

Local Government and Industrial Relations Amendment Bill 2008

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable the Minister for Transport, Trade, Employment and Industrial Relations, Mr John Mickel, MP.

Title of the Bill

Local Government and Industrial Relations Amendment Bill 2008

Objectives of the amendments

The amendments broadly bring into line arrangements relating to successful candidates in local government elections with existing provisions relating to full time public sector employees who are successful state election candidates and federal election candidates.

These amendments will provide that full-time public sector employees who are successfully elected to certain classes of local government will be deemed to resign from their public sector positions upon election. They also allow for full-time employees to make alternative part-time arrangements subject to the approval of the chief executive of their respective agency, and in this case, ensure that their entitlements are preserved as though their employment had not been terminated.

The amendments also prevent councillors and mayors in specified local governments from being appointed to a full-time public sector position after their election to a local government. Exceptions have been made to enable councillors and mayors to sit on boards, tribunals and similar bodies set up by the state. However councillors will be required to waive any rewards associated with these activities.

Minor amendments to the *Local Government Act 1993* address technical matters identified after the Bill was introduced.

Achievement of the objectives

To achieve the objectives, amendments are proposed to the *Local Government and Industrial Relations Amendment Bill 2008*.

Alternative ways of achieving policy objectives

The policy objectives can be achieved only by legislative enactment.

Estimated cost for government implementation

There will be no cost for government resulting from the amendments.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The Department of Premier and Cabinet and the Office of the Queensland Parliamentary Counsel were consulted throughout preparation of amendments about people in State employment. Queensland Treasury, the Department of Industrial Relations and Employment and QSuper were consulted about specific amendments. The Department of Communities was consulted about amendment of the *Community Services Act 2007*.

Notes On Provisions

Local Government Act 1993

Amendment 1 amends clause 10 (Replacement of s.35) to clarify that a local government is constituted by the councillors in office for the time being. A vacancy or vacancies in the office of councillor do not affect the legal entity of the local government.

Amendment 2 amends clause 12 (Replacement of s.38 (Local government's seal)) to clarify that new section 38 does not limit the operation of the delegation power in section 472 of the Act. New section 38(1) provides that a local government may execute a document in any of

the ways specified and subsection 38(2) provides that this does not limit section 483. Amendment 1 clarifies that new section 38(1) also does not limit section 472. Section 472 provides that a local government may, by resolution, delegate its powers. A local government may, for example, resolve to delegate to its chief executive officer its power to execute certain types of document. Section 1132 of the Act enables the chief executive officer to further delegate powers unless the local government has directed the chief executive officer not to further delegate the power. The amendment, together with existing provisions of the Act, will enable local governments to decide who is able to execute documents on behalf of the local government.

Amendment 3 amends clause 15 (Replacement of s. 53 (Joint local government's seal) to clarify that new section 53 does not limit the operation of the delegation power in section 472 of the Act. A joint local government may execute documents in any of the ways specified in new section 53, or in accordance with a delegation under section 472.

Amendment 4 inserts a new clause 17A (Insertion of new ch 4, pt 1, div 2A) into the Bill.

New clause 17A inserts new division 2A (Councillors holding paid State appointment) into Chapter 4 of the *Local Government Act 1993* (LGA). The amendments provide for the automatic resignation of persons holding a full-time paid State appointment who are elected to be councillors or mayors of certain classes of local government. New division 2A is intended to broadly mirror the operation of the *Parliament of Queensland Act 2001* as it pertains to Members of the Legislative Assembly holding a paid public appointment. The LGA provisions depart slightly from the *Parliament of Queensland Act 2001* in that they:

- only apply to councillors and mayors of larger local governments, and;
- only affect persons holding a full-time public sector appointment.

New section 226A (Meaning of paid State appointment for div 2A) provides a definition for ***paid State appointment***. The definition largely mirrors similar provisions within the *Parliament of Queensland Act 2001*.

New subsection 226A (1) specifies that a person holds ***paid State appointment*** if the person for ***reward***:

holds an office under, or is employed by the State; or
holds an appointment to or in or is employed by or in –

- an entity of the State; or
- the parliamentary service of the Legislative Assembly;
or
- a court or tribunal, or a registry or other administrative office of a court or tribunal, of the State.

