

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

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP

Title of the Bill

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

Objectives of the Amendments

Amendments to Chapter 1 (Preliminary)

The objective of the amendments to Chapter 1 (Preliminary) of the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019* (the Bill) is to provide for Chapters 2 (Amendments relating to funding and expenditure for State elections) and 3 (Amendments relating to signage at State elections) of the Bill to commence on 1 August 2020. However, amendments related to election funding and caps on political donations will apply from 1 July 2022, and amendments relating to policy development payments will apply from 1 January 2022 (allowing the first payment to occur under new arrangements in July 2022).

Additional objectives of the amendments to Chapter 1 of the Bill are to provide for Chapter 5 to commence on 12 October 2020, other than particular sections which commence on assent.

Amendments to Chapter 2 (Amendments relating to funding and expenditure for State elections)

The objectives of the amendments to Chapter 2 of the Bill are to:

- address the concerns of small, not-for-profit third party organisations, regarding the regulatory burden of the political donation and electoral expenditure cap schemes, in response to recommendation 2 of the Economics and Governance Committee's Report No. 37 on the Bill of 7 February 2020; and

- clarify and strengthen the reforms to be implemented by the Bill.

Amendments to Chapter 3 (Amendments relating to signage for State elections)

The objectives of the amendments to Chapter 3 of the Bill are to:

- improve the fairness and equality of opportunities for communication with voters in proximity to polling booths through signage; and
- provide flexibility, if required, to facilitate the holding of the 2020 State general election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

The 2020 State general election is due to be held on 31 October 2020. Many existing arrangements under the *Electoral Act 1992* (the Electoral Act) are incongruent with the social distancing measures implemented, or which may need to be implemented in the future, due to the COVID-19 public health emergency. The amendments will ensure that any disruptions caused by the disease and social distancing measures can be appropriately managed.

Amendments to Chapter 5 (Amendments relating to dishonest conduct of councillors and other local government matters)

The objectives of the amendments to Chapter 5 of the Bill are to:

- implement the Government's response to recommendation 1 of the Crime and Corruption Commission's (CCC) report *Operation Yabber: An investigation into allegations relating to the Gold Coast City Council* (Yabber Report);
- clarify and strengthen the reforms to be implemented by the Bill about councillor conflicts of interest, councillor advisors and filling vacancies in the office of a councillor;
- expand the statutory protection and immunity provided to members of the Councillor Conduct Tribunal (CCT) when performing their functions in hearing and deciding an application made by the Independent Assessor about alleged misconduct by a councillor; and
- make a minor change to the *Local Government Act 2009* (Local Government Act) to remove the current requirement for a local government's corporate plan to cover a 5-year period.

Achievement of the Objectives

Amendments to Chapter 1 (Preliminary)

The objectives of the amendments to Chapter 1 of the Bill will be achieved by providing for Chapters 2 and 3 of the Bill to commence on 1 August 2020, other than amendments related to caps on political donations which commence on 1 July 2022 and amendments related to policy development payments which commence on 1 January 2022.

The objectives of the amendments to Chapter 1 of the Bill will be achieved by providing for Chapter 5 to commence on 12 October 2020, other than particular sections which commence on assent.

Amendments to Chapter 2 (Amendments relating to funding and expenditure for State elections)

The objective of the amendments to Chapter 2 of the Bill related to reducing the regulatory burden of the political donation and electoral expenditure cap schemes on third parties will be achieved by:

- removing the donation caps for donations to third parties engaged in electoral campaigning;
- increasing the registration threshold for third parties from \$1,000 to \$6,000 of electoral expenditure incurred during the capped expenditure period for an election;
- shortening the capped expenditure period so that, following the 2020 general election, it applies from the day after the last Saturday in March of that year for an ordinary general election (or for an extraordinary general election held after the last Saturday in March where an ordinary general election was to be held in that year);
- clarifying the definition of the electoral expenditure including with regard to advocacy as part of third parties' everyday activities;
- providing that disclosure of political donations received by third parties to enable expenditure for political purposes will only be required where both the amount or value of the gift and the amount that is applied to expenditure for political purposes are both \$1,000 or more;
- allowing for regulations to be made reducing the record keeping requirements applied to third parties;
- removing the need for third party expenditure returns to be audited; and
- reducing the obligations on agents to support compliance.

The objective of the amendments to Chapter 2 of the Bill related to clarifying and strengthening the reforms will be achieved by:

- clarifying the definition of 'electoral expenditure' and to address the potential for stockpiling electoral material outside the capped expenditure period;
- clarifying the reach of offences and ensuring that they apply fairly, and increasing the penalty for exceeding the expenditure cap;
- in relation to the transfer of a candidate's own funds into a State campaign account, clarifying the treatment of transfers from joint bank accounts held with a spouse;
- modifying the definition of 'associated entity' so that it includes entities that are controlled by, or operate to a significant extent for the dominant purpose of promoting one or more candidates or a registered political party, and clarifying the application of part 11 to associated entities;
- changing auditing requirements so that only registered political parties and associated entities will be required to provide audited six-monthly returns and electoral expenditure returns, with the Electoral Commission of Queensland (ECQ) being empowered to conduct compliance audits, including of candidates and third parties;

- clarifying the record keeping requirements for election participants;
- allowing for regulations to be made clarifying the record keeping requirements for election participants;
- allowing regulations to be made requiring real time disclosure of loans received by associated entities;
- prohibiting the ECQ from making party membership lists available for public inspection, including, for example, by publishing them on its website; and
- making further minor amendments and drafting improvements.

Amendments to Chapter 3 (Amendments relating to signage for State elections)

The objective of the amendments to Chapter 3 of the Bill in relation to signage will be achieved by:

- increasing the number of signs able to be displayed by parties and candidates at ordinary polling booths under the restrictions, with adjusted size limitations;
- providing for associated entities to be considered to be part of the party or candidate it is associated with for the purposes of the signage restrictions;
- allowing third parties to display signage, subject to relevant number and size limitations;
- removing requirements for permitted signs to be accompanied by a person and not attached to a building, fence or other permanent structure; and
- ensuring that the offence relating to setting up to display election signs applies prior to 5am on polling day and does not apply to residences and other lawfully occupied premises, or to a pre-poll voting office that is also to be used as an ordinary polling booth before close of voting hours at that office.

The objective of the amendments in relation to the 2020 State general election will be achieved by amending the Electoral Act to allow:

- the cut-off day for the electoral rolls and the nomination of candidates stated in the writ to be earlier than the day stated in section 84 of the Electoral Act;
- a regulation-making power that may require electors or certain electors to vote by postal vote;
- the time and day by which an elector may request a postal vote to be fixed to an earlier or later time and day by the ECQ, rather than by 12 days before the polling day;
- requests for elector visitor voting to be refused and met by the making of alternative arrangements, to the extent practicable, for voting;
- the ECQ to declare additional classes of electors who may make an electronically assisted vote;
- the ECQ to make procedures about how an elector may make an electronically assisted vote, without the need for the procedures to be approved by a regulation and tabled in the Legislative Assembly;
- the ECQ to give a direction about the distribution or display of how-to-vote cards or other election material at a polling booth and canvassing for votes in or near a polling booth, with an offence applying to persons who contravene such a direction;

- the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place at which a scrutineer is entitled to be present under the Electoral Act, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the Electoral Act, with an offence applying to a contravention;
- a returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth for the election, and areas where they may be, with an offence applying to a contravention;
- a returning officer to direct a member of the ECQ's staff to carry out the counting of votes at a stated place or to arrange for the counting of votes to be filmed by a member of the ECQ's staff; and
- a further broad regulation making power to allow regulations to be made which make provision for any matter that will allow or facilitate the election to be held in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency (including modifying or varying any provision in part 7 of the Electoral Act).

The measures in relation to the 2020 State general election are temporary and will not apply to future elections.

Amendments to Chapter 5 (Amendments relating to dishonest conduct of councillors and other local government matters)

Yabber Report

The CCC commenced Operation Yabber in August 2018 to investigate allegations of corrupt conduct relating to senior employees and councillors at the Gold Coast City Council. On 10 December 2019, the CCC finalised its investigation and determined to issue a public report on aspects of the investigation in light of the public interest in these matters.

On 24 January 2020, the Yabber Report was tabled in State Parliament. The report makes two recommendations to ensure stricter governance and accountability in local government.

The objective of the amendments related to implementing the Government's response to recommendation 1 of the Yabber Report will be achieved by amending the Local Government Act and the *City of Brisbane Act 2010* (City of Brisbane Act) to provide that a mayor may not give a direction:

- to the chief executive officer (CEO) that relates to the CEO's functions in relation to appointment of a local government employee under section 196(3) of the Local Government Act or a council employee, other than a senior executive employee, under section 193(3) of the City of Brisbane Act; disciplinary action against a local government employee under section 197 of the Local Government Act or a council employee under section 194 of the City of Brisbane Act; or discipline of a councillor advisor; and
- to the CEO or a Brisbane City Council senior executive employee that would result in the CEO or senior executive employee contravening a provision of an Act.

Councillor conflicts of interest

The amendments to clarify and strengthen the reforms to be implemented by the Bill about councillor conflicts of interest will achieve the objective by making amendments to the Local Government Act and the City of Brisbane Act to:

- clarify that a councillor or other person participates in a decision by considering and discussing a matter before making a decision about the matter;
- exempt the following additional matters from the conflict of interest provisions:
 - a matter that is solely, or relates solely to, amending a planning scheme which applies to the whole of a local government area;
 - a matter that is solely, or relates solely to, amending a local government's budget;
 - a matter that is solely, or relates solely to, insurance for councillors; and
 - matters in which a councillor or a close associate or related party of the councillor or a donor stands to gain a benefit or suffer a loss that is no greater than the benefit or loss that a significant proportion of persons in the local government area stand to gain or lose;
- clarify that a councillor has a prescribed conflict of interest in a matter if the total of all gifts, loans and sponsored travel or accommodation benefits given in the relevant circumstances by a donor with an interest in the matter is \$2,000 or more;
- clarify that gifts and loans given to groups of candidates or political parties are to be divided between the number of members of the group on the record of membership of the group given to the ECQ or the number of candidates endorsed by the party for determining whether a councillor has a prescribed conflict of interest or declarable conflict of interest;
- clarify that a prescribed conflict of interest includes matters relating to the appointment of the CEO if a close associate of a councillor is being considered for appointment;
- clarify that a councillor does not commit particular offences if the councillor participates in, or is present for, a decision to not decide a matter and take no further action in relation to the matter; and
- make other minor drafting amendments to clarify the operation of the provisions.

