

# **LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objective of the Legislation**

The Bill provides for:

- Amendment of the *Local Government Act 1993* (LGA) and repeal of the *Townsville/Thuringowa Water Supply Board Act 1987* to convert the Townsville Thuringowa Water Supply Board from a State statutory authority to a new local government entity similar to a joint local government; and
- Amendment of the LGA to:
  - (a) provide that councillors cease to hold their local government office when they become a candidate for election to the State or Commonwealth Parliaments;
  - (b) provide that local laws or subordinate local laws purporting to prohibit or restrict the distribution of how-to-vote cards for elections under the LGA, the *City of Brisbane Act 1924* or the *Electoral Act 1992* have no effect;
  - (c) provide a head of power in the LGA to require all operators on the Kuranda rail line to pay a levy of \$1 per passenger journey, to assist Mareeba Shire Council in the provision of tourist infrastructure in Kuranda; and
  - (d) extend by two years a sunset clause allowing councillors and council employees to make up to one-half of the directors of Local Government Owned Corporations and extend by two years a related sunset clause for review of this provision; and
- Amendment of the *Integrated Planning Act 1997* (IPA) to:
  - (a) clarify the intention of the IPA to preserve the operation of development control plans (DCPs) made under the repealed *Local Government (Planning and Environment) Act 1990* (P&E Act); and

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- (b) provide interim development control provisions for the shires of Wambo and Belyando; and
- (c) provide a small amendmentg relative to Ministerial call-in of development applications; and
- Amendment of the *Land Title Act 1994* (LTA) to require local government approval for the registration of an agreement to create an easement giving access to a constructed road.

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

The provisions in the Bill will help with the ongoing implementation of current reform programs as they affect local governments and other statutory and industry bodies. In addition, they will contribute to maintaining public confidence in the local government system. They will also help the Mareeba Shire Council provide infrastructure to cater for tourism development in the town of Kuranda.

### **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 provisions of 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**

Retrospective commencement is proposed for the amendment to section 6.1.45A of the *Integrated Planning Act 1997*. This will clarify that the intent of the provision since its commencement has been to preserve the operation of Development Control Plans made under the repealed *Local Government (Planning and Environment) Act 1990*, and to validate plans made under them and development approved in accordance with those plans.

Continuation is proposed of a restriction on rights to water supply in relation to the powers of the TTWSB under its current Act to discontinue or

lessen water supply. This will ensure the TTWSB will be able to preserve the availability of supply for all customers in the event of a drought, breakdown or other emergency where a supply agreement made prior to the passage of this Bill did not specifically provide for such powers but relied on statutory powers provided under the repealed legislation.

### **Consultation**

Consultation has been undertaken on all provisions of the Bill with relevant State agencies, local government representative bodies and relevant local governments.

On the provisions relating to the Townsville Thuringowa Water Supply Board, consultation occurred with the Department of the Premier and Cabinet, Queensland Treasury, Department of Natural Resources and Mines, Crown Law, Department of Employment and Training, Office of Rural Communities, Department of Primary Industries, the Townsville Thuringowa Water Supply Board, Townsville City Council and Thuringowa City Council.

On provisions relating to councillors vacating office and local laws prohibiting how-to-vote cards, the Department of Justice and Attorney-General was consulted.

Queensland Transport was consulted with regard to the Kuranda Tourist Infrastructure Levy, and Queensland Treasury in respect to councillors and council employees being directors of Local Government Owned Corporations.

In respect of the amendments to the *Integrated Planning Act* and the *Land Title Act* the Department of Natural Resources, Queensland Treasury, Belyando Shire Council and Wambo Shire Council were consulted.

## **NOTES ON PROVISIONS**

### **PART 1 —PRELIMINARY**

#### **Short title**

*Clause 1* provides for the short title of the proposed Act.

#### **Commencement**

*Clause 2(1)* provides that Part 3, other than sections 12 , 13 and 14, is taken to have commenced on 30 March 1998. The remaining provisions commence on assent.

*Clause 2(2)* provides that provisions concerning the Townsville-Thuringowa Water Supply Board in clauses 5 and 10 commence on 30 June 2001.

*Clause 2(3)* provides that clause 9 dealing with the Kuranda rail line commences on a day to be fixed by proclamation.

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

#### **Act amended in pt 2 and schedule**

Clause 3(1) (Act amended in pt 2) provides that this part amends the Local Government Act 1993.

*Clause 3(2)* provides that the schedule includes amendments to the *Local Government Act 1993*.

#### **Amendment of s 3 (Definitions)**

*Clause 4* amends section 3 to include definitions for “joint board” meaning the Townsville-Thuringowa Water Supply Board established

under section 60A, and amends the definition of “member” to refer to a member of a joint board for section 60A.

### **Insertion of new ch 2A**

*Clause 5* inserts a new chapter –

## **‘CHAPTER 2A—TOWNSVILLE–THURINGOWA WATER SUPPLY JOINT BOARD**

The chapter provides for the conversion of the Townsville Thuringowa Water Supply Board from a statutory authority to a local government entity under the LGA similar to a joint local government. It will become the Townsville Thuringowa Water Supply Joint Board (“joint board”). It may operate its bulk water supply business under another trading name, if the joint board chooses.

Once established under the LGA, the joint board (as a local government entity) must commercialise its bulk water supply business in accordance with the framework provided in the LGA for commercialisation of local government significant business activities. This is to fulfil the Queensland Government’s obligations to implement competitive neutrality principles under water industry reforms agreed by the Council of Australian Governments (COAG). The need to meet COAG commitments regarding the commercialisation of the joint board’s water business activities is the prime reason for needing legislative amendment at this time.

Townsville and Thuringowa City Councils, as the component councils of the joint board, will each appoint two councillors as members. The joint board will also comprise a jointly appointed fifth member as an independent chairperson. This member will not be a councillor of either local government.

The joint board in character and function will operate with many of the features of a joint local government, except that it will have an independent chairperson.

