(b) a transition document under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Note—

Some employees to whom this section applies have, since the enactment of this section, been transferred to the Queensland Bulk Water Supply Authority under a regulation made under the *South East Queensland Water (Restructuring) Act 2007*, section 105. The LG super scheme continues to apply to those employees—see section 300.

(2) Chapter 7, part 2 applies to the new water entity and the transferred employees.

(3) For applying chapter 7, part 2 to the new water entity and the transferred employees—

(a) the new water entity is taken to be a local government entity, but only in relation to its employment of the transferred employees; and

(b) a transferred employee is taken to be an eligible member; and

(c) despite section 219(2), a transferred employee continues to be a permanent employee if the transferred employee was a permanent employee immediately before the transfer.

(4) In this section—

new water entity means—

(a) an entity, other than the SEQ Water Grid Manager, established under the *South East Queensland Water (Restructuring) Act 2007*, section 6(1); or

(b) a distributor-retailer under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

transferred employee means an employee mentioned in subsection (1).

291 Repeal

The following Acts are repealed—

Not authorised—indicative only

Not authorised—indicative only

- the Local Government Act 1993, No. 70
- the Local Government (Community Government Areas) Act 2004, No. 37.

Chapter 9 Other transitional and validation provisions

Part 1 Transitional provision for Revenue and Other Legislation Amendment Act 2011

292 References to City Super etc. in industrial instruments

A reference, in an industrial instrument, to City Super or the Brisbane City Council Superannuation Plan may, if the context permits, be taken to be a reference to the LG super scheme.

Part 2 Transitional provision for Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011

293 Continuation of implementation of matters under s 282A

(1) This section continues the implementation of the following limited reviewable local government matters implemented under section 282A—

(a) a change to the external boundaries of Ipswich City Council and Scenic Rim Regional Council gazetted on 11 June 2010;

(b) a change to the external boundaries of Cook Shire Council and Wujal Wujal Aboriginal Shire Council gazetted on 16 July 2010.

(2) To remove any doubt, it is declared that an action started by a former local government is taken to have been started by a current local government.

(3) To remove any doubt, it is declared that the assets and public works on a relevant lot belong to the current local government.

Example—

Any material associated with a road or bridge is an asset.

(4) An existing planning scheme applies after 17 September 2010 until the current local government makes or amends a planning scheme to include the relevant lot.

(5) The existing planning scheme must be implemented, administered and enforced by the current local government to the extent it relates to the relevant lot as if the existing scheme were part of a planning scheme for its local government area.

(6) A reference in a document about a relevant lot to a former local government may, as appropriate, be taken to be a reference to the current local government.

(7) In this section—

action means the performance of a function, or the exercise of a power, including the following—

(a) an application about land;

(b) the amount of rate for land on a relevant lot;

(c) a demand for payment of an amount of rate;

(d) any requirement under an Act.

Not authorised—indicative only

Not authorised—indicative only

current local government means the local government for a relevant lot immediately after 17 September 2010.

existing planning scheme means a planning scheme for a relevant lot made by the former local government before 17 September 2010.

former local government means the local government for a relevant lot immediately before 17 September 2010.

relevant lot means a lot, shown on a map showing the boundaries of a local government area, that was transferred from the former local government to the current local government on 17 September 2010.

Part 3 Transitional provision inserted under the Local Government Electoral Act 2011

294 Continuation of particular local laws of Torres Strait Island Regional Council

(1) A prescribed local law in force immediately before 1 January 2012 continues in force until the earlier of the following—

(a) the local law's repeal by the Torres Strait Island Regional Council;

(b) the end of 30 September 2012.

(2) However, that Council may, by local law, amend a local law continued under subsection (1) while it continues under that subsection.

(3) In this section—

prescribed local law means any of the following local laws—

(a) Badu Island Council By-Law No. 2 (Law and Order);

(b) Boigu Island Council By-Law No. 2 (Law and Order);

(c) Dauan Island Council By-Laws 1995;

(d) Erub Island Council By-Laws 1995;

(e) Hammond Island Council By-Law No. 2 (Law and Order);

(f) Iama Island Council By-Law No. 2 (Law and Order);

(g) Kubin Island Council By-Law No. 2 (Law and Order);

(h) Mabuiag Island Council By-Laws 1995;

(i) Mer Island Council By-Laws 1995;

(j) Poruma Island Council By-Laws 1995;

(k) Saibai Island Council By-Laws 1997;

(l) St Pauls Island Council By-Laws 1995;

(m) Ugar Island Council By-Laws 1997;

(n) Warraber Island Council By-Laws 1997;

(o) Yorke Island Council By-Laws 1995.

Part 4 Transitional provisions for Local Government and Other Legislation Amendment Act 2012

Division 1 Transitional provisions about change of legal status

295 Effect of change of legal status on existing local governments and joint local governments

(1) On the commencement, a local government in existence immediately before the commencement continues in existence as a local government, but as a body corporate.

Not authorised—indicative only

Not authorised—indicative only

(2) The change in the local government's constitution effected by section 11 as in force after the commencement does not, in any way, affect—

(a) the local government's assets or rights and liabilities; or

(b) any matter or thing done by or in relation to the local government.

(3) On the commencement, a joint local government in existence immediately before the commencement continues in existence as a joint local government, but as a body corporate.

(4) The change in the joint local government's constitution effected by section 11 as in force after the commencement does not, in any way, affect—

(a) the joint local government's assets or rights and liabilities; or

(b) any matter or thing done by or in relation to the joint local government.

296 Contractual rights etc. are unaffected

Without limiting section 295 and to remove any doubt, it is declared that the continuation of a local government under that section—

(a) does not place the local government in breach of contract or otherwise make it guilty of a civil wrong; and

(b) does not make the local government in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability; and

(c) is not taken to fulfil a condition—

(i) allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability; or

(ii) requiring any amount to be paid before its stated maturity; and

(d) does not release a surety or other obligee, in whole or part, from an obligation; and

(e) does not negate any decision made by the local government.

Division 2 Other transitional provisions

297 Continuation of particular provisions for corporate entities

Note—

See also section 302 (Exemption from continuation of particular provisions for corporate entities) and section 303 (Continuation of particular provisions of other Acts for corporate entities).

(1) A ***corporate entity*** is an entity that was corporatised under this Act before the commencement and to which the Corporations Act does not apply.

(2) A provision of this Act, as in force immediately before the commencement, that applied in relation to a corporate entity, continues to apply in relation to the corporate entity—

(a) as if the provision were not amended or repealed under the *Local Government and Other Legislation Amendment Act 2012*; and

(b) despite any amendment or repeal of the provision under the *Local Government and Other Legislation Amendment Act 2012*.

Examples—

- chapter 3, part 2, divisions 3 and 4
- sections 199, 200 and 257

(3) A provision of the relevant regulations, as in force immediately before the commencement, that applied in

Not authorised—indicative only

Not authorised—indicative only

relation to a corporate entity, continues to apply in relation to the corporate entity—

(a) as it was in force immediately before the commencement; and

(b) despite any amendment or repeal of the provision after the commencement.

(4) The ***relevant regulations*** are—

(a) the *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010*; and

(b) the *Local Government (Finance, Plans and Reporting) Regulation 2010*; and

(c) the *Local Government (Operations) Regulation 2010*.

(5) A provision continued under subsection (2) or (3) continues in relation to a corporate entity until the corporate entity is wound up or otherwise ceases to be corporatised under this Act.

298 Change in dealing with complaints

(1) This section applies if—

(a) a local government, or the department's chief executive, makes or receives a complaint about the conduct or performance of a councillor before the commencement; and

(b) an entity had started dealing with, but had not finally dealt with, the complaint under chapter 6, part 2, division 6.