Engagement of advisors to assist councillors

The amendments to clarify and strengthen the reforms to be implemented by the Bill about councillor advisors will achieve the objective by making amendments to the Local Government Act and the City of Brisbane Act to:

- expand the functions of the Local Government Remuneration Commission to include considering and making recommendations to the Minister about whether or not to prescribe a local government under the Local Government Act for the purpose of allowing the appointment of councillor advisors and the number of councillor advisors each councillor under the Local Government Act and the City of Brisbane Act may appoint;
- remove the existing disqualification to be a commissioner of the Local Government Remuneration Commission if a person is a member of a political party;
- require the Minister to ask for a recommendation from the Local Government Remuneration Commission and for the Minister to have regard to that recommendation before proposing the making of a regulation prescribing particular matters about councillor advisors, other than for the regulation first made after commencement;

- clarify that a councillor advisor may carry out or assist in an activity relating to a councillor's campaign for re-election outside of their role as a councillor advisor;
- provide for the appointment of part-time councillor advisors;
- remove the requirement for a council resolution under the City of Brisbane Act and provide that Brisbane City Council councillors may appoint up to the maximum number of councillor advisors prescribed by regulation; and
- provide that a local government resolution under the Local Government Act must state the number of councillor advisors, up to the maximum prescribed by regulation, that each councillor may appoint.

Filling vacancies in the office of a councillor

The amendments to clarify and strengthen the reforms to be implemented by the Bill about filling a vacancy in the office of a councillor will achieve the objective by making amendments to the Local Government Act to provide that:

- a vacancy arising during the first 12 months after a quadrennial election is to be filled by appointment of a runner-up or, if there is no runner-up who is eligible and consents to the appointment, by by-election;
- a vacancy arising during the period starting on the first anniversary and ending on the day before the third anniversary of the quadrennial election is to be filled by a by-election;
- a vacancy arising in the period starting on the third anniversary of the last quadrennial election to the day before the next quadrennial election is to be filled by appointment; and
- the current processes under Chapter 6, part 2, division 3 of the Local Government Act in relation to filling a vacancy are to apply to any vacancy that occurs before the commencement if the vacancy has not been filled on the commencement.

This process is to apply to all vacancies, both mayoral and councillor, in divided and undivided local governments.

Councillor Conduct Tribunal members' immunity

The Local Government Act establishes the CCT. The CCT's primary function is to hear and determine an application made to it by the Independent Assessor about alleged misconduct by a councillor.

The Local Government Act section 235 provides protection from liability for State administrators, including CCT members, for acts done, or omissions made, honestly and without negligence under the Local Government Act, City of Brisbane Act or the *Local Government Electoral Act 2011* (Local Government Electoral Act).

The amendments to expand the statutory protection and immunity provided to CCT members when performing their functions in hearing and deciding an application made by the Independent Assessor about alleged misconduct by a councillor will achieve the objective by:

- providing that a CCT member, in performing their functions to hear and decide an application made by the Independent Assessor about alleged misconduct by a councillor, has the same protection and immunity as a Supreme Court judge has in performing the judge's judicial functions; and
- clarify that the current civil liability protection for CCT members under section 235 of the Local Government Act applies in addition to the new statutory protection and immunity.

Local government corporate plans

Chapter 4, part 3 of the Local Government Act provides for financial planning and accountability of local governments. Section 104(5) provides that the system of financial management established by a local government must include a number of financial management planning documents prepared for the local government, including a 5-year corporate plan that incorporates community engagement. The amendment will remove the requirement that the corporate plan must cover a 5-year period to provide flexibility to make a regulation under section 270(2)(j) of the Local Government Act in relation to the length of time the corporate plan should cover.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Estimated Cost for Government Implementation

Amendments to Chapter 1 (Preliminary)

The Bill will increase the policy development payments funding pool from \$3 million to \$6 million per annum from January 2021, with \$4.5 million being available in the 2020-2021 financial year. The amendments will delay the increase in the funding pool from \$3 million to \$6 million per annum from July 2022, with \$6 million being available in the 2022-23 financial year.

The Bill will also increase election funding entitlements from \$3.14 to \$6.00 per formal first preference vote for registered political parties and from \$1.57 to \$3.00 per formal first preference votes for candidates. In addition, the eligibility threshold for both registered political parties and candidates will decrease from 6 per cent to 4 per cent of formal first preference votes. The amendments will delay this increase so that it applies to elections held after 1 July 2022, rather than being effective for the 2020 general election and later elections.

Amendments to Chapter 2 (Amendments relating to funding and expenditure for State elections)

The amendments to Chapter 2 removing the application of the donation caps from third parties, the increase in the registration threshold for third parties, and the shortening of the capped expenditure period applying to general elections may reduce the scope of compliance, monitoring and enforcement activities to be undertaken by the ECQ as compared with the Bill as introduced.

There may be a cost to the ECQ in ensuring their internal systems can provide appropriate functionality in accordance with new requirements created by the funding and disclosure amendments.

Amendments to Chapter 3 (Amendments relating to signage for State elections)

The amendments to Chapter 3 in relation to signage restrictions will result in additional staffing costs for the ECQ during an election period to monitor compliance. Any costs will be considered through normal budgetary processes.

The amendments to Chapter 3 in relation to the 2020 State general election, may result in additional costs for the ECQ, particularly in relation to administering any expanded use of postal voting. The costs involved will depend on any specific measures that are implemented by the relevant decision makers in relation to each of the amendments included in the Bill, and will also depend on other variables, including take-up of any

measures by voters, which are difficult to predict in the context of the public health emergency involving COVID19. Any costs will be considered through the normal budgetary processes.

Amendments to Chapter 5 (Amendments relating to dishonest conduct of councillors and other local government matters)

There are no significant costs for implementation of the amendments to Chapter 5. Any costs will be met within normal budgetary processes.

Consistency with Fundamental Legislative Principles

Rights and liberties of individuals

The fundamental legislative principles include requiring that legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992* (LSA)).

Amendments to Chapter 2 (Amendments relating to funding and expenditure for State elections)

Human rights and political communication

The amendments impact on political communication and human rights including the rights to freedom of expression, peaceful assembly and freedom of association, taking part in public life and privacy and reputation. These impacts are addressed in the Statement of Compatibility with Human Rights.

Imposition of presumed responsibility

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

An ‘associated entity’ is currently defined in the Electoral Act to be an entity that:

- is controlled by one or more registered political parties; or
- operates wholly, or to a significant extent, for the benefit of one or more registered political parties.

The amendments:

- expand the definition of ‘associated entity’ so that it includes:
 - entities that are controlled by, or operate wholly, or to a significant extent, for the benefit of a candidate, or two or more candidates endorsed by the same registered political party; or
 - operate for the dominant purpose of promoting a registered political party, a candidate or two or more candidates endorsed by the same registered political party.
- clarify the application of part 11 to associated entities and electoral committees, and requiring the agent of the registered political party or candidate to take steps to ensure that the associated entity or electoral committee, and persons authorised by the associated entity or electoral committee, are aware of and comply with their obligations.

The amendments provide that the electoral expenditure incurred by an associated entity or electoral committee will be taken to be incurred by a party or candidate. Similarly, the amendments provide that gifts or loans made to or for the benefit of, or received by, the associated entity or electoral committee will be taken to be made to or for the benefit of, or received by, the party or candidate. This could be seen to have the effect of a registered political party or a candidate being responsible for the actions of an associated entity or electoral committee over which they may not have control.

The treatment of expenditure and gifts and loans in this way is necessary to ensure that the expenditure caps and donations caps cannot be avoided by candidates and registered political parties using associated entities or electoral committees to incur electoral expenditure or receive gifts or loans for their benefit, and ensures that such expenditure is appropriately attributed for the purposes of the electoral expenditure and donation caps.

In circumstances where an expenditure cap or donation cap is exceeded a person will not commit an offence if they did not know, or could not reasonably have known, that the caps would be exceeded. This limits the potential adverse impact on individuals due to the actions of others over which they may have had no control.

Proportionality of penalties and orders

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, consequences are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

The amendments include new offence and penalty provisions, namely:

- requiring a record-keeping entity to make a record about each prescribed matter – 20 penalty units;
- requiring the agent of a participant in an election to make a record about steps taken to ensure compliance – 20 penalty units;
- requiring a person who makes a record or is authorised to receive transferred records to keep records for five years – 20 penalty units;
- requiring a register-keeping entity to keep a register of non-monetary gifts – 20 penalty units;
- requiring a registered political party to keep a register of members and affiliates – 20 penalty units; and
- requiring a participant to assist an appointed auditor in relation to an audit – 200 penalty units.

The penalties for these offences are proportionate and relevant to the actions to which they apply, taking into account comparable existing offences, including those already in the Electoral Act and those proposed to be introduced by the Bill. The penalties for offences related to audits are required to be sufficiently high to deter election participants from not providing the required assistance to appointed auditors thereby enabling auditors to effectively detect instances of non-compliance and support the effectiveness of the new electoral funding and disclosure arrangements.

The maximum penalty for the offence in section 281G (Cap on electoral expenditure during capped expenditure period) is increased to 1,500 penalty units or 10 years imprisonment by the amendments. This reflects the serious nature of this offending and is necessary to adequately deter a situation where electoral expenditure is unlawfully incurred, potentially influencing voting in an election and therefore providing an unfair advantage to an election participant.

Reversal of onus of proof

The amendments allow for a 'reasonable excuse' in relation to a record keeping offence. This acknowledges that there are likely to be a range of matters that are peculiarly within the knowledge of the defendant and that the defendant would be better-positioned than the prosecution to meet the evidential burden. The 'reasonable excuse' ensures liability would not be unjustly imposed, given the unpredictability of the situations likely to arise.

Retrospective effect

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, legislation adversely affects those rights and liberties or imposes obligations retrospectively.

The amendments provide that electoral expenditure is incurred when the goods or services for which the expenditure is incurred are provided or supplied, regardless of when the amount of the expenditure is invoiced or paid. Therefore, expenditure incurred during the capped expenditure period, commencing on 1 August 2020 for the 2020 general election, may be counted towards the expenditure caps where goods and services are provided or supplied after 1 August 2020, including in circumstances where it is invoiced or paid for before this date. Records are also required to be kept in relation to the electoral expenditure.

The amendments could be seen to have a potential retrospective effect in relation to the relevant expenditure by potentially extending obligations and impacting on expenditure caps due to activities undertaken before commencement.

It is necessary for legislation to be applied in this way to ensure that the electoral expenditure caps cannot be avoided by entering into arrangements prior to the capped expenditure period, and providing an unfair advantage to an election participant.

Electoral expenditure incurred to obtain goods that are first used for a campaign purpose during the capped expenditure period for the 2020 general election will not be included in the expenditure caps unless a contract for the supply of the goods was entered into on or after 17 June 2020. This limits the retrospective effect in relation to this type of electoral expenditure.

Amendments to Chapter 3 (Amendments relating to signage at State elections)

Amendments relating to signage at State elections

Human rights and political communication

The amendments impact on political communication and human rights including the rights to freedom of expression and taking part in public life. The Statement of Compatibility for the amendments addresses the compatibility with human rights of the proposed amendments.

