Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Stirling Hinchliffe, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs

Title of the Bill

Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Bill 2018

Objectives of the Amendments

The objective of the amendments is to reinforce integrity and provide for increased transparency and accountability in local government by amending the *Local Government Act 2009* (LGA) to provide for additional Ministerial powers in certain circumstances and amending both the LGA and the *City of Brisbane Act 2010* (COBA) to trigger the automatic suspension of councillors in certain circumstances and to expand the existing range of automatic disqualification offences.

Disqualification of councillors

Sections 153 and 154 of the LGA and the COBA provide for the automatic disqualification of a councillor for certain offences. Section 153 of the LGA and the COBA provide that a councillor is automatically disqualified when convicted of the following offences:

- a treason offence; or
- an electoral offence; or
- a bribery offence; or
- an integrity offence.

A treason offence is an offence of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth. An electoral offence is defined as certain disqualifying electoral offences under the *Electoral Act 1992* (EA). A bribery offence is an offence against section 98C of the Criminal Code (bribery in relation to conduct at a State election including voting) or a corresponding law of another State or the Commonwealth.

An integrity offence is an offence against the provisions in the LGA and COBA relating to misuse of information; misuse of inside information; register of interest requirements; material personal interest requirements or giving false/misleading information; or provisions in the Criminal Code relating to certain conduct at State Elections (giving false/misleading information to the Electoral Commission of Queensland (ECQ), improperly influencing voting; voting if not entitled).

Section 153 of the LGA and section 153 of the COBA also provide that a person convicted of these offences cannot be a councillor for a period of time, ranging from 4 years to life, after being convicted.

The Bill and the *Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018* (the Councillor Complaints Act) prescribe a number of new offences as integrity offences as follows:

- new section 150AW of the LGA (a councillor must not take detrimental action against another councillor or a local government employee in reprisal for a complaint or notification about the councillor's conduct);
- new section 175C(2) of the LGA and new section 177C(2) of the COBA (equivalent offences to the existing offences in section 172(5) of the LGA and section 174(5) of the COBA);
- new section 175E(2) of the LGA and new section 177E(2) of the COBA (a councillor must inform a meeting of the local government or any of its committees about the councillor's conflict of interest in a matter, other than an ordinary business matter, to be discussed at the meeting, including specified particulars);
- new section 175E(5) of the LGA and new section 177E(5) of the COBA (a councillor must comply with a decision of other councillors at a meeting, that the councillor has a real or perceived conflict of interest in a matter and must leave the place at which the meeting is being held, including any place set aside for the public, and stay away from the place while the matter is being discussed and voted on);
- new section 175H of the LGA and new section 177H of the COBA (a person must not, because a councillor complied with their duty to inform a meeting of a local government or any of its committees of another councillor's material personal interest or conflict of interest in a matter, take retaliatory action against the councillor or another person); and
- new section 175I(2) or (3) of the LGA and new section 175I(2) or (3) of the COBA (a councillor with a material personal interest or conflict of interest in a matter must not influence or attempt to influence another councillor to vote on the matter in a particular way or a local government employee or contractor who is authorised to deal with the matter to do so in a particular way).

The range of offences prescribed under section 153 LGA and COBA do not include a range of offences that may constitute corrupt conduct under the *Crime and Corruption Act 2001* (CCA) or criminal offences under the *Local Government Electoral Act 2011* (LGEA) or the EA.

Section 154 of the LGA and section 154 of the COBA provide that a councillor is automatically disqualified if imprisoned for any offence (including suspended sentences, parole or leave of absence).

Also, a review of the prescribed automatic disqualification offences under section 153 has indicated the following anomalies:

- the prescribed bribery offence under section 98C of the Criminal Code only applies to conduct at State elections, not local government elections – the equivalent offence in section 170 of the LGEA is not prescribed as a ground for automatic disqualification under section 153; and
- the prescribed integrity offences under section 98B, 98E and 98G of the Criminal Code only apply to State elections not local government elections – the equivalent offences (sections 169, 186 and 189 respectively) in the LGEA are not prescribed as grounds for automatic disqualification under section 153.

Suspension of councillors

There are no provisions in the LGA or the COBA which provide for the automatic suspension of a councillor charged with serious offences, such as the automatic disqualifying offences under section 153 or serious integrity offences. There are discretionary powers under section 122 of the LGA, under which the Minister may recommend to the Governor in Council that a councillor be suspended or dismissed under one of the following grounds:

- the Local Government Remuneration and Discipline Tribunal recommends a councillor be suspended or dismissed; or
- the Minister reasonably believes that a councillor has seriously or continuously breached the local government principles; or
- the Minister reasonably believes that a councillor is incapable of performing their responsibilities.

There are no discretionary powers to suspend or dismiss a councillor in the COBA.

The policy objective is to provide that a councillor is automatically suspended if the councillor is charged with an offence that would, on conviction, disqualify the councillor from being a councillor under section 153 of the LGA or the COBA.

Action by the Minister - public interest amendments

The LGA provides the State with a range of intervention options when there are concerns regarding the performance of councillors or a local government as a whole. These include the power to dismiss a local government. These powers rely on a reasonable belief by the Minister that a local government or a councillor is either not complying with the local government principles or is not capable of performing its responsibilities.

