

# **LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL 2003**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objective of the legislation**

The Bill provides for:

- Amendment of the *City of Brisbane Act 1924* (CoBA) to clarify the discretionary power of the council to cap rates levied on properties that were not rated for all of the previous year and validate the resolution of the council using the rate capping provisions;
- Amendment of the *Local Government Act 1993* (LGA) to:
  - clarify the discretionary power of councils to cap rates levied on properties that were not rated for all of the previous year, and validate the resolutions of councils that have invoked the rate capping provisions;
  - remove the requirement for ownership consent for particular types of State land (unallocated State land, land dedicated as a reserve under the *Land Act 1994*, and land held under a lease, licence or permit under the *Land Act 1994*), when it is transferred to another local government area as part of an agreed external boundary change;
  - align the general disqualifications for councillors with those applying to Members of the Queensland Legislative Assembly;
  - remove the invalid LGA provision (section 224A(b)) for a councillor to vacate office on becoming a candidate for election to the Commonwealth Parliament;
  - align LGA requirements in relation to printed electoral advertising materials for local government elections with the requirements for State elections;

- clarify that local governments cannot use local laws to prohibit election signage materials;
  - clarify the scope of regulation powers enabling employees of entities other than local governments to be members of the Local Government Superannuation Scheme; and
  - restrict access to the councillors' related persons' registers of interests.
- Amendment of the *Workers' Compensation and Rehabilitation Act 2003* to allow a licensed local government self-insurer to provide workers' compensation coverage to councillors.
  - Amendment of the *Central Queensland Coal Associates Agreement Act 1968* to bring about a transfer of ownership between two Mitsubishi-owned companies.
  - Miscellaneous amendments to the LGA, the CoBA, and other Acts affecting local government.

## **Reasons for the Bill**

The primary purpose of the Bill is to address a number of electoral issues that need to be resolved in time for the local government quadrennial elections in March 2004, and the opportunity has been taken to address a range of other matters.

## **Electoral issues**

### *General disqualifications for membership*

A series of amendments in the *Parliament of Queensland Act 2001* and the *Electoral and Other Acts Amendment Act 2002* has resulted in the grounds of disqualification applying to Members of State Parliament diverging from those applying to local government councillors.

To maintain consistency between State and local government electoral arrangements, amendments to the LGA align the general disqualifications for councillors with those that apply to Members of the Queensland Legislative Assembly.

### *Printed electoral advertising materials*

When the LGA was developed, provisions relating to printing of electoral advertising material and general disqualifications of persons from

becoming a local government councillor were aligned to the relevant corresponding provisions for State electoral arrangements.

Section 392(2)(b) of the LGA requires printed electoral advertising material to include the name and address of the printer. The EA contained a similar requirement until it was removed by the *Electoral Amendment Act 1997*.

To maintain consistency between State and local government electoral arrangements, an amendment removes the requirement for printed electoral advertising material to carry the name and address of the printer.

#### *Regulation of electoral signage*

Under current law, the State does not play a major role in local government's regulation of electoral signage. Councils that want to address the issue can do so by developing local laws. The local law making process provides the opportunity for the State to have input on an ad hoc basis by, for example, preventing a council from developing an excessively restrictive local law. Proposed local laws are submitted by local governments to the Department of Local Government and Planning for a State interest check.

This system allows local governments to develop local laws that are appropriate to particular local circumstances. For example, there may be no regulation of electoral signage if this is not an issue in a particular local government area.

However, local governments have no jurisdiction to make local laws or subordinate local laws that prohibit electoral signage, whether applying to local, State, or Commonwealth elections. This is based on the High Court's decisions in a number of cases about the implied constitutional freedom of communication in relation to political matters.

The purpose of the amendment is to make clear that local governments cannot make local laws or subordinate local laws that prohibit electoral signage. However, local governments are able to develop local laws to regulate electoral signage to achieve a clear public purpose, such as public safety.

