



Queensland

Local Government Reform Implementation Regulation 2008

Explanatory Notes for SL 2008 No. 23

made under the

Local Government Act 1993

General outline

Short title

Local Government Reform Implementation Regulation 2008.

Authorising law

Sections 157 and 159YQ of the *Local Government Act 1993* (the Act).

Policy objective of the legislation

Following the State Government's adoption of recommendations of the Local Government Reform Commission, the *Local Government Reform Implementation Act 2007* and the *Local Government and Other Legislation (Indigenous Regional Councils) Amendment Act 2007* were enacted to amend the *Local Government Act 1993* (the Act) and other Acts to put in place arrangements for structural reform of Queensland local governments.

The objective of chapter 3, part 1B of the Act (as amended) is to provide for the transition of existing local governments to new arrangements for affected local governments on changeover day, 15 March 2008. The Act provides for the making of implementation regulations to support the transition of existing local governments to new local government

arrangements and to give effect to other recommendations of the Local Government Reform Commission.

The *Local Government Reform Implementation Regulation 2008* will support the transition of regulatory and administrative arrangements and in particular include provisions to—

- establish new local governments as the successors of merging local governments;
- abolish specific joint local governments and change the composition provisions for joint local governments that continue;
- transition staff, assets, liabilities, activities, functions and operations of merging and joint local governments to new councils;
- amend the *Local Government Regulation 2005* to establish criteria for regions and transition staff, assets, liabilities, activities, functions and operations of the Townsville Thuringowa Water Supply Joint Board to the new Townsville City Council; and
- transition instruments and activities under other legislation including pest management and disaster management plans.

Consistency with authorising law

The regulation is consistent with chapter 3, part 1B, of the Act which provides for the structural reform of local governments.

Fundamental legislative principles

The regulation is consistent with the fundamental legislative principles.

Consultation

On 11 October 2007, the Local Government Reform Implementation Regulation consultation paper was distributed to all existing local governments and joint local governments, Local Transition Committees, State agencies, and the State Transition Committee. The consultation paper invited comment on the proposed legislative approach and was also published online on the Department of Local Government, Sport and Recreation's Stronger Councils website.

On 19 December 2007, a draft of the regulation, incorporating suggestions received, was sent to stakeholders for further comment. The draft regulation was also available on the Stronger Councils' website. Suggestions and comments from stakeholders have been incorporated in the regulation where appropriate.

Notes on provisions – parts 1 and 2

Part 1 Preliminary

Section 1 Short title

The short title of the regulation is the *Local Government Reform Implementation Regulation 2008*.

This section notes the reform provisions of the Act (chapter 3, part 1B) expire at the end of 31 December 2011 or at an earlier time fixed by regulation, and that the regulation will expire when the reform provisions expire – i.e. 31 December 2011.

The *Acts Interpretation Act 1954* provides that the validating effect of a provision of an Act, which includes a regulation, does not end when the Act expires. In this context, for example, a planning scheme transitioned to a new local government by this regulation does not expire when the regulation expires in 2011.

Section 2 Main purpose of regulation

The main purpose of the regulation is to support the coming into effect of reform matters under chapter 3, parts 1B and 1C of the Act.

It is intended that the regulation transition all of the regulatory and administrative arrangements of existing local governments to new local governments on changeover day, and deal with transitional matters for joint local governments.

Pursuant to section 159YE of the Act, changeover day has been notified as 15 March 2008 for all new local governments (Queensland Government Gazette, 23 November 2007. Vol 346, No 80). For this reason, the regulation defines changeover day as being 15 March 2008.

Section 3 Application of definitions for ch 3, pts 1B and 1C of the Act

Words defined in the Act for reform matters have the same meaning in the regulation.

Section 4 Definitions

The dictionary in schedule 2 of the regulation defines the following words used in the regulation—

- administrative action;
- authorisation;
- changeover day;
- Community Government Finance Standard;
- continuing local law;
- existing planning scheme;
- industrial instrument;
- infrastructure;
- joint local government; and
- legal proceeding.

Section 5 References to changeover day

This section clarifies that changeover day commences at the beginning of the day.

Part 2 **Reform matters for particular new local governments**

Division 1 **Preliminary**

Section 6 **Application of pt 2**

This part of the regulation applies to all merging local governments other than the following councils—

- Beaudesert Shire;
- Ipswich City;
- Taroom Shire; and
- Tiaro Shire.

Provisions to transition regulatory and administrative arrangements for these councils to new and adjusted local governments are included in the *Local Government Reform Implementation (Transferring Areas) Amendment Regulation (No. ..) 2008* which amends the *Local Government Reform Implementation (Transferring Areas) Regulation 2007*. These councils are treated separately because they include transferring areas. That is, a part or parts of their existing local government area will be included in another local government area on changeover day.

Merging local government is defined in section 159YD of the Act to mean an existing local government whose local government area is a merging local government area.

Merging local government area means an existing local government area all or part of which is abolished to become part of a new local government area.

It should be noted that other parts of the regulation may apply to the merging local governments listed above. For this reason, the *Implementation (Transferring Areas) Amendment Regulation (No. 1) 2008*, should be read together with this regulation.

