



Queensland

Local Government Reform Implementation (Transferring Areas) Amendment Regulation (No. 1) 2008

Explanatory Notes for SL 2008 No. 24

made under the

Local Government Act 1993

General outline

Short title

*Local Government Reform Implementation (Transferring Areas)
Amendment Regulation (No. 1) 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 (Transferring Areas) Regulation 2007* made provision to empower and direct the Local Government Grants Commission to make decisions about the allocation of employees, assets, liabilities and property of any kind between local governments whose areas have a transferring area included in them or excluded from them.

Under that regulation, the Transferring Areas Allocation Methodology was published to support and outlines a process for preparing of Allocation Reports to assist in the allocation of transferring areas' employees, assets, liabilities and property.

The Local Government Reform Implementation (Transferring Areas) Amendment Regulation (No. 1) 2008 (LGRI (TA) Regulation 2008) will support the transition of regulatory and administrative arrangements and in particular provide provisions to—

- establish receiving local governments as the successors of transferring local governments in relation to transferring areas; and
- transition staff, assets, liabilities, activities, functions and operations of transferring local governments to receiving local governments.

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 2008* (LGRI Regulation 2008) consultation paper was distributed to all existing local governments and joint local governments, Local Transition Committees, State agencies, and the State Transition Committee for comment. The discussion paper invited comment on the proposed legislative approach. The consultation paper 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 LGRI Regulation 2008, incorporating suggestions received, was sent to stakeholders for further comment. This draft regulation was also made available on the Stronger Councils' website.

On 20 December 2007 a consultation paper was forwarded to councils affected by the inclusion or exclusion of transferring areas. This paper outlined the proposed application of transitional provisions in relation to the transferring areas, based on the proposed provisions in the draft LGRI Regulation 2008. Feedback was received from several local governments affected by transferring areas, which was incorporated into a draft LGRI (TA) Amendment Regulation 2008. Ongoing feedback has been received from affected local governments in relation to the proposed provisions of the LGRI (TA) Amendment Regulation 2008.

Notes on provisions

Most of the provisions of the LGRI (TA) Amendment Regulation 2008 reflect the provisions of the LGRI Regulation 2008, with the necessary modifications required to accommodate any specific circumstances in relation to transferring areas. These explanatory notes focus primarily on the provisions that have been modified to accommodate transferring areas and should be read together with the explanatory notes for the LGRI Regulation 2008 in order to give a comprehensive explanation of the LGRI (TA) Amendment Regulation 2008.

Table 1 outlines the transferring areas referred to in the LGRI (TA) Amendment Regulation 2008, the existing local governments those areas were part of before 15 March 2008 and the new or adjusted local government they will form part of after 15 March 2008—

Table 1—Transferring Areas

Transferring Area	Part of existing local government or unincorporated area before changeover day (“the transferring local government”)	Becomes part of new or adjusted local government on changeover day (“the receiving local government”)
A	Beaudesert Shire	Logan City
B	Beaudesert Shire	Scenic Rim Regional
C	Ipswich City	Scenic Rim Regional
D	Gold Coast City	Logan City
E	Taroom Shire	Banana Shire
F	Taroom Shire	Dalby Regional
G	Tiaro Shire	Fraser Coast Regional
H	Tiaro Shire	Gympie Regional
I	Sweers Island and Bountiful Islands	Mornington Shire
J	Cook Shire	Wujal Wujal Aboriginal Shire
K	Cook Shire	Hope Vale Aboriginal Shire

The LGRI (TA) Amendment Regulation 2008 applies to each of the local governments that include a transferring area/s in order to establish the receiving local governments as the successors of the transferring local government in relation to the transferring areas and to transition all relevant staff, assets, liabilities, activities, functions and operations relating to the transferring area, from the transferring local government to the receiving local government.

It should be noted that many of the receiving local governments to which this regulation applies are also covered by the generic provisions of the LGRI Regulation 2008. This is because they are also new local governments formed as a result of several merging local governments, in addition to receiving a transferring area.

Inserted part 3 Reform matters for particular transferring areas

Division 1 Preliminary

Section 14 Application of pt 3

This part applies to transferring areas A–H as set out in table 1.

Section 15 References to transferring and receiving local governments and local government areas

The following terms are specifically defined for the LGRI (TA) Amendment Regulation 2008—

Receiving local governments are new or adjusted local governments that include a transferring area from 15 March 2008.

Transferring local governments are existing local governments whose local government areas include a transferring area immediately before 15 March 2008.