(2) The former process continues to apply in relation to the complaint despite any amendment of this Act under the *Local Government and Other Legislation Amendment Act 2012*.

(3) The ***former process*** is chapter 6, part 2, division 6 as in force immediately before the commencement.

(4) To remove any doubt, it is declared that—

(a) an entity dealing with the complaint must deal with the complaint under the former process; and

(b) any disciplinary action taken against a councillor because of the complaint is limited to the action that may be taken under the former process.

299 Change in process for making local laws

(1) This section applies if a local government has begun, but not completed, its process for making a local law before the commencement.

(2) The local government may continue the process for making the local law despite any amendment of this Act under the *Local Government and Other Legislation Amendment Act 2012*.

(3) Chapter 3, part 1, as in force immediately before the commencement, continues to apply for the purpose of subsection (2).

Part 5 Transitional provision for South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012

300 Superannuation for particular LinkWater employees transferred to Queensland Bulk Water Supply Authority

(1) This section applies if employees of LinkWater who are members of the LG super scheme are, or have been, transferred to the Queensland Bulk Water Supply Authority (the ***Authority***) under a regulation made under the *South East Queensland Water (Restructuring) Act 2007*, section 105.

Not authorised—indicative only

Not authorised—indicative only

(2) Chapter 7, part 2 applies to the Authority and the transferred employees.

(3) For applying chapter 7, part 2 to the Authority and the transferred employees—

(a) the Authority is taken to be—

(i) a local government entity in relation to transferred employees other than former BCC employees; or

(ii) the Brisbane City Council in relation to former BCC employees; and

(b) a transferred employee is taken to be an eligible member; and

(c) if a transferred employee was, immediately before the transfer mentioned in subsection (1), a permanent employee—the transferred employee is taken to continue to be a permanent employee.

(4) In this section—

former BCC employee means a transferred employee who was transferred to LinkWater from the Brisbane City Council under a transfer notice under the *South East Queensland Water (Restructuring) Act 2007*, repealed section 67.

LinkWater means the Queensland Bulk Water Transport Authority established under the *South East Queensland Water (Restructuring) Act 2007*, section 6.

permanent employee means—

(a) a permanent employee under section 219; or

(b) a BCC permanent employee under the *Local Government (Operations) Regulation 2010*, schedule 7.

Queensland Bulk Water Supply Authority means the Queensland Bulk Water Supply Authority established under the *South East Queensland Water (Restructuring) Act 2007*, section 6.

transferred employee means an employee mentioned in subsection (1).

Part 6 Transitional provision for Queensland Independent Remuneration Tribunal Act 2013

301 Amendment of regulation does not affect powers of Governor in Council

The amendment of the *Local Government Regulation 2012* by the *Queensland Independent Remuneration Tribunal Act 2013* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Part 7 Transitional provisions for Local Government and Other Legislation Amendment Act 2013

Division 1 Former corporate entities

302 Exemption from continuation of particular provisions for corporate entities

(1) This section applies to a corporate entity mentioned in section 297(1).

(2) Despite section 297(3), section 72(1) of the repealed regulation does not prevent a person being both of the following at the same time—

(a) a director of the corporate entity;

Not authorised—indicative only

Not authorised—indicative only

(b) a councillor of a local government.

(3) However—

(a) no more than 1 director of the corporate entity can be a councillor of a local government; and

(b) a person who is both a director of the corporate entity and a councillor of a local government can not be the chairperson or deputy chairperson of the board of the corporate entity.

(4) In this section—

repealed regulation means the repealed *Local Government (Beneficial Enterprises and Business Activities) Regulation 2010* as in force immediately before the commencement of section 297.

303 Continuation of particular provisions of other Acts for corporate entities

(1) This section applies to a corporate entity mentioned in section 297(1).

(2) Each of the relevant Acts, as in force immediately before the commencement of the *Local Government and Other Legislation Amendment Act 2012* (the ***amending Act***), continues to apply in relation to the corporate entity—

(a) as if the Act were not amended under the amending Act; and

(b) despite any amendment of the Act under the amending Act.

(3) In this section—

relevant Act means either of the following—

(a) the *Judicial Review Act 1991*;

(b) the *Public Interest Disclosure Act 2010*.

Division 2 New local governments

Note—

See also the *Sustainable Planning Act 2009*, chapter 10, part 8, division 2 for other transitional provisions for continuing and new local governments.

304 Definition for div 2

In this division—

new local government means each of the following local governments that comes into existence on 1 January 2014—

(a) Douglas Shire Council;

(b) Livingstone Shire Council;

(c) Mareeba Shire Council;

(d) Noosa Shire Council.

305 Meeting to approve budget and levy rates and charges for period ending 30 June 2014

(1) A new local government must, at a meeting of the local government—

(a) adopt, by resolution, a budget presented by the mayor, with or without amendment, for the period—

(i) starting on 1 January 2014; and

(ii) ending on 30 June 2014; and

(b) decide, by resolution, what rates and charges are to be levied for the period—

(i) starting on 1 January 2014; and

(ii) ending on 30 June 2014.

(2) The meeting must be held—

(a) before 1 February 2014; or

Not authorised—indicative only

Not authorised—indicative only

(b) on a later day allowed by the Minister.

(3) Sections 94(2) and 107A do not apply to a new local government for the 2013-14 financial year.

306 Post-election meeting not required

(1) Section 175 does not apply, and is taken to have never applied, to a new local government.

(2) However, a new local government must, by resolution, appoint a deputy mayor from its councillors (other than the mayor) at its first meeting after it comes into existence on 1 January 2014.

Part 8 Validation provision for Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014

307 Validation of rates charged

It is declared that a local government always has had, whether under this Act or a repealed Act, the power to categorise rateable land, and decide differential rates for the rateable land, in the way stated in section 94(1A).

Part 9 Transitional provisions for Planning (Consequential) and Other Legislation Amendment Act 2016

308 Definitions for part

In this part—

amending Act means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

former, in relation to a provision, means the provision as in force immediately before the provision was amended or repealed under the amending Act.

repealed Planning Act means the repealed *Sustainable Planning Act 2009*.

309 Entry under existing application, permit or notice

(1) This section applies to an application, permit or notice—

(a) mentioned in former section 132; and

(b) made or given under the repealed Planning Act.

(2) Former section 132 continues to apply in relation to the application, permit or notice as if the amending Act had not been enacted and the repealed Planning Act had not been repealed.

310 Existing remedial notice

(1) This section applies to a remedial notice—

(a) given under former section 138AA; and

(b) requiring an owner or occupier of a property to take action under the repealed Planning Act.

Not authorised—indicative only

Not authorised—indicative only

(2) The remedial notice continues to have effect as if the amending Act had not been enacted and the repealed Planning Act had not been repealed.

311 Existing inside information

(1) This section applies to information about any of the following (***existing inside information***) that, immediately before the commencement, was inside information, in relation to a local government, for former section 171A—

(a) the exercise of a power under the repealed Planning Act by the local government, a councillor or a local government employee;

(b) a decision, or proposed decision, under the repealed Planning Act of the local government or any of its committees;

(c) the exercise of a power under the repealed Planning Act by the State, a Minister, a statutory body or an employee of the State or statutory body, that affects the local government, any of its corporate entities or land or infrastructure within the local government's area;

(d) any legal or financial advice about the repealed Planning Act created for the local government, any of its committees or any of its corporate entities.

(2) Former section 171A continues to apply in relation to the existing inside information as if the amending Act had not been enacted and the repealed Planning Act had not been repealed.

