

# Local Government Bill 2008

## Explanatory Notes

### Title of the Bill

#### Local Government Bill 2008

### Introduction

Contemporary local government legislation reflects Queensland's growth, and strengthens and supports local governments in seizing the opportunity for expanding local initiatives and increasing flexibility to serve their communities.

Over the last 18 months the local government system in Queensland has undergone the most extensive reform process in more than a century. The Local Government Reform Program was initiated in April 2007 to build stronger local governments better able to deliver on their long term plans for sustainability and viability, and to meet their community service obligations, as needed by their respective communities.

As part of this reform program, new local government legislation is intrinsic to the goal of building stronger local governments. The convoluted and highly prescriptive legislative framework that existed under the *Local Government Act 1993* (LGA), the *Local Government (Community Government Areas) Act 2004* (CGA) and associated regulations and standards is replaced by a local government Bill that is contemporary, principles-based and applicable to all local governments across Queensland.

The streamlined size of the *Local Government Bill 2008* (the Bill) is primarily due to a number of provisions being incorporated into other, more relevant statutes or being omitted altogether due to redundancy or duplication. Also, the intention is for the Bill to be supplemented by regulations that govern essential but subordinate operational and administrative issues.

In reflecting the principle of “one size does not fit all”, the legislative framework better enables Queensland’s diverse range of local governments to make choices about processes to suit their size, location and administrative circumstances. The legislation balances increased discretion by articulating consistent integrity, accountability and transparency requirements for local government. These focus on councillor behaviour and local government performance in the delivery of sustainable development and proper management of assets and infrastructure. Increased flexibility is balanced by appropriate consequences and penalties for any failure to meet statutory responsibilities and standards.

### **General policy objectives of the Bill**

During extensive consultation, stakeholders asked that the Bill facilitate efficient, accountable and effective governance and service delivery.

Clear expectations and high standards about transparent decision-making, inclusive community consultation practices and local government performance are addressed. The groundwork is laid for a sensible but more adaptable approach to enterprises, partnerships of many secure kinds and sustainable financial arrangements and accountability.

The Bill fosters a culture of personal integrity and accountability for elected and administrative officials, and is unambiguous about the consequences of not meeting particular standards. It has a strong focus on the conduct of councillors and the performance of local governments.

#### **Alternatives to achieve policy objectives**

An alternative option is to retain the LGA and the CGA in their current forms. However, this would not provide a contemporary or appropriate legislative framework for the Queensland local government system to undertake its governance and service delivery role in the 21<sup>st</sup> century.

### **Estimated implementation costs**

#### *Costs to Government*

Implementation costs to Government, including training and publication of documentation supporting local government elections, will be met from existing budgetary allocations.

The Ministerial Ethics Advisory Committee will have minimal cost implications and be funded from existing resources.

### *Costs to local government and industry*

There are no financial implications as a result of the legislative proposals.

The Regional Conduct Review Panels (the panels) and the Local Government Remuneration and Discipline Tribunal (the tribunal) are funded by a local government user-pays system and replace the local government funded conduct review panels.

### **Consistency with Fundamental Legislative Principles**

Potential fundamental legislative principle issues arising from the State monitoring, enforcement, dismissal and dissolution powers are justified to enable the State to meet its constitutional responsibility for local government under the *Constitution of Queensland 2001* (Queensland Constitution). More details of the way the Bill complies with fundamental legislative principles are addressed clause by clause.

Of course, processes of the independent panels and the tribunal will comply with natural justice principles including show cause processes prior to any recommendation of dismissal. Further safeguards are provided by Parliament's involvement in the ratification of regulations for the dissolution of a council and the requirement for dismissal of an individual councillor by regulation made by the Governor in Council. The regulation will be tabled and therefore could be subject to a motion of disallowance and Parliamentary debate.

Similar to arrangements for conduct review panels under the LGA and the equivalent process for State MPs, where the decision of the Parliament on the review of a MP's conduct and any penalty is final, panels and the tribunal deliberations are non-appealable. The system for dealing with behavioural breaches for councillors takes account of the fact that there is no equivalent system of party discipline in local government as at the State level.

An additional consideration is that the system of disciplinary hearings must be simple, swift and independent to maintain public confidence and minimise any disruption to council operations.

The Bill respects Aboriginal tradition and Island custom, particularly by allowing all local governments to consider Aboriginal tradition and Island custom when exercising their powers under the Bill.

## **Consultation**

There will be further thorough consultation on the Bill following its introduction and prior to its passage. Submissions are invited and any changes the Minister decides are warranted will be made as amendments in committee. A summary of the extensive consultation to date is listed below.

### *Government*

Two workshops with government agencies and nine high level meetings with key statutory bodies and stakeholders were held to identify key themes and issues which informed the topics and outline of the issues papers. All departments were consulted during the Cabinet process.

On the Bill discussion paper, a number of departments raised issues related to the details of processes and procedures. Further consultation will be held during the drafting of the regulations for the Bill, where these matters will be addressed in detail.

### *Local Governments*

During a three stage consultation program, local governments and their professional associations were widely consulted. They responded with great interest and positive contributions drawing on their comprehensive knowledge and experience of local government.

Sixteen workshops and meetings with stakeholders were held throughout Queensland to discuss issues with the current legislation and improvements and changes desirable in the legislation.

Membership of the Local Government Act Review Reference Group included representatives from the Brisbane City Council, Local Government Managers Australia–Queensland, Local Government Association of Queensland (LGAQ), Aboriginal councils, rural and remote councils.

During the development of the Bill, the Minister held several roundtable discussions with peak bodies, including industrial unions. Ten external agencies and all government agencies were consulted.

At its September 2008 annual conference the LGAQ commented favourably on the proposals for the Bill, noting that they will meet most of the requirements of the LGAQ and its members.

### *Community*

Eight Issues Papers were released for public consultation on 17 July 2007 and 119 submissions were received, including from business, professional, unions and other special interest and community groups. The Queensland Council of Social Services, Commerce Queensland and a representative from Griffith University were represented on the Local Government Act Review Reference Group.

### **Queensland Office for Regulatory Efficiency**

The Queensland Office for Regulatory Efficiency was consulted during the drafting of the legislation and will be consulted during the development of regulations.

### **Integrated Development Assessment System**

There are no implications for the Integrated Development Assessment System.

### **Ministerial Policy Committee**

The Minister briefed the Policy Committee.

### **National Competition Policy**

Queensland Treasury has been consulted in the development of the Bill and supports the streamlining and updating of the legislation.

### **Office of the Queensland Parliamentary Counsel**

The Office of the Queensland Parliamentary Counsel has been briefed on the reforms and supports the legislative proposal.

## **Clause by clause explanation:**

### **Chapter 1 Preliminary**

#### **1 Short title**

Clause 1 provides that the short title of this Bill is the *Local Government Act 2008*.

#### **2 Commencement**

Clause 2 provides that the Bill will commence on a day to be fixed by proclamation.

#### **3 Purpose of this Bill**

The Queensland Constitution establishes Queensland's system of local government. The local government system sustains the social fabric of communities and currently these communities are experiencing rapid changes. The system is expected to respond efficiently to public expectations and demands for equitable access and high quality services whilst maintaining a level of accountability, effectiveness, efficiency, and sustainability.

The purpose of this Bill is to provide for how local governments are constituted, as well as the legal and organisational system of local government in Queensland. The Bill establishes and provides the powers, responsibilities, obligations and requirements, for the system of local government.

#### **4 Local government principles underpin this Bill**

This Bill provides a principles-based framework for decision making and governance. It allows local governments choices about processes to suit their size, location and administrative circumstances, as long as the processes are rational, justifiable and transparent. Anyone performing a responsibility under this Bill must consider the application of the local government principles.

Principles-based legislation allows practitioners to focus on outcomes and develop their own operational procedures and processes. It does not mean that the Bill will be less enforceable. Principles-based legislation achieves higher levels of compliance. By requiring entities to comply with the spirit rather than the letter of the law, they must come to terms with the reasons behind a law.

The principles highlight the absolute essentials of excellently performing local governments which citizens expect and deserve. The principles are at one and the same time, aspirational, inspirational, practical and demanding.

## **5 How this Bill applies to the Brisbane City Council**

Clause 5 makes clear that this Bill applies to the Brisbane City Council (BCC) to the extent the *City of Brisbane Act 1924* (COBA) does not. In line with the policy of providing a single legislative framework for Queensland's local government, it recognises that BCC has certain unique requirements.

## **6 Definitions**

As modern drafting practice, clause 6 refers the reader to a schedule, the dictionary, for the definitions applicable to particular words in the Bill.

# **Chapter 2 Local governments**

Chapter 2 provides more detail about the system of local government. It explains what a local government is and what area it governs. It establishes who makes up the parts of a local government, and the powers and responsibilities of those parts. It sets out how a change may be made to the name, area or representation of a local government. The intent is to make clear how the overall framework of local government is established.

## **Part 1                      Local governments and their constitution, responsibilities and powers**

### **7 What this part is about**

Clause 7 states that part 1 is about what a local government and a local government area are, what constitutes a local government and the responsibilities and powers of a local government and its constituent parts.

### **8 Local government's responsibility for local government areas**

Clause 8 defines a *local government*, a *local government area* and local government *divisions*. It outlines the Governor in Council's powers to identify, by a regulation, a local government's boundaries, divisions, representation (number of councillors), name or classification.

### **9 Powers of local governments generally**

Clause 9 empowers a local government to do anything that is necessary or convenient to provide good governance and deliver high quality services to their communities. This broad power is complemented by the local government principles. That is, a local government may do anything within its power in line with the local government principles.

As local government power is drawn from the State, a local government can only do something that the State can legally do.

Recognising cultural diversity as part of the good rule and governance of a local government area, clause 9 provides for all local governments to take account of Aboriginal tradition and Torres Strait Island custom. This promotes greater consideration of cultural matters in all local government areas.

A general competence power is included in clause 9 which ensures that those with responsibilities under the Bill have the powers to carry them out.

This clause also provides that when a local government is able to exercise a power outside of a local government area, it is no different to its exercise within a local government area.

## **10 Power includes power to conduct joint government activities**

Given the many effective kinds of collaborative arrangements operating between local governments and others, as well as the formation of regional local governments, the Bill supports these even further by legislating for the possibility of partnerships for multi-purposes such as managing a resource, providing services and/or operating facilities.

Clause 10 defines *joint government activities* and includes this as a specific local government power. Local governments may enter into agreements, contracts or other forms of collaboration with government entities from all levels of governments. This encompasses the entities previously known as joint local governments, as well as other types of collaborative arrangements.

The exercise of power outside of the local government's area as part of a joint government activity is by local law, with the agreement of the relevant government or governments.

## **11 Who a local government is constituted by**

Clause 11 outlines who constitutes a local government, including councillors when elected or appointed in the normal manner, when a local government has been dismissed or any other situation when there are no councillors or interim administrator. The intent is succession and transition certainty within the local government.

## **12 Responsibilities of councillors**

The effective functioning of local governments depends on local government legislation striking an appropriate balance between the roles of elected members (councillors) and those of the council's employees (officers). Of particular importance is clearly defining the separate roles of the mayor and the chief executive officer of the local government (CEO), and their relationship.

Similar to the principle of separation of powers that operates at Commonwealth and State levels of government, the Bill makes clear the separate and different responsibilities of councillors, mayors, CEOs and officers. Councillors make up a collection of elected members that constitute the local government executive arm, which makes laws and decides policy and other matters at a strategic level. The local government

appoints a CEO to implement the decisions of the executive arm by overseeing the work of officers of local government at an operational level.

The responsibilities of the mayor include being the agent between the executive and officers of local government by directing the CEO. The responsibility of a councillor is to represent the public interests of the local government's electors. Officers provide advice and options to the executive, through the CEO, about implementation of decisions of the executive as well as actually implementing policies and decisions.

It is the responsibility of councillors and mayors to achieve the purpose and principles of local government as defined in this Bill. Of particular relevance is the principle, the *ethical and legal behaviour of councillors and officers*.

Clause 12 details responsibilities of councillors, including the mayor, who should have a strategic approach, similar to a board of directors. It clarifies that all councillors, including the mayor, are responsible for the overall direction of the local government, taking a leading role in determining the way the local government achieves the purpose and principles of local government. This clause recognises that the primary accountability of the local government is to its community, and that the decisions of the local government must be made with regard to the benefit of the entire local government area.

It is the responsibility of the mayor to provide a visionary and strategic role in the economic, social and environmental management of the local area. The mayor has additional responsibilities to lead as the first among equals.

It is clear from subsection (3) only the mayor has the power to direct and to manage the CEO. The mayor must also take a leadership role in establishing and managing a professional working relationship with the CEO, and to provide the CEO with feedback on performance, thus, reinforcing the line management authority of the CEO that neither the mayor (nor any other councillor) may direct any other officer.

### **13 Responsibilities of local government employees**

Clause 13 acknowledges that local government employees are guided by work performance and conduct principles. These principles are a combination of ethical obligations (e.g. carrying out duties with impartiality and integrity) and work performance standards (e.g. ensuring effective, efficient and economical management of public resources). This clause is complementary to the *Public Sector Ethics Act 1994* which

prescribes that employees, including the CEO, must comply with the council's code of conduct.

