

# LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL 2019

## EXPLANATORY MEMORANDUM

### OVERVIEW OF THE BILL

The *Local Government Act 1995* provides the framework for local governments within Western Australia. Local government is an important tier of government and makes a significant contribution to the Western Australian way of life. Local government is a major provider of government services and infrastructure and supports economic development, community vibrancy and inclusiveness.

The *Local Government Act 1995* is an outdated piece of legislation. While there have been amendments since it was introduced in 1995, there have not been substantial amendments to reflect the changing expectations of the community or the advances in technology. We need local governments to be agile, smart and inclusive.

The reforms in this Bill are aimed at the governance level of local governments and increasing accountability to the community. The Bill introduces the measures to ensure that council members have the skills and tools to be able to competently and appropriately perform their role.

#### Universal Training

To ensure that council members have the necessary training to understand and carry out their role, universal training for candidates and council members is being introduced. This consists of the following requirements:

- all candidates to complete an online induction prior to nominating for election;
- all council members to complete prescribed training within twelve months of being elected;
- all local governments to prepare and adopt a council member training policy for ongoing professional development; and
- all local governments to annually report on the training completed by each council member.

The Bill provides a head of power for, if required in the future, regulations to introduce a penalty if a council member fails to complete the prescribed training.

#### Council Member Behaviour

In addition to improving the skills and knowledge of council members by introducing training, the Bill includes clear expectations and improved mechanisms for holding council members accountable for their behaviour. The Bill provides for the following:

- Introduction of a mandatory Code of Conduct to which all council members must comply. The regulations will prescribe a model Code of Conduct which must include:
  - general principles to guide the behaviour of council members;
  - requirements relating to the behaviour of council members; and
  - rules of conduct.

- The Code of Conduct is to apply to candidates in the same way it applies to council members. An alleged breach of the Code of Conduct by a candidate will only be able to be referred to the Local Government Standards Panel if the candidate is elected.
- Adoption of an employee Code of Conduct by all local governments.

To improve the transparency, accountability and overall outcomes of the minor breach system, the following changes to the Standards Panel are being introduced:

- the power to order a council member to reimburse the local government for the cost of the panel proceedings for adverse findings;
- reducing the time period for complaints to be lodged from two years to six-months; and
- a power for the Standards Panel to request that both parties to a complaint participate in mediation before the panel deals with the complaint.

## **Gifts**

Given the important role of council members and many local government employees as decision-makers in positions of power, the public has a reasonable expectation that the decisions that a local government makes are free from improper influence. A new framework for the receipt of gifts has been developed and amendments reflecting this are included in this Bill.

Elected members and Chief Executive Officers (CEOs) will be required to declare all gifts over a prescribed amount that are received in the ordinary course of their duties as an elected member or CEO. All gifts must be disclosed within ten days of receipt and published on the online gift register within ten days.

Receipt of any gift over the threshold (including gifts received in other than an official capacity) will prohibit the elected member from voting on or participating in matters before the council concerning the donor of the gift for the period of their term unless approval is given by the council or Minister. The CEO is prohibited from giving advice on a matter involving the donor of a gift that they have received unless approval is given by the council or Minister.

To improve transparency, local governments must also prepare and adopt a policy that relates to the attendance of council members and CEOs at events such as concerts, conferences and functions.

A gift of a ticket to, or that otherwise relates to a person's attendance at, an event that is in accordance with the policy will be exempted from the conflict of interest provisions. The council member (or CEO) will not be required to disclose the interest if the donor has a matter before council and will be able to participate in the decision-making (or the provision of advice for the CEO).

## **CEO Recruitment and Performance Management**

Given the importance of the CEO position in local government and growing concerns regarding CEO performance and management, legislative amendments are being introduced to require local governments to adopt minimum standards in relation to CEO recruitment and selection, performance review and dismissal.

Local governments will be required, under the new provisions, to adopt model standards for the recruitment, performance management and early termination of the CEO. They will also be required to develop a policy that provides the processes for filling a temporary CEO vacancy.

## **Greater Accountability to the Community**

Reforms have been drafted to enable local governments to be more efficient and flexible, and to ensure that the community and other stakeholders have greater access to information held by the local government.

Information that is currently only available to the community at the local government office during business hours will now be required to also be made available on the local government's website. The information required to be published on the website includes:

- a map of the district showing the district and ward boundaries;
- local laws made by the local government;
- the annual budget;
- fees and charges schedule;
- current plans for the future of the district;
- minutes of council or committee meetings and electors' meetings; and
- notice papers and agenda relating to council or committee meetings and other documents tabled at these meetings.

Copies of the gifts register, the codes of conduct and policies referred to above will also be required to be published on the local government's website.

The requirements for local and State-wide notices will be included in regulations to enable the flexibility required to adapt to changes in technology and community expectations.

To encourage local governments to live stream meetings, statutory protection for the local government from publishing defamatory comments has been provided in the Bill.

## **Administrative Efficiencies**

Provisions are included in the Bill to improve the operations of local governments without having an adverse impact on the community.

The Bill standardises the appointment of authorised officers across the following pieces of legislation:

- *Caravan Parks and Camping Grounds Act 1995*;
- *Cat Act 2011*;
- *Cemeteries Act 1986*;
- *Control of Vehicles (Off-road Areas) Act 1978*;
- *Dog Act 1976*; and
- *Local Government Act 1995*.

The CEO is provided the power to appoint an authorised person or class of persons.

The Bill includes transitional provisions to ensure that existing appointments continue to have effect.

The category of 'senior employees' has been removed to provide greater clarity on the separate roles of the council and the administration.

Part 2 of the Bill contains the amendments to the *Local Government Act 1995* that give effect to the above provisions.

Part 3 of the Bill contains amendments to the *Local Government (Miscellaneous Provisions) Act 1960* to provide administrative efficiencies.

Part 4 of the Bill amends a number of other Acts in the local government portfolio to harmonise the appointment of authorised officers introducing further efficiencies.

## **CLAUSE NOTES**

Contained below is a brief description of each clause contained in the Local Government Legislation Amendment Bill 2019 (the Bill).

### **Part 1 – Preliminary**

#### ***Clause 1 – Short title***

Clause 1 cites the short title of the *Local Government Legislation Amendment Act 2019*.

#### ***Clause 2 – Commencement***

This clause provides that Part 1 will commence on the day on which the Act receives Royal Assent with Part 3 and certain sections in Part 2 coming into operation on the following day.

The remainder of the Act will come into effect on a day to be fixed by proclamation as it requires the development of policies or regulations.

### **Part 2 – Local Government Act 1995 amended**

#### ***Clause 3 – Act amended***

This clause provides that the Bill amends the *Local Government Act 1995*.

#### ***Clause 4 – Section 1.4 amended***

This clause removes the definition of a 75% majority as these types of decisions are being removed from the Act.

This definition has been removed as it operates in conjunction with a ‘special majority’ decision which only applies where there are more than 11 members of council.

#### ***Clause 5 – Sections 1.7 and 1.8 replaced***

##### **Section 1.7 – Local Public Notice**

This section provides the requirements for what constitutes a local public notice under the *Local Government Act 1995*.

This clause provides that the requirements for a public notice will be set in regulations, which will allow for changes in technology and communication methods over time.

Local governments will be required to publish these notices on their official website.

##### **Section 1.8 – State-wide public notice**

This section provides the requirements for what constitutes a State-wide public notice under the Act.

This clause provides that the requirements for a State-wide notice will be set in regulations, which will allow for changes in technology and communication methods over time.

State-wide public notice will include a concurrent requirement for local public notice.

**Clause 6 – Section 1.10 deleted**

This clause removes the definition of a special majority decision.