Section 7 References to merging and new local governments and local government areas

This section explains that, references in part 2 of the regulation to a merging local government relate to an existing local government whose local government area is abolished on 15 March 2008 to become part of a new local government area.

Division 2 Role of new local governments

Section 8 New local government successor of merging local government

A new local government is, in all respects, the successor of each of its merging local governments. This overarching statement informs and is not limited by the other provisions of part 2 of the regulation.

For example, on 15 March 2008, if three merging local government areas are abolished to become part of a new government area; it is intended that the new local government is the successor to the three merging local governments. In particular, the new local government will assume all of the powers and functions of the three merging local governments. Similarly, the assets and liabilities of the three merging local governments will become those of the new local government.

It is intended that, except where otherwise provided in the regulation, all of the regulatory and administrative arrangements of merging local governments be transitioned to the relevant new local government by operation of this section and other relevant provisions of the regulation.

Section 9 New local government to take over particular functions and powers

If a merging local government started to perform a function or exercise a power under an Act but did not finish performing the function or exercising the power before 15 March 2008, the relevant new local government may continue to perform the function or exercise the power.

This is a general provision aimed at allowing new local governments to resolve a range of matters that may be outstanding after 15 March 2008 without the need to re-start processes.

For example, a new local government may make a decision about the granting of a licence even though the licence application was originally received and first considered by a merging local government before 15 March 2008.

The *Acts Interpretation Act 1954* provides that function includes duty. It is intended that this section operate to require new local governments to continue to meet the existing obligations of merging local governments.

To remove doubt, this section applies to the confirmation of the minutes of the final meeting of a merging local government (section 461(3) of the Act). The relevant new local government may confirm the minutes of the merging local government at its first meeting, if it is satisfied that the minutes are a true and accurate record.

Section 10 New local government subject to particular obligations etc.

If a merging local government was subject to a condition, duty, obligation, order or requirement, this provision ensures that it will apply to the relevant new local government from changeover day.

Division 3 Local laws and other instruments

Section 11 Definition for div 3

In this division, a *continuing local law* means a local law of a merging local government that is in force immediately before 15 March 2008.

Section 12 Local laws for new local government area

From 15 March 2008, the local and subordinate local laws of a merging local government (*continuing local laws*) continue to apply to what was formerly the merging local government area until the earlier of the following—

- the continuing local law is repealed by the new local government; or
- the new local government applies the continuing local law to the whole of the new local government area by local law; or

- 31 December 2010.

A new local government can amend a continuing local law using the process in chapter 12, part 2, division 3 of the Act if it is necessary to do so before a local law on the issue can be made for the whole new local government area. A continuing local law must be read with the changes necessary to make it consistent with the operation of the regulation.

Section 1282 of the Act provides that, from 15 March 2008, the by-laws of a relevant Island council continue in force and are taken to be a local law of an indigenous regional council.

Section 13 Limited application of continuing local laws

This section clarifies that a local law that continues after 15 March 2008 will only apply to the area to which it applied immediately before changeover day.

The section provides for a new local government to apply a continuing local law to the whole of the new local government area with or without changes.

If a local government applies a continuing local law to the whole of the new local government area without change—

- subordinate local laws made under that local law are automatically applied; and
- it must use the local law making process in chapter 12, part 2, division 3 of the Act but is not required to comply with the requirements of section 867 and 872 of the Act.

Similarly, if the only changes made to a continuing local law which is to be applied to the whole of a new local government are to—

- provide for the repeal of other continuing local laws that deal with the same matter;
- include appropriate transitional arrangements for existing instruments made under the local laws that are to be repealed; or
- repeal redundant or anti-competitive provisions;

the local government is not required to comply with the requirements of section 867 and 872 of the Act.

For example, if three merging local governments have similar local laws dealing with animal management, each setting different standards on a number of issues including how many animals may be kept, the minimum standards for keeping animals and whether certain animals must be registered, the new local government may—

- choose one of the continuing local laws and apply it across the whole new local government area (i.e. the standards that applied in one of the merging local governments will now apply to the entire new local government area); or
- retain the continuing local laws applying to the former local government areas while a new local law is developed that will apply to the whole of the new local government area.

In both instances transitional provisions may need to be considered to enable animal owners to keep their animals where they would otherwise breach any new requirements being imposed in a new local law.

Redundancy and anti-competitive provision review requirements in the Act require that all local laws are reviewed, using processes specified in the Act, prior to 31 December 2010. These review requirements will not apply to any new local laws or subordinate local laws made by new local governments but will apply to local laws of merging local governments that are continued and applied to whole new local government areas.

The Department will be publishing an information package online at <http://www.localgovernment.qld.gov.au/?id=6867> that will provide advice and information to assist local governments when reviewing local laws.

Section 14 Model local law about meetings

Merging local government's local laws about meetings and related subordinate local laws are repealed on 15 March 2008. From 15 March 2008, each new local government is taken to have adopted the model local law about meetings for its area. It is available at the Department's website at <http://www.localgovernment.qld.gov.au/?id=6625>.

The model local law for meetings allows standing orders to be adopted immediately by resolution of a new local government and will facilitate the orderly conduct of meetings.

The model local law for meetings will govern conduct of the meetings of the new local government until new local laws for meetings are made by the new local governments.