Further, the LGA currently does not provide for the appointment of an interim administrator where all councillors are suspended under section 122 of the LGA.

The policy objective is to provide the Minister with greater powers to suspend or dismiss councillors or dissolve a local government, other than the Brisbane City Council and Brisbane

City Council councillors, where the Minister reasonably believes that such action is in the public interest.

Consequential amendments to the LGA to align with the Councillor Complaints Act

The Councillor Complaints Act implements the Government's response to the Independent Councillor Complaints Review Panel's Report '*Councillor Complaints Review: A fair, effective and efficient framework*' to provide for a simpler, more streamlined system for making, investigating and determining complaints about councillor conduct in Queensland.

To implement the Government's response, the Councillor Complaints Act amends the LGA, including by:

- establishing the Independent Assessor and the Office of the Independent Assessor to investigate and deal with the conduct of councillors where it is alleged or suspected to be inappropriate conduct, misconduct or, when referred to the Independent Assessor by the Crime and Corruption Commission, corrupt conduct
- providing that the Independent Assessor may investigate particular offences, including offences relating to councillor conduct ('conduct provisions')
- omitting a number of provisions, including the current definition of 'misconduct' in the LGA and inserting new provisions.

The Bill also amends the LGA including by:

- providing that:
  - failure by a councillor to inform a meeting of the local government of a real or perceived conflict of interest, which is currently misconduct, is instead to be an offence; and
  - failure by a councillor to comply with the duty to inform the person presiding at a meeting of another councillor's undeclared material personal interest or conflict of interest in a matter is misconduct
- inserting a number of new offences relating to councillor conduct.

Consequential amendments are required to the LGA to ensure consistency.

Achievement of the Objectives

Automatic suspension of councillors

The policy objective is achieved by amending the LGA and COBA to provide that a councillor is automatically suspended if the councillor is charged with an offence (disqualifying offence) that would, on conviction, disqualify the councillor from being a councillor under section 153 of the LGA or the COBA. The LGA and COBA are amended to prescribe the following offences as disqualifying offences:

- the existing section 153 automatic disqualification offences;
- new section 153 automatic disqualification offences inserted by the Bill and the Councillor Complaints Act;
- specific offences which may constitute corrupt conduct, including certain offences under the CCA (serious integrity offences);
- specific offences under sections 169, 170, 171, 175, 186 and 189 of the LGEA

- new offences inserted by the Bill in the LGEA (sections 194A, 194B, 194C and 212) and EA (sections 307A, 307B, 307C and 427) relating to the prohibition of election donations from property developers.

The LGA and COBA are amended to provide that a person is automatically suspended as a councillor when the person is charged with a disqualifying offence. If, when a person is appointed or elected as a councillor, a proceeding for a disqualifying offence against the person has been started but has not ended, the person is automatically suspended as a councillor when the person's term as councillor starts.

A person is charged with a disqualifying offence when:
- a police officer arrests and charges the person for the offence; or
- the person is served with a notice to appear for the offence; or
- the person is served with a complaint for the offence under the *Justices Act 1886*; or
- a charge for the offence is made against the person in a proceeding without a complaint under the *Justices Act 1886*; or
- an *ex officio* indictment against the person for the offence is presented to the Supreme Court or the District Court.

Further, a proceeding for a disqualifying offence is started against a person when the person is charged with the offence.

The effect of a councillor's suspension is as follows:
- the councillor must not act as a councillor - the maximum penalty for acting as a councillor if the person knows that the person is suspended as a councillor is 85 penalty units
- if the councillor is the mayor or deputy mayor, the councillor is also suspended as mayor or deputy mayor
- the councillor's obligations are not affected. A councillor will remain subject to the normal transparency and accountability provisions applying to councillors, for example, the requirement to update their register of interests
- for councillors (other than Brisbane City Council councillors), the Minister's remedial action powers under the LGA chapter 5, part 1, division 3 are not affected
- the councillor is entitled to be paid remuneration as a councillor, that does not include an amount payable to a councillor for performing a particular responsibility, including, for example, attending a meeting of the local government or any of its committees.

The suspension ends when the earliest of the following happens:
- for each disqualifying offence to which the suspension relates –
    - if the councillor is convicted of the offence and appeals the conviction – the conviction is set aside or quashed on appeal; or
    - if the councillor is convicted of the offence and does not appeal the conviction – the time within which an appeal must by law be started ends; or
    - the proceeding for the offence otherwise ends;
- the councillor's term ends under section 160 of the LGA or section 160 of the COBA
- the councillor's office becomes vacant under section 162 of the LGA or section 162 of the COBA.

If the councillor is convicted of a disqualifying offence, the councillor's office becomes vacant.

Automatic disqualification of councillors

The existing provisions in section 153 of the LGA and COBA contain anomalies relating to the range of offences which currently trigger the automatic disqualification of a councillor. The new automatic suspension provisions would create further anomalies if those offences which trigger automatic suspension did not also trigger automatic disqualification upon conviction of that offence.