This amendment is made to remove all special majority decisions of the council of the local government from the *Local Government Act 1995*. This only affects councils with more than 11 offices of members of council.

Special majority decisions are being replaced by absolute majority decisions which currently apply if there are 11 or fewer members of council.

**Clause 7 – Section 2.11 amended**

This section provides the mechanism for a local government to change the method of filling the office of mayor or president from a councillor mayor or president to an elector mayor or president.

This clause removes the requirement to make the decision via a special majority of council and replaces it with a requirement to have an absolute majority of the council.

This change has no effect on councils with 11 or fewer offices of council.

**Clause 8 – Section 3.12 amended**

Subsection (1) changes the requirement for local governments to give State-wide notice when preparing local laws, to a requirement to give local public notice.

Subsection (2) removes the requirement to give State-wide notice to reflect the changes made by subsection (1).

Subsection (3) amends the local public notice requirements which a local government must follow after the gazettal of a new or amending local law to require the notice to specify that the local law can be viewed on the local government's official website.

All proposed and gazetted local laws will be required to be published on the local government's official website.

**Clause 9 – Section 3.16 amended**

Subsection (1) changes the requirement for local governments to provide State-wide notice of a proposal to review local laws, to a requirement to provide local public notice.

Subsection (2) removes the requirement to provide the concurrent publication of a local public notice with a State-wide notice to reflect the changes made by subsection (1).

A local government will be required to provide this information on its official website.

***Clause 10 – Section 3.17 amended***

This clause inserts subsection (5) which makes it a requirement that any local laws made by the Governor (rather than the local government) are to be tabled in Parliament.

This clarifies an anomaly in the existing legislation to ensure that local laws made by the Governor are disallowable instruments.

***Clause 11 – Section 3.59 amended***

Subsection (1) provides that when a business plan is prepared for a major trading undertaking or major land transaction, the local government must publish a copy of the plan on its official website.

Subsection (2) removes the requirement to provide the concurrent publication of a local public notice with a State-wide notice to reflect the changes made to the public notice requirements by clause 5 of the Bill.

***Clause 12 – Section 4.32 amended***

This is an amendment to correct a typographical error in the current Act.

***Clause 13 – Section 4.39 amended***

This section provides the public notice requirements that must be followed to advise prospective electors of the date that the electoral roll will close prior to an election.

Subsection (2) amends the current requirements to provide that the Electoral Commissioner is responsible for publishing the notice for an election conducted by the Western Australian Electoral Commission and the CEO of the local government in any other case.

***Clause 14 – Section 4.47 amended***

This section provides the public notice requirements which must be followed to advise prospective candidates of when nominations close prior to an election.

Subsection (1) amends the current requirements to provide that the Electoral Commissioner is responsible for publishing the notice for an election conducted by the Western Australian Electoral Commission and the returning officer in any other case.

***Clause 15 – Section 4.48 amended***

This clause amends the eligibility requirements for a person to become a candidate to fill an office of councillor, an elector mayor or elector president.

Subsection (1) inserts the requirement for a candidate to complete an induction course prior to their nomination to be a councillor. This course will be set in regulations.

Subsection (2) requires that a candidate to be an elector mayor or president must also complete the induction course that will be set in regulations.

***Clause 16 – Section 4.52 amended***

This section provides for the publication of the candidates' profiles prior to a local government election.

Subsection (1) removes the current requirement to display the candidates' profiles upon the notice board of the local government and requires the local government to publish the profiles of candidates on the local government's official website.

Subsection (2) is an amendment as a result of changes made by subsection (1).

Heading of the section is amended — 'Candidates' details and profiles to be published on website'.

***Clause 17 – Section 4.64 amended***

This section provides the public notice requirements which must be followed to inform the public of how, where and when the election will be conducted.

Subsection (1) is an amendment to reflect the changes made by subsection (2).

Subsection (2) provides that State-wide notice is to be provided by the Electoral Commissioner for an election conducted by the Western Australian Electoral Commission and the returning officer in any other case.

***Clause 18 – Section 5.10 amended***

This amendment provides clarity that it is the council that is the decision-making body of the local government.

***Clause 19 – Section 5.17 amended***

This section provides what powers and duties under the Act can be delegated under the Local Government Act to a committee of council.

Subsection (1) makes the requirements the same for all councils, regardless of the number of offices of council.

***Clause 20 – Section 5.29 amended***

This amendment reflects the changes made to the local public notice requirements under the Act.

***Clause 21 – Section 5.37 deleted***

This clause removes the framework for the appointment of a ‘senior employee’ under the *Local Government Act 1995*.

This will more clearly separate the role of the council from that of the administration.

***Clause 22 – Section 5.38 replaced***

This new section 5.38 clarifies the annual performance review requirements for employees of a local government.

Subsection (1) provides that the performance of the CEO must be reviewed if they are employed for a term longer than 1 year.

Subsection (2) provides that the CEO is to ensure that the performance of all other employees is reviewed if they are employed for a term longer than 1 year. This allows for the review to be undertaken by a person other than the CEO.

Subsection (3) requires that a review of the performance of the CEO and other employees must be completed at least once for each year they are employed.

***Clause 23 – Section 5.39 amended***

This section provides for the employment contracts and remuneration of local government CEOs.

Subsection (1) removes references to senior employees.

Subsection (2) is redrafted to remove references to senior employees.

Heading of the section is amended — ‘Contracts for CEO’.

***Clause 24 – Sections 5.39A to 5.39C inserted***

**Section 5.39A – Model standards for CEO recruitment, performance and termination**

Subsection (1) provides that regulations must prescribe model standards for local governments for the:

- recruitment of CEOs;
- performance review of CEOs; and
- termination of the employment of CEOs.

Subsection (2) provides that these model standards can be amended.

**Section 5.39B – Adoption of model standards**

This section requires a local government to prepare and adopt (via an absolute majority) the model standards for the recruitment, performance review and termination of the employment of a CEO.

Subsection (1) defines the term ‘model standards’ for the purposes of this section and means the model standards which will be set in regulations.

Subsection (2) requires the local government to prepare and adopt (via an absolute majority) standards for the recruitment, performance review and termination of the employment of a CEO that includes the model standards, within three months of the model standards taking effect.

Subsection (3) requires the local government to amend and adopt (via an absolute majority) any amendments to the standards for the recruitment, performance review and termination of employment of a CEO, within three months of the amendments taking effect.

Subsection (4) provides a local government with the ability to include additional elements within their adopted standards to suit their local government. Any additional requirements are of no effect to the extent they are inconsistent with the model standards.

Subsection (5) provides that until a local government adopts standards, the model standards will apply.

Subsection (6) places a requirement upon the CEO to publish an up-to-date version of the adopted standards on the local government’s official website.

Subsection (7) provides the ability for regulations to be developed on:

- the monitoring of compliance with the adopted standards; and
- the way in which contraventions of the adopted standards are to be dealt with.

### **Section 5.39C – Policy for temporary employment or appointment of CEO**

Subsection (1) provides that a local government must prepare and adopt (via an absolute majority) a policy that sets out the process to be followed by the local government for the temporary appointment or employment of a CEO for a term not exceeding one year.

Subsection (2) provides the local government with the power to amend the policy (via an absolute majority).

Subsection (3) provides that when preparing the policy, local governments must comply with any requirements set in regulations as to the form and content of the policy.

Subsection (4) places a requirement upon the CEO to publish an up-to-date version of the policy on the local government’s official website.

The policy will address who is the decision-making authority and under what circumstances. This will be a decision of council as the employing authority.

Vacancies of a year or more are covered in the legislation.

