

City of Brisbane Bill 2010

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

Title of the Bill

City of Brisbane Bill 2010

Objectives of the Amendments

The objectives of the amendments are to:

- include amendments resulting from further consultation with the Brisbane City Council (BCC), the Local Government Association of Queensland (LGAQ) and Councils; and
- include amendments identified as necessary during the drafting of the regulations under the *Local Government Act 2009* (LGA 2009) and the *City of Brisbane Bill 2010*.

Reasons for the Objectives

A number of changes to the Bill were identified as necessary by the Department and stakeholders for the operation of the LGA 2009 and the *City of Brisbane Bill 2010*.

LGAQ identified several amendments required to the LGA 2009 to clarify the original policy intent and ensure consistency and clarity.

BCC identified some areas of the Bill that needed additional clarification.

A number of amendments were found to be necessary during the preparation of the regulations under the LGA 2009 and the *City of Brisbane Bill 2010*.

Consistency with Fundamental Legislative Principles

The amendments are consistent with the fundamental legislative principles.

Consultation

The BCC were consulted and support the amendments in relation to the Council. The LGAQ were consulted about amendments to the LGA 2009.

Notes on Provisions

Amendment 1 amends clause 30 to provide that the local law making process must be consistent with new clauses 30A and 30B.

Amendment 2 amends clause 30 by inserting new clause 30A to make it clear that the requirement of the council to give the Minister a copy of a proposed local law before making it does not apply to model local laws and subordinate local laws.

Amendment 3 amends clause 30 by inserting new clause 30B to clarify council's requirement to publish notice of the making of a new local law.

Amendment 4 amends clause 30 to provide that council make a copy of a local law available to the public for viewing and purchase as soon as practicable after notice of the making of the local law is published in the gazette. This requirement now forms part of new clause 30B.

Amendment 5 supports amendments 1 to 4 by omitting a redundant note.

Amendment 6 inserts new chapter 3, part 3, division 4 to provide for other matters about corporate entities.

Amendment 7 inserts new clause 61A to provide that State taxes are not payable for something done for the corporatisation of a significant business of a local government and that a corporate entity is not liable to pay more State taxes than a local government would be liable for the same thing.

Amendment 8 amends clause 62 to remove references to 'ferry' and 'punt'. Similar to the approach taken in relation to malls, council will be provided with the exclusive right to operate ferry services and provision will be made for other matters related to ferries to be prescribed under a regulation. Punts were removed because they are now considered obsolete in this context.

Amendment 9 inserts a new clause 87A to provide the council with the exclusive right to provide ferry services across a watercourse in Brisbane.

The clause also provides that the council may lease the rights to provide a ferry service and that a regulation may provide for other matters related to ferry services.

Amendment 10 amends clause 88 to provide that a road, or any works relating to a road, constructed by developers and donated to the council is included in the scope of the clause. An example of a road constructed for the council has been included.

Amendment 11 supports amendment 10 by updating a reference to works constructed 'by the council' to works constructed 'by or for the council'.

Amendment 12 amends clause 91 to provide that land may be exempted from rating under a regulation.

Amendment 13 amends clause 99 to bring the terminology used into line with that used in the LGA 2009.

Amendment 14 amends clause 123 to remove the requirement for council to give each council worker an identity card. The provision of identity cards to council workers is set out in new clause 123A.

Amendment 15 inserts new clause 123A to bring the requirements about identity cards for council workers into line with the requirements for authorised persons. New clause 123A provides that the council must give a council worker an identity card and that the council worker must return that identity card within 21 days after they stop being a council worker.

Amendment 16 amends clause 215 to provide that a local government may serve a document under the clause by publishing a notice containing a summary of the document in a newspaper and the gazette, or by publishing a notice containing a full copy of the document on its website.

The amendment has been made to save local governments the costs involved in publishing in hard copy a notice that includes a full copy of the document, particularly in cases where the document is very long.

Amendment 17 inserts new clause 241A to provide for the free conduct of searches of registers or documents about land in the land registry by the CEO of the council or a representative of the council authorised by the CEO. The repealed *Local Government Act 1993* (LGA 1993), section 1126 previously provided for such searches.

Amendment 18 amends clause 246 to clarify what a regulation may be made about, particularly in relation to a register of interests.

Amendment 19 amends clause 248 to extend the scope of the part to apply to the LGA 1993 and to the *Local Government (Chinatown and The Valley Malls) Act 1984* and the *Local Government (Queen Street Mall) Act 1981*.

Amendment 20 amends clause 250 to extend the application of the section to a local law made by the council under the LGA 1993.

Amendment 21 amends clause 250 to provide that if, before the commencement of this clause, the council had started the process to adopt a model local law or make another local law under the LGA 1993 the council may continue the process to adopt or make the local law.

Amendment 22 amends clause 251 to extend the application of the section to a decision under the LGA 1993 and in force immediately before the commencement of this clause. Such a decision continues in force under this Bill.

