

Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Local Government Legislation (Validation of Rates and Charges) Amendment Bill 2018.

Policy objectives and the reasons for them

The policy objectives of the Bill are to:

- amend the *City of Brisbane Act 2010* (COBA 2010) and the *Local Government Act 2009* (LGA 2009) to validate rates and charges made and levied or to be levied by a local government for a financial year up to and including the financial year ending 30 June 2018 without an express resolution at the local government's budget meeting for the financial year
- apply the validating provisions to rates and charges made and levied under the repealed *City of Brisbane Act 1924* (COBA 1924), the repealed *Local Government Act 1993* (LGA 1993) or the repealed *Local Government Act 1936* (LGA 1936)
- declare that anything done, or to be done, in relation to the rate or charge is as valid as it would have been or would be if the local government had decided to levy the rate or charge by resolution at the local government's budget meeting for the financial year under the COBA 2010, the repealed COBA 1924, the LGA 2009, the repealed LGA 1993 or the repealed LGA 1936.

On 6 November 2017, the Supreme Court of Queensland (the court), in its decision in *Linville Holdings Pty Ltd v Fraser Coast Regional Council*,¹ declared that for each of the financial years ending 30 June 2015, 30 June 2016 and 30 June 2017 Fraser Coast Regional Council (FCRC) failed to validly make and levy rates and charges within its local government area because it did not decide by resolution at its budget meeting for that year what rates and charges were to be levied as required by section 94(2) of the LGA 2009.

Section 94(2) of the LGA 2009 provides that a local government must decide, by resolution at the local government's budget meeting for a financial year, what rates and charges are to be levied for that financial year. Section 96(2) of the COBA 2010 is in similar terms.

For the relevant financial years FCRC, in accordance with section 107A of the LGA 2009, resolved to adopt the budget for the financial year as presented in a number of attachments. As required under sections 169 and 172 of the Local Government Regulation 2012, the

¹ *Linville Holdings Pty Ltd v Fraser Coast Regional Council* [2017] QSC 252.

A copy of the decision is available at:

<https://archive.sclqld.org.au/qjudgment/2017/QSC17-252.pdf>

attachments included a Schedule of Rates and Charges and a Revenue Statement which stated the rating categories and a description of each rating category.

The court found that, “[h]aving regard to the text and structure of s 94(2) in the context of the other provisions of the LGA, a resolution to adopt a budget (as is required by s 107A of the LGA) does not, without more, satisfy the requirement for a resolution to decide what rates and charges are to be levied.”²

Although the declaration applies only to FCRC, other local governments that may have constructed their resolutions in a way that has similar deficiencies to those outlined in the court’s decision may be affected if similar declarations are made in relation to those local governments’ rates and charges.

Achievement of policy objectives

To achieve the policy objectives the Bill amends the COBA 2010 to:

- apply to a rate or charge levied or to be levied by the council under COBA 2010, or levied by the council under the repealed COBA 1924, for a financial year up to and including the financial year ending 30 June 2018; and that was not decided to be levied by resolution of the council at the council’s budget meeting for the financial year under the COBA 2010 or the repealed COBA 1924
- declare that the rate or charge is taken to be, and to always have been, as validly levied by the council as it would have been if the council had decided to levy the rate or charge by resolution at the council’s budget meeting for the financial year under the COBA 2010 or the repealed COBA 1924
- declare that anything done, or to be done, in relation to the rate or charge is as valid as it would have been or would be if the council had decided to levy the rate or charge by resolution at the council’s budget meeting for the financial year under the COBA 2010 or the repealed COBA 1924 and provide examples of things done or to be done in relation to the rate or charge (including bringing by the council of proceedings against a person, the sale or acquisition of land by the council or charging of interest on the rate or charge).

To achieve the policy objectives the Bill also amends the LGA 2009 to:

- apply to a rate or charge levied or to be levied by a local government under the LGA 2009, or levied by a local government under the repealed LGA 1993 or the repealed LGA 1936, for a financial year up to and including the financial year ending 30 June 2018; and that was not decided to be levied by resolution of the local government at the local government’s budget meeting for the financial year under the LGA 2009, the repealed LGA 1993 or the repealed LGA 1936
- declare that the rate or charge is taken to be, and to always have been, as validly levied by the local government as it would have been if the local government had decided to levy the rate or charge by resolution at the local government’s budget meeting for the financial year under the LGA 2009, the repealed LGA 1993 or the repealed LGA 1936
- declare that anything done, or to be done, in relation to the rate or charge is as valid as it would have been or would be if the local government had decided to levy the rate or charge by resolution at the local government’s budget meeting for the financial year under the LGA 2009, the repealed LGA 1993 or the repealed LGA 1936 and provide

² *Linville Holdings Pty Ltd v Fraser Coast Regional Council* [2017] QSC 252 paragraph [43].

examples of things done or to be done in relation to the rate or charge (including bringing by a local government of proceedings against a person, the sale or acquisition of land by a local government or charging of interest on the rate or charge).