**Clause 25 – Section 5.41 amended**

This clause removes the reference to senior employees from the section.

**Clause 26 – Section 5.43 amended**

This section provides what powers and duties under the Act cannot be delegated to the CEO.

This clause removes the reference to a 75% majority decision and makes the requirements the same for all councils, regardless of the number of council members.

**Clause 27 – Section 5.50 amended**

This section requires a local government to prepare a policy that sets out the circumstances in which an employee will be paid any amount of money additional to any entitlement under their contract of employment or the award when finishing their employment.

Subsection (1) removes the requirement to provide a local public notice of the adoption of the policy.

Subsection (2) places a requirement upon the CEO to publish the policy adopted by the local government on the local government's official website.

**Clause 28 – Section 5.51A inserted**

**Section 5.51A – Code of Conduct for employees**

This section requires the CEO of the local government to prepare and implement a Code of Conduct to be followed by the employees of the local government.

Subsection (1) inserts the requirement to prepare and implement the Code of Conduct to be observed by the employees of the local government.

Subsection (2) provides that the CEO may amend the Code of Conduct.

Subsection (3) requires the CEO to publish an up-to-date version of the employees' Code of Conduct on the local government's official website.

Subsection (4) provides a regulation making power for the content of, and other matters in relation to, the Code of Conduct.

Subsection (5) provides that any element of the Code of Conduct prepared under this section is of no effect to the extent that it is inconsistent with the regulations.

**Clause 29 – Part 5 Division 6 heading amended**

The heading for Part 5 Division 6 is amended to 'Disclosure of financial interests and gifts'.

### **Clause 30 – Part 5 Division 6 Subdivision 1A inserted**

The heading for subdivision 1A is inserted — ‘Preliminary’.

### **Section 5.57 – Terms used**

Section 5.57 defines the terms used in this division.

The term ‘gift’ means a conferral of a financial benefit (including a disposition of property) by one person in favour of another person unless adequate consideration in money or money’s worth passes from the person in whose favour the conferral is made to the person who makes the conferral. Travel contributions are to be included in this definition.

The definition is used for the purposes of disclosure and in establishing interests in a matter.

The term ‘travel’ includes accommodation incidental to a journey.

The term ‘travel contribution’ means a financial or other contribution made by one person to travel undertaken by another person.

Travel will no longer be considered separately from a gift under the Act.

### **Section 5.58 – Provisions about gifts**

Subsection (1) provides for the purpose of this division:

- the amount of a gift comprising property or the conferral of a financial benefit is taken to be an amount equal to the value of the property or financial benefit at the time the gift was made; and
- the amount of a gift comprising a travel contribution (other than a financial contribution) is taken to be an amount equal to the value of the contribution at the time the gift was made.

Subsection (2) provides that where a gift is made by two or more related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) are taken to be given by a single corporation.

This section captures elements of the existing sections 5.82 and 5.83 which are being deleted by clause 40.

### **Clause 31 – Section 5.59 amended**

Section 5.59 inserts a new definition of interest relating to a gift. Section 5.60 describes when a person has an interest in a matter affecting a local government decision. The concept of closely associated person is further expanded in section 5.62 and extends to a council member receiving an electoral gift ((1)(ea)), and a council member ((1)(eb)) or CEO ((1)(ec)) receiving a gift.

The definition of the term 'relevant person' is amended to incorporate the new section 5.71A (CEOs to disclose interests relating to gifts in connection with advice or reports) inserted by clause 36 of the Bill.

**Clause 32 – Section 5.62 amended**

This section provides the framework to establish who is classified as a closely associated persons (for the purpose of section 5.60).

Subsection (1)(a) reflects changes made to the definition of “notifiable gift” under subsection (3) of this section.

Subsection (1)(b)(eb) provides that a person becomes a closely associated person of a council member if they give the council member a gift. It also reflects that contributions to travel will no longer be treated differently from other gifts.

The new subsection (1)(ec) provides that a person becomes a closely associated person of a CEO if they give the CEO a gift.

The effect of being a closely associated person is that the council member or CEO has an interest in a matter under section 5.60. Sections 5.65, 5.67 and 5.69B then apply in relation to disclosure and provide restrictions on participation in meetings (or parts thereof) and providing advice.

Subsection (2) inserts a new subsection (1A) that provides that this subsection applies to a gift that either:

- exceeds the amount set in regulations for the purposes of the subsection, or
- is one or more gifts made by one person to a relevant person at any time during a year and the sum of the amounts of those gifts exceed the amount for the purposes of the subsection,

and the gift is not an excluded gift.

The new subsection (1B) provides that an excluded gift is a gift of a ticket to, or that relates to, the person’s attendance at an event that has been approved by the local government in accordance with the attendance at events policy (under section 5.90A).

The effect of this is to exempt such a gift from the conflict of interest provisions. The council member (or CEO) will not be required to disclose the interest if the donor has a matter before council and will be able to participate in the decision-making (or the provision of advice for the CEO).

An excluded gift can also be a class of gifts that are set in regulations. This will include gifts received from the State or Commonwealth government, WA Local Government Association or other local governments.

Subsection (3) changes the defined term 'notifiable gift' to 'electoral gift'. This has been changed to make it clear what the type of gift is.

***Clause 33 – Section 5.68 amended***

The *Local Government Act 1995* provides that a council member who has disclosed an interest in a matter is not to participate in that part of the meeting. Section 5.68 permits a council or a committee of a local government to allow a member to participate if they decide that the interest is so trivial or insignificant that it is unlikely to influence the person's decision-making (or that the interest is common to a significant number of electors or ratepayers).

This clause inserts subsection (1A) which provides that where the interest relates to receipt of a gift, the council or committee cannot make such a decision if the gift (or 1 of 2 or more gifts from that donor) exceeds an amount to be set in regulations. This is proposed to be \$1,000.

Subsection (2) introduces a requirement that when decisions are made concerning an interest relating to a gift, certain information, including the reason for allowing participation, is to be recorded in the minutes.

***Clause 34 – Section 5.69 amended***

This section provides that the Minister can allow members disclosing interests to participate in meetings.

This amendment introduces the requirement that a decision made by the Minister under this section needs to be recorded in the minutes.

***Clause 35 – Section 5.70 amended***

This section provides the obligations for employees of a local government in respect to disclosing interests relating to advice and reports.

Subsections (1) and (3) are a drafting improvement which shows that a penalty applies to both subsections.

Subsection (2) provides that if the council or Minister decides under the new section 5.71B that the CEO can give advice, the CEO is still required to disclose the interest when doing so.

***Clause 36 – Sections 5.71A and 5.71B inserted***

**Section 5.71A – CEOs to disclose interests relating to gifts in connection with advice or reports**

This new section outlines the CEO's obligations in respect to disclosing an interest that relates to a gift when providing advice or a report to the council or committee of the local government.

Subsection (1) provides that a CEO must disclose the nature of any interest (as defined in Part 5 Division 6) that the CEO has, when providing any advice or report directly to council or a committee.

If the CEO fails to disclose the interest, they commit an offence and are liable to a penalty of 2 years imprisonment or a fine not exceeding \$10,000.

Subsection (2) provides that if the CEO has an interest relating to a gift, they must not provide advice or a report on a matter to council or a committee unless they receive approval from the council or the Minister.

Contravention of this provision is an offence and the CEO is liable to a penalty of 2 years imprisonment or a fine not exceeding \$10,000.

Subsection (3) provides that a CEO must disclose if they have an interest relating to a gift in a matter before council or a committee where an employee of the local government (including someone under a contract of services with the local government) is providing advice or a report on the matter.

