

LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL (No. 2) 1992

EXPLANATORY NOTES

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Bill.

PART 2—AMENDMENT OF THE CITY OF BRISBANE ACT 1924

Clause 2 cites the *City of Brisbane Act 1924* as being amended by the Part.

Clause 3 omits Section 14A (3)-(7), which established the two zonal system for the City.

Clause 4 replaces Subdivision A of Division 4 of Part 2 with a new Subdivision A which provides that the electoral wards in force before the commencement of the *Local Government Legislation Amendment Act (No.2) 1992* are to be the electoral wards for the 1994 elections, unless they are changed by a redistribution.

Clause 5 omits Sections 14F to 14J, which provided for the circumstances and administrative arrangements under which electoral wards were to be redistributed and inserts new provisions dealing with redistributions as follows:—

New Section 14C provides that if there is to be either a partial or a complete redistribution of the City, the Governor in Council is to appoint 3 electoral commissioners, one of whom is to be appointed chairperson.

New Section 14D obligates the electoral commissioners to make a redistribution in accordance with their appointment and the Act.

New Section 14E provides that there must be a quota of electors for each electoral ward, with a quota being determined by dividing the number of electors in the City by the number of electoral wards prescribed under Section 14A of the Act (i.e. 26 electoral wards).

New Section 14F requires the electoral commissioners to observe the quota determined under Section 14E, subject to a discretion to depart from the quota by a margin of not more than 10%.

New Section 14G requires that the electoral commissioners must consider the following criteria in undertaking a redistribution: community or diversity of interest, means of communication, physical features, density of population, demographic trends, and development trends.

This new Section also requires the electoral commissioners to consider proposals on how people believe the ward boundaries should be changed if they are reviewed within 21 days of their appointment or some later date that may be specified.

Clause 6 provides for a minor consequential amendment to Section 14K and the tidying up of an incorrect reference.

Clause 7 contains a number of consequential amendments to Section 14M.

Clause 8 provides for consequential amendments to Section 14N.

Clause 9 provides for consequential amendments to Section 14O.

Clause 10 omits Section 14P(2) as the Subsection is now redundant.

Clause 11 inserts a new Section 14R which provides that Section 4F of the *Local Government Act 1936* (dealing with reviewable local government matters) does not apply to a redistribution which is conducted under this Act for the purposes of the 1994 triennial elections.

Clause 12 omits Schedule 2 which provided for the boundaries of the two zones of the City.

PART 3—AMENDMENT OF THE LOCAL GOVERNMENT ACT 1936

Clause 13 cites the *Local Government Act 1936* as being amended by the Part.

Clauses 14(1)-(4) amends Section 4F to clarify that the jurisdiction of the Local Government Commissioner includes the power to create a new area, to name a new area, to inquire into and report upon whether an area or areas should be abolished and merged with or into an area or areas and extends the current powers to include, to determine and change the composition and voting system of a local authority.

Clause 14(5) states that the term “area” is to include “a proposed area”.

Clause 15 corrects a minor drafting error in Section 4H(2).

Clause 16 clarifies the intention of Section 4I(4) by providing that a reference to the Local Government Commissioner must be laid before the Legislative Assembly within 7 ‘sitting’ days after the giving of the reference.

Clause 17 makes a minor consequential amendment to Section 4J.

Clause 18 provides for minor consequential amendments to Section 4L.

Clause 19 provides for minor machinery amendments to Section 4ZI.

Clauses 20(1)–(3) provide for a number of amendments to Section 5 in order to reflect the role the Local Government Commissioner and the subsequent powers of the Governor in Council:—

Clause 20(4) replaces the notification procedure contained in Section 5(1)(iii)-(ix) with the following new provisions:—

— New Subsection (1A) obligates the Local Government Commissioner to give public notice by advertisement in both the Gazette and a newspaper where consideration is being given to recommending the implementation of a reviewable local government matter;

— New Subsection (1B) outlines the nature of the matters to be contained in the notice referred to in Section (1A);

- New Subsection (1C) provides a method of calculating the earliest day upon which particulars of any maps may be inspected or submissions made;
- New Subsection (1D) requires the particulars and the maps to be kept open for inspection as specified in the advertisement;
- New Subsection (1E) specifies the manner for the making of submissions;
- New Subsection (1F) obligates the Local Government Commissioner to consider all submissions properly made, in relation to the proposed implementation of a reviewable local government matter;
- New Subsection (1G) confers a discretion upon the Local Government Commissioner to vary the proposed recommendation under which public notice was given pursuant to Subsection (1A);
- New Subsection (1H) requires the Local Government Commissioner to give further public notice if a proposed recommendation is to be substantially varied;
- New Subsection (1I) provides that the Local Government Commissioner's report must give a summary of the submissions received;
- New Subsection (1J) provides that the Local Government Commissioner must give all submissions to the Minister when a report under Part 2A is given to the Minister;
- New Subsection (1K) provides that a reviewable local government matter may only be implemented if it does not vary substantially from the Local Government Commissioner's recommendations;
- New Subsection (1L) deems that new Section 5 (1A) to (1K) applies in relation to a reviewable local government matter referred to the Commissioner before the commencement of the Amendment Act;
- New Subsection (1M) provides however that the provisions of the Act which were in force before the commencement of the Amendment Act continue to apply to any reviewable local government matter that is the subject of a report by the Commissioner and which is received by the Minister before the commencement of the new provisions;

— New Subsection (1N) provides that an order in council made under this section is subordinate legislation for the purposes of the Statutory Instruments Act 1992.