The responsibilities of the CEO, as the head of the administrative arm of local government, are outlined in this clause. The line management role and separation of powers is emphasised by the responsibility for appointment of all local government officers, including senior officers. This provision does not prevent the local government from deciding recruitment and merit selection policy, the budget and employment policy, which will guide the CEO's recruitment and selection process.

It is incumbent on the CEO to develop with the mayor, a professional, effective working relationship.

## **Part 2                      Divisions of local government areas**

Part 2 explains that a local government may be divided or undivided for representation purposes. When a local government is divided, there are certain conditions which apply to ensure that the representation is equitable and to maintain 'one vote one value'.

### **14 What this part is about**

Clause 14 outlines what chapter 2, part 2 is about.

### **15 Division of local government areas**

Clause 15 requires the equitable distribution of electors across divisions of local government areas. A quota of electors (a reasonable proportion of electors) is determined for each division so that electors receive comparable representation on a council. Where an area is divided, the voter to division ratio must not vary by more than 20% from the quota when the number of voters is less than 10,000 or 10% when the number of voters exceeds 10,000.

## **16 Review of divisions of local government areas**

Clause 16 provides that the representation of local government divisions is reviewed periodically by requiring local governments to advise the Minister that each division complies with the voter to division ratio. This must happen no later than two years before the next quadrennial election and be based on the latest available electoral roll.

## **Part 3                      Changing a local government area, name or representation**

To maintain principles of democratic representation, a change to the name or area of a local government, or to the number of councillors representing a community, must be undertaken in a transparent and accountable way. Part 3 ensures a process of independent assessment of proposed changes.

### **Division 1                      Introduction**

#### **17 What this part is about**

Clause 17 defines a *local government change* and briefly explains the process to make such changes which must be in the public interest, with further details in division 2. The clause also provides a head of power for the making of a regulation to provide for an implementation process.

### **Division 2                      The process for change**

#### **18 Who may start the change process**

Clause 18 says that the Minister, a local government or the Electoral Commission of Queensland (ECQ) may generate an application for a change.

Only the Minister will be able to make an application for a change to those decisions affected as part of the 2007 structural reform process. This is to minimise the potential for contradiction of Parliament's reform intentions

and the associated waste of public money in assessing these kinds of proposals.

## **19 Assessment**

The independent Local Government Change Commission (the change commission) assesses and decides an application for a local government change. Division 3 describes the establishment of the change commission.

To justify the application for a change, the applicant must have sufficient regard to the principles for local government. For example, a local government will provide evidence of meaningful community consultation and engagement. As part of their assessment, the commission must conduct public consultation about the proposed changes, to ensure there is genuine community support for the change. Referenda are not required.

In assessing any application, the change commission must:

- consider whether the application has due regard to the principles of local government; and
- obtain the Minister's views, thus protecting matters of interest to the State.

In addition to these requirements, the change commission may conduct its assessment in any way it considers appropriate but must call for submissions and have a public hearing.

The commission must notify the Minister of its final assessment. If the assessment is that the application for change should proceed, the change commission must recommend the making of a regulation to the Governor in Council.

The final determination is published in the gazette, on the commission's website and in a newspaper circulating generally in local government areas affected by the determination.

## **20 Implementation**

The Governor in Council implements the change under a regulation. The involvement of the Governor in Council reflects the importance of the constitution of local government areas and representation. Clause 20 exempts a local government from particular State taxes as a result of the implementation of a local government change.

## **21 Decisions under this division are not subject to appeal**

Clause 21 provides that any decision of the change commission in relation to a local government change cannot be appealed. The change commission is an independent body with an appropriate safeguard provided by the implementation of its decisions by the Governor in Council. Also, decisions by the change commission do not abrogate individual rights, liberties or obligations.

## **Division 3            The change commission**

### **22 Change commission is established**

Clause 22 establishes the change commission and outlines who constitutes the change commission. The intent is for the electoral commissioner to have the discretion to decide which of several choices makes up the change commission based on which would be most appropriate to assess a particular application. Minor changes may be managed by the electoral commissioner or the electoral commissioner's delegate alone, for example. For more complex changes, a number of casual commissioners may be appointed.

### **23 Casual commissioners**

Clause 23 lists the qualifications and terms of appointment for a casual commissioner to the change commission. The Governor in Council may appoint a qualified person for no longer than 3 years on the terms and conditions that the Governor in Council decides.

### **24 Conflict of interests**

To maintain transparent, ethical and just decision-making processes for all local government changes, clause 24 declares that a member of the change commission must not take part in the consideration of a matter in which they have a direct or indirect financial interest. If the member with the conflict of interest is the electoral commissioner, the deputy commissioner must consider and assess the application in question. If the member is the electoral commissioner's delegate, they must inform the electoral commissioner.

Clause 24 imposes a penalty if a member of the change commission takes part in a matter where they have a conflict of interest or if they fail to declare the conflict.

## **25 Annual report of change commission**

As an accountability and transparency measure, clause 25 requires that the annual report of the change commission be given to the Minister for tabling in Parliament and be included in the ECQ's annual report. The public must be able to inspect copies of the annual report.

# **Chapter 3     The business of local governments**

Chapter 3 provides the framework for the day to day operations of a local government – local laws, business enterprises, roads. It also provides for those matters which are unique to the operation of indigenous regional councils.

## **Part 1             Local laws**

Local laws are how a local government regulates its local government area. The Bill gives a local government the necessary powers to make local laws that are suitable to their particular needs and resources, and that achieve the purpose and principles of local government, without unnecessary administrative red tape. As a transitional measure, the department will use its regional structure to build capacity in local governments to manage local law making, including the State interest check.

Local laws are an essential part of the regulatory landscape, and fit into the Queensland legislative scheme in a similar fashion to State laws fitting into the Commonwealth's legislative scheme.

Local laws are defined in the *Statutory Instruments Act 1992*, showing that the power to make a local law is functionally a delegated power from the State Parliament.

Under the *Legislative Standards Act 1992* the Office of the Queensland Parliamentary Counsel is empowered to issue guidelines for the drafting of local laws to ensure they are consistent with the drafting principles applied to the drafting of subordinate legislation.

Part 1 provides for a simplified local law making system that:

- requires local governments to comply with the local government principles;
- gives local governments the power to make and implement local laws via their own process;
- provides flexibility and certainty for local governments about the power to make local laws for any matter relevant to the local government area, subject to the prohibition on making of local laws for certain matters;
- sets out State powers to make model local laws and to stipulate those matters about which local laws cannot be made; and
- emphasises the importance of the State interest check in the process of making local laws.

## **Division 1            Introduction**

### **26 What this part is about**

Clause 26 states what this part is about and defines *local law*, *interim local law* and *subordinate local law*.

The Minister has a power to make model local laws. A model local law is developed by the department to be sufficiently generic and encompassing to cover the majority of local governments. State interest checks are conducted by the department, and so a model local law may be adopted by a local government. This assistance is offered to all local governments who wish to save resources, particularly smaller local governments.

## **27 Interaction with State laws and the State**

Clause 27 clarifies that a law made by the State overrides a law made by a local government if there is any conflict between the two. It also stipulates that a local law does not bind the State which reflects the constitutional relationship between the State and local government spheres.

## **Division 2            Making, recording and reviewing local laws**

### **28 Power to make a local law**

Clause 28 provides a local government with a head of power to make a local law that is necessary and convenient for the good rule and local government of its area. The power is intended to be broad enough for a local government to make local laws that are relevant to its context, necessary for the management of the local government area, and enforceable by the local government.

### **29 Local law making process**

Clause 29 outlines the framework for making a local law. A local government can develop its own detailed process for making a local law, as long as that process is consistent with the framework and with the local government principles.

A key part of the process is the requirement for a local government to consult with the relevant government entities about overall State interest before it makes a local law. To reflect contemporary interaction between the two spheres of government, this consultation is to be undertaken directly between the local government and the relevant agency.

However, the adoption of model local laws and interim local laws by local governments do not require this consultation.

Safeguards for the consistency of local laws across the State include that:

- local governments provide their local laws to the Minister within seven days of gazettal;
- local governments provide a drafting certificate for all local laws; and
- the department will continue to maintain a register of local laws.

This is complemented by the power in this Bill for the Governor in Council to make a regulation about drafting standards and other matters related to local laws.

Should a local law not comply with the legislation, the Minister has a power to revoke it and/or direct that it be changed.

### **30 Expiry of interim local law revives previous law**

Clause 30 deals with the situation of the expiry of an interim local law which amended a local law, but was not itself made a local law in the specified time. When the interim local law expires, the previous local law applies. This is to maintain a level of regulation in this situation.

### **31 Local law register**

For transparency and accountability, clause 31 provides that a local government must keep, and have publicly available, a register of all its local laws, subordinate local laws and interim local laws.

### **32 Consolidated versions of local laws**

Clause 32 defines a consolidated version of a local law and shows how it can replace the original version of a local law.

### **33 Regular review of local laws**

Local governments must ensure local laws are kept current, relevant and enforceable. This clause requires a local government to regularly review its local laws to assess their relevance to the public interest, for example, assessment of anti-competitive provisions, redundancy and obsolescence.

The intent is to encourage continuous review and improvement of local laws, as opposed to a time-limited and lengthy review process potentially leading to compliance for the sake of compliance.

## **Division 3            Local laws that can not be made**

### **34 What this division is about**

There are certain matters about which a local law cannot be made. If a local government makes a local law about a specified matter, the local law is invalid to the extent specified.

### **35 Network connections**

A local law regulating network connections is not valid. This is based on regulation previously provided by Commonwealth telecommunications legislation.

### **36 Election advertising**

A local government is prevented from making a local law about election advertising. This is to stop a local government making a local law which purports to prevent a candidate distributing how-to-vote material and election signage which may create unfair conditions for some candidates in local government elections.

### **37 Development processes**

All development comes under the *Integrated Planning Act 1997*. Accordingly, this clause prohibits a local government from making a local law about a development process.

### **38 Anti-competitive provisions**

A local government must not attempt to negate National Competition Policy requirements through local laws.

## **Part 2                      Business enterprises and activities**

### **Division 1                Beneficial enterprises**

Local governments conduct beneficial enterprises as part of their day to day business. In general, the conduct of these enterprises is governed by the local government principles and the financial sustainability criteria outlined in clause 102.

The intent of this division is to extend opportunities for local government viability and sustainability by widening investment in own source revenue initiatives.

To balance the increased risk to local government when an enterprise is undertaken with the private sector, certain requirements are triggered.

#### **39 What this division is about**

Clause 39 gives information about what is contained in division 1 and defines an *enterprise*, a *beneficial enterprise* and what is meant by the term *conducting*.

This clause also states that a beneficial enterprise can include an enterprise that may contribute, for example, to the economic development of the local government area.

#### **40 Conducting beneficial enterprises**

A local government may conduct a beneficial enterprise by resolution after consulting with, and having regard to the advice of, professional advisors (defined in the same clause).

In addition, clause 40 explains the way in which a local government may conduct the beneficial enterprise such as by participating with an association (also defined in this clause).

#### **41 Register of beneficial enterprises**

To maintain transparency and accountability, this clause provides that a local government must keep a register of beneficial enterprises, and have it

open to public inspection. The local government must provide a copy of the register to the department's chief executive and the auditor-general, and can be penalised for non-compliance.

## **42 Planning for a beneficial enterprise with the private business sector**

This clause sets out additional requirements that apply if a local government plans to invest in a beneficial enterprise with the private business sector. The local government must identify the planned investment as a capital expense in its budget. If a local government does not identify the investment in the budget, or if the planned investment is more than an amount prescribed by regulation, the local government must seek approval from the department's chief executive before the investment is made.

The intent of this is to ensure the local government can meet the risks associated with the particular investment.

## **Division 2            Business reform, including competitive neutrality**

### **43 What this division is about**

National Competition Policy (NCP) was adopted by the Commonwealth, States and Territories in 1995, and remains in force. The Competition Principles Agreements underpin NCP, and include obligations for local governments. A key obligation is the application of the *competitive neutrality principle*, which means that publicly and privately owned businesses should compete on an equal footing. In other words, a government owned business should not have an advantage over a private sector competitor by reason of it being owned by government.

This division provides a framework to facilitate compliance with the agreements. For larger businesses, or *significant business activities*, there are options for local governments to comply with the competitive neutrality principle.

For smaller businesses or business activities, the division provides for a less onerous code of competitive conduct.

#### **44 Ways to apply the competitive neutrality principle**

Clause 44 outlines in broad terms three options for reform available to local governments to ensure compliance with the competitive neutrality principle. This clause defines the three options: *full cost pricing*, *commercialisation* and *corporatisation*. Further provisions for the application of these reforms to a significant business activity can be provided for in a regulation.

#### **45 Identifying significant business activities**

Clause 45 requires a local government to annually identify its business activities, including new business activities, and include a list of those activities with the type of competitive neutrality reform implemented within that business. This list must be included in the local government's annual report.

#### **46 Assessing public benefit**

This clause requires local governments to undertake a public benefit test for each of its significant business activities to establish whether it is in the public benefit to implement some form of competitive neutrality reform. Public benefit tests must be undertaken every three years for unreformed businesses.

#### **47 Code of competitive conduct**

This clause requires local governments to identify smaller business activities which are in direct competition with the private sector, and gives them discretion to make decisions on applying the Code of Competitive Conduct (the Code). However, local governments do not have discretion in the application of the Code to building certification and roads activities.