Amendment 23 amends clause 267, which amends section 13 of the LGA 2009, to remove divisional references.

Amendment 24 replaces clause 272, which amends section 29 of the LGA 2009. The amendment replaces section 29 with new sections 29, 29A and 29B.

Replacement section 29 provides that a local government can decide its own process for making local laws as long as that process is consistent with new sections 29A and 29B.

New section 29A provides that when making a local law a local government must consult with relevant government entities about the overall State interest. The local government must then give a copy of the proposed local law, other than model local laws and subordinate local laws, to the Minister with a drafting certificate and any other information required by the Minister or under a regulation. The Minister will then advise the local government that it may proceed with a local law, subject to satisfying any conditions imposed by the Minister to ensure the overall State interest is satisfactorily dealt with.

New section 29B states that a local government must publish notice of the making of a new local law and sets out what information must be included in that notice. After the notice is published the local government must make a copy of the local law available to the public and provide a copy of the local law and the notice to the Minister.

Amendment 25 amends clause 280 to insert new division 4 into chapter 3, part 2 of the LGA 2009 to provide for other matters about corporate entities.

Amendment 26 amends clause 280 to insert new section 58B into the LGA 2009. New section 58B provides that State taxes are not payable for something done for the corporatisation of a significant business activity of a local government and that a corporate entity is not liable to pay more State taxes than a local government would be liable for the same thing.

Amendment 27 inserts a new clause 280A into the Bill. Clause 280A amends section 59 of the LGA 2009 to omit references to ‘ferry’ and ‘punt’. Similar to the approach taken in relation to malls, local governments will be provided with the exclusive right to operate ferry services in their local government area and provision will be made for other matters related to ferries to be prescribed under a regulation. Punts were removed because they are now considered obsolete in this context.

Amendment 28 supports amendment 30 by extending the scope of the new LGA 2009 chapter 3, part 3, division 3 heading to include ‘Other matters’.

Amendment 29 supports amendment 30 by amending clause 281 to allow for the insertion of new section 80B into the LGA 2009.

Amendment 30 amends clause 281, which inserts new chapter 3, part 3, division 3 into the LGA 2009, by inserting new section 80B to provide a local government with the exclusive right to provide ferry services across a watercourse in its local government area. The clause also provides that the local government may lease the rights to provide a ferry service and that a regulation may provide for other matters related to ferry services.

Amendment 31 inserts new clause 281A, which amends section 93 of the LGA 2009. As drafted, section 93 inadvertently narrowed a local government’s power to exempt particular land from rating. New clause 281A reinstates the original policy intent by widening the scope of land exempt from rating, including by resolution of a local government or under a regulation.

Amendment 32 inserts new clause 284A, which amends section 104 of the LGA 2009, to update the terminology used in relation to financial management, planning and accountability documents.

Amendment 33 amends clause 293, which amends section 138 of the LGA 2009, to remove the requirement for a local government to give each local

government worker an identity card. The provision of identity cards to local government workers is set out in new section 138A.

Amendment 34 inserts new clause 293A, which inserts new section 138A into the LGA 2009, to bring the requirements about identity cards for local government workers into line with the requirements for authorised persons. New section 138A provides that a local government must give a local government worker an identity card and that the local government worker must return that identity card within 21 days after they stop being a local government worker.

Amendment 35 amends clause 295, which inserts new section 150A into the LGA 2009, to remove from the examples a reference to omitted section 170B.

Amendment 36 inserts a new clause 295A into the Bill. Clause 295A amends section 152 of the LGA 2009 to provide that a councillor of a local government must live in the local government area they represent.

Amendment 37 amends the heading to clause 298 to remove a reference to proposed section 170B of the LGA 2009 which is omitted by amendment 41.

Amendment 38 amends clause 298, which inserts new sections 170A and 170B into the LGA 2009, to amend the section heading of new section 170A to better reflect the content of the section after amendment.

Amendment 39 amends clause 298, which inserts new sections 170A and 170B into the LGA 2009 to change references to 'council' to references to 'local government'.

Amendment 40 amends clause 298, which inserts new sections 170A and 170B into the LGA 2009. New section 170A is amended to remove divisional references and to include exceptions to what information relating to a local government area a councillor may request. Exceptions include information that is a record of the regional conduct review panel or tribunal, information, the disclosure of which would be contrary to a court or tribunal order, or information privileged from production in a legal proceeding

Amendment 41 amends clause 298, which inserts new sections 170A and 170B into the LGA 2009, to remove proposed new section 170B. Section 170B has been removed as councillors may access information under new section 107A.

Amendment 42 amends clause 299, which amends section 171 of the LGA 2009, to prevent the release of confidential information by a councillor while that councillor is in office and to provide an alternative serious penalty option.

