

Queensland



**LOCAL GOVERNMENT
LEGISLATION
AMENDMENT ACT (No. 2)
1997**

Act No. 42 of 1997

Queensland



LOCAL GOVERNMENT LEGISLATION AMENDMENT ACT (No. 2) 1997

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Queensland



**Local Government Legislation Amendment
Act (No. 2) 1997**

Act No. 42 of 1997

An Act to amend legislation about local government

[Assented to 25 August 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Local Government Legislation Amendment Act (No. 2) 1997*.

PART 2—AMENDMENT OF LOCAL GOVERNMENT 1993

Act amended in pt 2

2. This part amends the *Local Government Act 1993*.

Amendment of s 4 (Definitions)

3. Section 4—

insert—

‘ **“delayed implementation issues”**, for a reviewable local government matter mentioned in section 64(1)(c), means—

- (a) the likely cost of conducting fresh elections that may be held because of the implementation of the matter; and
- (b) the period since the conduct of the last elections of all councillors for the local governments affected by the matter; and
- (c) the period before the conduct of the next triennial elections for the local governments.

“delayed implementation determination”, for a reviewable local government matter, means a determination, under section 72G(1A) or

(1B) or section 73E(1A) or (1B), for the matter.

“delayed implementation reference”, for a reviewable local government matter, means a reference of a matter mentioned in section 64(1)(c), for a local government whose area is divided, that—

- (a) does not include a matter mentioned in section 64(1)(g), (h), (i) or (k); and
- (b) the Minister states in the reference is a delayed implementation reference.’.

Amendment of s 72D (Public notice of proposed determination to implement matter)

4. Section 72D—

insert—

‘**(4A)** If, in the proposed determination of the matter, the commission proposes to adopt a margin of allowance under section 233(3) for the quota of voters for each councillor for a division of a local government, the notice must also state the margin of allowance to be adopted.

‘**(4B)** If the commission proposes to make a delayed implementation determination for the matter, the notice must also state—

- (a) the matter is to be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination to implement the matter; and
- (b) the elections are to be conducted as if the determination were implemented.’.

Amendment of s 72G (Making final determination and preparation of report)

5. Section 72G—

insert—

‘**(1A)** If the matter is the subject of a delayed implementation reference

and the commission makes a determination to implement the matter, the commission—

- (a) must determine the matter be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination to implement the matter; and
- (b) must determine not to implement a reviewable local government matter mentioned in section 64(1)(g), (h), (i) or (k) for the local governments or the local governments' areas.

‘**(1B)** If the matter is a reviewable local government matter mentioned in section 64(1)(c) (other than a matter the subject of a delayed implementation reference) for a local government area that is divided, the commission may determine the matter be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination only if—

- (a) the commission is satisfied it is appropriate to delay implementing the matter having regard to the delayed implementation issues for the matter; and
- (b) the commission determines not to implement a reviewable local government matter mentioned in section 64(1)(g), (h), (i) or (k) for the local governments or the local governments' areas.

‘**(1C)** Also, if the matter is a matter mentioned in section 64(1)(c) (the “**first matter**”) and the commission makes a determination to implement the first matter, the commission may, if it is satisfied it is appropriate for another reviewable local government matter mentioned in section 64(1)(g) or (h) included in the reference of the first matter, make a determination to implement the other matter only so far as the other matter relates to all of the divisions of a local government area directly affected by the determination of the first matter.

‘**(1D)** However, subsection (1C) does not apply if the commission makes a determination of a matter mentioned in section 64(1)(i) or (k) included in the reference of the first matter.

‘**(1E)** For subsection (1C), a division of a local government area is directly affected by the determination of the first matter only if, under the determination—

-
- (a) the division's boundaries are to be changed because of the exclusion of part of the local government area (the "**excluded part**") and including the excluded part in another local government area; or
 - (b) the division adjoins the excluded part; or
 - (c) the division adjoins a division mentioned in paragraph (a) or (b).'

