

# **LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL (No. 2) 1999**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The policy objectives of the Bill are to:

- provide for four year terms of office for local government councillors;
- change equal employment opportunity (EEO) reporting responsibilities in local government annual reports;
- provide for certain minor and technical amendments to a number of Acts; and
- postpone or avoid commencement of several provisions of the *Integrated Planning Act 1997* (IPA), the *Environmental Protection Act 1994*, and the *Transport Infrastructure Act 1994*, and to amend the IPA to respond to amendments in other legislation.

#### **Reasons for and Achievement of the Policy Objectives**

The Bill amends the relevant legislation to achieve the policy objectives outlined above.

#### **Alternatives to the Bill**

There are no alternatives considered appropriate for achieving these policy objectives.

### **Estimated Cost of Implementation**

The costs to Government of implementing the Bill will be administrative in nature and will not be significant. Costs will be met within existing budgetary allocations.

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

The Bill has been drafted with regard to the fundamental legislative principles.

### **Consultation**

#### *Four year terms*

Community consultation was undertaken by Queensland councils and Members of Parliament (MPs). A Local Government Association of Queensland (LGAQ) sponsored survey was also conducted on community attitudes to four year terms for councillors. The survey showed that 57% of respondents supported four year terms for councillors. A majority of the councils that considered the issue were supportive of the change.

#### *EEO in Local Government*

Extensive consultation was undertaken during a review of the regulation setting EEO requirements for councils and all parties agreed a change in the reporting requirements was desirable. The trade unions and the Queensland Anti-Discrimination Commission support an expansion of the annual report requirements in the *Local Government Act 1993* (LGA).

#### *Integrated Planning Act 1997*

The LGAQ, the Department of Aboriginal and Islander Policy and Development, and the Department of Housing have been consulted.

#### *Coastal Protection and Management Act 1995*

The Office of Parliamentary Counsel and the Department of Communication and Information, Local Government and Planning have been consulted.

*Environmental and Other Legislation Amendment Act 1997*

The LGAQ, and the Queensland Chamber of Commerce and Industry have been consulted.

Those consulted agree with the proposed amendments.

*Miscellaneous Amendments*

Key stakeholders have been consulted on the balance of the amendments included in the Bill.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

*Clause 1* sets out the short title of the Act.

*Clause 2(1)* provides that sections 3 and 14 commenced on 16 June 1999 (the date of assent of the *Local Government and Other Legislation Amendment Act 1999*).

*Clause 2(2)* provides that section 43 commences on 1 January 2000.

*Clause 2(3)* provides that section 4 commences on 25 March 2000.

*Clause 2(4)* provides that section 44 commences on 30 March 2000.

*Clause 2(5)* provides that section 12 commences on 1 June 2000.

*Clause 2(6)* provides that section 46 will commence on a day to be fixed by proclamation.

*Clause 2(7)* provides that the remaining provisions will commence on the date of assent.

### **PART 2—AMENDMENT OF LOCAL GOVERNMENT ACT 1993**

*Clause 3* provides that part 2 amends the *Local Government Act 1993*.

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*Clause 4* amends section 222 dealing with disqualification of office for offences under the Act. The amendment extends the period of disqualification to four years, to reflect the extension in councillors' terms of office from three to four years.

A definition for "conviction" has been inserted to clarify that conviction of an offence includes the instance where a conviction is not recorded but where the person has been found guilty. This amendment is not intended to affect the courts' discretion to direct that this section does not apply to a relevant person.

*Clause 5* amends section 266 by providing that local government councillors are to be elected once every 4 years. This amendment provides local governments with 4 year terms in place of the current 3 year terms.

*Clause 6* amends section 269 by providing that quadrennial elections will be held in the year 2000 (the first quadrennial elections) and every fourth year after that.

*Clause 7* amends section 419 in relation to the definition of "relevant period". An election candidate's disclosure period for disclosing election donations begins at the conclusion of the last election in the relevant period at which the person was a candidate. The relevant period is extended from 4 to 5 years in order to reflect the change to four year terms of office.

*Clause 8* amends section 425 by extending the transitional provision until 1 March 2001. This provides that if a disclosure period would otherwise start before 1 January 1997, it starts on 1 January 1997. The intent is to ensure that disclosure periods cannot commence before 1 January 1997 merely because of the extension to disclosure periods arising from the move to four year terms of office.

*Clause 9* amends section 425B by providing for a new expiry date for subdivision 3. The transitional provisions will now expire on 1 July 2004—after the completion of the 2004 quadrennial elections.

*Clause 10* amends section 437 by providing that relevant records for disclosure of election donations must be kept for 5 years after the conclusion of the election to which they referred.