312 Existing unpaid fine—where fine to be paid to

(1) This section applies to a fine mentioned in former section 246 that—

(a) is unpaid; and

(b) was imposed in proceedings brought by a local government for an offence against the repealed Planning Act.

(2) Former section 246(2) continues to apply in relation to the fine as if the amending Act had not been enacted and the repealed Planning Act had not been repealed.

Part 10 Transitional provisions for Revenue and Other Legislation Amendment Act 2016

313 Change in name of board and scheme

(1) To remove any doubt, it is declared that—

(a) the amendment of section 208 by the *Revenue and Other Legislation Amendment Act 2016* has effect only to change the name of the board mentioned in the section and does not establish a new board; and

(b) the amendment of section 217 by the *Revenue and Other Legislation Amendment Act 2016* has effect only to change the name of the superannuation scheme mentioned in the section and does not establish a new superannuation scheme.

(2) From the commencement, if the context permits—

(a) a reference in a document to the Queensland Local Government Superannuation Board under the 1993 Act or this Act is taken to be a reference to LGIAsuper Trustee; and

(b) a reference in a document to the Local Government Superannuation Scheme under the 1993 Act or this Act, or to the LG super scheme, is taken to be a reference to LGIAsuper; and

Not authorised—indicative only

Not authorised—indicative only

(c) a reference in an industrial instrument to City Super or the Brisbane City Council Superannuation Plan is taken to be a reference to LGIAsuper.

314 Existing membership and entitlements

(1) The amendment of this Act by the *Revenue and Other Legislation Amendment Act 2016* does not affect—

(a) the membership of a current member; or

(b) any entitlement the member accrued under this Act before the commencement.

(2) In this section—

current member means a person who, immediately before the commencement, was a member of LGIAsuper.

Part 11 Validation provision for particular rates and charges

315 Validation of rates and charges

(1) This section applies to a rate or charge—

(a) levied or to be levied by a local government under this Act, or levied by a local government under a repealed Act, for a financial year up to and including the financial year ending 30 June 2018; and

(b) that was not decided to be levied by resolution of the local government at the local government's budget meeting for the financial year under this Act or a repealed Act.

(2) It is declared that the rate or charge is taken to be, and to always have been, as validly levied by the local government as it would have been if the local government had decided to levy the rate or charge by resolution at the local government's

budget meeting for the financial year under this Act or a repealed Act.

(3) It is also declared that anything done, or to be done, in relation to the rate or charge is as valid as it would have been or would be if the local government had decided to levy the rate or charge by resolution at the local government's budget meeting for the financial year under this Act or a repealed Act.

Examples of things done or to be done in relation to the rate or charge—

- the bringing by a local government of proceedings against a person
- the sale of land, or the taking of steps preparatory to the sale of land, by a local government
- the acquisition of land, or the taking of steps preparatory to the acquisition of land, by a local government
- the charging of interest on the rate or charge

(4) In this section—

repealed Act means the repealed *Local Government Act 1936* or the repealed *Local Government Act 1993*.

Part 12 Transitional provisions for Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018

316 Definitions for pt 12

In this part—

assessed, in relation to a complaint about the conduct or performance of a councillor, means—

(a) a preliminary assessment of the complaint was conducted under former section 176B; or

Not authorised—indicative only

Not authorised—indicative only

(b) the department's chief executive decided, under former section 177, that the complaint is about inappropriate conduct or misconduct.

existing complaint means a complaint about the conduct or performance of a councillor made to any of the following entities before the commencement—

(a) the local government;

(b) the department's chief executive;

(c) the mayor of the local government;

(d) the chief executive officer of the local government.

former, for a provision of this Act, means as in force immediately before the commencement of the section in which the provision is mentioned.

local government official see section 150R(3).

Note—

Section 150R(3) was renumbered as section 150R(4) by the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*.

317 Existing complaints not assessed

(1) This section applies if, immediately before the commencement, an existing complaint about a councillor's conduct had not been assessed.

(2) The assessor must deal with the existing complaint under chapter 5A as if the existing complaint was made or referred to the assessor under chapter 5A.

(3) An entity holding information relating to the existing complaint must, as soon as practicable after the commencement, give the information to the assessor.

(4) This section is subject to section 322.

318 Existing inappropriate conduct complaints

(1) This section applies if, immediately before the commencement—

(a) an existing complaint about a councillor was assessed as being about inappropriate conduct; and

(b) a final decision dealing with the complaint had not been made.

(2) Former chapter 6, part 2, division 6 continues to apply in relation to the existing complaint as if the provisions had not been repealed by the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018*.

(3) This section applies despite section 322.

319 Existing misconduct complaints

(1) This section applies if, immediately before the commencement—

(a) an existing complaint about a councillor was assessed to be about misconduct; and

(b) a final decision dealing with the complaint had not been made.

(2) The assessor must deal with the existing complaint under chapter 5A as if the existing complaint was made or referred to the assessor under chapter 5A.

(3) An entity holding relevant information relating to the existing complaint must, as soon as practicable after the commencement, give the information to the assessor.

(4) This section is subject to section 322.

320 Existing orders taken into account

(1) This section applies if, before the commencement—

Not authorised—indicative only

Not authorised—indicative only

(a) an order was made against a councillor under section 180 or 181 as in force from time to time before the commencement; and

(b) the order is substantially the same as an order that may be made under chapter 5A.

(2) The order may be taken into account for the following purposes—

(a) the local government or a local government official deciding whether—

(i) to notify the assessor about a councillor's conduct under chapter 5A, part 3, division 3; or

(ii) to give information about a councillor's conduct to the assessor under section 150AF;

(b) the assessor deciding how to deal with the conduct of a councillor, or a complaint about the conduct of a councillor, under section 150W;

(c) the local government or conduct tribunal deciding what action to take in relation to any inappropriate conduct or misconduct of the councillor.

321 Existing recommendations continue

(1) This section applies if—

(a) before the commencement, the Local Government Remuneration and Discipline Tribunal had recommended the suspension or dismissal of a councillor to the Minister under former section 180; and

(b) immediately before the commencement, the Minister had not considered or made a decision in relation to the recommendation.

(2) For sections 120, 122 and 123, the recommendation is taken to be a recommendation made by the conduct tribunal under section 150AR.

322 Dealing with particular pre-commencement complaints or conduct

(1) This section applies in relation to conduct engaged in by a councillor before the commencement, including conduct that is the subject of an existing complaint mentioned in section 317(1) or 319(1).

(2) In deciding how to deal with the conduct, the assessor, a local government official, the local government and the conduct tribunal must—

(a) apply the former conduct definitions to the conduct; and

(b) if the conduct is referred to the local government—only make an order that is substantially the same as an order that could have been made under former section 181; and

(c) if the conduct is referred to the conduct tribunal—only make an order that is substantially the same as an order that could have been made under former section 180.

(3) To remove any doubt, it is declared that chapter 5A otherwise applies in relation to an order mentioned in subsection (2).

(4) In this section—

former conduct definitions means—

(a) the definition of *misconduct* under former section 176(3); and

(b) the definition of *inappropriate conduct* under former section 176(4); and

(c) the qualification of those definitions under former section 177A(5) and (6); and

(d) the extension of the definition of *misconduct* under former section 181(3) and (4).

Not authorised—indicative only

Not authorised—indicative only

323 Model procedures apply until procedures adopted

(1) If, immediately before the commencement, a local government has not adopted the model procedures or other procedures under section 150G, on the commencement the local government is taken to have adopted the model procedures.

(2) Subsection (1) applies until the local government adopts the model procedures or other procedures under section 150G.