Amendment of s 72H (Notification of determination and report to Minister)

6. Section 72H(2)(c)—

omit, insert—

- '(c) if the commission determines the matter be implemented—state that the matter is to be implemented by regulation; and
- (d) if the commission makes a delayed implementation determination for the matter—state in general terms the effect of the determination; and
- (e) if section 72J applies to the matter—state in general terms the effect of the section.'

Amendment of s 72I (Implementation of matter on commission's report)

7. Section 72I—

insert—

'(1A) However, if the commission makes a delayed implementation determination for the matter—

- (a) the Governor in Council must implement the matter to commence on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination; and
- (b) a regulation implementing the matter must provide for the

conduct of the next triennial elections of the local governments as if the matter were implemented.’.

Amendment of s 73C (Notice of proposed determination to implement matter and recommendations)

8. Section 73C—

‘(2A) If, in the proposed determination of the matter, the commission proposes to adopt a margin of allowance under section 233(3) for the quota of voters for each councillor for a division of a local government, the notice must also state the margin of allowance to be adopted.

‘(2B) If the commission proposes to make a delayed implementation determination for the matter, the notice must also state—

- (a) the matter is to be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination to implement the matter; and
- (b) the elections are to be conducted as if the determination were implemented.’.

Amendment of s 73E (Making final determination and preparation of report)

9. Section 73E—

insert—

‘(1A) If the matter is the subject of a delayed implementation reference and the commission makes a determination to implement the matter, the commission—

- (a) must determine the matter be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination to implement the matter; and
- (b) must determine not to implement a reviewable local government matter mentioned in section 64(1)(g), (h), (i) or (k) for the local

governments or the local governments' areas.

(1B) If the matter is a reviewable local government matter mentioned in section 64(1)(c) (other than a matter the subject of a delayed implementation reference) for a local government area that is divided, the commission may determine the matter be implemented on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination only if—

- (a) the commission is satisfied it is appropriate to delay implementing the matter having regard to the delayed implementation issues for the matter; and
- (b) the commission determines not to implement a reviewable local government matter mentioned in section 64(1)(g), (h), (i) or (k) for the local governments or the local governments' areas.

(1C) Also, if the matter is a matter mentioned in section 64(1)(c) (the **“first matter”**) and the commission makes a determination to implement the first matter, the commission may, if it is satisfied it is appropriate for another reviewable local government matter mentioned in section 64(1)(g) or (h) included in the reference of the first matter, make a determination to implement the other matter only so far as the other matter relates to all of the divisions of a local government area directly affected by the determination of the first matter.

(1D) However, subsection (1C) does not apply if the commission makes a determination of a matter mentioned in section 64(1)(i) or (k) included in the reference of the first matter.

(1E) For subsection (1C), a division of a local government area is directly affected by the determination of the first matter only if, under the determination—

- (a) the division's boundaries are to be changed because of the exclusion of part of the local government area (the **“excluded part”**) and including the excluded part in another local government area; or
- (b) the division adjoins the excluded part; or
- (c) the division adjoins a division mentioned in paragraph (a) or (b).'

Amendment of s 73F (Notification of determination and report to Minister)

10. Section 73F(2)—

insert—

- ‘(d) if the commission makes a delayed implementation determination for the matter—state in general terms the effect of the determination.’.

Amendment of s 73G (Implementation of matter)

11. Section 73G—

insert—

‘(1A) However, if the commission makes a delayed implementation determination for the matter—

- (a) the Governor in Council must implement the matter to commence on the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination; and
- (b) a regulation implementing the matter must provide for the conduct of the next triennial elections of the local governments as if the matter were implemented.’.

Amendment of s 77 (Restriction on determination to implement matter)

12. Section 77(2), after ‘allowance’—

insert—

‘mentioned in section 233(2)’.

Amendment of s 106 (Implementation of reviewable local government matter)

13.(1) Section 106(2)(j)—

renumber as section 106(2)(k).