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*Clause 11* amends section 438 by providing that when a candidate lodges an election donations disclosure return that is not complete and subsequently obtains further information or particulars relevant to the return within five years of the relevant election, that information must be passed to the chief executive officer of the local government.

*Clause 12* amends section 505 and extends the minimum period of the corporate plan from 3 to 4 years. This provides that a corporate plan must cover at least a four year period. The commencement of this amendment on 1 June 2000 means that from that date all corporate plans will have to cover a minimum period of four years. This will ensure a corporate plan covers a local government's four year term of office.

*Clause 13* amends section 534 by providing that a council's annual report must include information about its activities to implement its EEO plan. It also provides a regulation-making power which will set out the information required in the statement of activities for equal employment activities.

*Clause 14* amends section 1233 correcting the cross-references in the transitional section to amending sections for special rates and charges under the *Local Government and Other Legislation Amendment Act 1999*.

*Clause 15* inserts a new section 1235 which provides an expiry date for Chapter 19, Part 2 of 1 July 2000.

*Clause 16* inserts a new Chapter 19, Part 3 providing transitional arrangements for this Bill.

Section 1236 provides that references to an amended section are references to the section as amended by the *Local Government and Other Legislation Amendment Act (No. 2) 1999*.

Section 1237 provides that for councillors elected at the 1997 triennial elections, a reference in amended section 227(1) to a quadrennial election will be taken to be a reference to the 1997 triennial elections. The reference in section 227(3)(a) as it relates to councillors elected at fresh elections held in 1995 to the next quadrennial elections is taken to be a reference to the 1997 triennial elections. The reference in the regulations identified in subsection (3) to the 2000 triennial elections is taken to be a reference to the 2000 quadrennial elections.

Section 1238 provides that for the 2000 quadrennial elections, a reference in amended section 424 to the conclusion of the immediately preceding quadrennial elections is taken to be a reference to the 1997 triennial elections.

Section 1239 provides for the expiry date of Division 1 (which includes sections 1235, 1236 and 1237) as 1 August 2000.

Section 1240 provides that for any election prior to the 2000 quadrennial elections, the periods for keeping records and making returns about election donations for an election described in sections 437(1) and 438(4) will remain at 4 years.

Section 1241 provides that Chapter 19, part 3 will expire on 1 March 2003.

### **PART 3—AMENDMENT OF *CITY OF BRISBANE ACT* *1924***

*Clause 17* provides that part 3 amends the *City of Brisbane Act 1924*.

*Clause 18* amends section 13 by replacing the term "triennial" with the term "quadrennial".

*Clause 19* amends section 16 by providing that quadrennial elections will be held in the year 2000 (the first quadrennial elections) and every fourth year after.

*Clause 20* inserts a new section 136 by providing transitional arrangements for the deputy mayor of Brisbane City Council appointed following the 1997 triennial elections. In this circumstance, a reference in the amended section 24 to the appointment of a deputy mayor at the first meeting after each quadrennial election is taken to be a reference to the deputy mayor's appointment after the 1997 triennial elections. The section expires on 1 July 2000.

## **PART 4—AMENDMENT OF COASTAL PROTECTION AND MANAGEMENT ACT 1995**

*Clause 21* provides that part 4 amends the *Coastal Protection and Management Act 1995*.

*Clause 22* omits section 26(3).

*Clause 23* amends section 29 to provide that the final State plan must be approved by Governor in Council but is not subordinate legislation.

*Clause 24* replaces the heading of section 30 with the heading 'Regional plans must be prepared'.

*Clause 25(1)* amends section 31 by providing that a regional plan must 'identify' rather than 'show' control districts in the plan area. This amendment is required to give effect to amendments to section 47 of the Act that provide control districts are to be declared by 'a regulation giving effect to the plan', rather than by the plan itself.

*Clause 25(2)* omits section 31(4).

*Clause 26* inserts new provisions to replace the existing sections 35(2)(b) and (c), without changing the intent, except that the new provisions now reflect that any relevant control districts or coastal building lines in relation to the plan will be declared by 'a regulation giving effect to the plan', rather than by the plan itself.

*Clause 27* amends section 36 to provide that a final regional plan must be approved by Governor in Council but is not subordinate legislation.

*Clause 28* inserts new provisions to replace the existing sections 41(3)(b) and (c), without changing the intent, except that the new provisions now reflect that any relevant control districts or coastal building lines in relation to the plan will be declared by 'a regulation giving effect to the plan', rather than by the plan itself.

*Clause 29* amends section 42 to provide that a final coastal plan must be approved by Governor in Council but is not subordinate legislation.