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

There are no costs to the government associated with the Bill.

Consistency with fundamental legislative principles

Under section 4(2)(a) of the *Legislative Standards Act 1992* (LSA) the fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals.

Section 4(3)(g) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The amendments will operate retrospectively. However, without the amendments FCRC and other local governments that may have constructed their resolutions in a way that has similar deficiencies to those outlined in the court's decision may be affected if similar declarations are made in relation to those local governments' rates and charges. Accordingly, in the circumstances, the amendments have sufficient regard to the fundamental legislative principle stated in section 4(2)(a) of the LSA because of the need to provide financial surety to local governments and ratepayers.

Consultation

The Local Government Association of Queensland and Brisbane City Council have been consulted and support the policy objectives of the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that the Act may be cited as the *Local Government Legislation (Validation of Rates and Charges) Amendment Act 2018*.

Part 2 Amendment of City of Brisbane Act 2010

Clause 2 Act amended

Clause 2 provides that this part amends the *City of Brisbane Act 2010*.

Clause 3 Insertion of new ch 8, pt 8

Clause 3 inserts in chapter 8 the following:

Part 8 Validation provision for particular rates and charges

Section 276 Validation of rates and charges

Section 276 applies to a rate or charge levied or to be levied by the council under the *City of Brisbane Act 2010* or levied by the council under the repealed *City of Brisbane Act 1924* for a financial year up to and including the financial year ending 30 June 2018; and that was not decided to be levied by resolution of the council at the council's budget meeting for the financial year under the *City of Brisbane Act 2010* or the repealed *City of Brisbane Act 1924*.

It is declared that the rate or charge is taken to be, and to always have been, as validly levied by the council as it would have been if the council had decided to levy the rate or charge by resolution at the council's budget meeting for the financial year under the *City of Brisbane Act 2010* or the repealed *City of Brisbane Act 1924*.

It is also declared that anything done, or to be done, in relation to the rate or charge is as valid as it would have been or would be if the council had decided to levy the rate or charge by resolution at the council's budget meeting for the financial year under the *City of Brisbane Act 2010* or the repealed *City of Brisbane Act 1924*.

Examples of things done or to be done in relation to the rate or charge are:

- the bringing by the council of proceedings against a person
- the sale of land, or the taking of steps preparatory to the sale of land, by the council
- the acquisition of land, or the taking of steps preparatory to the acquisition of land, by the council
- the charging of interest on the rate or charge.

Part 3 Amendment of Local Government Act 2009

Clause 4 Act amended

Clause 4 provides that this part amends the *Local Government Act 2009*.

Clause 5 Insertion of new ch 9, pt 11

Clause 5 inserts in chapter 9 the following:

Part 11 Validation provision for particular rates and charges

Section 315 Validation of rates and charges

Section 315 applies to a rate or charge levied or to be levied by a local government under the *Local Government Act 2009*, or levied by a local government under a repealed Act, for a financial year up to and including the financial year ending 30 June 2018; and that was not decided to be levied by resolution of the local government at the local government's budget meeting for the financial year under the *Local Government Act 2009* or a repealed Act.

It is declared that the rate or charge is taken to be, and to always have been, as validly levied by the local government as it would have been if the local government had decided to levy the rate or charge by resolution at the local government's budget meeting for the financial year under the *Local Government Act 2009* or a repealed Act.

It is also declared that anything done, or to be done, in relation to the rate or charge is as valid as it would have been or would be if the local government had decided to levy the rate or charge by resolution at the local government's budget meeting for the financial year under the *Local Government Act 2009* or a repealed Act.

Examples of things done or to be done in relation to the rate or charge are:

- the bringing by a local government of proceedings against a person
- the sale of land, or the taking of steps preparatory to the sale of land, by a local government
- the acquisition of land, or the taking of steps preparatory to the acquisition of land, by a local government
- the charging of interest on the rate or charge.

In this section 'repealed Act' means the repealed *Local Government Act 1936* or the repealed *Local Government Act 1993*.