Division 3 Local laws and other instruments

Section 20 Local laws for transferring areas

Any local law that applied to a transferring area before 15 March 2008 (a continuing local law) continues to apply only in the transferring area after 15 March 2008 until it is repealed, the receiving local government chooses to apply it over the whole of the area (under section 20(2)) or 31 December 2010.

Section 21 Limited application of continuing local laws

This provision removes any doubt regarding the application of a continuing transferring areas local law, confirming that the local law

only applies to that area of the receiving local government that was the transferring area.

It also applies the same provisions as for merging and new local governments under the LGRI Regulation 2008 to a receiving local government that applies a continuing local law from its transferring area over the whole of its area.

Section 22 Local laws for particular receiving local government areas

This section applies only to Banana Shire Council and Logan City Council, enabling them to apply an existing local law (as opposed to a continuing local law from a transferring area), over the whole of their new local government areas. This provision gives those councils the option to use the most relevant local law for their new area. The requirements for applying an existing local law over the whole local government area are the same as for continuing local laws.

Section 23 Local laws about meetings for particular receiving local government areas

This section applies only to Logan City Council and Banana Shire Council and provides for these local governments to keep their existing local laws for meetings and apply these to the whole of the receiving local government area from 15 March 2008. This provision will enable these councils to continue operating under their existing meetings local laws despite the inclusion of a transferring area in their new local government area.

It should be noted that the remaining receiving local governments are also new local governments and will therefore be required to adopt the model local law for meetings after 15 March 2008, under section 14 of the LGRI Regulation 2008.

Division 4 Financial matters

Allocation of assets and liabilities in relation to transferring areas

There is no specific provision in this amendment regulation for the allocation of employees, assets, liabilities and property between transferring local governments and receiving local governments, similar to that provided for merging and new local governments in the LGRI Regulation 2008.

This is because section 12 of the existing *Local Government Reform Implementation (Transferring Areas) Regulation 2007* (2007 SL No. 293) already provides for this. Section 12 provides that gazetted allocation decisions in relation to the transfer of employees, assets, liabilities and property from a transferring local government to a receiving local government will take effect on 15 March 2008.

Section 32 Levying rates

This section operates in a similar way to the rates provisions in the LGRI Regulation 2008, however, it also provides for transferring local governments (as well as receiving local governments) to issue a rates notice to a person after the changeover day. If a transferring local government issues such a notice, however, it must include a statement that the notice is issued on behalf of the receiving local government for the period 15 March to 30 June 2008.

This provision was included to accommodate the arrangements made by some local governments where the transferring local government would continue to issue rates notices for the period ending 30 June 2008 on behalf of the receiving local government, to reduce the administrative burden of the boundary change.

Section 33 Recovery of unpaid rates

This section similarly provides that either the transferring or the receiving local government may take action against a person to recover any unpaid rates. This provision is required to accommodate the circumstances where the transferring local government would be

issuing a rates notice on behalf of the receiving local government and would therefore also require the right to recover any such unpaid rates.

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

Section 35 Corporate plan, operational plan, revenue policy and revenue statement

This section applies only to Banana Shire Council, Gold Coast City Council, Ipswich City Council and Logan City Council and provides that these local governments are not required to amend their corporate plan, operational plan, revenue policy or revenue statement to take into account the inclusion or exclusion of a transferring area until 1 July 2008. This provision acknowledges that these councils are existing local governments and would be able to adjust their existing documents to account for the transferring areas from 1 July 2008.

It should be noted that the remaining receiving local governments are also new local governments and their requirements in relation to these corporate documents are outlined in the LGRI Regulation 2008.

Section 36 Amending budget of relevant local government

This section applies only to Banana Shire Council, Gold Coast City Council, Ipswich City Council and Logan City Council and provides that these local governments must amend their budgets for the financial year starting 1 July 2007 to take into account the inclusion or exclusion of a transferring area. This provision will ensure that existing budgets remain relevant and operational for the correct local government area.

For example, the area of land that is transferring from Gold Coast City Council to Logan City Council must be accounted for in Logan's budget and no longer in Gold Coast's budget after 15 March 2008.

Section 37 Budget of receiving local government in relation to transferring area

This section provides that the part of a transferring local government's budget that applies in relation to the transferring area and is taken to have been adopted by the receiving local government for the financial year starting 1 July 2007.

It further provides that receiving local governments may amend their budgets, however, sections 519(2)(a) and (b) and 520(3) of the Act (relating to corporate and operational plans) do not apply to these amendments.