*Clause 30* inserts new sections 43A and 43B.

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New section 43A provides that coastal plans prepared under the Act are statutory instruments under the meaning of the *Statutory Instruments Act 1992*.

New section 43B provides the relationship of the coastal plans with the *Integrated Planning Act 1997*. For the purposes of the *Integrated Planning Act 1997*, coastal plans are to be applied under specific provisions of that Act as if they are State Planning Policies. However, other provisions in the *Integrated Planning Act 1997* that deal with the preparation and consultation requirements for State Planning Policies are not to apply to coastal plans as the *Coastal Protection and Management Act 1995* already provides comparable processes and requirements.

*Clause 31* inserts new provisions to replace the existing section 44, without changing the intent, except that the new provisions now reflect the process for amendment to the State or a regional coastal plan as a statutory instrument.

*Clause 32(1)* provides that for an area that is covered by a regional coastal plan, a regulation that gives effect to the plan may declare a control district for the area.

*Clause 32(2)* amends section 47(7) and will now require the chief executive to give public notice in relevant newspapers when declaring a control district under the section.

The existing section 47(7) provides that the chief executive must notify in writing, each owner of land in an area that is declared to be a control district. However, if the chief executive was to inadvertently miss or fail to notify a land owner in the district pursuant to this section, that omission or failure could expose the final regional plan and accompanying district to legal challenge on the grounds that the notification process under the Act had not been lawfully complied with.

The amendment to section 47(7) makes the public notification process for the coastal management plans and the control district the same. This amendment also is consistent with the notification requirements under the *Integrated Planning Act 1997* for the preparation of State Planning Policies.

*Clause 33* amends section 50 to clarify that the regulation referred to in that section is a regulation made under section 47(1)(b).



*Clause 34* amends section 51 to clarify that the regulation referred to in that section is a regulation made under section 47(1)(b).

*Clause 35* omits the words 'regional plan' from section 59(1).

*Clause 36(1)* provides that the definition of 'regional plan' also applies to chapter 2, part 2, division 3.

*Clause 36(2)* provides that the definition of 'State plan' also applies to chapter 2, part 2, division 3.

## **PART 5—AMENDMENT OF *ENVIRONMENTAL AND OTHER LEGISLATION AMENDMENT ACT 1997***

*Clause 37* provides that part 6 amends the *Environmental and Other Legislation Amendment Act 1999*.

*Clause 38* amends section 2 of the amendment Act, which extends the commencement date of an amendment to section 118B of the *Environmental Protection Act 1994*. The amendment which otherwise will commence on 5 December 1999 will now commence on 1 June 2001.

## **PART 6—AMENDMENT OF *INTEGRATED PLANNING ACT 1997***

*Clause 39* provides that part 6 amends the *Integrated Planning Act 1997* (IPA).

*Clause 40(1)* amends section 1.1.2 to provide an exception to the original commencement clause of the IPA. The proclamation of 26 March 1998 provided for the commencement of parts of the IPA at various times. The proclamation specified 1 December 1998 as the commencement date for all provisions remaining uncommenced at that date. These included the independent review provisions in chapter 2, part 2, division 2, and the public housing provisions in chapter 5, part 6. The proclamation was amended before the proposed residual commencement date, and commencement was extended for a further 12 months by regulation, until 2 December 1999. The commencement may only be further extended by primary legislation, and is extended by this amendment.

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*Clause 40(2)* provides for the independent review provisions, which enable an independent reviewer to be appointed to review planning schemes, to commence on 1 January 2001. This will allow further time for the need for the provisions to be assessed in the light of the operation of IPA schemes.

*Clause 40(2)* also provides for the public housing provisions to commence on 31 March 2000 to coincide with the expiry of the State exemption from planning schemes under section 6.1.40 of the IPA.

*Clause 41(1)* amends section 2.6.3(1)(a) for consistency with recent amendments to the *State Development and Public Works Organisation Act 1971* (SD&PWO Act).<sup>1</sup> Section 2.6.3 applies only where designators are designating land for community infrastructure and the proponent is an entity other than a public sector entity. The designator is required to take account of major environmental effects in a similar way to that required under the SD&PWO Act for public sector entities proposing to carry out or approve development or works. The effect of the amendment to section 2.6.3 is that if such a proposal is declared a "significant project" and as a consequence the proponent is required to undertake the EIS process under new division 3 of part 4 of the SD&PWO Act, the provisions will not apply. For other proposals, the provisions remain unchanged. When section 29(2) SD&PWO Act (now section 29A(2)) expires on 30 March 2000 these provisions will be redundant (see Clause 41(3) below).