If the CEO fails to disclose the interest they commit an offence and are liable to a penalty of a fine of \$10,000 or 2 years imprisonment.

These provisions will prevent influence on advice being provided to a council where a gift has been received by the CEO.

### **Section 5.71B – Council or Minister may allow CEOs to provide advice or reports**

This new section introduces the ability for the council or Minister to approve a CEO who has an interest due to receipt of a gift, to provide advice or a report to council or a committee.

Subsection (1) defines a relevant gift as a gift disclosed under section 5.71A(1).

Subsection (2) provides that that where the gift received by the CEO does not exceed an amount set in regulations (proposed to be \$1,000), council can allow the CEO to provide advice on the matter if receipt of the gift (or 1 of 2 or more gifts from that donor) is unlikely to influence the advice.

Subsection (3) requires a decision made by council under subsection (2) to be recorded in the council minutes.

Subsection (4) provides that if the gift received by the CEO exceeds an amount set in regulations, an application can be made to the Minister to allow the CEO to provide advice on a matter.

Subsection (5) provides that the application to the Minister is to include details of the interest disclosed and any other information required.

Subsection (6) provides that if the Minister is of the opinion that it is in the interests of the ratepayers or electors, approval can be given for a CEO to provide advice or a report

on a matter in which they have an interest relating to receipt of a gift. The Minister can place any conditions on the determination.

Subsection (7) requires a decision made by the Minister under subsection (6) to be recorded in the council minutes.

Subsection (8) clarifies that a relevant gift could be 1 or more gifts made by 1 person over a period of 12 months.

***Clause 37 – Section 5.72 amended***

This clause reflects the introduction of section 5.71A and the amendments made to section 5.70 to provide protection to the CEO if they did not know that they had an interest in a matter.

***Clause 38 – Section 5.73 amended***

This clause reflects the introduction of section 5.71A and requires that disclosures by a CEO under the section 5.71A are recorded in the minutes of the meeting.

***Clause 39 – Section 5.74 amended***

This is a drafting correction as the reference to gifts or contributions to travel is no longer relevant as these are no long included in annual or primary returns.

***Clause 40 – Sections 5.82 and 5.83 deleted***

This clause deletes the current 'Gifts' and 'Contribution to travel' provisions.

These sections have been replaced by the new sections 5.57, 5.58, 5.87A, 5.87B and 5.87C.

***Clause 41 – Part 5 Division 6 Subdivision 2A inserted***

The heading for subdivision 2A is inserted — 'Disclosure of gifts'.

**Section 5.87A – Council members to disclose gifts**

Subsection (1) provides that a council member must disclose a gift received. Subsection (3) provides exceptions to this requirement.

If a council member fails to disclose a gift they are liable to a penalty of a fine of \$10,000 or two years imprisonment.

Subsection (2) provides the disclosure must be in writing to the CEO.

Subsection (3) provides the council member does not commit an offence under subsection (1) if:

- the amount of the gift did not exceed the amount set in regulations; or
- the gift was not received in the person's capacity as a council member.

If a gift is one or more gifts made by one person to the council member at any time during a year the amount is the sum of the amounts of those gifts.

Subsection (5) clarifies subsection (3) by providing that a gift is not received in the person's capacity as a council member if they would have received the gift even if they were not a council member.

The onus is on the council member to show that any gift that was received was not received because of that role and that the value of the gift(s) was below the prescribed amount.

### **Section 5.87B – CEOs to disclose gifts**

Subsection (1) provides that a CEO must disclose a gift received. Subsection (3) provides exceptions to this requirement.

If a CEO fails to disclose a gift they are liable to a penalty of a fine of \$10,000 or two years imprisonment.

Subsection (2) provides the disclosure must be in writing to the mayor or president.

Subsection (3) provides the CEO does not commit an offence under subsection (1) if:

- the amount of the gift did not exceed the amount set in regulations; or
- the gift was not received in the person's capacity as a CEO.

If a gift is one or more gifts made by one person to the CEO at any time during a year the amount is the sum of the amounts of those gifts.

Subsection (5) clarifies subsection (3) by providing that a gift is not received in the person's capacity as a CEO if they would have received the gift even if they were not the CEO.

The onus is on the CEO to show that any gift that was received was not received because of that role and that the value of the gift(s) was below the prescribed amount.

### **Section 5.87C – Provisions about disclosure**

This section provides how gifts received by a council member or a CEO must be disclosed.

Subsection (1) provides that this section applies to gifts disclosed under the new sections 5.87A and 5.87B.

Subsection (2) provides the disclosure is to be made within 10 days of receiving the gift.

Subsection (3) provides the disclosure must include:

- a description of the gift;
- the name and address of the person who made the gift;
- the date on which the gift was received;

- the estimated value of the gift;
- the nature of the relationship between the donor and the recipient; and
- in the case of a travel contribution—
  - a description of the travel, and
  - the date of the travel.

**Clause 42 – Section 5.88 amended**

This section outlines the requirements pertaining to the register of financial interests kept by the CEO of the local government.

Subsection (1) is an amendment to include a reference to the new section 5.71A, requiring the CEO’s disclosures of interest be entered into the register of financial interests.

Subsection (2) places a requirement upon the CEO to publish an up-to-date version of the register on the local government’s official website.

**Clause 43 – Section 5.89A amended**

This section provides the requirements pertaining to the register of gifts kept by the CEO of the local government.

Subsection (1) reflects changes made to the gift provisions whereby the definition of gift incorporates contributions to travel.

Subsection (2) reflects amendments made to the disclosure of gifts in sections 5.87A and 5.87B.

Subsection (3) inserts subsection (2A) which provides the CEO must record a disclosure made under section 5.87A (disclosure of gifts received by council members) and section 5.87B (disclosure of gifts received by the CEO) in the register within 10 days.

It also inserts subsection (2B) which provides that if a local government approves attendance at an event in accordance with the local government’s policy (section 5.62(1B)(a)(ii)), the CEO must record in the gift register the:

- date of the approval; and
- the reasons for the decision; and
- any other information set in regulations (such as the number of tickets provided).

Subsection (4) deletes subsection 5.89A(4) which is a requirement for the register to be available for public inspection. This is now contained within section 5.94 (clause 48).

Subsection (5) places a requirement on the CEO to publish an up-to-date version of the register on the local government’s official website.

Subsection (6) inserts subsection (5A) which provides that the version of the register published under subsection (5), must not, if the donor is an individual person, include the full address of the donor but must include the donor's town or suburb.

Subsection (7) reflects that the new sections relating to disclosure of gifts.

Subsection (8) reflects that the new sections relating to disclosure of gifts.

Heading of the section is amended — 'Register of gifts'.

***Clause 44 – Sections 5.89B deleted***

This clause deletes the offence provision for a failure to disclose gifts and contribution to travel provisions.

This section has been replaced by offence provisions in new sections 5.87A and 5.87B.

***Clause 45 – Section 5.89 amended***

This clause removes references to the former gift and travel provisions and includes to references to new sections 5.69B, 5.87A and 5.87B.

***Clause 46 – Section 5.90 amended***

This section makes it an offence to publish any information derived from a register of financial interests or register of gifts unless the information constitutes a fair and accurate report or summary of information contained within the register.

Subsection (1) expands the application of this section to include the publication of information contained within the register of gifts.

Subsection (2) updates the definition of 'publish' in accordance with section 345 of the *Criminal Code*.

***Clause 47 – Part 5 Division 6A inserted***

The heading for division 6A is inserted — 'Attendance at events'.

***Section 5.90A – Policy for attendance at events***

This section introduces the requirement for a local government to prepare and adopt a policy for attendance at events.

Subsection (1)(a)–(d) provides examples of events that are captured by this section.

