Local Government and Other Legislation Amendment Bill 2012

Explanatory Notes for amendments to be moved during consideration in detail

Short title

The short title of the Bill is the *Local Government and Other Legislation Amendment Bill 2012.*

Policy objectives

The objectives of the amendments are:

- to commence the local government re-corporatisation provisions by Proclamation;
- to clarify that copies of local laws are available from the department's website;
- to clarify the remuneration reporting requirements of council chief executive officers;
- to omit incorrect references to the *Financial Accountability Act 2009;*
- to omit legislative duplication regarding financial management requirements and the residency/heritage qualifications for Torres Strait Island Regional Council councillors;
- to remove the provision that enables an 'ordinary business matter' to be prescribed by regulation;
- to link council employee responsibilities with councillor requests for information under the acceptable request guidelines;
- to enable councillors to seek information from council employees, irrespective of whether the information relates to their own ward or division.

Achievement of policy objectives

The objectives are achieved by way of amendments to the Bill as described below.

Alternative ways of achieving policy objectives

There is no alternative way to achieve the policy objective.

Estimated cost for government implementation

There are no anticipated costs for government.

Consistency with fundamental legislative principles

The Transport, Housing and Local Government Committee (the Committee) Report 11 on the Bill, considered that clauses 72(9) and 176(8), which amend the definition of 'ordinary business matter' in the dictionary schedule of the *City of Brisbane Act 2010* (COBA) and the *Local*

Government Act 2009 (LGA), respectively, are inappropriate delegations of legislative power and a departure from fundamental legislative principles under the *Legislative Standards Act 1992*. The Committee believes that where sanctions could apply for breaching a section of an Act, then the terms used in that section should be defined in the Act rather than having part of the definition defined in the regulation.

Recommendation 19 of the Committee's report reads—

"The Committee recommends that the term 'ordinary business matter' should be defined in the City of Brisbane Act 2010 and the Local Government Act 2009, and that the definition should not be able to be amended in any way by regulation"

The Government supports the Committee's recommendation and is satisfied that instances in which an amendment to the definition of the term 'ordinary business matter' would be limited and in those circumstances, an amendment to the LGA or the COBA would be appropriate.

Amendment 5 and ***amendment 13*** amend clauses 72(9) and 176(8), respectively, to remove from the Bill the provision for a regulation to prescribe another matter to be an 'ordinary business matter'.

Consultation

The amendments principally stem from the supported recommendations of the Committee on the Bill. Also following the Bill's introduction and the submissions received by the Committee, further consultation was undertaken primarily with the Local Government Association of Queensland (LGAQ).

Notes on provisions

Amendment 1 amends clause 2 (Commencement) of the Bill to give effect to recommendation 11 of the Committee's report. Recommendation 11 of the committee's report reads—

"The Committee recommends the Bill be amended to ensure that the commencement of the clauses relating to the re-corporatisation of local governments be delayed until the Department of Justice and Attorney-General and the Local Government Association of Queensland have the opportunity to resolve the outstanding matter of the industrial relations jurisdiction"

The purpose of amendment 1 is to enable clauses 77, 150 and 151, that is, the provisions of the Bill dealing with the re-corporatisation of local governments, to commence by Proclamation.

The explanatory notes to the Bill at clause 77 provide that under its *Empowering Queensland Local Government Election Policy*, the government undertook to restore the body corporate status of local governments which had been removed by the *Local Government and Industrial Relations Amendment Act 2008*.

Clause 77 replaces s. 11 to restore body corporate status to local governments. Whether or not local government employees consequently fall under the ambit of the Commonwealth *Fair Work Act 2009* (FWA) is based upon the trading activities of the local government and whether or not the local government is a 'constitutional corporation' for the purposes of FWA.

To enable local governments, who are bodies corporate, to fall under the State Industrial relations system, an amendment to the *Industrial Relations Regulation 2011* (Queensland) is required to declare those local governments not to be National System Employers for the purpose of s. 14(2) of the FWA.

The declaration is effective from the date specified in the endorsement instrument which must be Tabled by the Commonwealth Minister. As such, it is important that the provisions in the Bill in relation to the re-corporatisation of local governments, do not come into force until the declaration is effective.

City of Brisbane Act 2010 amendments

Amendment 2 amends clause 11 (Amendment of s. 32 (Notice of new local law)) to correct a minor inconsistency in the Bill. Section 32 provides that the notice on the council's website about a new local law must include that a copy of the local law may be inspected at the department's state office. However, clause 12 amends s. 34 to provide that the department must keep a database of all councils' local laws and ensure the database may be viewed by the public on the department's website and not the department's state office.