Section 15 Existing instruments continue in force

This section applies to existing instruments made by a merging local government under an Act (other than a local law or instrument under the *Integrated Planning Act 1997*). All existing instruments continue in force after 15 March 2008 until they would have ceased to have effect had reform not occurred and are taken to have been properly made by the relevant new local government. For example, this provision applies to licences issued under a local law.

Section 16 Existing delegations made to merging local government

This section applies to delegations made to a merging local government under an Act and in force immediately before 15 March 2008.

On changeover day, the delegations are taken to have been made to the new local government on the same terms and conditions as originally stated. Delegations continue in relation to the area to which they originally applied. That is, they will only apply to part of a new local government area.

A delegation continues in force until revoked or it would have ended had the relevant merging local government not been abolished. This section does not stop a delegation being amended while it continues in force.

This section ensures that delegations made to local governments, in particular by State agencies, continue in force after changeover day.

Section 17 Existing delegations made by merging local government to chief executive officer

This section applies to delegations made by a merging local government to the chief executive officer of the local government and in force immediately before 15 March 2008.

On changeover day, delegations made by a merging local government to its chief executive officer and recorded in the local government's register of

delegations continue in force for the whole of the new local government area and are taken to have been made by the relevant new local government on the same conditions as originally delegated.

A delegation continues in force until revoked by the new local government or until it would have ended had the relevant merging local government not been abolished. This section does not stop the new local government amending a delegation while it continues in force.

The register of delegations for a new local government will likely contain delegations that deal with the same matter. Where delegations made to the chief executive officer are inconsistent, the chief executive officer may choose to exercise a delegated authority in accordance with any one of the relevant delegations.

These sections are intended to ensure that delegations made by merging local governments continue in force after 15 March 2008. However, delegations made to the mayor, a standing committee or joint standing committee, or the chairperson of a standing committee or a joint standing committee of a merging local government (under section 472(a), (b) and (c) of the Act) are not transitioned to the new local government.

Section 18 Existing delegations made by chief executive officer of merging local government

This section applies to delegations made by the chief executive officer of a merging local government to an employee of the merging local government and in force immediately before 15 March 2008.

On changeover day, delegations made by a former chief executive officer of a merging local government to other officers of the local government and recorded in the local government's register of delegations continue in force for the whole of the new local government area and are taken to have been made by the relevant new local government.

Such a delegation continues in force until revoked by the new local government or it would have ended had the relevant merging local government not been abolished. This section does not stop the new local government amending a delegation while it continues in force.

A new local government's transition action plan requirement for a schedule of interim delegations will support the operation of the sections on delegations by identifying existing delegations of relevant merging local governments before 15 March 2008 and proposing a means to rationalise

existing delegations or add new delegations. The chief executive may give effect to the schedule of interim delegations by amending the schedule of delegations to reflect the interim schedule under section 1132 of the Act.

The new local government's chief executive officer, may amend a delegation while it continues in force.

Section 19 Existing authorisations

Any authorisation applying to a merging local government or an officer of a merging local government and in force immediately before changeover day continues in force after 15 March 2008 on the same conditions and for the same area, until it would have normally ended or is revoked.

A new local government can amend an authorisation while it continues to be in force.

A new local government's transition action plan will support the operation of this section by identifying all existing authorisations made by merging local governments before 15 March 2008.

Section 20 Authorised persons

This section transitions instruments of appointment for authorised persons. In effect, a person appointed as an authorised person by a merging local government under chapter 15, part 5 of the Act, section 445 of the *Environmental Protection Act 1994* or under a by-law of a relevant Island council is taken to have been appointed by the relevant new local government as an authorised person on the same terms and conditions as stated in the instrument of appointment. For example, an authorised person for a new local government will be able to issue and enforce infringement notice offences as well as perform other functions of an authorised person from 15 March 2008.

An authorised officer's instrument of appointment continues in force until it is repealed by the new local government or the person stops holding office as an authorised person, for example, because they resign from the new local government.

An authorised person under this section is an authorised person for the *State Penalties Enforcement Regulation 2000*.

Division 4 Financial matters

Section 21 Assets and liabilities of merging local government

The assets and liabilities of a merging local government become the assets and liabilities of the new local government on 15 March 2008. *Asset* is intended to have its broadest possible meaning, and includes land, buildings, infrastructure and also intangible assets such as copyrights and patents.

The registrar of titles must, if asked by a new local government in the appropriate form, record the transfer or vesting of any asset in the new local government.

A new local government is not liable to pay a state tax or duty in relation to a transfer to implement reform. This is because—

1. section 159 of the Act provides that a local government is not liable to pay a state tax, other than a duty under the *Duties Act 2001*, in relation to a transfer made to implement a reviewable local government matter;
2. section 159YQ(2) of the Act provides that chapter 3, part 1, division 10, which includes section 159, applies to the regulation as if it were a regulation implementing a reviewable local government matter; and
3. section 430 of the *Duties Act 2001* provides that duty is not imposed on a transaction entered into to implement a reviewable local government matter.

Section 22 Fees and charges

Charges for services and facilities, and regulatory fees fixed by a merging local government, continue as fees and charges of the new local government after 15 March 2008 as if fixed or made by the new local government.