Subsection (1)(e) provides a power to prescribe in regulations other occasions which a policy for attendance at events would cover if the need arises.

Subsection (2) places a requirement upon a local government to prepare and adopt a policy (via an absolute majority) for attendance at events by council members and the CEO. The policy is to consider matters including payment in respect of attendance and the approval of attendance by the local government, including the criteria for approval.

Subsection (3) provides the local government with the power to amend the policy (via an absolute majority).

Subsection (4) provides that the form and content of the policy for attendance at events must comply with any requirements set in regulations.

Subsection (5) places a requirement upon the CEO to publish an up-to-date version of the policy on the local government's official website.

***Clause 48 – Section 5.94 amended***

This section provides a list of the information that any person can request to inspect (free of charge) at a local government office.

Subsection (a) removes the requirement to have any regulations that prescribe the rules of conduct.

Subsection (b) inserts a requirement to have any register of gifts available for public inspection.

Subsection (c) amends the terminology used to describe the document which outlines the fees and charges imposed by the local government.

Subsection (d) reflects the changes made to the public notice requirements for local laws.

Subsection (e) is made for drafting consistency with the remainder of the Act.

Subsection (f) removes the requirement to have the CEO's contract available for inspection. This is being replaced by a requirement (to be set in regulations) for the CEO's total remuneration package to be published.

***Clause 49 – Section 5.95 amended***

This section provides the limitations on a person's right to inspect information under section 5.94.

Subsection (1) removes the ability in 5.95(3)(b) for the CEO to form an opinion that documents should not be made available because in the CEO's opinion the meeting should have been closed to the public.

Subsection (2) reflects changes made in subsection (f) of clause 48.

**Clause 50 – Section 5.96A inserted**

**Section 5.96A – Information published on official website**

This new section provides what information a local government is required to publish on their official website in addition to the requirements provided within individual sections of the Act.

Subsection (1) requires the CEO to publish the following information on the local government's official website:

- a map of the district (which includes ward boundaries);
- consolidated copies of any local law that is in force in the district;
- the annual budget;
- list of fees and charges;
- the local government's plans for the future;
- confirmed minutes of council or committee meetings;
- minutes of electors' meetings;
- notice papers and agendas relating to council and committee meetings that have been tabled or produced by the local government and presented at a council or committee meeting; and
- any other information set in regulations.

Subsection (2) provides the CEO must not publish confirmed minutes of meetings (subsection (1)(f)) and notice papers (subsection (1)(h)) on the local government's official website if the meeting or that part of the meeting was closed to members of the public.

Subsection (3) provides that notwithstanding the detailed minutes of a closed meeting are not to be published, the record of the decisions made at the meeting or information of a kind prescribed must still be published.

Subsection (4) provides the CEO must ensure the following information is not published on the local government's official website:

- rate records;
- the register of owners and occupiers and electoral rolls; and
- any other information prescribed.

Subsection (5) provides a regulation power to set the period of time that the information published on the website must remain on the website and may provide different time frames for different types of information.

**Clause 51 – Part 5 Division 9 heading amended**

The heading for Part 5 Division 9 is amended to 'Conduct'.

**Clause 52 – Section 5.102A amended**

Section 5.102A defines the terms used in this division.

Subsection (1) removes the current definition of rules of conduct which is being replaced.

The term ‘candidate’ means a candidate for election as a council member.

The term ‘model code’ means the model code prescribed under section 5.103(1).

The term ‘rule of conduct’ means a provision of the model code that is a rule of conduct.

A breach of a rule of conduct constitutes a minor breach, which can be dealt with by the Standards Panel.

**Clause 53 – Sections 5.103 and 5.104 replaced**

The existing sections 5.103 and 5.104 are deleted and replaced with:

**Section 5.103 – Model Code of Conduct for council members, committee members and candidates**

This new section 5.103 introduces a model code of conduct for council members, committee members and candidates.

Subsection (1) imposes the requirement to prescribe a Code of Conduct in regulations.

Subsection (2) provides that the Code of Conduct must include:

- (a) general principles to guide behaviour;
- (b) requirements relating to behaviour; and
- (c) the rules of conduct.

Subsection (3) provides that the model code may include provisions concerning how alleged breaches of subsection (2)(b) (requirements relating to behaviour) and alleged breaches of the rules by committee members can be dealt with.

Subsection (4) provides that the model Code of Conduct cannot include a rule of conduct that would, if breached, constitute a serious breach under the *Local Government Act 1995*.

Subsection (5) provides that regulations can amend the model Code of Conduct.

**Section 5.104 – Adoption of model Code of Conduct**

This new section 5.104 requires a local government to adopt a model Code of Conduct.

Subsection (1) requires the local government to prepare and adopt (via an absolute majority) a Code of Conduct that incorporates the model code, within three months of the code being prescribed in regulations.

Subsection (2) requires the local government to amend and adopt (via an absolute majority) a new Code of Conduct that incorporates any amendments made to the model Code of Conduct, within three months of the amendments taking effect.

Subsection (3) provides a local government with the ability to include additional elements in the adopted Code of Conduct. Any additional requirements:

- can only apply to council members and committee members; and
- are of no effect to the extent they are inconsistent with the regulations.

Subsection (4) prevents a local government from including additional general principles or rules of conduct into the adopted code. The local government can include additional requirements relating to behaviour.

Subsection (5) provides that until a local government adopts a Code of Conduct, the model Code of Conduct applies.

Subsection (6) provides that a breach of a local government's adopted Code of Conduct by a candidate cannot be dealt with unless the candidate has been elected as a council member.

Subsection (7) requires the CEO to publish an up-to-date version of the adopted Code of Conduct on the local government's official website.

#### ***Clause 54 – Section 5.105 amended***

This section provides the circumstances where a council member has committed a minor breach under the *Local Government Act 1995*.

The amendments made to subsection (1) reflect current drafting best practice.

Subsection (1A) provides that a council member can contravene a rule of conduct as a candidate. This constitutes a minor breach and can be dealt with by the Standards Panel.

Subsection (1B) provides that regulations cannot specify that a contravention of a local law is a minor breach if, in addition to it being a minor breach, it would also be a serious breach under the *Local Government Act 1995*.

#### ***Clause 55 – Section 5.107 amended***

This clause reduces the timeframe for which a complaint of a minor breach can be made to a local government complaints officer from two years to six months.

**Clause 56 – Section 5.108 amended**

This clause reduces the timeframe for which the Departmental CEO can refer a complaint of a minor breach to a local government complaints officer, from two years to six months.

**Clause 57 – Section 5.109 amended**

This clause reduces the timeframe for which the complaints officer can make a complaint to the primary Standards Panel, from two years to six months

**Clause 58 – Section 5.110 amended**

The section provides the processes to be followed and the sanctions that can be imposed by a Standards Panel when dealing with a complaint of a minor breach made under sections 5.107, 5.108 and 5.109.

Subsection (1) inserts subsection (3B).

Subsection (3B)(a) provides a Standards Panel with the ability to request the complainant and respondent to participate in mediation to resolve behavioural matters related to the complaint.

Subsection (3B)(b) enables the Standards Panel to defer making a finding concerning the alleged minor breach pending the outcome of mediation.

Subsection (2) inserts subsection (5A).

Subsection (5A) provides that the Standards Panel, when determining how a minor breach will be dealt with, may take into account:

- the outcome of mediation requested; or
- a refusal by the council member to participate in the mediation requested.

Subsection (3)(a) amends Subsection 5.110(6)(a) and provides that a Standards Panel can order that no sanction be imposed. The current provision provides that a Standards Panel can dismiss a complaint after finding a breach has occurred. This has the effect of recording no breach. This amendment allows a Standards Panel to impose no sanction, but the breach is still recorded.