Amendments related to the 2020 general election

Human rights and political communication

The following amendments in relation to the 2020 general election impact on political communication and human rights including the rights to freedom of expression, taking part in public life, freedom of movement and privacy and reputation:

- changing the cut-off day for the electoral rolls and the nomination of candidates stated in the writ;
- enabling a regulation to be made providing that all electors, electors in a stated electoral district, electors of a stated class or electors in a stated electoral district of a stated class must vote by postal vote;
- modifying timeframes for making a postal vote request;
- allowing issuing officers to be directed not to visit the elector, or electors of the class, or any electors;
- allowing the ECQ to issue directions in relation to the display or distribution of how-to-vote cards and other election material and canvassing for votes in or near polling booths;
- allowing the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place that scrutineers are otherwise entitled to be present. It also allows the returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth; and
- allowing ECQ to make procedures which potentially impact on how particular individuals vote.

These impacts, which are addressed in the Statement of Compatibility with Human Rights, are justified on the basis that public health considerations may necessitate changes to the way the election is conducted to reduce the spread of contagion. The amendments which will only apply in relation to the 2020 general election, are confined to the circumstances of the public health emergency involving COVID-19.

Proportionality of penalties and orders

Whether legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the LSA) includes whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

The amendments contain new offences for contravening a direction given by the ECQ, a returning officer or member of the ECQ's staff in charge of a polling booth, without reasonable excuse, with maximum penalty of 20 penalty units. It also provides for a new offence for the display of an election sign or setting up other items to be used for a purpose related to an election with a maximum penalty of 10 penalty units. The penalties for these offences are commensurate with the penalties applying for similar offences in the Electoral Act.

Chapter 5 (Amendments relating to dishonest conduct of councillors and other local government matters)

Human rights and political communication

The amendments impact on political communication and human rights including the rights to take part in public life, privacy and reputation and liberty and security of the person. These impacts are addressed in the Statement of Compatibility with Human Rights.

Councillor Conduct Tribunal members' immunity

Immunity from proceeding or prosecution

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, legislation confers immunity from proceeding or prosecution without adequate justification (section 4(3)(h) of the LSA).

The proposal provides the same protections and immunity to CCT members as those applying to Supreme Court judges or members of the Queensland Civil and Administrative Tribunal (QCAT). It is appropriate that CCT members should also be free from personal liability when performing their functions in hearing and deciding an application made by the Independent Assessor about whether or not a councillor has engaged in misconduct and, if so, what disciplinary action should be taken.

The immunity will ensure that they are at liberty to hear and decide an application made by the Independent Assessor independently without fear or favour. It would be difficult for CCT members to act with the appropriate confidence in determining an application in the public interest if they were subject to allegations and litigation taken against them personally for performing their functions.

Although the proposal will give CCT members immunity from civil and criminal liability, particular persons may apply to QCAT to review a decision of the CCT under the circumstances provided under section 150AT of the Local Government Act.

Sufficient regard to the institution of Parliament

The fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) of the LSA). Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the sub-delegation of a power delegated by an Act only, in appropriate cases and to appropriate persons, and if authorised by an Act.

Amendments to Chapter 3

Amendments related to the 2020 general election

The following amendments in relation to the 2020 general election raise whether the amendments have sufficient regard to the institution of Parliament:

- allowing the ECQ to change the time and day by which an individual must apply for a postal vote;
- allowing the ECQ to declare an additional class of electors to be able to make an electronically assisted vote at an election;

- allowing the ECQ to issue directions in relation to various matters including the display or distribution of how-to-vote cards and other election material and canvassing for votes in or near polling booths, scrutineers and the movement of candidates;
- allowing procedures to be made without the need for the procedures to be approved by a regulation and tabled in the Legislative Assembly; and
- allowing a regulation to be made about a matter for which it is necessary to make provision to facilitate the holding of the election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

Any potential breach of fundamental legislative principles is justified on the basis that flexibility and expediency is required to deal with any interruptions or disruptions due to the public health emergency involving COVID-19. A number of the amendments provide opportunities for voter enfranchisement to be maximised in the event that public health considerations make it difficult for them to otherwise exercise their right to vote. The ECQ is the appropriate body for managing these temporary arrangements, which will only apply during the 2020 general election.

With regard to the regulation making power which confers the power to make a regulation about a matter for which it is necessary to make provision to facilitate the holding of the election in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency, this power is justified on the basis that the scope of the power is limited to the purpose of facilitating an election in a public health emergency. Further, the provision, and any regulation made under it, will expire after one year and the Minister may recommend the making of a regulation under this section only if they are satisfied the regulation is necessary to achieve the purpose of this part. It is in the public interest to include this regulation-making power to ensure that there are no legislative impediments or gaps that would prevent an election proceeding in an appropriate way in the circumstances of the public health emergency.

Consultation

Amendments to Chapter 2 (Amendments relating to funding and expenditure for State elections) and Chapter 3 (Amendments relating to signage for State elections)

The amendments to Chapter 2 relating to third parties were developed in response to the Economics and Governance Committee's recommendation that consideration be given to amending the Bill to address the concerns of small, not-for-profit third party organisations regarding the regulatory burden of the political donation and electoral expenditure cap schemes in its report on the Bill. Consultation was also undertaken with the ECQ in relation to the amendments to Chapter 2 and amendments to Chapter 3 in relation to signage.

In relation to amendments related to the 2020 State general election, the ECQ was also consulted. Due to the urgent nature of these amendments, further consultation, including community consultation, was not possible.

Chapter 5 (Amendments relating to dishonest conduct of councillors and other local government matters)

Consultation was undertaken with the Local Government Association of Queensland and Local Government Managers Australia on the proposed amendments contained in Chapter 5 of the Bill itself. Other consultation was undertaken on certain proposed amendments contained in Chapter 5 of the Bill, including the distribution of an information paper in March 2019 and meetings with various stakeholders, including councils and community organisations.

A number of the amendments address issues raised by submitters to the Economics and Governance Committee's inquiry into the Bill.

NOTES ON PROVISIONS

Amendment 1- Clause 2 (Commencement)

Amendment 1 amends clause 2 to provide for commencement of provisions of the Bill as follows:

- part 1A of Chapter 2 to commence on assent;
- clause 22, to the extent it inserts new part 11, division 5 (Policy development payments), to commence on 1 January 2022;
- clauses 19, 20 and 21 and remainder of clause 22, relating to election funding and caps on political donations, to commence on 1 July 2022;
- remaining provisions of Chapter 2, and schedule 1, to commence on 1 August 2020, immediately after the commencement of those provisions of the *Electoral and Other Legislation Amendment Act 2019* that commence on 1 August 2020;
- clauses 57 and 58A in Chapter 3 to commence on assent;
- Chapter 3 (other than clauses 57 and 58A) to commence on 1 August 2020;
- Chapter 4 to commence on a day to be fixed by proclamation;
- clauses 74, 77, 94, 97 to 99, 102, 103A, 105, 113B, 120, 121A and part 3 of Chapter 5 to commence on assent; and
- remaining provisions of Chapter 5 to commence on 12 October 2020.

Amendments 2 to 12 – Clause 4 (Amendment of s 2 (Definitions))

Amendments 2 to 12 amend section 2 (as amended by the Bill) to:

- provide definitions of ‘associated entity’, ‘bank statement’, ‘campaign purpose’, ‘election material’, ‘participant’ and ‘prescribed matter’;
- make the definitions of ‘donation cap’ and ‘donation cap period’ relate to a registered political party or candidate in an election;
- change the definition of ‘candidate’ to refer to an individual rather than a person to ensure consistency and reflect that a candidate must be a natural person; and
- make the definition of ‘third party’ apply for the Electoral Act generally rather than for part 11.

Amendments 13 to 19 – Clause 7 (Amendment of s 197 (Definitions))

Amendments 13 to 19 amend section 197 (as amended by the Bill) to:

- omit and replace the definition of ‘associated entity’ so that it refers to the definition in section 204(2) and (3) for an associated entity of a registered political party, and section 204A(2), (3) and (4) in relation to an associated entity of a candidate in an election;
- provide definitions of ‘bank statement’, ‘campaign purpose’, ‘election material’, ‘participant’ and ‘prescribed matter’; and
- make the definitions of ‘donation cap’ and ‘donation cap period’ relate to a registered political party or candidate in an election.

Amendment 20 – Clause 8 (Insertion of new s 197A)

Amendment 20 amends section 197A (as inserted by the Bill) to refer to goods or services being supplied or provided, rather than delivered or provided.

Amendments 21 to 27 – Clause 9 (Insertion of new s 199))

Amendments 21 to 27 amend section 199 (as inserted by the Bill) to:

- define electoral expenditure to be of a kind mentioned in section 199(2) incurred for a ‘campaign purpose’ (as defined in new section 199A);
- remove the word ‘direct’ related to the costs of distributing material from section 199(2)(b) to make it clearer that distribution of material for an election is captured as a kind of expenditure;
- insert section 199(2)(d) to make it clearer that expenditure for contracted services related to an activity in section 199(2)(a), (b) or (c), including, for example, fees for consultants or the provision of data, is captured as a kind of expenditure;
- provide that, for section 199(2)(a) and (b), it does not matter whether section 181 applies to the material;
- insert section 199(4)(c) which excludes expenditure incurred in employing staff for a campaign purpose as a kind of expenditure;
- replace section 199(5) so it provides that expenditure incurred by a third party is electoral expenditure if the dominant purpose for which the expenditure is incurred is a campaign purpose.
- insert new section 199(6) which provides that expenditure incurred by a third party is not electoral expenditure if the dominant purpose for which the expenditure is incurred is another purpose, even if the expenditure was also incurred for, or achieved, a campaign purpose. A note is also inserted indicating that to educate or raise awareness about an issue of public policy is an example of other purposes for incurring expenditure;
- renumber sections 199(6) and (7) (as inserted by the Bill); and
- remove gifts in kind from being included as expenditure.

Amendment 28 – Clause 9 (Insertion of new s 199))

Amendment 28 inserts new section 199A which provides a definition of ‘campaign purpose’. This differs from section 199(1) of the Bill as it removes references to ‘directly or indirectly’ from the purposes. New section 199A(2) also specifically provides that, without limiting section 199A(1), if material produced as a result of the expenditure does any of the following in relation to an election, it will be incurred for a purpose mentioned in new section 199A(1)(a), (b) or (c):

- expressly promotes or opposes political parties or candidates who: advocate, or do not advocate, a particular policy or issue, or have or do not have a particular position on a policy or issue; or candidates who express a particular opinion;
- expressly or impliedly comments about a political party, elected member or candidate in the election, or in relation to an electoral district;

- expresses a particular position on a policy, issue or opinion if the position is publicly associated with a political party or candidate, and whether or not, in expressing the position, the party or candidate is mentioned.

Amendments 29 and 30 – Clause 11 (Insertion of new ss200A and 200B)

Amendments 29 and 30 amend section 200B (as inserted by the Bill) which provides that a gift of electoral expenditure is made when the circumstances in subsection 200B(1) apply to the expenditure, regardless of when the expenditure is incurred. Notes are inserted under section 200B alerting readers to section 280A and 281A.