324 Process if no investigation policy

(1) This section applies if, on or after the commencement—

(a) a local government is required to deal with the inappropriate conduct of a councillor under chapter 5A, part 3, division 5; and

(b) the local government has not adopted an investigation policy under section 150AE.

(2) The local government must decide, by resolution, the procedure for investigating the conduct.

(3) However, subsections (4) and (5) apply if the assessor has recommended, under section 150AC(3), how the conduct may be dealt with.

(4) The local government must follow the process recommended by the assessor or decide, by resolution, to deal with the complaint in another way.

(5) The local government must state the reasons for its decision in the resolution.

Part 13 Transitional provisions for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018

325 Disqualifying offence committed before commencement

Chapter 6, part 2, as in force after the commencement, applies in relation to a disqualifying offence, whether the act or omission constituting the offence was committed before or after the commencement.

326 Existing charge for disqualifying offence

(1) This section applies if a proceeding for a disqualifying offence against a councillor had started before the commencement but has not ended.

(2) The councillor is automatically suspended as a councillor on the commencement.

(3) Chapter 6, part 2, division 7 applies in relation to the councillor as if the councillor was suspended under section 182A.

(4) Immediately after the commencement, the councillor must give a notice that complies with subsection (5) to each of the following, unless the councillor has a reasonable excuse—

(a) the Minister;

(b) if the councillor is not the mayor of the local government—the mayor;

(c) the chief executive officer of the local government.

Maximum penalty—100 penalty units.

(5) For subsection (4), the notice must state—

Not authorised—indicative only

Not authorised—indicative only

(a) the provision of the law against which the councillor was charged; and

(b) the day the councillor was charged.

(6) The information contained in the notice is taken to be criminal history information for section 182G.

327 Existing conviction for new disqualifying offence

(1) This section applies if—

(a) before the commencement, a councillor was convicted of an offence that is a new disqualifying offence; and

(b) on the commencement, the disqualifying period for the offence would not have ended.

(2) The councillor automatically stops being a councillor on the commencement.

(3) Immediately after the commencement, the councillor must give a notice that complies with subsection (4) to each of the following, unless the councillor has a reasonable excuse—

(a) the Minister;

(b) if the councillor is not the mayor of the local government—the mayor;

(c) the chief executive officer of the local government.

Maximum penalty—100 penalty units.

(4) For subsection (3), the notice must state—

(a) the provision of the law against which the councillor was convicted; and

(b) the day the councillor was convicted.

(5) Section 153(7) applies in relation to the offence.

(6) The information contained in the notice is taken to be criminal history information for section 182G.

(7) In this section—

conviction includes a spent conviction.

disqualifying period, for a new disqualifying offence, means the period stated in section 153(1) during which a person convicted of the offence can not be a councillor.

new disqualifying offence means an offence that, under section 153—

(a) is a disqualifying offence after the commencement; but

(b) was not a disqualifying offence before the commencement.

Part 14 Transitional provisions for Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019

Division 1 Transitional provisions for new disqualifying offences

328 Definitions for division

In this division—

amending provision means a provision of the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* that amends section 153 or schedule 1.

new disqualifying offence means an offence that—

(a) is a disqualifying offence after the commencement of an amending provision; but

(b) was not a disqualifying offence before the amending provision commenced.

Not authorised—indicative only

Not authorised—indicative only

329 New disqualifying offence committed before commencement

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

330 Existing charge for new disqualifying offence

(1) This section applies if a proceeding for a new disqualifying offence against a councillor had started before the commencement but has not ended.

(2) The councillor is automatically suspended as a councillor on the commencement.

(3) Chapter 6, part 2, division 7 applies in relation to the councillor as if the councillor was suspended under section 175K.

(4) Immediately after the commencement, the councillor must give a written notice about the proceeding for the new disqualifying offence that complies with subsection (5) to each of the following, unless the councillor has a reasonable excuse—

(a) the Minister;

(b) if the councillor is not the mayor—the mayor;

(c) the chief executive officer;

Maximum penalty—100 penalty units.

(5) For subsection (4), the notice must state—

(a) the provision of the law to which the proceeding for the new disqualifying offence relates; and

(b) the day the councillor was charged with the offence.

(6) The notice is taken to be a notice mentioned in section 175P(1)(a).

(7) The information contained in the notice is taken to be criminal history information for section 175Q.

331 Existing conviction for new disqualifying offence

(1) This section applies if—

(a) before the commencement, a councillor was convicted of an offence that is a new disqualifying offence; and

(b) on the commencement, the disqualifying period for the offence would not have ended.

(2) The councillor automatically stops being a councillor on the commencement.

(3) Immediately after the commencement, the councillor must give a written notice that complies with subsection (4) to each of the following, unless the councillor has a reasonable excuse—

(a) the Minister;

(b) if the councillor is not the mayor—the mayor;

(c) the chief executive officer.

Maximum penalty—100 penalty units.

(4) For subsection (3), the notice must state—

(a) the provision of the law against which the councillor was convicted; and

(b) the day the councillor was convicted.

(5) Section 153(7) applies in relation to the offence.

(6) The notice is taken to be a notice mentioned in section 175P(1)(a).

(7) The information contained in the notice is taken to be criminal history information for section 175Q.

(8) In this section—

conviction includes a spent conviction.

disqualifying period, for a new disqualifying offence, means the period stated in section 153(1) during which a person convicted of the offence can not be a councillor.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Other transitional provision commencing on assent

332 Existing senior executive employees

(1) This section applies to a person who, immediately before the commencement, was a senior executive employee of a local government.

(2) The person is taken to have been appointed as a senior executive employee by the chief executive officer of the local government.

Part 15 Transitional provisions for Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020

332A Existing vacancies in office of mayor or other councillor

(1) This section applies if—

(a) before the commencement, the office of a mayor or other councillor became vacant; and

(b) on the commencement, the vacancy has not been filled.

(2) Chapter 6, part 2, division 3 applies in relation to filling the vacancy as if the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020*, had not commenced.

333 Proceedings for repealed integrity offences

(1) This section applies in relation to an offence against a repealed integrity offence provision committed by a person before the commencement.

(2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020*, sections 112 and 113 had not commenced.

(3) From the commencement, an offence against a repealed integrity offence provision continues, despite the repeal of the provision, to be—

(a) an integrity offence for section 153(5); and

(b) a disqualifying offence for section 153(6).

(4) In this section—

repealed integrity offence provision means the following provisions as in force from time to time before the commencement—

(a) section 171A(2) and (3);

(b) section 171B(2);

(c) section 175C(2);

(d) section 175E(2) and (5);

(e) section 175H;

(f) section 175I(2) and (3).

334 Continuation of Minister's approval for councillor to participate or be present to decide matter

(1) This section applies to a notice given before the commencement by the Minister to a councillor under section 175F, if the notice is in force immediately before the commencement.

(2) The notice is taken to be a notice given to the councillor under section 150EV.

Not authorised—indicative only

Not authorised—indicative only

335 Remuneration commission's recommendation not required for initial regulation

Section 197D(2) and (3) does not apply to the regulation first made after the commencement under section 197D(1)(a) or (b).

336 Application of s 201A for councillors

(1) This section applies if, on the commencement, a councillor has an interest mentioned in section 201A(1).

(2) Despite section 201A(2), the councillor must comply with section 201A in relation to the interest within 30 days after the commencement.

Part 16 Transitional provisions for COVID-19 Emergency Response and Other Legislation Amendment Act 2020

337 Definitions for part

In this part—

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force from the commencement.

relevant period means the period—

(a) starting on 12 October 2020; and

(b) ending immediately before the commencement.