(2) Section 106(2)—

insert—

‘(j) in the case of a reviewable local government matter the subject of a delayed implementation determination—payment by a local government for not adequately supplying services and facilities in the interim period for the matter in a part of a local government area that, under the matter, has been, or is to be, transferred from 1 local government area to another local government area; or’.

(3) Section 106—

insert—

‘(2A) Subsection (2)(a) has effect subject to section 350(2A).¹’.

(4) Section 106(5)—

insert—

‘**“interim period”**, for a reviewable local government matter the subject of a delayed implementation determination, means the period from the notification of the determination by gazette notice to the conclusion of the election, at the next triennial elections, of all councillors for the local governments affected by the determination.’.

Amendment of s 233 (Quota to be complied with in division of local government area and assignment of councillors)

14. Section 233(3) and (4)—

omit, insert—

‘(3) Also, an electoral and boundaries review commission may, if it is satisfied it is appropriate in its determination, under section 72G(1C) or 73E(1C), of a reviewable local government matter, adopt a margin of allowance, but the quota must not be departed from—

(a) for a local government area with more than 10 000 electors—by

¹ Section 350 (Requirements for fresh election)

not more than 20%; or

(b) for another local government area—by not more than 40%.

‘(4) However, a commission must not make a determination under subsection (3) in the period starting on the information date mentioned in section 234 for a local government and ending on the date of the next triennial elections.

‘(5) Also, subsection (3) does not apply if—

- (a) the reference for the matter includes a reviewable local government matter mentioned in section 64(1)(a) or (f); or
- (b) the matter is referred to the commissioner under section 235.

‘(6) For subsection (2), the quota must be worked out as near as practicable to—

- (a) if the matter is a reviewable local government matter (other than a limited reviewable local government matter)—the time notice of the proposed determination of the matter is given under section 72D or 73C; or
- (b) if the matter is a limited reviewable local government matter—the time notification in the gazette of the determination of the matter is given under section 78.

‘(7) For subsection (3), the quota must be worked out as near as practicable to the time notice of the proposed determination of the matter is given under section 72D or 73C.’.

Amendment of s 234 (Disclosure of compliance or noncompliance with quota requirements)

15.(1) Section 234(1), ‘233’—

omit, insert—

‘233(2)’.

(2) Section 234—

insert—

‘(2A) However, subsection (1) does not apply to a local government,

if—

- (a) an electoral and boundaries review commission has made a delayed implementation determination for a reviewable local government matter for the local government's area; and
- (b) the determination was made after the conduct of the last election of all councillors for the local governments affected by the determination.'

Amendment of s 235 (Matter of area's division referred to commissioner)

16.(1) Section 235(a), '233'—

omit, insert—

'233(2)'.
'

(2) Section 235—

insert—

'**(2)** Also, the Minister must refer the matter of the division of a local government's area to the commissioner—

(a) if—

- (i) an electoral and boundaries review commission has made a determination, under section 72G(1C) or 73E(1C), for a reviewable local government matter for the area; or
 - (ii) an electoral and boundaries review commission has made a delayed implementation determination for a reviewable local government matter for the area; and
- (b) the determination was made since the conduct of the last election of all councillors for the local governments affected by the determination.

'**(3)** A reference under subsection (2) must be made as soon as practicable after the information date for the local government.'

Amendment of s 350 (Requirements for fresh election)**17.** Section 350—

insert—

‘(2A) However, subsection (2) does not apply if the matter is the subject of a determination of an electoral and boundaries review commission under section 72G(1C) or 73E(1C).’.

Amendment of s 459 (Object)**18.** Section 459, after subsection (3)—

insert—

‘Examples for subsections (2) and (3)—

1. If a local law on libraries states that the local government may make a local law policy about the management and use of library resources, the local government has a general power to make a local law policy about a variety of issues, including, for example, the hours of operation of the library, use of its facilities and restrictions on borrowing books.

