

Local Government Bill 2009

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Desley Boyle MP

Title of the Bill

Local Government Bill 2009

Objectives of the Amendments

The objectives of the amendments are to:

- correct drafting errors and omissions;
- provide the Local Government Superannuation Scheme (LG Super) with the ability to modify the employer contribution amount for its funds in both the *Local Government Act 1993* (LGA 1993) and the *Local Government Bill 2009* (the Bill);
- apply the *Queensland Contact with Lobbyists Code* (the Lobbyists Code) to local government councillors; and
- extend the application of the electoral provisions in the LGA 1993 to provide coverage until new local government electoral legislation comes into force in 2011.

Reasons for the Objectives

A number of drafting errors and omissions were identified in the Bill and the *Animal Management (Cats and Dogs) Act 2008* (AMCD Act) which are corrected by the amendments in committee.

LG Super approached the Department of Infrastructure and Planning seeking urgent legislative amendment to allow it to vary the employer contribution amount for its defined benefit fund. This amendment was supported by the Local Government Association of Queensland (LGAQ) as the employer representative on the LG Super board. Other superannuation

funds have the power to set the employer contribution rate in the funds' trust deed and vary it, from time to time, on actuarial advice.

A key aim of the review is to achieve parity, as much as possible, between the requirements for elected representatives at the State and local government levels. Accordingly, the amendments to the Bill apply the Lobbyists Code to local government councillors. The Lobbyists Code already applies to local government staff via their coverage under the *Public Sector Ethics Act 1994*, however, an amendment provides a "signpost" in the employee responsibilities to ensure that all local government officers are aware of this.

The State has made a commitment to consultation in the development of new and separate local government electoral legislation. The results of this consultation will inform the drafting of the local government electoral legislation. To allow for the necessary time for the consultation to be conducted, the Bill is amended to continue to apply the existing electoral provisions under the LGA 1993 until the new electoral legislation comes into force.

Consistency with Fundamental Legislative Principles

The amendments are consistent with the fundamental legislative principles.

Consultation

Superannuation amendments: LG Super and the LGAQ proposed and support the amendments. Queensland Treasury and QSuper were consulted and support the amendments.

The Lobbyists Code: The LGAQ, Local Government Managers Australia – Queensland, the Institute of Public Works Engineers Australia – Queensland and the Planning Institute of Australia – Queensland were consulted about the amendments to apply the Lobbyists Code to councillors.

Notes on Provisions

Amendment 1 replaces clause 2 of the Bill to commence the amendments to the superannuation provisions of the LGA 1993 on assent. This is in order to ensure these amendments apply from the earliest possible time. Other amendments to the LGA 1993 relating to electoral matters commence immediately before the repeal of that Act. The amendment also commences the amendments to the AMCD Act on the day that Act commences (1 July 2009) to ensure its workability. The remainder of the provisions contained in the Bill are to commence on proclamation.

Amendment 2 provides a new responsibility in clause 12 of the Bill for local government councillors, including the mayor, to comply with the requirements of the Lobbyists Code.

Amendment 3 adds an example in clause 13 of the Bill of a code of conduct under the *Public Sector Ethics Act 1994* which local government staff must comply with. The intent is to ensure that all relevant local government staff are aware of the need to comply with the Lobbyists Code.

Amendment 4 amends clause 17 to correct a drafting error which omitted the class of a local government from the matters the change commission may consider.

Amendments 5 to 7 correct a drafting omission to continue the power under the LGA 1993 for a local government to treat overdue charges in the same manner as overdue rates.

Amendment 8 corrects a drafting error in clause 105 referring to the statutory appointment of auditors by the Queensland Audit Office (QAO) by updating the legislative reference to the *Financial Accountability Act 2009*. The Bill is not intended to conflict with, replace or in any way affect QAO's statutory role under that Act.

Amendment 9 amends clause 217 to provide that the trust deed for LG Super may specify the amount of the employer contribution, based on actuarial advice. It also provides that the trust deed may specify the terms and conditions upon which the LG Super board may obtain actuarial advice, and defines *actuary*.