Accordingly, section 153 of the LGA and COBA are amended to provide that 'serious integrity offences' listed in schedule 1 part 1 and 'integrity offences' listed in schedule 1 part 2 are included as 'disqualifying offences' along with the existing treason offence and electoral offence. The range of offences which trigger the automatic disqualification of a councillor is expanded to include:

- new section 153 automatic disqualification offences inserted by the Bill and the Councillor Complaints Act;
- specific offences which may constitute corrupt conduct, including offences under the CCA (with a disqualification period of 4 years or 7 years after conviction depending on the seriousness of the offence)
- specific offences under sections 169, 170, 171, 175, 186 and 189 of the LGEA (with a disqualification period of 4 years or 7 years after conviction depending on the seriousness of the offence)
- the new offences inserted by the Bill in the LGEA (sections 194A, 194B, 194C and 212) and EA (sections 307A, 307B, 307C and 427) relating to the prohibition of election donations from property developers.

Notification requirements

The LGA and COBA are amended to provide for notification requirements in relation to disqualification. If a councillor becomes aware the councillor is not qualified to be a councillor, the councillor must, unless the councillor has a reasonable excuse, immediately give a notice to the Minister; and if the councillor is not the mayor of the local government - the mayor; and the chief executive officer. The notice must state details about why the councillor is not qualified to be a councillor and the day the councillor became disqualified. Failure to notify as required is an offence with a maximum penalty of 100 penalty units.

The LGA and COBA are amended to provide for an obligation for a councillor to give notice if charged with a disqualifying offence. If a councillor is charged with a disqualifying offence, or a proceeding for a disqualifying offence has been started, but has not ended, against a councillor when the councillor is appointed or elected, the councillor must, unless the councillor has a reasonable excuse, immediately give a notice to the Minister; and if the councillor is not the mayor of the local government – the mayor; and the chief executive officer. The notice must state the provision of the law against which the councillor is charged and the day the councillor was charged. Failure to notify as required is an offence with a maximum penalty of 100 penalty units.

Criminal history information

The LGA and COBA are amended to provide that the Minister may ask the police commissioner for a written report about the criminal history of a councillor. The amendments

apply if the Minister receives a notice from a councillor in relation to the conviction of the councillor for a disqualifying offence; or receives a notice from a councillor charged with a disqualifying offence; or reasonably suspects a councillor has been charged with, or convicted of, a disqualifying offence. The report includes a brief description of the circumstances of a conviction or charge mentioned in the criminal history. Criminal history of a councillor includes spent convictions and every charge made against the councillor for an offence, in Queensland or elsewhere.

Amendments to the LGA and COBA provide for privacy protections in relation to criminal history information (information contained in the notices of charge or conviction or in the criminal history report). A person possessing criminal history information because the person is or was an officer, employee or agent of the department or is or was a councillor, officer, employee or agent of the local government must not, directly or indirectly, disclose criminal history information to any other person unless the disclosure is permitted. The maximum penalty is 100 penalty units. The person is permitted to disclose criminal history information

- to the extent necessary to perform the person's functions under the LGA or COBA; or
- if the disclosure is authorised under an Act; or
- if the disclosure is otherwise required or permitted by law; or
- if the person to whom the information relates consents to the disclosure; or
- if the disclosure is in a form that does not identify the person to whom the information relates; or
- if the information is, or has been, lawfully accessible to the public.

Further, the person must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it is given.

Transitional provisions

Transitional provisions provide that:

- the LGA and COBA chapter 6, part 2, as in force after the commencement, apply in relation to a disqualifying offence, whether the act or omission constituting the offence was committed before or after the commencement
- a councillor is automatically suspended as a councillor on the commencement if a proceeding for a disqualifying offence against the councillor had started before the commencement but has not ended
- COBA chapter 6, part 2, division 8 (Automatic suspension of councillors) applies in relation to the councillor as if the councillor was suspended under COBA new section 186B
- LGA chapter 6, part 2, division 7 (Automatic suspension of councillors) apples in relation to the councillor as if the councillor was suspended under LGA new section 182A
- immediately after the commencement the councillor must, unless the councillor has a reasonable excuse, give a notice to the Minister; and if the councillor is not the mayor of the local government – the mayor; and the chief executive officer of the local government. The notice must state the provision of the law against which the councillor was charged; and the day the councillor was charged (maximum penalty - 100 penalty units)
- the information contained in the notice is taken to be 'criminal history information' (for the provisions applying to 'criminal history information')
- if, before the commencement, a councillor was convicted of an offence that is a new disqualifying offence and on the commencement the disqualifying period for the offence

would not have ended, the councillor automatically stops being a councillor on the commencement. LGA and COBA section 153(7) applies in relation to the offence. A conviction includes a spent conviction. A 'new disqualifying offence' means an offence that, under LGA and COBA section 153, is a disqualifying offence after the commencement but was not a disqualifying offence before the commencement. The 'disqualifying period' for a new disqualifying offence means the period stated in LGA and COBA section 153(1) during which a person convicted of the offence can not be a councillor

- immediately after the commencement, the councillor must, unless the councillor has a reasonable excuse, give a notice to the Minister; and if the councillor is not the mayor of the local government - the mayor; and the chief executive officer of the local government. The notice must state the provision of the law against which the councillor has been convicted; and the day the councillor was convicted (maximum penalty – 100 penalty units)
- the information contained in the notice is taken to be 'criminal history information' (for the provisions applying to 'criminal history information')

Action by the Minister – public interest amendments

Section 120 of the LGA requires the Minister to provide (unless it would either defeat the purpose of the exercise of the power or would serve no useful purpose) the local government or councillors with a notice to show cause as to why they should not be suspended or dismissed under sections 122 (Removing a councillor) or 123 (Dissolving a local government) of the LGA.