Ordinarily, a joint local government is simply established by a regulation under the LGA. The provisions of the LGA that apply to joint local governments are those specifically applied to joint local governments plus

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general provisions of the LGA which apply as if the joint local government were a local government.

Since the LGA does not permit a joint local government to include a person who is not a councillor of a component council, the joint board is to be established, governed and treated for competitive neutrality purposes under a new chapter of the LGA rather than by establishment by regulation under the general model for joint local governments.

To give full effect to the inclusion of the joint board as a local government entity under the LGA, relevant provisions of the LGA that apply to local governments are applied in relation to the joint board (“applied provisions”). In applying the provisions of the LGA to the joint board, references to terms used in relation to local governments are taken to be references to equivalent terms relating to the joint board.

The joint board will have jurisdiction consistent with the impounding and harvesting of bulk water from waterways and other sources in its area of operations and distributing either treated or untreated water in bulk to the Townsville and Thuringowa City Councils and bulk consumers in its operational area.

This jurisdiction is intended to be read in the context of the *Water Act 2000*, which establishes clear boundaries between the determination by local governments of suppliers of retail water services in their areas, and the supply of bulk and irrigation water by other registered service providers, including entities such as the joint board.

Specifically, section 449 of the *Water Act 2000* provides for a local government:

- (a) to declare, by resolution, all or part of its local government area to be a service area; and
- (b) to appoint the service provider for the service area.

The coverage of this declaration by local governments relates to the provision of retail water services, as defined in Schedule 4 of the *Water Act 2000*:

- (c) “service area” means an area declared under section 449 for either or both a retail water service and a sewerage service to customers; and
- (d) “retail water service” means a reticulated water service in a service area, but does not include the supply of a water service for irrigation and bulk water supply purposes in any area.

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The entity declared as the service provider for an area is then able to give effect to its jurisdiction by utilising section 456 of that Act, which empowers it to issue notices requiring the owner of premises in the service area to carry out works for connecting the premises to its registered water service.

Section 449 of the *Water Act 2000* will not present a barrier for bulk water consumers to obtain bulk water from the joint board even if they are connected to the reticulated water system of one of the councils. This is because the jurisdiction of the joint board to supply treated or untreated water in bulk does not come within the definition of a retail water service under the *Water Act 2000*.

In addition, even though the *Water Act 2000* defines “bulk water service provider” as one that provides water to other registered service providers, this is not intended to limit the jurisdiction of the joint board. The intention is for the joint board to be able to supply bulk water to a customer which may also be connected to a reticulated water system.

At the commencement of this part of the Bill, the *Townsville/Thuringowa Water Supply Board Act 1987* is repealed and the joint board comes into existence.

## **‘PART 1—PRELIMINARY**

*Section 60A* lists definitions for the purposes of the chapter.

## **‘PART 2—ESTABLISHMENT, JURISDICTION AND POWERS**

### ***‘Division 1—Establishment of joint board***

*Section 60B* establishes the joint board.

*Section 60C* establishes the legal status of the joint board.

*Section 60D* details requirements relating to the joint board’s seal.

***‘Division 2—Jurisdiction and powers of joint board***

Section 60E provides for the jurisdiction of the joint board. Its jurisdiction enables it to provide bulk water to the Townsville and Thuringowa City Councils and to other bulk water customers in its operational area. The joint board’s jurisdiction includes a range of activities ancillary to this role.

Under the *Water Act 2000*, the joint board will need to be registered as a water service provider. By virtue of section 1249, the pre-existing registration of the former board will be transferred as a right to the joint board.

*Section 60F* provides the joint board has all the powers of an individual and powers under an Act, which may be exercised inside and outside its operational area. These powers include the power to administer and manage property of the joint board.

**‘PART 3—MEMBERSHIP**

***‘Division 1—Composition of joint board***

*Section 60G* provides that the composition of the joint board is two councillors from each of the component councils and a qualified person jointly appointed by the component councils as a member and chairperson.

***‘Division 2—Provisions about chairperson***

Section 60H provides for the appointment of a qualified person as chairperson by resolution of the component councils. If the component councils do not appoint a chairperson within 1 month of the conclusion of the quadrennial elections of the two component councils, the Governor-in-Council has a reserve power to appoint the chairperson.

Section 60I provides for the chairperson’s term of appointment.

Section 60J provides for the filling of a casual vacancy in the office of chairperson by resolution of both component councils, and the reserve power for the Governor-in-Council to act if the councils have not done so.



Section 60K details the circumstances where the chairperson’s office becomes vacant. In addition, the appointment of the chairperson can be ended at any time by both the component councils resolving to do this.

Section 60L provides for resignation of the chairperson.

### ***‘Division 3—Provisions about other members***

Section 60M provides for the appointment of members who are councillors of the Townsville City Council and the Thuringowa City Council, and the reserve power of the Governor-in-Council to act where the component councils have not done so.

Section 60N provides for delegate members of the joint board.

Section 60O provides for the filling of casual vacancies.

### ***‘Division 4—Duties of joint members***

Section 60P provides that the overriding duty of joint board members in the exercise of the joint board’s jurisdiction is to act in the best interests of the joint board’s operational area.

## **‘PART 4—PROCEEDINGS**

*Section 60Q* provides for selection of a member to preside at a meeting if the chairperson is absent from the meeting.