Amendment 2 amends clause 11 to align s. 32 with s. 34 to provide that a new local law notice must state that a copy of the local law is available from the department's website instead of being available for inspection at the department's state office.

Amendment 3 amends clause 30 (Amendment of s. 103 (Systems of financial management)) to remove the reference to the *Financial Accountability Act 2009* as the Act does not apply to Council. The Queensland Audit Office submitted to the Committee that s. 105(5) of the LGA be amended to remove the reference to the *Financial Accountability Act 2009* as it does not apply to local governments. Amendment 3 makes the complementary amendment to clause 30 (amendment of s. 103 COBA).

Amendment 4 amends clause 60 (Replacement of s. 198 (Annual report must detail remuneration)) to further clarify in s. 198 that Council's annual report, must state in a band of remuneration, the chief executive officer's total remuneration package, but does not require the exact salary of the chief executive officer or other senior executive employees to be stated in the annual report.

The Bill requires that the annual report must state the total remuneration package that is payable (in the year to which the annual report relates) to the chief executive officer together with all senior executive employees and the number of senior executive employees who are being paid each a band of remuneration.

Sunshine Coast Regional Council submitted to the Committee that s. 201(1) of the LGA be amended in subparagraph (b) to include the chief executive officer as well as the number of senior executive employees who are being paid each band of remuneration. The Council submitted that it is not clear how the chief executive officer's remuneration is to be stated in the annual report, that is whether it is to be stated in a band of $100 000 increment or whether an exact sum. Amendment 4 makes this amendment to clause 60 (Replacement of s. 198).

Amendment 5 amends clause 72(9)(Amendment of schedule (Dictionary)) to remove the provision for a regulation to prescribe another matter to be an 'ordinary business matter'. Without amendment 5, the Bill at clause 72(9) amends the definition of 'ordinary business matter' in the dictionary schedule to provide that in addition to the those 'ordinary business matters' defined, another matter may be prescribed by regulation.

The term 'ordinary business matter' is used in both the COBA and the LGA to deal with a councillor's material personal interest and a councillor's conflict of interest. Breaches of these sections attract penalties.

Amendment 5 gives effect to recommendation 19 of the Committee's report. Recommendation 19 of the committee's report reads—

"The Committee recommends that the term 'ordinary business matter' should be defined in the City of Brisbane Act 2010 and the Local Government Act 2009, and that the definition should not be able to be amended in any way by regulation"

The Committee considers that clause 72(9) is an inappropriate delegation of legislative power and believes that where sanctions could apply for breaching a section of an Act, then the terms used in that section should be defined in the Act rather than having part of the definition defined in the regulation.

The Government supports the Committee's recommendation and is satisfied that instances in which an amendment to the definition of the term 'ordinary business matter' would be limited and in those circumstances, an amendment to the LGA or the COBA would be appropriate.

Local Government Act 2009 amendments

Amendment 6 amends clause 79 (Amendment of s. 13 (Responsibilities of local government employees)) to cross reference s. 13(3)(g) with s. 170A to clarify that councillor requests for advice made to local government employees must be made in accordance with s. 170A. Also, the word 'help' in s. 13(3)(g) has been replaced with the word 'assist' for consistency with new s. 170A(1).

Amendment 6 gives effect to recommendation 6 of the Committee's report. Recommendation 6 of the committee's report reads—

"The Committee recommends that the clauses in the Bill which relate to the Acceptable Request Guidelines (clause 125) and a Council CEO's additional responsibility to fulfil councillor requests for information (clause 79) (both in relation to the Local Government Act 2009), be linked in order to clarify that councillor requests are considered "complied with" when the Acceptable Request Guidelines are followed"

The amendment will link the provisions about a local government employee's responsibility to comply with a councillor's request for information, with the guidelines that a councillor must comply with when making a request.

Amendment 7 amends clause 83 (Amendment of s. 29B (Notice of new local law)) to correct a minor inconsistency in the Bill. Section 29B provides that the notice on a local government's website about a new local law must include that a copy of the local law may be inspected at the

department's state office. However, clause 84 amends s. 31 to provide that the department must keep a database of all councils' local laws and ensure the database may be viewed by the public on the department's website and not the department's state office.

Amendment 7 will align s. 29B with s. 31 to provide that a new local law notice must state that a copy of the local law is available from the department's website instead of being available for inspection at the department's state office.