The Minister must be of the view that the local government or the councillor has either seriously or continuously breached the local government principles or is incapable of performing its responsibilities.

The policy objective is achieved by amending the threshold for when the State may seek to intervene under chapter 5 of the LGA to provide for the dismissal of a local government or the suspension or dismissal of a councillor where the Minister for Local Government reasonably believes it is in the public interest to do so.

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

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

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

The LGA section 122 is amended to apply if the Minister reasonably believes it is otherwise in the public interest that a councillor be suspended or dismissed. LGA section 122(2)(c) is

amended to provide that if the proposal in the Minister's notice under LGA section 120 was to dismiss the councillor or dissolve the local government, the Minister may recommend that the Governor in Council suspend or dismiss the councillor.

The LGA section 123 is amended to change the heading from "Dissolving a local government" to "Suspending or dissolving a local government". The section is amended to apply if the Minister reasonably believes it is otherwise in the public interest that every councillor be suspended or dismissed. If the proposal in the Minister's notice under LGA section 120 was to suspend every councillor for a stated period, the Minister may recommend that the Governor in Council suspend every councillor for a period that is no longer than the stated period; and appoint an interim administrator to act in place of the councillors until the stated period ends.

Also, the Minister may recommend that the Governor in Council dissolve the local government; and appoint an interim administrator to act in place of the councillors until the conclusion of a fresh election of councillors.

Consequential amendments to the LGA to align with the Councillor Complaints Act

The Councillor Complaints Act section 12 amends the LGA to provide that an investigator may investigate particular offences ('conduct provisions'), including offences relating to councillor conduct (LGA new section 150AY(b)).

The Bill clause 24 inserts the following new offences into the LGA relating to managing councillor conflicts of interest and material personal interests:

- section 175E(2) and (5) (councillor's conflict of interest at a meeting)
- section 175H (offence to take retaliatory action)
- section 175I(2) and (3) (offence for councillor with material personal interest or conflict of interest to influence others).

To enable the Independent Assessor to investigate these new offences under the LGA relating to a councillor's conduct, amendments to the LGA new section 150AY(b) prescribe these offences as conduct provisions.

The LGA new section 150AY(b) is also amended to update the reference to the offence of a councillor failing to inform a meeting of the councillor's material personal interest in a matter and leave the meeting room while the matter is being discussed and voted on (LGA section 172(5)). Clause 23 of the Bill omits section 172 of the LGA. The Bill inserts an equivalent offence provision in LGA new section 175C(2).

The Bill amends the LGA with regard to conduct that is misconduct by providing that:

- failure by a councillor to inform a meeting of the local government of a real or perceived conflict of interest, which is currently misconduct (LGA section 173(4) and LGA section 176(3)(d)), is instead to be an offence (LGA new section 175E(2) and (5)) and
- failure by a councillor to comply with the duty to inform the person presiding at a meeting of another councillor's undeclared material personal interest or conflict of interest in a matter is misconduct (LGA new section 175G(2)).

The Councillor Complaints Act omits the current definition of misconduct in section 176(3) of the LGA and inserts a new definition (LGA new section 150L). To achieve the policy objective, the new definition of misconduct is amended by omitting reference to section 173(4) or (5) and inserting a reference to new section 175G.

New section 175G(2) of the LGA as inserted by the Bill includes a note that refers to section 176(3)(d) and section 180 of the LGA. Both these sections are omitted by section 17 of the Councillor Complaints Act as part of the omission of chapter 6, part 2, division 6, and equivalent sections are inserted. The policy objective is achieved by amending the note in LGA section 175G(2) to refer to LGA section 150L(1)(c)(iv), LGA section 150AQ and LGA section 150AR inserted by the Councillor Complaints Act.

These consequential amendments commence on a day to be fixed by proclamation.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no anticipated costs for government.

Consistency with Fundamental Legislative Principles

Potential breaches of the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992* (LSA) are addressed below.

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

Natural justice

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

The amendments provide for automatic suspension of a councillor who is charged with a disqualifying offence. This is similar to existing provisions in the LGA and COBA which automatically disqualify a councillor on conviction of particular offences.

The amendment does not provide for a show cause process prior to the commencement of the suspension or a review or appeal process. However, the suspension is considered necessary to maintain public confidence that councillors are properly able to perform their role and to make decisions in the public interest. Further, the suspension does not affect the councillor's right to present their case in response to the charge before the appropriate court. As mentioned earlier, the amendments provide that the suspension ends when the earliest of the following happens:

- for each disqualifying offence to which the suspension relates –
    - if the councillor is convicted of the offence and appeals the conviction – the conviction is set aside or quashed on appeal; or

  - if the councillor is convicted of the offence and does not appeal the conviction – the time within which an appeal must by law be started ends; or
  - the proceeding for the offence otherwise ends;
- the councillor's term ends under section 160 of the LGA or section 160 of the COBA
- the councillor's office becomes vacant under section 162 of the LGA or section 162 of the COBA.

If the councillor is convicted of a disqualifying offence, the councillor's office becomes vacant.