## **‘PART 5—APPLICATION OF ACT TO JOINT BOARD**

*Section 60R* provides for the application to the joint board of relevant LGA provisions (“applied provisions”) as well as any definition relevant to the applied provisions or any regulation made pursuant to the applied provisions. The following sections are the applied provisions for the joint board:

section 22 (Exercise of jurisdiction for its local government area – the “basic territorial unit”)

section 24 (Territorial unit of local government)

- section 25 (Jurisdiction of local government)
- section 26 (Law-making matters included in jurisdiction of local government)
- section 27 (Limitation on exercise of jurisdiction for basic territorial unit)
- section 30 (General limitations on exercise of jurisdiction)
- section 31 (Inconsistency with State law)
- section 160 (Procedures before exercise of certain powers)
- section 161 (Revocation and suspension of resolutions and orders)
- section 162 (Effect of revocation or suspension)
- section 163 (Overruling local laws and subordinate local laws etc.)
- section 167 (Inquiries, investigations and inspections by authorised persons)
- section 168 (Reports on inquiries, investigations and inspections)
- section 169 (Chief executive may request information from local government)
- section 170 (Authorised person's duties on inquiry)
- section 171 (Authorised person may decide procedures)
- section 172 (Public may attend)
- section 173 (Authorised person's powers on inquiry)
- section 174 (Notice to witness)
- section 175 (Duty of witness at inquiry)
- section 176 (Contempt of authorised person)
- section 177 (Change of authorised person)
- section 222 (Disqualification and vacation of office for certain offences)
- section 224 (Termination of membership of Legislative Assembly on becoming councillor)
- section 226 (Termination of local government employment on becoming councillor)
- section 228 (Resignation from office as a councillor)

- section 229 (Councillors' role)
- section 230 (Limitations on councillors' roles)
- section 231 (Additional roles of mayor)
- section 237 (Remuneration for service on local government and advisory committees)
- section 238 (Superannuation benefits for councillors)
- section 239 (Insurance of councillors)
- section 240 (Indemnity for councillors)
- section 243 (Acting as councillor without authority)
- section 244 (Exclusion from meeting of councillor with material personal interest)
- section 245 (Removal of disability)
- section 246 (Penalty for contravening exclusion from meeting)
- section 247 (Registers of interests)
- section 248 (Access to registers)
- section 249 (Queries on contents of register)
- section 250 (Improper use of information by councillors)
- section 443 (Agenda of post-election meetings)
- section 444 (Other meetings)
- section 445 (Place of meetings)
- section 446 (Quorum at meetings)
- section 447 (Procedure at meetings)
- section 448 (Minutes must be kept)
- section 449 (Adjournment of meetings)
- section 450 (Notice of meetings)
- section 451 (Repeal or amendment of resolutions)
- section 452 (Appointment of committees)
- section 453 (Advisory committees)
- section 454 (Delegate members of committees)
- section 455 (Quorum)

- section 456 (Chairperson of committee)
- section 457 (Committee meetings)
- section 458 (Reports)
- section 459 (Minutes must be kept unless committee exempted)
- section 460 (Division applies to local governments and their committees)
- section 461 (Minutes)
- section 462 (Meetings in public unless otherwise resolved)
- section 463 (Closed meetings)
- section 464 (Public notice of meetings)
- section 465 (Public notice of resolution authorising remuneration etc.)
- section 466 (Safe custody of records)
- section 467 (Loss or destruction of records)
- section 468 (Inspection of records by the public)
- section 469 (Inspection of records by members)
- section 470 (Duty to make records available)
- section 471 (Correspondence with local government)
- section 472 (Delegation by local government)
- section 473 (Preservation of proceedings)
- section 481 (Principles governing the making of contracts)
- section 482 (Ways of entering into a contract)
- section 483 (Entering into a contract under delegation)
- section 484 (When tenders are required)
- section 485 (When quotations are required)
- section 486 (Exceptions to the requirement to seek tenders or quotations)
- section 487 (Panel of suitable providers)
- section 488 (Changes to tenders)
- section 489 (Short listing after calling for expressions of interest)
- section 490 (Acceptance of tender or quotation)

- section 491 (When tenders or auctions are required)
- section 492 (Exemptions)
- section 494 (Matters relevant to good rule and government)
- section 495 (Application of part)
- section 496 (Engagement in or help to enterprises)
- section 497 (Specific enterprise powers)
- section 498 (Requirements for exercise of enterprise powers)
- section 499 (Restrictions on exercise of enterprise powers)
- section 500 (Establishing enterprise powers limits)
- section 501 (Register of enterprises)
- section 502 (Issue of standards)
- section 503 (Standards must be complied with)
- section 504 (Preparation and adoption of corporate plan)
- section 505 (Period of corporate plan)
- section 506 (Amendment of corporate plan)
- section 507 (Requirements of corporate plans)
- section 508 (Preparation and adoption of operational plan)
- section 509 (Amendment of operational plan)
- section 510 (Requirements of operational plan)
- section 511 (Compliance with corporate and operational plans)
- section 512 (Evaluation of activities)
- section 513 (Copies of plans to be available for inspection and purchase)
- section 514 (Funds)
- section 515 (Reserves)
- section 516 (Trust fund)
- section 517 (Compliance with sound accounting principles and procedures)
- section 518 (Adoption of budget)
- section 519 (Requirements of budgets)

- section 520 (Content of operating fund budgets)
- section 521 (Financial information to be presented to budget meeting)
- section 522 (Spending of local government pending adoption of budget)
- section 523 (Councillors' liability for disbursements)
- section 524 (Budgets to be available for inspection and purchase)
- section 525 (Local governments are statutory bodies)
- section 526 (Councillors' liability for unauthorised borrowings)
- section 527 (Accounting records to be kept)
- section 528 (Statements of account to be presented to local government)
- section 529 (Statements of accounts open to inspection)
- section 530 (General reporting provisions)
- section 531 (Annual report to be prepared and adopted)
- section 532 (Content of report about financial position of local government)
- section 533 (Content of report about implementing corporate and operational plans)
- section 534 (Content of report about other issues of public interest)
- section 535 (Copies of report to be available for inspection and purchase)
- section 536 (Report of missing property)
- section 537 (Local Government to take part in prosecution)
- section 543 (Object)
- section 545 (Definitions for ch 8)
- section 571 (Application of pt 6)
- section 572 (Objectives of commercialisation)
- section 573 (How objectives of commercialisation are to be achieved-key principles and their elements)
- section 574 (Key objectives of commercial business units under commercialisation)