#### *Repeal of section 224A(b)*

Section 224A(b) of the LGA provides for a councillor to vacate office on becoming a candidate for election to the Commonwealth Parliament. In November 2001, following legal action initiated by the Local Government Association of Queensland (LGAQ) and the Commonwealth Government,

the Queensland Court of Appeal ruled that section 224A(b) of the LGA was invalid. A proposed amendment to the *Commonwealth Electoral Act 1918* is intended to make such provisions invalid in State legislation. The amendment removes the invalid provision from the LGA.

*Access to councillors' registers of interests for related persons*

The LGA requires that a register of interests be maintained outlining particular financial and non-financial interests as detailed by regulation of persons related to councillors. The relevant provision in the LGA is based on a similar requirement for Members of State Parliament.

When these requirements were drafted, the intention was to align the registers of interests requirements for councillors with those applying to State MPs. There is no public access to a State MP's related persons' register of interests.

Access to a State MP's related persons' register of interests is restricted to the leaders of political parties represented in the House, the Speaker of the House, the Auditor General and the Chair of the Crime and Misconduct Commission. However, given the lack of political party structures in the majority of councils and the relatively small number of elected representatives in councils compared to Parliament, it was not possible to align the access arrangements with those applying at State level. Accordingly, the LGA allows all councillors to be able to inspect the related persons' register.

The *Discrimination Law Amendment Act 2002* (the DLAA) comprehensively reformed the Statute Book to recognise de facto relationships, both those involving same sex and opposite sex relationships, so that they are given the same status as married people in legislation where possible. As a consequential amendment to the DLAA, the definition of 'spouse' in the *Local Government Regulation 1994* relating to the registers of interests for councillors and their partners was removed.

The LGA now relies upon the definitions of 'spouse' and 'de facto', that include same sex relationships, contained in the *Acts Interpretation Act 1954*, which were inserted by the DLAA. The requirement for councillors to disclose the interests of a same sex partner will not commence until after the local government elections in March 2004.

The LGAQ raised concerns regarding the privacy of information in councillors' related persons' registers. The LGAQ was concerned that the obligation on councillors to complete related persons' registers of interests

for same sex partners could potentially deter people with same sex partners from running for office at local government elections.

Consequently, there is an amendment to restrict access to the councillors' related persons' register.

The amendments contained in the draft Bill restrict access to the councillors' related persons' register by specifying a limited number of persons who are permitted access. It is proposed that for all local governments other than Brisbane City Council, access to the related persons' registers of interest be limited to the Mayor, the Chief Executive Officer, and persons permitted by law (for example, Crime and Misconduct Commission). In relation to Brisbane City Council, access to the related persons' registers of interest is limited to the Mayor, the Leader of the Opposition, the Chairperson of the Council, the Town Clerk, and persons permitted by law.

The requirement for councillors to disclose the interests of a same sex partner will not commence until after the local government elections in March 2004 and the provision relating to the related persons' registers of interest will commence by proclamation at a date that will ensure that the privacy of the councillors concerned is protected.

### **Provision of workers' compensation coverage to councillors**

The *Workers' Compensation and Rehabilitation Act 2003* (WCRA) has provisions that allow WorkCover to issue contracts of insurance to local governments to cover elected councillors in the event of injury. This insurance is not mandatory and WorkCover made a commercial decision not to offer this type of insurance to most councils after 31 December 2001.

The LGAQ has lobbied for amendment to allow the local government self-insurance scheme and councils that individually self-insure to be able to provide workers' compensation coverage for elected councillors.

To enable this coverage, the WCRA will be amended to enable local government self-insurers to provide councillors with compensation benefits equivalent to those available to 'workers' as defined under the Act.