This effectively provides the councillor with natural justice in relation to the councillor's continuing position as a councillor following the suspension. The suspension itself is not a consequence which goes towards whether the councillor is guilty of the offence.

The potential FLP is further mitigated by providing that the councillor is entitled to be paid remuneration as a councillor during the period of suspension, other than an amount payable for performing a particular responsibility.

When considering whether the amendments to provide the Minister with the power to recommend to the Governor in Council to suspend or dismiss a councillor, or dissolve a local government has sufficient regard to the rights and liberties of individuals and with the principles of natural justice, it is important to note that the amendments require the Minister to have a reasonable belief that it is in the public interest to exercise the power when balanced with the rights and liberties of the individual. A further consideration to note is that the Minister's recommendation is only given effect by the Governor in Council under a regulation. The regulation must be tabled in Parliament and may be disallowed by a resolution of the Parliament, giving the Parliament ultimate oversight of the Minister's decision.

It is also important to note that the Minister is required under section 120 of the LGA to give written notice to the councillor or local government of the proposal to exercise the power, unless the Minister considers that giving notice is likely to defeat the purpose of the exercise of the power; or the notice would serve no useful purpose.

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

Retrospectivity

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, legislation does not adversely affect rights and liberties, or impose obligations, retrospectively (LSA, section 4(3)(g)).

The amendments provide that a councillor who has been charged with a disqualifying offence is automatically suspended from the commencement of the amendments, whether the councillor was charged before or after the commencement.

Further, a person convicted of a new disqualifying offence prior to commencement of the amendments will be disqualified from being a councillor, and a person who is currently a councillor will automatically stop being a councillor. The period of disqualification will commence from the conviction for the offence, including if the conviction is prior to commencement.

These provisions are considered to have a limited retrospective effect as they merely take account of past events in prescribing new legal consequences from when the amendments take effect, rather than making a past act or omission illegal, or subject to a new legal consequence, from the time it happened.

New and amended offences

The amendments introduce a number of new offences and amend an existing offence, constituting a potential infringement of the FLP that legislation has sufficient regard to the rights and liberties of individuals (LSA section 4(2)(a)).

The amendments provide for notification requirements if a councillor is charged with a disqualifying offence or becomes disqualified from being a councillor. A councillor who is charged with a disqualifying offence or who becomes disqualified from being a councillor must, unless the councillor has a reasonable excuse, immediately notify the Minister, the chief executive officer and, if the councillor is not the mayor, the mayor.

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

The maximum penalties for these offences is 100 penalty units. This is consistent with the maximum penalty for the similar offence in section 55 of *the Building Queensland Act 2015* and the new offence in section 260B of the LGA inserted by the Councillor Complaints Act. The rights and liberties of the person are protected because the provisions allow for the councillor to have a reasonable excuse for non-compliance.

Further offences are included to provide limits on the disclosure of these notices to safeguard the privacy of councillors. The maximum penalties for a person who breaches these secrecy provisions is 100 penalty units. The offence and the maximum penalties are similar to offences in the *Grammar Schools Act 2016* and the *Plumbing and Drainage Act 2002*.

In addition, the existing offence in section 158 of the LGA of acting as a councillor without authority is extended to apply to councillors who are suspended. The offence currently applies to a person who is not qualified to be a councillor or whose office as a councillor has been vacated. It is necessary and appropriate for this offence to be extended to apply to councillors who have been suspended under the new provisions to ensure that a councillor who has been

charged with a suspension offence ceased to act as a councillor as soon as they know they have been charged. The maximum penalty for this offence will remain as 85 penalty units.

Criminal history report

The amendments provide that the Minister may ask the police commissioner for a written report about the criminal history of a councillor and a brief description of the circumstances of a conviction or charge mentioned in the criminal history if the Minister has received notification from a councillor, or reasonably suspects, that the councillor has been charged with a disqualifying offence or convicted of a disqualifying offence.

In relation to whether the provision may adversely affect the rights and liberties of the person, it is considered justified to ensure the Minister is able to verify whether a councillor is suspended or disqualified and the day the suspension or disqualification took effect, particularly given the gravity of the consequence of the councillor having been charged with or convicted of particular offences. The Bill includes a safeguard by requiring a person who possesses criminal history information to ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given and to prevent unauthorised disclosure of it.

Consultation

The Local Government Association of Queensland and the Queensland Law Society were consulted over the amendments relating to the automatic suspension and automatic disqualification of councillors. The Government is committed to ongoing monitoring and review of the operation of the amendments, in consultation with key stakeholders.

NOTES ON PROVISIONS

Part 1 Preliminary

Amendment 1 amends clause 2 (Commencement) to commence by proclamation consequential amendments in part 4, division 3 to align with the Councillor Complaints Act also commencing on proclamation.

Part 2 Amendment of City of Brisbane Act 2010

Amendment 2 inserts new clause 3A to amend section 6 (Definitions) to renumber the dictionary schedule 1 as schedule 2 as a consequence of new schedule 1 which lists the serious integrity offences and integrity offences under section 153.

Amendment 3 amends clause 4 (Amendment of section 153 (Disqualification for certain offences)) to provide that 'serious integrity offences' listed in schedule 1 part 1 and 'integrity offences' listed in schedule 1 part 2 are 'disqualifying' offences.