338 Effect of particular things done under former s 166A

(1) This section applies if, during the relevant period—

(a) the office of mayor or of another councillor became vacant under former section 162; and

(b) anything was done under former section 166A for filling the vacant office.

(2) From the commencement—

(a) former section 166A does not apply, and is taken never to have applied, for filling the vacant office; and

(b) anything done under former section 166A for filling the vacant office is taken never to have been done.

(3) To remove any doubt, it is declared that if, during the relevant period, the local government filled the vacant office by appointing a runner-up under former section 166A(4)(b), on the commencement—

(a) the office is taken to be vacant, and to have always been vacant since it became vacant during the relevant period; and

(b) the runner-up is taken never to have been appointed.

(4) However, this section does not affect any entitlement to remuneration or other benefits accrued or accruing under an Act, in respect of the appointment period, because of the runner-up's appointment under former section 166A.

(5) For subsection (4), the ***appointment period*** is the period—

(a) starting on the appointment of the runner-up under former section 166A(4)(b); and

(b) ending immediately before the commencement.

(6) Subsections (2) and (3) apply despite the *Acts Interpretation Act 1954*, section 20.

Not authorised—indicative only

Not authorised—indicative only

339 Filling particular vacancies in office of mayor

(1) This section applies if—

(a) during the relevant period, the office of mayor became vacant under former section 162; and

(b) either of the following applies—

(i) immediately before the commencement, the office had not been filled;

(ii) on the commencement, the office is taken, under section 338, to be vacant.

(2) New chapter 6, part 2, division 3 applies for filling the vacant office.

(3) However, despite new section 163(3), the local government must fill the vacant office within 2 months after the commencement.

(4) Subsections (2) and (3) apply despite the *Acts Interpretation Act 1954*, section 20.

340 Filling particular vacancies in office of another councillor generally

(1) This section applies if—

(a) during the relevant period, the office of a councillor, other than the mayor, became vacant under former section 162; and

(b) either of the following applies—

(i) immediately before the commencement, the office had not been filled;

(ii) on the commencement, the office is taken, under section 338, to be vacant.

(2) New chapter 6, part 2, division 3 applies for filling the vacant office.

(3) However, despite new section 163(3), the local government must fill the vacant office within 2 months after the commencement.

(4) Subsections (2) and (3) apply despite the *Acts Interpretation Act 1954*, section 20.

(5) This section is subject to section 341.

341 Filling particular vacancies in office of another councillor under new s 166A

(1) This section applies if a local government decides under new section 166(2), as applied under section 340, that a vacancy in the office of a councillor, other than the mayor, is to be filled by following the procedure under new section 166A.

(2) Despite section 338(2) and (3)(b) and new section 159(b)—

(a) anything done during the relevant period under former section 166A for filling the vacant office is taken to have been done under new section 166A; and

(b) if, during the relevant period, the local government filled the vacant office by appointing a runner-up under former section 166A(4)(b), the runner-up is taken—

(i) to have been appointed under new section 166A(4)(b) on the commencement; and

(ii) to have held office as a councillor continuously from that day.

(3) Subsection (4) applies if—

(a) during the relevant period, the electoral commission gave a vacancy notice, under former section 166A(3), to a runner-up; and

(b) the deadline for the runner-up was a day after the end of the relevant period; and

(c) the runner-up did not, before the end of the relevant period, consent to being appointed to the vacant office.

Not authorised—indicative only

Not authorised—indicative only

(4) The electoral commission must, under new section 166A(6), as applied under section 340, extend the day and time stated in the vacancy notice to a day and time after the day the decision mentioned in subsection (1) was made.

Schedule 1 Serious integrity offences and integrity offences

section 153

Part 1 Serious integrity offences

This Act

201D	Dishonest conduct of councillor or councillor advisor

Criminal Code

54A(1)	Demands with menaces upon agencies of government
57(1)	False evidence before Parliament
60(1)	Bribery of member of Parliament
87(1) or (1A)	Official corruption
92A(1) or (2)	Misconduct in relation to public office
98B(1)	False or misleading information
98C(1) or (2)	Bribery
98D(1) or (2)	Forging or uttering electoral or referendum paper
110	Stuffing ballot boxes
112(1)	False or misleading information
119B(1)	Retaliation against or intimidation of judicial officer, juror, witness etc.
122(1)	Corruption of jurors
123(1)	Perjury
126(1)	Fabricating evidence

Not authorised—indicative only

Not authorised—indicative only

127(1)	Corruption of witnesses
129	Damaging evidence with intent
131(1)	Conspiracy to bring false accusation
132(1)	Conspiring to defeat justice
133(1)	Compounding an indictable offence
	circumstance—the penalty in subsection (2) applies to the offence
140(1)	Attempting to pervert justice
193(1)	False verified statements
398(1)	Punishment of stealing
	circumstance—a circumstance of aggravation with a maximum penalty of 7 years or more imprisonment applies to the offence
399	Fraudulent concealment of particular documents
	circumstance—paragraph (b) of the penalty applies to the offence
408C(1)	Fraud
	circumstance—a circumstance of aggravation mentioned in subsection (2), (2A) or (2B) applies to the offence
408E(1)	Computer hacking and misuse
	circumstance—a circumstance of aggravation mentioned in subsection (3) applies to the offence
415(1)	Extortion
430	Fraudulent falsification of records
433(1)	Receiving tainted property
442B	Receipt or solicitation of secret commission by an agent
442BA	Gift or offer of secret commission to an agent
442D	False or misleading receipt or account

442E	Secret commission for advice given
442EA	Offer or solicitation of secret commission in return for advice given or to be given
442F	Secret commission to trustee in return for substituted appointment
442G	Liability of director etc. acting without authority
488(1)	Forgery and uttering circumstance—paragraph (a) or (b) of the penalty applies to the offence
541(1)	Conspiracy to commit crime circumstance—a maximum penalty of 7 years imprisonment or more applies to the offence

Crime and Corruption Act 2001

198(1)	Contempt of person conducting commission hearing

Criminal Proceeds Confiscation Act 2002

250(1)	Money laundering

Electoral Act

307B(1)	Schemes to circumvent prohibition on particular political donations

Local Government Electoral Act

169(1)	False or misleading information
170(1) or (2)	Bribery
175(1) or (2)	Forged electoral papers

Not authorised—indicative only

Not authorised—indicative only

194B(1)	Schemes to circumvent prohibition on particular political donations

Part 2 Integrity offences

This Act

150AW(1)	Protection from reprisal
150EM(2)	Dealing with prescribed conflict of interest at a meeting
150EY	Offence to take retaliatory action
171(1)	Use of information by councillors
201F	Prohibited conduct by councillor or councillor advisor in possession of inside information
234(1)	False or misleading information

Criminal Code

54(1)	Interference with Governor or Ministers
55(1)	Interference with the Legislature
58(1)	Witness refusing to attend, answer question or produce a thing before Legislative Assembly or authorised committee
78(1) or (2)	Interfering with political liberty
85	Disclosure of official secrets
98E(1)	Influencing voting
98F	Providing money for illegal payments
98G	Voting if not entitled
99(1), (2), (3), (4) or (5)	Voting if not entitled

