

LOCAL GOVERNMENT LEGISLATION AMENDMENT BILL (NO 2) 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Bill

The objectives of the Bill are to amend the *Local Government Act 1993* to—

- provide for greater flexibility in dealing with the review and implementation of proposed external boundary changes to local government areas occurring between triennial elections which could affect divisional boundaries or councillor representation;
- clarify how local laws can enable the making of local law policies; and
- provide for some minor and technical amendments.

Reasons for and Achievement of the Policy Objectives

Mid-term Reviews of Local Government Boundaries

The Bill will provide a Local Government Electoral and Boundaries Review Commission with greater flexibility in making determinations on the review of proposed changes to local government external boundaries.

This will address restrictions under the current law, which in the case of divided areas, do not enable the creation of divisions outside the allowable electoral tolerances, i.e., a redistribution and possibly fresh elections would be necessary to produce an ‘in quota’ situation.

To avoid unnecessary disruption to local government electoral arrangements at a time between triennial elections, the Bill addresses the situation by providing a Commission with additional options to suit a range of possible circumstances. The Bill will also give the Minister more

flexibility in making a reference to the Electoral Commissioner about external boundary changes involving a local government with electoral divisions.

The full range of options (including those provided for in this Bill and under the current law) will be as follows:

Minister can identify that only external boundaries of a divided area be reviewed

In making a reference, it is proposed that the Minister be given more flexibility to deal with the review of the external boundaries of a local government area which could impact on its electoral divisions. In this respect, it is proposed that the Minister (when framing a reference) would have the discretion to specify that the external boundaries only are to be examined, i.e., there would be no immediate consideration by a Commission of electoral divisions or the composition of a Council and the assignment of councillors to divisions.

With such a reference, a Commission would be required to delay the implementation of any proposed external boundary change involving a local government area with electoral divisions, until the holding of the next local government triennial elections. The review of divisions by another Commission would then occur in accordance with the normal statutory requirements, i.e., during the period beginning 1 March in the year before the year of the next triennial elections (or in the case of Brisbane City Council, in the period beginning 1 October in the year that is two years before the year of the next triennial elections).

The fact that a delayed implementation of an external boundary change is intended, must be stated by the Minister in the reference, i.e., a “delayed implementation reference”. A delayed implementation must be signified when a Commission gives public notification of its proposed determination. If the Commission proceeds with the determination, people will also be aware of that approach through the existing requirements to publicly advise of any determination by a Commission.

Commission can determine not to proceed

Under the current law, a Commission can make a preliminary assessment and could determine not to implement a reviewable local government matter. The Commission may also exercise this discretion at a later stage of the review process. This could be on the basis that the

proposed external boundary change would unduly disrupt divisional and electoral arrangements. In effect, the Commission may be of the opinion that it would be better if a new reference were issued closer to the next local government triennial elections.

Commission only reviews external boundaries—with delayed implementation

The Bill provides that even though the Minister has not issued a delayed implementation reference (as indicated above), a Commission has the discretion to delay implementation of a proposed external boundary change that involves a divided local government area.

For example, if a Commission considers the proposed external boundary change would unduly disrupt the divisional or electoral arrangements, it may (at its own discretion) determine to delay the implementation of the change until the holding of the next triennial elections. The proposed divisions for the conduct of the next triennial elections would then be determined by another Commission in accordance with the normal statutory requirements. As in the case of a delayed implementation reference from the Minister, people would be aware of the Commission's intention through the public notification process.

These new powers of a Commission do not extend to the amalgamation, creation or abolition of local government areas. They only relate to the transfer of land from one local government area to another.

The Bill also expands the regulation making power of the Governor in Council to redress a situation that may arise whenever implementation is delayed. For example, Council "A" may reduce services and expenditure in the interim period to an area that will be transferred to Council "B" at the conclusion of the next triennial elections. The Governor in Council's power to make regulations dealing with the implementation of matters relating to a Commission's determinations (e.g., the apportionment of assets and liabilities following a boundary change) now extends to requiring a greater transfer of assets such as funds from Council "A" because it failed to provide adequate services to the part of the local government's area it knew was to be transferred to Council "B".