Subsection (3)(b) is a minor drafting amendment.

Subsection (3)(c) inserts a new subsection (6)(b)(iv). This subsection provides a Standards Panel with the power to order that the costs of the Standards Panel proceedings are to be paid by the person against whom a breach has been found. The amount is paid to the local government and has the effect of reimbursing the local government with the amount payable by that local government. The amounts are determined under Schedule 5.1 clause 9.

Subsection (4) inserts a new subsection (8), which provides the power to set in regulations:

- the appointment of mediators;
- procedures to be followed when mediation is undertaken;
- timeframe for completion; and
- payment and recovery of costs of the mediation

**Clause 59 – Section 5.118 amended**

Subsection (1) is a drafting amendment.

Subsection (2) inserts the requirement that the CEO is to publish on the local government's official website any censure ordered by the Standards Panel under section 5.110(6) or the State Administrative Tribunal under section 5.113 or 5.117(1).

**Clause 60 – Section 5.120 replaced**

Section 5.120 is deleted and replaced.

**Section 5.120 – Complaints officer**

This section provides the local government is to have a complaints officer.

Subsection (1) removes the CEO's ability to designate the role of complaints officer to a senior employee and replaces it with a general power to designate.

This amendment is necessary as 'senior employee' as a class of employees has been removed from the Act.

Subsection (2) states that if no employee is designated, the CEO is the complaints officer.

**Clause 61 – Section 5.121 amended**

This section provides the complaints officer is to maintain a register of complaints where the Standards Panel has found a minor breach and imposed a sanction.

Subsections (1) and (2) require the recording of a finding of breach where no sanction has been imposed.

Subsection (3) places a requirement upon the CEO to publish an up-to-date version of the register on the local government's official website.

**Clause 62 – Section 5.123 amended**

This section makes it an offence to disclose that a complaint of a:

- minor breach,
- serious breach, or

- recurrent breach

has been made or to disclose any information concerning a complaint pending the outcome of the matter.

Currently confidentially only applies during a campaign period for a local government election.

Subsection (1) deletes the current section and inserts new subsections (1A) and (1).

Subsection (1A) provides that this section applies to:

- the complainant;
- the person against whom the complaint is made;
- any person who performs a function under the *Local Government Act 1995* in respect to the complaint; or
- any other person who becomes aware of any detail of the complaint knowing it to be relevant to the complaint.

The new subsection (1) provides that a person (as described in subsection (1A)) commits an offence if they disclose that a complaint has been made or disclose any information about any detail of the complaint.

Subsection (2) provides that it is not an offence to disclose in certain circumstances. This includes when the disclosure is made by the Departmental CEO after they have decided whether to refer the matter to the State Administrative Tribunal the disclosure is considered to be in the public interest., Disclosure is also permitted where it is necessary to investigate or deal with the complaint, where it is required by a written law and where a Standards Panel or the State Administrative Tribunal has dealt with the complaint and made an adverse finding.

The amendment to subsection (2) in clause 62(2)(b) changes the reference to subsections 5.110(6)(b) or (c) to subsection 5.110(6), thereby capturing the situation where a Standards Panel has found a breach has occurred but imposes no sanction.

Clause 62(2)(c) amends 5.123(2)(d) to include the situation where the State Administrative Tribunal has made an order in relation to a recurrent breach.

Subsection (3) deletes the current subsection (3) as the definition of campaign period is no longer required.

#### **Clause 63 – Section 5.125 amended**

In section 5.125(2) the definition of decision is being amended to reflect that a finding of breach where no sanction is imposed by a Standards Panel can be reviewed by the State Administrative Tribunal.

#### **Clause 64 – Part 5 Division 10 inserted**

The heading for Division 10 is inserted — ‘Training and development’.

### **Section 5.126 – Training for council members**

This section requires a council member to complete training.

Subsection (1) places a requirement upon each council member to complete the training that is set in regulations.

Subsection (2) provides a power to set in regulations:

- the training to be undertaken;
- the time frame for completion;
- circumstances where council members are exempt from completing the training; and
- that it is an offence for a failure to complete the training.

The regulations will require council members to complete five core modules of training within twelve months of being elected.

### **Section 5.127 – Report on training**

Subsection (1) requires the CEO to prepare a report each financial year outlining the training that has been completed by each council member in that financial year.

Subsection (2) requires the CEO to publish that report on the local government's official website within one month of the end of the financial year.

### **Section 5.128 – Policy for continuing professional development**

This section requires a local government to prepare and adopt (via an absolute majority) a policy for the continuing professional development of council members.

Subsection (1) places a requirement upon a local government to prepare and adopt a policy of continuing professional development to apply to council members.

Subsection (2) provides the local government with the power to amend the policy (via an absolute majority).

Subsection (3) provides a head of power to prescribe certain requirements as to the form and content of the continuing professional development policy with which the local government must comply.

Subsection (4) places a requirement upon the CEO to publish an up-to-date version of the policy on the local government's official website.

Subsection (5) provides that a local government must review the policy after each ordinary election and may review the policy at any other time.

### **Clause 65 – Section 6.36 amended**

This section provides that the local government must give the public notice before imposing differential rates and sets out the process for imposing such rates.

Subsection (1) inserts a new subsection (3)(c) that requires a local government to advise electors and ratepayers that the document that outlines the objects and reasons for the differential rate:

- can be inspected, and
- viewed on the local government's official website.

Subsection (2) requires the local government to make the document describing the objects and reasons available on its official website.

#### **Clause 66 – Section 6.41 amended**

This clause provides that a rate notice can be provided by email if the recipient of the notice agrees to that method of delivery.

#### **Clause 67 – Section 9.10 replaced**

#### **Section 9.10 – Appointment of authorised persons**

This new section 9.10 provides the CEO of the local government with the power to appoint authorised persons under this Act and other written laws (where there is a power to appoint local government officers).

In addition to the power to appoint, it provides the processes to be followed and places certain requirements upon an authorised person when they are conducting their duties.

This section imposes identical requirements under different pieces of legislation thus reducing red tape and introducing administrative efficiencies.

Subsection (1) defines the terms used in this section.

The term 'law' means

- this (Local Government) Act
- the *Caravan Parks and Camping Grounds Act 1995*;
- the *Cat Act 2011*;
- the *Cemeteries Act 1986*;
- the *Control of Vehicles (Off-road Areas) Act 1978*;
- the *Dog Act 1976*;
- subsidiary legislation under any of these Acts;
- a written law prescribed for the purposes of this section.

The term 'specified' means set out in the instrument of appointment.

Subsection (2) provides that the CEO may, in writing, appoint a person or a class of people to be authorised for the purposes of one or more of the Acts listed above, or for specified provisions of those laws.

The document that appoints the person is to contain the details of which written laws the person is authorised to perform duties including (if appropriate) the specific sections or regulations.

Subsection (3) provides that the CEO can impose any conditions or limitations upon the authorisation as they see fit.

Subsection (4) provides that the CEO must provide to each person appointed an identity card which contains the following:

- the name and official insignia of the local government;
- the name of the person;
- a recent photograph; and
- on the reverse a list of each written law to which the appointment relates.

The requirement to specify each written law is limited to only the title of the legislation (for example, *Local Government Act 1995* and *Cemeteries Act 1986*). It does not include a requirement to provide specific section or regulation numbers – these will be detailed in the instrument of appointment.

Subsection (5) places two requirements upon an authorised person when they are performing a duty or function under this section. They must:

- carry their identity card at all times when working; and
- produce their identity card, on request.