The main elements of amendments to the WCRA provide for:

- A council that is a licensed self-insurer or that forms part of a group self-insurance licence to choose to provide workers' compensation coverage for elected local government councillors. A councillor covered by the self-insurer is entitled to compensation for injury sustained only while attending meetings

of the public body or performing any other duty of office as a councillor;

- Entitlements are to be the same as offered under section 12 of the Act and limited to compensation only, and councillors will not be entitled to claim damages under this policy;
- Councillors are not to be considered by the Workers' Compensation Regulatory Authority in determining the number of full time workers for the purposes of issuing or renewing a self-insurance licence;
- Remuneration payments made to councillors are to be included in the calculation of the amount of the bank guarantee and/or cash deposit required to be lodged; and
- The quantum of remuneration payments to councillors is also to be included in the calculation of the self insurer's annual levy payable.

### **Amendment to Central Queensland Coal Associates Agreement**

The Central Queensland Coal Associates Agreement (CQCA Agreement) is enacted as legislation pursuant to the *Central Queensland Coal Associates Agreement Act 1968*. Presently, there are seven CQCA joint venture companies, each ultimately owned and controlled either by BHP Billiton Ltd or by Mitsubishi Development Pty Ltd.

Mitsubishi Development Pty Ltd wants to transfer its 6.69% interest in the CQCA joint venture company, QCT Management Ltd, to its immediate parent company, QCT Resources Ltd, and for this change in ownership to operate retrospectively from 31 March 2003 to coincide with the start of the Japanese tax year. The transfer requires an amendment to the CQCA Agreement (which lists all of the seven CQCA joint venture companies and their respective interests).

The proposed amendments bring about the transfer of ownership between the two Mitsubishi-owned companies.

### **Miscellaneous amendments**

*Removal of need for State consent as part of agreed local government external boundary change*

Under the LGA, there is scope to change local government external boundaries by treating the change as a limited reviewable local government

matter. Limited reviewable local government matters are intended to be a simple method by which minor changes can be made to local government external boundaries, provided that the affected property owners and the local governments agree to the change. Delays have been experienced by the Local Government Electoral and Boundaries Review Commission in processing limited reviewable local government matters when particular State land is involved. Delays have occurred because the State, as owner, must give approval before the change can occur.

Amendments to the LGA will remove the requirement for State ownership consent in processing limited reviewable local government matters involving unallocated State land, land dedicated as reserves under the *Land Act 1994*, and land held under a lease, licence or permit under the *Land Act 1994*. Removal of the requirement for State approval as an owner in the circumstances outlined above will significantly reduce the time needed to process such changes and will meet the intended objective of a simple method for dealing with minor external boundary changes.

#### *Local government entity for superannuation purposes*

Chapter 17 of the LGA provides for the establishment and operation of the Local Government Superannuation Scheme (LG Super) for employees and other persons for whom local governments make contributions for superannuation benefits. Under section 1170 of the LGA, organisations other than local governments can be prescribed as “local government entities” if they wish to contribute to LG Super.

This provision is intended to enable employees of local government entities such as regional organisations of councils to be members of LG Super.

The amendment will clarify the definition of “local government entity” under section 1170 to ensure the definition is wide enough to cover all types of entities local governments may establish to assist them in carrying out their roles.

#### *Rate capping*

The *Local Government Legislation Amendment Act 2003* amended the LGA and the CoBA to provide local governments with the discretionary power to cap the rates levied on properties that were not rated for all of the previous financial year. The amendments allowed local governments to calculate a notional amount of what rates would have been paid had the property been rated for the full year. A clarifying amendment has been

developed to better reflect the original policy intent that rates can be capped up to a specified percentage increase.

### **Alternatives to the Bill**

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

### **Administrative cost to Government**

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**

#### *Aligning disqualification provisions for councillors with those for MPs*

The Bill proposes to align the grounds for disqualification for local government councillors with the grounds for disqualifications for Members of State Parliament. The proposed new grounds for disqualification for councillors include the conviction of certain offences, including offences that may have been committed before the enactment of the new provisions. The new grounds for disqualification may therefore adversely affect the rights of councillors, with a degree of retrospectivity.

The Scrutiny of Legislation Committee has previously considered provisions about the qualifications and disqualifications for Members of Parliament and local government councillors. In 2002, the committee referred to Parliament a similar issue to decide the question of whether the relevant provisions had sufficient regard for the rights of the candidates, members and councillors concerned, and whether they had sufficient regard for the institution of Parliament.