100(1) or (2)	Hindering or interfering with voting conduct
101(1) or (2)	Bribery
102	Publishing false information about a candidate
113(2), (3), (4) or (5)	Interfering with secrecy at elections
128	Deceiving witnesses
130	Preventing witnesses from attending
133(1)	Compounding an indictable offence circumstance—the penalty in subsection (3) applies to the offence
194(1)	False declarations
204(1)	Disobedience to statute law
398(1)	Punishment of stealing circumstance—no circumstance of aggravation applies to the offence
399	Fraudulent concealment of particular documents circumstance—paragraph (a) of the penalty applies to the offence
408C	Fraud circumstance—the circumstance of aggravation mentioned in subsection (2), (2A) or (2B) does not apply to the offence
408D(1) or (1A)	Obtaining or dealing with identification information
408E	Computer hacking and misuse circumstance—no circumstance of aggravation, or the circumstance of aggravation mentioned in subsection (2), applies to the offence
414	Demanding property with menaces with intent to steal

Not authorised—indicative only

Not authorised—indicative only

488(1)	Forgery and uttering circumstance—paragraph (c) of the penalty applies to the offence
541(1)	Conspiracy to commit crime circumstance—the maximum penalty for the crime in question is less than 7 years imprisonment

Electoral Act

307A(1)	Offence about prohibited donations
307C(1)	False or misleading information relating to determinations
427(2)	Obligation to repay particular political donations

Local Government Electoral Act

126(8)	Requirement for candidate to operate dedicated account
127(8)	Requirement for group of candidates to operate dedicated account
171	Assisting illegal payments
183	Engaging in group campaign activities
186	Influencing voting by violence or intimidation
189	Voting if not entitled
194A(1)	Offence about prohibited donations
194C(1)	False or misleading information relating to determinations
195(2)	Offences about returns
195(3)	Offences about returns
212(2)	Obligation to repay particular political donations

Schedule 4 Dictionary

section 6

1936 Act means the repealed *Local Government Act 1936*.

1993 Act means the repealed *Local Government Act 1993*.

2020 quadrennial election means the quadrennial election for 2020.

adopt, by a local government, means adopt by resolution of the local government.

advisor see section 117.

ancillary works and encroachments means—

(a) cellars; or

(b) gates; or

(c) temporary rock anchors for building support; or

(d) ancillary works and encroachments under the Transport Infrastructure Act.

anti-competitive provision means a provision that a regulation identifies as creating barriers to—

(a) entry to a market; or

(b) competition within a market.

appropriately qualified, in relation to a delegated power, includes having the qualifications, experience or standing to exercise the power.

Example of standing—

a person's classification level in the public service

approved form means—

(a) for chapter 5A, a form approved by the assessor under section 150EC; or

(b) otherwise, a form approved by the department's chief executive under section 266.

Not authorised—indicative only

Not authorised—indicative only

approved inspection program see section 133(2).

assessor see section 150C.

auditor-general means the Queensland Auditor-General under the *Auditor-General Act 2009*.

authorised officer means a person who holds office under section 204D.

authorised person means a person who holds office under section 202.

beginning of the local government's term see section 161(3).

behavioural standard, for chapter 5A, see section 150C.

beneficial enterprise see section 39.

Building Act means the *Building Act 1975*.

building certifying activity see section 47(4).

building unit means a lot under—

(a) the *Body Corporate and Community Management Act 1997*; or

(b) the *Building Units and Group Titles Act 1980*; or

(c) the *Integrated Resort Development Act 1987*; or

(d) the *Mixed Use Development Act 1993*; or

(e) another Act prescribed under a regulation.

business activity, of a local government, means trading in goods and services by the local government.

business unit, of a local government, is a part of the local government that conducts a business activity of the local government.

caretaker period, for a local government, see section 90A(1).

casual commissioner means—

(a) in relation to the change commission—a person appointed as a casual commissioner of the change commission under section 23(2); or

(b) in relation to the remuneration commission—a person appointed as a casual commissioner of the remuneration commission under section 180(2).

casual member, in relation to the conduct tribunal, means a person appointed to be a casual member of the conduct tribunal under section 150DN(2).

cause detriment to a local government—

1 To *cause detriment to a local government* includes—

(a) to sabotage a lawful process of the council (including adopting a budget or conducting a tender process, for example); or

(b) to cause the council to suffer a loss in its lawful performance of a function or commercial activity (including the loss of a future contractual arrangement, for example).

2 To *cause detriment to a local government* does not include—

(a) merely embarrassing the council; or

(b) merely causing disagreement between councillors.

chairperson means—

(a) in relation to the grants commission—the person appointed to be the chairperson of the grants commission under section 231; or

(b) in relation to the remuneration commission—the person appointed to be the chairperson of the remuneration commission under section 180(1).

change commission see section 22.

charges includes any interest accrued, or premium owing, on the charges.

chief executive officer means a person who holds an appointment under section 194.

chosen fund, for chapter 7, part 2, see section 216A.

close associate, of a councillor, see section 150EJ.

Not authorised—indicative only

Not authorised—indicative only

code of competitive conduct see section 47.

commercialisation, of a significant business activity, see section 44(2).

commissioner, in relation to the remuneration commission, means—

(a) the chairperson of the remuneration commission; or

(b) a casual commissioner of the remuneration commission.

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

community forum see section 87(2).

component local government see section 25A(4).

conclusion, of the election of a councillor, see the Local Government Electoral Act, section 7.

conduct, for chapter 5A, see section 150C.

conduct provision, for chapter 5A, see section 150AY.

conduct tribunal see section 150DK.

consolidated version, of a local law, see section 32.

contractor, of a local government, means—

(a) a person who provides services under a contract with the local government; or

(b) a person prescribed under a regulation.

conviction includes a finding of guilt, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

corrupt conduct see the *Crime and Corruption Act 2001*, section 15.

cost-recovery fee see section 97(2).

councillor, of a local government, includes the mayor.

councillor advisor see section 197A(1).

councillor conduct register see section 150DX(1).

court means a court of competent jurisdiction.

criminal history, of a person, means all convictions, other than spent convictions, recorded against the person for offences, in Queensland or elsewhere, whether before or after the commencement of this Act.

decision-maker see section 212(2).

declarable conflict of interest see sections 150EN and 150EO.

defined benefit category, for chapter 7, part 2, see section 216A.

defined benefit member, for chapter 7, part 2, see section 216A.

department's chief executive means the chief executive of the department.

deputy chairperson, in relation to the grants commission, means the person appointed as the deputy chairperson of the grants commission under section 231.

deputy electoral commissioner means the deputy electoral commissioner under the Electoral Act.

discretionary funds see section 109(2).

disqualifying offence see section 153(6).

distribute a how-to-vote card—

(a) includes make the card available to other persons; but

(b) does not include merely display the card.

Examples—

1 A person distributes how-to-vote cards if the person hands the cards to other persons or leaves them at a place for other persons to take away.

2 A person does not distribute how-to-vote cards if the person attaches the cards to walls and other structures, merely for display.

division, of a local government area, see section 8(3).

elect includes re-elect.

elector means a person entitled to vote in an election of councillors.

Not authorised—indicative only

Not authorised—indicative only

Electoral Act means the *Electoral Act 1992*.

electoral commission means the Electoral Commission of Queensland under the Electoral Act.

electoral commissioner means the electoral commissioner under the Electoral Act.

electronic document, for chapter 5A, means a document of a type mentioned in the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

eligible councillor, for a matter at a local government meeting, means a councillor at the meeting who does not have a prescribed conflict of interest or declarable conflict of interest in the matter.

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.

establish, a superannuation scheme, includes join in establishing a superannuation scheme.

executive officer, of an entity, means—

(a) if the entity has a board or management committee—each member of the board or committee; or

(b) each person, by whatever name called, who is concerned, or takes part, in the management of the entity.

expired conviction means a conviction—

(a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and

(b) that is not revived as prescribed by section 11 of that Act.

final part of the local government's term see section 161(5).

financial controller see section 118.