Allowable variance to quota

The electoral quota for a local government area that is divided is calculated by dividing the total number of electors by the number of

councillors (other than the Mayor). The allowable variance to the electoral quota for a councillor for a division is set at—

- up to 10% for local government areas with more than 10 000 electors; and
- up to 20% for other local government areas.

The Bill allows a Commission as an interim measure to expand the allowable variance from the electoral quota for directly affected divisions. This discretion is only available where a Commission considers that a proposed external boundary change would disrupt divisional arrangements but not to an extreme degree. The Commission may then determine to proceed with the changes to the external boundaries and allow the divisions directly affected by the change to be out of the normal margin of allowance until the next triennial elections. A division is “directly affected” where the area of the division has been affected by the transfer of land in the adjustment of the external boundaries of the local governments, or where a division shares a boundary with a division affected by the transfer of land.

A Commission would not have an unfettered discretion but would only be able to permit the immediate implementation of external boundary changes with expanded variance to the tolerance, where the variance to the quota is not more than double the normal margin. The temporary expanded variance to the quota will be:

- up to 20% for local government areas with more than 10 000 electors; and
- up to 40% for other local government areas.

The extent of the proposed variance is to be publicly advertised during public consultation on a proposed determination.

If the Commission held a reference that permitted an amalgamation to occur or the creation or abolition of a local government area, it would not be able to rely on this new power to draw up electoral arrangements for the fresh elections, i.e. the Commission would be obliged to rely on the existing normal allowance provisions in the Act.

Commission reviews external boundaries plus some or all internal boundaries—with possible fresh elections

In examining a reference dealing with an external boundary change for a divided area, the current law provides that a Commission must proceed

with a review of external boundaries and divisional boundaries, with results that can include a full redistribution of divisions and fresh elections for the local governments concerned. This option is needed for those external boundary changes with such major impacts on divisions and representation that it is the only reasonable course of action.

However, to provide further flexibility for mid-term boundary changes, the Bill also gives a Commission a discretion to choose to conduct a partial redistribution of affected divisions rather than a full redistribution. Only those divisions directly affected by the external boundary change would need to be brought into quota (i.e. by using the normal tolerance or the expanded tolerance). Divisions that do not fall within the definition of “directly affected” need not be altered at that time, even if they are out of quota for other reasons such as natural population trends. All divisions would be brought back into normal quota at the time of the statutory review period.

Clarify how local laws enable the making of local law policies

The *Local Government Act 1993* allows local governments to make local laws which include provision for the making of local law policies to assist in the detailed implementation of a local laws’ objects.

Some user friendly examples have been added to the Act to clarify how local governments can make local laws which include provision for the making of local law policies to assist in the detailed implementation of a local law’s objects. These examples indicate how a local law can either authorise making a broad local law policy or a policy that applies only to a narrow and specific issue.

Minor and technical amendments

Minor errors and oversights have been corrected so that the Act reflects the intentions expressed when approval was originally given for drafting the relevant sections. This includes minor and technical amendments to the National Competition Policy provisions contained in the *Local Government Legislation Amendment Bill 1997* passed by Parliament on 9 May 1997.

Alternatives to the Bill

Mid-term Reviews of Local Government Boundaries

The only alternative to these amendments is to take no legislative action.

This option is not acceptable as the intention of the proposed legislation is to enable a Commission to review external boundary changes and make determinations which avoid the necessity to immediately implement a change which could result in a redistribution of local government electoral divisions and subsequent fresh elections at a time occurring between the holding of triennial elections.

Clarify how local laws enable the making of local law policies

There is no alternative to the proposed amendment. The proposed examples further clarify the relationship between local laws and local law policies.

Minor and technical amendments

There are no alternatives for the minor and technical amendments. These amendments correct minor errors and oversights to reflect the intentions expressed when approval for drafting was first given.

Administrative Costs to the Government of Implementation of the Bill

There are no additional administrative costs for Government. All costs will be met from the normal operating budget.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles.

Consultation

The following have been consulted during the preparation of the Bill:

- Local Government Association of Queensland (LGAQ);
- Electoral Commissioner of Queensland (ECQ); and
- Brisbane City Council.