Currently, section 153 provides that a person can not be a councillor (for a prescribed period of time) if the person is convicted of a treason offence, an electoral offence, a bribery offence, or an integrity offence. *Amendment 3* replaces bribery offence with serious integrity offence.

The policy intent is for the automatic suspension of a councillor charged with an offence which would result in disqualification under section 153. The disqualification provisions under section 153 are expanded accordingly, for consistency.

Amendment 4 inserts new clause 4A to amend section 158 (Acting as councillor without authority) to provide that it is an offence, with a maximum penalty of 85 penalty units, for a person to act as a councillor if the person is suspended as a councillor.

Amendment 4 also inserts new clause 4B to insert new section 158A to provide that a councillor who becomes aware that he or she is not qualified to be a councillor, must immediately give a written notice to the Minister, if the councillor is not the mayor—the mayor and the chief executive officer, unless the councillor has a reasonable excuse. The notice must state the details about why the councillor is not qualified to be a councillor and the day the councillor became disqualified. A failure to give the notice carries a maximum penalty of 100 penalty units.

Amendment 5 inserts new clause 7A to insert new chapter 6, part 2, division 8 (Automatic suspension of councillors) and division 9 (Criminal history information).

Division 8 (Automatic suspension of councillors) (new sections 186B to 186F)

Section 186B (Automatic suspension for certain offences) provides that a person is automatically suspended as a councillor when the person is charged with a disqualifying offence. In the circumstances where a person is appointed or elected as a councillor, and a proceeding for a disqualifying offence against the person has been started but has not ended, the person is automatically suspended as a councillor when the person's term as a councillor starts.

Section 186C (When a person is charged with disqualifying offence and proceeding is started) provides for when a person is charged with a disqualifying offence. A proceeding for a disqualifying offence is started against a person when the person is charged with the offence.

Section 186D (Obligation to give notice if charged with disqualifying offence) provides that if a councillor is charged with a disqualifying offence, the councillor must immediately give a written notice to the Minister, if the councillor is not the mayor—the mayor, and the chief executive officer, unless the councillor has a reasonable excuse. The section also applies if a proceeding for a disqualifying offence has been started, but has not ended, against a councillor when the councillor is appointed or elected. A failure to give the notice carries a maximum penalty of 100 penalty units. The notice must state the provision of the law against which the councillor is charged and the day the councillor was charged.

Section 186E (Effect of councillor's suspension) provides for the effect of a councillor's suspension. The councillor must not act as a councillor. If the councillor is the mayor or deputy mayor, the councillor is also suspended as mayor or deputy mayor. The councillor's obligations under chapter 6, part 2, division 5 are not affected, for example, a councillor will remain subject to the normal transparency and accountability provisions applying to councillors, for example, the requirement to update their register of interests. The councillor is entitled to be paid ***remuneration*** (defined) as a councillor, other than an amount that is payable

to a councillor for performing a particular responsibility, including, for example, attending a meeting of the local government or any of its committees.

Section 186F (When suspension of councillor ends) provides for when a councillor's suspension ends.

Division 9 (Criminal history information) (new sections 186G and 186H)

Section 186G (Criminal history report) provides that if the Minister receives a notice from a councillor under section 158A in relation to the conviction of a councillor for a disqualifying offence, or under section 186D (Obligation to give notice if charged with disqualifying offence), or the Minister reasonably suspects a councillor has been charged with, or convicted of, a disqualifying offence, the Minister may ask the police commissioner for a written report about the criminal history of the councillor that includes a brief description of the circumstances of a conviction or charge mentioned in the criminal history. In this section c***riminal history***, of a councillor, includes spent convictions and every charge made against the councillor for an offence, in Queensland or elsewhere.

Section 186H (Confidentiality of criminal history information) applies to a person who possesses criminal history information because the person is or was an officer, employee or agent of the department; or is or was a councillor, officer, employee or agent of the council.

The person must not, directly or indirectly, disclose criminal history information to any other person unless the disclosure is permitted under the section. The offence carries a maximum penalty of 100 penalty units. The person must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it is given. ***Criminal history information*** is defined in the section.

Amendment 5 also inserts new clause 7B to insert new chapter 8, part 9 (Transitional provisions for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018) sections 277 to 279.

Section 277 (Disqualifying offence committed before commencement) provides that chapter 6, part 2, as in force after the commencement, applies in relation to a disqualifying offence, whether the act or omission constituting the offence was committed before or after the commencement.

Section 278 (Existing charge for disqualifying offence) applies if a proceeding for a disqualifying offence against a councillor had started before the commencement but has not ended. The councillor is automatically suspended as a councillor on the commencement.

Chapter 6, part 2 division 8 applies in relation to the councillor as if the councillor was suspended under section 186B.

Immediately after the commencement, the councillor must give a written notice, unless the councillor has a reasonable excuse, to the Minister, the mayor and the chief executive officer. There is a maximum penalty of 100 penalty units.

The notice must state the provision of the law against which the councillor was charged and the day the councillor was charged. The information contained in the notice is taken to be criminal history information for section 186H.

Section 279 (Existing conviction for new disqualifying offence) applies if before the commencement, a councillor was convicted of a new disqualifying offence, and on the commencement, the disqualifying period for the offence would not have ended. The councillor automatically stops being a councillor on the commencement. Section 153(7) applies in relation to the offence.