Forestry Act means the *Forestry Act 1959*.

fresh election means an election of all the councillors of a local government that is not a quadrennial election.

full cost pricing, of a significant business activity, see section 44(3).

full-time government job see section 168(3).

fund, for chapter 7, part 2, see section 216A.

general power, for chapter 5A, see section 150BU.

gift includes—

(a) a gift under the Local Government Electoral Act, section 107; and

(b) a gift that is required, under a regulation, to be recorded in a register of interests.

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

grants commission see section 228(1).

group of candidates see the Local Government Electoral Act, schedule 2.

help requirement, for chapter 5A, see section 150BV(1).

home includes—

(a) a room in a boarding house; and

(b) a caravan; and

(c) a manufactured home within the meaning of the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

Housing Act contract means a contract of sale—

(a) that was entered into under—

Not authorised—indicative only

Not authorised—indicative only

(i) the *State Housing Act 1945*, section 24, before the repeal of that Act; or

(ii) the *Housing Act 2003*, section 113; or

(b) under which—

(i) the purchase price, other than the deposit, is payable in 2 or more instalments; or

(ii) the sale is of a share in a house and land.

how-to-vote card see the Local Government Electoral Act, schedule.

identity card of a person means a card that—

(a) identifies the person as an investigator, authorised person, local government worker or authorised officer; and

(b) contains a recent photo of the person; and

(c) contains a copy of the person's signature; and

(d) states the expiry date for the identity card.

inappropriate conduct, for chapter 5A, see section 150K.

indigenous local government means—

(a) the local government for the following local government areas—

- Cherbourg
- Doomadgee
- Hope Vale
- Kowanyama
- Lockhart River
- Mapoon
- Napranum
- Palm Island
- Pormpuraaw
- Woorabinda

- Wujal Wujal
- Yarrabah; or

(b) an indigenous regional council.

indigenous regional council means—

(a) the Northern Peninsula Area Regional Council; or

(b) the Torres Strait Island Regional Council; or

(c) an indigenous regional council prescribed under a regulation.

industrial instrument means an industrial instrument under the Industrial Relations Act.

Industrial Relations Act means the *Industrial Relations Act 2016*.

information notice, for a decision, means a notice that states the following information—

(a) the decision;

(b) the reasons for the decision;

(c) the rights of review under this Act for the decision;

(d) how, and the period within which, a review under this Act for the decision may be started;

(e) how a stay of the operation of the decision may be applied for under this Act.

insolvent under administration see the Corporations Act, section 9.

interest means a financial or other interest.

interim administrator means a person appointed by the Governor in Council under section 123 to act in place of the councillors of a local government.

interim local law see section 26(4).

investigation policy, of a local government, for chapter 5A, see section 150AE(1).

Not authorised—indicative only

Not authorised—indicative only

investigator means a person who holds office under chapter 5A as an investigator.

joint government activity see section 10(2).

joint local government see section 25A(2).

joint local government area see section 25A(3).

judicial review is a review under the Judicial Review Act.

Judicial Review Act is the *Judicial Review Act 1991*.

land includes—

(a) freehold land; and

(b) land held from the State for a leasehold interest; and

(c) a mining claim.

Land Act means the *Land Act 1994*.

Land Title Act means the *Land Title Act 1994*.

LGIAsuper means the superannuation scheme continued in existence under section 217.

LGIAsuper Trustee means the board continued in existence under section 208.

loan includes—

(a) a loan under the Local Government Electoral Act, section 106; and

(b) a loan that is required, under a regulation, to be recorded in a register of interests.

local government—

(a) for chapter 5, part 1—see section 113A(1); or

(b) for chapter 5A—see section 150C; or

(c) for chapter 6, part 7—see section 204G; or

(d) for chapter 7, part 2—see section 216A; or

(e) generally—see section 8(1).

Local Government Act means a law under which a local government performs the local government's responsibilities, including for example—

(a) this Act; and

(b) a local law; and

(c) the Building Act; and

(d) the Planning Act; and

(e) a planning scheme; and

(f) the Plumbing and Drainage Act; and

(g) the *Water Act 2000*; and

(h) the *Water Supply (Safety and Reliability) Act 2008*.

local government area see section 8(2).

local government change see section 17(2).

Local Government Electoral Act means the *Local Government Electoral Act 2011*.

local government employee means—

(a) the chief executive officer; or

(b) a person holding an appointment under section 196.

local government entity, for chapter 7, part 2, see section 216A.

Local Government (Financial Assistance) Act means the *Local Government (Financial Assistance) Act 1995* (Cwlth).

local government meeting means a meeting of—

(a) a local government; or

(b) a committee of a local government.

local government principles means the principles expressed in the form of outcomes set out in section 4(2).

local government worker see section 138(4).

local law see section 26(2).

Not authorised—indicative only

Not authorised—indicative only

major policy decision, for a local government, means a decision—

(a) about the appointment of a chief executive officer of the local government; or

(b) about the remuneration of the chief executive officer of the local government; or

(c) to terminate the employment of the chief executive officer of the local government; or

(d) to enter into a contract the total value of which is more than the greater of the following—

(i) $200,000;

(ii) 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements included in the local government's most recently adopted annual report; or

(e) relating to making or preparing an arrangement, list, plan or register in the way provided under a regulation made under this Act that can be used to establish an exception to obtaining quotes or tenders when entering into a contract; or

(f) to make, amend or repeal a local law; or

(g) to make, amend or repeal a local planning instrument under the Planning Act; or

(h) under the Planning Act, chapter 3, part 3, division 2 on a development application that includes a variation request under that Act if the application proposes to—

(i) vary the category of development or category of assessment of development; or

(ii) vary the assessment benchmarks or criteria for accepted development that would apply to development; or

(iii) facilitate development that would result in a greater demand on infrastructure than the demand

anticipated in the local government's local government infrastructure plan; or

(i) under the Planning Act, chapter 3, part 5, division 2, subdivision 2 on a change application under that Act that includes a change to a variation approval if the application is being assessed under section 82 of that Act and the application proposes to—

(i) further vary the category of development or category of assessment of development; or

(ii) further vary the assessment benchmarks or criteria for accepted development that would apply to development; or

(iii) facilitate development that would result in a greater demand on infrastructure than the demand anticipated in the local government's local government infrastructure plan.

Note—

Change application assessments for minor changes under the Planning Act, section 81 are not subject to paragraph (i).

member means—

(a) in relation to the grants commission—the chairperson, deputy chairperson or another person appointed as a member of the grants commission under section 231; or

(b) in relation to the conduct tribunal—the president or a casual member of the conduct tribunal.

middle of the local government's term see section 161(4).

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

misconduct, for chapter 5A, see section 150L.

model local law see section 26(8).

model procedures, for chapter 5A, see section 150F.