- section 575 (Meaning of ‘commercialisation’)
- section 576 (Meaning of ‘key principles of commercialisation’)
- section 577 (Definitions for pt 6)
- section 578 (Local government to establish commercial business unit)
- section 579 (Additional requirements for corporate plan)
- section 580 (Performance plan for commercial business units)
- section 581 (Annual statement of operations on commercial business unit)
- section 582 (Commonwealth and State tax equivalents)
- section 583 (Guarantees by State)
- section 769 (Object of ch 10)
- section 772 (Definitions for ch 10)
- section 783 (Local governments to implement charging and operational arrangements for relevant business activities)
- section 784 (Start of work to apply two-part tariffs)
- section 785 (Timetable for implementing arrangements)
- section 786 (Strategies for applying s 783(b)-(e) )
- section 787 (Object of ch 11)
- section 788 (Application of ch 11)
- section 790 (Definitions for ch 11)
- section 791 (Application of pt 2)
- section 792 (Affected persons)
- section 793 (Local government to establish complaint process)
- section 794 (Requirements for complaint process)
- section 795 (Grounds for complaints)
- section 796 (Effect of complaint on activities)
- section 797 (Referee to act fairly)
- section 798 (Matters to be considered by referee on complaint)
- section 799 (Requirement of referee to investigate)
- section 800 (Investigation notice)

- section 801 (Effect of giving an investigation notice)
- section 802 (General procedures)
- section 803 (Consideration of submissions)
- section 804 (Handling of documents)
- section 805 (Confidential information)
- section 806 (Giving of reports)
- section 807 (Contents of reports)
- section 808 (Reports open to inspection)
- section 809 (Local government decisions on recommendations)
- section 810 (Disposal of documents held by referee)
- section 811 (Protection from liability of referee or person assisting referee)
- section 812 (Protection from liability of person giving information to referee)
- section 813 (Secrecy)
- section 814 (Draft reports)
- section 815 (Local government may resolve Queensland Competition Authority to be referee)
- section 816 (Application of complaints process)
- section 817 (Making a complaint)
- section 818 (Further information to support complaint)
- section 819 (Application of part and *Queensland Competition Authority Act 1997*)
- section 820 (Local government decisions on recommendations)
- section 821 (Application of pt 3)
- section 822 (Reference of outcome of complaint to Queensland Competition Authority)
- section 823 (Making a reference)
- section 824 (Request for referee's documents)
- section 825 (Further information to support reference)



- section 826 (Matters to be considered by Queensland Competition Authority in considering reference)
- section 827 (Procedures for dealing with references)
- section 828 (Giving of reports)
- section 829 (Contents of reports)
- section 830 (Reports open to inspection)
- section 831 (Local government decisions about reports)
- section 832 (Application of pt 4)
- section 833 (Purpose of accreditation)
- section 834 (Application for accreditation)
- section 835 (Investigation notice)
- section 836 (Matters to be considered by authority for investigation)
- section 837 (Procedures for investigations)
- section 838 (Decision on application)
- section 839 (Conditions on grant of accreditation)
- section 840 (Notice of decision)
- section 841 (Publication of decision)
- section 842 (Period of effect of accreditation)
- section 843 (Surrender of accreditation)
- section 844 (Cancellation of accreditation)
- section 845 (Lists of accreditations)
- section 846 (Register of accreditations, complaints etc.)
- section 847 (Annual report to include summary of complaints and decisions by local government)
- section 848 (Object)
- section 850 (Meaning of 'local law')
- section 851 (Meaning of 'model local law')
- section 852 (Meaning of 'interim local law')
- section 853 (Meaning of 'subordinate local law')

- section 854 (Local laws and subordinate local laws about development)
- section 855 (Application of division)
- section 856 (Model local law process)
- section 856A (Step 1 - propose a law)
- section 857 (Step 2 - make a law)
- section 858 (Step 3 - give public notice of law)
- section 859 (Interim local law process)
- section 860 (Step 1 - propose a law)
- section 861 (Step 2 - get Minister's agreement to use interim local law process)
- section 862 (Step 3 - make proposed law)
- section 863 (Step 4 - give public notice of law)
- section 863A (Making proposed interim local law under div 3)
- section 864 (Application of division)
- section 865 (Local law process)
- section 866 (Step 1 - propose a law)
- section 867 (Step 2 - ensure proposed law satisfactorily deals with any State interest)
- section 868 (Step 3 - consult with public about proposed law)
- section 869 (Step 4 - give public access to proposed law)
- section 870 (Step 5 - accept and consider all submissions)
- section 871 (Step 6 - decide whether to proceed with making proposed law)
- section 872 (Step 7 - again ensure proposed law satisfactorily deals with any State interest)
- section 873 (Step 8 - make proposed law)
- section 874 (Step 9 - give public notice of law)
- section 875 (Application of division)
- section 876 (Subordinate local law process)
- section 877 (Step 1 - propose a subordinate local law)

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- section 878 (Step 2 - consult with public about proposed subordinate local law)
- section 879 (Step 3 - give public access to proposed subordinate local law)
- section 880 (Step 4 - accept and consider all submissions)
- section 881 (Step 5 - make proposed subordinate local law)
- section 882 (Step 6 - give public notice of subordinate local law)
- section 883 (Early commencement under subordinate local law making process)
- section 884 (Application of division)
- section 885 (Definitions for div 5)
- section 886 (Local laws and subordinate local laws not to be made unless local government complies with division)
- section 887 (Review of proposed local law or proposed subordinate local law to identify possible anti-competitive provisions)
- section 888 (Public interest test of possible anti-competitive provisions)
- section 889 (Local government to decide on test and report process)
- section 890 (Public interest test report to be presented to local government meeting)
- section 891 (Local government to resolve whether to implement recommendations of public interest test)
- section 892 (Public interest test reports are open to inspection)
- section 893 (Regulation about public interest tests and public interest test reports)
- section 894 (Local laws and subordinate local laws available for inspection and purchase)
- section 895 (Subordinate local law register)
- section 896 (Effect of local laws)
- section 896A (Effect of expiry of interim local law)
- section 897 (Extent to which subordinate local law is binding)
- section 897A (When subordinate local laws cease to have effect)