EXPLANATION OF CLAUSES

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

PART 2—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Clause 2 provides for the amendment of the *Local Government Act 1993*.

Clause 3 inserts in section 4 (Definitions) a meaning of the term “delayed implementation issues”. Delayed implementation issues are issues which a Local Government Electoral and Boundaries Review Commission must consider prior to deciding whether or not a determination relating to an external boundary change should be delayed until the next triennial elections. They include the likely cost of fresh elections and the proximity to last and next elections of all councillors of the local governments concerned. (Delayed implementation issues are considered for major or minor references of a reviewable local government matter that involve changes to external boundaries under section 64(1)(c). They do not apply to limited reviewable local government matters or references dealing with amalgamation, abolition or creation of local government areas).

Section 4 also defines the term “delayed implementation determination”. It is a determination by a Commission to delay the implementation of an external boundary change involving a divided local government area until the next triennial elections. (Refer to new sections 72G(1A) or (1B) or 73E(1A) or (1B)).

Section 4 also defines the term “delayed implementation reference” as a reference that the Minister states is a delayed implementation reference. It must be a major or minor reference (under section 64(1)(c)) for a reviewable local government matter that involves only an external boundary change for a divided area. It also does not require a Commission to consider

electoral divisions or composition and assignment of members of a local government under section 64(1)(g), (h), (i) or (k).

With a delayed implementation reference, the Governor in Council would be required to make a regulation as soon as practicable that would provide that the new external boundaries would not come into force until the declaration of the polls at the next triennial elections for the affected local governments. The internal boundaries would then be reviewed in the run up to the local government triennial elections using the process under sections 234 and 235. The triennial elections would be conducted as if the changed external boundaries, and the internal divisional arrangements based on those external boundaries, were in force.

Clause 4 amends section 72D dealing with major references of reviewable local government matters to expand the information that is to be contained in the public notification of a Commission's proposed determination.

For a proposed determination of a Commission that includes a proposal to adopt an expanded margin of allowance from an electoral quota under section 233(3), the public notice must include details of what increased margin is being proposed for each affected division.

For a proposed determination of a Commission that includes a proposal for delayed implementation under section 72G(1A) or (1B), the public notice must include that it is proposed to delay the implementation until the next triennial elections and that those elections will be conducted as if the proposed boundaries were already in place. This applies to proposed determinations for delayed implementation either under a Minister's reference or a Commission's discretionary decision to delay implementation.

Clause 5 amends section 72G dealing with a Commission making final determinations on major references of reviewable local government matters by inserting new subsections (1A), (1B), (1C), (1D) and (1E).

Subsection (1A) requires a Commission, where the Minister has issued a delayed implementation reference, to determine that a change to external boundaries under section 64(1)(c) be delayed in its implementation until the next triennial elections.

The Commission also must not determine any matters relating to the divisions of the area or the composition and assignment of councillors. This

restriction is necessary as these matters would automatically be reviewed in the statutory review period in the lead up to the next triennial elections.

It is also necessary despite the definition in section 4 which explicitly provides that a delayed implementation reference is not to include a review of electoral divisions or the composition and assignment of councillors of a local government under section 64(1)(g), (h), (i) or (k). The provisions act to prohibit a Commission actually considering these matters on a delayed implementation issue.

This is also appropriate because legal advice has indicated that a reference by the Minister under section 69 that refers only to the external boundaries does not necessarily prevent a Commission, if its determination would impact on divisional or electoral matters, from proceeding to examine the divisions and the composition and assignment of members of the local government. In this respect, it could be interpreted that there is an implied power for the Commission to review internal electoral matters whenever a reference is couched as just external boundaries.

This implied power is appropriate in circumstances where a Commission may arrive at a determination on external boundaries with such an impact that it is only sensible to proceed to deal with divisional or electoral matters. However, it is necessary to limit this implied power in the case of delayed implementation references, as otherwise the intention of the Minister in issuing the reference could be overturned.