Amendment 43 amends clause 302, which amends section 176 of the LGA 2009, to provide that misconduct by a councillor includes a breach against section 171(3).

Amendment 44 amends clause 303, which amends section 177 of the LGA 2009, to support amendment 45 by renumbering the existing section as subsection (1).

Amendment 45 amends clause 303, which amends section 177 of the LGA 2009, to provide that the department's chief executive must refer to the tribunal a complaint he/she receives about misconduct that is a breach of section 171(3).

Amendment 46 amends clause 318, which amends section 239 of the LGA 2009, to provide that a local government may serve a document under the clause by publishing a notice containing a summary of the document in a newspaper and the gazette, or by publishing a notice containing a full copy of the document on its website.

The amendment has been made to save local governments the costs involved in publishing in hard copy a notice that includes a full copy of the document, particularly in cases where the document is very long.

Amendment 47 inserts new clauses 322A and 322B into the Bill. Clause 322A amends section 265 of the LGA 2009 to provide that a road, or works relating to a road, constructed by developers and donated to a local government is included in the scope of the clause. An example of a road constructed for a local government has been included.

Clause 322B inserts new section 265A into the LGA 2009 to provide for the free conduct of searches of registers or documents about land in the land registry by the CEO of a local government or a representative of the local government authorised by the CEO. The LGA 1993, section 1126 previously provided for such searches.

Amendment 48 amends clause 323, which amends section 270 of the LGA 2009, to clarify what a regulation may be made about, particularly in relation to a register of interests.

Amendment 49 amends clause 323, which amends section 270 of the LGA 2009, to clarify that a regulation may be made about meetings of a local government or its committees.

Amendment 50 inserts a new clause 323A into the Bill. Clause 323A amends the LGA 2009 to extend the application of the section to a local law made by a local government under the LGA 1993. If, before the commencement of this clause, a local government had started the process to adopt a model local law or make another local law the local government may continue the process to adopt or make the local law.

Amendment 51 inserts new clause 326A which inserts new section 283A into the LGA 2009. New section 283A provides for a reviewable local government matter or limited reviewable local government matter received or considered by a Local Government Electoral and Boundaries Review Commission and for which a recommendation has not been made up until 1 July 2010, to be considered by the new Local Government Change Commission under the LGA 2009.

The section also provides for the implementation as recommendations under the LGA 2009 of determinations made by a Local Government Electoral and Boundaries Review Commission under the LGA 1993.

Amendment 52 amends clause 327 to renumber existing section 288 of the LGA 2009 to section 291 to allow for the insertion of new sections 288 to 290.

Amendment 53 amends the heading to clause 328 to allow for the insertion of new sections 288 to 290 by amendment 54.

Amendment 54 amends clause 328, which inserts new section 288 into the LGA 2009, to also insert new sections 289 and 290.

New section 289 provides that chapter 16, part 6 of the LGA 1993 continues to apply to a disciplinary appeal started under that Act but not decided before the commencement of the LGA 2009.

New section 290 provides for local government employees transferred to new water entities and distribution-retailers. Under the SEQ Urban Water Arrangements Reform: Workforce Framework 2007 and the SEQ Distribution and Retail Water Reform Workforce Framework 2009, employees transferred from local governments to new water entities and distribution-retailers are to receive no loss in entitlements during the transfer.

In order for the superannuation of these employees to remain unchanged, the employees need to be deemed to continue to be ‘permanent employees’ under the LGA 2009. This will maintain their entitlements to mandated contributions and ensure that Defined Benefit Scheme members can continue their membership without any loss of entitlements.

Employees are transferred to water entities under *the South East Queensland Water (Restructuring) Act 2007* by transfer notice.

Employees are transferred to distribution-retailers under the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* by transfer scheme.

Amendment 55 amends clause 329, which amends schedule 1 of the LGA 2009, to correct minor errors and update references.

Amendment 56 amends clause 329, which amends schedule 1 of the LGA 2009, to update a reference.

Amendment 57 amends clause 329, which amends schedule 1 of the LGA 2009, to update a reference.

Amendment 58 amends clause 331, which amends schedule 4 of the LGA 2009, to update references.

Amendment 59 amends clause 331, which amends schedule 4 of the LGA 2009, to correct a cross reference.

Amendment 60 amends clause 331, which amends schedule 4 of the LGA 2009, to correct a minor error.

Amendment 61 amends clause 331, which amends schedule 4 of the LGA 2009, to correct minor errors and update references.

Amendment 62 amends the amendments to the *Fire and Rescue Service Act 1990* in schedule 1, to include a definition of relevant provision in relation to the *Local Government Act 2009* or *City of Brisbane Act 2010*.

Amendment 63 amends the amendments to the *Fire and Rescue Service Act 1990* in schedule 1, to include that a relevant provision under that Act includes charges made and levied under the *Local Government Act 2009* or *City of Brisbane Act 2010*.