The provisions are intended to cover all paid public appointments including employees of the public service, the parliamentary service and statutory office holders. The provisions are not intended to cover essentially private entities which may operate under or pursuant to a law of the State or which receive funding from the State—unless appointments to those entities are controlled in some way by the State.

New subsection 226A (2) makes it clear that a councillor (use of the term councillor throughout the explanatory notes is intended to also encompass mayors unless explicitly stated otherwise) does not hold a *paid State appointment* if:

- an Act expressly requires or permits that an appointment be held by a councillor of a local government; or
- an appointment is held by a councillor of a local government and the councillor does not receive any *reward* for, or waives any *reward* associated with, the appointment.

These provisions provide that councillors may hold appointments where an Act explicitly requires such an appointment, or where the councillor waives their right to remuneration under an appointment. New subsections 226A (3) and (4) provide for the mechanism of waiving a reward.

Subsection 226A (2) (b) is not intended to allow councillors to hold full-time public sector employment if they waive their right to remuneration. The provision is intended to allow local government representatives to continue to sit on boards, tribunals and other similar state entities that require or benefit from engagement with local government representatives, as long as the councillor waives any reward associated with the role.

New subsection 226A (5) defines the term *reward* by providing that a *reward* does not include:

- an amount decided under part 3 (Entitlements and obligations);
- an amount paid to former members of the Legislative Assembly from the old Parliamentary Superannuation Scheme;
- reasonable expenses incurred by or for the councillor and reimbursed from the state for a number of listed matters;
- an amount paid as a pension, entitlement, remuneration or allowance for past service in a paid public appointment;

The exclusion from the term *reward* of an amount decided under Part 3 (Entitlements and obligations) is important because Part 3 determines the remuneration of councillors. Therefore, the receipt by a councillor of his or her remuneration or a superannuation entitlement does not qualify as a *paid State appointment*.

New section 226B (Meaning of paid State appointment for div 2A) establishes two classes of local governments for the purposes of the subsequent sections 226C and 226D.

Class A local governments are those local governments either prescribed by a regulation, or if no regulation has been made, then category 3 or 4 local governments as decided by the Local Government Remuneration Tribunal under section 250AJ of the LGA.

Class B local governments are those local governments either prescribed by regulation, or if no regulation has been made, then:

- Brisbane City Council, and;
- category 5 and higher category councils as decided by the Local Government Remuneration Tribunal under section 250AJ of the LGA.

New section 226C (Effect on paid State appointment of person's election as councillor) in subsection (1) gives effect to the automatic resignation of persons who hold a full-time paid State appointment and are elected, elected unopposed or appointed to be the mayor of a *Class A local government*.

The new subsection 226C (2) gives effect to the automatic resignation of persons who hold a full-time paid State appointment and are elected, elected unopposed or appointed to be a councillor (but not a mayor) of a ***Class B local government***.

The date of effect of the automatic resignation is the day before the day of the poll at which the person is elected, or in the case of appointed councillors, the day before the day of appointment. These provisions ensure that there is a discrete separation between the mutually exclusive positions.

New subsection 226C (3) makes it clear that the requirements of the new division do not preclude a person from subsequently obtaining a part-time ***paid State appointment***.

New subsection 226C (4) provides for the retention of all a person's existing entitlements (e.g. long service leave, annual leave etc.) if they are appointed to either their previous ***paid State appointment*** in a part-time capacity under new subsection 226C (3) (b).

New section 226D provides that a mayor of a ***Class A local government***, or a councillor or mayor of a ***Class B local government*** can not be appointed to a full-time ***paid State appointment***, and that any such appointment made is void.

Amendment 5 provides that a new local government is constituted by the chief executive officer from 15 March 2008 until the end of the day that is the conclusion of the last election for any councillor of that new local government. This facilitates an orderly commencement of operation of the new local governments which is not determined by the time that each councillor's election is declared.

Community Services Act 2007

Amendment 6 inserts new Division 1A in Part 4 of the Bill to make a consequential amendment to the *Community Services Act 2007*. The amendment ensures that the definition of ***service provider*** includes a local government, so that local governments will be eligible to receive grants under a range of community services programs.