Subsection (1B) provides that where the Minister has not issued a delayed implementation reference, a Commission, in considering a reference dealing with external boundaries for a divided area, has the discretion to determine to delay implementation, if it is satisfied that it is appropriate after considering the delayed implementation issues as defined in section 4. Where a Commission exercises this discretion, the Commission must not make any determinations relating to divisional boundaries, assignment of councillors to divisions or the composition of a local government.

Subsection (1C) provides that a Commission in making a determination to implement changes to external boundaries under section 64(1)(c), may as a result of its determination, deal only with those divisions of the local government area directly affected by the external boundary change, i.e. carry out a partial redistribution. This discretion is not only limited to those divisions that are directly affected by the external boundary change but also

on the proviso that divisional matters were included in the original reference.

In carrying out a partial redistribution, a Commission also has discretion to apply either the normal margin of allowance (section 233(2)) or the expanded margin of allowance (section 233(3)). This arrangement would be reviewed by a Commission at the normal statutory review period in the lead up to the next triennial elections. In such case, all divisions would need to comply with the normal margin of allowance for the purpose of conducting the next triennial elections.

Subsection (1D) provides that a Commission does not have the discretion to carry out a partial redistribution if the original reference included matters relating to the composition or assignment to divisions of councillors of a local government (under section 64(1)(i) or (k)) and if the Commission has made a determination on those matters. This is because the assignment of members and the composition of a local government affect all divisions and could require fresh elections for the whole of the local government area.

Subsection (1E) defines a directly affected division as a division with boundaries that will be changed by the transfer of land between local governments as a consequence of a proposed external boundary change. It also includes any divisions that adjoin the transferred part (including the division that has had land transferred from it) and all divisions that adjoin those divisions.

Clause 6 amends section 72H dealing with major references of reviewable local government matters by requiring a Commission to include additional information to inform the public in the notification of its final determination. The notification must advise that implementation will be by regulation. Where a Commission's determination includes delayed implementation under section 72G(1A) or (1B), the notification must provide some general information about the effect of delayed implementation. If a compulsory referendum has rejected a proposal to create, amalgamate or abolish a local government area, the Commission's notification of its determination (in line with the outcome of the referendum) must provide general information about the Legislative Assembly's discretion to overturn a referendum under section 72J.

Clause 7 amends section 72I dealing with the implementation by the Governor in Council, by regulation, of major references of reviewable local government matters.

Section 72I currently provides that the Governor in Council must implement a Commission's determination as soon as practicable after the Minister receives the notice about, and a copy of, the Commission's report. This requirement ensures that the implementation of a Commission's determination is not ignored or delayed. The existing provisions also allow for delayed implementation without breaching the intent of the original provisions, e.g. where the implementation requires some delay because of the holding of triennial or fresh elections.

Additional provisions are provided for to ensure that the Governor in Council implements a Commission's determination for delayed implementation under section 72G(1A) or (1B). The provisions also require a regulation to be made to ensure that the next triennial elections are conducted on the proposed new external boundaries.

Clause 8 amends section 73C dealing with minor references of reviewable local government matters to expand the information that is to be contained in the public notification of a Commission's proposed determination.

For a proposed determination of a Commission that includes a proposal to adopt an expanded margin of allowance from an electoral quota under section 233(3), the public notice must include details of what increased margin is being proposed for each affected division.

For a proposed determination of a Commission that includes a proposal for delayed implementation under section 73E(1A) or (1B), the public notice must include that it is proposed to delay the implementation until the next triennial elections and that those elections will be conducted as if the proposed boundaries were already in place. This applies to proposed determinations for delayed implementation either under a Minister's reference or a Commission's discretionary decision to delay implementation.

Clause 9 amends section 73E dealing with a Commission making final determinations on minor references of reviewable local government matters by inserting new subsections (1A), (1B), (1C), (1D) and (1E).

Subsection (1A) requires a Commission, where the Minister has issued a delayed implementation reference, to determine that a change to external boundaries under section 64(1)(c) be delayed in its implementation until the next triennial elections.

The Commission also must not determine any matters relating to the divisions of the area or the composition and assignment of councillors. This restriction is necessary as these matters would automatically be reviewed in the statutory review period in the lead up to the next triennial elections.