The Code involves the application of competitive neutrality principles, including adjustments to take account of the advantages and disadvantages of local government ownership.

The Code is intended to be a less onerous way for smaller business activities to comply with competitive neutrality principles.

## **48 Competitive neutrality complaints**

Clause 48 requires each local government to establish a process to resolve competitive neutrality complaints.

## **Division 3 Responsibilities and liabilities of employees of corporate entities**

### **49 Director's duty to disclose interest in a matter**

Clause 49 requires a director of a corporate entity to disclose direct and indirect interests in matters to be considered by the board of directors. The penalty for non-disclosure is consistent with the *Government Owned Corporations Act 1993* (GOCA). This means that it is higher than for a similar non-disclosure by other officials under this Bill.

This clause also provides that the director is not entitled to take part in any aspect about the matter if their interest is a material personal interest (as defined in clause 172). However, the board may pass a resolution about the interest and allow the director to consider or vote on the matter.

### **50 Obligations of a corporate entity's employees**

This clause sets out the responsibilities of employees of corporate entities in relation to exercising their powers.

### **51 Corporate entity is not to pay premiums for certain liabilities of employees**

Clause 51 prevents a corporate entity from paying an insurance premium for insurance of an employee of the entity if the insurance indemnifies the employee for a wilful breach of duty. Any instrument that purports to do so is void under this clause.

### **52 When a corporate entity is not to indemnify employees**

This clause outlines the circumstances under which a corporate entity should not indemnify an employee for a liability. These circumstances are generally where the employee has acted in bad faith.

### **53 Prohibition on loans to directors**

Corporate entities can not make loans or guarantees to directors, their spouses or their relatives by this clause. This is consistent with general corporate governance principles. There is a penalty for anyone who knowingly agrees to the loan or guarantee.

### **54 Duty to prevent insolvent trading**

Clause 54 imposes a duty on directors of corporate entities not to incur a debt on behalf of the entity where the entity is or the director has reasonable grounds to suspect that it will become insolvent. The GOCA and the Commonwealth *Corporations Act 2001* (Cwlth Corporations Act) impose the same duty on directors of entities under their jurisdiction.

### **55 Order for examination of persons concerned with corporate entities**

This clause enables the local government or Attorney-General to apply to the Supreme Court of District Court for an order for the court to examine persons concerned with the corporate entity's management, administration or affairs. There must be reasonable grounds that a person may be capable of giving information or they have been or may have been guilty of fraud or malpractice in relation to the corporate entity.

### **56 Examination of persons concerned with corporate entities**

This clause gives the Attorney-General or a local government the power to apply to a court for an order to require the person to be examined under oath. There must be reasonable grounds to believe the person has engaged in fraud, negligence or other breaches of their duties as a director or if they may be capable of giving information in relation to the management or administration of the entity. The provisions further set out the conditions for the examination. This clause mirrors the powers under GOCA applying to State government owned corporations. The person is excused from answering if it might tend to incriminate him/her.

### **57 Relief from liability for malpractice**

This clause allows an employee of a corporate entity to be relieved from liability that would otherwise be incurred for negligence, default or breach where the person has acted honestly and ought fairly to be excused in the

circumstances. This supports the natural justice principle that liability should not generally be strictly applied.

## **58 False or misleading information**

Clause 58 deals with employees of corporate entities who make false or misleading statements or omissions. The penalties for this clause are higher than those for councillors or local government employees. However, given the status of corporate entities it is correct to have penalties that are consistent with the GOCA and Cwlth Corporations Act.

# **Part 3 Roads and other infrastructure**

## **Division 1 Roads**

The intent of this division to give a local government the power to manage, control and maintain roads in its area.

### **59 What this division is about**

This clause clarifies the purpose of the division. The definition of *roads* is included here to make clear that certain roads do not come under local government control.

### **60 Control of roads**

This clause provides a local government with a head of power to control roads, and lists those activities included in control.

This clause contains a power to approve the naming and numbering of private roads, so local government can ensure that addressing data for private estates is collected for emergency service purposes. It also allows a local government to ensure that naming of roads is consistent with the relevant standards and guidelines. This is to prevent multiple roads in one locality with the same name, for example.

### **61 Notice of intention to acquire land to widen a road**

This clause provides a head of power for local government to acquire land to widen a road. It sets out the process by which a local government can acquire land and requires a local government to give the owner of affected land a notice of its intention to acquire the land.

### **62 Compensation for a notice of intention to acquire land**

A person is entitled to claim compensation if the value of the land adjoining the land to be acquired is affected by the local government's intention to acquire the land.

### **63 Appeal on a claim for compensation**

Clause 63 provides an appeal process for decisions the local government makes about the compensation through the Planning and Environment Court.

### **64 Acquisition of land instead of compensation**

After the notice of intention to acquire land is served, but before the land is sold, the local government can acquire the land instead of paying compensation for injurious affection. The land must be used for a public road within three months of its acquisition. Compensation for the acquisition of the land, if not agreed between the parties, must be assessed as at the date of the acquisition.

Injurious affection is the depreciation in the value of land caused by the adverse affects of public works through such things as noise, vibration, overshadowing, loss of support, and restriction or loss of access.

### **65 What is to happen if realignment is not carried out**

This clause describes the process a local government must follow if it decides not to proceed with a realignment.

### **66 Compensation if realignment not carried out**

If a local government declares an intention to realign a road, but then does not, and owners of affected land have made improvements to structures on the affected land, the local government must compensate the owners for the subsequent loss in value.

## **67 Acquiring land for use as a footpath**

Clause 67 provides a head of power for a local government to acquire land for use as a footpath and certain rights for the owner of the land to be acquired.

## **68 Notice to local government of opening or closing of roads**

In recognition of the local government control of roads, a local government must be notified if an application is made for a road in its area to be opened or closed.

## **69 Closing roads**

This clause gives a local government power to close a road, either permanently or temporarily, if there is another road or temporary road available for use by traffic.

## **70 Temporary roads**

Clause 70 gives a local government a power to make a temporary road only if it would not be practicable to temporarily close the actual road. The local government is required to give an owner of land where the temporary road is to be notice prior to entry and provide compensation for any damage caused because of the making or use of a temporary road.

## **71 Road levels**

Clause 71 requires a local government to advise an owner or occupier of the permanent fixed level of a road if asked.

## **72 Assessment of impacts on roads from certain activities**

This clause means that local governments can adequately manage any impacts on roads by particular entities.

## **73 Categorisation of roads**

Local governments must assess and decide, based on the surface, the category of each road in its area.

## **74 Roads map and register**

As the local government is the manager of roads, one of its responsibilities is to keep an account of all the roads in their area. The public must also be able to access this information.

## **75 Unauthorised works on roads**

This mirrors the powers of the State on State-controlled roads to take action against unauthorised works on roads.

## **Division 2 Stormwater drains**

### **76 What this division is about**

This division gives powers and requirements for stormwater drains and stormwater installations.

### **77 Connecting stormwater installation to stormwater drain**

A local government has a power to regulate the connection of stormwater installations to stormwater drains, and there are penalties for a person who does not comply with the local government's requirements or approval for the connections.

### **78 No connecting sewerage to stormwater drain**

Sewerage and stormwater flows must remain separate, by preventing cross connection of sewerage installations to stormwater installations or stormwater drains.

### **79 No trade waste or prohibited substances in stormwater drain**

Particular substances must not be put into a stormwater drain - to prevent contamination of the stormwater flows and to avoid damage to the stormwater infrastructure. The local government has a power to recover costs for repairing any damage due to a person putting a prohibited substance in a stormwater drain.

## **80 Interference with path of stormwater**

The intention of clause 80 is to prevent stormwater collecting and becoming stagnant when it flows over land. However, if the stormwater is collected in such a way that no offensive material accumulates, this clause does not apply.

# **Part 4                    The business of indigenous regional councils**

## **Division 1            Introduction**

### **81 What this part is about**

The Northern Peninsula Area Regional Council, the Torres Strait Island Regional Council or another local government prescribed under a regulation are indigenous regional councils. They have specific additional functions to other local governments because of the need to manage land trusts and particular changes when they were established as indigenous regional councils.

## **Division 2            Managing trust land**

### **82 What this division is about**

Indigenous regional councils are trustees of land held as a deed of grant in trust (DOGIT), and some contiguous land in their local government area. They manage these lands and any assets upon the land. This division sets out the requirements for these councils in their capacity as trustee councils.

Clause 82 states what this division is about and defines *trustee council* and *trust land*. It also clarifies that anything in this division will not affect the status of land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991* and that the provisions are additional to provisions that already apply to the land under the *Land Act 1994* (Land Act) or any other legislation.

### **83 Trustee business must be conducted separately**

An indigenous regional council must separate its functions as the trustee council from any other function. In particular, it must separate the performance of its responsibilities in the two roles, in the way it obtains information, its meetings, accounts and records.

### **84 Meetings about trust land generally open to the public**

Meetings must be open to the public, unless the trustee council resolves to close it for the particular reasons in the legislation. The resolution to close the meeting to the public must tell the general nature of the matters to be discussed and the trustee council must not make any resolution, other than a simple process resolution, during a meeting that is closed to the public.

The trustee council is accountable to their community and they must be open in their decisions about trust land, while recognising there are certain circumstances that warrant a closed meeting. The overall effect of this clause is that a decision about trust land will not be able to be made by the trustee council ‘behind closed doors’.

### **85 Community forum input on trust change proposals**

A trustee council must seek, via written notice, their community forum’s advice and input on any trust change proposal (as defined in this clause). The indigenous regional council must allow the community forum sufficient time to formulate its advice.

When a trustee council needs to make a decision regarding land that is the subject of a DOGIT, it must consider the advice of its community forum. If, after considering that advice, the trustee council’s decision is not consistent with advice received from the community forum, the reason(s) for the decision must be provided back to the forum. Then, if the forum does not support the trustee council’s decision, the council can still make the decision only if the majority of voting councillors vote in favour of the decision. The vote cannot favour the decision if the councillor for the division for which the land, the subject of the proposal is situated, voted against it.

### **86 Grouping of trust land not available**

Clause 86 stipulates that the chief executive of the department administering the Land Act must not approve the grouping of DOGIT land.

This clause provides certainty for the affected communities that the formation of the indigenous regional council does not mean the amalgamation of the individual DOGITs.

### **Division 3            Community forums**

To recognise and protect Torres Strait Island customs and Aboriginal culture and traditions, each indigenous regional council (including each division of an indigenous regional council) must have a community forum. Community forums give advice to indigenous regional councils. The community forums meet with the community to gain the community view on issues about trust land (as discussed in the previous division), planning, service delivery and culture and convey these views back to the indigenous regional councils.

As community forums are established under this legislation and the composition is set by regulation, this clause stipulates that no other body can be created to carry out a community forum's functions.

#### **87 Community forums**

Clause 87 gives the Minister the responsibility to establish a community forum for each indigenous regional council or for each division of an indigenous regional council.

A community forum comprises the councillor representing the particular division (who will automatically be the chairperson) and three to seven elected community members.

After consultation with the indigenous regional council, the Minister must decide on how many elected members the forum is to have and the name of the forum. The Minister must then ensure the names of each community forum along with the names of all the members, are published in a locally circulating newspaper or the gazette so as to ensure that the local communities are aware of who their forum members are.

The community forum's operational procedures remain at the discretion of the indigenous regional councils.

## **88 Members of a community forum**

To provide a mechanism for accountability and transparency, elections of, and filling of vacancies for, members of a community forum must be carried out under a regulation. The regulation must state the process to be followed for the election and the qualifications required to be a member of a community forum. However, clause 88 mandates that a mayor or a candidate for mayor of an indigenous regional council cannot be a member of a community forum.

To minimise the time where a community may not be represented by a community forum, the election for the members of a community forum are held at the same time as (or as close as possible to) the quadrennial elections for indigenous regional council and the members of the community forum hold that position until the next election of community forum members.

## **89 Payments to elected members of a community forum**

Members are not entitled to be remunerated. The indigenous regional council may authorise the payment of expenses incurred by elected members while they are performing their duties or the council may provide facilities for elected members to enable them to perform their duties.

## **90 Convenors for a community forum**

Apart from the councillor, as chairperson, and the three to seven elected members, each community forum has a convener who is responsible for the overall administration and operation of the community forum. The convener liaises between the forum and the indigenous regional council and is responsible for giving public notice of the forum's meetings but he/she cannot be a councillor or mayor of an indigenous regional council or an elected member of a community forum.

The convener is not elected, but is appointed by the indigenous regional council. The convener can be a convener of two or more community forums (if they can effectively manage the duties of all the positions) and can perform extra duties for the indigenous regional council as well as their functions as convener. For these reasons, a convener can not vote at any meeting of the community forum. The convener must be skilled and experienced in the administration of land to enable them to provide accurate advice to the indigenous regional council.

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## Chapter 4 Financial matters

### Part 1 Rates

Rating is a key mechanism by which local governments in Queensland raise own-source revenue. The rating powers under this Bill allow local governments flexibility in setting appropriate and legitimate rates for their areas and to fully access rates revenue.

Under the Bill, the levying of rates will continue to be based on unimproved value under the *Valuation of Land Act 1944* (VOLA), and the Bill will allow for differential and special rating instruments.