2. If a local law on libraries states that the local government may make a local law policy on a specific issue, for example, the restriction of borrowing rights or suspension of membership if a member retains borrowed items for substantially longer than permitted by the library rules, the local government cannot, without specific authority in the local law, make a local law policy about other library matters, including, for example, the hours of operation of the library.’.

PART 3—CONSEQUENTIAL AND MINOR AMENDMENTS

Amended Acts—schedule

19. The schedule amends the Acts mentioned in it.

SCHEDULE

CONSEQUENTIAL AND MINOR AMENDMENTS

section 19

CITY OF BRISBANE ACT 1924

1. Section 116(2)(c)(iv), ‘costs and revenue’—

omit, insert—

‘revenue and expenditure’.

LOCAL GOVERNMENT ACT 1993

1. Section 7(1), ‘part 6’—

omit, insert—

‘part 6 that is, or is to become, an LGOC,’.

2. Section 7(3)(a)(i), ‘or are to become’—

omit, insert—

‘, or are to become,’.

3. Sections 7(3)(c)(ii), 458FC(10) and 458FE(2) and (3), ‘or is to become’—

omit, insert—

‘, or is to become,’.

SCHEDULE (continued)

4. Section 297(1)(d), ‘prepaid’—*omit, insert—*

‘reply paid’.

5. Section 434(4)(a), after ‘carried on’—*insert—*

‘, under chapter 7A, part 4.’.

6. Section 434(4)(b), after ‘units’—*insert—*

‘under chapter 7A, part 5’.

7. Section 458AB—*insert—*‘**“Commonwealth tax”** means tax imposed under a Commonwealth Act.‘**“State tax”** means tax imposed under an Act, including this Act.’.**8. Section 458AB, definition “type 2 business activity”, paragraph (k), ‘City’—***omit, insert—*

‘Shire’.

9. Section 458AC(3) and (4), after ‘For’—*insert—*

‘identifying’.

SCHEDULE (continued)

10. Chapter 7A, part 3, heading—*omit, insert—***‘PART 3—PUBLIC BENEFIT ASSESSMENT OF
SIGNIFICANT BUSINESS ACTIVITIES’.****11. Sections 458B(2), 458BA(2), 458BE(2) ‘Example to’—***omit, insert—**‘Example for’.***12. Section 458CA(3)—***omit, insert—*

‘(3) Full cost pricing also includes compliance with Commonwealth, State and local government requirements that apply only if the activity were carried on by a private sector business, including, for example, requirements relating to the protection of the environment and planning and approval processes.’.

13. Section 458CB, ‘in carrying on the activity’—*omit, insert—**‘, in carrying on the activity,’.***14. Section 458CP, ‘in the unit’s operations’—***omit, insert—**‘, in the unit’s operations,’.***15. Section 458DH, definitions “Commonwealth tax’ and “State tax”—***omit.*

SCHEDULE (continued)

16. Section 458DH, definition “share”, ‘entity or’—*omit, insert—*

‘entity’s or’.

17. Section 458DN(6), ‘chapter’—*omit, insert—*

‘part’.

18. Section 458DN(7), ‘(6)’—*omit, insert—*

‘(5)’.

19. Section 458EJ, ‘candidate’s’—*omit, insert—*

‘candidate LGOC’s’.

20. Section 458EM(2), ‘(1),’—*omit, insert—*

‘(1)(b)’.

21. Section 458FA(1), ‘or 2 or more local governments’—*omit, insert—*

‘, or 2 or more local governments,’.

SCHEDULE (continued)

22. Section 458FH(4), ‘the’—*omit, insert—*

‘a’.

23. Section 458FI, from ‘officers and’—*omit, insert—*

‘employees of the local government to be made available to it.’.

24. Section 458GG, heading, ‘shareholder’—*omit, insert—*

‘shareholders’.

25. Section 458GG(2), ‘on,’—*omit, insert—*

‘on’.

26. Section 458GR(1), from ‘its business’—*omit, insert—*

‘the LGOC is established under section 458G.’.

27. Section 458GR(2), from ‘candidate’s business’—*omit, insert—*

‘LGOC is established.’.