#### *Rate capping—validation of council resolutions*

A number of councils have passed resolutions invoking the rate capping provisions in relation to land that did not have an improved value for the entire 2002/2003 financial year based on the policy intent of the amendments.

The Bill proposes to validate these budget resolutions on the basis the councils have acted in accordance with the policy intent to provide



assistance to ratepayers and to ensure the amendments do not inadvertently invalidate the resolutions. Validation of the resolutions will allow the provision to be applied by these councils as originally intended but will limit any retrospective action to those councils.

#### *Amendment to Central Queensland Coal Associates Agreement Act*

The proposed amendments transfer Mitsubishi Development Pty Ltd's 6.69% interest in the CQCA joint venture company, QCT Management Ltd, to its immediate parent company, QCT Resources Ltd, and for this change in ownership to operate retrospectively from 31 March 2003 to coincide with the start of the Japanese tax year. There is no indication that this action will have an adverse effect on rights and liberties or impose any obligations on any other parties.

### **Consultation**

Consultation was undertaken on relevant provisions of the Bill with the following State agencies:

- Department of Aboriginal and Torres Strait Islander Policy
- Department of Industrial Relations
- Department of Justice and Attorney-General
- Department of Main Roads
- Department of Natural Resources and Mines
- Department of Premier and Cabinet
- Department of State Development
- Department of Transport
- Office of the Queensland Parliamentary Counsel
- Queensland Treasury (NCP)
- Q Super
- Electoral Commission of Queensland
- Crime and Misconduct Commission
- Workcover Queensland.

Targeted consultation has taken place with appropriate stakeholders including:

- Local Government Association of Queensland
- Local Government Managers Australia
- Brisbane City Council
- LG Super.

## **NOTES ON THE PROVISIONS**

This section provides explanatory notes for each clause of the draft Bill. The clause numbers refer to the numbers of the clauses in the Bill.

The ‘clauses’ of a Bill become ‘sections’ of an Act after the Bill is passed by Parliament and assented to by the Governor.

### **PART 1—PRELIMINARY**

#### **Clause 1—Short title**

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

#### **Clause 2—Commencement**

*Clause 2* provides for clause 17 to commence by proclamation. (All other provisions will automatically commence on Royal Assent.)

## **PART 2—AMENDMENT OF CENTRAL QUEENSLAND COAL ASSOCIATES AGREEMENT ACT 1986**

### **Clause 3—Act amended in pt 2**

*Clause 3* provides that this part amends the *Central Queensland Coal Associates Agreement Act 1986*.

### **Clause 4—Renumbering of section 9 (Regulation-making power)**

*Clause 4* renumbers section 9 as section 10.

### **Clause 5—Insertion of new s 9**

*Clause 5* inserts a new section 9 that authorises the making of the agreement and outlines how it must be made.

### **Clause 6—Insertion of new sch 6**

*Clause 6* inserts a new schedule 6, which includes the revised ownership details for the interests in the operations carried on under the agreement.

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

### **Clause 7—Act amended in pt 3**

*Clause 7* provides that this part amends the *City of Brisbane Act 1924*.

### **Clause 8—Amendment of s 3A (Application of the Local Government Act)**

*Clause 8* amends section 3A to extend a list of LGA provisions that apply to the Brisbane City Council to include various sections relating to general disqualifications for councillors.

**Clause 9—Amendment of s 80 (Limitation of increase in rate levied)**

*Clause 9* amends section 80(1)(b) to clarify that the application of rate capping to properties that were not rated for all of the previous financial year includes the power to cap rates to an increase by a fixed percentage. Clause 20 amends section 1036 of the LGA to achieve the same purpose for other local government areas.

**Clause 10—Insertion of new pt 7**

*Clause 10* inserts a new part 7 that validates the resolutions of the council made after 31 May 2003 for the 2003/04 financial year to limit an increase in rates levied.