Many stakeholders advocated change to another form of rating. However, after extensive consultation and research, for example, by the Australian Productivity Commission in its 2007 report on assessing local government revenue raising capacity, it is evident that implementing a new rating system across local governments would be prohibitively expensive and unduly complex.

Any type of rating system is not perfect and all have their own strengths and weaknesses. However, provisions for differential and special rating instruments which acknowledge that “one size does not fit all” allow local governments flexibility.

Local governments will need to make rating decisions in accordance with the financial sustainability criteria, in particular: *manage financial risks prudently and formulate spending and rating policies that ensure a reasonable degree of equity, stability and predictability*. The level or amount of rates and fees decided by a local government must ensure financial sustainability and intergenerational equity.

#### 91 What this part is about

The definition of rates captures all types of rates, fees, charges and levies that a local government can make and collect. While rates continue to be based on unimproved value of land, a local government may exercise reasonable discretion within the principles of local government and financial sustainability criteria.

## **92 Types of rates**

This clause defines and explains the four types of rates a local government can make and levy; general rates, special rates, utility rates and separate rates.

## **93 Land on which rates are levied**

This clause defines *rateable land* and sets out those types of land which are exempted from rating.

## **94 Power to levy rates**

If a local government area contains rateable land, a local government must levy general rates and may levy utility rates, special rates and separate rates. All decisions about what rates are to be levied for a particular financial year must be made at the local government's budget meeting. Given the level of community interest in this issue and the broad powers of the council, openness and accountability are essential.

## **95 Overdue rates are a charge over land**

This clause provides a mechanism for local governments to register certain documents with the registrar of titles to make unpaid rates a charge. This does not limit any other way local governments can recover unpaid rates.

## **96 Regulations for rates**

As rating is both a technical and contentious area, regulations may provide further detail about rating. In particular, the ability for a local government to give a concession on rates, and how a local government can categorise land in its area in different ways in order to charge differential rates.

# **Part 2                      Fees**

In addition to rating, local governments can also charge fees in specific circumstances and with adherence to the financial sustainability criteria.

### **97 Fees for services**

A local government may charge a fee in a number of circumstances, and within certain limits. Fixing the fee by local law or by resolution makes it public.

### **98 Register of service fees**

To further ensure transparency, a local government must keep a register of its service fees. The register must be accessible to the public.

### **99 Fees on occupiers of high-water mark land**

Land below the high-water mark is State land under the Land Act. A local government is not permitted to charge a rate on this land. However, with increasing development on land below the high-water mark, occupiers of this land are accessing local government services and using local government infrastructure.

A local government has a power to charge a general fee to occupiers of land below the high-water mark. The fee may be levied in relation to the use of roads and infrastructure. The fee is not based on a valuation of the land below the high-water mark under VOLA. To provide transparency, a local government must make the fee by resolution.

### **100 Fees on residents of indigenous local government areas**

Many indigenous local government areas include land with a DOGIT. As DOGITs are not rateable, no general rate charge for premises on this land is permitted. This clause provides indigenous local governments the power to make and levy a fee on residents living on this land. To provide transparency, a local government must make the fee by resolution.

Clause 100 also gives an indigenous regional council the power to exempt a resident from paying a fee if another amount is payable on the same land.

## **Part 3                      Financial sustainability and    accountability**

Financial sustainability and accountability are not negotiable so the relevant processes are mandated in this Bill. The community expects local governments to manage their public infrastructure and assets for the long-term benefit and viability of the communities they represent, and in the short term deliver essential services and account for all public monies.

Local government in Queensland is facing significant challenges in financial governance and service delivery. It must successfully manage a number of competing priorities associated with:

- managing population changes;
- ongoing sustainability of the council and its community;
- significant infrastructure provision; and
- regional initiatives.

Key components of this part for local government financial and infrastructure sustainability, management and accountability are:

- a focus on longer-term planning;
- transparency and accountability to the community and the Minister; and
- penalties for non-compliance.

These provisions supply a system where there is balance between flexibility for local governments to decide process and take responsibility, and penalties for non-compliance with the mandated requirements.

### **101 Statutory Bodies Financial Arrangements Act applies to local governments**

A local government is a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* so the local government can use a power under that Act if it is necessary for performing its functions under a local government Act.

Important powers which are used by local governments under the *Statutory Bodies Financial Arrangements Act 1982* are borrowing, banking and investment powers, for example, to fund infrastructure development.

### **102 Financial sustainability criteria**

The mandatory financial sustainability criteria must be met by local governments. Financial risks must be managed prudently. The criteria require the local government to:

- formulate spending and rating policies that ensure a reasonable degree of equity, stability and predictability and fund current services with regard to their future effects; and
- disclose full, accurate and timely financial information relating to the local government to the community and the State by publication of reports and on a website.

The achievement of the criteria is essential as evidence to the community of its financial current and future viability, correct governance, State monitoring and enforcement of responsibilities under the Bill and to prevent financial dysfunction. The achievement of the criteria also ensures compliance with national frameworks.

### **103 Financial management systems**

A local government must establish a system of financial management that complies with a regulation and the local government must review its system of financial management regularly.

### **104 Financial management, planning and accountability documents**

A local government's documents must comply with a regulation and the different types of documents a local government must maintain are listed in clause 104.

Guidance is enshrined in the legislation under the purpose, principles for local government and the financial sustainability criteria and specific financial requirements.

In particular, local governments will effectively plan for future sustainability through longer-term planning by developing 10 year plans, publishing these and reviewing progress annually. The community and the

State then have the best information available to judge progress against the plan, and local governments can make necessary adjustments.

#### *Long-term community plans*

These plans outline the local government's vision for the community. In line with the commitment to principles rather than prescription in the legislation, the content of the plan and the method of community engagement will be decided by individual local governments.

#### *Long-term financial plans*

A valuable tool for local governments when managing their finances will be to implement a longer-term financial plan to include an investment policy, a debts policy, procurement policy and a revenue policy.

#### *Long-term asset and infrastructure management plans*

There will be longer term plans of at least 10 years for assets and infrastructure. During research and consultation on this Bill, it became evident that there is extensive variation in stakeholder understanding of, commitment to, and action on asset and infrastructure management. Yet assets and infrastructure represent a very large portion of local community physical capital.

### **105 Auditing, including internal auditing**

Audit is the local government's opportunity to report to itself, rectify systemic problems and improve on feedback from external sources such as the Auditor-General and Queensland Treasury Corporation.

To ensure local governments maintain a high level of expertise in financial budgeting and management, all local governments are required to have an internal audit function and process. Internal audit is an effective method of helping local government fulfil its corporate governance responsibilities and it is local governments' responsibility to fund it. Information provided by audit should be fed back into the planning and reporting cycle to allow continuous improvement of operations.

In addition, as recommended by the Auditor-General, larger local governments (which will be prescribed by a regulation) will be required to have an audit committee to monitor and review financial integrity and effectiveness and make recommendations to the local government.

### **106 Sound contracting principles**

*Sound contracting principles* are defined and a local government must have regard to these principles when entering into any contract relating to work, supply of goods or services and disposal of assets. These principles are in addition to the local government principles and the financial sustainability criteria.

### **107 Insurance**

A local government will maintain public liability insurance and professional indemnity insurance for an amount prescribed in a regulation. The clause describes a councillor's role for the purposes of insurance cover.

## **Part 4                      Councillor's financial    accountability**

Councillors, as elected representatives, have a duty to ensure their allocated discretionary funds are not misused. A councillor is liable should he/she knowingly allow a local government to improperly disburse money.

### **108 Misappropriation offence applies**

Clause 108 clarifies that nothing in this division prevents a councillor being guilty of a misdemeanour and being liable to imprisonment for up to two years for the misuse of local government funds under section 440 of the Criminal Code.

### **109 Councillor's discretionary funds**

Discretionary funds are defined along with the requirement that discretionary funds are only used as prescribed in a regulation.

### **110 Councillor's liable for improper disbursements**

Clause 110 deals with the liability for improperly made disbursements. A disbursement may not be made from a local government fund if it has not been budgeted for, or not agreed to by resolution, only in a genuine emergency and only if notice of the disbursement is given to the public

within 14 days in a local newspaper (otherwise, it is an improper disbursement).

If a councillor knowingly agrees to an improper disbursement, the councillor is to be held accountable to repay the disbursed amount plus any interest, fees or charges back to the local government.

While this provision does impose strict civil liability, it is justified on the basis that the councillor must knowingly agree to the improperly made disbursement. This liability also reflects that a councillor is in a position to influence the conduct of the council in relation to these matters. The intention is that the councillor who does not act to influence the council to make ethical and legal decisions should be penalised.

### **111 Councillor's liable for loans to individuals**

Acting in the public's interest, a local government must not use funds to make a loan or guarantee to an individual and clause 111 stipulates that any councillor who agrees to an improper loan from local government funds (a loan or a guarantee or security for a loan to an individual) is to be held accountable to repay the loaned money, plus any interest, fees or charges back to the local government.

While this provision does impose strict civil liability, it is justified on the basis that the councillor must knowingly agree to the improper loan. This liability also reflects that a councillor is in a position to influence the conduct of the council in relation to these matters. The intention is that the councillor who does not act to influence the council to make ethical and legal decisions should be penalised.

### **112 Councillor's liable for improper borrowings**

Clause 112 places the liability on councillors if they agreed that the local government borrow money that is not in line with the local government's responsibilities or obligations under this Bill or the *Statutory Bodies Financial Arrangements Act 1982*. The liability is to repay the improperly borrowed money plus any interest, fees or charges back to the local government.

While this provision does impose strict civil liability, it is justified on the basis that the councillor must knowingly agree to the improper borrowing. This liability also reflects that a councillor is in a position to influence the conduct of the council in relation to these matters. The intention is that the

councillor who does not act to influence the council to make ethical and legal decisions should be penalised.

## **Chapter 5      Monitoring and enforcing the Local Governments Acts**

### **Part 1              Local governments**

Given the State's constitutional responsibility for local government, the Bill provides for a range of graduated State responses to council difficulties. A continuum of educative, preventative, monitoring and enforcement strategies in addition to dismissal and dissolution facilitates an appropriate response, including dismissal of individual councillors and dissolution of local governments as a 'last resort' when behaviour or performance standards cannot be improved through corrective measures.

The following continuum of graduated State responses illustrates a total package of graduated responses, both administrative and statutory. There are more serious powers for the Minister to monitor, enforce, dismiss and dissolve as an end measure when all other supportive measures have not rectified a problem:

1. Facilitation (e.g. aids to good practice such as model local laws);
2. Capacity building (e.g. training and education);
3. Performance evaluation and reporting;
4. Remedial (e.g. offering solutions to problems arising from complaints, providing advice to correct a problem);
5. Monitoring and enforcement (e.g. chief executive powers to monitor compliance with the Act, to ensure the proper and efficient delivery of local government service, to appoint an adviser or financial controller. Ministerial powers to direct a mayor to take action and to enforce compliance with the Act);

6. Dismissal and dissolution (e.g. Ministerial powers to suspend a mayor and/or an individual councillor and to recommend to Governor in Council to dismiss a mayor and/or an individual councillor and to suspend or dissolve a council and appoint an administrator).

## **Division 1            Introduction**

### **113 What this part is about**

The purpose of this part is broadly based on two stages:

gathering information from local governments for monitoring and evaluation purposes; and

taking necessary action.

This clause defines *remedial action* and provides examples of remedial action.

### **114 Decisions under this part are not subject to appeal**

Any decision made by the Minister for monitoring or enforcement, dismissal and dissolution purposes cannot be appealed against.

The current process for dissolution of a council will continue with a power to dismiss an individual councillor. A proposal to dismiss a councillor or mayor will be preceded by a show cause process to ensure natural justice. A decision by the Governor in Council to dismiss a councillor or mayor or to dissolve a local government will be implemented by a regulation. The requirement for Parliament to ratify a regulation for the dissolution of a local government will continue. Any regulation made to enforce the dismissal of a councillor or mayor will be gazetted and tabled and thereby be subject to a motion of disallowance and Parliamentary debate.

## **Division 2            Monitoring and evaluation**

This division outlines the monitoring process in the continuum of graduated responses available to the State. Gathering information and acting on it give the department (and indirectly, the local government)

evidence to evaluate the performance and compliance of the local government so that an appropriate response may be made.

### **115 Gathering information**

The department's chief executive may request, only in writing, information from a local government for the purposes of determining their performance and level of compliance with local government legislation. The local government must cooperate with this request.

### **116 Acting on the information gathered**

The department's chief executive may examine, in any way the chief executive considers appropriate, records and operations to evaluate performance and compliance with local government legislation. The local government must cooperate with the examination.

The Minister may publish information about the local government's performance, including positive actions and outcomes.

Remedial action, across the continuum of graduated State responses, may be taken if there are shortcomings.

## **Division 3                      Action by the department's chief executive**

Stage two of the monitoring and enforcement process involves the powers of the chief executive of the department.

### **117 Advisors**

If, after gathering information and examining records and operations (stage one), it is found a local government is not performing its responsibilities properly or is not complying with the Act, the chief executive of the department can appoint, by gazette notice, an advisor to that local government.

The advisor's responsibilities are outlined and a local government must fully cooperate with them. The appointment of an advisor is a capacity building mechanism aimed at helping the local government build and

improve on its own processes with the aim of more fully complying with local government legislation.