Subsection (6) makes it an offence not to return the identity card within 14 days of the person's appointment ceasing.

***Clause 68 – Section 9.13 amended***

This amendment is as a result of changes made by clause 67 of this Bill.

***Clause 69 – Section 9.15 amended***

This amendment is as a result of changes made by clause 67 of this Bill.

***Clause 70 – Section 9.25 amended***

This clause provides the time limit for when proceedings can be commenced. It has been formatted into a table to improve readability.

***Clause 71 – Section 9.49A amended***

This section provides for the process that a local government must follow to execute certain documents.

Subsection (1) removes the ability of a senior employee to affix the common seal of the local government upon a document as 'senior employee' is no longer a class of employee under the Act.

Subsection (2) is a minor amendment made to reflect current drafting practices which does not affect the operation of the section.

**Clause 72 – Section 9.57A inserted**

**Section 9.57A – Local government protected from liability for defamation: council proceedings on website**

This new section provides statutory protection for defamation to a local government (body corporate) from the publishing of any broadcast, audio recording or video recording of council or committee meetings on the local government's official website.

Subsection (1) defines the terms used in this section.

The term 'council proceedings' means at a meeting of the council or a committee of the council.

The term 'matter' has the same meaning as in section 4 of the *Defamation Act 2005*.

Subsection (2) provides that the local government is not liable to an action for defamation in relation to a matter published on its official website as part of a broadcast, audio recording or video recording of a meeting of the council or a committee of the council.

The protection offered by this section does not affect the operation of the *Defamation Act 2005*.

**Clause 73 – Schedule 2.4 amended**

This provision deals with decision-making by Commissioners. It refers to a situation when a council would be required to make a decision by a special majority and states that the decision would be made by an absolute majority of commissioners (when 5 or more commissioners are appointed). Special majority decision-making will no longer be required in the Act so this reference is being removed.

**Clause 74 – Schedule 2.5 amended**

In subsections (1), (2) and (3) references to Local Government Managers WA Division are changed to Local Government Professionals Australia (WA) as the organisation has changes its name.

**Clause 75 – Schedule 5.1 amended**

This clause is amended to reflect the changes made in clause 58 of the Bill. The Standards Panel's annual report must not include information that identifies or enables the identification of a council member where no breach was found.

**Clause 76 – Schedule 6.3 amended**

This section provides the procedures to be followed by the local government prior to the sale of land where rates or services charges are unpaid.

This clause removes the requirement to publish the notice on the local government's notice board and replaces it with a requirement to publish the notice for at least 35 days on the local government's official website.

**Clause 77 – Schedule 9.3 amended**

Subsection (1) removes the definition of senior employee as a class of employee from the schedule.

The heading for division 5 is inserted — 'Provisions for the *Local Government Legislation Amendment Act 2019*'.

This division provides transitional provisions for the *Local Government Legislation Amendment Act 2019*.

Subsection (2) inserts new clause 55 providing that persons that were authorised persons immediately before the *Local Government Legislation Amendment Act 2019* comes into effect are taken to have been appointed under the new provisions in section 9.10.

Subsection (3) inserts clause 56 which provides that in addition to the records required to be kept under section 5.89A(2), the register of gifts kept under section 5.89A(1) must contain a record of disclosures made under the former provisions that were recorded prior to the commencement of the new gift provisions.

Additionally, the former section 5.89A(7) continues to apply in relation to disclosures made prior to the commencement of the new gift provisions – these are to continue to be made available for public inspection.

**Part 3 – Local Government (Miscellaneous Provisions) Act 1960 amended**

**Clause 78 – Act amended**

This clause provides that this Part amends the *Local Government (Miscellaneous Provisions) Act 1960*.

**Clause 79 – Section 450 amended**

Subsection (1) changes the requirement from providing a 'public notice' to providing a 'local public notice' in relation to the establishment of a pound.

This change in terminology is made in this clause and clause 80. This amends the current requirement of placing a notice in the government *Gazette* and replaces it with a requirement to publish a local public notice in accordance with the requirements in the *Local Government Act 1995*.

**Clause 80 – Section 451 amended**

Subsection (1) amends the requirement from providing a 'public notice' to providing a 'local public notice' under the *Local Government Act 1995* in relation to the closing of a pound.

**Clause 81 – Section 463 amended**

Subsection (1) amends the requirement from providing notice in the *Gazette* or in a newspaper circulating in the locality of cattle found trespassing upon unenclosed land to providing a 'local public notice' under the *Local Government Act 1995*.

Subsection (2) provides that if the owner or occupier of the land requests the local government to publish a notice on the local government's official website, the local government must comply with the request.

**Clause 82 – Section 464 amended**

This clause amends the requirement from publishing a notice in the *Gazette* on changes to the fees and charges under this Act to providing a 'local public notice' under the *Local Government Act 1995*.

**Clause 83 – Section 469 amended**

This clause amends the requirement from providing notice of unclaimed cattle in the *Gazette* or in a newspaper circulating in the locality to providing a 'local public notice' under the *Local Government Act 1995*.

**Clause 84 – Section 470 amended**

Subsection (1) amends the requirement from providing notice in the *Gazette* or in a newspaper circulating in the locality of the impounding notice to providing a 'local public notice' under the *Local Government Act 1995*.

**Clause 85 – Section 474 amended**

Subsection (a) is a minor amendment made for drafting consistency and does not affect the operation of the section.

Subsection (b) amends the requirement from providing notice in the *Gazette* or in a newspaper circulating in the locality of impounded cattle to providing a 'local public notice' under the *Local Government Act 1995*.

Subsection (c) is an amendment to reflect the changes made by subsection (b).

**Part 4 – Other Acts amended**

**Division 1 — *Caravan Parks and Camping Grounds Act 1995* amended**

**Clause 86 – Act amended**

This clause provides that this Division amends the *Caravan Parks and Camping Grounds Act 1995*.

**Clause 87 – Section 5 amended**

Section 5 defines the terms used in the *Caravan Parks and Camping Grounds Act 1995*.

Subsection (1) amends the definition of an ‘authorised person’ to include a person authorised under section 9.10(2) of the *Local Government Act 1995*.

**Clause 88 – Section 17 amended**

This section provides the process to be followed to authorise a person under the *Caravan Parks and Camping Grounds Act 1995*.

Subsection (1) amends subsection (1) to reflect the changes made to section 5 of the Act. The power to appoint under section 17 now only applies to the CEO of the Department.

Subsection (2) is an amendment to reflect the changes made to subsection (1).

Subsection (3) deletes subsection (4) (assistance by members of the Police Force).

**Clause 89 – Section 17A inserted**

**Section 17A – Assistance from member of Police Force**

This section requires a member of the Police Force to assist an authorised person (if requested) to enforce compliance with the *Caravan Parks and Camping Grounds Act 1995* and provides the member with all the powers of an authorised person while assisting the authorised person.

This new section contains the same powers and liabilities upon a police officer as contained within the deleted subsection 17(4).

**Clause 90 – Section 23 amended**

This section provides the procedure for issuing and otherwise dealing with infringement notices under the *Caravan Parks and Camping Grounds Act 1995*.

Subsection (1) is an amendment made to reflect the changes made by clause 87 of this Bill and does not affect the operation of the section.

Subsection (2) is a minor amendment made for clarity which does not affect the operation of the section.

**Clause 91 – Part 6 heading inserted**

The heading for Part 6 is inserted — ‘Transitional provisions’.

**Clause 92 – Section 35 inserted**

**Section 35 – Transitional provision for *Local Government Legislation Amendment Act 2019***

This section provides that any person who was authorised under section 17(1) of the *Caravan Parks and Camping Grounds Act 1995* prior to the commencement of clause 88 of this Bill is taken to be an authorised person appointed under section 9.10(2) of

the *Local Government Act 1995* with the same terms and conditions that were applicable under section 17(1).