- section 898 (Proof of local laws and subordinate local laws)
- section 899 (Local law and subordinate local law presumed to be within jurisdiction)
- section 899A (Definitions for pt 5)
- section 899B (Expiry of local laws and subordinate local laws)
- section 899C (Reviews of local laws and subordinate local laws)
- section 899D (Repeal of redundant provision)
- section 974 (General charges) – other than subsection (1)(f)
- section 975 (Register of charges)
- section 1060 (Powers of entry)
- section 1061 (Taking materials from land)
- section 1062 (Owner’s right of entry to comply with notice or order)
- section 1063 (Order on occupier who refuses entry)
- section 1064 (Protection of owner against occupier’s obstruction)
- section 1065 (Discharge of obligations by occupier on failure of owner)
- section 1069 (Limitation of time in absence of notice of work done)
- section 1070 (Entry on land for local government purposes)
- section 1071 (Compensation for loss or damage)
- section 1072 (Obstructing execution of *Local Government Act* etc.)
- section 1076 (Fines)
- section 1077 (Indictable and summary offences)
- section 1080 (Limitation on time for starting summary proceedings)
- section 1081 (Attempt to commit offence)
- section 1082 (Definitions)
- section 1083 (References to ‘local government’ and ‘authorised person’)
- section 1084 (Appointment)
- section 1085 (Limitation on authorised person’s powers)
- section 1086 (Authorised person’s appointment conditions)

- section 1087 (Authorised person's identity card)
- section 1088 (Production of identity card)
- section 1089 (Offences)
- section 1090 (Power to require name and address)
- section 1091 (Entry to places)
- section 1092 (Agreement to entry)
- section 1093 (Evidence of agreement)
- section 1094 (Warrants for entry)
- section 1095 (Warrants - applications made otherwise than in person)
- section 1096 (Monitoring authorisations and processing applications)
- section 1097 (Limitation on entry to residence)
- section 1098 (Approval of inspection program)
- section 1099 (Notice of proposed inspection program)
- section 1100 (Access to program)
- section 1101 (Power of entry under approved inspection program)
- section 1102 (General powers after entering places)
- section 1103 (Authorised person to give notice of damage)
- section 1104 (Compensation)
- section 1106 (Authentication of documents made by local governments)
- section 1107 (Service of documents on local governments)
- section 1108 (Substituted service)
- section 1109 (Exemption from stating law in the case of substituted service)
- section 1110 (Service on time share owners)
- section 1111 (Acting for local government in legal proceedings)
- section 1112 (Judiciary not disqualified from adjudicating)
- section 1113 (Constitution and limits of local government need not be proved)
- section 1115 (Proof of proceedings of local government)
- section 1117 (Evidentiary value of copies and certificates)

- section 1119 (Proof of directions given to local government)
- section 1120 (Proof of orders for costs)
- section 1121 (Proof of complainant's knowledge of matter)
- section 1122 (Ownership of things in local government's control)
- section 1123 (Insurance against liability)
- section 1126 (Land registry searches free of charge)
- section 1127 (Corporate structure)
- section 1128 (Resources for staff)
- section 1129 (Employment of staff)
- section 1130 (Personnel practices)
- section 1131 (Role of chief executive officer)
- section 1132 (Delegation by chief executive officer)
- section 1133 (Selection of chief executive officer)
- section 1134 (Acting chief executive officer)
- section 1135 (Requests to employees for help or advice)
- section 1136 (Role of other local government employees)
- section 1138 (Integrity of local government employees)
- section 1139 (Registers of interests)
- section 1140 (Access to register of interests)
- section 1141 (Queries on content of register)
- section 1142 (Disclosure of employee's interest in particular issues)
- section 1143 (Improper conduct by local government employees)
- section 1144 (Indemnity for local government employees)
- section 1145 (Limitations on who may take disciplinary action)
- section 1146 (When disciplinary action may be taken)
- section 1147 (Types of disciplinary action)
- section 1148 (Deductions from salary or wages)
- section 1149 (Suspension of employees)

- section 1150 (Employee to be given notice of grounds for disciplinary action)
- section 1151 (Appeal against disciplinary action)
- section 1152 (Formation of appeal tribunal)
- section 1153 (Secretary of appeal tribunals)
- section 1154 (Expenses of tribunal)
- section 1155 (Grounds of appeal)
- section 1156 (Decisions open to appeal tribunal)
- section 1157 (Duties of appeal tribunal)
- section 1158 (How to start an appeal)
- section 1159 (Appeal tribunal may decide procedures)
- section 1160 (Preliminary hearing of appeals)
- section 1161 (Appeal tribunal's powers)
- section 1162 (Prosecution of appeal)
- section 1163 (Notice to witness)
- section 1164 (Duty of witness at appeal)
- section 1165 (Leave for attending an appeal)
- section 1166 (Contempt of appeal tribunal)
- section 1167 (Change of person forming appeal tribunal)
- section 1168 (Costs of appeal)
- section 1169 (Recovery on orders of appeal tribunal)
- section 1170 (Definitions)
- section 1171 (Meaning of 'permanent employee')
- section 1172 (Establishment of board)
- section 1173 (Legal status of board)
- section 1174 (Board's functions)
- section 1175 (Board's powers)
- section 1176 (Board of directors)
- section 1177 (Role of the board of directors)

- section 1178 (Composition of board of directors)
- section 1179 (Delegation of board's powers)
- section 1180 (Scheme continued)
- section 1181 (Membership of scheme)
- section 1182 (Local governments' liability for permanent employees)
- section 1183 (Permanent employees' liability for contributions)
- section 1184 (Additional contributions to scheme)
- section 1185 (Contributions may be deducted from employee's salaries)
- section 1186 (Adjustment of contributions because of change in salary)
- section 1187 (Local governments' liability for non-contributory members)
- section 1188 (Interest payable on outstanding contributions)
- section 1189 (Prohibition on local governments establishing certain superannuation schemes)
- section 1190 (Management of other superannuation schemes)
- section 1191 (Relevant persons superannuation schemes)
- section 1192 (Auditor-general's role)
- section 1193 (Application of chapter to board's employees)

*Section 60S* details how the applied provisions in the LGA relate to the joint board in respect of terms used in the Act for local governments, including "local government territorial unit", "local government", and the "mayor", "councillor", "chief executive officer" and "significant business activity" of a local government.