Immediately after the commencement, the councillor must give a written notice to the Minister, the mayor and the chief executive officer, unless the councillor has a reasonable excuse. The notice must state the provision of the law against which the councillor was convicted and the day the councillor was convicted. There is a maximum penalty of 100 penalty units.

The information contained in the notice is taken to be criminal history information for section 186H. ***Conviction*** includes a spent conviction and ***disqualifying period*** and ***new disqualifying offence*** are also defined in the section.

Amendment 6 amends clause 8 heading (Amendment of schedule 1 (Dictionary)) as a consequence of schedule 1 being renumbered as schedule 2 and new schedule 1 inserted.

Amendment 7 amends clause 8 (Amendment of schedule 1 (Dictionary)) to insert the term ***disqualifying offence*** in the dictionary.

Amendment 8 amends clause 8 (Amendment of schedule 1 (Dictionary)) to renumber schedule 1 as schedule 2 as a consequence of inserting new schedule 1 which lists the serious integrity offences and integrity offences under section 153.

Amendment 9 inserts new clause 8A to insert new schedule 1 (Serious integrity offences and integrity offences) to prescribe the serious integrity offences and integrity offences under section 153.

Part 4 Amendment of Local Government Act 2009

Amendment 10 inserts in part 4 new division 1 heading (Preliminary), as a consequence of new division 2 heading which clarifies the amendments commencing on assent from new division 3 consequential amendments commencing by proclamation (to align with the Councillor Complaints Act).

Amendment 11 inserts new division 2 heading (Amendments commencing on assent) to clarify the amendments commencing on assent from new division 3 consequential amendments to align with the Councillor Complaints Act commencing by proclamation.

Amendment 11 inserts new clause 21A to amend section 122 (Removing a councillor) to provide that if the Minister reasonably believes it is otherwise in the public interest that a councillor be suspended or dismissed, the Minister may recommend to the Governor in Council to dismiss or suspend a councillor. The Governor in Council may give effect to the Minister's recommendation under a Regulation.

Amendment 11 also inserts new clause 21B to amend section 123 heading and apply section 123 if the Minister reasonably believes it is otherwise in the public interest that every councillor be suspended or dismissed.

If the proposal in the Minister's notice under section 120 was to suspend every councillor for a stated period, the Minister may recommend to the Governor in Council to:

- suspend every councillor for a period that is no longer than the stated period and
- appoint an interim administrator to act in place of the councillors until the stated period ends.

The Governor in Council may give effect to the Minister's recommendation under a regulation. A regulation dissolving a local government has effect in accordance with the requirements of *Constitution of Queensland Act 2001*, chapter 7, part 2.

Currently section 122 of the *Local Government Act 2009* (LGA) provides that if the Minister reasonably believes that a councillor has seriously or continuously breached the local government principles; or the Minister reasonably believes that a councillor is incapable of performing their responsibilities, the Minister may recommend that the Governor in Council suspend or dismiss the councillor. Section 122(3) of the LGA provides that the Governor in Council may give effect to the Minister's recommendation under a regulation.

Amendment 12 amends clause 22 (Amendment of section 153 (Disqualification for certain offences)) to provide that 'serious integrity offences' prescribed in schedule 1 part 1 and 'integrity offences' prescribed in schedule 1 part 2 are 'disqualifying' offences.

Currently, section 153 provides that a person can not be a councillor (for a prescribed period of time) if the person is convicted of a treason offence, an electoral offence, a bribery offence, or an integrity offence. *Amendment 12* replaces bribery offence with serious integrity offence.

The policy intent is for the automatic suspension of a councillor charged with an offence which would result in disqualification under section 153. The disqualification provisions under section 153 are amended accordingly, for consistency.

Amendment 13 inserts clause 22A to amend section 158 (Acting as councillor without authority) to provide that is an offence, with a maximum penalty of 85 penalty units, for a person to act as a councillor if the person is suspended as a councillor.

Amendment 13 also inserts new clause 22B to insert new section 158A to provide that a councillor who becomes aware that he or she is not qualified to be a councillor must immediately give a notice to the Minister, if the councillor is not the mayor—the mayor and the chief executive officer, unless the councillor has a reasonable excuse. The notice must state the details about why the councillor is not qualified to be a councillor and the day the councillor became disqualified. A failure to give the notice carries a maximum penalty of 100 penalty units.

Amendment 14 inserts new clause 25A to insert in the Bill new chapter 6, part 2, division 7 (Automatic suspension of councillors) and division 8 (Criminal history information).

Division 7 (Automatic suspension of councillors new sections 182A to 182E)

Section 182A (Automatic suspension for certain offences) provides that a person is automatically suspended as a councillor when the person is charged with a disqualifying offence. In the circumstances where a person is appointed or elected as a councillor, and a proceeding for a disqualifying offence against the person has been started but has not ended, the person is automatically suspended as a councillor when the person's term as a councillor starts.

Section 182B (When a person is charged with disqualifying offence and proceeding is started) provides for when a person is charged with a disqualifying offence. A proceeding for a disqualifying offence is started against a person when the person is charged with the offence.