It is also necessary despite the definition in section 4 which explicitly provides that a delayed implementation reference is not to include a review of electoral divisions or the composition and assignment of councillors of a local government under section 64(1)(g), (h), (i) or (k). The provisions act to prohibit a Commission actually considering these matters on a delayed implementation issue.

This is also appropriate because legal advice has indicated that a reference by the Minister under section 69 that refers only to the external boundaries does not necessarily prevent a Commission, if its determination would impact on divisional or electoral matters, from proceeding to examine the divisions and the composition and assignment of members of the local government. In this respect, it could be interpreted that there is an implied power for the Commission to review internal electoral matters whenever a reference is couched as just external boundaries.

This implied power is appropriate in circumstances where a Commission may arrive at a determination on external boundaries with such an impact that it is only sensible to proceed to deal with divisional or electoral matters. However, it is necessary to limit this implied power in the case of delayed implementation references, as otherwise the intention of the Minister in issuing the reference could be overturned.

Subsection (1B) provides that where the Minister has not issued a delayed implementation reference, a Commission in considering a reference dealing with the external boundaries of a divided area, has the discretion to determine to delay implementation, if it is satisfied that it is appropriate after considering the delayed implementation issues as defined in section 4. Where a Commission exercises this discretion, the Commission must not make any determinations relating to divisional boundaries, assignment of councillors to divisions or the composition of a local government.

Subsection (1C) provides that a Commission in making a determination to implement changes to external boundaries under section 64(1)(c), may as a result of its determination, deal only with those divisions of the local government area directly affected by the external boundary change, i.e. carry out a partial redistribution. This discretion is not only limited to those

divisions that are directly affected by the external boundary change but also on the proviso that divisional matters were included in the original reference.

In carrying out a partial redistribution, a Commission also has discretion to apply either the normal margin of allowance (section 233(2)) or the expanded margin of allowance (section 233(3)). This arrangement would be reviewed by a Commission at the normal statutory review period in the lead up to the next triennial elections. In such case, all divisions would need to comply with the normal margin of allowance for the purpose of conducting the next triennial elections.

Subsection (1D) provides that a Commission does not have the discretion to carry out a partial redistribution if the original reference included matters relating to the composition or assignment to divisions of councillors of a local government (under section 64(1)(i) or (k)) and if the Commission has made a determination on those matters. This is because the assignment of members and the composition of a local government affect all divisions and could require fresh elections for the whole of the local government area.

Subsection (1E) defines a directly affected division as a division with boundaries that will be changed by the transfer of land between local governments as a consequence of a proposed external boundary change. It also includes any divisions that adjoin the transferred part (including the division that has had land transferred from it) and all divisions that adjoin those divisions.

Clause 10 amends section 73F dealing with minor references of reviewable local government matters by requiring a Commission to include additional information to inform the public in the notification of its final determination. The notification must not only advise that implementation will be by regulation, but also, where a Commission's determination includes delayed implementation under section 73E(1A) or (1B), it must provide some general information about the effect of delayed implementation.

Clause 11 amends section 73G dealing with the implementation by the Governor in Council, by regulation, of minor references of reviewable local government matters. Section 73G currently provides that the Governor in Council must implement a Commission's determination as soon as practicable after the Minister receives the notice about, and a copy of, the

Commission's report. This requirement ensures that the implementation of a Commission's determination is not ignored or delayed. The existing provisions also allow for delayed implementation without breaching the intent of the original provisions, e.g. where the implementation requires some delay because of the holding of triennial or fresh elections.

Additional provisions are provided for to ensure that the Governor in Council implements a Commission's determination for delayed implementation under section 73E(1A) or (1B). The provisions also require a regulation to be made to ensure that the next triennial elections are conducted on the proposed new external boundaries.

Clause 12 amends section 77 dealing with a Commission making determinations on limited reviewable local government matters. It inserts a reference to section 233(2) to take account of amendments to section 233 in this Bill. In this respect, a Commission can not adopt an expanded margin of allowance in making determinations in relation to divisions being examined under an application for a limited reviewable local government matter.