Clause 21 provides for a number of consequential amendments to Section 6.

Clause 22 inserts the following new provisions in Section 7:—

— New Subsection (6A) provides that a quota of electors must be determined for each member to be elected for a division of an area or proposed area;

— New Subsection (6B) specifies that a quota is determined by dividing the number of electors for the area by the number of members (excluding the chairperson);

— New Subsection (6C) provides that the number of electors to be used in determining a quota is the number enrolled under the Electoral Act 1992;

— New Subsection (6D) provides that the quota determined under Subsection (6B) is to be observed for the purposes of dividing an area and assigning or reassigning the members to divisions of the area;

— New Subsection (6E) enables a departure from the quota of up to 10% where an area has more than 10,000 electors and up to 20% where an area has fewer than 10,000 electors;

— New Subsection (6F) provides that if after the commencement of the Amendment Act, the Local Government Commissioner takes action under Section 5 that requires a quota to be determined, it must be determined as nearly as practicable at the time when public notice is given under the Section.

Clause 23 inserts new Sections 7A-7C as follows:—

— New Section (7A)(1) provides that if the area of a local authority is divided at the commencement of the Amendment Act, the local authority must review certain electoral matters being its divisional arrangements, the assignment of members to divisions, and the composition of the Council;

— New Section (7A)(2) requires a review to take into account the following criteria:—community or diversity of interest, means of communication, physical features, density of population, demographic trends, and development trends;

- New Section (7A)(3) requires a local authority to resolve to adopt as its proposal, no change to the current status of electoral matters or to adopt as its proposal a change in the current status of electoral matters;
- New Section (7A)(4) enables a local authority which is not divided to resolve to change the current status of an electoral matter, provided it complies with Section 7A(2);
- New Section (7A)(5) requires a local authority to give written notice of a resolution to the Minister before 26 February 1993, or a later day allowed by the Minister;
- New Section (7A)(6) specifies that a local authority which passes a resolution must certify to the Minister (if it is to be divided for the purposes of the 1994 elections) -that the number of electors in each division is within the allowed quota and it has properly taken into account the matters in Section 7A(2);
- New Section (7A)(7) provides that in determining a quota a local authority must base its calculations on the number of electors in its area on a day after the 30 October 1992, which day is to be fixed by the local authority;
- New Section (7A)(8) requires the Minister to refer a proposal for change to the Local Government Commissioner, under Section 4H;
- New Section (7A)(9) grants the Minister the discretion to refer a proposal for no change to the Local Government Commissioner, under Section 4H;
- New Section (7A)(10) obligates the Commissioner when examining a proposal for or including the division of an area or the assignment or reassignment of members, to determine whether the proposal complies with the quota for the area;
- New Section (7A)(11) grants the Commissioner a discretion to consider whether any of the matters referred to in Section 7A(2) have been properly taken into account in relation to a proposal;
- New Section (7A)(12) specifies that Part 2A dealing with the powers and duties of the Local Government Commissioner in relation to reviewable local government matters (other than sections 4K and 4M) applies in respect of a proposal referred to the Commissioner under Section 7A(8) or (9);
- New Section (7A)(13) specifies that any public notice of any

proposed recommendation for a change of status of an electoral matter need not include reasons or views of the Commissioner for the proposed recommendation;

— New Section (7A)(14) provides that the Commissioner's report may contain reasons for the recommendation and views in the report;

— New Section (7B) deems a local authority to be undivided for electoral purposes if it is required to take action under Section (7A) but fails to give notice to the Minister of a proposal for no change or for change under Section 7A(5);

— New Section (7C) provides that, if at the commencement of the Amendment Act a local authority is divided for other than electoral purposes and it becomes undivided as a result of Section (7B) or an order in council is made so that the area is undivided for electoral purposes, or the electoral divisions of the area do not correspond with other divisions of the area, then—

- the divisions (other than the electoral divisions continue until 1 July 1994 for all purposes other than of Part 4); and
- on 1 July 1994, if the area is divided by order in council the local authority becomes divided for all purposes or if the area is undivided for electoral purposes, the local authority becomes undivided for all purposes under the Act.