Amendment 31 – Clause 12 (Replacement of s 201 (Meaning of gift))

Amendment 31 amends section 201 (as inserted by the Bill) to insert a new provision providing that an amount transferred to an individual from funds the individual holds jointly with the individual's spouse is not a gift, and renumber the following paragraphs.

Amendment 32 – Clause 12 (Replacement of s 201 (Meaning of gift))

Amendment 32 amends section 201 (as inserted by the Bill) so that the definition of 'uncharged interest' on a loan more clearly identifies those circumstances where amounts that would have been payable on the loan are captured.

Amendments 33 and 34 – Clause 13 (Insertion of new ss 201B and 201C)

Amendments 33 and 34 amend section 201B (as inserted by the Bill) to improve clarity, without otherwise changing its meaning.

Amendments 35 and 36 – Clause 15 (Insertion of new s 204)

Amendments 35 and 36 omit section 204 (as inserted by the Bill) and insert new sections 204 and 204A.

New section 204(1) specifies how divisions 3 (Managing political donations and electoral expenditure), 4 (Election funding), 6 (Political donations and caps on political donations) and 9 (Caps on electoral expenditure) apply if a registered political party has an associated entity.

New section 204(2) specifies the circumstances in which an entity is an associated entity of a registered political party. An entity is an associated entity if it is controlled by, or operates wholly, or to a significant extent for the benefit of, the party or a group of endorsed candidates of the party, or operates for the dominant purpose of promoting the party in elections, or promoting a group of endorsed candidates of the party in an election. The provision will capture circumstances in which a political party or group of candidates seek to artificially amplify their capacity for electoral expenditure. The purpose of the amendment is not to impinge upon the right of legitimate third parties, such as registered industrial organisations (both employer and employee representatives) or industry peak bodies, incurring electoral expenditure to support or oppose particular political parties or candidates.

New section 204(3) provides that an associated entity of a registered political party does not include a candidate endorsed by the party for an election, another political party that is a related political party, or a federal or interstate branch or division of the entity that the registered political party is part of.

New section 204(4) provides a definition of 'group of endorsed candidates' for the purposes of the section.

New section 204A(1) specifies how divisions 3 (Managing political donations and electoral expenditure), 4 (Election funding), 6 (Political donations and caps on political donations) and 9 (Caps on electoral expenditure) apply if a candidate in an election has an associated entity.

New section 204A(2) specifies the circumstances in which an entity is an associated entity of a candidate in an election. An entity is an associated entity of a candidate if it is an electoral committee established for the candidate, is controlled by the candidate, operates wholly, or to a significant extent for the benefit of, the candidate, or operates for the dominant purpose of promoting the candidate in the election. The provision will capture circumstances in which a candidate seeks to artificially amplify their capacity for electoral expenditure. The purpose of the amendment is not to impinge upon the right of legitimate third parties, such as registered industrial organisations (both employer and employee representatives) or industry peak bodies, incurring electoral expenditure to support or oppose particular candidates.

New section 204A(3) specifies those circumstances in which an associated entity of a registered political party is not an associated entity of a candidate.

New section 204A(4) provides that an associated entity of a candidate in an election does not include an electoral committee mentioned in section 203(1).

New section 204A(5) provides a definition of ‘group of endorsed candidates’ for the purposes of the section.

Amendments 37 and 38 – Clause 17 (Replacement of pt 11, div 2 (Agents))

Amendments 37 and 38 amends section 212 (as inserted by the Bill) to improve clarity by referring to the resignation of a person’s appointment as agent.

Amendment 39 – Clause 17 (Replacement of pt 11, div 2 (Agents))

Amendment 39 amends section 215(1) (as inserted by the Bill) so that an agent of a participant in an election must take all reasonable steps to ensure the participant keeps a separate bank account (referred to as the State campaign account).

Amendments 40 to 50 – Clause 17 (Replacement of pt 11, div 2 (Agents))

Amendments 40 to 50 amend section 216 (as inserted by the Bill) so that:

- the offence for paying an amount into the State campaign account of a registered political party or candidate, other than a permitted amount, only applies if a person knows, or ought reasonably to know that the amount is not a permitted amount;
- references to an election participant are updated to refer to a registered political party or candidate;
- a political donation of money made for the benefit of a registered political party or candidate, other than a political donation received in contravention of division 6 or 8, is included as a permitted amount;
- funds held jointly with the candidate’s spouse (other than an amount given to the spouse by a prohibited donor) is an amount permitted to be paid into the State campaign account of a candidate; and
- the offence related to paying gift or loans into a registered third party’s State campaign account (previously in new section 216(2)) is omitted, as well as a reference to it in section 216(3).

Amendments 51 and 52 – Clause 17 (Replacement of pt 11, div 2 ((Agents))

Amendments 51 and 52 amend section 219 (as inserted by the Bill) so that references to an election participant are updated to refer to a registered political party or candidate.

Amendments 53 to 55– Clause 17 (Replacement of pt 11, div 2 (Agents))

Amendments 53 to 55 amend sections 220 and 221 (as inserted by the Bill) so that references to an election participant are updated to refer to a registered political party or candidate.

Amendments 56 to 58 – Clause 17 (Replacement of pt 11, div 2 (Agents))

Amendments 56 to 58 amend section 221B (as inserted by the Bill) so that the requirement to give notice about a participant's State campaign account only applies to third parties that incur electoral expenditure for an election to the extent that it becomes a third party that is required to be registered for the election, and clarity is improved.

Amendment 59 – Clause 18 (Amendment of s 222 (Interpretation))

Amendment 59 omits and replaces section 222(1) (as amended by the Bill) so that, for part 11, division 4 concerning election funding, electoral expenditure is taken to have been incurred for an election if incurred for a campaign purpose that relates to the election, whether or not incurred during the capped expenditure period for the election.

Amendment 60 – Clause 21 (Amendment of s 225 (Election funding amount))

Amendment 60 amends section 225(1) so that the changes to election funding amounts apply for the financial year that starts on 1 July 2022, rather than 1 July 2020.

Amendments 61 to 64 – Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendments 61 to 64 amend section 242 (as inserted by the Bill) so that:

- the vote ratio for a registered political party is based on endorsed candidates who polled at least four per cent of the total number of formal first preference votes in the candidate's electoral district at the most recent general election divided by the total number of relevant first preference votes at that general election;
- the vote ratio for an independent member is based on the total number of formal first preference votes given to the member in the most recent general election divided by the total number of relevant first preference votes at that general election; and
- relevant first preference votes are based on the votes 'given in the candidate's electoral district', with a specific meaning being provided for this term being provided in section 242(4).

Amendments 65 and 66 - Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendments 65 and 66 amend section 244 (as inserted by the Bill) to improve clarity.

Amendments 67 to 69 – Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendments 67 to 69 amend section 247 (as inserted by the Bill) to make a clearer reference to the ‘current election’ for the donation cap period for a candidate, and no longer apply section 247(2) to a third party, and omit the example under section 247(2) relevant to a third party.

Amendment 70 – Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendment 70 omits sections 248 and 249 (as inserted by the Bill) which were relevant to a third party.

Amendments 71 to 74 – Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendments 71 to 74 amend section 250 (as inserted by the Bill) so that:

- a gift or loan is a ‘political donation if it is made to, or for the benefit of, a registered political party or candidate in an election and is accompanied by a donor statement; and
- references to a participant in an election are updated to refer to a registered political party or candidate in an election.

Amendment 75 - Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendment 75 amends section 251 (as inserted by the Bill) to provide that a donor statement must state that the gift or loan is made with the intention that it is used for an electoral purpose and remove other purposes relevant to a third party.

Amendment 76 - Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendment 76 amends section 252 (as inserted by the Bill) to remove the reference to a donation cap for a third party for the election.

Amendments 77 and 78- Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendments 77 and 78 amend section 253 (as inserted by the Bill) to update references to an election participant to a registered political party or candidate in an election.

Amendment 79 - Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendment 79 omits section 256 (as inserted by the Bill) which provided for caps on political donations made to third parties.

Amendments 80 to 82 – Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendments 80 to 82 amend section 257 (as inserted by the Bill) to remove references to section 256 which is omitted by the amendments.

Amendment 83 - Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendment 83 omits section 258 (as inserted by the Bill) and replaces it with new section 258. Section 258 provides for requirements for receipts to be given where a person makes a political donation to, or for the benefit of, a registered political party, candidate in an election or an associated entity of a registered political party or candidate in an election, including the information that must be included in the receipt. For a political donation to, or for the benefit of, an associated entity, the name of the registered political party or candidate of which it is an associated entity must include a statement in the approved form summarising the effect of new sections 204 and 204A in relation to the circumstances, in addition to the other stated information. Failure to comply is an offence with a maximum penalty of 20 penalty units. A person does not commit an offence if they have a reasonable excuse.

Amendments 84 to 86 - Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendments 84 to 86 amend section 259 (as inserted by the Bill) to replace references to participant in an election and election participants with references to a registered political party or candidate

Amendments 87 and 88 – Clause 22 (Replacement of pt 11, div 5 (Policy development payments))

Amendments 87 and 88 amend section 259A (as inserted by the Bill) to improve clarity and remove a reference to an amount recovered by the State from a recipient that is a third party.

Amendment 89 – After clause 24

Amendment 89 inserts new clause 24A, which inserts notes under section 261(1) to alert readers that section 204A does not apply to an associated entity of a candidate in an election for division 7, and that section 294 contains a requirement for a return about a gift received by an associated entity to be given to the commission.

Amendment 90 – Clause 25 (Amendment of s 262 (Loans to candidates))

Amendment 90 inserts a note under section 262(1) to alert readers that section 204A does not apply to an associated entity of a candidate in an election for division 7, and that section 294 contains a requirement for an associated entity of a candidate to give the commission a return about a loan received by the entity.

Amendment 91 – Clause 26 (Amendment of s 263 (Disclosure of gifts by third parties that incur expenditure for political purposes))

Amendment 91 amends section 263(2) to provide that a third party will only be required to give a return under the section where the value of the gift is equal to or more than the gift threshold amount, and the third party uses the gift, or part of the gift with a value equal to more than the gift threshold amount to incur expenditure for a political purpose, or to reimburse the third party for expenditure incurred for a political purpose.

Amendment 92 – Clause 29 (Replacement of pt 11, div 8, sdiv 4 (Loans from entities other than financial institutions))

Amendment 92 amends section 272 (as inserted by the Bill) to refer to a candidate in an election, rather than the election.

Amendment 93– Clause 31 (Insertion of new pt 11, div 9)

Amendment 93 omits section 280 (as inserted by the Bill) and replaces it with new sections 280 and 280A.

New section 280 provides that the capped expenditure period starts:

- for an ordinary general election: on the first business day after the last Saturday in the preceding March;
- for an extraordinary general election: on the day the writ is issued, unless the capped expenditure period for an ordinary general election has started, in which case it starts on that day; or
- for a by-election, the day the writ for the election is issued.

The capped expenditure period ends at 6pm on the later of polling day or the day an adjourned poll is held (despite section 100(6)).