Fees and charges continue to apply only in relation to the merging local government area for which they were set until the fees and charges are varied by the new local government.

For example, a new local government that consists of five merging local governments could have five different fees applying for a service it provides until it resolves to make the fee or charge consistent across the whole local government area.

In this section a *charge* includes an infrastructure charge and infrastructure contribution under the *Integrated Planning Act 1997*.

Section 23 Recovery of unpaid fees and charges

On 15 March 2008, if a merging local government had fixed or made a fee or charge, the new local government is taken to have made the fee or charge.

If the time for payment of a fee or charge had not ended before 15 March 2008, the time continues to run after changeover day and the fee or charge is payable to the new local government. The new local government may take action to recover any unpaid amount at the end of the payment period.

Section 24 Levying rates

If immediately before 15 March 2008, a merging local government had made a rate on land in its area but not given a notice levying the rate, the new local government is taken to have levied the rate and must give notice of the rate.

Section 25 Recovery of unpaid rates

If the time for payment of a rate had not ended before 15 March 2008, the time continues to run and the rate is payable to the new local government. The new local government will receive payment of, or can take action to recover, the amount of the rate.

Division 5 Financial operation and accountability matters—chapter 7 of the Act

Sections 1280 and 1285 of the Act delay the application of chapter 7 relating to financial operation and accountability of local governments for the Torres Strait Island Regional Council (TSIRC) and Northern Peninsula Area Regional Council (NPARC) until 1 July 2009, unless otherwise provided for by regulation.

This regulation therefore provides for the application of the existing *Community Services (Torres Strait) Act 1984* (the repealed Torres Strait Act) and the *Local Government (Community Government Areas) Act 2004* (CGA) and associated subordinate legislation to the TSIRC and NPARC for finalising the financial requirements of the abolished councils for the pre-changeover period.

The regulation further provides for the application of the CGA (and therefore parts of the the Act) and *Local Government (Community Government Areas) Finance Standard 2004* (CGFS) to apply to the TSIRC and NPARC for the period until 1 July 2009, when chapter 7 of the Act will apply to these Indigenous Regional Councils. The details of these provisions to be applied are outlined in the explanatory material below.

Section 26 Definitions for div 5

In this division—

- *pre-changeover period* means the period starting on 1 July 2007 and ending at the conclusion of 14 March 2008; and
- *post-changeover period* means the period starting at the beginning of 15 March 2008 and ending on 30 June 2009.

Section 27 Corporate plan

Unless a new local government prepares a corporate plan earlier, its first corporate plan will be for the financial year starting on 1 July 2009.

To support the preparation of new local governments' budgets for the 2008/2009 financial year, the regulation provides that sections 504 (Preparation and adoption of corporate plan), 507 (Requirements for corporate plan), 511 (Compliance with corporate and operational plan) and 512 (Evaluation of activities) of the Act do not apply until 1 July 2009 – i.e. a new local government is not required to prepare or act consistently with a corporate plan before 1 July 2009.

It should be noted that a new local government's budget for the 2009/2010 financial year must be consistent with its corporate plan. For this reason, local governments should begin preparing a corporate plan well in advance of 1 July 2009. The regulation does not prevent a local government from beginning to prepare or adopting a corporate plan before 1 July 2009.

The budget governing 2008 /2009 is to include the adjustments associated with the outcomes from the transferring areas process and structural reform process, but need not be linked to corporate plans or operational plans in that period.

Section 28 Operational plan

Unless a new local government prepares an operational plan earlier, its first operational plan will be for the financial year starting on 1 July 2009.

To support the preparation of new local governments' budgets for the 2008/2009 financial year, the regulation provides that a new local government is not required to prepare and adopt an operational plan until 1 July 2009. Therefore, sections 508 (Preparation and adoption of operational plan), 510 (Requirements for operational plan), 511 (Compliance with corporate and operational plans) and 512 (Evaluation of activities) of the Act do not apply until 1 July 2009.

It should be noted that a new local government's budget for the 2009/2010 financial year must be consistent with its operational plan. For this reason, local governments should begin preparing an operational plan for the 2009/2010 financial year before 1 July 2009.

The budget governing 2008 /2009 is to include the adjustments associated with the outcomes from the transferring areas process and structural reform process, but need not be linked to corporate plans or operational plans in that period.

Section 29 Revenue policy

A new local government is not required to comply with the requirements of section 513A (Preparation and adoption of revenue policy) of the Act and section 12 (Requirements for revenue policy) of the *Local Government Finance Standard 2005* (Finance Standard) until 1 July 2008.

Unless a new local government prepares a revenue policy earlier, its first revenue policy will be for 1 July 2008 to 30 June 2009 – i.e. it is not required to prepare and adopt a revenue policy for the period 15 March 2008 to 30 June 2008.

From 1 July 2008, TSIRC and NPARC are required to comply with the requirements of sections 513A (Preparation and adoption of revenue policy), 513B (Requirements and content of revenue policy) and 513C

(Copies of revenue policy to be available inspection and purchase) of the Act and section 10 of the CGFS (Revenue policy).