Amendment 8 inserts new clause 106A to omit s. 103 (Financial management systems) to correct a minor error. Section 103 provides that each council must establish a system of financial management that complies with the requirements prescribed under a regulation and the local government must regularly review the performance of its systems. These requirements are provided for under new s. 104 and amended s. 270 (Regulation making power), and as a consequence s. 103 is no longer required.

Amendment 9 inserts new clause 107A to amend s. 105 (Auditing, including internal auditing), to remove the reference to the *Financial Accountability Act 2009* as the Act does not apply to local governments. The amendment is a result of the Queensland Audit Office's submission to the Committee.

Amendment 10 inserts new clause 121A to omit s. 156A (Disqualification about residence) to remove legislative duplication as clause 120 of the Bill amends s. 152 to remove prescribed qualifications for a councillor or mayor of the Torres Strait Island Regional Council (TSIRC).

Without amendment 10, s. 156A also provides that a person can not be a councillor of the TSIRC if the person does not live in the council's local government area.

Amendment 10 gives effect to recommendation 14 of the Committee's report. Recommendation 14 of the committee's report reads—

"For consistency with the amendments to section 152 of the Local Government Act 2009 (which will remove the prescribed residency and heritage qualifications for a person to be eligible to be mayor or a councillor of the Torres Strait Island Regional Council), the Committee recommends that section 156A (Disqualification about residence) also be omitted."

Amendment 11 amends clause 125 (Replacement of s. 170A (Requests by councillors for advice or information)) to delete s. 170A(4)(b) of the LGA. Amendment 11 will permit councillors to seek access to information from council officers, irrespective of whether the information relates to their own ward or division.

Amendment 11 gives effect to recommendation 5 of the Committee's report. Recommendation 5 of the committee's report reads—

"The Committee recommends that the clauses in the Bill which propose to amend the Local Government Act 2009 by limiting a councillors' ability to request information for divisions other than their own, be omitted."

It remains the case that proposed s. 170A of the LGA permits a councillor to ask a local government employee for assistance or information provided it is to permit the councillor to carry

out his or her responsibilities under the Act. A request of a councillor must comply with acceptable request guidelines developed by the council.
Acceptable request guidelines are guidelines about the way in which a councillor is to ask a local government employee for advice to assist the councillor carry out their responsibilities under the Act and the reasonable limits on requests that a councillor may make. Local governments have a broad discretion and a high level of autonomy in determining the contents of their guidelines.

Proposed s. 170A enacts the government's policy of ensuring that mayors and councillors are clearly in charge of councils.

Amendment 12 amends clause 142 (Replacement of s. 201 (Annual report must detail remuneration)) to further clarify that a council's annual report, must state in a band of remuneration, the chief executive officer's total remuneration package, but does not require the exact salary of the chief executive officer or other senior executive employees to be stated in the annual report.

The Bill requires that the annual report must state the total remuneration package that is payable (in the year to which the annual report relates) to the chief executive officer together with all senior executive employees and the number of senior executive employees who are being paid each a band of remuneration.

Sunshine Coast Regional Council submitted to the Committee that s. 201(1) of the LGA be amended in subparagraph (b) to include the chief executive officer as well as the number of senior executive employees who are being paid each band of remuneration. The Council submitted that it is not clear how the chief executive officer's remuneration is to be stated in the annual report, that is whether it is to be stated in a band of $100 000 increment or whether an exact sum.

Amendment 13 amends clause 176(8) (Amendment of schedule 4 (Dictionary)) to remove the provision for a regulation to prescribe another matter to be an 'ordinary business matter'. Without amendment 13, the Bill, at clause 176(8) amends the definition of 'ordinary business matter' in the dictionary schedule to provide that in addition to those 'ordinary business matters' defined, another matter may be prescribed by regulation.

The term 'ordinary business matter' is used in both the COBA and the LGA to deal with a councillor's material personal interest and a councillor's conflict of interest. Breaches of these sections attract penalties.

Amendment 13 gives effect to recommendation 19 of the Committee's report. Recommendation 19 of the committee's report reads—

"The Committee recommends that the term 'ordinary business matter' should be defined in the City of Brisbane Act 2010 and the Local Government Act 2009, and that the definition should not be able to be amended in any way by regulation"

The Committee considers that clause 176(8) is an inappropriate delegation of legislative power and believes that where sanctions could apply for breaching a section of an Act, then the terms used in that section should be defined in the Act rather than having part of the definition defined in the regulation.

The Government supports the Committee's recommendation and is satisfied that instances in which an amendment to the definition of the term 'ordinary business matter' would be limited and in those circumstances, an amendment to the LGA or the COBA would be appropriate.