### **118 Financial controllers**

If, after gathering information and examining records and operations (stage one), it is found a local government is not complying with local government legislation in relation to financial matters, the chief executive of the department can appoint, by gazette notice, a financial controller.

Clause 118 outlines the financial controller's responsibilities, most importantly implementing financial controls, and states that a local government must fully cooperate with the controller.

The appointment of a financial controller is a mechanism aimed at ensuring a local government's funds are used in the correct way and that financial decisions are appropriate and lawful. The role of the financial controller is to ensure that financial matters are handled according to the lawful decisions of the local government and that finances are not spent or dispersed in other ways.

### **119 Costs and expenses of advisors and financial controllers**

Advisors and financial controllers will be appointed on a user-pays system (i.e. the local government). These appointments will be of advantage to underperforming local governments and therefore, worthy of payment by the local government. They will enhance local government prevention and education strategies and reinforce and speed up capacity building. They provide a service to local governments who are not able to provide it themselves.

## **Division 4            Action by the Minister**

Division 4 outlines stage two of the monitoring and enforcement process in relation to the actions the Minister can take to ensure compliance with local government legislation.

## **120 Precondition to remedial action**

The Minister must take certain steps before using a power to take actions to enforce compliance with local government legislation.

The Minister must give notice to the local government or relevant councillor, unless the giving of the notice would frustrate the reason for taking the proposed action. The notice must state the power proposed to be used, the reasons for using it and suggest any way the local government could rectify the situation to comply with local government legislation. The notice must also give a reasonable time in which the local government or councillor can make a submission to the Minister.

Exceptions where this process is not necessary are listed.

The Minister must consider any submissions made and decide if grounds still exist for exercising the power. If grounds still do exist, the Minister may exercise the power without giving further notice.

## **121 Removing unsound decisions**

The powers for the Minister include the ability to suspend or revoke an unsound decision of a local government, including local laws and resolutions. The process will allow potential issues to be rectified quickly and reduce administrative red tape. A show cause process will precede the exercise of this power and specific requirements for the gazette notice, such as for the Minister to state the reasons for the revocation, will ensure transparency.

The Minister has the power to suspend or revoke a decision of a local government if he/she believes the decision is contravening local government legislation. The Minister must publish a notice in the gazette about the suspension (including the period of suspension) or revocation and how the decision of the local government contravened the legislation.

Clause 121 also clarifies that the State is not liable for any loss or expense to a person as a result of the suspension or revocation of a local government decision.

For the purposes of the Minister's powers under this clause, a local government decision is defined to be, or be a part of:

- a local law;
- a resolution;

- an order to carry out a resolution;
- a planning scheme; or
- an interim development control provisions.

## **122 Removing a councillor**

The removal of an individual councillor from office under a recommendation from the Local Government Remuneration and Discipline Tribunal (the tribunal), or suspension of an individual councillor under the Minister's notice is a power supported by stakeholders and preferable to removing the whole council which was previously the only way for the State to hold individual councillors to account for failed performance.

While local government is recognised in the Queensland Constitution, the constitution, powers and responsibilities of local government are derived from this Bill. The removal of a councillor is appropriately carried out by the Minister who is responsible for the system of local government.

Further, so that the Minister's decision to remove a councillor is transparent, the responsibilities which the Minister must judge a councillor's conduct and performance against are clearly defined in the Bill.

To ensure natural justice, a show cause process must first be followed.

In cases where the independent tribunal is involved, natural justice principles will be upheld by the hearing required under the Bill and the tribunal will make recommendations to the Minister.

The Minister must make a recommendation to the Governor in Council to make a regulation for the dismissal of a councillor. For the suspension of a councillor under the Minister's notice, the Governor in Council must give effect to the suspension by a regulation for no longer than the period stated in the notice.

The making of a regulation for dismissal aligns with current provisions for the dissolution of a local government. However, in recognition that this is the dismissal of an individual and not a local government, the regulation to dismiss will not require ratification by Parliament.

Nevertheless, in accordance with statutory requirements, it will be gazetted and tabled in Parliament and thereby can be subject to a motion of disallowance and subsequent Parliamentary debate. This political scrutiny is an adequate replacement for a right to merit or judicial review.

## **123 Dissolving a local government**

Clause 123 is about the dissolution of a local government, when the tribunal recommends or the local government is incapable of performing its responsibilities.

While local government is recognised in the Queensland Constitution, the constitution, powers and responsibilities of local government are derived from this Bill. The dissolution of a council is appropriately carried out by the Minister who is responsible for the system of local government.

As provided for under the Queensland Constitution, Parliament will continue to ratify the regulation for dissolution of the local government. The Governor in Council will continue to make the regulation for the dissolution of an entire council and the appointment of an interim administrator.

## **124 Interim administrator acts for the councillors temporarily**

The interim administrator has all the powers and responsibilities of the local government and the mayor (only if these powers and responsibilities have not been limited by a regulation). The interim administrator acts under local government legislation as if they were the local government.

The Governor in Council may direct that the costs associated with an interim administrator be borne by the local government who receives the services.

Subsection 10 allows the Minister to create an advisory committee to advise the interim administrator about the performance of the local government's responsibilities.

## **Part 2                    The public**

The community living in a local government area have an obligation to comply with local government legislation. This part provides for the necessary powers of entry for the relevant persons to monitor and enforce the public's compliance with local government legislation.

## **Division 1 Powers of authorised persons**

### **Subdivision 1 Introduction**

#### **125 What this division is about**

Clause 125 outlines what this division is about and defines the terms *authorised person*, *private property*, *public place* and *occupier*. It clarifies that the use of force to enter a property can not be used except when authorised by a warrant, for example, reasonable force to enter a locked shed.

#### **126 Producing authorised person's identity card**

An authorised person must show or have displayed, their identity card whenever they are acting under this part before they act, or at the first possible chance after they act if it is not practicable to show or display their identity card first.

### **Subdivision 2 Power to require a person's name and address**

#### **127 Power to require a person's name and address**

An authorised person is allowed to ask a person to state the person's name and address if the authorised person sees the person committing, or suspects the person has committed, an infringement notice offence. When making the request, the authorised person may require proof of the identity of the person.

The authorised person must warn the person that it is an offence to fail to give their name and address when requested by an authorised person unless the person has a reasonable excuse. However a person does not commit an offence by not giving their name and address if they are proven not to have committed the infringement notice offence.

This clause defines *infringement notice offence*.

### **Subdivision 3 Powers to enter property etc.**

#### **128 Entering public place that is open without the need for permission**

An authorised person may enter a place that is open to, and used by, the public during the times the place is open in order to monitor the compliance of the place with local government legislation without permission of the occupier of the place.

#### **129 Entering private property with, and in accordance with, the occupier's permission**

An authorised person may enter private property that is accessible by the general public (for example, to walk up front stairs of a house) to ask for permission to stay on the property to exercise a power under this Bill.

An authorised person must inform the occupier of the purpose for which entry is sought and outline the occupier's rights in relation to the entry request.

The occupier is not obliged to give permission and the right of the authorised person to stay is subject to conditions the occupier imposes and the right to stay can be cancelled by the occupier.

If an occupier consents to the entry, an authorised person may request the occupier to evidence the consent by completing an appropriate form of acknowledgment. The authorised person must give the occupier a copy of the document.

A court, in any proceedings, may assume the occupier did consent to the entry by an authorised person even if an acknowledgment of consent can not be produced in evidence, unless it is proven otherwise.

#### **130 Entering private property with, and in accordance with, a warrant**

An authorised person must apply to a magistrate for a warrant to authorise entry to a place. Clause 130 sets out the requirements of the application, conditions for issue of a warrant by a magistrate and the details to be included in a warrant including the reasons for the warrant being issued. The warrant must be in a form approved by the department's chief executive and must be sworn.

The magistrate may refuse to consider the application until it includes all the information he/she requires, so additional information may be requested and must be given. The magistrate may only issue the warrant if satisfied that there are reasonable grounds for suspecting that there may be evidence of an offence and the evidence is at that place or likely to be within the next seven days.

The warrant states the suspected evidence, the right of the authorised person to enter with reasonable help and force if necessary, the hours entry is allowed and the day the warrant ends.

The intent of this clause is to balance the rights of the individual with those of the State.

### **131 Warrants—applications made electronically**

An authorised person may apply to a magistrate for a warrant by electronic means such as by email, phone, facsimile, radio or in another form of communication in urgent or special circumstances e.g. the location of the place is remote.

An authorised person must prepare an application for a warrant but may apply to the magistrate before the application is sworn. The magistrate may issue the warrant if he/she is satisfied about the conditions relating to the use of the electronic application.

The clause sets out the administrative procedure to be followed by a magistrate and authorised person in relation to the issue of a warrant in these circumstances.

On entering the property, the authorised person must tell (or attempt to tell) the occupier the reason for entering, that he/she may enter under a warrant, and allow the occupier to cooperate but if this doesn't work, the authorised person must ensure the effective execution of the warrant.

The copy of the warrant, or the warrant form properly completed by the authorised person, authorises that person to enter the property and exercise the powers mentioned in the warrant signed by the magistrate. The sworn application and completed warrant form must be sent to the magistrate as soon as possible.

It also provides for a court in proceedings against an occupier to assume the warrant was not issued unless the warrant is produced as evidence.

### **132 Entering under an application, permit or notice**

An authorised person may enter a place at any reasonable time during the day for the purposes of inspecting the place to process an application made under an Act conferring jurisdiction on local government or to monitor compliance with, or inspect work being carried out under an authorisation or notice.

Entry for these purposes can occur at night if the place is a public place and is open to the public at the time of the entry or at the occupier's request or in accordance with a lawfully imposed condition.

When entering the property, the authorised person must inform the occupier of the reasons for entering and that he/she is authorised under this Bill to enter the property without permission from the occupier. The authorised person may enter a home on the property only if the occupier accompanies the authorised person.

### **133 Entering property under an approved inspection program**

An authorised person may enter premises under an approved inspection program, other than a structure or part of a structure used for residential purposes, at any reasonable time of the day or night.

The Scrutiny of Legislation Committee considered the breach of fundamental legislative principles in subsection (3) when the original amendment was proposed under the *Building and Other Legislation Amendment Bill 2001*, and found that it was justified on public safety grounds (Alert Digest No 1 of 2002, paras 14-20, pp. 2-3).

However, a local government must attempt to give the occupier written notice of the intention to enter the property.

### **134 Approving an inspection program**

Authorised persons may enter places under programs approved by resolution of a local government for the purpose of monitoring compliance with legislation conferring jurisdiction on a local government. Examples are where a local government monitors compliance with requirements of private swimming pools under the *Building Act 1975* or monitors compliance with limits on the number of dogs that may be kept under a local law.

An approved inspection program may be either a selective or systematic program. Conditions for inspection programs are detailed, including the requirement to notify the public of the inspection program.

### **135 General powers after entering a property**

Clause 135 provides for general powers of authorised persons after entering a place for a reason under this Bill. When entry is made, an authorised person may exercise the powers as set out in the clause.

An authorised person may require the occupier to give reasonable assistance in the exercise of the powers and a person must comply with the requirement unless the person has a reasonable excuse.

It would be a reasonable excuse to fail to comply if supplying information or producing a document (other than a document required to be kept under this Bill) might incriminate a person.

These powers cannot be exercised by an authorised person if entry is made merely to obtain the agreement of an occupier for entry.

### **136 Authorised person to give notice of damage**

An authorised person must give notice to a person if any damage to property occurs as a result of the exercise of the powers.

### **137 Compensation for damage or loss caused after entry**

Clause 137 puts the onus on the local government, which must pay the person compensation if the person incurs a loss or expense as a result of the exercise of the powers.

The person does not need to claim compensation except in any proceeding for compensation or any proceeding brought against the person for an offence.

A court may order compensation according to the circumstances of the particular case and regulations may prescribe matters to be taken into account by the court in making a decision to order compensation.

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## **Division 2            Powers of other persons**

### **138 What this division is about**

This division is about the powers available to local governments and their workers so that they can discharge their responsibilities effectively and ensure a person complies with a remedial notice given by the local government.

A local government can give a person a remedial notice that requires the person to take a stated action to comply with local government legislation.

To facilitate interpretation of the division, the terms *remedial notice*, *reasonable written notice* and *local government worker* are defined.

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.

### **139 Entry with, and in accordance with, permission of occupier**

A person can enter property if they have the permission of the occupier of the property and subject to the occupier's conditions. If an occupier decides an authorised person can no longer be on the property under this section, the authorised person must leave the property.

### **140 Entry by an owner, with reasonable written notice, under a remedial notice**

Clause 140 describes the procedure which must be followed, the duties, responsibilities, and powers of entry of an owner of land where the owner's land is subject to a remedial notice of the local government, and the owner of land is not the occupier.

### **141 Occupier may discharge owner's obligations**

Clause 141 outlines the provisions for the discharge of an obligation of an owner of land by the occupier of land where the owner of land has failed to perform work required by the local government. It protects the rights of the occupier of land. If the occupier is a tenant, the tenant may deduct the cost of performing the work from any rent owing and the owner cannot terminate the tenancy because of the deduction of the costs from the rent.

### **142 Entry by a local government worker, with reasonable written notice, under a remedial notice**

Where an owner or occupier of land has failed to perform work under a remedial notice, a local government worker may enter that land and perform that work, provided the local government has given at least seven days notice in writing (seven days notice is a component of the *reasonable written notice* as defined in clause 138.)