Section 30 Revenue statement

Similarly, a new local government is not required to prepare and adopt a revenue statement until 1 July 2008. For this reason, section 518 (Adoption of budget and revenue statement) of the Act and section 56 (Requirements for revenue statements) of the Finance Standard do not apply until 1 July 2008.

Unless a new local government prepares a revenue statement earlier, its first revenue statement will be for 1 July 2008 to 30 June 2009 – i.e. it is not required prepare and adopt a revenue statement for the period 15 March 2008 to 30 June 2008.

From 1 July 2008, TSIRC and NPARC are required to comply with the requirements of sections 518 (Adoption of budget and revenue statement) and 520A (Requirements and contents of revenue statements) subsections (2) and (3) of the Act and section 30 of the CGFS (Requirements for revenue statement).

Section 31 Budget of new local government for period from 15 March 2008 to 30 June 2008

The new local government is deemed to have adopted the existing 2007/08 financial year budgets of the merging local governments for the period immediately following changeover day.

As soon as practical after changeover day, the new local government must prepare a new budget for the period 15 March 2008 to 30 June 2008. The budget will be informed by the unexpended portion of each of the merging local governments' budgets. On or before 30 June 2008 the new local government must adopt a budget for the period.

Budgets of new local governments are required to comply with the Finance Standard in accordance with usual practice. However, section 519(2)(a), (b) or (d) of the Act does not apply to the budget, or amendment of a budget, of a new local government for the period 15 March 2008 to 30 June 2008.

The budget governing 2008 /2009 is to include the adjustments associated with the outcomes from the transferring areas process and structural reform

process, but need not be linked to corporate plans or operational plans in that period.

The requirements of section 519(2)(a), (b) or (d) relate to corporate and operational plans, and the requirement for a revenue statement. As a new local government is not required to have these documents during the relevant period, this section does not apply. However, this does not prevent a new local government from preparing a corporate plan or operational plan.

This section applies to TSIRC and NPARC, with an additional exception in that section 519(2)(c) (budget to comply with the Finance Standard does not apply to these Indigenous regional councils).

Section 32 Budget of new local government for 2008-2009 financial year

For the financial year beginning 1 July 2008, the budget of the new local government does not have to be developed consistent with its corporate plan or operational plan or be clearly linked with the matters specified in the plans. However, the budget must be accompanied by a revenue statement.

From 1 July 2008, TSIRC and NPARC are required to comply with the requirements of sections 518 (Adoption of budget and revenue statement) and 519(d) (budget must be accompanied by a revenue statement) of the Act and the CGFS, sections 31 (Amendment of budget) and 33 (Financial information to be presented to budget meeting).

Section 33 Financial statements of merging local government for pre-changeover period

This section requires new local governments (other than TSIRC and NPARC) to give financial statements for each of the merging local governments in its new local government area for the period 1 July 2007 to 14 March 2008, to the auditor-general on or before 30 June 2008. Section 48(3) of the Local Government Finance Standard 2005 applies.

If the auditor-general notifies the new local government that the financial statements require amendment, the new local government must give the auditor-general the amended financial statements together with new official

certificates stating the relevant recording and reporting procedures have been complied with in the preparation of the amended statements.

The financial statements or amended financial statements have effect as the financial statements for the new local government for the period starting on 1 July 2007 and ending on 14 March 2008 when the auditor-general certifies the financial statements as audited financial statements.

A new local government is not required to comply with the requirements of sections 48(1), 49, 50 and 51 of the Finance Standard.

Section 34 Financial statements of relevant entities for pre-changeover period

This section only applies to TSIRC and NPARC. The TSIRC and NPARC must give the auditor-general the financial statements for each of the relevant entities for the period 1 July 2007 to 14 March 2008. These will need to be prepared in accordance with the relevant legislative requirements that applied to each abolished local government before the changeover day. That is, the CGA, the CGFS for the Aboriginal Community Governments of Injinoo, Umagico, and New Mapoon and the repealed Torres Strait Act and Community Services (Island Council Accounting Standard) 2004 for all Torres Strait Island councils.

Section 35 Financial statements of new local governments for post-changeover period

This section provides financial statements for the financial year commencing on 1 July 2008 as including the post-changeover period from 15 March 2008 to 30 June 2008. In effect new local governments will be required to prepare a financial statement for the new local government covering the period 15 March 2008 to 30 June 2009.

TSIRC and NPARC financial statements will need to be prepared in accordance with the relevant requirements of the CGA (and therefore parts of the Act) and the CGFS.

Section 36 Annual report for pre-changeover period

New local governments (other than TSIRC and NPARC) are required to prepare the annual reports for each of the merging local governments in the new local government areas for the period 1 July 2007 to 14 March 2008.

Although sections 531 and 533 of the Act will not apply to the annual reports, other requirements and dates for adoption specified in the Act and Finance Standards apply. These reports must be adopted by the new local government on or before 15 September 2008.

Section 37 Annual report for post-changeover period

This section provides that the annual report for the financial year commencing on 1 July 2008 includes the post-changeover period from 15 March 2008 to 30 June 2008. In effect all new local governments will be required to prepare an annual report for the new local government covering the period 15 March 2008 to 30 June 2009. Section 533 of the Act will not apply for this period, as there is no requirement to prepare corporate and operational plans for the period.