Section 182C (Obligation to give notice if charged with disqualifying offence) provides that if a councillor is charged with a disqualifying offence, the councillor must immediately give a notice to the Minister, if the councillor is not the mayor—the mayor, and the chief executive officer, unless the councillor has a reasonable excuse. The section also applies if a proceeding for a disqualifying offence has been started, but has not ended, against a councillor when the councillor is appointed or elected. A failure to give the notice carries a maximum penalty of 100 penalty units. The notice must state the provision of the law against which the councillor is charged and the day the councillor was charged.

Section 182D (Effect of councillor's suspension) provides for the effect of a councillor's suspension. The councillor must not act as a councillor. If the councillor is the mayor or deputy mayor, the councillor is also suspended as the mayor or deputy mayor. The councillor's obligations under chapter 6, part 2, division 5 are not affected, for example, a councillor will remain subject to the normal transparency and accountability provisions applying to councillors, for example, the requirement to update their register of interests. The councillor is entitled to be paid ***remuneration*** (defined) as a councillor, other than an amount that is payable to a councillor for performing a particular responsibility, including, for example, attending a meeting of the local government or any of its committees.

Section 182E (When suspension of councillor ends) provides for when a councillor's suspension ends.

Division 8 (Criminal history information new section 182F and 182G)

Section 182F (Criminal history report) provides that if the Minister receives a notice from a councillor under section 158A in relation to the conviction of a councillor for a disqualifying offence, or under section 182C (Obligation to give notice if charged with disqualifying offence), or the Minister reasonably suspects a councillor has been charged with, or convicted of, a disqualifying offence, the Minister may ask the police commissioner for a written report about the criminal history of the councillor that includes a brief description of the circumstances of a conviction or charge mentioned in the criminal history. In this section ***criminal history***, of a councillor, includes a spent conviction and every charge made against the councillor for an offence, in Queensland or elsewhere.

Section 182G (Confidentiality of criminal history information) applies to a person who possesses criminal history information because the person is or was an officer, employee or agent of the department; or is or was a councillor, officer, employee or agent of the council.

The person must not, directly or indirectly, disclose criminal history information to any

other person unless the disclosure is permitted under the section. The offence carries a maximum penalty of 100 penalty units. The person must ensure a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it is given. ***Criminal history information*** is defined in the section.

Amendment 14 also inserts new clause 25B to insert new chapter 9 part 13 (Transitional provisions for Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018) sections 325 to 327.

Section 325 (Disqualifying offence committed before commencement) provides that chapter 6, part 2, as in force after the commencement, applies in relation to a disqualifying offence, whether the act or omission constituting the offence was committed before or after the commencement.

Section 326 (Existing charge for disqualifying offence) applies if a proceeding for a disqualifying offence against a councillor had started before the commencement but has not ended. The councillor is automatically suspended as a councillor on the commencement. Chapter 6, part 2 division 7 applies in relation to the councillor as if the councillor was suspended under section 182A

Immediately after the commencement, the councillor must give a notice, unless the councillor has a reasonable excuse, to the Minister, the mayor and the chief executive officer. There is a maximum penalty of 100 penalty units.

The notice must state the provision of the law against which the councillor was charged and the day the councillor was charged. The information contained in the notice is taken to be criminal history information for section 182G.

Section 327 (Existing conviction for new disqualifying offence) applies if before the commencement, a councillor was convicted of a new disqualifying offence, and on the commencement, the disqualifying period for the offence would not have ended. The councillor automatically stops being a councillor on the commencement. Section 153(7) applies in relation to the offence.

Immediately after the commencement, the councillor must give a notice to the Minister, if the councillor is not the mayor—the mayor, the chief executive officer, unless the councillor has a reasonable excuse. There is a maximum penalty of 100 penalty units.

The notice must state the provision of the law against which the councillor was convicted; and the day the councillor was convicted. The information contained in the notice is taken to be criminal history information for section 182G. ***Conviction*** includes a spent conviction and ***disqualifying period*** and ***new disqualifying offence*** are also defined in the section.

Amendment 14 inserts new clause 25C to insert new schedule 1 (Serious integrity offences and integrity offences) to list the serious integrity offences and integrity offences under section 153.

Amendment 15 amends clause 26 (Amendment of schedule 4 (Dictionary)) to insert the term ***disqualifying offence***.

Amendment 16 inserts division 3 heading (Amendments commencing on proclamation) in part 4 (Amendment of Local Government Act 2009) and inserts clauses 26A to 26C to provide for consequential amendments to ensure consistency between the Councillor Complaints amendments and the Belcarra Bill amendments on commencement by proclamation.

Accordingly, clause 26A amendment of section 150L (What is misconduct) subsection (1)(c)(iv) replaces the reference to 173(4) or (5) with 175G.

Clause 26B amendment of section 150AY (Functions of investigators) subparagraph (b) second dot point, replaces 'or 172(5)' with 175C(2), 175E(2) or (5), 175H or 175I(2) or (3).

Clause 26C amendment of section 175G (Duty to report another councillor's material personal interest or conflict of interest at a meeting) replaces in section 175G(2), note, the reference to '176(3)(d) and 180' with 150L(1)(c)(iv), 150AQ and 150AR.

Part 5 Amendment of Local Government Electoral Act 2011

Amendment 17 amends clause 33 (Insertion of new section 201A) to correct a minor error by replacing 'electoral' with election.

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