### ***Division 2 — Cat Act 2011 amended***

#### ***Clause 93 – Act amended***

This clause provides that this Division amends the *Cat Act 2011*.

#### ***Clause 94 – Section 3 amended***

Section 3 defines the terms used in the *Cat Act 2011*.

This clause amends the definition of an ‘authorised person’ to include a person authorised under section 9.10(2) of the *Local Government Act 1995*.

#### ***Clause 95 – Part 4 Division 3 Subdivision 1 deleted***

This clause deletes Part 4 Division 3 Subdivision 1 (section 48) of the *Cat Act 2011* as it no longer is required due to the amended definition of an ‘authorised person’ under section 3.

#### ***Clause 96 – Section 62 amended***

This section provides the power to issue infringement notices under the *Cat Act 2011*.

This clause inserts a new subsection (3) that limits the power to issue infringement notices to employees of the local government.

This subsection replaces the restriction that was contained within subsection 48(2).

#### ***Clause 97 – Part 7 inserted***

The heading for Part 7 is inserted — ‘Transitional provisions’.

This Part provides transitional provisions for the *Local Government Legislation Amendment Act 2019*.

### ***Section 87 – Transitional provision for Local Government Legislation Amendment Act 2019***

This section provides that any person authorised under section 48 of the *Cat Act 2011* prior to the commencement of clause 94 of this Bill, is taken to be an authorised person appointed under section 9.10(2) of the *Local Government Act 1995* with the same terms and conditions that were applicable under section 48 immediately before commencement day.

### ***Division 3 — Cemeteries Act 1986 amended***

#### ***Clause 98 – Act amended***

This clause provides that this Division amends the *Cemeteries Act 1986*.

### **Clause 99 – Section 3 amended**

Section 3 defines the terms used in the *Cemeteries Act 1986*.

Subsection (1) amends the definition of an ‘authorised person’ to include a person authorised under section 9.10(2) of the *Local Government Act 1995* for the purposes of section 63.

### **Clause 100 – Section 64 amended**

This section provides for the authorisation of persons under the *Cemeteries Act 1986*.

This section is being amended to align the requirements under the *Cemeteries Act 1986* with the requirements under section 9.10 of the *Local Government Act 1995*.

Subsection (2) provides a cemetery board must give each person appointed an identity card which contains the following:

- the name and official insignia of the board;
- the name of the person;
- a recent photograph; and
- a statement on the reverse of the card that provides that the person is authorised to give infringement notices.

Subsection (3) states that when performing a duty or function authorised under this section, an authorised person must:

- carry their identity card at all times; and
- produce their identity card on request.

Subsection (4) provides that a reference to a board in this section does not include a board that is a local government.

### **Clause 101 – Schedule 2 amended**

The heading for Division 1 is inserted — ‘Provisions for repealed Act’.

Subsection (2) is a consequential amendment made to reflect the changes made by the other subsections in this clause.

The heading for Division 2 is inserted — ‘Provisions for the *Local Government Legislation Amendment Act 2019*’.

This division provides transitional provisions for the *Local Government Legislation Amendment Act 2019*.

### **Clause 10 – Authorised persons**

Any person authorised under section 64 of the *Cemeteries Act 1986*, by a local government acting as a board, prior to the commencement of clause 100 of this Bill, is taken to be an authorised person appointed under section 9.10(2) of the *Local*

*Government Act 1995* with the same terms and conditions that were applicable under section 64 immediately before commencement day.

#### ***Division 4 — Control of Vehicles (Off-road Areas) Act 1978 amended***

##### ***Clause 102 – Act amended***

This clause provides that this Division amends the *Control of Vehicles (Off-road Areas) Act 1978*.

##### ***Clause 103 – Section 3 amended***

Section 3 defines the terms used in the *Control of Vehicles (Off-road Areas) Act 1978*.

Subsection (1) amends the definition of an ‘authorised officer’ to read ‘authorised person’.

This section is amended to provide consistency with the terminology used in other pieces of legislation which are administered by the Minister for Local Government and enforced by local governments.

##### ***Clause 104 – Section 5 amended***

Subsection (5) is deleted as it is not required. (The local government already has general powers to employ people for any purpose.)

##### ***Clause 105 – Section 38 amended***

This section provides the functions of an authorised person under the *Control of Vehicles (Off-road Areas) Act 1978*.

Subsection (1) is a minor amendment made to reflect current drafting practice.

Subsection (2) replaces subsection (3) to provide that a person appointed by a local government under the *Control of Vehicles (Off-road Areas) Act 1978* is to be appointed under section 9.10(2) of the *Local Government Act 1995*. The appointment of the authorised person can specify all or parts of the local government’s district.

Subsection (3) is a minor amendment made to reflect modern drafting practice.

Subsection (4) inserts new subsection (4A) which removes the requirement for an appointment certificate to be issued to an authorised person who has been appointed by a local government under section 9.10 of the *Local Government Act 1995*.

Subsections (5), (6), (7), (8) and (9) are minor amendments made to provide consistency with the terminology used in other pieces of legislation.

Heading of the section is amended — ‘Authorised persons’.

**Clause 106 – Section 49 inserted**

This division provides transitional provisions for the *Local Government Legislation Amendment Act 2019*.

**Section 49 – Transitional provisions for the *Local Government Legislation Amendment Act 2019***

Any person authorised under section 38(3) of the *Control of Vehicles (Off-road Areas) Act 1978*, prior to the commencement of clause 105 of this Bill, is taken to be an authorised person appointed under section 9.10(2) of the *Local Government Act 1995* with the same terms and conditions that were applicable under section 38(3) immediately before commencement day.

**Clause 107 – Various references to “authorised officer” amended**

References to an ‘authorised officer’ are replaced with ‘authorised person’ in various sections for consistency.

**Division 5 — *Dog Act 1976* amended**

**Clause 108 – Act amended**

This clause provides that this Division amends the *Dog Act 1976*.

**Clause 109 – Section 3 amended**

Section 3 defines the terms used in the *Dog Act 1976*.

This clause amends the definition of an ‘authorised person’ to include a person authorised under section 9.10(2) of the *Local Government Act 1995* for the purposes of the Act.

**Clause 110 – Section 11 amended**

This clause provides that if a person is appointed as an authorised person under the *Local Government Act 1995*, there is no requirement to comply with the separate certificate requirements under section 11(3) of the *Dog Act 1976*.

**Clause 111 – Section 11A inserted**

This clause provides that for the purpose of the *Dog Act 1976*, the CEO of a local government must appoint authorised persons under the *Local Government Act 1995*. This replaces the former section 29(1).

**Clause 112 – Section 29 amended**

This clause deletes subsection (1) to reflect the changes made by clauses 109 and 111 of this Bill.

**Clause 113 - Part XI Division 1 heading amended**

The heading for Part XI Division 1 is amended to — ‘Transitional provisions for *Dog Amendment Act 2013*’.

**Clause 114 – Part XI Division 2 inserted**

The heading for Division 2 is inserted — ‘Transitional Provisions for the *Local Government Legislation Amendment Act 2019*’.

This division provides transitional provisions for the *Local Government Legislation Amendment Act 2019*.

**Section 61 – Authorised persons**

Any person authorised under section 29(1) *Dog Act 1976*, prior to the commencement of clause 112 of this Bill, is taken to be an authorised person appointed under section 9.10(2) of the *Local Government Act 1995* with the same terms and conditions that were applicable under section 29(1) immediately before commencement day.