The local government can recover any costs it incurred in acting under this clause.

Generally, a remedial notice will pertain to a matter of public safety. As such there are justifiable grounds for a local government worker to enter a property even without permission in this circumstance as long as reasonable written notice is given to the owner.

### **143 Entry by a local government worker, with reasonable written notice, to take materials**

A local government worker may enter rateable land for the purpose of searching for materials that the local government may need to fulfil its responsibilities under local government legislation. This power can only be exercised if at least seven days written notice has been given to the owner and also the occupier, if the occupier is not the owner (seven days notice is a component of the *reasonable written notice* as defined in clause 138.)

Further, this clause does not authorise the exercise of this power where damage to any structure could occur - within 50 metres of a structure or works (for example, a house, a bridge, a dam, a jetty or a wharf).

### **144 Entry by a local government worker, at reasonable times, to repair etc. facilities**

A local government worker can enter property (except for a home) without giving notice or asking for permission if the reason for entry is to plan for, install or maintain facilities on the property that are to be, or were, installed by the local government.

This provision does not allow entry into a home on a property and is justified, not necessarily on public safety grounds, but on grounds that there is a necessity for local government facilities to be maintained.

### **145 Entry by a local government worker, at any time, for urgent action**

For public health and safety reasons, should emergent conditions warrant it, the power of entry (other than to a home) on the property to carry out work may be exercised without giving notice if justified on public safety grounds.

### **146 Entry with, and in accordance with, a court order**

Clause 146 provides for the procedure for entry where it is necessary to obtain a court order. This could be when, for example, entry to premises is denied by an occupier of land for an authorised person of the local government to exercise a function or power of the local government.

### **147 Compensation for damage or loss caused**

A local government worker entering property must not cause damage to any structure or works and must take all reasonable steps to cause the least amount of inconvenience and damage as is practicable while fulfilling a duty under this division.

If inconvenience or damage does occur as a result of entry to land and the exercise of a power, a person can claim compensation where they have suffered loss or damage. For example, if something had to be removed from the property under clause 143, the person may claim compensation (whether as agreed with the local government or ordered by a court) for the value of the thing removed.

### **148 Limitation of time in absence of notice of work done**

Where any work has been carried out without required approval of the local government, any limitation on time imposed on a local government in initiating proceedings commences from the day the local government becomes aware of the unauthorised work.

## **Division 3            Offences**

### **149 Obstructing enforcement of Local Government Acts**

This clause sets out offences for obstructing enforcement of a Local Government Act.

### **150 Impersonating an authorised person**

It is an offence for a person to pretend to be an authorised person. This recognises the importance of the powers of an authorised person.

## **Chapter 6            Administration**

### **Part 1                Introduction**

#### **151 What this chapter is about**

Any person in local government who is elected or appointed to perform responsibilities under this Bill, or any bodies that are created, are provided for in this chapter.

### **Part 2                Councillors**

#### **Division 1            Qualifications of councillors**

##### **152 Qualifications of councillors**

Clause 152 declares that if a person is an Australian citizen, and not disqualified based on any other section in this division, that the person is eligible to become a councillor in local government. This clause reflects

the requirements at State and Federal level for representatives to be Australian citizens.

A councillor of the Torres Strait Island Regional Council must be a Torres Strait Islander or an Aborigine and must have lived in the local government division for the two years prior to the election. The same requirements apply to the mayor, except that it is the local government area, rather than the division, as the mayor does not represent a single division. These additional qualifications reflect the cultural and other circumstances of this council and the representation by councillors who understand this.

### **153 Disqualification for certain offences**

Clause 153 lists the reasons that a person can not become a local government councillor, defines terms used in the clause, details reasons a person automatically stops being a local government councillor, and when a person is taken to have been convicted of an offence. This clause reflects the necessity to have competent representation in accordance with community expectations and public interest. The criteria contained in this clause are based on those applying to members of the Queensland Parliament under the *Parliament of Queensland Act 2001*.

### **154 Disqualification of prisoners**

If a person is serving a period of imprisonment, or is liable to serve a period of imprisonment, under clause 154 that person is defined as a prisoner and is not qualified to be a local government councillor. This clause reflects community expectations for high ethical standards of councillors.

### **155 Disqualification because of other high office**

Councillors are elected to carry out the good rule and governance of the local government area. Concurrent holding of certain other high offices is not consistent with this role. Accordingly, a person can not be a councillor at the same time as being a member of another government, and the office of councillor is automatically vacated in certain circumstances.

### **156 Disqualification during bankruptcy**

A person can not be a councillor if the person is bankrupt. This is in line with community expectations for their elected representatives to be competent financial managers.

### **157 Judicial review of qualifications**

If a person is eligible to vote in a local government election, clause 157 allows that person to apply for judicial review of the eligibility of a person to be a councillor. This has no limit on the *Judicial Review Act 1991* and ensures that electors have standing to challenge the validity of local government electoral matters.

### **158 Acting as councillor without authority**

A person must not act as a local government councillor without authority. This clause prevents people from gaining benefits for themselves or others or causing detriment to others by acting as a councillor when they are not qualified to do so or their authority has expired.

## **Division 2 Councillor's term of office**

### **159 When a councillor's term starts**

A councillor's term starts the day after the conclusion of the councillor's election, or the day that the councillor is appointed.

### **160 When a councillor's term ends**

A local government councillor's term finishes, in a number of ways described in this clause.

## **Division 3 Vacancies in councillor's office**

### **161 What this division is about**

The purpose of the division includes defining the divisions of time in a local government's term to create a fair system for filling councillor vacancies which takes into account the amount of time since the last quadrennial election, the amount of time until the next quadrennial election, the resources of the affected local government and the principle of democratic representation.

## **162 When a councillor's office becomes vacant**

This clause sets out the conditions in which a councillor's office becomes vacant and ensures that when the councillor has ceased to be qualified, is dismissed or cannot perform their duties for another reason, their office is vacated.

## **163 When a vacancy in an office must be filled**

Clause 163 explains the periods of time when a local government does or does not have discretion about whether to fill the vacancy in the councillor's office.

A local government must fill a vacancy that occurs more than 6 months before an election, to maintain constituents' right of representation.

Within 6 months before an election the local government can choose whether to fill the office. Given the short time frame, a local government may consider the need for representation balanced with the cost of a by-election.

This clause also applies to a vacancy in the office of mayor, including that the vacancy may not be filled if it occurs in the last 6 months of the term.

## **164 Filling a vacancy in the office of mayor**

This clause recognises the importance of the democratic process for the office of mayor, and therefore provides that any vacancy in the office of mayor must always be filled by a by-election. However, because clause 163 also applies to a mayoral vacancy, a vacancy may not be filled if it occurs in the last 6 months of the term.

## **165 Acting mayor**

Clause 165 provides for the way in which the deputy mayor, or another councillor, may act in the office of mayor. It also provides for vacation of the deputy mayor's office. This clause recognises that executive power must be exercisable at all times, even when the mayor is absent or incapacitated.

## **166 Filling a vacancy in the office of another councillor**

The system for filling a vacancy in a councillor's office who is not the mayor varies according to when, in the local government's term, the vacancy occurs.

In the beginning (first year after a quadrennial election), the local government can choose whether to appoint the *runner-up* (as defined in the clause) in the general election or to hold a by-election. In deciding, the council can balance the cost of holding a by-election with the availability of the runner-up.

In the middle 18 months of the local government's term, the office must be filled by a by-election. This reflects the potential for change in voter opinions in the time frame and provides for a representative outcome.

In the end part of the term (the 18 months leading up to a quadrennial election), the relevant political party or the local government can appoint a qualified person. This prevents the duplication of costs that would arise from holding a by-election when the quadrennial election is imminent.

## **Division 4 Councillors with other jobs**

### **167 Councillors and local government jobs**

A person can not be a councillor at the same time as they are a local government employee. If a person becomes a councillor while they are a local government employee they are taken to have resigned from their position as a local government employee as of the day prior to them becoming a councillor. This is consistent with the separation between the executive and the legislature.

### **168 Senior councillors and full-time government jobs**

A person can not have a full-time government job at the same time as they are a senior councillor for local government. The meanings of a *senior councillor* and *full-time government job* are defined. This clause lists certain exceptions that apply.

If a senior councillor does not fall into one of the exemption categories and they become a senior councillor while they hold their full-time government job, it is taken that the person resigned from the full-time government job

on the day prior to them becoming a senior councillor for local government.

This clause does not stop a senior councillor from having a part-time government job or from converting an existing full-time government job to part-time.

## **Division 5            Obligations of councillors**

### **169 Obligations of councillors before acting in office**

A councillor must not act in the office until the councillor has been elected to the office and made their declaration of office. This clause defines the term *declaration of office*, and states that a CEO can hear the declaration of office and keep a signed written record of it. It is important that councillors-elect make their declaration of office before acting in office to ensure that the exclusions from liability apply.

### **170 Mayor only to give directions to local government staff**

In order to create a separation between the elected council members and the appointed administration, only the mayor of a local government can give direction to the CEO. Neither the mayor nor a councillor of the local government can give a direction to a local government employee.

This clause does allow for the CEO to determine the ways in which a councillor can ask a senior local government employee for advice. This is similar to the relationship between State Ministers and their departmental staff.

### **171 Use of information by councillors**

Information acquired by a councillor, or someone who was previously a councillor, must not be used for gain, financial advantage or to harm the local government. Information that the councillor knows is confidential to the local government must not be released. The use of information in such a way is a breach of the public trust in the councillor as an elected representative. The penalty for this mirrors that for the disclosure of an official secret under the *Criminal Code Act 1899*.

## **172 Councillor's material personal interest at a meeting**

*Material personal interest* (MPI) and the procedure for dealing with it are clearly defined in clause 172 so that there can be little doubt about councillors identifying and taking responsibility for following the procedures relating to MPI. The rationale for openness about MPIs is the achievement of the local government principles, especially *transparency and effective decision making processes in the public interest* and fairness towards all constituents. Decisions by councillors must be made in the public interest over and above any personal and private advantage of the councillor.

A councillor with an MPI in a matter in a meeting (including a committee meeting) must declare their interest, leave the meeting and not participate in any discussion or vote on the matter.

Furthermore, the provision includes a mechanism for a councillor who is unsure of whether an interest amounts to an MPI to refer the matter to a vote of the meeting. This eliminates the excuse of ignorance or uncertainty on the part of councillors.

Details of MPI matters must be recorded in the minutes of the meeting and accessible to the public.

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

*Conflict of interest* (COI) and the procedure for dealing with it are clearly defined so that there can be little doubt about councillors identifying and taking responsibility for following the procedures. The rationale for openness about COIs is the achievement of the local government principles, especially *transparency and effective decision making processes in the public interest* and fairness towards all constituents. Decisions by councillors must be made in the public interest over and above any personal and private interest of the councillor.

A councillor with a COI must declare it to the meeting, including to a committee meeting. A vote is held at the meeting to determine whether the councillor can remain at the meeting, participate in discussions and vote on the issue. Similar to clause 172, this provides a quick, independent means of dealing with any conflict.

Details of any declaration of, and decision on, a COI must be minuted for transparency.

### **174 Duty to report another councillor's, material personal interest, conflict of interest or misconduct**

A councillor has a duty to report another councillor's MPI, COI or misconduct. The duty to report is consistent with the high ethical standards of behaviour expected of councillors. Clause 174 also affords protection from intimidation and harassment from any person who reports the MPI, COI or misconduct of another councillor.

The duty to report acknowledges the collective responsibilities of the councillors to achieve the principles.

### **175 Post-election meetings**

A local government must hold a meeting within 14 days after an election. At that meeting the local government must, by resolution, appoint a deputy mayor. This ensures the council begins performing its responsibilities soon after elections are held.

## **Division 6                      Conduct and performance of councillors**

### **176 What this division is about**

This division details how complaints about the conduct and performance of councillors are to be dealt with. The system is based on different levels of seriousness of complaints, i.e. those which are dealt with locally (inappropriate conduct), and serious and dismissible breaches (misconduct).

Instead of a separate councillor code of conduct, standards for councillor conduct and performance are set in the Bill. Councillors, by virtue of being elected and holding the office of councillor are, individually and collectively, bound by:

- the purpose and principles for local government;
- the responsibilities and powers of councillors;
- the financial sustainability criteria; and
- any other obligations under the Bill.

Open and honest outcomes in the public's best interests are achieved by the publication of reports, recommendations, decisions and penalties, thereby requiring transparency and accountability to the community.

A local government user-pays system meets the costs for a complaint to be reviewed. It is assumed that in usual circumstances, the conduct and performance of councillors and local governments will meet the principles, responsibilities, criteria and any other obligations under local government legislation. When this is not so, the intention is that local governments educate and prevent poor conduct and performance and deal with any complaints of inappropriate behaviour.

*Inappropriate conduct* and *misconduct* are defined, and two independent entities essential to the system of dealing with serious and dismissible complaints are also defined: *regional conduct review panels* (a panel) and the *Local Government Remuneration and Discipline Tribunal* (the tribunal). These two entities have important functions including conducting hearings, investigations, deciding liability and penalty and making recommendations. The tribunal may make recommendations about suspension and dismissal of an individual to the Minister.