New section 280A provides that, if electoral expenditure is gifted to a participant in an election, the election participant is taken to have incurred the electoral expenditure, and section 281 applies for determining when the expenditure is incurred.

Amendments 94 to 96 – Clause 31 (Insertion of new pt 11, div 9)

Amendments 94 to 96 amend section 281 (as inserted by the Bill) so that:

- section 281(1) refers to goods being supplied or provided, rather than delivered or provided;
- section 281(2) refers to ‘election material’ which is defined in section 197; and
- new sections 281(3) to (5) are inserted which provide that electoral expenditure incurred to obtain goods for the dominant purpose of being used for a campaign purpose in relation to one or more elections, before the capped expenditure starts, the electoral expenditure is taken to have been incurred when the goods are first used for a campaign purpose during a capped expenditure period.

Amendments 97 and 98 – Clause 31 (Insertion of new pt 11, div 9)

Amendments 97 and 98 amend the maximum penalty applicable to an offence against section 281G(1) to 1,500 penalty units or 10 years imprisonment and specify that it is a crime.

Amendment 99 to 102– Clause 31 (Insertion of new pt 11, div 9)

Amendments 99 to 102 amend section 281H (as inserted by the Bill) to change references to \$1,000 to \$6,000 to reflect the amended registration threshold in section 297.

Amendment 103 – Clause 31 (Insertion of new pt 11, div 9)

Amendment 103 amends section 281I (as inserted by the Bill) so that the section applies to a participant in an election, or a person acting with the participant’s authority, to align with section 281G.

Amendments 104 to 108 – Clause 34 (Replacement of s 283 (Returns of electoral expenditure))

Amendments 104 to 108 amend section 283 (as inserted by the Bill) so that the financial controller of an associated entity of a registered political party or candidate in the election must give the commission a return about electoral expenditure incurred for the election. A return of electoral expenditure must be accompanied by a copy of each bank statement for the election participant's State campaign account for the period that starts when the capped expenditure period for the election starts and ends on the day before the return is given to the commission, and for an earlier period that includes a transaction related to an item of electoral expenditure incurred for the election. The amendments also renumber provisions in section 283 to reflect the insertion of an additional provision.

Amendments 109 and 110 – Clause 35 (Amendment of s 284 (Returns by broadcasters))

Amendments 109 and 110 amend section 284 (as amended by the Bill) to improve clarity.

Amendments 111 and 112 – Clause 36 (Amendment of s 285 (Returns by publishers))

Amendments 111 and 112 amend section 285 (as amended by the Bill) to improve clarity.

Amendments 113 and 114 – Clause 38 (Amendment of s 290 (Returns by registered political parties))

Amendments 113 and 114 amend section 290 (as amended by the Bill) to insert a note under section 290(1) to alert readers that section 204 does not apply to an associated entity of a registered political party for division 11, and that section 294 contains a requirement for return about a gift or loan received by an associated entity to be given to the commission. The amendments also provide that a return under section 290 must be accompanied by a copy of each bank statement for the registered political party's State campaign account that relates to any part of the reporting period.

Amendments 115 to 121 – Clause 42 (Replacement of s 294 (Returns by associated entities))

Amendments 115 to 121 amend section 294 (as inserted by the Bill) to update the reference to associated entities to associated entity of registered political party or candidate in an election, ensure consistency of presentation with sections 272(3) and 291(3)(c)(ii) in relation to loans, and require a return under section 294 to be given to the commission by the day or the time prescribed by regulation.

Amendment 122 - Clause 43 (Insertion of new pt 11, divs 12 and 12A)

Amendment 122 amends clause 43 to reflect the insertion of division 12B.

Amendments 123 to 125 – Clause 43 (Insertion of new pt 11, divs 12, and 12A)

Amendments 123 to 125 amend section 297 (as inserted by the Bill) to provide that a third party must be registered for an election under part 11 if the electoral expenditure incurred by, or with the authority of, the third party during the capped expenditure period for the election exceeds \$6,000 (rather than \$1,000), and to refer to a person who fails to register for an election. A note is also inserted alerting readers to the offence in section 281H applying to a third party that is not registered for an election.

Amendment 126 – Clause 43 (Insertion of new pt 11, divs 12 and 12A)

Amendment 126 omits section 305 (as inserted by the Bill) and inserts new sections 305, 305AA, 305AB and 305AC.

New section 305 provides definition of ‘participant’ and ‘prescribed matter’ for the purposes of division 12A.

New section 305AA provides a meaning of prescribed matter. Prescribed matters are specified for a participant in an election (including an associated entity of a registered political party or candidate in an election) other than a third party, and a third party, respectively.

New section 305AB requires a participant in an election to make, or ensure a person authorised by the participant makes, a record that complies with section 305C, includes information necessary to demonstrate, to the greatest extent practicable, the election participant complied with this part in relation to the prescribed matter and includes prescribed information. Failure to comply with this requirement is an offence with a maximum penalty of 20 penalty units.

New section 305AC requires the agent of a participant in an election to make a record about the agent’s compliance with section 306B that complies with section 305C, includes information necessary to demonstrate, to the greatest extent practicable, each step taken by the agent and includes prescribed information. Failure to comply with this requirement is an offence with a maximum penalty of 20 penalty units.

Amendment 127– Clause 43 (Insertion of new pt 11, divs 12, and 12A)

Amendment 127 amends section 305B (as inserted by the Bill) to refer to section 285.

Amendment 128 - Clause 43 (Insertion of new pt 11, divs 12 and 12A)

Amendment 128 omits and replaces sections 305C and 305D (as inserted by the Bill).

New section 305C specifies requirements for records and how they must be made.

New section 305D requires a stated person who makes or receives a transferred record to keep it for 5 years after the day the record is made, unless the person has a reasonable excuse. Failure to comply is an offence with a maximum penalty of 20 penalty units.

Amendment 129 – Clause 43 (Insertion of new pt 11, divs 12 and 12A)

Amendment 129 inserts new division 12B (Registers to kept).

New section 305F provides that a registered political party, a candidate in an election or an associated entity of a registered political party or candidate in an election must keep a register including the particulars prescribed by regulation of records about each non-monetary gift made to, or for the benefit, of the entity. For a third party, this only applies to those gifts about which the third party is required to give the commission a return under section 263. Failure to comply is an offence with a maximum penalty of 20 penalty units.

New section 305G provides that a registered political party must keep a register including the particulars prescribed by regulation of subscribed members or persons who have paid an amount to be a current affiliate of a registered political party.

Amendment 130 – Clause 44 (Insertion of new ss 306A and 306B)

Amendment 130 amends section 306A(3) (as inserted by the Bill) to require the commission to give an elected member a notice about a relevant notification under section 306A(1).

Amendment 131 – Clause 44 (Insertion of new ss 306A and 306B)

Amendment 131 omits section 306B (as inserted by the Bill) and replaces it with new section 306B.

New section 306B(1) requires the agent of a participant in an election to take all reasonable steps to inform the participant, and each person the participant authorises to act for the participant under divisions 3, 4, 6 and 9, about the obligations that apply to the participant and person under divisions 3, 4, 6 and 9, and establish and maintain appropriate systems to support the participant and person to comply with the obligations. Failure to comply is an offence with a maximum penalty of 100 penalty units.

New section 306B(2) requires the agent of a registered political party or candidate in an election that has an associated entity to take all reasonable steps to inform the associated entity, and each person the associated entity authorises to act for it under divisions 3, 4, 6 and 9, about the obligations that apply to the participant and person under divisions 3, 4, 6 and 9, and establish and maintain appropriate systems to support the participant and person to comply with the obligations. Failure to comply is an offence with a maximum penalty of 100 penalty units.

New section 306B(3) provides that in deciding whether steps taken by the agent of an election participant to do a thing mentioned in section 306B(1) or (2), a court must consider the number of members and employees of the political party, third party or associated entity and the number of people authorised to act for it, and the amount or value of the political donations received by or for the benefit of the participant and an associated entity of the participant, and the amount of electoral expenditure incurred, or expected to be incurred, by the participant.

New section 306B(4) provides that a reference in subsection 306B(2) or (3) to an associated entity of a candidate in an election includes a reference to an electoral committee mentioned in section 203(1).

Amendments 132 and 133 – Clause 46 (Insertion of new ss 307AA and 307AB)

Amendments 132 and 133 amend section 307AA (as inserted by the Bill) to remove references to section 216(2), which has changed in its content, and section 256, which is omitted by the amendments.

Amendments 134 and 135 – Clause 46 (Insertion of new ss 307AA and 307AB)

Amendments 134 and 135 amend section 307AB (as inserted by the Bill) to refer to a gift or political donation being made, as well as accepted. This ensures all provisions in section 307AA are captured by section 307AB.

Amendment 136 – After clause 49

Amendment 136 inserts new clause 49A which amends section 310 concerning audit certificates and new clause 49B which amends section 311 concerning requirements for auditors to give the commission written notice of a reasonably likely contravention of part 11.

Section 310(1) is omitted and replaced so that section 310 only applies if a person is required to give the commission a return about electoral expenditure incurred by a registered political party under section 283, or a return about amounts received, paid and outstanding under section 290(4) or 294(4). Section 310(2)(a) is amended so that the return must be accompanied by a certificate from an auditor which includes a statement that the auditor was given full and free access at all reasonable times to the records related to a matter required to be disclosed in the return.

Section 311 is amended to refer to audits mentioned in section 310(2) and omit references to a registered political party or candidate.

Amendment 137 – Clause 50 (Amendment of s 316 (Publishing of returns))

Amendment 137 amends section 316 (as amended by the Bill) so that details of an election participant's State campaign account and information prescribed by regulation is information that the commission must delete from a copy of the return before publishing it and that the commission must not publish a copy, or part of a copy, of a bank statement accompanying a return that must be published.

Amendment 138 – After clause 50

Amendment 138 inserts new clauses 50A to 50C.

New clause 50A inserts new division 13A (Audits), which includes sections 319A to 319F.

New section 319A provides that the commission may appoint an auditor, to conduct an audit of a claim for election funding under division 4, a return given to the commission under division 7, 10 or 11, the State campaign account of a participant, or the compliance with part 11 generally.

New section 319B specifies how a participant in relation to whom an audit is conducted must assist the appointed auditor conducting the audit, including providing access to accounts, records or documents that relate to the matter being audited. Failure to comply with this requirement is an offence with a maximum penalty of 200 penalty units.

New section 319C requires an appointed auditor to prepare an audit report, with relevant requirements for the audit report for each type of audit being specified. The appointed auditor must give a copy to the commission and the participant.

New clause 50B amends section 321 so that it allows for auditors to be appointed by the commission as authorised officers under part 11.

New clause 50C amends section 384 so that the appointment or power of an appointed officer must be presumed unless a party, by reasonable notice, requires proof of the appointment or the power, and so that the signature purporting to be the signature of the commissioner or an authorised officer is evidence of the signature it purports to be.