Clause 13 amends section 106 to expand the issues that may be dealt with by a regulation made by the Governor in Council implementing a reviewable local government matter. Section 106 already enables the making of a regulation providing for the transfer of assets and liabilities between local governments.

This amendment inserts section 106(2)(j) to enable a regulation to provide for payment where services and facilities have not been adequately supplied to a part of an area that will be transferred into another local government at the conclusion of the next triennial elections. This amendment will enable a regulation to deal with problems arising out of an external boundary change which is the subject of a delayed implementation. In this situation, Council "A" may, during the interim period up to the next triennial elections, reduce services and expenditure to an area that will be transferred to Council "B" at the conclusion of those elections. The amendment will provide a discretionary regulation making power to require a greater transfer of assets (e.g. funds) from Council "A" because it failed to provide adequate services to the area it knew was to be transferred to Council "B".

In addition, section 106 already enables the making of a regulation to provide for holding, postponing or cancelling elections. However, the

regulation making power has been constrained to ensure that a regulation can not be made providing for the holding of fresh elections for a local government where a Commission has adopted the expanded margin of allowance or only conducted a partial redistribution of divisions of the area.

Clause 14 amends section 233 by providing a Commission with the discretion to apply up to a double margin of allowance for the quota of voters for each councillor to be elected for a division of a local government area. This applies to references of major and minor reviewable local government matters relating to the review of external boundaries (and does not apply to references dealing with amalgamation, creation or abolition of local government areas). It also does not apply to delayed implementation.

Only those divisions that are directly affected by the external boundary change may have the doubled margin of allowance applied. The increased margin of allowance will only apply from the date of a regulation implementing a Commission's determination on external boundaries until the next triennial elections.

Other divisions not directly affected by the external boundary change would be reviewed at a later time by another Commission in the statutory review period in the lead up to the next triennial elections. A Commission therefore can not make a determination using the doubled margin of allowance during the statutory review period in the lead up to the next triennial elections within which a Commission is required to review all divided local government areas which are or could be out of quota.

For the purpose of conducting the next triennial elections, all divisions of a local government area must still comply with the normal margin of allowance for quotas.

Clause 15 amends section 234 to exempt those local governments with divided areas which are affected by a delayed implementation determination made by a Commission, from the unnecessary task of advising the Minister whether or not their divisions (based on its existing area and not the proposed area) are within the normal margin of allowance. In these circumstances, a review of divisional boundaries will be initiated by the Minister under section 235 without requiring a triggering report from a local government.

Clause 16 amends section 235 by ensuring that where a local government area has been the subject of a delayed implementation determination or a partial redistribution, that local government area will be

referred by the Minister for review of divisional boundaries. The reference must be made as soon as practical after the information date. (The information date is 1 March in the year before the year of the next triennial elections, except in the case of Brisbane City Council, where it is 1 October in the year that is two years before the year of the next triennial elections).

The amendment will ensure that all local governments with divided areas are within the normal margin of allowance for the purpose of conducting the next triennial elections.

Clause 17 amends section 350 to ensure that any fresh election cannot be held where only a partial redistribution of divisions of the area has occurred.

In this respect, a normal margin of allowance or a doubled margin of allowance can be adopted by a Commission when carrying out a partial redistribution. However, it is considered that all divisions should be reviewed and are to be within the normal margin of allowance for the purpose of conducting a fresh election.

Clause 18 amends section 459 by providing examples of how a local law can either authorise making a broad local law policy or a policy that applies only to a narrow and specific issue.

PART 3—CONSEQUENTIAL AND MINOR AMENDMENTS

Clause 19 provides for a schedule of consequential and minor amendments amending the Acts mentioned therein.

SCHEDULE**CONSEQUENTIAL AND MINOR AMENDMENTS****CITY OF BRISBANE ACT 1924****LOCAL GOVERNMENT ACT 1993****LOCAL GOVERNMENT LEGISLATION
AMENDMENT ACT 1997**

These minor amendments are administrative in nature and correct minor errors and oversights to ensure that the intentions of provisions are met or are clear.

The majority of the amendments are to the National Competition Policy provisions contained in the *Local Government Legislation Amendment Bill 1997* passed by Parliament on 9 May 1997.