National Competition Policy Agreements means the following agreements (made between the Commonwealth and the States on 11 April 1995), as in force for the time being—

Not authorised—indicative only

Not authorised—indicative only

(a) the Conduct Code Agreement;

(b) the Competition Principles Agreement;

(c) the Agreement to Implement National Competition Policy and Related Reforms.

notice means a written notice.

notice of intention to acquire land see section 61(2).

occupier—

(a) of a place, for chapter 5A, includes—

(i) if there is more than 1 person who apparently occupies the place—any of the persons; and

(ii) a person at the place who is apparently acting with the authority of a person who apparently occupies the place; and

(iii) if no person apparently occupies the place—a person who is an owner of the place; or

(b) of property, other than for chapter 5A, see section 125(6).

of, a place, for chapter 5A, includes at or on the place.

offence warning, for a direction or requirement by an investigator under chapter 5A, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with it.

overall State interest is—

(a) an interest that the Minister considers affects the economic, environmental or social interest of all or part of the State; or

(b) an interest that the Minister considers affects the interest of ensuring there is an accountable, effective, and efficient system of local government; or

(c) an interest prescribed under a regulation.

owner, of a thing that has been seized under chapter 5A, includes a person who would be entitled to possession of the thing had it not been seized.

owner of land—

(a) means—

(i) a registered proprietor of freehold land; or

(ii) a purchaser of freehold land from the State under an Act; or

(iii) a purchaser of land under a Housing Act contract; or

(iv) a person who has a share in land that the person bought under a Housing Act contract; or

(v) a lessee of land held from the State, and a manager, overseer or superintendent of the lessee who lives on the land; or

(vi) the holder of a mining claim or lease; or

(vii) the holder of land mentioned in the *Mineral Resources Act 1989*, schedule 2, definition *owner*; or

(viii) a lessee of land under any of the following Acts—

- the *Geothermal Energy Act 2010*
- the *Greenhouse Gas Storage Act 2009*
- the *Petroleum Act 1923*
- the *Petroleum and Gas (Production and Safety) Act 2004*; or

(ix) a lessee of land held from a government entity or local government; or

(x) the holder of an occupation permit or stock grazing permit under the Forestry Act or of a permit prescribed under a regulation; or

(xi) the holder of a permission to occupy from the chief executive of the department responsible for the administration of the Forestry Act; or

Not authorised—indicative only

Not authorised—indicative only

(xii) the holder of a permit to occupy under the Land Act; or

(xiii) a licensee under the Land Act; or

(xiv) 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 the participants in the scheme; or

(xv) another person who is entitled to receive rent for the land; or

(xvi) another person who would be entitled to receive rent for the land if it were leased at a full commercial rent; but

(b) does not include the State, or a government entity, except as far as the State or government entity is liable under an Act to pay rates.

permanent employee, for chapter 7, part 2, see—

(a) for a local government (other than the Brisbane City Council) or a local government entity—section 216B; or

(b) for the Brisbane City Council—section 216C.

place, for chapter 5A, includes—

(a) premises; and

(b) vacant land; and

(c) a place in Queensland waters; and

(d) a place held under more than 1 title or by more than 1 owner; and

(e) the land or water on which a building or other structure, or a group of buildings or other structures, is situated.

Planning Act means the *Planning Act 2016*.

planning scheme means a planning scheme under the Planning Act.

Plumbing and Drainage Act means the *Plumbing and Drainage Act 2018*.

police commissioner means the commissioner of the police service under the *Police Service Administration Act 1990*.

political party means an organisation registered as a political party under the Electoral Act.

premises, for chapter 5A, includes—

(a) a building or other structure; and

(b) a part of a building or other structure; and

(c) a caravan or vehicle; and

(d) a cave or tent; and

(e) premises held under more than 1 title or by more than 1 owner.

prescribed conflict of interest see section 150EG, 150EH or 150EI.

president, of the conduct tribunal, means the person appointed as the president of the conduct tribunal under section 150DN(1).

private property see section 125(4).

private sector means an entity that is not—

(a) the Commonwealth or a State; or

(b) a State authority; or

(c) a local government.

property means land, any structure on the land, and a vehicle.

public office, of a local government, see section 261.

public place, for chapter 5, part 2, division 1, see section 125(5).

public thoroughfare easement is an easement created under—

(a) the Land Act, chapter 6, part 4, division 8; or

(b) the Land Title Act, part 6, division 4.

public utilities means—

Not authorised—indicative only

Not authorised—indicative only

(a) works for the supply of drainage, electricity, gas, sewerage, telecommunications or water; or

(b) works for an infrastructure corridor under the *State Development and Public Works Organisation Act 1971*, section 82; or

(c) works for a purpose mentioned in the *State Development and Public Works Organisation Act 1971*, section 125; or

(d) other works that is declared under a regulation to be a public utility.

QCAT information notice means a notice complying with the QCAT Act, section 157(2).

quadrennial election means the election for local governments that is held in 2012, and every fourth year after 2012.

rateable land see section 93(2).

rates includes any interest accrued, or premium owing, on the rates.

reasonable entry notice see section 138AA(3).

reasonable proportion of electors see section 15(2).

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably satisfied means is satisfied on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

referral notice, for chapter 5A, see section 150AC.

registered officer, of a political party, means the registered officer of the political party under the Electoral Act.

registrar of titles means the public authority responsible for registering title to land and dealings affecting land.

regulated pool see the Building Act, section 231B.

related, for chapter 6, part 5A—

(a) to a councillor—see section 201A(3); or

(b) to a councillor advisor—see section 201A(4).

related party, of a councillor, see section 150EP.

relevant fund, for chapter 7, part 2, see section 216A.

relevant term, for a councillor, means the councillor's current term of office, and the period—

(a) starting on the day after the conclusion of the quadrennial election held before the most recent quadrennial election; and

(b) ending on the day immediately before the councillor's current term of office started.

relevant trustee, for chapter 7, part 2, see section 216A.

remedial action see section 113(2).

remedial notice see section 138AA(1).

remuneration category means a remuneration category prescribed under a regulation.

remuneration commission see section 176.

resolution, of a local government, means the formal decision of the local government at a local government meeting.

responsibility includes a function.

reward does not include—

(a) a councillor's remuneration as a councillor; or

(b) an amount decided under the deed under the *Superannuation (State Public Sector) Act 1990* in relation to a transferring member within the meaning of section 32A of that Act; or

(c) reasonable expenses actually incurred for any 1 or more of the following—

(i) accommodation;

(ii) meals;

(iii) domestic air travel;

Not authorised—indicative only

Not authorised—indicative only

(iv) taxi fares or public transport charges;

(v) motor vehicle hire; or

(d) an amount paid as a pension or otherwise for past service in a full-time government job.

road see section 59(2).

roads activity see section 47(5).

sanitary drain—

(a) means a drain that is immediately connected to, and used to carry discharges from, a soil or waste pipe; but

(b) does not include a pipe that is a part of a drain for carrying off effluent from a property after treatment in an on-site sewerage facility.

senior executive employee, 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.

sewerage treatment system means the infrastructure used to receive, transport and treat sewage or effluent (including sewers, access chambers, machinery, outfalls, pumps, structures and vents, for example).

sign, a thing, includes the making of a mark on the thing in front of someone else who signs the thing as witness.

significant business activity see section 43(4).

spent conviction means a conviction—

(a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and

(b) that is not revived as prescribed by section 11 of that Act.

standing committee, of a local government, means a committee of its councillors that meets to discuss the topic

decided by the local government when establishing the committee.

State-controlled road has the meaning given in the Transport Infrastructure Act.

State office, of the department, means the office of the department at the address prescribed under a regulation.

Statutory Bodies Financial Arrangements Act means the *Statutory Bodies Financial Arrangements Act 1982*.

stormwater drain see section 76(2).

stormwater installation see section 76(3).

structure means anything that is built or constructed, whether or not it is attached to land.

superannuation contributions, for chapter 7, part 2, see section 216A.

subordinate local law see section 26(5).

sustainable development is development that is designed to meet present needs while also taking into account future costs (including costs to the environment and the depletion of natural resources, for example).

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

Transport Infrastructure Act means the *Transport Infrastructure Act 1994*.

trust deed means a trust deed made by LGIAsuper Trustee.

trustee council see section 82(2).

trust land see section 82(3).

unsuitable meeting conduct, for chapter 5A, see section 150H.

Not authorised—indicative only