Amendments 139 and 140– Clause 51 (Insertion of new s 388A)

Amendments 139 and 140 amend clause 51 of the Bill to insert new section 388B, which provides that the commission must not publish, or otherwise make available for public inspection, information about the membership of a political party.

Amendment 141 – Clause 52 (Insertion of new pt 13, div 11)

Amendment 141 omits section 439 (as inserted by the Bill) and replaces it with new section 439. New section 439 provides that an individual who has announced or otherwise indicated the individual's intention to be a candidate in the 2020 election is a candidate even if the announcement or indication occurred before commencement. A note is inserted alerting readers to the definition of candidate in schedule 1.

Amendments 142 to 144 – Clause 52 (Insertion of new pt 13, div 11)

Amendments 142 to 144 amend section 440 (as inserted by the Bill) so that transitional arrangements for State campaign accounts in sections 440(3) and (4) apply to participants in an election held after the 2020 general election and before 1 July 2022, in addition to participants in the 2020 general election.

Amendment 145 - Clause 52 (Insertion of new pt 13, div 11)

Amendment 145 omits section 440(5) (as inserted by the Bill) and replaces it with new section 440A.

New section 440A allows for stated amounts, including amounts held by the party on the start date, proceeds from the disposal of property, or a return on investment, held by the party on the start date, to be paid into a State campaign account of the registered political party. It also allows for similar stated amounts held by an associated entity of a registered political party that were held before 1 August 2020 to be paid into a State campaign account of the party.

Amendments 146 and 147 - Clause 52 (Insertion of new pt 13, div 11)

Amendments 146 and 147 omit section 441(2) and (3) and make a consequential amendment.

Amendments 148 to 152 - Clause 52 (Insertion of new pt 13, div 11)

Amendments 148 to 152 amend section 442 (as inserted by the Bill), replace sections 443, 444 and 445, and insert new section 445A.

Section 442 is amended to provide that previous part 11, division 5 continues to apply in relation to instalments of policy development payments payable in January 2022 to a registered political party for the 2020-21 financial year, and a registered political party is no longer entitled to the instalment that would have been payable on 31 July 2022 or for the financial year starting on 1 July 2021.

New section 443 specifies that commencement of the donation cap period relevant to a candidate or registered political party for a general election or by-election held after 1 July 2022, which will be 1 July 2022 or later in certain circumstances where a general election or by-election is held during June 2022. The donations cap period ends 30 days after polling day for the election.

New section 444 provides that:

- despite new section 280, the capped expenditure period for the 2020 general election starts on 1 August 2020;
- new section 199 applies to expenditure incurred before commencement as if the expenditure were incurred after the commencement;
- new section 281 applies to electoral expenditure, whether the expenditure was incurred before or after commencement;
- however, new section 281 does not apply to electoral expenditure to obtain goods that are first used for a campaign purpose during the capped expenditure period for the 2020 general election, unless a contract for the supply of the goods was entered into on or after 17 June 2020; and
- new section 281A applies to electoral expenditure incurred for a campaign purpose for the 2020 general election, whether or not an event mentioned in new section 281A(3) happened before or after commencement.

New sections 445 and 445A provide that requirements to keep stated information related to compliance with donations caps does not apply until the start date.

Amendment 153 – After clause 55

Amendment 153 inserts new part 2A of chapter 2 of the Bill, which contains new clauses 55A and 55B.

Clauses 55A provides that part 2A of chapter 2 amends the *Electoral and Other Legislation Amendment Act 2019*.

Clause 55B amends section 2 to the Electoral and Other Legislation Amendment Act to commence provisions that are not in force on 1 August 2020.

Amendment 154 – Chapter 3, heading (Amendments relating to signage at State elections)

Amendment 154 amends the heading to Chapter 3 to reflect the inclusion of other matters.

Amendment 155 - Clause 58 (Insertion of new pt 10, div 2A)

Amendment 155 amends new section 185A (as inserted by the Bill) so that it includes the definition of ‘designated area’ (relocated from section 185F(6)).

Amendment 156 – Clause 58 (Insertion of new pt 10, div 2A)

Amendment 156 omits and inserts new section 185C (as inserted by the Bill) which provides a definition of ‘restricted signage area’ for a pre-poll voting office or ordinary polling booth. This includes the building or part of the building in which voting compartments (the polling premises) and within 100 metres of the polling premises. If the area includes grounds, it also includes the grounds, boundary fence or area within 100 metres of each designated entrance to the grounds. The restricted signage area does

not include premises used as a residence, used by a candidate in the election or a registered political party as an office, or premises (including part of larger polling premises) lawfully occupied by a person other than the commission, a candidate or registered political party for a purpose that is not related to the polling premises being used for the election.

Amendment 157 – Clause 58 (Insertion of new pt 10, div 2A)

Amendment 157 amends new section 185F (as inserted by the Bill) so that:

- the display of an election sign by or for a third party is permitted (in addition to display by a candidate or registered political party), provided that the other conditions of subsection 185F(2) are met, including that the election sign is one of the maximum number of signs that, under section 185G, may be displayed in each designated area;
- a sign displayed by an associated entity of a registered political party (as defined in new section 204) or candidate in an election (as defined in section 204A) is taken to be displayed for the party or candidate;
- the requirements for signs to be no larger than 900mm by 600mm and specifications concerning A-frame signs are removed (as these are addressed in section 185G);
- the requirements for signs to be not attached to a building, fence or other permanent structure and be accompanied by a person are removed; and
- the definition of ‘designated area’ is omitted (as it is relocated to section 185A).

The amendment also omits and inserts new section 185G so that the maximum number of signs that may be displayed by or for a candidate in an election, registered political party or third party is:

- two small signs in each designated area at a pre-poll voting office;
- for signs displayed in each designated area at an ordinary polling booth by or for a candidate or registered political party – six signs, comprised only of large signs (a maximum of four) and small signs;
- for signs displayed in each designated area at an ordinary polling booth by or for a third party – four signs, comprised only of large signs (a maximum of two) and small signs.

A large sign means a sign that is no larger than 1830mm by 1220mm and a small sign means a sign that is no larger than 900mm by 600mm, with a A-frame sign being taken to be one sign. A candidate endorsed for election by a registered political party may display the maximum number of signs less the number of signs displayed by the party, and vice versa.

Amendments 158 to 161 – Clause 58 (Insertion of new pt 10, div 2A)

Amendments 158 to 161 amend section 185G (as inserted by the Bill) to rename it as section 185H and apply it until 5am on polling day. For a place used as a pre-poll voting office and ordinary polling booth, the provision is to start when voting hours for the pre-poll voting office end. The concept of ‘area around an ordinary polling booth’ is replaced with ‘restricted signage area’ which includes the area in the grounds, or on a

boundary fence or another structure or feature that marks the grounds and does not include an area mentioned in section 185C(1)(c).

Amendment 162 – After Clause 58

Amendment 162 inserts new clause 58A, which inserts new part 12B (2020 general election).

New section 392K (Purpose of part) provides that the purpose of part 12B is to facilitate the holding of 2020 general election in a way that helps minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

New section 392L (Application of part) provides that part 12B applies in relation to the 2020 general election.

New section 392M (Definition for part) provides a definition of ‘2020 general election’ to mean the next ordinary general election to be held after the commencement. It also provides a definition of ‘postal vote’ to mean a declaration vote made by an elector, using a ballot paper and declaration envelope sent to the elector, and posted or sent to the ECQ or a returning officer.

New section 392N (Cut-off days) provides that, in relation to the writ issued for the 2020 general election, the cut-off day for the electoral rolls and cut-off day for the nomination of candidates stated in the writ may be a day earlier than the day stated in section 84 of the Electoral Act.

New section 392O (Procedure for voting) provides that a regulation may be made which requires all electors, electors in a stated electoral district, electors of a stated class or electors in a stated electoral district of a stated class to vote by postal vote.

New section 392P (Pre-poll ordinary voting) ensures that any change to the cut-off day for the nomination of candidates made as a result of new section 392N does not affect the period when an elector may make an ordinary pre-poll vote.

New section 392Q (Making a declaration vote using posted voting papers) allows the ECQ to fix an earlier or later time and day, by publishing a notice on its website, by which an elector may make a postal vote request under section 119.

New section 392R (Electoral visitor voting) allows the ECQ or a returning officer to direct an issuing officer not to visit an elector who has requested to vote as an electoral visitor voter, a class of elector or any elector if the ECQ is satisfied that a risk to the health and safety of an issuing officer is posed. The ECQ or returning officer must, to the extent practicable, have the issuing officer make alternative arrangements, if practicable, to enable the elector affected by the direction to vote in the election.

New section 392S (Electronically assisted voting) allows the ECQ, having regard to the purposes of the part, to declare an additional class of electors to be able to make an electronically assisted vote in the 2020 election. The section also allows the ECQ to make procedures for electronically assisted voting for the 2020 general election and for these procedures to take effect on publication of the ECQ’s website.

New section 392T (Distribution or display of how-to-vote cards or other election material) allows the ECQ to give a direction about the display or distribution of how-to-vote cards and election material or prohibiting a person from canvassing for votes in or near a polling booth or permitting the display of political statements at a place mentioned in section 190(1), if the ECQ is satisfied that, having regard to the purposes of the part, it would be in the public interest to regulate, limit or prevent the distribution of how-to-vote cards or other election material or canvassing for votes in or near a polling booth. The direction must be published on the ECQ's website. It is an offence with a maximum penalty of 10 penalty units to contravene a direction under the section.

New section 392U (Directions about candidates or scrutineers at particular places) provides for the ECQ to give a direction about the number of scrutineers each candidate may have at a polling booth or other place at which a scrutineer is entitled to be present under the Electoral Act, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the Electoral Act, with an offence applying to a contravention.

New section 392V (Direction about movement of candidates or scrutineers) provides for a returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth for the election, and areas where they may be, with an offence applying to a contravention.

New section 392W (Counting of votes) provides that a returning officer may arrange for the counting of votes to be filmed by a member of the ECQ's staff. It further provides that a returning officer may direct a member of the ECQ's staff to carry out the counting of votes at a stated place.

New section 392X (Restriction on directions) provides that the ECQ, returning officer or member of the ECQ's staff must not give a direction under this part of a kind prescribed under section 392Y as a kind of direction that may not be given under the provision or in circumstances prescribed under section 392Y as circumstances in which a direction may not be given.

New section 392Y (Regulation about 2020 general election) allows a regulation to make a provision about a matter to facilitate the holding of the 2020 general election.

New section 392Z (Matters about regulation under this part) applies to regulations under this part and subsection (2) provides, amongst other things, that the regulation may be inconsistent with the Electoral Act, including, for example, by modifying the application of part 7 in relation to the 2020 general election, to the extent necessary to achieve the purpose of this part. Subsection (3) provides that the Minister may recommend the making of the regulation only if satisfied the regulation is necessary to achieve the purpose of this part. Subsection (4) provides that the Minister must consult with the ECQ before recommending the making of a regulation under new section 392O. Subsection (5) provides that the regulation must declare that it is made under this part.