*Clause 41(2)* amends a section number for consistency with renumbering under the amendments to the SD&PWO Act.

*Clause 41(3)* provides for this section to expire on 30 March 2000 when section 6.1.40<sup>2</sup> of the IPA expires. The expiry of section 29(2) of the SD&PWO Act is also linked to the expiry of section 6.1.40. From that date, the environmental effects of community infrastructure proposed by

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<sup>1</sup> The amendments to the SD&PWO Act provide that the Coordinator-General may declare a project to be a "significant project" and require the proponent to prepare an environmental impact statement. Previous section 29(2) (the so called "the green book" process) will expire on 30 March 2000 to coincide with the expiry of section 6.1.40 of the IPA (which exempts State development from regulation by planning schemes).

<sup>2</sup> Section 6.1.40 provides that for the two years following the commencement of the IPA (on 30 March 1998) development started by or on behalf of the State is not subject to planning schemes or any infrastructure charge for the development.

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either a public or private sector entity which is a "significant project" will be assessed under division 3 of part 4 of the SD&PWO Act. This is sufficient to satisfy the designator<sup>3</sup> under the IPA. The environmental effects of all other proposals will need to be considered by the designator pursuant to the obligations imposed by sections 1.2.2 and 1.2.3 of the IPA. Section 1.2.2 requires that a designator must carry out their function or exercise their powers under the IPA in a way that advances the purpose of the Act. Section 1.2.3 states a number of ways this may be done and includes ensuring that any decision-making, among other things listed in sections 1.2.3(a) to (f), takes account of the short and long-term environmental effects of development.

*Clause 42* amends section 2.6.8 to allow for recent amendments to the *State Development and Public Works Organisation Act 1971* (SD&PWO Act). Amended section 2.6.8 provides that if the environmental effects of proposed community infrastructure have been assessed under part 4 of the SD&PWO<sup>4</sup>, the Minister may proceed to designate the infrastructure using the shortened designation process in schedule 7.

*Clause 43* inserts a new section 6.1.10A which reproduces the substance of a transitional regulation<sup>5</sup> made earlier in the year as an interim measure until the provision could be placed in the IPA. The transitional regulation provides a similar mechanism to that which existed under the previous planning legislation<sup>6</sup> which enabled a closed road to be appropriately zoned by Order in Council. It is proposed that IPA planning schemes will provide for the zoning of roads and closed roads. However, in the meantime, the

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<sup>3</sup> See section 2.6.8.

<sup>4</sup> Part 4 of the SD&PWO requires either that consideration be given under section 29A(2) (previously section 29(2)) to development or works likely to have major environmental effects by way of an administrative impact assessment process (the so called "green book"); alternatively, a statutory impact assessment process must be undertaken for proposals declared by the Coordinator-General to be "significant projects" under section 29B of Part 4 of the SD&PWO Act. Section 29A(2) has an expiry date of 30 March 2000.

<sup>5</sup> *Integrated Planning (Zoning of Closed Roads) Transitional Regulation 1999*.

<sup>6</sup> Section 1.21(3) of the *Local Government (Planning and Environment) Act 1990* (repealed).

closure of roads in transitional planning schemes needs to be provided for in the IPA.

*Clause 44* amends section 6.1.35C to remove the expiry date for the section and to provide for the triggers for the operation of the section to be placed in the *Integrated Planning Regulation 1998*. These provisions were included in the IPA as a transitional arrangement to continue the environmental impact provisions under the *Local Government (Planning and Environment) Act 1990* (repealed). Section 6.1.35C is due to expire on 30 March 2000. At present the provisions rely on triggers in the Regulation to the repealed Act.

The removal of the expiry date will allow the transitional arrangements to continue to apply until the IDAS consequential amendment program is completed.

By placing the triggers in a regulation to the IPA adjustments may be made to the transitional arrangements in response to the integration of new approval processes into IDAS, without the need to amend the principal legislation each time. For example, there is overlap between the transitional referral coordination arrangements for certain "designated" developments listed in the regulation to the repealed Act that are also environmentally relevant activities (ERAs) under the *Environmental Protection Act*. As ERAs, the formal concurrence referral arrangements under the IPA currently apply, in addition to the transitional referral coordination arrangements. This results in extra unnecessary administration and confusion about the process.

Also, the regulations under the repealed legislation are becoming increasingly difficult to access, and in view of the continuing nature of this arrangement, it is preferable for the provisions to link to regulations under the IPA.