*Section 60T* creates the connection with the competitive neutrality provisions in the LGA to the effect that the joint board is taken to have resolved to implement commercialisation under chapter 8 part 6 of the LGA in the exercise of its jurisdiction.

The provisions of chapter 10 of the LGA relating to COAG water reforms are applied, but provisions dealing with "utility charges" are not relevant in the case of the joint board, which may not make a rate (see section 60Y of this Bill) and therefore may not make a utility charge under



Chapter 14 of the LGA. Thus requirements relating to two-part tariffs are not intended to apply to the joint board.

## **‘PART 6—MISCELLANEOUS**

*Section 60U* provides for the joint board maintaining a public office in its operational area.

*Section 60V* provides that a regulation may provide for the levying of a precept upon Townsville and Thuringowa City Councils toward the operating costs of the joint board each financial year, and the levying of interest on unpaid precepts.

*Section 60W* provides that an operating surplus may be disbursed to the component councils or directly by the joint board. The disbursement may be applied to any purpose within the jurisdiction of local government approved by the Townsville and Thuringowa City Councils. The purpose to which the surplus is disbursed need not be a purpose within the jurisdiction of the joint board.

*Section 60X* provides for the application of other Acts to the joint board.

*Section 60Y* constrains the joint board from making or levying a rate on land. The joint board may therefore not make a utility charge.

*Section 60Z* provides that a joint board employee (other than the chief executive officer) may hold more than a single position under the joint board; and with the agreement of the joint board and a local government, may be employed by the joint board and the local government.

In addition, it provides that the chief executive officer may not hold more than a single position under the joint board or be employed by a local government. However, under subsection (3), the chief executive officer of the Townsville City Council or the Thuringowa City Council may also hold a position under the joint board, despite the provisions of subsection (2).

*Section 60ZA* provides for resolving inconsistency between local laws of the joint board and a component local government. The intent is that local laws of the joint board prevail to the extent of any inconsistency.

*Section 60ZB* provides for the composition of the joint board upon dissolution of the Townsville or Thuringowa City Councils under section 164 LGA (Dissolution of local government). For the purposes of section 60M (Appointment), the administrator and another person approved by the

Minister are taken to be members appointed by the dissolved local government to the joint board.

**Insertion of new s 224A (Councillor ceases to be councillor on becoming candidate for an Australian Parliament)**

*Clause 6* inserts a new section 224A after section 224 to provide that a councillor ceases to be a councillor if the person becomes a candidate for election to an Australian Parliament. The intention is that the office of councillor becomes vacant from the time when the person becomes a candidate under the relevant State or Commonwealth electoral legislation.

For an election as a member of the Legislative Assembly, the office of councillor becomes vacant when under section 88(3) of the *Electoral Act 1992*, the names of those persons nominated are displayed at the returning officer's office.

For an election as a member of the Commonwealth Parliament, the office of councillor becomes vacant when the person is declared to be a candidate under section 176 of the *Commonwealth Electoral Act 1918*.

The intention is that this provision applies in addition to the requirements of section 221(f) of the LGA, which provides that a councillor cannot also hold office as a member of the State or Commonwealth Parliament.

**Amendment of s 298 (Qualification for nomination)**

*Clause 7* amends section 298 to provide that a person who is a candidate for election as a member of an Australian Parliament, is not qualified to be nominated for election or appointed as a councillor until the result of the election to the Australian Parliament for which the person is a candidate is known.

Given that section 221(f) provides that a member of an Australian Parliament is not qualified to be or become a councillor, the intent of the provision is to avoid a situation where a person is elected to an Australian Parliament while at the same time a candidate for election as a councillor. Once a ballot paper for a local government election is prepared, it is not possible to remove the name of a candidate who becomes unqualified for office by virtue of election to an Australian Parliament. However, once an election for an Australian Parliament is concluded, an unsuccessful candidate is not prevented from nominating for election as a councillor.

The provision is intended to also apply to appointment of a councillor, eg, where a vacancy in the office of councillor occurs in the twelve months prior to the local government quadrennial elections.

**Insertion of new s 854A (No jurisdiction to make local laws and subordinate local laws about distributing how-to-vote cards)**

*Clause 8* inserts a new section 854A. Subsection (1) provides that a local government has no jurisdiction to make a local law or subordinate local law prohibiting or regulating the distribution of how-to-vote cards for State and local government elections. Subsection (2) provides that to the extent that a local law or subordinate local law is contrary to subsection (1), it is of no effect.

**Insertion of new ch 13, pt 6**

*Clause 9* inserts a new pt 6 (sections 955A – 955H) and heading in chapter 13 of the Act.

**‘PART 6 —KURANDA RAIL LINE**

***‘Division 1 —Preliminary***

*Section 955A* provides definitions for the part.

***‘Division 2 —Tourist infrastructure levy***

Section 955B provides that each Kuranda rail operator must pay a levy of \$1 per passenger journey (single or return) to or from Kuranda provided by the operator, other than journeys provided free of charge, from the commencement of this section to 1 April 2014.

Section 955C provides that each Kuranda rail operator must, within 3 weeks after the end of each quarter in a financial year, pay to the State the amount of levy imposed on it during the quarter. For example, for the first quarter of a financial year, the amount of the levy must be paid within 3 weeks of 30 September. If commencement of this section occurs during a quarter, it is intended that the levy apply to passenger journeys for the remainder of the quarter.