TSIRC and NPARC will be required to comply with the CGFS part 7 in relation to the content of their annual reports for the period.

Section 38 Certificate about payment of notional GST for pre-changeover period

This section requires that on or before 15 September 2008, all new local governments must finalise and give the Minister official certificates for each of the merging local governments in the new local government's areas stating that the merging local government has paid the notional GST for the period 1 July 2007 to 14 March 2008,.

A new local government is not required to comply with the requirements of section 21 of the Finance Standard.

Division 6 Planning schemes and related matters

Section 39 Existing planning schemes and other planning instruments continue

The existing planning scheme of a merging local government continues in force after 15 March 2008 as a planning scheme for the relevant new local government. The planning scheme is taken to have been made by the new local government and applies to the same area and for the same purposes as originally made.

The new local government may amend an existing planning scheme while it continues in force. An existing planning scheme remains in force until it would have expired or it is reviewed and replaced.

An existing planning scheme becomes part of the new local government's planning scheme in that it must be implemented, administered and enforced by the new government.

The *existing planning scheme* of a merging local government means the planning scheme or the transitional planning scheme until the planning scheme is published for the relevant areas.

Section 40 Amending existing planning schemes

If a merging local government started, but did not finish, amending its planning scheme or other planning instrument before changeover day, the new local government may continue to amend the existing planning scheme or other planning instrument while it continues to apply to the area that was the merging local government area.

A *planning instrument* means a State planning policy, a designated region's regional plan, a State planning regulatory provision, a planning scheme, a temporary local planning instrument or a planning scheme policy (as defined in schedule 10 of the *Integrated Planning Act 1997*).

Section 41 Requirements by merging local government in relation to infrastructure

Any requirement about infrastructure made by a merging local government, including, for example, a charge for infrastructure under the

Integrated Planning Act 1997 or condition on a development approval, continues to apply from 15 March 2008 for the new local government area and is taken to have been made by the new local government.

Section 42 Requirements by new local government in relation to infrastructure

A new local government may, from 15 March 2008, for its local government area, levy the charge or impose the condition on a development approval in relation to the area that was the merging local government's area.

Section 43 Particular decisions about land in merging local government area

A decision made under a planning scheme by a merging local government before changeover day continues to apply after 15 March 2008, and for that purpose is taken to have been made by the relevant new local government.

Section 44 Outstanding applications about land in merging local government area

This section requires that from changeover day, the relevant new local government must deal with any outstanding planning scheme applications made to a merging local government before 15 March 2008.

Section 45 Appeals

Where an appeal against a decision of a merging local government was started but had not been decided by 15 March 2008, the new local government takes the place of the merging local government for hearing and deciding the appeal.

Also, where an appeal could have been started against a decision of the merging local government before changeover day, the appeal may be started against the new local government provided it is started within the time required by the *Integrated Planning Act 1997*.

Division 7 Employment matters

Section 46 Preservation of employees' rights and entitlements

This section provides that—

- employees of a merging local government become the employees of the relevant new local government on 15 March 2008; and
- employees retain their existing terms, conditions and entitlements of employment; and
- continuity of employment is not broken by reason of the transition from being an employee of a merging local government to being an employee of a new local government; and
- an employee's period of employment with a merging local government continues to be counted as service with the new local government for all purposes (e.g. entitlements, leave, superannuation); and
- all industrial instruments and arrangements that applied to an employee's employment before 15 March 2008, continue to apply under the new local government after 15 March 2008.

It is important to note that the intention is to preserve employees' employment rights and entitlements to their substantive positions. That is, the reference to preserving or transmitting an employee's existing terms and conditions is restricted to the terms and conditions that apply to an employee's permanent and substantive position. There is no guarantee that a new council will maintain temporary arrangements such as higher duties. Continuation of temporary arrangements are at the discretion of the CEO who under direction from the new council may make changes based on operational needs at the time.

A CEO is an employee and can be temporarily transferred to the employ of the new council from changeover because the intention is to transmit CEOs to the new councils should they wish to remain in temporary positions for a specified period of time. This transmission of former CEOs to temporary positions within the new structure of the newly formed councils does not trigger a redundancy. Redundancy and retrenchment for CEOs is triggered by the legislative abolition of the council (and in effect, the position of CEO). Redundancy does not occur for CEOs by virtue of transmission at

the instant of changeover. The decision to defer the retrenchment of a former CEO as a result of their former position being redundant remains with the new council following transmission. It is also intended that the former CEO of a merging local government will only retain access to deferred redundancy provisions until the appointment of the first permanent CEO of the new council is made.

Section 47 Appointer of employees

On 15 March 2008, the employees of a merging local government appointed by its chief executive are taken to have been appointed by the chief executive of the new local government.

Employees, including chief executives, originally appointed by a merging local government that become employees of the new local government are also taken to have been appointed by the chief executive officer of the new local government.

Section 48 Declaration for the Act, s 159ZE

This section provides that, when applying the employment provisions in chapter 3, part 1B, division 7 of the Act, a merging local government is the predecessor of the new local government.

This clarification is necessary to ensure that the provisions of chapter 3, part 1B, division 7 of the Act, including the prohibition on retrenchment because of a reform matter, continue to apply to long term casual or temporary employees after 15 March 2008.