Subdivision 3 Reporting obligations of particular receiving local governments

Section 38 References to transferring local government and receiving local government

This section identifies the “relevant” receiving local governments that will be responsible for preparing the financial statements and annual reports for the local governments of Beaudesert Shire, Taroom Shire and Tiaro Shire, each of which are split between two receiving councils to become an abolished council on changeover day. For administrative efficiency, the receiving local governments shown in table 2 have been identified to prepare the relevant financial statements and annual report for these abolished local governments in relation to the pre-changeover period.

Table 2—Local governments abolished and local government responsible for the financial statements and annual reports

Abolished local government	“Relevant” receiving local government
Beaudesert Shire Council	Scenic Rim Regional Council
Taroom Shire Council	Banana Shire Council
Tiaro Shire Council	Fraser Coast Regional Council

Division 6 Planning schemes and related matters

Section 43 Priority infrastructure plans for receiving local governments

This section provides for a receiving local government to continue to amend its planning scheme after the changeover day to include a priority infrastructure plan that does not take into account or apply to the transferring area. This provision is required to clarify that receiving local governments may include a priority infrastructure plan in a planning scheme amendment that does not apply to the whole of its adjusted local government area.

Section 44 Priority infrastructure plan for transferring area D

This section specifically provides that the relevant part of the Gold Coast City Council's priority infrastructure plan that relates to transferring area D is taken to be a planning scheme policy made by the receiving local government (Logan City Council) and applying to Transferring Area D. This will ensure the relevant parts of Gold Coast City Council's existing priority infrastructure plan can be applied by the receiving local government to the transferring area from 15 March 2008.

Division 7 Employment matters

Section 50 Preservation of employees' rights and entitlements

The same provisions apply to employees of transferring local governments that are transmitting to a receiving local government under a gazetted allocation decision by the Commission, as apply to employees from merging local governments under the LGRI Regulation 2008 sections 46 to 47. That is, these employees are, from the changeover day, taken to be employees of the receiving local

government, on the same conditions the person was employed by the transferring local government.

Although, in accordance with section 8.16.1.4 of the Code of Practice, an employee from an existing local government (in this case a transferring local government) which is abolished at changeover day, who is transferring to a new or adjusted local government (in this case a receiving local government here) must advise, by written election to their existing CEO prior to changeover day, the terms and conditions upon which they will transmit on changeover day. This will require the employee to decide whether they wish to retain the terms and conditions of employment of their existing agreement or contract of employment, or adopt the terms and conditions of employment as outlined in the relevant industrial agreement of the receiving local government. Once having made this written election, the employee transmits on changeover day on the terms and conditions they have chosen and remain on these terms and conditions until such time as they either apply for, and are appointed to (as distinct from redeployed to), a new position in the adjusted local government (receiving local government), wherein they will adopt the conditions of that position; or until such time as a new agreement is negotiated by the receiving local government or a new contract of employment is negotiated between the employee and the receiving local government.

Division 8 General

Section 58 Duty to facilitate changes in boundaries

An added provision is included in the regulation to require receiving local governments to work together with transferring local governments to resolve matters arising because of the boundary changes after 15 March 2008. For example, it may be necessary for a transferring local government to give a receiving local government information or documents relating to the area to be transferred into the receiving local government.

Division 3 Planning schemes and related matters

This division applies only in relation to transferring area K, which is transferred from the Cook Shire Council local government area to the Hopevale Aboriginal Shire Council local government area. These provisions of the regulation provide for—

- the transition and continuing application of the Cook Shire Council planning scheme to transferring area K to allow the Hopevale Aboriginal Shire Council to be able to deal with and amend the planning scheme;
- the transition of any decisions made under the planning scheme in relation to the transferring area;
- the transition of any outstanding applications in relation to the transferring area; and
- the transition of any appeals in relation to the transferring area.

The intention of this division is to provide for the transition and continued application of the Cook Shire Council planning scheme to transferring area K in order to facilitate the development of Miller's Block. Miller's Block is a parcel of land within transferring area K and is currently the subject of a development application in relation to a freehold home ownership project, funded by the Commonwealth Department of Families, Community Services and Indigenous Affairs.

This initiative is unique as tenure arrangements in Indigenous communities generally do not allow for freehold land/home ownership. Preservation of the existing planning scheme and current development application will provide for good planning outcomes over the entire site and for the following of due process under the *Integrated Planning Act 1997* in accordance with the Federal Government funding requirements.

ENDNOTES

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

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