**PART 4—AMENDMENT OF LOCAL GOVERNMENT  
ACT 1993**

**Clause 11—Act amended in pt 4**

*Clause 11* provides that this part amends the *Local Government Act 1993*.

**Clause 12—Amendment of s 9 (Act applies on so far as expressly provided)**

*Clause 12* extends the list of sections of the LGA that apply to the BCC to include various sections relating to general disqualifications for councillors.

**Clause 13—Amendment of s 63 (Meaning of “owner” of land for pt 1)**

*Clause 13* amends section 63 to remove the requirement for the State as owner of particular types of State land (unallocated State land, land dedicated as a reserve under the *Land Act 1994*, and land held under a lease, licence or permit under the *Land Act 1994*), to participate in statutory processes for minor changes to local government boundaries affecting the land.

**Clause 14—Amendment of s 221 (General disqualifications)**

*Clause 14* amends section 221 to align qualification provisions for local government councillors with those provided for State Members of Parliament under the *Parliament of Queensland Act 2001*.

**Clause 15—Amendment of s 222 (Disqualification and vacation of office for certain offences)**

*Clause 15* amends section 222 to specify that certain Criminal Code provisions apply to City of Brisbane candidates for election and councillors.

**Clause 16—Amendment of s 224A (Councillor ceases to be councillor on becoming candidate for an Australian Parliament)**

*Clause 16* amends section 224A by repealing paragraph (b) following a Queensland Court of Appeal ruling in November 2001 that this provision is invalid.

**Clause 17—Amendment of s 248 (Access to registers)**

*Clause 17* restricts access to councillors' related persons' registers of interest to people holding specifically named positions and people permitted by law to have access to the register.

**Clause 18—Amendment of s 392 (Responsibility for election matter)**

*Clause 18* amends section 392 to remove the requirement for electoral advertising to include the name and address of its printer.

**Clause 19—Insertion of new s 854AA**

*Clause 19* inserts a new section 854AA (No jurisdiction to make local laws and subordinate local laws prohibiting placement of election signs or posters). Section 854AA confirms that local governments do not have jurisdiction to make local laws to prohibit election signage and can only regulate signage in relation to public safety, prevention of property damage, proximity to election dates or other public purposes.

**Clause 20—Amendment of s 1036 (Limitation of increase in rate levied)**

*Clause 20* amends section 1036 to clarify that the application of rate capping to properties that were not rated for all of the previous financial year includes the power to cap rates to an increase by a fixed percentage. Clause 9 amends section 80 of the CoBA to achieve the same purpose for the City of Brisbane.

**Clause 21—Amendment of s 1170 (Definitions)**

*Clause 21* amends section 1170 by amending the definition of “local government entity” to clarify the scope of regulation powers enabling employees of entities other than local governments to be members of the Local Government Superannuation Scheme.

**Clause 22—Insertion of new ch 19, pt 9**

*Clause 22* inserts a new chapter 19 part 9 that validates the resolutions of councils made after 31 May 2003 for the 2003/04 financial year to limit an increase in rates levied.

**PART 5—AMENDMENT OF WORKERS’  
COMPENSATION AND REHABILITATION ACT 2003**

**Clause 23—Act amended in pt 5**

*Clause 23* provides that this part amends the *Workers’ Compensation and Rehabilitation Act 2003*.

**Clause 24—Insertion of new ch 2, pt 4, div 1A (Local government self-insurers)**

*Clause 24* inserts a new division 1A (Local government self-insurers). The proposed section 68A (Self-insurance for local governments) allows a local government self-insurer to choose to cover elected local government councillors under its licence. If this election is made, all councillors of councils covered by the licence are entitled to compensation. The clause

provides that the self-insurer must advise both councillors and the Workers' Compensation Regulatory Authority when it elects to provide coverage.

Proposed section 68B (Entitlements of local government councillors) allows that compensation is only to be paid in the event of an injury sustained by a councillor while attending meetings or performing other council duties. The clause provides that councillors are entitled to weekly payments under the part mentioned and all other compensation entitlements are the same as workers under the *Workers' Compensation and Rehabilitation Act 2003*.