Division 8 Code of conduct for councillors and general complaints process

Section 49 Adopting model code of conduct

In order that a single code of conduct apply immediately to the councillors of new local governments, each new local government is taken to have adopted the model code of conduct (http://www.lgp.qld.gov.au/docs/local_govt/code_of_conduct/Model_CoC.pdf) from 15 March 2008.

A new local government may, after 15 March 2008 and before the 2012 quadrennial election, adopt a different code of conduct for its councillors. If when adopting a code other than the model code of conduct, a new local government adopts the code of conduct of a merging local government without amendment, the normal requirements about giving notice of, or receiving comments on, a draft of the code of conduct do not apply.

Section 50 Particular new local governments to adopt general complaints process

After 15 March 2008, the new local government must adopt, with or without amendment, one of the merging local government's complaint processes at or before the new local government's second meeting.

The general timing and notice provisions in the Act for adoption of a complaints process will not apply to this first adoption of the merging local government's complaints process.

This section does not apply to TSIRC.

If a complaint had been started before 15 March 2008 and not been resolved or dealt with by the merging local government in the appropriate manner by 15 March 2008, the complaint is taken to be made to the new local government as its successor. The new local government may resolve or deal with the conflict using the relevant merging local government's previous complaint process.

Section 51 Delayed adoption by TSIRC of general complaints process

TSIRC has specific timing provisions for adopting its complaints process as the merging Island councils have not previously been covered by the requirements of the Act.

TSIRC must establish and adopt, by resolution, its general complaints process by 1 January 2009. This section clarifies that section 501D(2) of the Act does not apply to the adoption of a complaints process by TSIRC.

Division 9

General

Section 52 Documents of merging local government

From 15 March 2008, documents and records of a merging local government become documents and records of the relevant new local government.

The transfer of records and documents to the new local government does not affect the roles and responsibilities, under the *Public Records Act 2002*, of persons in charge of records or documents whether from the merging local government or the new local government.

Section 53 References to merging local government

References in an Act or document, which includes a contract, may, from 15 March 2008, be taken as references to the relevant new local government if the context permits.

This section is stated very broadly and is intended to transfer a broad range of documents and records to new local governments on 15 March 2008. In particular, it is intended that a reference in a contract to a merging local government may be taken to be a reference to the new local government. In this way, most contracts will continue uninterrupted by the amalgamation of local governments.

Section 54 Administrative action taken by merging local government

Any administrative action taken by a merging local government before 15 March 2008 is taken to be an administrative action taken by the relevant new local government.

An administrative action that could have been started or continued by a merging local government before 15 March 2008 may, from that date, be started or continued by the new local government.

For example, the resolution of a complaint made to the Ombudsman but not resolved about administrative action taken by a merging local before 15 March 2008.

Section 55 Infringement notice offences

From 15 March 2008, for any matter relating to a merging local government to which the *State Penalties Enforcement Act 1999* applies or may apply, the new local government takes the place of the merging local government.

Section 56 Legal proceedings

A legal proceeding that could have been started or continued by or against a merging local government before 15 March 2008 may, from that date, be started by or continued against the relevant new local government.

Note that legal proceeding is defined to include—

- any proceeding, whether civil or criminal, before any court, tribunal, or person, including any inquiry, examination or arbitration, in which evidence is or may be given; and
- any part of any legal proceeding.

Notes on provisions—Part 3 Transitional matters for particular joint local governments

The Local Government Reform Commission recommended that when an amalgamation involves all of the councils which comprise a joint local government, the joint local government should be abolished and its functions, powers and duties assumed by the relevant new local government. Part 3 gives effect to this recommendation by providing for the dissolution of affected joint local governments and the transition of regulatory and administrative arrangements to new local governments.

The following local governments mentioned in schedule 1, column 1, of the regulation are dissolved on changeover day—

1. Caloundra-Maroochy Water Supply Board
2. Dalby-Wambo Aerodrome Board

3. Dalby-Wambo Library Board
4. Dalby-Wambo Saleyards Board
5. Emerald-Peak Downs Saleyards Board
6. Gladstone-Calliope Aerodrome Board
7. Goondiwindi-Waggamba Aerodrome Board
8. Goondiwindi-Waggamba Community Cultural Centre Board
9. Mission Beach Marine Facilities Joint Board
10. Rockhampton District Saleyards Board
11. Roma-Bungil Show Grounds and Saleyards Board

Each new local government mentioned in schedule 1, column 2 of the regulation is the successor, in all respects, to the relevant joint local government (section 60).

Other provisions of part 3, divisions 2 to 6 of the regulation transition the regulatory and administrative arrangements of a dissolved joint local government to the relevant new local government in the same way as the arrangements of a merging local government are transitioned to a new local government in part 2 of the regulation.

Notes on provisions—Part 4 and 5—Transitional matters for Esk-Gatton-Laidley Water Board and Nogoa River Flood Plain Board

The Local Government Reform Commission recommended that the Esk-Gatton-Laidley Water Board and the Nogoa River Flood Plain Board continue after 15 March 2008 as the local governments that make up these joint local governments are amalgamated into two or more new local government areas on changeover day.