Section 955D provides that an operator must pay interest on any amount of unpaid levy owed to the State. For example, if the amount of the levy for the first quarter was not paid within 3 weeks of 30 September, interest would apply from the end of the 3-week period.

Section 955E provides that where an operator does not pay an amount owing under section 955C or section 955D, the State may recover it as a debt.

### ***‘Division 3 —Miscellaneous provisions***

Section 955F provides that each Kuranda rail operator must provide a written statement within 4 months after the end of each financial year, of the number of passenger journeys provided by the operator during the year, other than journeys provided free of charge. A maximum penalty of 20 penalty units applies for non-compliance with this section.

Subsection (2)(b) provides that if the chief executive officer of the Department has approved a form, the statement must be in the approved form.

Subsection (3) provides that the period from commencement of the requirement to pay the levy until 30 June 2001 is taken to be a financial year, ie, an annual statement must be provided for this period.

Subsection (4) provides that the approved form may require the statement to be made or verified by statutory declaration.

Section 955G provides that the levy amounts received by the State must be paid to the Mareeba Shire Council in the way and on the conditions, decided by the Minister.

### ***‘Division 4 —Expiry of pt 6***

Section 955H provides that the part expires on 30 June 2015.

### **Insertion of new ch 19, pt 6**

*Clause 10* inserts a new part to chapter 19 –

**‘PART 6—TRANSITIONAL PROVISIONS FOR LOCAL  
GOVERNMENT AND OTHER LEGISLATION  
AMENDMENT ACT 2001**

*‘Division 1—Preliminary*

*Section 1245* adds definitions for part 6, being “commencing day”, “former board”, “repealed Act” – and provides that terms used in part 6 that were defined in section 60A for Ch 2A, carry the same meaning in part 6.

*‘Division 2-Transitional provisions for Townsville-Thuringowa Water  
Supply Joint Board*

Section 1246 provides for abolition of the board and the termination of office of the members on the commencing day.

Section 1247 provides for the transfer of assets and property of the board to the joint board on the commencing day.

Section 1248 provides for the exemption of the transfer of assets from the former board to the joint board and establishment of the joint board from State tax and fees.

Section 1249 provides for the transfer of rights and liabilities of the board to the joint board on the commencing day.

Section 1250 provides for continuation of the joint board’s entitlement to water until an allocation is made under the Water Act 2000.

Section 1251 provides for the existing contracts of the board to continue and be enforceable from the commencing day.

Section 1252 provides that any contractual tendering or supply quotations started before the commencement day are not subject to the contracting and tendering requirements of the LGA.

Section 1253 provides for the continuation of guarantees, securities and undertakings of the board.

Section 1254 provides for the preservation of proceedings relating to the board.

Section 1255 provides the joint board with powers previously contained in sections 46 and 47 of the Townsville/Thuringowa Water Supply Board Act 1987. It provides that where contracts or agreements were entered into before the commencement day, those contracts or agreements are taken to

have been entered into by the new joint board. Irrespective of the terms of the contracts or agreements, it enables the joint board to discontinue the supply of water or to supply a lesser amount than contracted for, under certain conditions (such as damage, alterations, drought, emergency conditions or other relevant conditions). It also sets out the process to be followed in exercising this power.

Section 1255 will not apply to any future contracts or agreements entered into after the commencement day. Such future contracts will need to contain their own provisions allowing the joint board to discontinue or lessen supply in emergency and other conditions. Overarching all existing and future contractual arrangements, section 388 of the *Water Act 2000* enables the joint board, as a registered water service provider, to restrict supply under conditions given in that provision.

Section 1256 provides for continuation of employment, remuneration and entitlements of the manager (chief executive officer) of the board.

Section 1257 provides for continuation of employment, remuneration and entitlements of the employees of the board.

Section 1258 provides employees (including the manager) of the former board who continue employment with the joint board the ability to choose within 30 days of the commencement date whether to remain in their current superannuation scheme. If they do not exercise this choice to stay with their current superannuation scheme, their entitlements will be transferred to the superannuation scheme the joint board is required to participate in under chapter 17 of the LGA.

Section 1259 provides for legal recognition of the transfer of property to the joint board.

Section 1260 provides transitional timetables for applying the requirements in the LGA regarding the preparation and adoption of the corporate and operational plans in its first year of operation. The joint board will be permitted to adopt its first set of plans immediately prior to adopting a budget.

Section 1261 provides that the first financial year in which the joint board must have corporate and operational plans is the financial year beginning 1 July 2001.

Section 1262 requires the joint board to prepare an annual report in its first year for the period 1 July 2000 to 29 June 2001 as far as practicable as if it were a local government entity at that time. For the second year, the joint board must report on the period from its commencement (30 June

2001) until the end of the 2001/2002 financial year. Thereafter, the joint board's annual reporting falls in line with the usual financial year basis.

Section 1263 provides that the terms of remuneration of the chairperson and members of the former board apply to the equivalent positions on the new joint board (until such time as the joint board decides new remuneration policies).

Section 1264 provides that the component councils must appoint the chairperson for the joint board within 1 month after the commencement day. In the absence of such resolution, the Governor in Council may appoint the chairperson.

Section 1265 provides that the component councils must appoint the members of the joint board within 1 month after the commencement day. In the absence of such resolutions, the Governor in Council may make the appointments from councillors to make up the required number of members.

Section 1266 provides that a reference in an Act or document to the board is, following conversion, taken to be a reference to the joint board.

Section 1267 enables the making of a transitional regulation about any matters to facilitate the transfer of operations from the former Act to the LGA for a period no longer than 1 year after the transfer. The intention is that this regulation power may only be used for administrative matters of a transitional nature. It is not intended to confer a power to make regulations contrary to the provisions of chapter 2A.