New section 392ZA (Expiry) provides that Part 12B will expire one year after the name of each candidate elected in the 2020 general election is published in the gazette under section 132(2).

Amendment 163 – Before clause 59

Amendment 163 inserts clause 58A which inserts new section 449. New section 449 provides that new part 10, division 2A does not apply in relation to a polling booth for an election if the writ for the election was issued before 1 August 2020.

Amendment 164 – Clause 78 (Amendment of s 170 (Giving directions to council staff))

Amendment 164 amends section 170 of the City of Brisbane Act (as amended by the Bill) to implement the Government's response to recommendation 1 of the CCC's Yabber Report. The amendment provides that the mayor must not give a direction to the CEO if it relates to the appointment of council employees under section 193(3) of the City of Brisbane Act; disciplinary action by the CEO in relation to a council employee under section 194 of the City of Brisbane Act or a councillor advisor. The amendment also provides that the mayor must not give a direction to the CEO or a senior executive employee if it would result in the CEO or senior executive employee contravening a provision of an Act.

Amendments 165 and 166 – Clause 81 (Replacement of ch 6, pt 2, div 5A (Dealing with councillors' personal interests in council matters))

Amendments 165 and 166 amend new section 177B of the City of Brisbane Act (as inserted by the Bill) to clarify that when a councillor or other person participates in a decision is not limited by the circumstances stated in the section and that a councillor or other person participates in a decision if they are considering or discussing a matter to which the decision relates before the decision is made and are wholly or partly responsible for making the decision.

Amendments 167 to 170 – Clause 81 (Replacement of ch 6, pt 2, div 5A (Dealing with councillors' personal interests in council matters))

Amendments 167 to 170 amend new section 177C of the City of Brisbane Act (as inserted by the Bill).

Amendments 167, 168 and 169 provide that chapter 6, part 2, division 5A does not apply in relation to a conflict of interest in a matter that is solely or relates solely to amending a planning scheme that applies to the whole of Brisbane, a resolution required for amending a budget for the council and the provision of insurance for councillors.

Amendment 170 provides that chapter 6, part 2, division 5A also does not apply in relation to a councillor's conflict of interest in a matter if the councillor, close associate or related party of the councillor, or the donor mentioned in section 177D(1)(a) or 177E(1)(a) stands to gain a benefit or suffer a loss that is no greater than the benefit or loss that a significant proportion of persons in Brisbane stand to gain or lose.

Amendments 171 to 173 – Clause 81 (Replacement of ch 6, pt 2, div 5A (Dealing with councillors' personal interests in council matters))

Amendments 171 to 173 amend new section 177D of the City of Brisbane Act (as inserted by the Bill).

Amendment 171 clarifies that a councillor has a prescribed conflict of interest in a matter if all gifts and loans given to a councillor and all sponsored travel or accommodation benefits given to the councillor or close associate of the councillor by an entity that has an interest in the matter (the donor), during the councillor's relevant term totals \$2,000 or more.

Amendment 172 clarifies that in relation to gifts or loans to groups of candidates or political parties, for subsection (1)(a), the circumstances include that a donor gives a gift or loan to a group of candidates when the councillor is a member of the group, or to a political party that endorses the councillor for an election, rather than a political party of which the councillor is a member.

Amendment 173 clarifies the method for working out the total amount of gifts or loans given by a donor to a group of candidates when the councillor is a member or to a political party that endorses the councillor. The amount of each gift or loan given to the group or political party must first be divided by the total number of candidates in the group stated in the record of membership of the group under section 41 of the Local Government Electoral Act or the total number of candidates endorsed by the political party in Queensland on nomination day for the election under the Local Government Electoral Act.

Amendments 174 and 175 – Clause 81 (Replacement of ch 6, pt 2, div 5A (Dealing with councillors’ personal interests in council matters))

Amendments 174 and 175 amend new section 177E of the City of Brisbane Act (as inserted by the Bill).

Amendment 174 clarifies that a councillor has a prescribed conflict of interest in a matter if all gifts and loans or sponsored travel or accommodation benefits given by an entity that has an interest in the matter (the donor) during the councillor’s relevant term totals \$2,000 or more.

Amendment 175 provides that section 177D(2A) and (3), as inserted by amendment 173, applies for working out the total gifts or loans given by the donor for subsection (1)(c).

Amendment 176 – Clause 81 (Replacement of ch 6, pt 2, div 5A (Dealing with councillors’ personal interests in council matters))

Amendment 176 amends new section 177F of the City of Brisbane Act (as inserted by the Bill) to provide that a councillor has a prescribed conflict of interest in a matter that is or relates to the councillor’s close associate being considered for appointment as CEO of the council.

Amendments 177 to 179 – Clause 81 (Replacement of ch 6, pt 2, div 5A (Dealing with councillors’ personal interests in council matters))

Amendments 177 to 179 amend new section 177L of the City of Brisbane Act (as inserted by the Bill).

Amendment 177 omits section 177L(1)(d) as amendment 170 provides that chapter 6, part 2, division 5A will not apply in the circumstance in section 177L(1)(d).

Amendment 178 clarifies that a councillor does not have a declarable conflict of interest in a matter if a conflict of interest arises solely because the councillor, or a related party of the councillor, receives a gift, loan or sponsored travel or accommodation benefit from an entity given in circumstances that would constitute a prescribed conflict of interest under section 177D or 177E if the total gifts, loans and benefits given by the entity totalled \$2,000 or more but the gifts, loans and benefits total less than \$500 during the councillor’s relevant term.

Amendment 179 clarifies that section 177D(2A) and (3), as inserted by amendment 173, applies to work out, under section 177L(1)(e)(ii), the total gifts, loans and sponsored travel or accommodation benefits given by the entity as if a reference in that section to a donor were a reference to the entity.

Amendment 180 – Clause 81 (Replacement of ch 6, pt 2, div 5A (Dealing with councillors’ personal interests in council matters))

Amendment 180 amends new section 177R of the City of Brisbane Act (as inserted by the Bill) to clarify that a councillor does not contravene section 177H(1), 177J(2), 177N(2)(a) or (3)(a) or 177P(5) by participating in a decision, or being present while the matter is discussed and voted on, for the purpose of deciding, by resolution, not to decide the matter and take no further action in relation to the matter.

Amendments 181 to 184 – Clause 85 (Insertion of new ch 6, pt 4, div 2A)

Amendments 181 to 184 amend new section 194A of the City of Brisbane Act (as inserted by the Bill) about the appointment and functions of councillor advisors.

Amendment 181 removes the requirement for Brisbane City Council to make a resolution to allow councillors to appoint councillor advisors. Each councillor of Brisbane City Council may appoint up to the number of councillor advisors prescribed by regulation.

Amendments 182 and 183 clarify, respectively, that a councillor must not appoint more than the number of councillor advisors prescribed by regulation and that a person who is appointed as a councillor advisor may carry out or assist in an activity relating to a councillor’s campaign for re-election other than in their capacity as a councillor advisor.

Amendment 184 omits subsection (7) relating to what a regulation may provide for with respect to the appointment and functions of councillor advisors. The provision has been relocated to new section 194C of the City of Brisbane Act which is inserted by amendment 185.

Amendment 185 – Clause 85 (Insertion of new ch 6, pt 4, div 2A)

Amendment 185 inserts new section 194C (Regulation may prescribe particular matters relating to councillor advisors) into the City of Brisbane Act. New section 194C provides that a regulation may prescribe the maximum number of councillor advisors each councillor may appoint and limit the functions and key responsibilities of councillor advisors. The amendment also provides for the appointment of part-time councillor advisors.

In addition, the amendment provides that before recommending the making of a regulation prescribing the maximum number of councillor advisors each councillor may appoint, the Minister must ask the Local Government Remuneration Commission for its recommendation about the proposed regulation and must have regard to the recommendation of the Local Government Remuneration Commission in recommending the making of the regulation. These requirements will not apply to the first regulation made after the commencement (amendment 186, new section 297 refers).

Amendment 186 – Clause 91 (Insertion of new ch 8, pt 11)

Amendment 186 inserts two transitional provisions into the City of Brisbane Act (new sections 297 and 298).

New section 297 provides that the new requirements under section 194C(2) and (3) of the City of Brisbane Act, as inserted by amendment 185, will not apply to the first regulation made after the commencement under section 194C(1)(a). Section 194C(2) and (3) require the Minister to ask the Local Government Remuneration Commission for its recommendation about a proposed regulation prescribing the maximum number of councillor advisors each councillor may appoint and for the Minister to have regard to the recommendation of the Local Government Remuneration Commission in recommending the making of the regulation.

New section 298 provides that if, on the commencement, a councillor has an interest mentioned in section 198A(1), the councillor must inform the CEO of particulars of interests within 30 days after the commencement, despite section 198A(2) of the City of Brisbane Act (as inserted by the Bill). Section 198A(2) requires a councillor to inform the CEO of particulars of interests within 30 days after the day the councillor's term starts.

Amendment 187 – After clause 96

Amendment 187 inserts new clause 96A which amends section 104 of the Local Government Act to remove the current requirement for a local government's corporate plan to cover a 5-year period.

Amendment 188 – Clause 101 (Amendment of s 150L (What is misconduct))

Amendment 188 amends section 150L of the Local Government Act (as amended by the Bill) to update a section reference as a consequence of amendment 164.

Amendment 189 - After clause 103

Amendment 189 inserts new clause 103A which inserts new section 150DSA into the Local Government Act to provide that a member of the Councillor Conduct Tribunal, in performing a function of the Tribunal under chapter 5A, part 3, division 6 or chapter 7, part 1, has the same protection and immunity as a Supreme Court judge has in performing a judicial functions.

Amendments 190 and 191 – Clause 104 (Insertion of new ch 5B)

Amendments 190 and 191 amend new section 150EE of the Local Government Act (as inserted by the Bill) to clarify that when a councillor or other person participates in a decision is not limited by the circumstances stated in the section and that a councillor or other person participates in a decision if they are considering or discussing a matter to which the decision relates before the decision is made and are wholly or partly responsible for making the decision.

Amendments 192 to 195 – Clause 104 (Insertion of new ch 5B)

Amendments 192 to 195 amend new section 150EF of the Local Government Act (as inserted by the Bill).

Amendments 192, 193 and 194 provide that chapter 5B does not apply in relation to a conflict of interest in a matter that is solely or relates solely to amending a planning scheme that applies to the whole of the local government area, a resolution required for amending a budget for the local government and the provision of insurance for councillors.

Amendment 195 provides that chapter 5B also does not apply in relation to a councillor's conflict of interest in a matter if the councillor, close associate or related party of the councillor or the donor mentioned in section 150EG(1)(a) or 150EH(1)(a) stands to gain a benefit or suffer a loss that is no greater than the benefit or loss that a significant proportion of persons in the local government area stand to gain or lose.

Amendments 196 to 198 – Clause 104 (Insertion of new ch 5B)

Amendments 196 to 198 amend new section 150EG of the Local Government Act (as inserted by the Bill).