Parts 4 and 5 of the regulation give effect to this recommendation by restating the joint local government areas, composition and jurisdiction of these joint local governments to provide that, on changeover day—

1. the Esk-Gatton-Laidley Water Board will be located in Lockyer Valley and Somerset Regional Councils, instead of Esk, Gatton and Laidley Shire Councils; and
2. the Nogoia River Flood Plain Board will be located in Central Highlands and Isaac Regional Councils, instead of Broadsound, Emerald and Peak Shire Councils.

The names of these joint local governments remain unchanged. Changes to the cost sharing arrangements for the Nogoia River Flood Plain Board are provided for in section 87.

Part 6 Other transitional matters

Division 1 Reform matters in relation to the Disaster Management Act 2003

Section 88 Words have meaning given by the Disaster Management Act

This section provides that words defined in the *Disaster Management Act 2003* (Disaster Management Act) and used in this division have the same meaning as in the Disaster Management Act.

Section 89 Local disaster management group

On 15 March 2008, the local disaster management group of a merging local government is the local disaster management group for that part of the relevant new or adjusted local government area.

As an interim measure, the acting chief executive officer of the relevant new or adjusted local government is taken to be the chairperson of the group until a chairperson is appointed by the new local government.

A new or adjusted local government must appoint a chairperson for each existing local disaster management group within its local government area at or before its second meeting.

Section 90 Local disaster management plans

On 15 March 2008, the local disaster management plan of a merging local government is taken to be a disaster management plan of the relevant new or adjusted local government for that part of its area the plan applied to before changeover day.

A local disaster management plan remains in force until the earliest of the following—

- the local government for the new or adjusted area prepares a plan that applies to the whole of its area; or
- 15 March 2009.

Section 91 Local controller of SES unit

The local controller of an SES unit established to perform functions in a merging local government area continues, on changeover day, to be the local controller for that part of the relevant new or adjusted local government area they were responsible for before 15 March 2008.

In some instances after 15 March 2008, local controllers will be responsible for an area which falls into two or more local government areas. This will occur where—

- a merging local government area is amalgamated into two or more new or adjusted local government areas on 15 March 2008; and / or
- a local government area is adjusted to include or exclude a transferring area on 15 March 2008.

Where this occurs, each new and adjusted local government may nominate a new local controller for the whole of their local government area using the process in section 85 of the Disaster Management Act.

Division 2 Reform matters in relation to the Housing Act 2003

Section 92 Registered providers

This section provides for the transitional arrangements for housing services in merging local government areas that will become part of new or adjusted local governments on 15 March 2008.

On 15 March 2008, a new or adjusted local government is taken to be a registered provider for housing services for the area which the relevant merging local government or other entity within the merging local government area provided housing services.

Any reference in an assistance agreement to a merging local government or other entity and their areas, is taken to be a reference to the relevant new local government and its area.

Division 3 Reform matters in relation to the Land Protection (Pest and Stock Route Management) Act 2002

Section 93 Pest management plans

On 15 March 2008, a pest management plan of a merging local government becomes the pest management plan of the relevant new or adjusted local government if the area the plan relates to becomes part of the new or adjusted local government area.

Mornington Shire Council is not required to have a pest management plan for Sweers and Bountiful Islands until it is required under the *Land Protection (Pest and Stock Route Management) Act 2002*.

Section 94 Stock route network management plans

On 15 March 2008, the stock route network management plan of a merging local government is taken to be the plan of the relevant new or adjusted local government for the area the of local government the plan applied to immediately before 15 March 2008.

The stock route network management plan ceases to have effect on the earlier of the following—

- the day the local government for the new or adjusted local government renews the plan; or
- 15 March 2010.

Division 4 Reform matters in relation to the Transport Operations (Road Use Management) Act 1995

Section 95 Abandoned vehicles, trams and animals

Section 100 of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) provides for the removal of vehicles and animals from roads where the chief executive of a local government has reasonable grounds to believe the vehicle or animal has been abandoned.

Section 100 does not apply to a local government area if a local government has, at anytime had a local law which applies to all or part of its area that provides for the removal, safe storage or disposal of a vehicle, tram or animal.

It is not intended that section 100 cease to apply to new local or adjusted local government areas because a local or continuing local law, which applies to all or part of a merging local government area, provides for the removal of abandoned animals or vehicles.

For this reason, this section of the regulation provides that section 100 of the TORUM Act continues to apply to those parts of a new or adjusted local government area to which it applied immediately before 15 March 2008.

Part 7

Amendment of Local Government Regulation 2005

Section 96 Regulation amended in part 7

This part of the regulation amends the *Local Government Regulation 2005*.

Section 97 Amendment of s 7 (Criteria for cities and towns—Act, s 18)

This section amends the *Local Government Regulation 2005* to define the criteria for a region as a local government area created from the amalgamation of two or more local government areas of any class that does not meet the criteria for a city or town.

Section 98 Insert of new pt 16A

This section inserts a new part 16A into the *Local Government Regulation 2005* to provide for the dissolution of the Townsville-Thuringowa Water Supply Joint Board and the transition of its regulatory and administrative arrangements to the Townsville City Council in a similar way as for joint local governments under part 3 of the regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Local Government, Sport and Recreation.