### ***'Division 3—Repeal***

Section 1268 repeals the Townsville/Thuringowa Water Supply Board Act 1987.

## **PART 3 —AMENDMENT OF INTEGRATED PLANNING ACT 1997**

### **Act amended in pt 3**

*Clause 11* (Act amended in pt 3) provides that this part amends the *Integrated Planning Act 1997*.

**Insertion of new s 3.6.5 (When development application may be called in)**

*Clause 12* inserts a replacement section 3.6.5 with an amended paragraph (b) to remove an ambiguity and make it clear that the period of time during which the Minister may call in a development application is from the time the application is made until 10 business days after:

- notice of an appeal is received by the chief executive, or
- the applicant's appeal period ends, or
- the submitter's appeal periods end;

whichever event is the later.

**Amendment of s 3.7.8 (When pt 7 does not apply)**

*Clause 13* amends section 3.7.8(2) to extend the effect of an existing provision of the IPA. Part 7 of chapter 3 provides for local government approval to be obtained for a plan (however called) for the reconfiguration of a lot if another Act requires that approval. Existing section 3.7.8 states that part 7 does not apply to the registration of plans where a reconfiguration is in relation to certain State purposes. Section 3.7.8(2) is amended to retain this exemption to where local government approval of a plan of survey is required under the section 83(2) of the LTA inserted by this Bill.<sup>1</sup>

**Insertion of new s 6.1.12A (Interim development control provisions for the shires of Wambo and Belyando)**

*Clause 14* inserts a new section 6.1.12A to provide interim development control (IDC) for the shires of Wambo and Belyando.

Subsection (1) restricts the application of the IDC provisions to those parts of the shires for which there is presently no transitional planning scheme.

Subsection (2) establishes that the generic IDC provisions contained in the repealed *Local Government (Planning and Environment) Regulation 1991* are to apply in those parts of each shire until a new planning scheme is made under the IPA. Although the IDC provisions do not have any retrospective effect, they are to be subject to the relevant provisions of the

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<sup>1</sup> See Clause 16 of this amendment Bill.



IPA in the same way as IDC provisions that existed at the commencement of the IPA. For example, any development application to which the IDC provisions apply must be made and processed under the IPA, and decided using the transitional provisions of that Act.<sup>2</sup>

Subsection (3) establishes some exceptions to the generic provisions of the repealed IDC Regulation, by stating that certain land uses, or buildings or other structures, require the consent of the local government. Under the repealed Act applications for development requiring the consent of the local government would have required public notification.<sup>3</sup> Accordingly, these applications must be processed under the IPA as if they required impact assessment.<sup>4</sup>

Subsection (4) confirms the effect of the section despite the making of the IDC provisions under a repealed Regulation.

### **Amendment of s 6.1.45A (Development control plans under repealed Act)**

*Clause 15* amends section 6.1.45A of the IPA by inserting new subsections (4) to (6).

Subsection (4) is intended to remove any possible doubt about the validity of plan making processes contained in development control plans, more detailed plans for specific areas (“precinct” plans) made under those processes, or the lawfulness of development approved under the amended DCP. The subsection affirms the intention of the Act that even if it could be shown that the making of the plans involved an inconsistency with the development approval process in chapter 3 or the plan making process in schedule 1 of the IPA, this will not invalidate the plan making process in the DCP, the precinct plans made under that process, or development approved under the amended DCP.

Subsection (5) makes it clear that a development control plan may be amended under either the provisions of the IPA for amending planning schemes, or under a process established in the development control plan itself. Thus if a DCP contains a process for making plans for certain areas to which the DCP applies, the making of these precinct plans is an

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<sup>2</sup> Sections 6.1.28 to 6.1.30 of the IPA.

<sup>3</sup> Section 4.12 of the *Local Government (Planning and Environment) Act 1990* (repealed).

<sup>4</sup> See note (2).

amendment of the DCP and may be achieved using either the process in the DCP or the scheme amendment process under Schedule 1 of the IPA.

Subsection (6) makes it clear that whether the DCP is amended using a process within itself, or using the scheme amendment process under Schedule 1 of the IPA, section 6.1.45A validates the precinct plans made under the DCP and development approved under the amended DCP.

## **PART 4 — AMENDMENT OF LAND TITLE ACT 1994**

### **Act amended in pt 4**

*Clause 16* (Act amended in pt 4) provides that this part amends the *Land Title Act 1994*.

### **Amendment to s 83 (Registration of easement)**

*Clause 17* amends s 83 of the LTA. New subsection (2) requires that as a prerequisite to registration of an easement giving access to a lot from a constructed road, the local government must approve the plan of survey for the easement. Chapter 3, part 7 of the IPA provides for local government approval to be endorsed on a plan for the reconfiguration of a lot if the approval is required under another Act.

Under the IPA the definition of reconfiguring a lot includes creating an easement giving access to a lot from a constructed road. The plans to which new section 83(2) applies are survey plans for this particular type of reconfiguration. The section does not apply to a reconfiguration which is a subdivision of lots that may include an access easement. Local government approval for the survey plan for that type of development is required under section 50(g) of the LTA.

This amendment reinstates in the LTA a requirement that previously existed under section 5.12 of the P&E Act.<sup>5</sup>

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<sup>5</sup> See also Clause 12 of this amendment Bill.

## **SCHEDULE**

### **AMENDMENTS OF LOCAL GOVERNMENT ACT 1993**

*Clause 1* amends section 3 (Definitions) for “approve” and “oppose”.

*Clause 2* amends the heading in chapter 8, part 6, division 6.

*Clause 3* amends the heading of section 581.

*Clause 4* amends the date of the sunset provisions relating to councillors and council employees being directors of local government owned corporations in sub-sections 618(9) to (11), 619(3) and 620(2)(b) and (4) from 1 July 2001 to 1 July 2003.

*Clauses 5 and 6* correct a duplication of section 854(5) inserted by other Acts.

*Clause 7* inserts a footnote in section 1208(2).