SCHEDULE (continued)

28. Section 458GS(1), from ‘candidate’s business’—*omit, insert—*

‘subsidiary is established under section 458GB.’

29. Section 458GS(3)(a), from ‘candidate subsidiary’s’—*omit, insert—*

‘subsidiary is established; and’.

30. Section 458HN(1)(b)(ii), ‘shareholder’—*omit, insert—*

‘LGOC’s local government’.

31. Section 458HN(1)(b)(iv), ‘shareholder’—*omit, insert—*

‘local government’.

32. Section 458HO(2), ‘For’—*omit, insert—*

‘However, for’.

33. Section 458HO(2), ‘from’—*omit, insert—*

‘to apply from’.

SCHEDULE (continued)

34. Section 458IG(3)(a), after ‘subsidiaries’—*insert—*

‘,’.

35. Section 458IG(3)(f), from ‘of any’ to ‘intent, and’—*omit, insert—*

‘, of any changes to the statement of corporate intent and of’.

36. Section 458II(1)(b)(ii), ‘shareholder’—*omit, insert—*

‘LGOC’s local government’.

37. Section 458IJ(2)(b), ‘shareholder’—*omit, insert—*

‘LGOC’s local government’.

38. Sections 458IM(1)(a), (3) and (4), 458IS(7), (8), (9), (11) and (13) and 458IU(3), ‘year’s’—*omit, insert—*

‘years’.

39. Section 458IS(4), ‘examined the’—*omit, insert—*

‘examined, the’.

SCHEDULE (continued)

40. Section 458IS(11), ‘(8)’—*omit, insert—*

‘(10)’.

41. Section 458IV(5), after ‘subsidiaries’—*insert—*

‘,’.

42. Section 458JG(1), example 2, after ‘If’—*insert—*

‘,’.

43. Section 458JK(8), ‘its corporation’—*omit, insert—*

‘its corporatisation’.

44. Section 458JL(1), ‘458LL’—*omit, insert—*

‘458JK’.

45. Section 458JL(4), ‘the approval’—*omit, insert—*

‘, the approval’.

SCHEDULE (continued)

46. Section 458JM, ‘corporation a dividend’—*omit, insert—*

‘corporation, a dividend’.

47. Section 458JM, example, ‘under paragraph (a)’—*omit.***48. Section 458JV(5), after ‘corporatised corporation’—***insert—*

‘,’.

49. Section 458KF(1), ‘a corporatised corporation’—*omit, insert—*

‘an LGOC’.

50. Section 458KF(2), ‘to a’—*omit, insert—*

‘to the’.

51. Section 458L(2), ‘An LGOC’s’—*omit, insert—*

‘A’.

52. Section 458LF(1)(a), ‘constitute’—*omit, insert—*

‘constitutes’.

SCHEDULE (continued)

53. Section 458LL(6), ‘director’—*omit, insert—*

‘directors’.

54. Section 458LT(b), ‘or is’—*omit, insert—*

‘or’.

55. Section 629(2), ‘; and’—*omit, insert—*

‘; or’.

**LOCAL GOVERNMENT LEGISLATION
AMENDMENT ACT 1997****1. Section 39, new section 458MA, ‘includes’—***omit, insert—*

‘include’.

**2. Section 39, new section 458MC, definition “roads business activity”,
‘on State-controlled roads’—***omit.*

SCHEDULE (continued)

- 3. Section 39, new section 458MH(4), after ‘longer applying’—**
insert—
‘,’.
- 4. Section 39, new section 458NO, ‘tariff,’—**
omit, insert—
‘tariff’.
- 5. Section 39, new section 458NP(3), ‘its’—**
omit.
- 6. Section 50, new section 489B(3), after ‘existing local law or’—**
insert—
‘existing’.
- 7. Section 54, new section 803M, after ‘existing local law or’—**
insert—
‘existing’.
- 8. Section 54, new section 803P(3)(a) and (b), ‘means’—**
omit, insert—
‘mean’.