Amendment 10 replaces clause 220 to require a local government to pay to LG Super at a rate set out in the trust deed. This replaces the previous set employer contribution rate. The intent is to allow LG Super to determine

the rate of employer contribution in its trust deed based on actuarial advice, as is common practice among superannuation providers. LG Super, being bound by the local government principles, should make this decision in consultation with the relevant local government employers.

Amendment 11 inserts a condition of membership of the grants commission in clause 231 to correct a drafting omission which left out the requirement for one member to have knowledge of an indigenous regional council and another indigenous local government area. This retains the membership conditions under the LGA 1993.

Amendment 12 inserts a provision into the Bill to ensure that local government electoral provisions under the LGA 1993 will continue to provide coverage until new local government electoral legislation is passed.

Amendments 13 and 14 amend sections 130 and 131 of the AMCD Act to ensure that, if a dog that is not a regulated dog has seriously attacked a person or other animal, the relevant local government can hold the dog until a declaration for the dog is finalised and the dog becomes a declared dangerous dog. Previously, dangerous dogs have been dealt with under local laws which, in many local government areas, permitted a seized dog to be held until it was declared to be a dangerous dog or destroyed. Under the AMCD Act, a non-regulated dog that seriously attacks a person or other animal can be seized, but must be returned to its owner. The process of declaring a dog to be a dangerous dog takes a minimum of 14 days. There is concern that some owners of dogs at risk of becoming subject to a destruction order following declaration might relocate their animals in order to avoid destruction. This would be contrary to the purposes of the AMCD Act, one of which is to provide for the effective management of dogs that pose a risk to community safety.

Amendment 15 amends section 318 of the Bill to insert new sections 195 and 196 in the AMCD Act. New section 196 (Defence for offence against s 194 or s 195) is amended to replace 'complainant' and 'complainant's' with 'defendant' and 'defendant's'. This amendment is necessary to ensure a defendant can rely on the defence against prosecution as set out in section 196.

Amendment 16 inserts new sections 217A and 217B in the AMCD Act to make it clear that a reference in the AMCD Act to the address of the place stated in the registration notice for a cat or dog is a reference to where the cat or dog is usually kept. This will apply to a local government area in

which the regulation provisions of the AMCD Act have not commenced until those provisions commence and the reference applies to the registration notice itself.

Amendment 17 amends clause 327 of the Bill, which amends schedule 2 of the AMCD Act, to include a definition of 'authorised implanter'. This provides a head of power for the chief executive to approve courses for authorised implanters set out in the regulation.

Amendments 18 and 19 correct a drafting error by including a definition of "cost-recovery fee" and updating a reference in the consequential amendments to the *City of Brisbane Act 1924* to a "regulatory fee" with "cost-recovery fee". This is in line with the terminology used in the rest of the Bill.

Amendment 20 removes a consequential amendment in schedule 1 of the Bill to the *Fluoridation of Public Water Supplies Act 1963* as it has since been repealed.

Amendment 21 replicates the amendments to the Bill for superannuation in amendments 6 and 7 for the LGA 1993. This will be commenced on assent under replaced clause 2. This amendment also amends the LGA 1993 as a consequence of amendment 12, to provide for continued coverage by the electoral provisions of the LGA 1993.

Amendment 22 updates the consequential amendment to the *Mineral Resources Act 1989* as a consequence of amendments 5 to 7.

Amendment 23 inserts a new schedule 1A Local government elections into the Bill as outlined in amendment 12, to continue electoral and related provisions from the LGA 1993. The schedule will expire on 31 December 2010.

Amendment 24 amends Schedule 3 (Dictionary) to include a definition of charges as a consequence of amendments 5 to 7.

Amendment 25 updates the definition in Schedule 3 (Dictionary) for the 'Local Government Electoral Act' as a consequence of amendment 9.

Amendment 26 inserts a new definition in schedule 3 (Dictionary) of 'Lobbyists Code' as a consequence of amendments 2 and 3.