*Clause 45* amends schedule 8, parts 1 and 2, by omitting the uncommenced provisions. As a consequence existing item 3(u) becomes the only provision in item 3. The uncommenced provisions were listed in schedule 8 at the commencement of the IPA to give an indication of the scope of development proposed to be made assessable under the Act. The provisions have already been postponed once by regulation, and will commence on 2 December 1999 unless some action is taken. The provisions in their present form cause confusion (for example, they are

thought to have commenced) and it is preferable they be removed. Replacement provisions in the appropriate form will be added to schedule 8 progressively as corresponding consequential amendments are made to the legislation to which they relate.

*Clause 46* amends schedule 10 by changing the definition of "local government area" to include Aboriginal and Torres Strait Islander (ATSI) Councils. Proposed amendments to the Community Services Acts (CSA) will establish ATSI Council areas in a similar way to local government areas under the Local Government Act. This amendment is consistent with the amendments to the CSA and clarifies that ATSI Councils have the same status under the IPA for their respective areas, as local governments have for areas declared under the Local Government Act. The amendment will be proclaimed to commence at the same time as the amendments to the CSA.

## **PART 7—AMENDMENT OF *INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 1999***

*Clause 47* provides that part 7 amends the *Integrated Planning and Other Legislation Amendment Act 1999*.

*Clause 48* amends section 12 which inserts a new section 6.1.54 in the IPA. The new section provides a special set of transitional arrangements for referral of development to the Department of Main Roads under transitional planning schemes. These arrangements allow the chief executive, Main Roads, to impose the same kind of condition through the chief executive's concurrence response as could have been imposed by a local government under the repealed provisions of section 40 of the Transport Infrastructure Act. The arrangements are necessary because the Department of Main Roads' (DMR) interests are not reflected in transitional planning schemes.

Section 12 is amended to extend the application of these special referral arrangements to planning schemes made under the IPA (IPA planning schemes), where the Minister gives the local government a notice to the effect that the special referral arrangements in section 6.1.54 apply. The effect of the notice will be to advise the local government that the Minister is

not satisfied that the DMR's interests are adequately reflected in the planning scheme. The notice can be withdrawn when this is remedied.

The amendment affects a small number of planning schemes which were being prepared at the commencement of the IPA, and the local governments elected to continue preparing the schemes not as transitional schemes under the repealed Act, but as IPA schemes under the IPA. Processes for identification and inclusion of State interests were not sufficiently well developed to enable DMR's interests to be adequately reflected in the schemes. The amendment will allow these early schemes to be adopted as IPA schemes, but the transitional referral arrangements for the DMR will apply for the time being.

## **PART 8—AMENDMENT OF *TRANSPORT INFRASTRUCTURE ACT 1994***

*Clause 49* provides that part 8 amends the *Transport Infrastructure Act 1994*.

*Clause 50* extends the expiry date of section 236 for a further 12 months. The matters dealt with in the section will be addressed in proposed consequential amendments to the coastal legislation generally to integrate coastal approval mechanisms into IDAS. The extended provisions will be repealed by that legislation to coincide with the commencement of the consequential amendments.

## **PART 9—MINOR AND CONSEQUENTIAL AMENDMENTS**

*Clause 51* provides that the Schedule amends those Acts mentioned in it.

### **SCHEDULE**

#### **MINOR AND CONSEQUENTIAL AMENDMENTS**

This Schedule includes minor and consequential amendments.

### ***CITY OF BRISBANE ACT 1924***

*Clause 1* provides for a change in heading in Part 2, Division 5 to reflect a change in terminology.

*Clause 2* provides for a change in terminology.

### ***COMMUNITY SERVICES (ABORIGINES) ACT 1984***

*Clause 1* provides for a change in terminology.

### ***COMMUNITY SERVICES (TORRES STRAIT) ACT 1984***

*Clause 1* provides for a change in terminology.

### ***GLADSTONE AREA WATER BOARD ACT 1984***

*Clause 1* provides for a change in the maximum possible term of office of councillors appointed to the Board, to reflect the change to four year terms of office for councillors.

### ***LOCAL GOVERNMENT ACT 1993***

*Clause 1* provides for a change in terminology for a number of sections.

*Clause 2* provides for a change in heading in Chapter 2, part 2, division 4.

*Clause 3* provides for a change in heading of section 44.

*Clause 4* provides for the correction of a minor grammatical error.

*Clause 5* provides for the correction of a minor grammatical error.

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*Clause 1* provides that a proposed interim local law, proposed local law or subordinate local law must be drafted in "sufficient" accordance with the drafting standards prescribed by regulation - allowing some flexibility in the drafting of local laws.

***TOWNSVILLE/THURINGOWA WATER SUPPLY  
BOARD ACT 1997***

*Clause 1* provides for a change in the maximum possible term of office of councillors appointed to the Board, to reflect the change to four year terms of office for councillors.