The clause further provides that councillors are excluded from claiming common law damages under the self-insurer's licence; and provides definitions for both employment and employer in the application of the definition of injury to the councillor.

Proposed section 68C allocates to the local government self-insurer the total of the accrued, continuing, future and contingent compensation liabilities for all injuries sustained by councillors covered by the licence during the period of the licence.

**Clause 25—Insertion of new s 73A (Calculation of the number of fulltime workers for local government self-insurers)**

*Clause 25* inserts a new section 73A, which specifies that hours performed by local government councillors are not to be included for the purposes of the calculation of the number of fulltime workers that are required for a self-insurance licence.

**Clause 26— Insertion of new s 92A (Powers of local government self-insurers)**

*Clause 26* inserts a new section 92A that allocates certain powers under the current Act to a local government self-insurer in relation to the councillors covered under its licence.

**Clause 27—Insertion of new s 93A**

*Clause 27* refers to existing section 93, and sets out the types of documentation that a local government self-insurer must keep in relation to injuries of a councillor for which it is liable.

## **PART 6—MINOR AND CONSEQUENTIAL AMENDMENTS**

### **Clause 28—Minor and consequential amendments of Acts**

*Clause 28* authorises the schedule to the Act and mentions that the schedule contains minor and consequential amendments.

## **SCHEDULE**

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

*Clause 1* inserts wording in section 2 that refers the reader from the definitions section to a definitions schedule.

*Clause 2* relocates the Act's definitions from the body of the Act to a schedule to the Act.

*Clause 3* amends sections 25C and 25D to update cross-references to another provision within the Act.

*Clause 4* alters the heading to section 133 to conform with current drafting practice.

*Clause 5* renumbers schedule 3 to 'schedule 1' following the repeal of earlier schedules.

*Clause 6* inserts a dictionary schedule as 'schedule 2', into which the Act's definitions are relocated in clause 2.

### **LOCAL GOVERNMENT ACT 1993**

*Clause 1* amends section 157 to allow that a regulation may provide for exempting a local government from the requirement to prepare and adopt a revenue policy.



*Clause 2* corrects an outdated reference in section 1180 from “regulated funds” to “regulated superannuation funds”. The amendment ensures that the reference reflects the wording in the Act to which it refers.

## **LOCAL GOVERNMENT (CHINATOWN AND THE VALLEY MALLS) ACT 1984**

*Clause 1* alters the heading to section 45 to conform with current drafting practice.

## **LOCAL GOVERNMENT (QUEEN STREET MALL) ACT 1984**

*Clause 1* alters the heading to section 39 to conform with current drafting practice.

## **WORKERS’ COMPENSATION AND REHABILITATION ACT 2003**

*Clause 1* amends a reference in section 12.

*Clause 2* replaces a section heading to include local government as a new category for applicability of section 16.

*Clause 3* amends section 16 to insert a footnote.

*Clause 4* amends the heading to section 20.

*Clause 5* amends a reference in section 20.

*Clause 6* replaces paragraph (2)(b) in section 89.

*Clause 7* adds a reference in section 75.

*Clause 8* adds a reference in section 79.

*Clause 9* adds a reference in section 84.

*Clause 10* clarifies a description in section 88.

*Clause 11* adds a reference in section 99.

*Clause 12* adds a reference in section 100.

*Clause 13* replaces sub-paragraph (1)(b)(i) in section 101.

*Clause 14* adds a reference in section 102.

*Clause 15* adds a reference in section 576.

*Clause 16* amends a reference to section 422.

*Clause 17* adds a reference in section 581.

*Clause 18* corrects a typographical error in section 607.

*Clause 19* omits a definition for “total liability” from the dictionary schedule.

*Clause 20* inserts definitions for “councillor”, “local government group employer”, “local government self-insurer”, and “total liability” in the dictionary schedule.