Amendment 196 clarifies that a councillor has a prescribed conflict of interest in a matter if all gifts and loans given to a councillor and all sponsored travel or accommodation benefits given to the councillor or close associate of the councillor by an entity that has an interest in the matter (the donor), during the councillor's relevant term totals \$2,000 or more.

Amendment 197 clarifies that in relation to gifts or loans to groups of candidates or political parties, for subsection (1)(a), the circumstances include that a donor gives a gift or loan to a group of candidates when the councillor is a member of the group, or to a political party that endorses the councillor for an election, rather than a political party of which the councillor is a member.

Amendment 198 clarifies the method for working out the total amount of gifts or loans given by a donor to a group of candidates when the councillor is a member or to a political party that endorses the councillor. The amount of each gift or loan given to the group or political party must first be divided by the total number of candidates in the group stated in the record of membership of the group under section 41 of the Local Government Electoral Act or the total number of candidates endorsed by the political party in Queensland on nomination day for the election under the Local Government Electoral Act.

Amendments 199 and 200 – Clause 104 (Insertion of new ch 5B)

Amendments 199 and 200 amend new section 150EH of the Local Government Act (as inserted by the Bill).

Amendment 199 clarifies that a councillor has a prescribed conflict of interest in a matter if all gifts and loans or sponsored travel or accommodation benefits given by an entity that has an interest in the matter (the donor) during the councillor's relevant term totals \$2,000 or more.

Amendment 200 provides that section 150EG(2A) and (3), as inserted by amendment 198, applies for working out the total gifts or loans given by the donor for subsection (1)(c).

Amendment 201 – Clause 104 (Insertion of new ch 5B)

Amendment 201 amends new section 150EI of the Local Government Act (as inserted by the Bill) to provide that a councillor has a prescribed conflict of interest in a matter that is or relates to the councillor's close associate being considered for appointment as CEO of the local government.

Amendments 202 to 204 – Clause 104 (Insertion of new ch 5B)

Amendments 202 to 204 amend new section 150EO of the Local Government Act (as inserted by the Bill).

Amendment 202 omits section 150EO(1)(d) as amendment 195 provides that chapter 5B will not apply in the circumstance in section 150EO(1)(d).

Amendment 203 clarifies that a councillor does not have a declarable conflict of interest in a matter if the conflict of interest arises solely because the councillor, or a related party of the councillor, receives a gift, loan or sponsored travel or accommodation benefit from an entity given in circumstances that would constitute a prescribed conflict of interest under section 150EG or 150EH if the total gifts, loans and benefits given by the entity totalled \$2,000 or more but the gifts, loans and benefits total less than \$500 during the councillor's relevant term.

Amendment 204 clarifies that section 150EG(2A) and (3), as inserted by amendment 198, applies to work out, under section 150EO(1)(e)(ii), the total gifts, loans and sponsored travel or accommodation benefits given by the entity as if a reference in that section to a donor were a reference to the entity.

Amendment 205 – Clause 104 (Insertion of new ch 5B)

Amendment 205 amends new section 150EU of the Local Government Act (as inserted by the Bill) to clarify that a councillor does not contravene section 150EK(1), 150EM(2), 150EQ(2)(a) or (3)(a) or 150ES(5) by participating in a decision, or being present while the matter is discussed and voted on, for the purpose of deciding, by resolution, not to decide the matter and take no further action in relation to the matter.

Amendment 206 – Clause 106 (Replacement of s 161 (What this division is about))

Amendment 206 omits the replacement of section 161 of the Local Government Act and instead inserts amendments to section 161. The amendment provides that the way in which a councillor vacancy is to be filled depends on when the office becomes vacant, that is, during the beginning, middle or end of the local government's term. Whether the vacancy is in the office of the mayor or of another councillor will no longer be a factor.

The amendment also inserts new definitions for the 'middle' and 'final part' of a local government's term. The middle of a local government's term will be the 24 month period that starts on the first anniversary of the last quadrennial elections (rather than an 18 month period) and the final part of a local government's term will be the period that starts on the third anniversary of the last quadrennial elections and ends on the day before the next quadrennial elections (a period of 12 months rather than 18 months).

Amendment 207 – Clause 109 (Replacement of s 166 (Filling a vacancy in the office of another councillor))

Amendment 207 replaces section 166 of the Local Government Act (as replaced by the Bill) to provide the way in which a vacancy in the office of a mayor or other councillor must be filled, depending on when during the local government's term the vacancy is to be filled. The provision is no longer specific to a mayoral vacancy or a councillor vacancy in a single-member division of a divided local government, during the first 36 months of a local government's term.

A vacancy in the beginning of a local government's term must be filled by appointing a runner-up from the last quadrennial elections or, if no runners-up are eligible and consent to the appointment, by a by-election. A vacancy in the middle of a local government's term must be filled by a by-election and a vacancy in the final part of a local government's term must be filled by appointment by the local government.

Amendments 208 to 212 – Clause 109 (Replacement of s 166 (Filling a vacancy in the office of another councillor))

Amendments 208 to 212 amend new section 166A of the Local Government Act (as inserted by the Bill).

Amendments 208 and 209 amend the section heading and subsection (1) to provide that the prescribed processes under section 166A are to apply to the filling of vacancies during the beginning of a local government's term, both for the vacant office of a mayor or other councillor.

Amendments 210 to 212 amend the definitions 'runner-up' and 'vacancy notice' to provide that the definitions also apply to a vacancy in the office of a mayor.

Amendments 213 and 214 – Clause 109 (Replacement of s 166 (Filling a vacancy in the office of another councillor))

Amendments 213 and 214 amend new section 166B of the Local Government Act (as inserted by the Bill) to condense the section heading and to omit the definition 'final part', of a local government's term. The definition has been re-inserted into section 161 of the Local Government Act under amendment 206.

Amendment 215 – Clause 110 (Amendment of s 170 (Giving directions to local government staff))

Amendment 215 inserts amendments to section 170(2) of the Local Government Act to implement the Government's response to recommendation 1 of the CCC's Yabber Report. The amendment provides that the mayor must not give a direction to the CEO if it relates to the appointment of local government employees under section 196(3) of the Local Government Act; disciplinary action by the CEO in relation to a local government employee under section 197 of the Local Government Act or a councillor advisor; or it would result in the CEO contravening a provision of an Act.

Amendment 216 – Clause 110 (Amendment of s 170 (Giving directions to local government staff))

Amendment 216 makes a drafting change to facilitate amendment 215.

Amendment 217 – After clause 113

Amendment 217 inserts clauses 113A and 113B. New clause 113A makes amendments to section 177 of the Local Government Act to provide that the functions of the Local Government Remuneration Commission are to include considering and making recommendations to the Minister about particular matters relating to councillor advisors. The amendment facilitates amendments 185 and 222.

New clause 113B amends section 181(2) of the Local Government Act to remove the existing disqualification to be a commissioner of the Local Government Remuneration Commission if a person is a member of a political party.

Amendments 218 to 221 – Clause 115 (Insertion of new ch 6, pt 5, div 2A)

Amendments 218 to 221 amend new section 197A of the Local Government Act (as inserted by the Bill) about the appointment and functions of councillor advisors.

Amendment 218 amends subsection (1) to make specific reference to new section 197D of the Local Government Act which is inserted by amendment 222.

Amendment 219 inserts a new requirement for the resolution under subsection (1) to state the number of councillor advisors, up to the maximum prescribed by regulation, that councillors may appoint.

Amendment 220 clarifies that a person who is appointed as a councillor advisor may carry out or assist in an activity relating to a councillor's campaign for re-election other than in their capacity as a councillor advisor.

Amendment 221 omits subsection (7) relating to what a regulation may provide for with respect to the appointment and functions of councillor advisors. The provision has been relocated to new section 197D of the Local Government Act which is inserted by amendment 222.

Amendment 222 – Clause 115 (Insertion of new ch 6, pt 5, div 2A)

Amendment 222 inserts new section 197D (Regulation may prescribe particular matters relating to councillor advisors) into the Local Government Act. New section 197D provides that a regulation may prescribe a local government that may, by resolution, allow the appointment of councillor advisors; prescribe the maximum number of councillor advisors each councillor may appoint; and limit the functions and key responsibilities of councillor advisors. The amendment also provides for the appointment of part-time councillor advisors.

In addition, the amendment provides that before recommending the making of a regulation prescribing the local governments that may allow the appointment of councillor advisors and the maximum number of councillor advisors each councillor may appoint, the Minister must ask the Local Government Remuneration Commission for its recommendation about the proposed regulation and must have regard to the recommendation of the Local Government Remuneration Commission in recommending the making of the regulation. These requirements will not apply to the first regulation made after the commencement (amendment 226, new section 335 refers).

Amendment 223 - After clause 121

Amendment 223 inserts new clause 121A which amends section 235 of the Local Government Act (Administrators who act honestly and without negligence are protected from liability). The amendment clarifies that the protection from civil liability under the section is in addition to the new statutory protection and immunity for Councillor Conduct Tribunal members, as inserted by amendment 189.

Amendment 224 – After clause 122

Amendment 224 inserts new clause 122A which amends section 247 of the Local Government Act (Local government references in this Act) to provide that a reference to a councillor advisor is a reference to a councillor advisor appointed by the mayor or another councillor of the local government.

Amendment 225 – Clause 123 (Insertion of new ch 9, pt 15)

Amendment 225 inserts new section 332A into the Local Government Act. Section 332A provides for vacancies in the office of a mayor or other councillor that have arisen before commencement but have not been filled on commencement. Chapter 6, part 2, division 3 of the Local Government Act applies to filling the vacancy as if the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2019* had not commenced.

Amendment 226 – Clause 123 (Insertion of new ch 9, pt 15)

Amendment 226 inserts two transitional provisions into the Local Government Act (new sections 335 and 336).

New section 335 provides that the new requirements under section 197D(2) and (3) of the Local Government Act, as inserted by amendment 222, will not apply to the first regulation made after the commencement under section 197D(1)(a) or (b). Section 197D(2) and (3) require the Minister to ask the Local Government Remuneration Commission for its recommendation about a proposed regulation prescribing the local governments that may allow the appointment of councillor advisors and the maximum number of councillor advisors each councillor may appoint and for the Minister to have regard to the recommendation of the Local Government Remuneration Commission in recommending the making of the regulation.

New section 336 provides that if, on the commencement, a councillor has an interest mentioned in section 201A(1), the councillor must inform the CEO of particulars of interests within 30 days after the commencement, despite section 201A(2) of the Local Government Act (as inserted by the Bill). Section 201A(1) requires a councillor to inform the CEO of particulars of interests within 30 days after the day the councillor's term starts.

Amendments 227 and 228 – Clause 125 (Amendment of sch 4 (Dictionary))

Amendments 227 and 228 amend schedule 4 (Dictionary) of the Local Government Act (as amended by the Bill).

The amendments are required as a consequence of amendment 206 about filling councillor vacancies.

Amendment 229 – Long title

Amendment 229 amends the long title of the Bill to include *Electoral and Other Legislation Amendment Act 2019*.