The tribunal is an independent investigator for matters where a recommendation of suspension or dismissal is possible. Furthermore, the tribunal will provide state wide consistency for determining these serious matters.

Other misconduct matters will be referred to a regional conduct review panel. These regional panels will be independent bodies convened solely to hear complaints about councillors.

## **177 Assessing complaints**

The CEO must assess complaints about councillor conduct and performance as either frivolous or vexatious, inappropriate conduct, misconduct or another category (e.g. a general complaint). Allegations of official misconduct continue to be referred to the Crime and Misconduct Commission (CMC).

If the alleged actions amount to inappropriate conduct, the matter is referred to the mayor. If the complaint is against the mayor, the matter is referred to the deputy mayor. This allows local governments to deal with inappropriate conduct internally which is quicker and more cost effective than referral.

If assessment shows that the complaint is about misconduct, it will be referred to the department's chief executive. The seriousness of the complaint will be determined and it will be referred to the appropriate entity to be investigated.

If the complaint is assessed as another category, it will be dealt with in an appropriate way. The CEO has the discretion to decide no further action be taken about a frivolous or vexatious complaint.

### **178 Notifying councillor of the hearing of a complaint of misconduct**

This clause sets out requirements for the notification to a councillor about the hearing of a misconduct complaint. There is a common law principle that no person should be condemned without a fair hearing, and that the person should be given enough time to prepare a response to allegations and a forum in which to give the response. The intention of this clause is to ensure that the councillor is given the appropriate information and the necessary time to prepare the response, in order to uphold this principle.

### **179 Hearing and deciding complaints**

This clause sets out the way in which a panel or the tribunal must hear a matter to ensure the accused councillor's right to natural justice is upheld. The standard of proof for proceedings is established as the balance of probabilities, as this is the standard of proof for other civil matters.

The balance of probabilities is the weighing up and comparison of the likelihood of competing facts or conclusions. A fact is proved to be true on the balance of probabilities if its existence is more probable than not, or if it is established by a preponderance of probability.

Chapter 7, part 1 describes details of the hearing and investigation processes.

### **180 Taking disciplinary action**

If a councillor is found to have engaged in misconduct, a number of disciplinary actions are available.

A panel is able to make orders for penalties such as for counselling, an apology or admission of error from the councillor or that the department monitor the councillor.

Examples of serious breaches leading to these penalties are:

- disbursement outside the budget;
- failure to declare a conflict of interest;
- failure of the duty to report;
- improper use of council resources;
- directing local government employees;
- disclosures and returns inaccurate or not on time; and
- repeated inappropriate conduct.

A panel can also refer more serious matters to the tribunal. Although this subjects the councillor involved to multiple tribunal processes, it is justified on the grounds that the panel does not have power to recommend more severe punishments that may be appropriate in the circumstances.

The tribunal is a central independent entity essential for state wide consistency in deciding liability and penalties. The tribunal may make any order that a panel has the power to make. In addition, the tribunal can order that a councillor reimburses money or forfeits payments or privileges. The tribunal can also recommend to the Minister that the councillor be suspended or dismissed. The tribunal does not have the power to dismiss a councillor, as only the Minister is able to do this.

Examples of dismissible breaches leading to these penalties are:

- failure to perform responsibilities;
- failure to meet financial sustainability criteria;
- failure to decide financial management requirements on time, with completion and accuracy;
- bringing the council into disrepute;
- failure to declare a material personal interest;
- improper use of confidential information; and
- harassment and/or intimidation of a councillor, employee or constituent.

### **181 Inappropriate conduct that is not misconduct**

Clause 181 defines *inappropriate conduct* and outlines the orders a mayor can make against a councillor who has engaged in inappropriate conduct. This will give a local solution to a local problem, providing immediacy with the intention of preventing escalation of the problem. Examples of inappropriate conduct include failure to follow meeting or committee procedures, failure to follow council policy and procedures and other procedural breaches.

The mayor has been given powers and procedures to follow which are similar to those of the speaker in State Parliament. This is to ensure the orderly conduct of council meetings.

### **182 Department's chief executive is a public official for CMC Act**

Under the section 46 of the *Crime and Misconduct Commission Act 2001* the CMC may refer a complaint to a public official for investigation. This clause makes all references to a public official in that section references to the department's chief executive where the allegation of official misconduct is by a councillor.

The reason for this variation to CMC practice is to avoid the role conflict of the CEO in having to investigate and make judgements about possible official misconduct of his/her employer.

## **Part 3                    The tribunal**

This part establishes the tribunal.

### **183 Continuation of the Tribunal**

The clause provides for the Local Government Remuneration Tribunal to continue as the tribunal, with discipline functions and responsibility for categorising local governments and determining councillor remuneration.

### **184 Members of tribunal**

The qualifications of tribunal members are listed within clause 184. Special note should be made of the most appropriate qualifications for the purpose, such as knowledge and experience in matters related to local government, ethics and investigations. Disqualifications for members of the tribunal are also listed and demonstrate the importance of the independence of the tribunal from local governments.

### **185 Remuneration and appointment conditions of members**

The Governor in Council decides the remuneration and conditions for tribunal members.

### **186 Costs of tribunal to be met by local government**

The tribunal operates on a local government user-pays system.

### **187 Conflicts of interests**

Tribunal members must not take part in the consideration of any matter where they have a COI. The department's chief executive must be informed of any conflicts. This provision ensures the fairness and independence of the tribunal. The penalty for failure to comply is 35 penalty units.

### **188 Assistance from departmental staff**

This clause ensures the tribunal is adequately staffed to perform its responsibilities.

## **Part 4 Regional conduct review panels**

The members of the regional conduct review panels are to be appointed, and operate in particular ways.

### **189 Appointing members of regional conduct review panels**

The department's chief executive must establish a pool of members for panels in each region across the State. The qualification and disqualification criteria are the same as those for tribunal members.

### **190 Remuneration and appointment conditions of members**

The department's chief executive determines the remuneration and conditions of panel members.

### **191 Costs of regional conduct review panels to be met by local government**

The panels operate on a local government user-pays basis.

### **192 Conflict of interests**

Panel members with a COI are subject to the same conditions as tribunal members under clause 187.

### **193 Assistance from departmental staff**

This clause ensures the panels are adequately staffed to perform their responsibilities.

## **Part 5                    The ethics advisory committee**

### **194 Establishment of the ethics advisory committee**

Clause 194 allows the Minister to establish a Local Government Ethics Advisory Committee (the ethics advisory committee) that contains between 2 and 5 members and provides advice to the Minister on ethical issues relating to councillors. The ethics advisory committee has no decision making role.

### **195 Appointing members of ethics advisory committee**

Members may be appointed by the Minister for a period of up to 3 years. A member of the ethics advisory committee is entitled to allowances and expenses as approved by the Minister.

### **196 Ending appointment of members of ethics advisory committee**

The Minister may end the appointment of a member of the ethics advisory committee at any time, without giving a reason.

## **Part 6 Local government employees**

### **Division 1 Chief executive officer**

#### **197 Appointing a chief executive officer**

The CEO is a key role. Accordingly, this clause provides that the local government must appoint a *qualified person* to be its CEO. The contract of employment between him/her and the local government must contain certain details.

#### **198 Appointing an acting chief executive officer**

This clause provides a power for a local government to appoint a *qualified person* to act in the CEO position in certain circumstances.

### **Division 2 Other local government employees**

#### **199 Local government employees**

This clause provides a power for the local government councillors to adopt an appropriate staff structure by resolution and it allows a local government to employ officers. All local government employees, including senior officers, are appointed by the CEO. Employment conditions of an officer

include those in an industrial instrument and those decided by the local government.

The intent of this clause is to provide a clear separation between councillors and the employees. The councillors of a local government decide the strategic direction of the administrative arm of the local government, for example through the staff structure, and a recruitment and selection policy. However, the CEO is responsible for the recruitment and selection, as well as the management and discipline, of all local government employees.

### **200 Disciplinary action against local government employees**

The power to take disciplinary action against a local government employee is only able to be exercised by the CEO. This clause provides that local government staff may appeal a decision to take disciplinary action to an external body provided by regulation.

## **Division 3            Common provisions**

### **201 Concurrent employment of local government employees**

In order to provide a level of flexibility, this clause provides that local government staff, including the CEO, are able to be employed by more than one local government. An arrangement of concurrent employment must have the agreement of each of the local governments involved. Codes of conduct and contracts should deal with conflicts of interest, conflicts of roles and use of information by officers and CEOs employed in more than one local government.

### **202 Improper conduct by local government employees**

This clause imposes a penalty for local government employees who ask for or receive fees for duties performed as an employee of a local government and for employees who unlawfully destroy or damage local government property.

### **203 Improper use of information by local government employees**

Local government employees are prevented from using information acquired in the performance of their duties for personal gain or to cause harm to the local government. Clause 171 establishes a similar provision for councillors with an equivalent penalty.

### **204 Annual report must detail remuneration**

Clause 204 sets out that the CEO's remuneration package range, along with the salary bands of all contracted local government employees, will be published in the local government's annual report. This aligns with the State requirement for senior executive packages to be published in annual reports. This provision will also apply to CEO remuneration packages in existence prior to the commencement of the provision. It achieves transparency and informs ratepayers how money is being spent by council on CEO and senior staff packages.

## **Part 7                      Authorised persons**

This part gives information about authorised persons and all aspects of their appointment.

### **205 Appointing authorised persons**

Clause 205 describes the basic qualifications and conditions for an authorised person and provides a power for a regulation to prescribe further qualifications and conditions.

### **206 End of appointment of authorised persons**

A non-exclusive list of ways the appointment of an authorised person can end is the subject of clause 206.

### **207 Identity card for authorised persons**

This clause requires an authorised person to be given an identity card. The authorised person must return their identity card within 21 days of ceasing to be an authorised person.

## **Part 8 Interim management**

### **208 Interim management committee**

Clause 208 provides a power for the Minister to establish an interim management committee to assist an interim administrator to perform the interim administrator's responsibilities.

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

Clause 209 provides the conditions of appointment and the process for the end of the appointment. The interim management committee gives the interim administrator advice relevant to the management of the local government.

### **210 End of appointment of interim management**

Clause 210 sets out the ways a person stops being an interim administrator or a member of an interim management committee. A person may resign, the appointment may be cancelled by the Governor in Council or a fresh election may be held to end the appointment of interim management.

## **Part 9 The superannuation board**

Part 9 (clauses 211 to 214) establishes the superannuation board, and sets out its responsibilities and constitution.

## **Chapter 7 Other provisions**

### **Part 1 Way to hold a hearing**

The way a hearing is held is important to several entities, including tribunals, panels, commissions and committees under the Bill. Procedures, powers of investigators and requirements of witnesses are laid down and must be of the highest standard.

#### **215 What this part is about**

This clause sets out what this part is about and provides a definition of *investigator*.

#### **216 Procedures at a hearing**

This clause outlines the procedural rules for hearings. Investigators must observe natural justice. They must also act as quickly and informally as is possible in the circumstances.

An investigator has discretion to disregard some areas of procedural fairness if need be. An investigator may act in the absence of someone who has been given reasonable notice of a hearing. This is justified on the basis of a need for expediency and the requirements for notice to be given before the hearing is held.

The investigator may also refuse to allow a person to have legal representation. However, any decision to do so must also ensure that the accused councillor's right to natural justice is not denied. Due to the practical rather than technical nature of the tribunals, panels, commissions and committees, the desire to reduce costs for all involved and the need for decisions to be made quickly, the usual practice should be to hold the hearing without legal representation.

An investigator may also disregard the rules of evidence at a hearing. This is consistent with the informality required by this clause and cannot be done if it would lead to a denial of natural justice.

### **217 Witnesses at hearings**

This clause is necessary to compel witnesses to appear and answer questions at hearings.

### **218 Contempt at a hearing**

This clause ensures the good conduct of hearings and prevents disturbances, interferences and other forms of contempt. It gives the tribunal the ability to impose a penalty for any action that would constitute a contempt of court.

## **Part 2 Superannuation**

### **219 What this part is about**

This clause outlines that the part is about superannuation for certain persons connected to a local government. It also defines a *local government entity* in such a way as to also enable an entity prescribed by regulation which exclusively exercises a local government power for a local government to be able to contribute to the Local Government Superannuation Scheme (LG super scheme).

### **220 LG super scheme**

The existing LG super scheme under the LGA is to continue with no changes under this Bill. Accordingly, this clause provides for the continuation of the LG super scheme, and requires the super board to make a trust deed in accordance with the relevant rules and legislation.

### **221 Members of LG super scheme**

This clause sets out who is an automatic member and who is an eligible member of the LG super scheme.

## **222 Compulsory super contributions**

This clause requires compulsory contributions by a local government under the Commonwealth superannuation legislation to be paid into the LG super scheme.

## **223 Amount of compulsory contributions**

This clause nominates the amount of yearly contributions that must be paid into the LG super scheme for special and standard permanent employees.

## **224 Extra super contributions**

This clause allows a member, or a local government on behalf of the member, to make additional contributions to the LG super scheme.

## **225 Adjusting super contributions when salary changed**

Clause 225 establishes the process by which super contributions may be adjusted when a permanent employee's salary changes. It also provides that a permanent employee may keep paying contributions at the higher rate if the permanent employee's salary has decreased.

## **226 Super contributions for non-contributory members**

This clause sets out how contributions for non-contributory members are to be managed.

## **227 Interest is payable on unpaid super contributions**

This clause requires a local government to pay interest on a contribution that is not paid in the specified time.

## **228 Local governments must not establish employee superannuation schemes**

This clause prohibits a local government from establishing a separate superannuation scheme for its employees. This is to ensure that employee superannuation is managed by the LG super scheme.

## **229 Super scheme for councillors**

Clause 229 gives a local government a power to establish and amend a superannuation scheme for its councillors, or to take part in an existing scheme. The contributions the local government makes for councillors must have parity with to the contributions it makes for its standard permanent employees.

## **230 Super schemes to be audited by auditor-general**

Clause 230 sets out that all superannuation schemes managed by the super board as trustee are to be audited by the auditor-general.

# **Part 3                      Allocating Commonwealth funding to local governments**

## **Division 1                Allocating Commonwealth funding**

### **231 Allocating Commonwealth funding**

This clause describes how the Local Government Grants Commission (the grants commission) allocates Commonwealth funding. The role of the grants commission is to make recommendations to the Minister about the allocation of the financial assistance the State receives from the Commonwealth under the *Local Government (Financial Assistance) Act 1986* (Cwlth) for local government purposes.

If a local government fails to provide the required information to the grants commission by the specified time, the grants commission need not make a recommendation about allocation of Commonwealth funds to that particular local government. The intent is to improve the return rate of information to the grants commission and, in turn, help facilitate decisions regarding the allocation of Commonwealth funds to Queensland local governments based on fair and equitable terms and funds to enable better allocation to specific and relative need.

### **232 Decisions under this division are not subject to appeal**

The decisions of the grants commission are made based on principles and requirements set out in Commonwealth legislation, including the need to hold public hearings and have consideration for equity. Clause 232 provides that these decisions are not subject to appeal.

## **Division 2            The grants commission**

### **233 Grants commission is established**

This clause establishes the grants commission.

### **234 Members of grants commission**

This clause sets out that the members of the grants commission must be appointed by the Governor in Council. It establishes requirements about the qualifications of members and conditions of membership.

### **235 Conflict of interests**

This clause sets out requirements to manage conflicts of interest for grants commission members.

### **236 Staff assistance to the grants commission**

This clause requires the department's chief executive to provide necessary staffing resources to the grants commission.

## **Part 4                    Legal provisions**

This part contains legal provisions for the administration of the Bill.

### **237 False or misleading information**

This clause makes it an offence to give false or misleading information to certain people.

### **238 Administrators who act honestly are protected from liability**

Clause 238 protects constituters of local government and State and local government administrators, acting honestly in the performance of their duties, from civil liability.

### **239 Who is authorised to sign local government documents**

Clause 239 identifies who may legally sign a document on behalf of a local government. The head of the local government is defined in the schedule, and would usually be the mayor, unless the constitution of the local government has varied, for example as provided for under clause 11 or clause 165.

### **240 Name in proceedings by or against a local government**

Clause 240 sets out that proceedings by and against a local government must be started in the name of the local government.

### **241 Service of documents on local governments**

This clause clarifies that service of a document on a local government is achieved by giving the document to the CEO in a certain way.

### **242 Substituted service**

Clause 242 allows a local government to serve a document on an owner of rateable land by serving it on the owner's agent in the State, in particular circumstances.

### **243 Acting for a local government in legal proceedings**

Clause 243 states that the CEO, or another employee authorised in writing, may act for the local government in legal proceedings.

### **244 Attempt to commit offence**

This clause clarifies that an attempt to commit an offence against this Bill is legally the same and carries the same penalties as actually committing an offence against this Bill.

## **245 Types of offences under this Bill**

Clause 245 sets out that there are both summary and indictable offences against this Bill. An indictable offence is an offence that has a penalty of more than 2 years imprisonment. A summary offence is an offence not punishable on indictment or for which no procedure is specified.

This clause also provides for proceedings for indictable offences.

## **246 Time to start proceedings in a summary way**

This clause sets out the timing for starting a proceeding for a summary offence against this Bill.

## **247 Decisions not subject to appeal**

Clause 247 exempts particular decisions under this Bill from appeal in any way.

The decisions taken under this Bill that are not subject to appeal are decisions made by the State against local governments or councillors of local governments. The exemption of these decisions from appeal reflects the relationship between the State and local governments in section 70(2) of the Queensland Constitution.

## **248 Judges and other office holders not disqualified from adjudicating**

Clause 248 clarifies that a particular office holder is not disqualified from adjudicating proceedings because that person could pay rates to a local government which is involved in those proceedings.

## **249 Where fines are to be paid to**

This clause requires fines to be paid to the local government's operating fund, unless the court orders differently.

## **250 Local government references in this Bill**

Clause 250 clarifies the expanded application of references in this Bill to particular entities or persons.

### **251 Evidence of local laws**

This clause sets out evidentiary matters for local laws for any proceedings.

### **252 Evidence of proceedings of local government**

Clause 252 sets out evidentiary matters for documents which purport to be about local government proceedings.

### **253 Evidentiary value of copies**

This clause sets out evidentiary matters for copies of local government documents.

### **254 Evidentiary value of certificates**

This clause sets out evidentiary matters for certificates.

### **255 Evidence of directions given to local government**

This clause sets out evidentiary matters for directions given to a local government.

### **256 Evidence of complainant's knowledge of matter**

Clause 256 sets out evidentiary matters for a complainant's knowledge of a matter.

### **257 Constitution and limits of local government need not be proved**

Clause 257 clarifies that the constitution and limits of a local government do not need to be proved in a proceeding.

## **Part 5 Delegation of powers**

### **258 Delegation of Minister's powers**

Clause 258 allows the Minister to delegate the Minister's powers under any Local Government Act to an officer of the department, including the chief

executive of the department. The power must be delegated to an appropriately qualified person.

However, to reflect the gravity of these powers, the Minister must not delegate powers to remove unsound decisions of a local government, remove a councillor or dissolve a local government.

### **259 Delegation of department's chief executive's powers**

Clause 259 enables the chief executive of the department to delegate any of the chief executive's powers under any Local Government Act to an appropriately qualified person. This would usually be an officer of the department.

### **260 Delegation of local government powers**

Clause 260 permits a local government to delegate, by resolution, particular legislative powers. However, the local government may not delegate a power that must be exercised by resolution. This reflects the importance of a local government's decision-making role.

### **261 Delegation of mayor's powers**

This clause allows a mayor to delegate the mayor's powers to another councillor of the local government. However, the power to give directions to the CEO may not be delegated. The intent of exempting this power from delegation is maintenance of the separation between the elected councillors and the appointed officers.

### **262 Delegation of chief executive officer powers**

Clause 262 allows the CEO to delegate the CEO's powers to another employee, or a contractor, of the local government. However, the CEO may not delegate certain powers.

### **263 Local government delegations register**

This clause requires the CEO to establish a register of delegations, which must be open to public inspection.

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## **Part 6                      Other provisions**

### **264 Public office of a local government**

Clause 264 states that a local government must keep premises for use as a public office, which must be either in or near the local government area.

### **265 Powers in support of responsibilities**

This clause clarifies that an entity who is required or empowered to perform a responsibility under this Bill may do anything necessary or convenient to enable the performance of those responsibilities. In addition, if the entity is not an individual, clause 265 sets out that those powers include all the powers of an individual.

### **266 Validity of committee proceedings**

This clause provides that local government or local government committee proceedings are not invalidated by vacancies in membership, issues with the qualifications of a member or the appointment or election process.

### **267 Approved forms**

Clause 267 allows for the department's chief executive to approve forms for use under this Bill.

### **268 Review of this Bill**

In order for all local governments to continue to have effective and contemporary legislation, this clause sets out that the Minister must review the *Local Government Act 2009* within 4 years of its commencement.

### **269 Process for administrative action complaints**

Clause 269 requires a local government to establish a process to resolve administrative action complaints. It gives a definition of *administrative action complaint* to clarify that this process for resolution of a complaint is about the way in which an administrative action was carried out, and not about decision itself.

## **270 Regulation-making power**

This clause provides a general regulation making power for the Governor in Council. A number of examples about which a regulation may be made are provided.

# **Chapter 8    Transitionals, savings, repeals and amendments**

## **271 What this chapter is about**

This clause sets out that the purpose of this chapter is to provide for the transition of certain rights and liabilities under the LGA and CGA (the repealed LG Acts).

## **272 Local governments, including joint local governments**

This clause provides for the continuation of the local governments which were in existence immediately before the repealed LG Acts were repealed. Clause 272 also provides for the continuation of the two joint local governments.

## **273 Community governments**

This clause provides for the continuation of a community government that was in existence immediately before the repeal of the CGA. Community governments continue in existence as a local government under the Bill, and a reference to a community government is taken to be a reference to a local government, if the context is appropriate.

## **274 Local service committees**

The CGA contains a power for Aboriginal councils to establish a local service committee (LSC) under a local law, to manage various community government programs and services. Unlike advisory committees and standing committees under the LGA, LSCs can include non-councillors and they can be delegated full decision-making authority.

Yarrabah Aboriginal Shire Council is the only local government to have established LSCs. Yarrabah has established LSCs to manage:

- a. the local government's Community Development Employment Program scheme under *CDEP Management Committee Local Law 2007*; and
- b. community housing under *Housing Management Committee Local Law 2007*.

Clause 274 provides for Yarrabah to maintain the operation of these LSCs. However, there is no head of power in the Bill to allow Aboriginal councils, including Yarrabah, to establish new LSCs. This is to prevent the emergence of a second tier decision making body with the potential to be counterproductive to local government operations. Community boards under the Bill have an advisory role only.

### **275 Local government owned corporation**

This clause provides for the continuation of the Wide Bay Water Corporation.

### **276 Local laws**

Clause 276 provides that all local laws that were in force immediately before the commencement of the Bill continue in force under this Bill.

### **277 Decisions**

This clause provides that all decisions that were in force immediately before the commencement of this section continue in force under this Bill. The clause provides a non-exclusive list of examples of what could constitute a decision to which this section applies.

### **278 Proceedings**

This clause provides that all appeal, complaint and offence proceedings that were started, or could have been started, under the repealed LG Acts, may continue or still be started under this Bill.

### **279 Super trust deed**

Clause 279 provides that the super trust deed continues in existence.

## **280 Registers**

Clause 280 provides that a register under a repealed LG Act continues in existence under this Bill. The list of registers in this clause is not exclusive.

## **281 Remuneration schedule**

Clause 281 provides that the remuneration schedule for councillors in force under the LGA continues in force under this Bill.

## **282 References to repealed LG Act**

Clause 282 provides that a reference in an Act or a document to a repealed LG Act is taken to be a reference to this Bill, if appropriate.

## **283 Transitional regulation-making power**

Clause 283 provides a power to make a regulation to deal with any matters to facilitate the transition from a repealed LG Act to this Bill, if this Bill does not make sufficient provision.

## **284 Administration of sinking fund for liquidation of current borrowings**

Clause 284 provides for the continuation of the corporation which was continued by the LGA, 'Trustees of the Local Governments Debt Redemption Fund'.

## **285 Local Government Association**

Clause 285 provides for transitional arrangements to ensure the legal continuation of interests, employment, legal proceedings and other existing arrangements for the Local Government Association of Queensland (LGAQ).

This is necessary given that the provisions for the LGAQ are not continued in the Bill. This discontinuation is because other local government representative bodies are not provided for in statute.

## **286 Repeal**

Clause 286 repeals the LGA and the CGA. The Government's priority of minimising the regulatory burden and preventing over-reliance on the

regulatory approach to resolve policy issues provides the impetus for the strategy of bringing local governments in Queensland under one local government Bill.

This local government legislation is comprehensive and contemporary, such that it can apply to all Queensland local governments. The Bill has the scope to provide for unique situations. An example of this is the establishment in the Bill of the framework for indigenous regional councils.

The CGA was considered as part of the *Meeting Challenges, Making Choices* strategy, which was the Government's response to the Cape York Justice Study report handed down by Justice Tony Fitzgerald in November 2001. The Cape York Justice Study report found, amongst other things, that Aboriginal local governments established under the *Community Services (Aborigines) Act 1984* continued to suffer from lack of capacity, poor governance practices and difficulty providing improvements in the quality of life for Aboriginal communities.

The CGA commenced on proclamation on 1 January 2005. Section 52 of the CGA requires the Minister to review the efficacy and efficiency of the Bill within four years of its commencement (i.e. by 31 December 2008).

As stated in the *Local Government (Community Government Areas) Bill 2004* explanatory notes in part 7, it was intended that the CGA would be a transitional arrangement for the affected local governments, and that the review of the CGA would provide an opportunity to determine the appropriate time for community governments to come completely under the LGA.

## **Chapter 9 Amendments of other Acts**

### **287 Acts amended in sch 1**

#### **Schedule 1 Other Acts amended**

Schedule 1 amends 83 other Acts necessary as a result of this Bill. The majority are to change references from the repealed legislation to this Bill.

#### **Schedule 2 Comparative terms for the Brisbane City Council**

This Bill applies to BCC for matters which COBA does not. For that purpose, schedule 2 sets out terms used in this Bill and corresponding terms used in COBA.

#### **Schedule 3 Dictionary**

Schedule 3 defines the terms used within this Bill.